

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

October 28, 2020

TO: Enforcement Committee Members

FROM: Priscilla Njuguna, Enforcement Policy Manager (415/352-3640;
priscilla.njuguna@bcdc.ca.gov)

SUBJECT: Approved Minutes of October 28, 2020 Enforcement Committee Meeting

1. Call to Order. The meeting, held virtually via Zoom, 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 in the meeting.

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

Staff in attendance included Executive Director, Larry Goldzband; Chief Deputy Director, Steve Goldbeck; Regulatory Division 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. Robbie Powelson stated that many people would be calling on the Richardson's Bay agenda item using a single phone. He asserted that Curtis Havel's actions involving crushing boats were reckless and bringing violence to Richardson's Bay. Mr. Powelson said that the Enforcement Committee should not persist in trying to destroy the community.

4. Approval of Draft Minutes from the September 10, 2020 and October 1, 2020 Meetings.

MOTION: Commissioner Gilmore moved for approval of the September 10, 2020 and October 1, 2020 meeting minutes. Commissioner Techel seconded. The motion carried unanimously with a vote of 4-0-0 with Commissioners Gilmore, Vasquez, and Techel, and Chair Scharff voting "YES", no "NO" votes, and no "ABSTAIN" votes.

5. Enforcement Report. Ms. Njuguna began by updating the Commissioners on the status of an issue raised at the September Enforcement Committee meeting during public comments about anchor-outs in the Oakland Estuary. She reported that BCDc had reached out to the Oakland Police Department's Marine Unit, which had informed the people on those vessels that they were not allowed to stay.

Ms. Njuguna proceeded by highlighting specific elements of the Enforcement Report:

- In the third quarter, 52 cases were closed, and 34 cases were opened. Of the 52 cases closed, most had duplicate reports, or staff had obtained documentation showing that violations had been resolved, or staff had obtained information on changed circumstances whereby the issues in question were no longer of concern.
- One after-the-fact permit was issued.
- \$4,000 in civil penalties was collected.
- The Enforcement Committee held an additional hearing regarding formulation of the Cease and Desist order for the Union Point Park matter.

Ms. Njuguna described the progress made on cases thus far in 2020. In the first quarter, 16% of cases were active, in the second quarter 14%, and in the third quarter 8%. She informed the Commissioners that this reduction demonstrated the ongoing progression of cases towards resolution. She also pointed out that the caseload at the end of the third quarter was 239, representing a 17% decrease from the caseload at the end of May.

She also informed the Commissioners that Staff sent updated data as of October related to the audit recommendations to the State Auditor at the Auditor's request.

She explained that Staff is still working through the grouped cases and noted that of the original fifteen only six cases are still open. She informed the Committee that those cases are more complex with other factors outside BCDC's control that are delaying resolution. She informed them that Staff will provide an update on the progress being made in the resolution of the oldest cases at the next meeting.

Ms. Njuguna then provided an update entitled "Enforcement Program Improvement Progress Report." The report explains the impact of procedures Staff implemented to ensure the goals of deterrence, transparency, fairness, and building consistency are met. She then explained that the Case Management procedure is BCDC's response to the legislation in AB2809, which requires case resolution timelines. She stated that Staff is using milestones which integrate timelines.

Ms. Njuguna then explained the Case Review procedures that are also responsive to AB 2809 in that they address which Staff person is responsible for what task done in enforcement including how matters are escalated to the Regulatory Division Director, the Executive Director, the Enforcement Committee, and to the Commission. Staff has designated cases that have a

Cease and Desist order in place in the status code Compliance Monitoring in anticipation of the availability of compliance personnel to monitor those cases for compliance.

With respect to Policies within the report Ms. Njuguna highlighted that discussions around the Administrative Civil Penalty Policy resulted in its integration into the proposed amendments to our regulation that were presented to the Commission on October 15. She noted that the Supplemental Environmental Project Guidance is part of the Administrative Civil Penalty Policy.

Ms. Njuguna then showed a chart that broke down tasks slated for improvement of the enforcement program and their completion status. She noted that the new Compliance staff position has not been successfully implemented, but the chart specified what Staff is doing in the interim to assure compliance. She also noted that the Standardized fine process improvements are tied to the rulemaking process, so a definitive due date was difficult to pinpoint. She explained that the Workforce Study begun by the Department of Finance November 2019 was not going to result in a report this year because of COVID-19 and other budgetary restraints. The Department of Finance is now looking to assess the entire permit process, recognizing that compliance shortcomings in other areas have an impact on the enforcement program.

Questions and Discussion

Commissioner Gilmore asked about the progress in obtaining tracking software for enforcement cases and permit requirement compliance. She asked if such software exists, whether other state agencies with such software can share it and whether there is funding available for the implementation of such software Mr. McCrea responded that staff has discussed this issue and will provide a comprehensive update to share the results of the investigations completed and the restraints in implementation.

