

San Francisco Bay Conservation and Development Commission

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October 1, 2020

TO: Enforcement Committee Members

FROM: Priscilla Njuguna, Enforcement Policy Manager (415/352-3640;
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SUBJECT: Draft Minutes of October 1, 2020 Enforcement Committee Meeting

1. Call to Order. The meeting, held virtually, was called to order by Chair Scharff at 9:30 A.M. He stated that Facebook Live was being used to increase public access and gave instructions for participation.

2. Roll Call. Present were Chair Scharff and Commissioners Gilmore, Ranchod, Techel, and Vasquez. A quorum was achieved.

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

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

3. Public Comment. There was no public comment.

4. Public Hearing and Vote on Revised Proposed Cease and Desist Order No. CCD2020.001.00. Chair Scharff stated that the proposed Cease and Desist Order, which addresses the situation at Oakland's Union Point Park, had previously been considered by the Enforcement Committee at several meetings beginning in March. The Commission had remanded this matter to the Committee on September 17 for additional revisions to the deadlines in the order the Committee had previously recommended.

Enforcement Committee Staff Briefing

Ms. Donovan provided the staff briefing. She began with a summary of the situation:

- Union Point Park is located along the Embarcadero in Oakland, and the Union Point Marina is directly adjacent.
- In February 2020, the City of Oakland was undertaking process of executing a plan to move all those in encampments in the park to a designated area, then to extend outreach to those people and relocate them outside the park.
- When the Covid-19 crisis took hold, efforts to move people in the

designated area were put on hold. Since then the encampments have reestablished in other portions of the park. Conditions in the park have deteriorated.

- There are now vehicles in the parking lot and some tents outside the designated area.

Ms. Donovan then gave a history of the Cease and Desist Order:

- In March, the Committee approved an order to recommend to the Commission deadlines of January 31 for partial closure and May 1 for full closure. The City had commenced work on the partial closure.
- Shortly after the Committee approved the Cease and Desist Order on March 12, the City made a request to extend the deadlines due to the shelter-in-place order.
- On April 22, the Committee extended the full closure deadline to September 1 and extended other deadlines and sent that order to the Commission for approval.
- At the Commission meeting in May, the Commission discussed concerns about the City's ability to do the full closure in light of the Covid-19 restriction. They remanded the order back to the Committee to consider additional or revised provisions regarding extensions.
- At the Committee meeting in August, the Committee approved a revised order establishing a deadline for renewing the partial closure 60 days after a defined "Triggering Event" then doing a full closure, within 90 days after a "Triggering Event."
- This revised order was presented to the Commission for approval on September 17. At that time the Commission heard from several public speakers who explained that the conditions had deteriorated in the park and several violent incidents had occurred.
- BCDC has negotiated changes to the Cease and Desist Order with the City. There will be no deadlines tied to a Triggering Event. Partial closure will be required by November 15, 2020 and full closure by February 12, 2021, after the holidays.
- Ms. Donovan listed changes to other deadline dates for missing signage and other improvements in the park.

Ms. Donovan highlighted the extension language in the order. Currently the greatest concern for the City in needing to extend the deadlines is having a repeat of the types of court challenges that have happened in the past. The City has committed to defending any lawsuit that would delay full closure of the park. However, BCDC wants to ensure that the order has language that would allow the deadlines to be pushed out if the City is prevented from complying with them

Ms. Donovan listed two minor technical corrections to the Cease and Desist Order for the Committee to approve before it goes to the Commission.

Ms. Donovan set out an alternative for partial closure. The Committee can choose to require regular monitoring of the area, posting of signs for reporting individuals and vehicles, sanitation and weekly garbage pickup, and prevention of debris and garbage accumulation. Ms. Donovan displayed the alternative language.

She presented the staff recommendation: Adopt the revised Cease and Desist Order with either a definitive deadline on partial closure or alternative language whereby the City would make commitments to ensure that park conditions do not continue to deteriorate.

City of Oakland Staff Discussion

Michael Branson, Oakland City Attorney, stated that assessing the feasibility of the November 15 deadline has been challenging to assess in such a short period. He acknowledged the City's obligation to address health and safety concerns that come up before full closure is accomplished.

Daryel Dunston, City of Oakland's Homelessness Administrator, requested clarity on the BCDC's definition of a partial closure. Ms. Donovan answered that it means that people who are not in the established secondary priority area need to be moved there.

Mr. Dunston asked for confirmation that the action the City took in advance of January 31, 2020, is the action BCDC is now looking for the City to reinstate by November 15 – BCDC is not expecting any closure activity in the secondary priority area prior to February 12, 2021. Ms. Donovan confirmed that this is the intent of the order presented to the Committee.

