

# San Francisco Bay Conservation and Development Commission

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July 9, 2020

**TO:** Enforcement Committee Members

**FROM:** Priscilla Njuguna, Staff Counsel (415/352-3640; [priscilla.njuguna@bcdc.ca.gov](mailto:priscilla.njuguna@bcdc.ca.gov))

**SUBJECT:** Draft Minutes of July 9, 2020 Enforcement Committee Meeting

**1. Call to Order.** The meeting held online via Zoom was called to order by Chair Scharff at 9:30 A.M. Chair Scharff noted that to increase public access, Facebook Live was being tested for use during the meeting.

**2. Roll Call.** Present were Chair Scharff and Commissioners Gilmore, Techel and Vasquez.

Not present was Commissioner Ranchod.

Ms. Njuguna stated that a quorum was present.

Staff in attendance included Executive Director, Larry Goldzband; Chief Deputy Director, Steve Goldbeck; Regulatory Director, Brad McCrea; Staff Counsel, Karen Donovan; Legal Secretary, Margie Malan; Principal Enforcement Analyst, Adrienne Klein; and Enforcement Policy Manager Priscilla Njuguna.

Shari Posner, Deputy Attorney General, also attended the meeting.

Chair Scharff noted that the meeting agenda previously posted on the BCDC website erroneously included Item 8, Supplemental Environmental Projects which was discussed at the previous meeting. This item was included in error.

**3. Public Comment.** Chair Scharff called for public comment on subjects not on the agenda.

Linda Pfeifer, Sausalito resident, spoke regarding the draft General Plan and draft Environmental Impact Report being developed by the City of Sausalito. She expressed concern that the illegal anchor-outs in the area continue to increase. She criticized City enforcement and expressed concern with 72-hour permits being extended. She stated that one anchor-out's boat is being used as an Airbnb. She asserted that Sausalito's anchorage is meant for maritime travelers who need to drop anchor for a couple of days then move on. She asked why BCDC has not enforced the Sausalito situation when it has helped other Bay Area harbors such as the Oakland Estuary. Ms. Pfeifer also expressed concern that the term "liveaboard," which historically refers to mariners is now also being used to also refer to anchor-outs.

**4. Approval of Draft Minutes from the June 24, 2020 Meeting.** Chair Scharff asked for a motion and second to adopt the June 24, 2020 meeting minutes.

**MOTION:** Commissioner Techel moved for approval of the June 24, 2020 meeting minutes, seconded by Commissioner Gilmore. The motion carried unanimously with a vote of 4-0-0 with Commissioners Gilmore, Techel, Vasquez, and Chair Scharff voting "YES", no "NO" votes, and no "ABSTAIN" votes.

**5. Enforcement Report.** Ms. Njuguna gave a summary of the Enforcement Report for the second quarter. She reported that Staff closed 61 cases and opened 32 cases, a substantial increase in closures from the first quarter. She noted that some cases were duplicate reports whereas in other instances information provided to Staff from respondents revealed that alleged violations were not actual violations. She also explained that Staff has been working to refer cases to local enforcement agencies when they are better suited to address some cases.

Ms. Njuguna then highlighted that the second quarter demonstrated a small reduction in the level of active cases that are open. She suggested that with the strategies Staff are implementing through their procedures, Staff will continue to close cases even though recent Staff departures have left only Ms. Klein and her working in enforcement.

Ms. Njuguna also reported that Staff made substantial progress on grouped cases. In addition, she noted that initial contact letters have proven effective in enabling quick responses and obtaining documentation from Respondents to close cases.

Ms. Njuguna then highlighted some information on the attachment: Enforcement Program Improvement Progress Report which documents improvements since 2019. She stated that the most important section for the Committee Commissioners is the Next Step Summary in the report. She informed the Commissioners that Staff will keep the Next Steps Summary section up to date so the Commissioners can be better prepared to consider the different upcoming processes that are underway.

**6. Oldest Case Update.** Ms. Klein reported that Staff provided the Committee Commissioners an updated report describing the progress on the remaining five oldest open cases.

She focused on the Rich Island Duck Club case in which most progress has been made towards resolution. The property is located in Solano County on a managed wetland known as the Rich Island Duck Club. Dredged material from a Port of Stockton dredging project was placed on an exterior levee and was required by the federal consistency determination issued by the United States Army Corps of Engineers to be beneficially reused on site. This beneficial reuse did not occur.

Ms. Klein noted that several efforts made during the 1990s had not resulted in compliance. She explained that Staff reinitiated contact with the Port of Stockton and the Corps of Engineers. The Port hired the consulting firm Anchor QEA, which analyzed the prior beneficial reuse proposals and created two new draft proposals. Staff met with interested parties several times and alternatives have been drafted. The consultant recently conducted a site visit to validate existing site conditions based on document review and technical data collected. She noted that they are pleased with the progress underway and are grateful to the Port of Stockton for engaging this able consultant. She then noted that the next steps involve getting an update in late July on the difference between the expected site conditions and those actually found. Ms. Klein informed that Commissioners that the beneficial reuse plans will then be finalized, and a consensus obtained regarding which beneficial reuse plan to proceed with. The regulatory permitting process will then begin.