Executive Director Goldzband commented that BCDC is pleased that the Department of Finance has decided to look at the entire regulatory structure beginning with permitting and moving toward enforcement and including compliance with enforcement orders and permit terms. BCDC will be asking about technology that the Department of Finance may know of – the Enforcement Committee would like a database that would allow people throughout the regulatory and planning programs to obtain information more easily than they do now.

6. Update on a transition plan for the Management of Vessels in Richardson's Bay, Marin County. Ms. Klein began with a summary of previous updates and recent developments.

Between February 21, 2019 and July 9, 2020 there were five presentations and updates on Richardson's Bay as well as two briefings on management and abatement of unoccupied vessels, and on eelgrass restoration.

In February 2019, there were approximately 239 vessels in City of Sausalito and Marin County waters; 202 vessels in August 2019; and 144 vessels in October 2020.

In September 2019, the City of Sausalito adopted its Safe Harbor Program. In June 2020, Richardson's Bay Regional Agency (RBRA) adopted its transition plan and the Safe and Seaworthy Program.

BCDC, RBRA, and Sausalito have met with Senator McGuire four times to discuss finding alternative upland housing and identify funding for subtidal habitat restoration.

RBRA and Sausalito are working to define habitat restoration plans.

COVID-19 has impacted the ability of local government entities to remove newly arrived occupied vessels.

Ms. Klein then reiterated the Enforcement Committee's direction to RBRA in April 2020 following the RBRA's presentation. The direction concerned aligning the RBRA's Safe and Seaworthy Program standards with marina berthing requirements, preventing vessel replacement from slowing the ultimate resolution, eelgrass damage and restoration, removal of noncompliant vessels, alternative housing for anchor-outs, and removal of anchor-outs.

Also in April, the Enforcement Committee directed the City of Sausalito to coordinate with the RBRA to expand the Safe Harbor Program, provide details on the increase of live-aboard slips at marinas, provide information on alternative housing for anchor-outs, coordinate with marina operators to prevent abandoned vessels from ending up on Richardson's Bay, and address eelgrass damage and restoration.

Ms. Klein then listed the Enforcement Committee's comments from the July 2020 meeting.

She concluded her presentation by listing questions for committee discussion and consideration which were the following:

- Whether an enforcement action should be taken against RBRA and/or Sausalito.
- Whether BCDC should require measures beyond requiring the removal of vessels.

RBRA Presentation

Curtis Havel, RBRA Harbor Administrator and Harbormaster, began with an update of the RBRA's transition plan for the management of vessels in

Richardson's Bay.

He noted that RBRA is in the process of hiring a full-time Assistant Harbormaster.

He spoke about some pertinent nautical details of Richardson's Bay. He pointed out the limit lines that define the metes and bounds of Richardson's Bay. A note in the nautical chart states that an oval area in the Bay, highlighted by Mr. Havel, is a special anchorage. This means that when a vessel is visiting and drops anchor in Richardson's Bay, if it is less than 65' in length, it is not required to shine an anchor light at night. In a note, a code section from the Code of Federal Regulations states that mariners anchoring in the special anchorage should consult applicable ordinances of the Richardson's Bay Regional Area and the County of Marin.

Mr. Havel explained that the RBRA Transition Plan has been ongoing and focused on protecting and preserving the environment while assuring public health and safety. He explained that when the RBRA hired Beth Pollard in 2017, she worked to formalize their approach to managing the anchorage. Thereafter, in the spring of 2018, the Guiding Principles and Work Plan were adopted. Ongoing community outreach and stakeholder engagement meetings have been occurring to clarify the issues and define future work. These conversations culminated in the adoption of a Transition Plan in June 2020. Mr. Havel stated that the plan was implemented to realize a decreasing number of occupied vessels over time and acknowledges the ecological importance of Richardson's Bay by addressing the eelgrass issue.

He then stated that the Transition Plan's focus areas are:

- The Safe and Seaworthy Program
- The alternative housing efforts, and
- The development of an eelgrass management plan.

Mr. Havel pointed out that while the Transition Plan sets objectives and goals related to housing, the RBRA is neither a housing authority nor an environmental protection organization.

He then explained that seventeen vessels enrolled in the Safe and Seaworthy Program after packets were distributed to the eligible vessels. The packets established October 15, 2020 as a deadline. He noted that the contents of the packets are available on the RBRA website at rbra.ca.gov. In addition, the packets were available at the shower and free lunch services made available by the City of Sausalito.

He explained that the next step will be to ensure the seventeen vessels are properly registered by February 15, 2021. He explained that final inspections will be done by October 15, 2021 to verify seaworthiness. Meeting the basic seaworthiness requirements will guarantee that vessels can qualify

for a slip in a marina and obtain insurance.

The Safe and Seaworthy Program also references the eventual establishment of a sunset date for the deferred enforcement of vessels that register in the Safe and Seaworthy Program. The RBRA is working on the sunset date given the number of vessels enrolled in the program.

