

San Francisco Bay Conservation and Development Commission

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November 12, 2020

TO: Enforcement Committee Members

FROM: Priscilla Njuguna, Enforcement Policy Manager (415/352-3640;
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SUBJECT: Approved Minutes of November 12, 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.

2. Roll Call. Present were Chair Scharff and Commissioners Gilmore, Ranshod, Techel, and Vasquez. Chair Scharff stated that 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; 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. Eva (no last name given) commented that Chevron had been emitting hydrogen sulfide into the air since the previous Saturday. She expressed concern that regulatory bodies need to step up more assertively in these cases. She stated that when Chevron flares, the smell can be detected on the waterfront from Emeryville to Larkspur within BCDC's jurisdiction. Reuters reported the flare and Chevron has acknowledged it. In general, she asked that everyone look more closely at Chevron's pollution and also the municipal waste systems that continually dump raw sewage into the bay.

MOTION: There were no other hands raised, and Commissioner Gilmore moved to close public comment. Commissioner Techel seconded the motion. There were no objections. Chair Scharff closed public comment.

4. Approval of Draft Minutes from the October 28, 2020 Meeting.

MOTION: Commissioner Techel moved for approval of the October 28, 2020 meeting minutes. Commissioner Gilmore seconded the motion. The motion carried unanimously with a vote of 5-0-0 with Commissioners Gilmore, Vasquez, Ranchod, Techel, and Chair Scharff voting "YES", no "NO" votes, and no "ABSTAIN" votes.

5. Enforcement Report. Ms. Njuguna reported on developments during the period from October 1 to November 10.

She addressed a question that had been raised by Commissioner Gilmore at the previous meeting regarding the progress in obtaining a database software upgrade and the potential to obtain software that fully integrates all BCDC department data. Ms. Njuguna reported that there is no new information. In December 2019, a vendor had shown integrated software used by other agencies to Staff. Presently, integrated database software cannot be implemented because of BCDC's funding shortages.

Ms. Njuguna reported that staff opened five new cases in the aforementioned time period and closed twelve cases. Of the twelve, one was outside BCDC jurisdiction; one was closed because there was no violation; one was closed because the local municipality was better placed to resolve the violation; two were duplicate reports; and seven were resolved when documentation was provided to verify resolution of the violation.

Ms. Njuguna supplied the current enforcement caseload figures: As of November 10, the caseload was 232, a six-case decrease from the last report on September 30. Staff continues to work on resolution of the oldest cases.

Ms. Njuguna then provided an update on the Union Point Park matter. The deadline for consolidation of all homeless encampments that are currently outside the City of Oakland designated area for encampments was November 15. On November 10, a representative of the City of Oakland confirmed that work to consolidate was underway with the intent to complete consolidation by Friday November 13.

Ms. Njuguna reported that Staff is continuing to refine case management and case review procedures to ensure that they are effective in enabling staff to meet the enforcement goals of deterrence, consistency, fairness, and transparency.

6. Oldest Case Update. Ms. Klein reported on the remaining five oldest cases, all of which were opened prior to 2000:

- A residence in Benicia has shoreline protection around its perimeter that is failing and needs to be reconstructed to make public access available. The homeowner has retained an engineer, who is working to develop a sound and feasible solution. He is in regular contact with staff and has a copy of the Joint Aquatic Resources Permit Application. Ms. Klein felt certain that when it is submitted, the application will be close to completion.
- A Consistency Determination issued to the U.S. Army Corps of Engineers in 1985 resulted in fill placement at the Rich Island Duck Club in Solano County. The material was dredged from the Port of

Stockton and was not fully reused as provided by the Consistency Determination. On September 10, 2020, BCDC staff briefed the Enforcement Committee on the final conceptual design plan. The Port of Stockton consultant is currently in the process of pursuing permit approvals from other local and state regulatory agencies for the concept plan.