Ms. Klein reported great success working with the oldest case private property owners in getting approvable permits they need to resolve their violations.

Ms. Klein then highlighted a case in which Staff reviewed the permits and assessed the nature of the violations at two public parks in San Francisco. Staff conducted a site visit and contacted City and County staff. There will be a private development in the area that will result in some modifications to existing permit requirements. She noted that BCDC, the City and the County, and other responsible parties are developing an agreement to understand when and how existing requirements providing access to the Bay through a fishing pier and launch ramp can effectively be implemented.

Ms. Klein then reported on the private property on Fernside Boulevard in Alameda. She noted that Staff has finally obtained contact information for the owner through the tenant residing at the property and are looking forward to getting the matter resolved.

**7. Update on a Transition Plan for the Management of Vessels in Richardson's Bay, Marin County.** Ms. Klein began the presentation by providing an overview on presentations and briefings the Committee has previously received.

At the progress briefing on April 9, Committee received a report on a phone call staff had with Senator McGuire, the RBRA and the City of Sausalito. Ms. Klein reiterated that on April 9, the Committee had given the RBRA direction to accomplish the following.

- Remove the anchor-outs within a reasonable time;
- Prevent slowing of the vessel replacement resolution;
- Increase removal of noncompliant vessels;

- Provide alternative housing for anchor-outs;
- Coordinate with marina operators to align Safe and Seaworthy Program standards with marina berthing requirements and prevent abandoned vessels from ending up on Richardson's Bay; and
- Address eelgrass habitat damage and restoration.

She then reiterated that the Committee had given direction for the City of Sausalito to accomplish the following.

- Expand the Safe Harbor Program in coordination with the RBRA;
- Provide details on the City's proposed increase of liveaboard slips at marinas;
- Provide information on alternative housing arrangements for anchor-outs;
- Coordinate with marina operators to prevent abandoned vessels from ending up on Richardson's Bay; and
- Address eelgrass habitat damage and restoration.

#### **Presentation: City of Sausalito**

Joan Cox, City of Sausalito Councilmember, gave a presentation beginning with a background of the situation and ending with the current status. She listed the Waterfront Management Plan Priorities. In doing so she noted that the highest priorities are the removal of marine debris vessels, unoccupied vessels, unregistered vessels, and vessels occupied by people who are a danger to themselves or others. She then noted that the lowest priority is the legacy anchor-outs for whom the City has adopted a policy of deferred enforcement.

Councilmember Cox then explained the City's authority to regulate. She described the staffing and enforcement efforts the City has made. She displayed a graph showing that the total number of vessels in the City's waters was down to 13 as of April and noted that an update showed that the total vessels is 10 as of July 2, 2020.

She provided numbers documenting Sausalito's police enforcement effort progress since January 2020. She informed that Commissioners that Sausalito is seeking state funding to restore damaged eelgrass in Sausalito's waters in concert with a comprehensive eelgrass restoration plan for all of Richardson's Bay. She noted that information from the Merkel & Associates report shows that there are two primary eelgrass beds located within City waters comprising approximately 9.9 acres. She noted that the beds comprise approximately 1% of the total eelgrass observed within Richardson's Bay during the 2019 survey. Councilmember Cox explained that several of the vessels removed were moored offshore of Dunphy Park and Turney Basin meaning the eelgrass beds can now expand in those areas. Further, she explained that the Sausalito City Council

has declared that the waters of Dunphy Park are an open water area for recreational boating making it unlawful for anyone to moor a vessel there.

In addition, Councilmember Cox informed the Committee that Sausalito is in negotiations with a marina owner to acquire additional underwater lots adjoining Dunphy Park that will facilitate the growth of eelgrass. The City is also collaborating with the Marin Audubon Society on eelgrass restoration. She noted that a fair number of funding sources are available to assist in these efforts. She explained that the City is also working with Senator McGuire and the RBRA to identify funding.

Councilmember Cox showed photos of abated marine debris and vessels turned in for the City for abatement. She noted that since the start of the Waterfront Management Plan, the Sausalito police have marked over 20 unoccupied vessels, the majority of which have been removed. She also noted that a number of unoccupied moorings have also been removed.

Councilmember Cox then displayed a map depicting the current locations of anchor-outs in Sausalito waters and Richardson's Bay. She explained that every year Sausalito removes debris in advance of winter storms. She further explained that the City and Marin County Health and Human Services reach out to people who may appreciate housing and other services.

Councilmember Cox then reviewed public safety impacts related to the waterfront for the City to ensure that boats anchored on the waters are seaworthy and occupants can handle them during storm events which she asserted continues to be a major priority for Sausalito.