Mr. Havel explained that the RBRA is working on the following management priorities:

- Inspection of vessels. A \$2,500 pool of grant money is available for minor repairs to boats enrolled in the Safe and Seaworthy Program.
- Removal of vessels that arrived after August 2019. Of the 124 vessels currently anchored in Richardson's Bay (not including Sausalito's waters), 24 arrived after August 2019. They are the ones that need to leave first.
- Prioritization of the remaining vessels for removal. Those that are the least seaworthy will be focused on first.

Mr. Havel informed the Enforcement Committee that the previous Monday night during strong winds, a vessel went adrift and collided with another vessel. The owner of the first vessel suffered a cardiac arrest and died. He noted that the prevention of loss of life is why RBRA is trying to manage the anchorage and maximize the seaworthiness of vessels there.

Mr. Havel stated that since the census in August 2019, the number of vessels in the Bay has been steadily decreasing. Since the COVID pandemic, RBRA has backed off on removal of vessels. However, with winter coming, this September, RBRA re-initiated efforts to remove marine debris vessels. RBRA is focusing on unoccupied vessels. Vessels are continuing to arrive, and the RBRA provides notice letting them know that it is a 72-hour anchorage, but there is some stiff resistance.

The RBRA has ongoing joint operations and upcoming operations with the Marin County Sheriff and the United States Coast Guard to continue addressing the removal of unseaworthy vessels. This will minimize hazards to people on the shoreline, to the environment, and to people on the water.

An area of the Transition Plan in which the RBRA has made significant progress is its outreach and support of alternative housing. Four people are in the Coordinated Entry housing program and now need to take ownership and move the process forward. Twelve people are currently being interviewed to start the process. Although it is a dynamic environment, RBRA knows the identity of nearly 100% of the people out in the anchorage.

Another area of significant progress is development of the eelgrass protection and management plan. Consultant Rebecca Schwartz-Lesberg of Coastal Policy Solutions has initiated outreach efforts. The next step is to

create designated areas on a map delineating allowable use. Richardson's Bay will continue being an anchorage while also protecting its ecological systems.

The RBRA Transition Plan Objectives are to avoid injury or death on the bay; to protect the environment; to set standards through the Safe and Seaworthy Plan, to enable people to enjoy their boats; to enable vessels to be in a condition that makes them eligible for marina slips; to limit the influx of new vessels coming into the Bay; and to enforce the Transition Plan by managing the vessels in the Bay.

Mr. Havel noted that some of the resistance in the anchorage is coming from people who understand the rules but have resisted the changes for months or years. The changes in enforcement are now formalized in the Transition Plan.

City of Sausalito Presentation

Joan Cox, City of Sausalito Councilmember, began by explaining Sausalito's authority to regulate. She stated that Sausalito has previously shared its Waterfront Management Plan priorities with the Enforcement Committee and listed the highest and lowest priorities.

Sausalito updated those priorities in January 2018 to adopt a two-part strategy:

- Part 1 is immediate enforcement of the 72-hour ordinance with respect to any new occupied boats entering its waters.
- Part 2 is deferred enforcement of the six remaining legacy anchor-outs. They will be reduced through attrition and through Sausalito's ongoing relocation efforts in cooperation with Marin County. Sausalito estimates this approach to take five years or less.

Councilmember Cox reported another recent death in the anchorage – a woman who died of carbon monoxide poisoning. In response to BCDC's recent query, Councilmember Cox stated that the City of Sausalito knows each of the occupants of the six legacy anchor-outs. Their vessels are in compliance with Sausalito's municipal code and the occupants are experienced mariners who take pride in the care of their boats.

BCDC had asked about a plan for any of the six anchor-outs that may remain after five years. Sausalito law enforcement staff are working to identify funding to facilitate entry of the remaining vessels into Sausalito's marinas.

BCDC had asked about the feasibility of replacing the existing tackle for the six legacy anchor-outs with ecological moorings. Sausalito law enforcement worked closely with BCDC staff in the past two years to remove RBRA mooring balls in Sausalito waters. Any proposal for moorings would require environmental review and approval by Sausalito's City Council.

In terms of enforcement efforts, Sausalito conducts monthly surveys of vessels and prepares GIS maps. Since mid-2019, Coast Guard Station Golden Gate has offered additional assistance on the bay. In March 2020, the Sausalito Police Department temporarily ceased removing boats, but it has continued to encourage occupied boats to comply with Sausalito regulations. This has resulted in a reduction of boats on Sausalito's waters from thirteen to nine between March and October 2020.

Councilmember Cox showed a graph of the declining number of boats (occupied and unoccupied) between July 2017 and October 2020. The number has gone from seventy-four to nine. From January 2020 through October 2020, no new boats have entered Sausalito's waters. The City believes this is due largely to their constant law enforcement presence on the waterfront and their effective communication and outreach program.

Sausalito undertakes annual debris collection events which have an outreach component and offers of assistance are made to the remaining anchor-outs.

Councilmember Cox discussed the public safety impacts related to the waterfront. Every winter, the Sausalito Police Department and the Southern Marin Fire Department must respond to distressed boats and mariners during heavy storms. They also respond to reports of crime on the water and on land, as well as medical service calls; the impacts of anchor-outs to Sausalito are significant.

