

SAN FRANCISCO BAY CONSERVATION  
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING  
PARTIAL TRANSCRIPT - ITEM 6

ONLINE/TELECONFERENCE MEETING  
HOSTED BY THE  
SAN FRANCISCO BAY CONSERVATION  
AND DEVELOPMENT COMMISSION  
SAN FRANCISCO, CALIFORNIA

THURSDAY, DECEMBER 10, 2020  
9:30 A.M.

Reported by: John Cota

A P P E A R A N C E SEnforcement Committee

Greg Scharff, Chair

Marie Gilmore

John Vasquez

Counsel to the Committee

Shari Posner, Deputy Attorney General  
Office of the Attorney General

BCDC Staff

Larry Goldzband, Executive Director

John Creech, Enforcement Analyst

Karen Donovan, Staff Counsel

Steve Goldbeck, Chief Deputy Director

Adrienne Klein, Chief of Enforcement

Margie Malan, Legal Secretary

Brad McCrea, Regulatory Director

Priscilla Njuguna, Enforcement Policy Manager

Respondents

Param Dhillon, Property Owner

Public Speakers

No members of the public addressed the Committee on Item 6

I N D E X

	<u>Page</u>
6. Public Hearing and Vote on Proposed Cease and Desist Order No. CCD2020.002.00	4
<u>Presentations</u>	
BCDC Staff	5
Param Dhillon	12
Rebuttal by BCDC Staff	21
Commissioner Discussion and Comments	23
Motion and Vote to Close the Public Hearing	
Motion	35
Vote	35
Motion and Vote on the Enforcement Committee's Recommendation	
Motion	36
Vote	36
Certificate of Reporter/Transcriber	41

P R O C E E D I N G S

9:34 a.m.

1  
2  
3 COMMITTEE CHAIR GILMORE: I believe that brings us to  
4 item number 6, right, which is the Proposed Hearing and Vote  
5 on Proposed Cease and Desist Order CCD2020.002.00.

6 So the next item is the public hearing and vote on that  
7 recommended enforcement decision to adopt the proposed Cease  
8 and Desist Order to address unauthorized activities in the  
9 East Lagoon area of White Slough in the City of Vallejo.  
10 The proposed Order has been prepared to address and correct  
11 alleged violations involving unauthorized changes in use in  
12 East Lagoon in violation of the White Slough Protection and  
13 Development Act and the White Slough Specific Area Plan.

14 Each Committee Member has been provided with a  
15 Statement of Defense submitted by Mr. Dhillon and  
16 accompanying exhibits as well as the administrative record  
17 documents.

18 I would like to start by asking Respondent Param  
19 Dhillon to identify himself and indicate whether he has an  
20 attorney present. Is he present?

21 MS. NJUGUNA: He is.

22 Mr. Dhillon, please unmute yourself.

23 MR. DHILLON: Yes, my name is Param Dhillon and I am  
24 present and I don't have an attorney.

25 CHAIR SCHARFF: Okay.

1 MR. DHILLON: And I am here.

2 CHAIR SCHARFF: All right. Well, thank you very much  
3 for attending and being here today.

4 Priscilla, I will now hand this over to you and Karen  
5 for your presentation. I will ask that you keep it brief in  
6 accordance with Section 11327.

7 Mr. Dhillon, after the staff presentation you will be  
8 allowed to summarize your position on this matter. I also  
9 ask that you keep your presentation brief and focus on areas  
10 where you dispute the assertions by the staff.

11 MS. NJUGUNA: Good morning once again, Commissioners  
12 and staff, members of the public.

13 Mr. Dhillon, if you could please mute yourself.

14 I will be providing a brief background information and  
15 Karen will provide information after me. But I will start  
16 by sharing my screen.

17 This just gives a brief outline of what we intend to  
18 discuss, which is a brief introduction of where the  
19 violation occurred, about the staff visits, and then Karen  
20 will give more detailed information on the legal, the law  
21 issues and details of the violation and the Order that we  
22 are proposing.