Councilmember Cox then described the Marin Mobile Care's shower program. She explained that through the pilot Safe Harbor program, Sausalito works in conjunction with other local agencies to empower anchor-outs toward an independent life. She noted that various marina operators have agreed to make slips available for periods of 6-18 months for the pilot program. Participants who enroll are assigned to the Ritter Center's Whole Person Care case manager to facilitate their transition out of homelessness. She noted that the Safe Harbor program has funding challenges and proceeded to list current funding sources and options for funding.

Councilmember Cox then informed the Commissioners that the City, RBRA, and Senator McGuire have been holding meetings to discuss solutions for the issues in Richardson's Bay and funding to meet BCDC's enforcement requirements. She reiterated that the three-part conceptual plan is comprised of the following components.

1. Permanent supportive housing for individuals living on the Bay;
2. Restoration and improvement of Richardson's Bay water quality including eelgrass restoration; and

3. Enhanced enforcement on Richardson's Bay as individuals living there are transitioned elsewhere.

She explained that Senator McGuire is working with the state Housing and Community Development Department and the Department of Finance to identify potential funding for affordable housing. She then noted that the City is working with him to identify potential housing sites with the hope that development could occur as soon as 2021.

Councilmember Cox explained to the Commissioners that as for every other California municipality, the financial impacts of COVID-19 have been significant to Sausalito. She noted that the impact to Sausalito's General Fund revenues could be a 10-20% reduction, and the level of state and federal relief available is uncertain. She noted that this funding shortfall will undoubtedly impact the City's waterfront management efforts. Nevertheless, she reiterated that Sausalito remains committed to its identified goals and will continue to keep BCDC apprised of its progress monthly.

The City of Sausalito requested the following from BCDC:

- Clarity regarding enforcement of BCDC policies for Richardson's Bay, particularly during the pandemic;
- Support of Sausalito's existing plan for its legacy anchor-outs including the Safe Harbor program and its policy to disallow newly arrived boats to moor longer than 72 hours, including legacy anchor-outs who voluntarily leave Sausalito waters and then return; and
- A permanent increase in Sausalito's liveaboard allocation from 10%-15% per marina.

### **Questions and Discussion**

Commissioner Techel asked if the City was taking the boats on Richardson's Bay and putting them in the marina. Councilmember Cox confirmed that the City is. Commissioner Techel asked how the City deals with people who do not want to follow regulations. Councilmember Cox answered that the City has been making efforts to build trust with the anchor-outs. She explained that of the 10 boats on Richardson's Bay, five are interested in the Safe Harbor program. She noted that with the wraparound services provided by the Ritter Center, the City was hopeful to continue providing supportive services and assist people in getting the help they need while somewhat preserving an independent lifestyle. She explained that some people are grateful not to have to row or motor into town every day for water and food – they now have permanent water, electricity and mooring.

Commissioner Gilmore commented that she continued to be impressed by the City of Sausalito's efforts. She noted that City efforts have been consistent, logical, strategic, and compassionate. She thanked the City

representatives for realizing the need to address the whole person and not just the end goal of getting the boats out of their waters. She stated that she realized that the already limited resources will become even more limited because of COVID.

Chair Scharff agreed and commented that when the five remaining legacy anchors are gone in five years, as is probable, the City's mission will have been accomplished.

Councilmember Cox acknowledged the police department, City Council, regional partners, marina operators, and Coast Guard as having played a role in the City's progress. She noted that it has been through collaboration that the City has been able to move this effort forward.

Chair Scharff referred to the public comment made by Ms. Pfeiffer and asked if Councilmember Cox wanted to respond. Ms. Cox stated that she had not heard the comments and could not respond. She noted that as Chair of the General Plan Advisory Committee she could state that over the last three years the City has paid particular attention to the portions of the General Plan that deal with the anchor-outs and with BCDC to ensure the accuracy of those provisions.

**Presentation: RBRA**

Curtis Havel, RBRA Administrator and Harbormaster shared the progress made since RBRA's last presentation before the Committee.

He began by noting RBRA staffing changes namely the temporary part-time hire of an Assistant Harbormaster, David Machinski. He explained that Marin County would hire a full-time position hopefully next month. He then explained that Beth Pollard is no longer RBRA Executive Director and that Marty Winters has stepped down from the RBRA Board of Directors and been succeeded by Claire McAuliffe.

Mr. Havel then provided some background information on Richardson's Bay. He described its geographical location, noted that the anchorage is roughly one mile wide by two miles long with an average depth of four feet. He noted that the northern lobe of the anchorage is bounded by the Audubon Bird Sanctuary which is closed from October through April. He then explained the RBRA's jurisdiction in Richardson's Bay noting that it is a federally designated Special Anchorage. He explained that mariners anchoring in this Special Anchorage area consult the applicable RBRA ordinances including information on anchoring vessels and the use of anchored and moored vessels.