Another method of outreach is the Marin Mobile Care's shower program which has two goals namely offering a shower and connecting individuals to the various resources they need. The showers are offered twice a week. During the pandemic, the number of people using the shower service has greatly increased. The vast majority of people utilizing the mobile showers are from Sausalito: Living on boats, Living in vehicles, and Homeless. Meals are also distributed at the mobile showers. The mobile showers offered COVID-19 testing on two dates in September.

Sausalito has also demonstrated compassion and an opportunity for long-term success via the Safe Harbor Program. Working in conjunction with other local agencies, Sausalito commenced encouraging anchor-outs to live an independent life. Participants have access to liveaboard slips, case managers to help with the transition out of homelessness, and job opportunities. Sausalito has spent over \$75,000 on the program from its Sausalito Tidelands Fund and was awarded \$171,000 in grant funding from California Emergency Solutions and Housing.

Sausalito has met with State Senator McGuire on numerous occasions to identify solutions to these issues. With Senator McGuire, Sausalito and the RBRA sent a joint letter to BCDC outlining a conceptual transition plan for

those living on Richardson's Bay with three parts:

- Permanent supportive housing
- Restoration and improvement of water quality of the Bay, including eelgrass restoration
- Enhanced enforcement on the bay as individuals living there are transitioned elsewhere

Senator McGuire is working with the California Housing and Community Development Department and the California Department of Finance to identify potential funding for affordable housing. Sausalito has identified eight potential sites and is working with housing consultants to identify the most feasible among them. The Senator is also seeking funding to assist in the restoration of Richardson's Bay. Because all of these efforts require significant time and resources, the joint letter to BCDC contained a request for additional time to formalize and implement these plans to respond to the concerns listed by the State Auditor.

In collaboration with RBRA and Senator McGuire, Sausalito is seeking state funding to restore damaged eelgrass in the bay, and to identify a comprehensive eelgrass restoration plan. Areas with eelgrass continue to be prioritized for enforcement and against future developments and anchoring. The Merkel study conducted in June and July 2019 identified two primary eelgrass beds within the City of Sausalito waters. Sausalito has reduced the number of vessels anchored in its waters from ninety to nine. Several of those removed were anchored in the two identified eelgrass areas. In one of those areas – Dunphy Park – it is now unlawful for anyone to anchor any vessel. The out-of-bound areas are marked with buoys.

Sausalito has entered into a Letter of Intent with a marina owner to acquire additional underwater lots adjoining Dunphy Park. The Marin Audubon Society has agreed to collaborate with Sausalito in forming a plan for the most efficient way to restore eelgrass in Sausalito waters. They have also agreed to assist in identifying grant funding to facilitate the restoration.

Sausalito is collaborating with RBRA and Rebecca Schwartz-Lesberg of Coastal Policy Solutions to develop a specific plan for the eelgrass restoration. This collaboration with RBRA is important and necessary to arrive at a wholistic plan that all can commit to and carry out.

COVID-19 is causing a 30-40% impact to Sausalito's General Fund revenues in the next year. The level of state and federal funding relief available for other efforts by the waterfront management program is uncertain. This could have an impact on the City's enforcement efforts. Sausalito will continue to keep BCDC apprised monthly.

Last week BCDC staff inquired about any anchor-out claims pending against Sausalito in connection with its waterfront management program. The answer is that there are none. One claim against the City also names BCDC and RBRA and arises from the removal in April 2020 of a dock at Galilee Harbor and its impact on access to land by anchor-outs.

Councilmember Cox stated that Sausalito disagreed with the impression that enforcement in their waters has had an impact on RBRA waters based on vessel survey data. For example, between March and October 2020, the number of boats in Richardson's Bay increased by 27, but none of those came from Sausalito. Of the decrease before that in the number of vessels in Sausalito waters from 74 to nine, survey data shows that very few that left Sausalito waters ended up in Richardson's Bay waters. She asserted that as RBRA pursues its enforcement efforts, it shifts the burden to Sausalito which is the point of entry for all boats in Sausalito and Richardson's Bay waters.

Councilmember Cox explained that it was the City's understanding that BCDC is contemplating different enforcement agreements with Sausalito and with the RBRA. She noted that how vessels in City waters are treated needs to be fair in considering how vessels are treated in RBRA waters which may require compromise.

The City has requested joint meetings with RBRA as BCDC staff considers the enforcement options for Sausalito and RBRA to be presented to the Enforcement Committee on November 12. Councilmember Cox stated that it was her impression that BCDC staff indicated that while joint meetings in discussing habitat restoration are productive joint meetings would not be productive in negotiating enforcement solutions.

