

San Francisco Bay Conservation and Development Commission

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Number: ER2019.060.00

Permit Number: N/A

Date Mailed: July 20, 2020

35th Day after Mailing: August 24, 2020

60th Day after Mailing: September 18, 2020

Enforcement Committee Hearing Date: Unscheduled

VIOLATION REPORT

ENFORCEMENT INVESTIGATION NO. ER2019.060.00

Param and Amandeep Dhillon

Guidance to the Respondent(s)

FAILURE TO RESPOND TO THIS VIOLATION REPORT BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS, AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER, A PERMIT RECOVATION ORDER, OR A CIVIL PENALTY ORDER BEING ISSUED TO YOU OR IN A SUBSTANTIAL ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.

The San Francisco Bay Conservation and Development Commission is issuing this violation report and the enclosed statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of either the Commission's laws or a Commission permit. The report contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and references to all pertinent evidence that the staff currently relies on. All the evidence that this report refers to is available in the enforcement file for this matter located at the Commission's office. You may access the files or have copies made at your expense or both by contacting Priscilla Njuguna by email at priscilla.njuguna@bcdc.ca.gov or by telephone at number 415-352-3640. The staff also intends that the report inform you of the nature of the possible violation so that you can fill out the enclosed Statement of Defense form and otherwise be prepared for the Commission enforcement proceedings.



Receipt of the report and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold an enforcement hearing and the Commission will determine what, if any, enforcement action to take.

Careful reading and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the violation report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact as quickly as possible the above-named enforcement analyst of the Commission's staff. Thank you for your cooperation.

Violation Report/Complaint

- 1. Person or persons believed responsible for illegal activity:** The following person or persons are believed to be responsible for illegal activity.
 - A. Param Dhillon, property co-owner
 - B. Amandeep Dhillon, property co-owner
- 2. Brief description of the nature of the illegal activity:**

Unauthorized placement of fill in the East Lagoon of White Slough, a five-acre brackish and mixed wetland preserved in perpetuity by the Commission's *White Slough Specific Area Plan*, as amended, and adopted pursuant to the White Slough Protection and Development Act .
- 3. Description of and location of property on which illegal activity occurred:**

Solano County Assessor Parcel Number 0052-160-090, consisting of approximately 7.6 acres of undeveloped land in the City of Vallejo, Solano County.
- 4. Name of owner, lessee (if any), and other person(s) (if any) who controls the property on which illegal activity occurred:**

Param and Amandeep Dhillon -- owners.
- 5. Approximate date (and time if pertinent and known) illegal activity occurred:**

On or around late October and early November 2019, Param and Amandeep Dhillon (Respondents) placed several tons of dirt and organic material of unknown origin and characteristic throughout the parcel, encroaching upon five acres of mixed and brackish wetland reserved in perpetuity via the White Slough Specific Area Plan, as amended.

6. Summary of all pertinent information currently known to the staff in the form of proposed findings with references to all pertinent supporting evidence contained in the staff's enforcement file (the file is available at the Commission's offices for your review; you should call the above listed staff enforcement officer to arrange to review the file):

- A. In the late 1970s, after storms and other natural forces caused levees along the Napa River to breach, the area of White Slough, including East Lagoon, became subject to the jurisdiction of the Bay Conservation and Development Commission. Recognizing the value of the area, in 1990, the Legislature enacted the White Slough Protection and Development Act, Government Code sections 66670-66682. Pursuant to the Act, the City of Vallejo and County of Solano, working with other agencies, finalized the White Slough Specific Area Plan. The Plan requires the permanent protection of areas in South White Slough, including five acres of brackish and mixed wetland habitat in East Lagoon, with the zoning of this area as Resource Conservation, providing maximum protection.
- B. On June 11, 2019, Respondents purchased the subject property from Solano County at a tax auction. A tax deed listing Param Dhillon and Amandeep Dhillon as purchasers of APN 0052-160-090 was recorded on June 25, 2019.
- i. **Supporting evidence.** Deed to Param and Amandeep Dhillon (husband and wife) for Solano County Parcel Number 0052-160-090 dated June 20, 2019.
- C. In June, around the time of the purchase, Mr. Dhillon contacted staff at BCDC to inquire about the status of Parcel No. 0052-160-090. On June 13, 2019, staff contacted Mr. Dhillon via email and noted the proximity of White Slough to the area. BCDC staff advised Mr. Dhillon that should he decide to develop the property, he should contact BCDC to confirm whether the property was subject to BCDC jurisdiction. The email further advised that prior to undertaking any development, Mr. Dhillon should contact the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, San Francisco Bay Regional Water Quality Control Board, and California State Lands Commission.
- i. **Supporting evidence.** June 13, 2019 email from P. Suomoy, MCRP – BCDC Environmental Scientist - to Mr. Dhillon [dhillonx@yahoo.com] re: 4018 Sonoma Blvd and BCDC.
- D. On October 23, 2019, BCDC received a report regarding the creation of a dirt road and trucks entering the parcel and placing fill. The reporter stated that the activities had been ongoing for three weeks.
- i. **Supporting evidence:** 10-23-2019 3:49:36 PM submittal to BCDC enforcement reporting site at <https://survey123.arcgis.com/share/267ac1e9a2b94cfbb184f142a2aeb0ef>
- E. On November 1, 2019, BCDC received a report that someone was sending dump trucks full of dirt to the area.