Mr. Harvel that explained the RBRA's Transition Plan and its related Commitments. He noted that the Transition Plan confirms that RBRA will enforce time limits on newly arriving vessels; vessels that are unsafe, unseaworthy, unregistered, and/or fail to conform to the Safe & Seaworthy

Program standards will be removed. He explained that the Transition Plan represents a fundamental shift in historic practice in that it sets timelines for vessels to enroll in the Safe & Seaworthy Program and get registered. It also sets a timeline for vessels to become seaworthy. He noted that the shift is that the RBRA Board of Directors is proceeding with bringing the anchorage into compliance with its existing rules and regulations. He noted that the Transition Plan acknowledges the economic, mental health, and substance abuse challenges that some anchor-outs face. He noted that the RBRA continues to support efforts to relocate willing individuals into alternative housing.

Mr. Havel explained that the Transition Plan addresses the ecology of Richardson's Bay and takes a long-term approach to improving and sustaining eelgrass habitat. He reiterated the RBRA's goal of "[a] safe, healthy, and well-managed Richardson's Bay." He noted that at last count there were 125 vessels on the water explaining that compared with the City of Sausalito, RBRA has to take a broader, longer-term approach to managing Richardson's Bay given the larger scope of their issue.

Mr. Havel reiterated that Richardson's Bay is a temporary 72-hour anchorage. He explained that the RBRA by establishing these timelines, standards, and expectations, is hoping that people in the anchorage have clear and consistent guidelines. He noted that in their multi-pronged approach, RBRA is supporting initiatives for relocating occupants of vessels to alternative housing. RBRA is also trying to realize a decrease in the number of occupied vessels over time. Last he noted that a 72-hour anchorage helps to protect and promote eelgrass habitat and growth.

Mr. Havel then summarized the RBRA's efforts towards compliance include the following:

- Incoming vessels remain for 72 hours and then must leave;
- The Safe & Seaworthy Program is for vessels present during the August 2019 census;
- Outreach continues to connect people with other housing;
- The sunset date for occupied vessels will be determined once the number of vessels that meet the Safe & Seaworthy Program standards has been definitively determined; and
- Eelgrass protection and restoration measures will be in place.

Mr. Havel explained that the RBRA staff has distributed information on the Transition Plan to about 90% of the vessels in the anchorage. The information distributed establishes the Safe & Seaworthy Plan, which states that by October 15, 2020, interested vessels owners must enroll. He noted that this process will give the RBRA an idea of the number of vessels that will be allowed to stay in the anchorage temporarily while they work through attaining

the program standards. The RBRA will also know who has chosen not to participate and those vessel owners will then be subject to a more immediate enforcement process.

Mr. Havel further explained that vessel owners who enroll in the program will receive a checklist explaining the inspections each vessel will undergo. The inspections will identify the deficiencies and solutions to make the vessel seaworthy. He explained that the vessels must have current registration, operable engine, sails, helm, self-contained sewage, etc. He noted that unlike Marinas that require insurance vessels that meet the RBRA standards would qualify for insurance but would not be required to obtain insurance meaning they would not without insurance qualify to berth at a marina slip.

He acknowledged that Sausalito's Safe Harbor Program works there because the volume of vessels in the City's waters is less than those in the waters managed by the RBRA. He explained that the RBRA given the larger volume of vessels is instead identifying the most vulnerable vessels and the people in the greatest need and using all the outreach connections available to get them into housing opportunities. He reported that three individuals in the anchorage have indicated that they want to move into permanent housing on land; they qualify for housing vouchers and now just need to secure vouchers and find housing. Mr. Havel hoped that success with these three individuals will create momentum for other similarly situated people. He pointed out that because the RBRA is not a housing agency, its greatest impact on addressing anchor-outs is to ensure that vessels are as seaworthy as possible so that they are safe for their occupants and the people around them.

Mr. Havel explained that the RBRA Board will benefit from information it gains over the next couple of months from the enrollment program by determining the number of vessels for legacy standing in the anchorage to better define a sunset date. He noted that vessel owners with legacy standing vessels will receive deferred enforcement while they work to make their vessels seaworthy.

He explained that the multi-faceted approach of continuous and consistent application of the rules for anchoring in Richardson's Bay will result in a decrease in number of vessels which will in itself lend to the improvement of the ecology in general and of the eelgrass habitat in particular. For eelgrass restoration the RBRA is working with Rebecca Schwartz-Lesberg of Coastal Policy Solutions as a Consultant to help the RBRA develop a map for Richardson's Bay that identifies an eelgrass restoration zone, an eelgrass protection zone, and an anchoring zone. The RBRA wants to find more information on a future mooring program that could potentially coexist with eelgrass. The RBRA would need to determine if there is a mooring system that protects and preserves the eelgrass but also allows for ongoing recreational

use of Richardson's Bay. The RBRA also needs to determine if the nautical charts prepared by the federal government that identify Richardson's Bay as an anchorage can be updated to show that parts of the anchorage are better off being protected due to the ecological resources impacted.