Sausalito requested reconsideration of this approach asserting the following:

- Until recently, the pace and commitment to address the issues pertaining to Richardson's Bay has been different between Sausalito and RBRA.
- 100% of the people living on Richardson's Bay come ashore in Sausalito requiring additional City services.
- Recent solutions proposed by RBRA may indicate that BCDC is negotiating with RBRA on solutions that may overly burden Sausalito. For example, the City believes that RBRA has previously stated that it wants 20-30 more Safe Harbor slips in Sausalito's marinas.
- Sausalito is working with Senator McGuire on identifying potential upland sites for affordable housing but has not observed that RBRA is pursuing upland projects outside of Sausalito although the RBRA

is participating in the dialogue with Senator McGuire.

Councilmember Cox listed Sausalito's requests of BCDC as the following:

- Support Sausalito's existing plan for its legacy anchor-outs, including its Safe Harbor program and its policy of allowing newly arrived boats to moor no longer than 72 hours.
- Increase Sausalito's liveaboard allocation from 10% to 15% per marina to facilitate a transition from anchor-out to Safe Harbor to liveaboard.

Councilmember Cox stated that she and other volunteers with the City of Sausalito would be happy to draft legislation that addresses enforcement needs as well as housing needs for Richardson's Bay and surrounding jurisdictions.

Questions and Discussion

Commissioner Vasquez asked for clarification on the Enforcement Committee's role given that the City and the RBRA were both raising policy considerations. Chair Scharff responded that Staff had come up with some questions that would inform the Committee's role. These included whether BCDC needs to have an enforcement order against the City of Sausalito and against the RBRA, what the order would look like and what the Committee's impressions were about their plans so far.

Chair Scharff felt comfortable with Sausalito's plan but thought the RBRA's plan needed more discussion. He asserted that Sausalito's language of "stop" rather than "limit" pertaining to new boats entering the Richardson Bay is preferable. Chair Scharff wanted to get a sense of where the differences are between the two agencies. He recognized that Sausalito is much smaller. He noted that new boats seem to be coming into Richardson's Bay, but the priority should be to have no new boats on the bay and to get rid of the 24 boats that came in after the census.

Commissioner Techel asked what staff meant in their conversations with Sausalito regarding having the same process for both jurisdictions. Ms. Njuguna responded that Staff's position was taken out of context. Staff were discussing the understanding that Richardson's Bay is contiguous; however, BCDC has separate enforcement cases against the RBRA and against the City of Sausalito because the latter is no longer part of the RBRA. Staff is looking for a wholistic solution because it affects the entire Richardson Bay, but staff recognizes that the RBRA comprises member towns, cities, and the county while the City of Sausalito is one separate local government.

Commissioner Techel asked if BCDC has the authority to say that no vessel can come in for any kind of temporary visit. Mr. Havel replied that by law, it is a 72-hour anchorage. That means that anyone can come in, drop anchor, and stay for 72 hours. The RBRA typically welcomes newcomers

promptly and informs them of the rules and regulations. Unfortunately, the RBRA is working against a persistent Bay Area-wide myth that Richardson's Bay is the place to find refuge. Mr. Havel related a story of an interaction with a hostile newcomer who threatened his life. He noted that mariners can file for an anchoring permit which allows them to stay a little longer; however, the vessel must be seaworthy and properly registered.

Chair Scharff commented that it should be a crime for people to threaten the life of the harbormaster. Mr. Havel agreed and explained that there are many fine points involved in effectively enforcing the law and being fair at the same time.

Chair Scharff felt that Mr. Havel needed more coordination with law enforcement. He noted that it cannot be acceptable for Mr. Havel to experience intimidation when trying to do his job. Mr. Havel responded that it is the reality he faces every day when he goes out on the Richardson's Bay. He works with law enforcement when he posts a notice on a vessel or removes one law enforcement must be with him as a matter of internal policy. The challenge is coordinating with law enforcement. The Marin County Sheriff's Office has a marine patrol unit consisting of two sheriffs. They are responsible for not only Richardson's Bay but also the broader coastlines of Marin County. They get pulled in multiple directions on any given day. Mr. Havel tries to set up operations with them ahead of time. If the threat is critical then they are always there for him. They have an excellent working relationship. The U.S. Coast Guard is also a partner on the water. He is currently working with the County Administrator's Office arranging to have law enforcement and/or some sort of security personnel aboard the RBRA patrol vessel.

Commissioner Gilmore commented that in as much as the RBRA administrator may not be directly familiar with the broader homelessness issues or mental health issues which are not part of his core mission, some understanding of those broader issues is required to deal with this problem. On the other hand, because Sausalito is a city, those issues come within their direct purview. The RBRA is made up of cities and jurisdictions who would have that kind of expertise or know where to find alternate housing; they should be more aggressive about looking for grant money. Cleaning up Richardson's Bay may not be the priority for these member jurisdictions that it is for Sausalito. Commissioner Gilmore asked for an explanation of how those jurisdictions look at this to explain why this issue is not being given higher priority. Mr. Havel responded that the RBRA is a Joint Powers Authority comprised of Belvedere, Tiburon, Mill Valley and Marin County. Its Board of Directors has one representative from each jurisdiction. The most directly affected jurisdiction is Belvedere because they see a direct impact of vessels. Mill Valley has minimal waterfront property on Richardson Bay, while Tiburon has mostly undeveloped coastline and its impacts are indirect.