Mr. Dunston stated that if a partial closure is defined as relocating individuals outside the secondary priority area back to that area, it could be challenging for the City given that they only have six weeks. Typically, when they conduct any type of closure operation, the City likes a longer ramp-up to assist in lining up shelter beds or alternative housing.

Mr. Dunston also stated that it is reasonable to ask the City to re-establish the initial closure of all areas except for the designated priority area. He felt that the City would be able to accomplish partial closure by November 15, 2020.

Joe DeVries, Director of Interdepartmental Operations, Office of the Oakland City Administrator, stated that the City works hard to address the problem of abandoned cars in the parking lot. The City removes them even though their response may not be immediate. He deferred to Mr. Dunston's assessment of the encampment operation. Mr. Dunston is managing that entire unit and its corresponding schedule now.

Questions and Discussion

Chair Scharff asked if BCDC can use the November 15 date and keep the original date in the order with Ms. Donovan's suggested changes. Mr. Branson stated that the City would be satisfied with either the alternate language or the November 15 deadline language.

Chair Scharff asked if the Committee was being asked to approve the order as written with the two minor technical changes explained by Ms. Donovan. She confirmed that it was. The partial closure date that was recommended was November 15.

Executive Director Goldzband asked at which Commission meeting the Cease and Desist Order would be discussed and decided, assuming the Committee approves one of the two options. Ms. Donovan replied that it would be October 15. If the Committee directed staff to prepare a Committee recommendation for the Commission and post it along with other necessary materials, they would do so.

Commissioner Gilmore asked about the alternative partial closure requirements. Ms. Donovan explained that in discussing the achievability of the November 15 deadline with the City, rather than eliminate it they wanted to ensure that conditions do not continue to deteriorate. There are concerns outside of the secondary priority area which would be addressed through the four requirements. Commissioner Gilmore commented that the City was supposed to do basically all those things already, but the problems returned. Assuming the Committee passes the Cease and Desist Order, she questioned how BCDC would we monitor this between now and the February 2021 deadline and asked whether there something BCDC can do in the interim phase to ensure that things do not slide backward again. Ms. Donovan answered that if the February 12, 2021 deadline is used, there will be requirements for regular monitoring after the partial closure occurs to ensure that encampments do not re-establish.

Commissioner Gilmore emphasized her preference that the monitoring should be reported to the Committee. The City has many different priorities, and the park problems could resurface without a push to get them cleaned up. Mr. DeVries responded that there had been a monthly reporting requirement with the old proposed Cease and Desist Order, and the City was satisfying that requirement. It is still in the new Order: Monthly updates providing information on how many cleanups the City has done and how much outreach has happened.

Commissioner Gilmore felt that the volume of activity is such that pictures need to be added to the report; sometimes the written report does not convey what is actually happening. Chair Scharff asked if Commissioner Gilmore would like to have the updates placed on Enforcement Committee

meeting agendas to be provided by staff and she stated that she would.

Commissioner Ranchod agreed with Commissioner Gilmore's recommendation. He expressed support for the November 15 deadline, and asked about one of the corrections regarding establishing a hard date of January 29, 2021 to submit the Encampment Enforcement Plan. He asked how that date was decided upon. Ms. Donovan answered that it was selected because they wanted a date that was at least a few weeks ahead of the full closure, and they recognized the difficulty of having a January 1 date because of the holidays. Mr. Branson commented that several other deadlines do fall on January 1.

Commissioner Ranchod explained that he would like to see the date pulled up a bit because it leaves only two weeks before the encampment closure deadline of February 12. If there are concerns or deficiencies in the proposed plan as a result of continued changing or deteriorating conditions, then there should be sufficient time for marina residents, the public, BCDC, and others to provide feedback on the proposed plan and for appropriate adjustments to be made. Ms. Donovan responded that the deadline could be set at December 1. Mr. Dunston stated that the City of Oakland would prefer a date after January 1; December 1 would be extremely difficult for them to meet. He suggested January 15, 2021. Commissioner Ranchod assented to that date, as did Chair Scharff.

Public Comment

Oakland Marinas Harbor Master, Brock de Lappe, spoke on behalf of the marina residents who have suffered over the last three years and beyond. He was disheartened that the City did not enforce the closure areas after clearing the east parking lot and the central portion of the park. The east parking lot had been the scene of a severe fire, and now an RV has been there for two weeks with others sure to follow. Without enforcement, this just starts all over again. In the central portion of the park, there are occupants now on the hill and in the bushes. Cars drive right into the park and camp. Mr. de Lappe did not have confidence that the partial clearance by November 15 will result in a true clearance with enforcement of those closure areas. He also felt extreme concern for the quality of life for people in the approved secondary containment area. The conditions are destitute and unsanitary – especially concerning in the midst of the Covid-19 pandemic. The rainy season is coming which will produce mud and increased squalor. With the City of Oakland allotting millions of dollars for new housing throughout the city, the City should prioritize for the small number of people living in the park.