23 So just as some background information, the enforcement  
24 action concerns East Lagoon, which is depicted here in the  
25 image that you see before you. It is a five acre portion of

1 White Slough. The parcel is in the city of Vallejo adjacent  
2 to Highway 29, which you see here. It is also called Sonoma  
3 Boulevard, this is called Sonoma Boulevard, and it is  
4 immediately east of Highway 29. This is White Slough, this  
5 is East Lagoon right here. The picture shows East Lagoon in  
6 relation to the larger South White Slough, which is  
7 immediately west as previously indicated and across Highway  
8 29. The affected parcel as indicated is right here and as I  
9 mentioned before that is a five acre parcel.

10 So this is a closer picture of the area that we will be  
11 discussing today. The picture shows the parcel at issue and  
12 the portion of the parcel that is East Lagoon, which is up  
13 here. The parcel that you see depicted in red here is eight  
14 acres and East Lagoon comprises the five acres on the  
15 western portion of the parcel.

16 Respondents purchased the parcel at a county auction in  
17 June of 2019 after the previous owner defaulted on tax  
18 payments. The parcel, as you can see, is surrounded by some  
19 commercial development which includes some residential  
20 areas, more commercial development at the bottom here.

21 Note that these photographs were submitted along with  
22 some of the reports that BCDC received. They show East  
23 Lagoon during the rainy season before these violations  
24 occurred.

25 As detailed in the Executive Director recommendation

1 memorandum that you received as part of the documentation  
2 for this presentation as well as what was posted on our  
3 website, when the Legislature developed the White Slough  
4 Protection and Development Act, and the City of Vallejo and  
5 Solano County working with BCDC subsequently finalized the  
6 White Slough Specific Area Plan, they determined that East  
7 Lagoon is a muted tidal wetland that is a portion of White  
8 Slough. A muted tidal wetland has culverts or other  
9 obstructions that reduce the range of tides but still allow  
10 frequent inundation. This area is historically low-lying  
11 and the information that was available when the White Slough  
12 planning took place indicated that the five acres that are  
13 East Lagoon are in the flood plain and hydrologically linked  
14 to South White Slough.

15       So these are images of the reports that we received  
16 from members of the public. They were submitted to us on  
17 November 9 as indicated. We had reports that were submitted  
18 to us online and then photographs were subsequently  
19 submitted to us with additional information. The photograph  
20 on the left shows you looking north and you see the  
21 development that I mentioned earlier that surrounds East  
22 Lagoon and White Slough, which includes a Starbucks that is  
23 back here in this area.

24       You also see on the right hand side that starting in  
25 late October and November BCDC started receiving reports

1 that someone was bringing dump trucks onto the property and  
2 dumping tons of dirt. As you can see, these are the tons of  
3 dirt in one of the reports that we received via email and  
4 electronically.

5 The reports alternately described the work that was  
6 being done as being in an area that is tidal, a wetland and  
7 a wet slough. Most of the reports urged BCDC to take action  
8 to stop the fill. A number of reporters used BCDC's website  
9 to make a report and then followed up with photographs and  
10 then reports were also submitted to the City of Vallejo and  
11 the Regional Water Quality Control Board.

12 So we had two staff visits to the particular site. On  
13 November 8th Matthew Trujillo visited the site and that is  
14 his image on the left. He observed that a road had been cut  
15 through the parcel from Highway 29 and that significant  
16 amounts of fill had been placed on the property and grading  
17 activities were taking place.

18 A little over a month later Schuyler was out at the  
19 property, this is Schuyler's photograph, and he observed  
20 that large portions of the property had been disturbed. And  
21 as you can see in the photo on the right, the area had  
22 received some rain and water was ponding in the southwest  
23 corner of the property, which is right here.

24 Mr. Segal, who was working for the respondent,  
25 submitted a report. In his report he notes that there are



1 wetland plant species on the southwestern edge. A review of  
2 aerial images by BCDC staff verified that in most years the  
3 property is wet throughout the rainy season.

4 BCDC opened an enforcement case on November 18th and  
5 sent an initial contact letter to the Respondent in early  
6 January 2020.

7 I will be followed by Karen for the rest of the  
8 presentation.

9 MS. DONOVAN: I am going to give a little background on  
10 the law and then I will walk you through how we put together  
11 the Violation Report and the Order that is in front you.