With respect to funding Mr. Havel explained that the RBRA continues to work with the Department of Boating & Waterways for the SAVE grant, the National Oceanic and Atmospheric Administration (NOAA) for grant funding and continues to look for new funding sources.

Mr. Havel then discussed the top objectives of the Safe & Seaworthy Program. He explained that making a vessel seaworthy results in avoiding injury or death on the Bay, protecting the habitat, promoting eligibility for a slip on the marina, and managing Richardson's Bay more effectively.

He provided further details on the requirements of the Safe & Seaworthy Program namely that: Ground tackle is operable; Boats are registered; Decks are clear of debris; and Vessel occupants convicted for criminal activity no longer qualify for the program.

Mr. Havel explained that enrollment in the program ends October 15, 2020. He noted that the next benchmark is February 15, 2021 when vessels need to be registered and documented. By October 15, 2021, vessels need to meet the Safe & Seaworthy requirements; those not complying will be subject to removal and he noted that vessels can fall out of compliance for various reasons and will also be subject to removal if they are no longer compliant.

Mr. Harvel then described the current status of the anchorage noting that as of July 6, 2020 there are 126 vessels in the anchorage. He explained 103 of those vessels were present during the August 2019 census. He noted that 80 vessels have been removed that were unoccupied marine debris. He explained that of the 126, at least five are currently using the anchorage as a marina – their owners do not live on the boats. If these vessels go adrift, there is no one to salvage the situation and it causes a hazard for everyone.

He noted that the RBRA is aggressively pursuing housing opportunities. He also noted that the RBRA is initiating an impound and citation program to further address non-compliant vessels.

Mr. Harvel asserted that the RBRA had met the Committees expectations of April 9, 2020, to bring Richardson's Bay into compliance within five years by adopting the Transition Plan and the Safe & Seaworthy Program. He noted that non-compliant vessels will probably be out of the anchorage in less than five years. He reiterated that in deciding on a sunset date, the RBRA Board of Directors wants an accurate number of enrolled vessels to focus on.

In addition, the RBRA has aligned the Safe & Seaworthy Program with marina requirements. Most marinas require insurance, but with this exception, vessels that meet RBRA standards would otherwise meet marina slip requirements. He further explained that the RBRA receives funding from the California Department of Boating & Waterways to dispose of vessels through the Voluntary Turn-In Program. He noted that a couple of times a month, he receives phone calls from vessel owners in marinas who are ready to turn in their vessels. If the marina is in the RBRA's jurisdiction, he works with them. If it is outside, he often works with that marina or harbormaster to try to arrange disposal of the vessel in the most cost-efficient manner. He explained that the RBRA is trying to break the supply chain from marinas throughout the Bay Area. He asserted that this is also an opportunity for BCDC as a regional agency to lend a hand in the effort to keep vessels past their prime from re-entering Richardson's Bay.

Mr. Havel then reported that the RBRA has done the outreach and some of the assessment for housing alternatives for people living on the anchorage. Social workers have gone out on his boat, the Audubon Society has also hosted people from the outreach community on their vessel to do assessments. In addition, the Transition Plan includes restrictive language for the option of one-time vessel replacement the noted that for one-time vessel replacement to be considered, the vessel needs to meet Safe & Seaworthy Program standards that would need to be maintained. The vessel would likely need to be insured and ongoing compliance closely monitored. The main option that the RBRA will aggressively pursue is alternative housing.

Mr. Havel reiterated that the RBRA will be working with Ms. Schwartz-Lesberg to create a plan for managing and enhancing the ecosystem in Richardson's Bay through by adjusting the layout of the anchorage. He indicated that the Richardson's Bay management plan will be a collaborative effort with other local agencies and community groups.

### **Committee Questions**

Commissioner Gilmore asked how the current number of 126 vessels on Richardson's Bay compares with the number of vessels at the same time the previous year. She also asked how many new vessels entered Richardson's Bay since the August 2019 census. Mr. Havel answered that the Marin County Sheriffs census counted 184 vessels in Richardson's Bay in August 2019. Around the same time, a census performed by Sausalito counted 192 vessels. The present count is 126, a reduction of about 70 vessels. He explained regarding the influx that vessels are constantly coming and going and estimated that 30-40 vessels have come into the anchorage and then left. He explained that a 30-day anchoring permit is available, and a number of vessels have used that permit process successfully. He further explained that of the current 126

vessels, 103 were part of the August 2019 census; approximately 25 are new to Richardson's Bay. All these new vessels have been provided with a 72-hour notice or a 10-day notice for marine debris. He reported that at the onset of the pandemic, the RBRA went into a "passive" enforcement mode in which they were still patrolling, communicating with vessel owners and providing notifications, but were not abating vessels. There were a few voluntary turn-ins. He explained that no vessels have been abated since March 13, 2020 and that at least two vessels sank and have been removed from the anchorage.

