

San Francisco Bay Conservation and Development Commission

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TO: Enforcement Committee Members

FROM: Adrienne Klein, Enforcement Analyst (adrienne.klein@bcdc.ca.gov)

SUBJECT: **Update on Oldest Cases (Agenda Item 9)**

Summary

This report summarizes the six open two closed enforcement cases that date from 1999 and earlier. The information provided for each case includes the impact prioritization score, a description, as appropriate, of the permit or authorization at issue, a description of the violation, staff actions that have been undertaken to resolve the violation, staff's proposed case management plan for the case, and the current case status.

Case Summaries – Closed Cases

1. Enforcement Case No. ER1999.019 located at 1331 Milton Road, Napa County, on the Napa River

- Impact Prioritization Score: 39
- Authorization: No BCDC permit or permit application.
- Violation/Challenges: Unauthorized construction of multiple boat docks in BCDC's certain waterway jurisdiction. Property has since changed hands.
- Staff Action: Onsite meetings and correspondence with previous property owner, who eventually declined to submit an after-the-fact permit application to the State Lands Commission and BCDC.
- Proposed Case Management Plan: Close case since docks have been removed and notify current owner that a BCDC permit is required to drive pilings and/or construct boat docks in the Napa River, including a lease from the State Lands Commission and review by the Regional Water Quality Control Board, U.S. Army Corps of Engineers and possibly California Department of Fish and Wildlife.
- Status: Closed 8/23/2019 Aerial image review shows that boat docks have been removed. While a pile supported pier remains in place it may predate the MPA, does not appear to have been repaired and was not part of the original violation complaint. A letter was sent to current owners to notify them that any future work on pier or in river requires prior BCDC approval.

2. Enforcement Case No. ER1999.081 located at 3393 Petaluma Boulevard S., Petaluma, Sonoma County (alternate address is 4001 Highway 101 South)

- Impact Prioritization Score: 75
- Authorization: No BCDC Permit. It is probable that a portion of the unauthorized fill on this 8-acre, open space / agricultural property is located on public property and



within BCDC's Petaluma River certain waterway jurisdiction, i.e. below 5 feet mean sea level.

- Violation: Placement of fill consisting of rock and concrete riprap in the Petaluma River.
- Staff Action: Reported to BCDC by Petaluma Riverkeeper in 1999. In 2001, staff from BCDC and Sonoma County sent two separate letters requesting an after-the-fact application for the fill placement. The property owner declined to submit an application or cooperate with staff from BCDC or the County and also provided the County with a letter explaining why he considered himself not subject to the jurisdiction of the County.
- Proposed Case Management Plan: In 2018, BCDC activated this case and learned that in the past, the County had referred the case to the U.S. Army Corps of Engineers, which is not currently pursuing an action. Staff will investigate this file and determine the appropriate action.
- Status: Closed December 31, 2019, following a review of a M1994.025.003 permit amendment which authorized levee maintenance at this location.

3. Enforcement Case No. ER1999.005, located on privately-owned, commercially developed property in Redwood City, San Mateo County

- Impact Prioritization Score: 0 (paper violation)
- Authorization: Permit No. 1982.026 authorized construction, use and maintenance of public access in shoreline band adjacent to Belmont Slough associated with a large commercial development.
- Violation: Failure to submit public access instrument required by the original permit.
- Proposed Case Management Plan: Contact permittee and provide instructions to submit and obtain approval of legal instrument within specified timeframe to avoid 35-day enforcement letter or formal enforcement proceeding.
- Status: Closed December 27, 2019, following review of Permit No. 1982.026.09, amended on December 4, 2017, which includes Exhibits E and F demarcating the required public access areas.

Case Summaries – Pending Cases

4. Enforcement Case No. ER1988.024 located at 628 Johns Place, Benicia, Solano County

- Impact Priority Score: 39
- Authorization: Permit No. 1977.021 authorized subdivision and construction of 10 homes, a concrete block gravity revetment and public access from the street to the beach via wooden stairway on a 2.3 acre site.
- Violation: Public access stairs from blufftop to beach are in disrepair and closed by City mandate. The beach is otherwise inaccessible due to grade change from street to beach.



- Staff Actions: Shoreline protection work by the owner of Lot 5 was necessary before City could reconstruct and reopen stairs pursuant to its maintenance agreement. BCDC and the City of Benicia initiated coordinated compliance efforts in 2014-2015. As of 2019, the City was satisfied with proposed revetment repair design submitted by property owner.
- Proposed Case Management Plan: Next step is to seek regulatory approvals, including BCDC approval, for the improvements. Allow landowner to continue pursuing design and regulatory approvals for new/repared seawall so that City can then reconstruct public access stairway.
- Status: Staff has received a concept shoreline protection plan from the private property owner's engineer and provided recommendations for modifications. Staff awaits the revised concept plan and an application for a permit amendment. Staff has also communicated with the City of Benicia staff engineer, who is prepared to oversee the construction of the beach access stairway following completion of the shoreline reconstruction project.