Mr. Havel agreed with Councilmember Cox that Sausalito takes the direct brunt of the anchorage – the 911 calls – it is where people come ashore. The maritime culture is part of the fabric of their community. Since its formation in 1985, the RBRA has had 1.2 staff allotted from the County of Marin. Recently the Board of Directors bumped that up to 2.0 full-time staff. Mr. Havel is currently interviewing to hire an Assistant Harbormaster. With 120+ boats in the anchorage, this is vastly insufficient. The adoption of the Transition Plan in June signaled a change of heart and change of direction; the steps the Board has taken through the years have led up to it.

Mr. Havel addressed Councilmember Cox's point about housing by reiterating that the RBRA is not a housing authority. The City representatives on the RBRA Board have to comply with marina numbers and ABAG numbers and look at those numbers from their city's perspective rather than from the RBRA's perspective. When they have the conversation about housing in their communities, it does not have the same real-time impact that it does in Sausalito. Mr. Havel stated that much of what he has been doing is to bring these issues to the forefront. He gave the RBRA Board of Directors credit for increasing staff and for authorizing funds to hire Ms. Schwartz-Lesberg to help coordinate eelgrass efforts.

Commissioner Gilmore observed that BCDC is trying to light a fire under RBRA, an entity that doesn't have much control over its destiny. It does not look like BCDC has the ability to light a fire under the jurisdictions that do have the tools to bring to bear in this situation which she described as frustrating. Ultimately it means that this entire process with Richardson's Bay is probably going to take much longer than any of us would like.

Councilmember Cox reminded the Enforcement Committee of the quantum shift in attitude and approach after this committee sent enforcement letters to the individual jurisdictions in November 2019. She believed that the committee's enforcement efforts will be well-served by directing enforcement letters not just to the RBRA, but to the individual agencies. The largest of these is the County which has the most resources and the most ability to directly address housing, enforcement, and bay restoration.

Mr. McCrea noted that BCDC's enforcement tools do not apply only to the RBRA – they can also apply to individual RBRA members.

Public Comment

Robbie Powelson asserted that the Enforcement Committee is trying to attack a longstanding community making a way in a very segregated inequitable county. In the middle of a housing crisis the Enforcement Committee is destroying housing. It is promoting violence during a pandemic and it is not going to be tolerated.

Melanie Masseau ("Skip") pointed out that the RBRA has had that area

since 1985 and asked how that goes along with the federal anchorage being under the U.S. Constitution. The Community has requested maps from the RBRA to show their jurisdictional authority, but they have never gotten them. One of their members secured a berth at the Richardson's Bay Marina, but the day after the census the Sausalito Police Department was seizing boats.

Reverend Paul Mowery of the Sausalito Presbyterian Church expressed appreciation for conversations he had had with all involved. He invited BCDC to shift their perspective. He noted that there is a longstanding community there as well as environmental issues. The goal of returning Richardson Bay waters to recreational use is great, but we must have respect and compassion for those who do not have the luxury of recreating anywhere. This is a bona fide community with a zoning issue, but it should not be an issue of eliminating the community.

Doug Storms emphasized that this is a community. He was disappointed that during this discussion there had been no mention of community outreach. There are experienced mariners in the anchorage that have lived there for 30-40 years. He noted that while they are part of the problem, they are an even greater part of the solution. He stated that their voices are not being heard. As a commercial diver, he sees that the eelgrass is better now than it has ever been. BCDC needs to make policies based on current scientific data. Also, BCDC has allowed Sausalito to shut down shoreline access points to Sausalito.

Andre stated that natural disasters can happen no matter how prepared you are. How we respond to emergencies are the indicators of how civilized we are as a society. There are many people who lost their boats who were greeted with violent response from the police, the City of Sausalito, the RBRA, and every other agency with the feedback that it was the person's fault. He asserted that the attitude for the past year has been to traumatize every person out there so that they will leave. Women have been actively targeted and harassed by the RBRA.

Patrick O'Brien stated that the eelgrass is not indigenous to the water – it has come in from mariners on their boats. He said that he is going to look into this to expose whatever corruption is going on amongst all of the involved parties.

Kyra Payne, Mill Valley resident, stated that the anchor-out community is an amazing part of the Sausalito community. It is disturbing to hear how little compassion is being shown in this meeting. She stated that environmentalism is being used as a war against poverty. Herbicide is being used on the lawn at Dunphy Park which then goes into the ocean and obviously affects the eelgrass and animals. She also stated that when boats are crushed at the US Army Corps of Engineers, fiberglass debris flies into the air straight into the water. She asserted that these issues are far more damaging to our environment than

people who are living peacefully on Richardson Bay, not producing nearly as much waste as any of us in houses.