Commissioner Gilmore asked the difference between "anchoring" and "mooring." Mr. Havel answered that "anchoring" is when a vessel comes, drops an anchor, stays for a limited time, weighs anchor, and leaves whereas with "mooring" the vessel ties up to a mooring ball. In the mooring instance the vessel owner calls the harbor master or harbor patrol to ask which mooring ball to tie the vessel to. The owner then pays to stay there and the cost of remaining there and the amount of time one can remain varies. In contrast, an anchorage is recognized as such on nautical charts.

Commissioner Gilmore stated that the Committee would not be in favor of mooring fields for liveaboards. Mr. Havel stated that if the RBRA were to have a discussion on mooring fields once the RBRA is better informed after information-gathering with the help of the consultant, they will do so at some undetermined future date. He clarified that the Transition Plan does not include any proposal for a mooring field. He also noted that a productive conversation about a mooring field could only occur once Richardson's Bay anchorage is being effectively managed.

Commissioner Techel asked the cost associated with a 72-hour anchorage. Mr. Havel replied that currently there is no fee for that or for a 30-day anchoring permit. Commissioner Techel asked if there is a requirement of insurance for vessels to anchor. Mr. Havel answered that if someone applies for a 30-day permit, typically he as harbor master looks at the vessel and inspects it to make sure the vessel is seaworthy. He looks for signs that the vessel may not be capable of navigating which may be a basis to deny the permit.

Commissioner Techel asked the cost of a marina slip. Mr. Havel answered that it is based on the length of the vessel. He gave the illustration that for a smaller vessel of 25 feet or less, the cost is probably \$400-500 per month; that is for storing the vessel, not a liveaboard. As the size of the vessel increases the price goes exponentially higher. Commissioner Techel asked about insurance. Mr. Havel explained that it is a vessel owner's personal choice not a legal requirement to carry vessel insurance although there may be a contractual insurance requirement if the owner decides to put the boat in a marina.

Commissioner Techel asked about the five-year deadline. Mr. Havel explained that it is a matter of being realistic about managing the volume of vessels anchored he noted that the RBRA needs to start somewhere. He explained that the Transition Plan provides the RBRA with a framework and clear timelines to set expectations for people living on the anchorage. He also acknowledged the issue of finances. He explained that the RBRA is a very lean agency and managing finances and resources to make progress is a big consideration. He explained that establishing something that is reasonable is also important. He noted that the Safe & Seaworthy Program and the Transition Plan were products of many public meetings and discussions with the local community. He explained that the RBRA is trying to manage for success in a consistent and progressive way.

Commissioner Gilmore asked the number of local government agencies that comprise the RBRA. Mr. Havel answered that it is comprised of Marin County, the City of Mill Valley, the town of Tiburon, and the City of Belvedere. Commissioner Gilmore asked if any of these agencies have marinas in their jurisdiction. Mr. Havel answered that Tiburon, Belvedere, and Marin County do. Commissioner Gilmore asked if they have any enforcement capabilities that could also be used for Richardson's Bay. Mr. Havel answered that for private marinas, it is a separate matter altogether. He communicates with their harbor masters to keep them in the loop. Also, a program is in place in which staff from Belvedere, Mill Valley, and Tiburon law enforcement join RBRA staff on an RBRA patrol vessel almost every other week. It keeps RBRA member entities aware of what is going on. He also explained that sometimes the RBRA coordinates its patrols with the Marin County Sheriff and U.S. Coast Guard patrols.

Mr. Havel pointed out that the two Marin County Sheriff's Office Marin patrol staff have been very supportive, joining RBRA for activities in RBRA jurisdiction while they also have responsibility for the rest of Richardson's Bay. He added that he continually works with the Sausalito Marine Patrol Unit.

Chair Scharff asked for clarification on the August 2019 legacy designation. Mr. Havel stated that after that date, a boat is not legacy. Chair Scharff asked about the vessels that are part of the current 126 vessels that were not part of the initial 103 count and information on whether the RBRA was going to immediately ask them to leave. Mr. Havel affirmed that 23 vessels need to leave immediately. He explained that when shelter-in-place orders are eased the RBRA can get back to removing vessels. He emphasized that the focus is going to be on unoccupied marine debris vessels in the interim.

Chair Scharff expressed concern about the current 126 vessels – he wanted to make sure that they do not remain and that the number does not continue to creep up. He then asked about the RBRA vision statement. He asserted that absent a clear statement that within five years there will be no anchor-outs the RBRA could not achieve compliance. Mr. Havel responded that the RBRA's vision states that the number of unoccupied vessels will diminish over time. He acknowledged that the Safe & Seaworthy Program timeline buys the boat owner a little more time in the anchorage, but those boats not participating will have enforcement repercussions. He pointed out that the RBRA has removed 80+ vessels in the past year and noted that those efforts will continue. He also noted that some unoccupied vessels remain. He explained that when the RBRA must deal with occupied vessels the process will be much more time-intensive and complex.