- A property owner in the Marin County town of Greenbrae inherited un-engineered fill that had been placed under the pile-supported residence. The property owner now wishes to elevate the residence, and BCDC has indicated that he could resolve the violations as part of that permitting for that planned project. He is working to develop a design for which he needs to integrate construction expertise with design expertise. He is having difficulty finding someone who can take on such a job. BCDC staff has connected him with a potential third-party expert to assist in getting his violation addressed.
- An old permit for public access benefits on public property involves the City and County of San Francisco and the Port of San Francisco. The public access is located in two different adjacent sites that are separated by a parcel in between. Some of the public access requirements that are not currently in place will be provided through a permit to be issued probably in January 2021 to Build Inc. for a development. The remaining improvements will still be within the purview of the City Department of Parks and Recreation. Staff is working with the agency on a specific solution.
- At a single-family residential property in Alameda, there were some errors in the permit that authorized a boat dock in the Bay. Staff set up a meeting scheduled for the following week with both the property owners to map out a plan forward.

Questions and Discussion

Commissioner Vasquez asked if there was any update on the Sweeney/Point Buckler case. Ms. Posner stated that the BCDC case is fully briefed and pending in the Court of Appeal. BCDC has no oral argument date. There was a ruling in the federal district court against Mr. Sweeney and Point Buckler LLC under the Clean Water Act. The Regional Water Quality Control Board sought some additional briefing related to that ruling in their case against Point Buckler and John Sweeney in the state court. The request was granted and the Water Board is doing some additional briefing related to the Clean Water Act. BCDC has submitted the federal district opinion as a supporting authority for their argument to the Court of Appeal.

Chair Scharff asked what conditions at the site look like on the ground. Ms. Donovan responded that Staff could provide a report at the next meeting. Ms. Posner added that the federal court action continues – the case was bifurcated between the decision regarding whether or not there was a violation, and what the remedy would be in terms of a potential penalty and a restoration plan.

Executive Director Goldzband stated that one of the consultants has seen the site recently; Staff will contact him as part of Ms. Donovan’s follow-up.

7. Briefing on Discussion Between the City of Sausalito and BCDC Regarding Richardson Bay. Ms. Klein presented the elements that staff sees as necessary in an agreement between BCDC and the City of Sausalito. They are as follows.

Vessel Influx Management. This would apply to vessels that have entered Sausalito waters after January 22, 2018. Any new vessels arriving after that date would have a 72-hour limit for stays. The City will pursue measures to prevent habitat damage from vessels using the anchorage and will address safety issues related to transitory vessel visits.

Removal of Vessels Within Five Years. There are currently nine vessels in Sausalito waters three of which are not considered to be legacy vessels and are on target to be removed by the end of 2021. The six legacy vessels will be removed within five years from the date an agreement is executed. In the interim, the City will undertake measures to prevent continued or additional habitat damage and to ensure the seaworthiness of the vessels.

Commit to Cooperate in Regional Solution. The City will ensure that its resources will be available to assist with resolution at a regional level. The majority of the anchor-outs come ashore in the City of Sausalito, which presents challenges that BCDC recognizes. The City will agree to actively participate in the development of a plan to work toward alternative housing for all existing anchor-outs in county waters as well as City waters. This plan will be presented to BCDC in June 2021.

Eelgrass Restoration and Monitoring. Pursuant to the requirements of the McAteer-Petris Act and the Richardson Bay Special Area Plan, it is critical to have a commitment to remedy damage and to reduce ongoing impacts. The City will submit a plan for habitat restoration including acreage and ratio commitments and other appropriate metrics. The City will develop a monitoring plan with defined benchmarks to track restoration success. The City will be asked to commit to ensuring that transitioning vessels do not cause future damage.

Community Engagement and Enrichment Measures. This could include continuation of the following: Marin Mobile Care shower program and outreach to residents of the anchorage; Annual debris box collection; The Safe

Harbor program and development of slips for anchor-outs; and Work to ensure that upland affordable housing opportunities are made available to anchor-outs.

Reporting Requirements. Monthly reports to BCDC staff and quarterly and annual reports to the Enforcement Committee will be provided.