Anne Libbin, Tiburon resident and member of Marin Audubon, asked two questions. She asked whether the RBRA can exclude non-seaworthy vessels from being towed into the 72-hour anchorage. She states that it may be more effective if RBRA could intercept these vessels as they are being towed in. She also asked whether BCDC has any enforcement options against other marinas in the Bay Area regarding towing marine debris to other jurisdictions. She noted that debris is landing in Richardson's Bay from everywhere else, and there needs to be a region-wide effort to abate this pattern.

Eva stated that Marin County sewage agencies have dumped millions of gallons of raw sewage routinely into the bay. She said that the fines were minor, and she stated that you won't hear the Audubon Society complaining about that. Chevron in Richmond is producing gross environmental pollution, but you won't hear concern about that. She said that we are seeing severe enforcement against poor people and that at the Sausalito City Council meetings, Councilmember Cox has scrambled to find consultants to fight affordable housing that the State has tried to support.

Beth Pollard addressed the question presented by staff regarding enforcement actions against individual RBRA member agencies. She reminded the Commissioners that over the last three years these agencies have increased their contributions of resources substantially to address the issues on Richardson's Bay. Yet they came to the JPA voluntarily and can withdraw voluntarily. Ms. Pollard cautioned the Commissioners that it would behoove them to work more cooperatively and collaboratively with member agencies rather than scaring them away.

Barbara Salzman, Marin Audubon Society, agreed that we are not hearing from Mr. Havel regarding the intent to remove anchor-outs from Richardson Bay within five years. This would be a good goal for them to articulate. Further, it would be beneficial for the RBRA and Marin County to go to the marinas within the county's jurisdiction to see if some spaces could be obtained there. In addition, Ms. Salzman noted that 24 new boats have been in RBRA since August 2019 and wanted to know how the enforcement effort is working with them. Last, she expressed concern for fairness for Sausalito – that the gains they have made will not be reduced because of an attempt to equalize the requirements upon the agencies.

Casey Arndt, Center Director for the Richardson Bay Audubon Center and Sanctuary, stated that Audubon California will continue to support the removal of unoccupied vessels from Richardson Bay, and they are especially pleased with the progress on an eelgrass protection and management plan. As a stakeholder, a local landowner, and a conservation organization with expertise

in waterbird habitat and eelgrass, Audubon California is excited to continue to offer its expertise and assistance throughout this process.

Eva returned to finish her comment after having been inadvertently cut off. She asserted that Mr. Havel is ill-equipped for his role with the RBRA, having no background in social services. She asserted that what he is doing now is harassment, not outreach.

Enforcement Committee Questions and Comments

Chair Scharff asked about any concerns Staff has with Sausalito's approach, and whether Sausalito has any concerns the Enforcement Committee should address. He felt that BCDC should have a consent enforcement agreement with Sausalito addressing the removal of all anchor-outs within five years.

Ms. Klein responded that the City of Sausalito does not want a specific deadline for when their mariner anchor-outs are required to be off City of Sausalito property. That is a point of probable disagreement. We need more detailed conversations regarding the eelgrass restoration component, but things are moving in a positive direction. Ms. Klein also mentioned the disconnect over available housing for anchor-outs. She also noted that time is required for building permanent housing. During the interim transitional time, Ms. Klein hoped to see opportunities for improving conditions in both jurisdictions.

Councilmember Cox stated that Sausalito does not object to a five-year deadline. They are pursuing a couple of different approaches for continuing to collaborate with the remaining six legacy anchor-outs. They do have plans for the three debris boats that are not occupied by legacy anchor-outs. With the easing of pandemic restrictions, the City will resume its efforts to abate the three boats.

Chair Scharff asked if the City was amenable to following a Consent Decree worked out by staff where the nine vessels are gone within five years and the environmental issues are addressed. Councilmember Cox replied that the City had no objection. They are concerned about the prospect of moorings, not wanting to impose any type of permanent moorings without obtaining consent from the City Council. They also would appreciate the opportunity to understand what will be required of RBRA and what RBRA is promising – to know that the promises are not overly dependent on Sausalito resources. Sausalito wants the opportunity to weigh in and ensure that the goals are realistic logistically.

Commissioner Vasquez felt that Commissioner Gilmore's question about the Harbormaster's lack of resources, and his answer, were key. He thought that an overall statement for the JPA about what BCDC is trying to do in the Richardson Bay itself is needed. Everyone is going to be treated equally;

Sausalito may be much further ahead in the process. To Sausalito's point, no actions can occur that can harm another entity. In addition, Commissioner Vasquez asked how we can prevent boats that are pushed out from ending up somewhere else.

Chair Scharff asked staff if they need more direction on Sausalito. Ms. Njuguna answered that they do not at this time, and if sticking points arise, staff will bring them to the Committee.

Chair Scharff asked if it is possible to force marinas to take people. Councilmember Cox answered that she had just seen a report from RBRA that they would like to have 20-30 more people participating in Safe Harbor, where she had preliminarily made a commitment for only eight people with the marina operators she had spoken with. She wanted the contact Mr. Havel makes with the operators to be coordinated with the City to avoid confusion.