Val Hammel, a 20-year resident of the Union Point Marina, stated that two weeks ago at the Commission meeting she had heard Mr. DeVries say that he understood about the enormous escalation of the violence and the public

health and safety threat. He had said that he intended to do something about it immediately. Now Ms. Hammel was hearing February 2021. She expressed frustration with the dates being set, while the marina residents are living with gunshots and swarms of rats. Anchor-outs are running generators 24 hours a day. The dates have been pushed back and are unacceptable. The City is not monitoring the situation or even monitoring the trash. In addition, the homeless encampments will continue to return as long as there are public bathrooms and a public water spigot. They need to be closed. The north parking lot near the encampment needs to be for marina residents only. At the very least we need enforcement of the posted “No Loitering” signs.

Brian Boero, landowner in the Suisun Marsh, described a commercial shooting operation that has been opened inside the primary management area of the marsh. There is tremendous disturbance ecologically. The shooting club has had illegal building and destroying the wetlands for years. This is within BCDC jurisdiction. The situation is worsening day by day, and Mr. Boero would like to see enforcement on this issue. Executive Director Goldzband requested Mr. Boero email Ms. Njuguna with the information.

Commissioner Questions and Discussion

Commissioner Ranchod asked Mr. DeVries to respond to the question regarding the City’s enforcement activity since the Commission meeting. Mr. Dunston stated that within the last two weeks there has been regular garbage service, increased Oakland Police presence, outreach engagement, and offers for shelter. Mr. DeVries stated that the City had reached out to the Oakland Police Department Area Commander, asking for greater police presence. They are conducting some investigations. There has been additional cleanup and additional outreach by the City’s Human Services. However, cleaning and outreach can prove ineffectual because of the nature of encampments. Some of the negative behavior impacting the marina residents is not due to the size or cleanliness of the encampments – it is the behavior of certain individuals within the encampments. That is why the City has asked the Oakland Police Department to take a closer look. Mr. Dunston noted the current national conversation going on around police reform, the local conversation going on regarding defunding OPD, and the Reimagining Public Safety Task Force that has been convened specifically to address how to provide public safety law enforcement without criminalizing someone for their housing status and/or ethnicity. He explained that it is not that the City does not want to enforce. Internally City staff are still wrestling with and working through these issues. The City and OPD know that there are bad actors in the encampments, but there is a process that needs to be followed and City staff are working to address the public safety issues that are occurring irrespective of the homelessness issue.

Mr. DeVries commented on the huge increase in urban violent crime during the pandemic occurring across the United States. Because of that, OPD is focused on shootings, assaults, homicides, and domestic violence. This epidemic of violence is occurring on top of the pandemic. Officers working on lower-level drug operations are being re-tooled with the intelligence units to focus on people they know to be involved in violent crime.

Commissioner Gilmore asked what “regular monitoring” means and how frequently the Committee would receive update reports from the City of Oakland. Ms. Donovan answered that staff presently receives a monthly report. Mr. Branson stated that the report is done on the tenth of every month.

Commissioner Gilmore commented that this is the first she has heard of anchor-outs in the estuary. She suggested following up because BCDC does not want this situation to expand. Chair Scharff agreed.

MOTION: Chair Scharff moved for approval of the staff-recommended Cease and Desist Order with the suggested technical changes, the move of the date to Enforcement Plan due date to January 15, 2021, and the submittal of pictures in the monthly report. Commissioner Ranchod seconded the motion.

Commissioner Vasquez commented that he hoped we were done with the Union Point Park issue and can move it forward. Chair Scharff agreed.

VOTE: The motion carried unanimously with a vote of 5-0-0 with Commissioners Gilmore, Ranchod, Vasquez, Techel, and Chair Scharff voting “YES”, no “NO” votes, and no “ABSTAIN” votes.

5. Future Agenda Items. Ms. Njuguna stated that the next update on Richardson’s Bay will be during the Committee meeting on October 28.

6. Adjournment. Chair Scharff called for a motion for adjournment.

MOTION: Commissioner Ranchod moved for adjournment, seconded by Commissioner Techel. The motion carried unanimously.

The meeting was adjourned at 10:29 A.M.