Questions and Discussion

Commissioner Techel asked about the possibility of having a timeline that assigns milestones for the many tasks to be done between now and the deadline of June 30, 2021. Ms. Njuguna replied that Staff could develop one. She pointed out that staff will continue to receive monthly reports from the City of Sausalito while the Enforcement Committee will receive quarterly updates. The Enforcement Committee will receive a comprehensive quarterly update in March 2021. In the interim, Commissioners will hear from Staff earlier regarding any concerns from the monthly reports.

Commissioner Gilmore asked about the people who come in and get a permit to anchor for 72 hours and if habitat damage occurs. She asked whether the City of Sausalito will have a specific area in which transiting vessels can anchor. If that anchoring area is farther out than transiting vessels mariners would like, she asked if the City has determined how the mariners will get back and forth to shore. Ms. Klein stated that the City has established a no-anchoring zone in an area identified in Keith Merkel's study as one that supports eelgrass. Besides that zone, anyone entering Richardson Bay can drop anchor anywhere. Without specific moorings, Ms. Klein was not sure that locations can be designated.

Sausalito Councilmember Joan Cox agreed with Ms. Klein's statements adding that the City of Sausalito has already cordoned off an area where the Merkel report identified dense eelgrass. That would certainly be one of the areas upon which the City would focus in the pilot program for eelgrass restoration. Councilmember Cox anticipated that they would seek to cordon off other areas. They are in the process of purchasing underwater lots adjoining the Dunphy Park area which is already cordoned off.

Commissioner Gilmore asked if it makes sense to designate an anchoring area for the 72-hour boats coming in and out. Councilmember Cox responded that if the City were to cordon off an area, it would probably require enhanced enforcement efforts by the Marine Patrol and Police Department. She would need to talk to the Police Chief. She believed that it would be more logistically feasible to cordon off the area that is not passable – that would be the subject of eelgrass restoration efforts.

Commissioner Gilmore stated that she would be open to either of those options noting that the City would have to enforce the 72-hour limit anyway. Ms. Donovan noted that Staff is going to expect measures to be put in place

that address any ongoing or future habitat damage caused by vessels transiting through the anchorage.

Ms. Klein commended the City for its efforts. She understood that any time a vessel comes in and drops anchor, there is potential for damage; there is also nothing to prevent a vessel from moving from its current location to another, which could cause damage. She mentioned ecological moorings, which other anchorages within the state tend to use for habitat safety and other benefits.

Commissioner Gilmore emphasized that she did not intend her comments to be taken as criticism of the City of Sausalito. The City is doing a good job dealing with an exceedingly difficult problem that involves not only their waters but also county waters.

Chair Scharff asked if a boat that has anchored in Sausalito waters can then go anchor in Richardson Bay for 72 hours. He asked how long it would be before it can come back to Sausalito waters and anchor again. Councilmember Cox answered that the City does not have constant monitoring: The 72-hour timeframe begins when their law enforcement personnel first observe the vessel. During the pandemic, with the City's resources reduced, someone could be on the water for 24 or 48 hours before Sausalito observes them. As soon as they are observed, law enforcement provides them with the 72-hour notice. They can then go to Richardson Bay waters. Councilmember Cox did not know how promptly Richardson Bay Regional Agency (RBRA) personnel observe them and provide them with another 72-hour notice. It is not Sausalito's experience that boats hopscotch back and forth from RBRA back to Sausalito waters. There is no specific statute governing the length of time before boats can return. Chair Scharff suggested for Staff to take a look at that issue so that a problem does not arise in the future.

Ms. Klein clarified that it is not a 72-hour permit – it is a 72-hour notice. RBRA offers the opportunity for a 30-day permit after receiving a 72-hour notice. Councilmember Cox stated that there is no corresponding ordinance for Sausalito waters; they do not believe that a 30-day permit is consistent with the Richardson Bay Special Area Plan.