5. Enforcement Case No. ER1990.026 located on managed wetlands at the Rich Island Duck Club, Port of Stockton, Suisun Resource Conservation District

- Impact Prioritization Score: 90
- Location: A 1,025-acre managed wetland at the Rich Island Duck Club (Duck Club), Simmons Island, Solano County
- Authorization: Consistency Determination No. 1985.006, issued to U.S. Army Corps of Engineers authorized one million cubic yards (cy) of dredging in the Stockton Ship Channel, and disposal of the material at four locations, one of which was the Duck Club, where the authorization allowed placement of 350,000 cy of material over 100 acres to improve habitat, fill borrow ditches and maintain levees. The Consistency Determination requires removal of any unused material within 10 years of project completion, in accordance with a 1985 agreement between Army and Stockton Port District (Port) and a 1986 letter from Army to BCDC stating the Army/Port agreement is part of the Consistency Determination. The 1985 Agreement states that the Port has the right to sell, remove or otherwise dispose of any excess material and Port agrees that if not all material is used or removed by July 1, 1996, Army has the right to remove the material and charge Port with net cost associated with such removal.
- Violation: Prior July 1, 1996, i.e. 10 years following project completion, BCDC staff notified the Army, Port District and Duck Club to use or remove excess material to avoid a violation. The Port subsequently hired a consultant to prepare a dredged material management plan.
- Staff and Enforcement Committee Action: Enforcement Committee heard matter on November 30, 2006 and declined to initiate litigation, instead selecting to direct the Army, Port District and Duck Club to:

- Prepare a final detailed plan based on conceptual plan and completed additional engineering work, environmental review, obtain permits and complete construction, monitoring and reporting; OR
- Remove all excess material to an acceptable offsite location with a reasonable length of time, TBD by Enforcement Committee and Commission.
- Shortly before a follow-up EC meeting scheduled for May 10, 2007, the Duck Cub presented a revised site restoration plan that raised a number of issues. During the 2007 EC meeting, the Corps and the Port confirmed their commitment to carry out the original plan with Port funding, but the Duck Club advocated for consideration of its plan. The EC directed the parties to work on a solution to rectify differences between the two plans and report back. The matter remains unresolved.
- Proposed Case Management Plan: Schedule call/meeting with parties to assess funding and capacity to finalize site restoration plan within a specified timeframe. If agreement between Army, Port and Duck Club cannot be achieved within specified timeframe, work with the Office of the Attorney General to consider whether to commence litigation.
- Status: Open resolution pending. A letter was mailed December 17, 2019, to USACE to meet its obligations under the letter of agreement dated June 4, 1986. The Port of Stockton has retained AnchorQEA, an engineering, environmental sciences and planning and restoration consulting firm, to evaluate the past site remediation proposals and develop a new remediation proposal to which all parties can agree and which is eligible for regulatory approval. Two in-person meetings have been held with all affected parties followed by monthly telephone update meetings. A tentative resolution timeline is scheduled with five milestones for potential presentation to the Committee for plan approval on/about May 2020 contingent on execution of a site visit postponed 6 weeks because of the COVID-19 virus to assess current conditions. There will be ongoing remote and teleconference meetings with interested parties to assure ongoing progress.

6. Enforcement Case No. ER1995.002 located at 22 Lucky Drive, Greenbrae, Marin County

- Impact Priority Score: 64
- Authorization: No BCDC Permit. Pre-existing pile-supported single-family residence located on Corte Madera Creek in BCDC's certain waterway jurisdiction.
- Violation: Two episodes of placing broken rock, concrete and fill around and under the residence in Corte Madera Creek, illegal live-aboard, removal of marsh vegetation, repair of decks around house, residential expansion via an enclosure, installing of pilings. Since discovery of the violations and the opening of the case, the property has changed hands.
- Staff Actions: 1994 onsite meeting & letter advising submittal of after-the-fact permit application. 1995 office meeting to complete application, and two follow-up letters requesting additional information. 1997 letter regarding illegal live-



aboard. 1998 onsite meeting and letter requesting after-the-fact permit application and letter from State Lands Commission (SLC).

- Proposed Case Management Plan: 1. Contact current owner; solicit after-the-fact application. Resolve without fines if all unauthorized work is permitted or removed within specified timeframe. 2. Coordinate with SLC, who owns the submerged tidelands on which this and other residences are located and with Marin County, from whom discretionary approval may be necessary.
- Status: SLC staff provided BCDC staff with a copy of the current lease. BCDC staff has not yet contacted the current property owner.

7. Enforcement Case No. ER1998.013 located on publicly-owned property adjacent to India Basin, northeast of Hunters Point Road, in the City and County of San Francisco

- Impact Prioritization Score: 0 (paper violation)
- Authorization: Permit No. 1993.001 authorized City and County of SF to place fill in the Bay to raise grade of previously filled area, riprap for shoreline protection, paving for public access pathways, boat launch ramp, landscaping, pile-supported fill for fishing pier, boat launch float and boardwalk; and fill in shoreline band for roads, public access, and open space.
- Violation: Failure to submit public access instrument required by original permit.
- Staff Actions: The City needs to vacate one or more street rights-of-way (ROW) to enable dedication of required public access area. BCDC staff met many times with City staff to achieve this requirement yet the City was unsuccessful in vacating the street ROW.
- Proposed Case Management Plan: Contact permittee to assess status and provide instructions to submit and obtain approval of legal instrument within specified timeframe to avoid 35-day enforcement letter or formal enforcement proceeding. Discuss additional actions in light of recent development plans.
- Status: Staff has contacted the SF Departments of Parks and Recreation (DP&R) and Public Works (DPW) to identify the appropriate contact persons who can establish whether a number of street rights of way located within the public access areas have been vacated and transferred from DPW to DP&R for exclusive public use.

8. Enforcement Case No. ER1999.034 located at 1620 Fernside Boulevard, City and County of Alameda, SPN-2011-00164

- Impact Prioritization Score: 28
- Authorization: Permit No. M1986.010 authorized repair and repositioning of existing single boat dock including pile driving, issued in September 1998.
- Violation: Construction of single boat dock and seawall on property formerly owned by USACE that may be inconsistent with existing authorization.
- Proposed Case Management Plan: Investigate permitting status of site and conduct site visit, as necessary, to assess whether existing boat dock and shoreline protection are consistent with permit authorization and proceed accordingly.

- Status: BCDC investigation indicated that there is a new property owner who staff has not yet contacted.