Commissioner Techel stated that she appreciated Sausalito's thoughtful approach to working with their legacy anchor-outs, creating a path and trust in the relationship. She was pleased that five years works for them. Chair Scharff agreed. He felt comfortable with the Sausalito situation.

Chair Scharff observed that the RBRA seems to have pivoted and focused on removing the anchor-outs within five years which he appreciated.

Commissioner Gilmore agreed with the idea of putting in writing the Enforcement Committee's expectations for what they want to achieve in Richardson's Bay. She affirmed the comment that BCDC does not want to scare RBRA members away. It might be useful to delineate what we are looking to do in five years, with specific asks for each of these agencies. For instance, for the jurisdictions that have marinas, encourage them to go to their marina operators along the lines of what Sausalito did. Ask for berths; ask them to write grants looking for more money; entertain having an increase in staff for the Harbormaster's office. Chair Scharff agreed.

Commissioner Techel commented that the requirement for short-term and long-term on-land housing solutions seems difficult for the RBRA. Possibly a requirement should be for them to work with individual jurisdictions to figure out from them how they can help with the housing. In addition, she asked who would partner with the RBRA on the environmental and habitat restoration piece.

Chair Scharff felt that the starting point should be to ensure that the RBRA does not allow new boats to come in and stay longer than 72 hours. If necessary, BCDC should fine the RBRA if the boats do not leave within that time span. If more boats come in and stay, BCDC would end up back where we were before. Chair Scharff asked staff to work with Mr. Havel to come up with something that works. We need a plan that does not allow us to go backward on that issue.

Chair Scharff continued that the RBRA needs to come up with a five-year plan. Boats that have signed up for the Safe and Seaworthy Program will be the last to go. First the RBRA will need to get rid of the unoccupied boats, then the least seaworthy. BCDC does not want people getting hurt and boats being blown around. BCDC needs an agreement that has some teeth in it with consequences for noncompliance. The other jurisdictions should be included within this agreement so that they are aware of their obligations.

Commissioner Gilmore stated that she would like to see the letter go out to all the member jurisdictions delineating the expectations, before staff devises the agreement that includes the member jurisdictions. It should be a two-part process. She concurred that the agreement needs to have teeth. In addition, at this point she would like to see us retain the five-year timeline. If we are not specific about that, things will likely linger. People need a goal to work toward.

Chair Scharff supported that. The RBRA and the member cities need to agree that in five years there will be no anchor-outs on the water. During the five years we should be able to find housing for people and there should be some natural attrition, but we must stick with the time limit.

Commissioner Gilmore emphasized that the letter should go out before the agreement and BCDC should make our expectations clear. She liked Commissioner Techel's comment regarding being specific about what jurisdiction we see being responsible for what action, based on resources etc. She supported putting forth our expectations first, with any feedback then going into the agreement.

Commissioner Vasquez agreed that the letter should go first. We can hold off on actions while encouraging everyone to work together. The five-year window should have some benchmarks. Like the Union Point Park agreement, there are going to be updates to the Committee.

Chair Scharff agreed with the importance of benchmarks. The Enforcement Committee needs to see progress every year toward this goal.

Commissioner Techel felt that the incident during last Monday's windstorm was critical to understanding why we are trying not to have these boats out there.

Chair Scharff agreed with all the bullet points following the staff question "Should BCDC require measures beyond only requiring that vessels be removed?" He asked if we have the authority during COVID to stipulate that there be no more 72-hour anchoring. Ms. Njuguna answered that in the consideration of reducing the influx of vessels, we are recognizing limitations related to the shelter-in-place orders in terms of enforcement. BCDC does not have the authority to stipulate that no new vessels can anchor in Richardson's Bay.

Chair Scharff asked if we can stop boats from being towed in. He also asked if BCDC has any authority to hold marinas accountable for boats they are allowing to be towed away and left in places such as Richardson's Bay, and whether BCDC may be able to fine them. He asked if BCDC does not have the authority, whether it can seek to obtain it. He asked Staff to work this out offline. Alternatively, there may be a better approach to be found than fining the marinas.

Executive Director Goldzband asked the Enforcement Committee when they would like the staff, the RBRA, and the City of Sausalito to return with an agreement worked out. Chair Scharff answered that the agreement with Sausalito seemingly could be worked out quickly, and the Committee could lock that in. There may be more thorny issues to work out with the RBRA. By the end of the year, the Committee would at least like to have a status report. Executive Director Goldzband agreed to that and said that they would also give a forecast for a proposed agreement.

Chair Scharff invited staff to feel free to come to the Committee should any issues with the RBRA arise that prove difficult to resolve. He would prefer a consent-type of agreement, but he was not opposed to imposing something and having an enforcement hearing. Commissioner Vasquez agreed.

7. Future Agenda Items. Ms. Njuguna stated that Staff is anticipating bringing at least one other complex matter before the Committee. The next meeting is scheduled for November 12.

8. Adjournment. Chair Scharff thanked all attendees for their participation. He adjourned the meeting at 12:37 P.M.