12 The White Slough Protection and Development Act was  
13 enacted in 1990. This directed that the City of Vallejo and  
14 Solano County jointly adopt a final plan, which was to  
15 include permanent protection and enhancement of at least 132  
16 acres of tidally influenced areas in South White Slough.

17 In the memorandum you were provided we noted what some  
18 of the background and motivation for the enactment of that  
19 was. There were improvements that were anticipated to  
20 Highway 37, there were flooding impacts in the area and  
21 other things and there had been a determination that is  
22 embodied in the law that this area is subject to BCDC's  
23 jurisdiction following the breaching of the levee system and  
24 the failure to repair that.

25 Now, embodied in the Act was the idea that the City and

1 County would jointly develop a final plan and that BCDC  
2 would review that and approve it, provided that it had  
3 certain things in and that included permanent protection and  
4 enhancement of marshes, tidelands, tidally influenced  
5 wetlands and upland habitat. Incidentally, at the time the  
6 Legislature was working on the Act the local jurisdictions,  
7 along with BCDC, had already begun plans and discussions  
8 about the White Slough Specific Area Plan. Next slide.

9 So, the White Slough Specific Area Plan that was  
10 developed and eventually finalized by BCDC provides for  
11 permanent protection of five acres of habitat in East  
12 Lagoon. East Lagoon, once again, and this image is taken  
13 from this Specific Area Plan, is that portion that you see  
14 there on the far east of Highway 29. Incidentally, the  
15 larger parcel which you can see outlined there is eight  
16 acres. East Lagoon, this portion you see in dark, comprises  
17 five acres.

18 Now, the Plan also provided that South White Slough,  
19 including East Lagoon, which was recognized as within  
20 Vallejo city limits -- incidentally, a lot of South White  
21 Slough is actually unincorporated Solano County. But East  
22 Lagoon within Vallejo city limits, according to the Plan,  
23 was to be zoned Resource Conservation, which would give it  
24 the maximum protection. The City has incidentally, recently  
25 as part of its general plan amendments given it a zoning

1 that is Parks, Recreation and Open Space, but that provides  
2 a similar level of protection. This parcel according to the  
3 City zoning is to be protected from development. Next  
4 slide.

5 The White Slough Protection and Development Act states  
6 that any person placing fill, extracting materials, or  
7 making any substantial change in use of any area within  
8 White Slough shall obtain a permit from the Commission  
9 before doing so.

10 Now, Respondents did not obtain authorization from BCDC  
11 before placing tons of dirt on this property and before  
12 conducting subsequent grading activities. That is what this  
13 action is about, they needed authorization from BCDC to  
14 undertake any placement of fill or any substantial change in  
15 use in East Lagoon and they did not do so. Next slide,  
16 please.

17 We issued a violation report in July, you have been  
18 provided with the statement of defense that the Respondents  
19 submitted, and now you have in front of you a Cease and  
20 Desist Order. We did not file a complaint for civil  
21 penalties, although we do have the ability to do so if we  
22 determine it is necessary. At this point we are only  
23 pursuing injunctive relief and this is based on the  
24 importance of ensuring that certain measures are undertaken  
25 to restore this property and reverse the damage.

1           Incidentally, the image you see is also an image of the  
2 activities that took place on the property.

3           The Order requires Respondents to cease and desist from  
4 placing any fill or making any substantial change in use in  
5 the five acres that comprise East Lagoon. Next slide,  
6 please.

7           In addition, Respondents must submit a report that  
8 describes the extent of the activities that were undertaken  
9 on the property and a plan for corrective action; and there  
10 are deadlines for all of these embodied in the Order.

11           And then Respondents must within 60 days of our  
12 approval of the plan undertake the corrective actions that  
13 are necessary to restore the property.

14           Just one more note, this image is also of East Lagoon  
15 during the rainy season and this is an image that was  
16 submitted to BCDC by one of the people filing a report.

17           With that I will turn it over so that the Respondent  
18 can make any comments and provide a summary of his position.

19           CHAIR SCHARFF: Thank you.

20           Mr. Dhillon, do you have any comments you would like to  
21 make?

22           MR. DHILLON: Yes, I do, I want to give you my side of  
23 the story. First of all I want to thank Ms. Donovan. She  
24 has been very helpful to answer all my questions all along.  
25 Whenever I had a question she promptly answered all my

1 questions and helped me to be able to be here and give my  
2 side to the Committee.