Chair Scharff expressed concern that more people will be allowed to come in and the number of 103 from the census will be exceeded. He asked for clarification in the vision statement and asserted that it needs to state that the eventual goal is to have no permanent liveaboards on Richardson's Bay. Chair Scharff further asserted that it is important for the anchor-out community and the RBRA to understand that is the long-term goal. He stated that he understood that this is difficult politically. Mr. Havel responded that in July 2019 the RBRA Board of Directors had said that they needed to stop the influx of vessels arriving in Richardson's Bay. Since then RBRA has been diligent about informing newly arrived vessels that it is a 72-hour anchorage. This theme is repeated throughout the Transition Plan.

Mr. Harvel also emphasized a shift in culture in the RBRA Board that is causing a change in the conversation on the anchorage; many out in the anchorage still cling to the belief that the RBRA has no jurisdiction and that only the U.S. Coast Guard and the federal marshals can regulate the anchorage. Changing this view takes time as well as presence. He indicated that he could relate to Chair Scharff's frustration and noted that he is continually strategizing on how to manage the anchorage and make a positive impact with the resources the RBRA has available.

Commissioner Gilmore agreed with Chair Scharff regarding the ultimate goal. She states that since BCDC restarted the Richardson's Bay compliance process, she saw two different goals: No permanent anchor-outs in Richardson's Bay RBRA waters or Sausalito waters. She stated that while the RBRA does not seem to have fully embraced that goal, they have given up the idea of a permanent mooring field, but still feel that some anchor-outs get to stay as long as they want. She wanted to ensure that BCDC has been clear as to its ultimate goal.

Commissioner Vasquez felt that a timeline with benchmarks will enable resolution. He noted that BCDC has a stick, but with every meeting, the scope of the problem is getting whittled down.

### **Staff Recommendation**

Ms. Klein presented the staff recommendation as follows:

- Commence negotiations with each of the property-owning agencies.
- Develop separate solutions for RBRA and for the City of Sausalito.
- Develop a formalized solution with the RBRA.
  - All RBRA members will be individual signatories;
  - A deadline will be set for removing illegally anchored vessels;
  - Influx vessel management will continue;
  - Boats will be ordered to leave when they fall out of compliance with the Safe and Seaworth Program standards;
  - Anchoring locations will be defined and managed;
  - The Safe & Seaworthy Program will be implemented and enforced (and further negotiated if necessary);
  - Sausalito's Safe Harbor Plan will be maximized; and
  - Damaged subtidal eelgrass habitat will be restored.

Ms. Klein requested comments from the Enforcement Committee on the following:

- Whether the City of Sausalito and the RBRA Transition Plans had any missing elements.
- Whether the Committee required any additional information from the agencies.
- Whether staff should pursue any additional steps and if so the timing within which to pursue those additional steps.

Chair Scharff felt that the City of Sausalito's transition plan was good. In contract, he had many concerns with the RBRA's transition plan.

Commissioner Techel felt that the only open loop in the City of Sausalito's plan is the request for more slip space. She agreed that there are many issues with the RBRA's transition plan.

Commissioner Vasquez agreed.

Commissioner Techel agreed and could support more slip space. She raised the issue of staff use of mooring versus anchoring. Ms. Klein clarified that none of the vessels are on moorings they have all dropped anchor.

Chair Scharff felt that staff could start negotiations with Sausalito. Ms. Njuguna acknowledges that staff did not need further direction regarding negotiations with Sausalito.

Chair Scharff recognized that the RBRA's resolution is very complicated and stated that staff can start negotiations. He felt that the RBRA is making some good progress but there are issues they need to address.

Ms. Donovan concurred that they are making progress and BCDC is looking to avoid any litigation. She clarified that staff were suggesting a staff-level negotiation where the RBRA would check in with their governing bodies regarding areas of disagreement. The RBRA would get approval and continue the negotiations. BCDC staff was hoping for an eventual plan that is acceptable to the Enforcement Committee, providing them with the assurance they need of a resolution where all unauthorized anchored-out vessels leave Richardson's Bay. She explained that if staff encounters a roadblock in negotiations, they will meet with the Enforcement Committee to determine what to do using the available enforcement tools.

Chair Scharff reiterated that BCDC staff will negotiate with RBRA staff, devise a plan that both sides can agree on, and bring the plan to their members respective Boards. Ms. Njuguna and Ms. Donovan affirmed their understanding of the next steps for staff in negotiating with the RBRA.

Ms. Donovan stated that going forward, it is important not to be negotiating with staff on elements for which they have no authority. She said that BCDC Staff will continue with briefings to the Enforcement Committee. Staff will convene a meeting with the Committee for any unresolved issues.