- i. **Supporting evidence:** 11-1-2019 1:22:15 PM submittal to BCDC enforcement reporting site.
- F. On November 4, 2019, BCDC received two additional reports of a truck dumping dirt onto an area generally described as a White Slough wetland area. One of the reports was accompanied by photographs showing several large piles of dirt that appeared to have been placed on the parcel.
 - i. **Supporting evidence:** 11-4-2019 11:44:12 AM submittal to BCDC enforcement reporting site; 11-4-2019 2:59:52 PM submittal to BCDC enforcement reporting site.
- G. On November 6, 2019, BCDC received an email from a concerned member of the public reporting fill at the parcel. The email further reported that “someone had cut a dirt access road into [the wetland] and recently started dumping dump truck loads of dirt, of which there are probably 30 or 40 loads, now [sic] at this site.”
 - i. **Supporting evidence.** November 6, 2019 email from a concerned member of the public to BCDC, subject “Wetlands East of White Slough/Napa River at Hwy 29 (Sonoma Blvd, Vallejo) between Sereno Drive and Yolano Avenue.” On November 8, 2019, BCDC staff conducted an inspection of the property and found evidence of unauthorized fill in the Commission’s jurisdiction.
 - ii. **Supporting evidence.** Photographs taken by BCDC enforcement staff on-site on 11/8/19.
- H. On November 12, 2019, staff from the San Francisco Regional Water Quality Control Board performed an inspection of the parcel, accompanied by staff from the City of Vallejo and U.S. Army Corps of Engineers. Staff observed recent activities, including disking, grading, and placement of imported fill material.
 - i. **Supporting evidence.** November 18, 2019 SF Regional Water Quality Control Board Inspection Report, Dhillon Property Case File Place ID 862784.
- I. On November 17, 2019, BCDC opened Enforcement Case No. ER2019.060.00 against Respondent based on the photographic evidence, reports from members of the public, and a review of the public record.
- J. On November 18, 2019, the City of Vallejo issued Administrative Warning Case No. PW19-0023-1 instructing Respondents to cease dumping dirt and filling the property and informing him that his property abuts what the City and BCDC believe to be an area subject to the White Slough Specific Plan.
 - i. **Supporting evidence:** November 18, 2019 Administrative Notice-Warning issued to P. Dhillon.
- K. After observing on December 2, 2019 that work was continuing to occur on the property, on December 9, 2019, the City of Vallejo issued Administrative Citation #PW19-0023-1 for violations of Municipal Code Section 12.40.030 prohibiting grading without a permit