3 I wanted to start with saying that I truly and honestly  
4 believe that BCDC and the Water Board, the Water Quality  
5 Board, does not have jurisdiction over this property and I  
6 would explain why. And then I would go into I don't deny  
7 the fact that I placed the fill on the property; I would  
8 explain why and how. But before I do that I want to, you  
9 know, tell my side about BCDC and Water Board not having  
10 jurisdiction over this property.

11 Before I did anything on the property or placed any  
12 fill on the property, or even before I bought the property I  
13 contacted BCDC. I called BCDC's office and I talked to  
14 Ms. Soumoy and I gave her the property address and I asked  
15 her if this property in question is under BCDC's  
16 jurisdiction. And she took the notes and she said I had to  
17 give her some time and she will do her investigation and get  
18 back to me.

19 She did call me. I don't recall exactly. It was at  
20 least a week or two weeks after that I got a call from  
21 Ms. Soumoy and she told me that the property is not under  
22 BCDC's jurisdiction. And that's where -- and we talked  
23 about it. She said any property within 100 feet from any  
24 coastal and tidal water is where BCDC's jurisdiction is.  
25 And that's where we would have concluded the conversation

1 but for some reason I asked her, I said, could you please  
2 send an email saying what you just told me, that way I have  
3 that for my record. And she said yes and she did send me an  
4 email, which I never opened because I had gotten my answer  
5 on the phone from her. That's all I wanted to hear to  
6 proceed to buy the property.

7 So then six months go by. Once I bought the property I  
8 cleaned up the property. I have sent some pictures to  
9 Ms. Donovan. I don't know if you are able to see those  
10 pictures. That would show you that I did a lot of work to  
11 clean that property, that property was never cleaned for the  
12 last 30 years. I don't know since when that was cleaned.  
13 And I took trucks and trucks of tires, wood, plastic,  
14 garbage, wood, all kinds of -- trucks and trucks of it. And  
15 by the time I was done cleaning it, it looked like a golf  
16 course. And I was able to go over the property with my  
17 tractor and a flail mower to cut all the weeds.

18 I don't deny that I have been on the property and I cut  
19 the vegetation, because I had no reason to believe that I  
20 was not supposed to do that. I went to BCDC, I went to the  
21 City of Vallejo, they did not tell me not to do any of that.  
22 So whatever I did on the property it was under the -- I did  
23 it under the impression that whatever I was doing as the  
24 property owner I had the right to do it.

25 Now I will you why I think that BCDC doesn't have

1 jurisdiction. Ms. Soumoy's determination of no BCDC  
2 jurisdiction over my property was the correct determination  
3 because for BCDC to have jurisdiction over any property has  
4 to have coastal or tidal water on the property, and there is  
5 no coastal or tidal water on the property. And the proof  
6 is, the water is only ponding up on the property for the  
7 rainy season. Once the rains start the water ponds up on  
8 the property. And towards the end of May or June when the  
9 rains stop water evaporates, percolates, dries up, and after  
10 that for the next six months or so until the rains start  
11 again there is no water.

12 If there was to be any coastal or tidal water on the  
13 property it will be throughout the year. Coastal or tidal  
14 water is not seasonal. So that right there tells you the  
15 lack of any water for those six months that there is no  
16 tidal or coastal water on the property. The only water that  
17 collects on the property is the rain water.

18 And as far as Ms. Donovan mentioned that there are  
19 culverts. There are no culverts on the property.  
20 Especially on my property there is not a single culvert.  
21 There is one culvert that exists on the northwest corner of  
22 my -- not on my property but the neighbor's property. That  
23 is there and it has no tidal flow. That culvert is only  
24 there for flood control. During any time of the year there  
25 is no flow of any coastal or tidal water through that

1 culvert. That culvert is there if the properties on east of  
2 Sonoma Boulevard ever to flood that would relieve the water  
3 onto the White Slough.