Ms. Posner stated that whatever staff negotiates will come back to the Enforcement Committee as a recommendation, to ensure that they adopt it. It will then go to the Commission as an agreement, stipulation, or some other format.

Mr. McCrea stated that the guidance the Committee had given today to the RBRA was very clear. It will guide staff negotiations.

Ms. Donovan stated that staff was anticipating that some enforceable instrument will be in place once the negotiations conclude. Mr. McCrea emphasized that he wanted that to be clear.

Mr. McCrea stated that it is also clear that a deadline is needed, and it is important to work backward from the deadline. He explained that in negotiations staff will figure out how to remove the illegal anchor-outs from the anchorage within five years.

Chair Scharff stressed that the RBRA needs to ensure that there are no more boats coming in – that would undermine the process more than anything else. He stated that the situation should not deteriorate while we are

discussing resolution. Ms. Njuguna responded that staff receive monthly reports from the RBRA and the City of Sausalito informing them of any influx. If staff notice a major increase, they will inform the Committee in real-time. Chair Scharff requested that staff look at the monthly updates with the 103-vessel census count as the base. That is the number that should be decreasing.

Commissioner Techel asked for clarification on the phrase “subject to removal” in the Safe & Seaworthy Program timeline which sounded complicated process. She asked what it entails.

Executive Director Goldzband requested the Commissioners to let BCDC staff know when they would like to be presented with a draft resolution on this issue. Chair Scharff responded that at the next meeting, he would like staff to have a short agenda item on this in which they would outline their timeline. Ms. Njuguna stated that staff has a tentative timeline for resolution by December 2020. She said that she would like to give the Committee an update on the negotiations in October 2020. Chair Scharff requested an update by September 2020.

Commissioner Gilmore asked if staff anticipates bringing back both resolutions at the same time and whether if the City of Sausalito’s gets finalized faster staff could bring it back separately. Ms. Njuguna anticipated that they could bring either back as soon as it is available.

Ms. Donovan added that the key is whether they are fully distinct. She noted that one element of both plans is the housing transition. Most of the marinas are located within the City of Sausalito; staff is discussing the effort with Senator McGuire to assist in funding for both entities together.

### **Public Comment**

Barbara Salzman of the Marin Audubon Society stated that they had always supported what Sausalito is doing and would like to assist in eelgrass restoration. Regarding the RBRA, she commented that the Safe & Seaworthy Program addresses neither the Richardson’s Bay Special Area Plan nor its goals. She asserted that the lack of a final deadline in the RBRA’s vision is a major deficiency.

Vicky Nichols, Sausalito resident, complimented the efforts of Harbormaster Havel over the past year. She expressed the need for a specific timeline. She did not feel the need to bifurcate all the eelgrass studies; the Bay is one natural resource and no further studies are needed to find where the beds are located, etc., and to set up competition among jurisdictions for grant money. She recommended against spending more money on a possible mooring field.

Casey Arndt, Director of the Richardson's Bay Audubon Center and Sanctuary, shared excerpts from a comment letter they had submitted. They appreciated the RBRA's collaboration with them in the development of the Transition Plan, as well as the willingness to listen to feedback. The Audubon Center and Sanctuary was very supportive of the plan to develop an eelgrass management plan and to work with the consulting firm. They offered to serve as a resource. They looked forward to hearing details on the eelgrass protection zones.

Anne Libbin, who had submitted a comment letter, recommended that because BCDC has bay-wide influence and representation from jurisdictions outside Marin County, they consider getting support from areas outside Marin County for both marina slips and on-land housing. She asserted that a significant subset of the current anchor-outs had come in from other areas that had more robust enforcement.

### **Committee Comments**

Chair Scharff felt that money spent on eelgrass restoration should not be undone by damage from the anchor-outs.

Commissioner Vasquez asked how to ensure that the eelgrass is going to remain after it is restored. Ms. Njuguna answered that staff would write it into the terms of the negotiated agreements in terms of tracking progress in habitat restoration.

Mr. Havel invited Committee members and staff onto the RBRA patrol vessel. He thought it would be worthwhile for them to see the anchorage. Mr. McCrea noted that BCDC staff has been out (on a different boat) to see the anchorage up close, and it was informative.

**8. Future Agenda Items.** Ms. Njuguna stated that in the coming months the Committee will conduct a public workshop to solicit input on proposed changes to the enforcement regulations. Anticipated focus areas include standardized fines, civil penalties, and other recommendations in the State Auditor's May 2019 audit, as well as recently discussed issues such as development of criteria for the use of Supplemental Environmental Projects.

**9. Adjournment.** Chair Scharff requested a Motion to adjourn.

**MOTION:** Commissioner Techel moved to adjourn, seconded by Commissioner Gilmore. The motion carried unanimously with a vote of 4-0-0 with Commissioners Gilmore, Techel, Vasquez, and Chair Scharff voting "YES", no "NO" votes, and no "ABSTAIN" votes.

The meeting was adjourned at 12:28 P.M.