- i. **Supporting evidence:** City of Vallejo Administrative Citation #PW19-0023-1 issued to P. Dhillon on December 9, 2019.
- L. On January 8, 2020, BCDC staff sent an Initial Contact Letter to Respondents describing the alleged violation, directing them to cease all unauthorized work within BCDC's jurisdiction, and notifying them that they would be expected to restore the affected portions of the protected wetland.
 - i. **Supporting evidence.** January 8, 2020 letter from BCDC to P. Dhillon and A. Dhillon re: Notice of Alleged Violation of Section 66681 of the White Slough Protection and Development Act and Directive to Stop Work Immediately on Assessor's Parcel No. 0052-16-090.
- M. On January 28, 2020, BCDC staff met with Respondent, Param Dhillon, and staff from the Regional Water Quality Control Board and the U.S. Army Corps of Engineers to explain the violation, the nature of the property, the various agencies' applicable jurisdictions, and the necessary corrective actions to resolve the violations. Respondent expressed willingness to hire a wetlands ecologist to conduct a wetlands delineation and assess the impacts of the illegal activities on the habitat. Shortly thereafter, Respondent declined to follow through and indicated that he was questioning BCDC's jurisdiction over the property.
 - i. **Supporting evidence.** February 12, 2020 email from the U.S. Army Corps of Engineers to Mr. Dhillon, Subject: "APN 0052-160-090 (SPN-2019-00421) Follow-up."
- N. Respondents have not taken any action to resolve the violation despite requests that they retain a technical expert and assess the site and the actions needed to restore it.

7. Provisions of law or Commission permit that the staff alleges has been violated:

Section 66681(b) of the White Slough Protection and Development Act of 1990, which requires anyone who wishes to place fill in, or make any substantial change of use of, any area within White Slough, including East Lagoon, to first obtain a permit from BCDC in addition to any other permit required by law.

8. Any other statement or information that the staff believes is either pertinent to the violation or important to a full understanding of the violation:

- A. **Respondent has failed to voluntarily resolve the violation.** Other local, state, and federal agencies with jurisdiction over the site have attempted to elicit voluntary resolution from Respondent. Respondent has consistently refused to comply with the directives of all regulatory agencies with whom he has had contact.
 - i. **City of Vallejo Involvement.** As set forth above, on November 18, 2019, the City of Vallejo issued Administrative Warning Case No. PW19-0023-1 informing Respondent of reported violations and requiring collective action. On December 9, 2019, the City of Vallejo issued Administrative Citation No. PW19-0023-1 and imposed a \$200 fine for unauthorized grading activities.

- ii. **San Francisco Bay Regional Water Quality Control Board Involvement.** On November 18, 2019, the San Francisco Bay Regional Water Quality Control Board sent Respondent a Notice of Violation (CIWQS Place ID: 862784) for the placement of fill in waters of the state directing Respondent to cease and desist the illegal activity, obtain Water Board approval to remove the fill from the site, and advised Respondent that a cleanup and abatement order to correct and mitigate the effects of the violation was impending. On April 30, 2020, the Water Board sent Respondent a Notice of Ongoing Violations and Pending Deadlines to Submit Reports directing Respondent to conduct a wetlands delineation of the property by May 8, 2020. The Water Board also requested a report of the activities conducted at the property and an application for coverage under the Construction Stormwater General Permit for site stabilization, fill removal, wetland restoration and all other “earthwork” that may be required. To date, BCDC has not been notified that Respondent has taken any action to resolve the violations enumerated by the Water Board.
 - iii. **U.S. Army Corps of Engineers Involvement.** In November 2019, the U.S. Army Corps of Engineers sent Respondent a Notice of Alleged Violation alleging that the unpermitted placement of fill and grading at the site potentially violated the Clean Water Act and the Rivers and Harbors Act, and directing Respondent to, within fifteen days of receipt of the letter, complete an enclosed questionnaire and contact the staff to grant them permission to inspect the property to gather information for their investigation. Respondent failed to accede to the Corps’ requests.
- B. East Lagoon is habitat for special status species.** East Lagoon is identified in the White Slough Specific Area Plan as habitat for salt marsh harvest mouse (CDFW status: endangered) and Suisun shrew (CDFW status: special concern).
- C. Findings on the nature of the East Lagoon from the June 2001 Flood Control Study/Draft Environmental Impact Report by the US Army Corps of Engineers and the Vallejo Sanitation and Flood Control District (page EIS/R - 48).** *East of Sonoma Boulevard, and hydrologically linked to the North Lagoon by culverts, the seven acre East Lagoon is subject to dampened tidal exchange through two partially blocked 30-inch and one 24-inch culverts beneath Sonoma Boulevard, and also receives run-off from the surrounding urban area. It is rarely flooded because debris and plants accumulated at the outlet of the culvert prevent water from entering. East Lagoon is mostly a wetland filled with salt tolerant plants such as alkali bulrush (*Scirpus robustus*) and pickleweed (*Salicornia virginica*). Large portions of East Lagoon become dry during the summer.*