4 So having said that, so there are no culverts on the  
5 property that would bring any water from White Slough to  
6 East Lagoon. So that is my determination, that there is no  
7 coastal and tidal water on the property. If there is no  
8 coastland tidal water BCDC cannot have a jurisdiction  
9 without coastland tidal water.

10 Just like in 1977, when the levees break the water came  
11 all the way to White Slough. And BCDC didn't have  
12 jurisdiction over White Slough until the coastland tidal  
13 water, you know, came all the way to White Slough. So just  
14 in the same manner, if there is no tidal or coastal water on  
15 any property BCDC doesn't have jurisdiction. Now, that was  
16 Ms. Soumoy's determination and I strongly believe that she  
17 made the right determination.

18 But when all the reports from public and city and Water  
19 Board, you know. All these agencies contacted each other,  
20 they started looking into different documents and they  
21 looked into White Slough Protection and Development Act and  
22 there they saw, oh, we have jurisdiction over this, we do  
23 have jurisdiction over this. But that White Slough  
24 Protection and Development Act is based on coastal and tidal  
25 water on my property, but in reality it doesn't exist. So



1 even if the White Slough gives you some kind of jurisdiction  
2 over my property, but if the water isn't there the  
3 coastal -- sorry. If the tidal and coastal water isn't  
4 there BCDC doesn't have jurisdiction.

5 So having said that, if BCDC doesn't have jurisdiction  
6 over my property then this Cease and Desist Order, it  
7 doesn't make any sense.

8 And in the same fashion, the Water Board, they do not  
9 have any jurisdiction over my property because it is rain  
10 water. Rain water that falls on my property belongs to the  
11 property owner. What I do with that water, I believe that  
12 is up to me. If I was to raise fish on that water and I use  
13 that water to raise fish, or if I -- there is only five  
14 acres that are considered under jurisdiction. If I was to  
15 grow say sunflowers or grow a garden on the rest of the  
16 three acres and I used that water, rain water to irrigate my  
17 garden or my plants, whatever I grow on there, the Water  
18 Board shouldn't have any problem for me to use that water  
19 because that water belongs to me.

20 And the rain water alone itself does not determine that  
21 it is a wetland. You can't -- it rains everywhere. Just  
22 because the neighboring properties are developed, they used  
23 fill to bring their, you know, grade up higher, and now the  
24 water when it rains the water runs off to my property and  
25 sits there for a few months. That doesn't mean it's a

1 wetland. So Water Board doesn't have any jurisdiction over  
2 my property either.

3 So that's my point that BCDC -- I'm not very  
4 articulate. I am a layman, I cannot afford an attorney, so  
5 I am doing my best to make my case. For me to hire an  
6 attorney to represent me in BCDC and Water Board's case it  
7 will cost me over \$200,000, which I cannot afford.

8 And my next point is that the fill that I placed on the  
9 property, why and how. I do not deny that I placed the fill  
10 and I will tell you why. As I mentioned before, I contacted  
11 BCDC, I was told that BCDC does not have jurisdiction. So  
12 that was six months before I placed any fill on my property,  
13 when I checked with Ms. Soumoy and she told me there is no  
14 jurisdiction.

15 And when I contacted this trucking company -- I  
16 explained this in Water Board's hearing, that I met this  
17 gentleman at Ace Hardware, which is right next to the  
18 property, and he was in trucking business. He said, you  
19 know, he hauls dirt. And I said, you know, I could use some  
20 dirt because there were some trenches and some holes on the  
21 property and when I was mowing the property with my tractor  
22 I had a tough time maneuvering around those holes and  
23 ditches. My intent was to fill those holes so that the next  
24 year I was, I was able to cut weeds to meet, to reduce the  
25 danger of fire, fire protection. The City expects you to

1 cut all weeds to prevent any fires on the property.

2 So I asked him. I said, I could use some dirt. And, I  
3 said, but let me -- he said, yes, I will gladly bring you  
4 dirt. And I said, let me check with the City before -- if I  
5 need any permits before, you know, you bring any dirt. So I  
6 went to the City's office, I believe it was public works,  
7 and I talked to -- she is a senior member at public works.  
8 Her first name is Jeanine and that's all I remember, her  
9 name is Jeanine. And she told me. I said, I want to bring  
10 some dirt to fill up these holes and she said, you need a  
11 grading permit. And I said, I am not planning to develop  
12 this property, I just need a little bit of dirt to, you  
13 know, fill the holes and trenches. And she said, if you  
14 only put 55 yards of dirt on your property you don't need  
15 any permits. So I said, okay, that's all I need, I would  
16 limit it to 55 yards. That's what I told the trucking  
17 person, I said only need -- I can only put 55 yards. And  
18 that's exactly what we did.