Curtis Havel, Harbormaster for RBRA, explained that the RBRA code states that a mariner can arrive, drop anchor, and stay in the anchorage for 72 hours. There is no permit required. If someone wants to stay longer, the RBRA code has provisions for a 30-day anchoring permit. It has an extension beyond that which is typically not granted unless the mariner presents some credible reason for needing to stay longer than 30 days. Regarding the issue of noticing, Mr. Havel said that he tries to be on the water twice a week. Once he has hired an Assistant Harbormaster, RBRA will be on the water at least five days a week. They try to dovetail their operation with other agencies such as

the California Department of Fish and Wildlife, United States Coast Guard, and Marin County Sheriff's Office. When a vessel arrives at the anchorage, typically a notice is posted within 24 hours. Regarding hopscotching across the channel, the RBRA code allows 72 hours upon arrival after which the vessel must leave for at least seven days in order to get another 72 hours.

Councilmember Cox stated that she had checked and found that no one has tried to hopscotch since January 22, 2018.

Public Comment

Robbie Powelson commented on a resident whose boat had been crushed, forcing her to live in her car for a year. She had reached out to BCDC to get her story out. Mr. Powelson stated that BCDC has become arrogant in its enforcement because it has suppressed stories and created shame and guilt. Mr. Powelson referred to an article in the *Pacific Sun*. He related the story of another violent eviction and said that these stories are starting to come out. People will see the stories and be shocked about what BCDC really does – the Enforcement Committee is really an eviction committee.

Jeff Jacob, who has a slip on Richardson Bay, spoke about Jacob and Esau in the Holy Torah. Esau rules by the sword but Jacob was different. He asserted that the committee seems to be working for full employment for lawyers. He stated that there are now six lawsuits for public access and boat crushing on Richardson Bay. BCDC is obligated to provide public access to all boats on Richardson Bay, but at the moment boats have half of one public dock. All of the other landing spots have no public access. Mr. Jacob stated that this community will not be destroyed in order to save eelgrass. All commissioners and staff at BCDC contribute to damage to the environment many times more than minimalist anchor-outs. The community has a solution called a WASATORBA (Waters And Shores And Tidelands Of Richardson Bay Anchorage) Small Craft Harbor District where they self-govern and are not ruled by outsiders.

Anne Libbin commented that part of the reason Sausalito has not observed a hopscotch issue of boats returning from RBRA waters is that with the pandemic, RBRA is not removing occupied vessels. The provision suggested by Chair Scharff may be needed in the future once enforcement starts on the RBRA waters. Regarding the plan for monitoring and restoration of the subtidal habitat, she stated that a deadline is in place to have the plan developed, but the Committee should consider whether the plan needs a deadline for commencement of the monitoring and restoration work.

Eva (no last name given) addressed some quotes from Executive Director Goldzband from a *Pacific Sun* article. She stated that the anchor-outs live on the Bay because of the housing issue. The notion that local governments are going to be able to deal with the larger issue of housing is in defiance of

reality. In spite of the latest COVID surge, people are still being evicted. Whether the 72-hour rule is in place, there are still going to be more unhoused people. She stated that there has been much attention placed on anchor-outs, who live a fairly minimalist lifestyle, but there has been zero attention given to the mass pollution Chevron is committing. She stated that the audit showed that BCDC has generally been excessively generous to big developers and punitive to small business owners. To make it look like Chair Scharff is doing something, BCDC is beating down on the poor, when it should be looking at the larger environmental issues that are plaguing the Bay.

A community member (no name given) who stated that she has been involved in the RBRA violence supported by BCDC, stated that considering BCDC's pejorative actions toward the people out on the water, she could guarantee that BCDC's maniacal and abhorrent behavior towards them and the waterfront community members will be its own undoing. She expressed concern with the assumptions in the meeting presentations regarding the alleged crop circles causing environmental damage. She stated that municipalities and the Chevron refinery are the ones causing environmental damage. The housing crisis that BCDC is trying to fictitiously address is actually a false representation of what is really domestic terrorism and genocide.

Melanie (no last name given), an anchor-out on Richardson Bay, stated that she suspected that the attention given to the eelgrass issue carries a hidden agenda. She related a story of an anchor-out who had gotten a slip at Richardson Bay Marina. The evening after he registered with the U.S. Census, he was told he had to leave for unclear reasons after he had paid in full for the berth. She asserted that it isn't right to destroy people's homes and to ignore the cause of the poor people in a community. BCDC should pay more attention to caring for anchor-outs and helping them upgrade their boats.

Councilmember Cox commented that the mechanism by which BCDC is considering formalizing these deal points is a Consent Decree, which could result in Attorney General enforcement if not met. She urged a softening in the manner in which some of the points are being compelled. While Sausalito is always happy to cooperate, the Consent Decree should not compel Sausalito to assign City resources for resolution of the regional issue. Councilmember Cox said that she would like to work with Staff on Sausalito's role.

Councilmember Cox also stated that there are two deadlines that Sausalito cannot meet. The first is removal of the three other vessels from its waters within one year. One of them, which Sausalito has been working with for two years, is huge and expensive, and requires a multi-jurisdictional approach to resolve. A deadline of five years would be feasible. The other two vessels are eligible for the Safe Harbor program and probably will be removed within one year. The second deadline she raised concerns about was the June

30, 2021 habitat restoration plan presentation date. Sausalito is participating with RBRA in listening sessions, but the most recent session was cancelled as was the most recent RBRA meeting. Sausalito wants to collaborate regionally on this solution, but this type of restoration has never been undertaken anywhere before. The pandemic continues and City resources have been reduced. Sausalito will be happy to provide BCDC what they have by June 30,

2021, but cannot commit to a regional habitat restoration plan being in place by that date. They can commit to monthly reporting and ongoing efforts to move this process forward. They have met with the Coastal Conservancy and Marin Audubon – they are not depending on RBRA to put this together.

Councilmember Cox then pointed out that Sausalito is amenable to continued work on regional solutions such as the regional showers and the Safe Harbor program – but all of those efforts are dependent on regional funding. Since this is a Consent Decree with potentially severe consequences, Councilmember Cox would like it to be framed as encouraging the City of Sausalito to continue their efforts so long as they are financially feasible without imposing severe consequences.

Ms. Donovan pointed out that the Enforcement Committee has various tools for moving this forward. The two primary tools are a Settlement Agreement and either a stipulated order or a contested order. She stated that Councilmember Cox has presented issues upon which Staff anticipates further discussion. Staff anticipates moving forward and coming up with an agreement or some form of order for the Committee to consider.

Councilmember Cox thanked and acknowledged BCDC Staff for the quick turnaround time on the deal points and for the collaborative manner in which they have been communicating. Chair Scharff responded that he as well as Staff have appreciated Sausalito's cooperative approach during this process.

Commissioner Questions and Comments

Commissioner Gilmore was gratified to hear that this was still an ongoing process and that we are not yet ready to commit pen to paper.

MOTION: Commissioner Ranshod moved to close public comment. Commissioner Techel seconded the motion. There were no objections, and Chair Scharff deemed public comment closed.

8. Future Agenda Items. Ms. Njuguna stated that the next Enforcement Committee meeting is scheduled for November 19. Staff anticipated there could be a discussion on unpermitted work undertaken in East Lagoon White Slough.

Ms. Njuguna stated that as requested by Commissioner Vasquez, Ms. Donovan will provide a written update on the Point Buckler matter at a future meeting.

Ms. Njuguna noted for the Commissioners that December 10 is the subsequent meeting when Commissioner Techel will no longer be serving on the Enforcement Committee as of December 8. Ms. Njuguna pointed out that it will be necessary to achieve a quorum at the December 10 meeting.

9. Adjournment

MOTION: Commissioner Vasquez moved to adjourn. Commissioner Techel seconded the motion. There were no objections, and Chair Scharff deemed the meeting adjourned at 10:47 A.M.