19 So I had the blessing of the City and I had the  
20 blessing of BCDC to do what I did. At any point I had no  
21 intent and I had no reason to break any laws to go over  
22 BCDC's jurisdiction.

23 I have asked this question many times, I asked this  
24 question myself many times, how did I get into this trouble?  
25 I went to BCDC, I went to the City. Whatever I did I

1 thought I was doing it within my right. So my life has been  
2 turned upside down by Water Board's action and BCDC's  
3 action. BCDC still has been very reasonable with me and I  
4 appreciate that. BCDC has been nice to me, I would say,  
5 that they have been working with me. But Water Board, they  
6 did not use any discretion. They came through like a  
7 freight train and they threw the book at me. No discretion,  
8 no discretion. I made my case in front of them, you know,  
9 but they disregarded all my testimony and they applied the  
10 law to the limit and gave me a fine of \$61,000, which I  
11 cannot afford and I am going to appeal that.

12 I would conclude that I had no, I had no intent of  
13 breaking any laws. I understand if BCDC thinks they have  
14 jurisdiction. We could work through it. If Water Board has  
15 any jurisdiction. We could first determine if there is any  
16 jurisdiction and then work together to resolve it.

17 From the time that I was told to stop to place dirt on  
18 the property I immediately stopped and no work has been done  
19 after that. There was one incident where I was given -- it  
20 is mentioned in the complaint that the City gave me  
21 administrative notice that there was still work continuing  
22 on the property. I sent an email to Ms. Donovan last night  
23 and I explained -- that email is a text, a conversation with  
24 a person that explains that why I had a backhoe and I was on  
25 the property and there was a set of discs that was left

1 there on the property on the lowest end and I wanted to  
2 remove that before the rains came and it was the day before  
3 that the first rain came in November 2019. So that  
4 administrative citation was dismissed so I want to make sure  
5 that the Committee understands that I did not do any work  
6 once I was told to stop. I submitted, I did not do any  
7 work, I have no intent of breaking any rules or laws that  
8 BCDC or Water Board has.

9 So that's my story. I had no intent.

10 MS. DONOVAN: Now, with the permission of the Chair and  
11 Ms. Posner I would like to make three brief rebuttal points,  
12 if possible?

13 CHAIR SCHARFF: Yes, absolutely.

14 MS. DONOVAN: Just to start out, very briefly. BCDC is  
15 enforcing a law that clearly places East Lagoon within  
16 BCDC's jurisdiction. So as to whether the Legislature did  
17 that correctly or not, that is not before you right now,  
18 East Lagoon is within BCDC's jurisdiction.

19 Now, the second thing is that we have sent to you,  
20 because it was included as an exhibit with Mr. Dhillon's  
21 Statement of Defense, the email that he received from  
22 Ms. Soumoy at BCDC. This states:

23 "Although it appears that the property is  
24 outside of BCDC jurisdiction you may want to  
25 contact BCDC should you decide to develop the

1 property to confirm this."

2 That is what the email he received from Ms. Soumoy  
3 said.

4 Now thirdly, I believe that what he is formulating in  
5 his defense is that we should somehow be estopped from  
6 enforcing the law. Now as you know, the case law  
7 establishes that estoppel is not ordinarily applied against  
8 a governmental entity except in unusual circumstances and  
9 where necessary to avoid a grave injustice and where it will  
10 not defeat a strong public policy.

11 I don't think that anything that Mr. Dhillon has said  
12 would support estoppel. First off, there is no reason he  
13 should have reasonably believed he could have developed the  
14 property because Ms. Soumoy did advise him to contact BCDC  
15 prior to doing so. And then the history of the White Slough  
16 Protection and Development Act establishes a strong public  
17 policy in protecting it.

18 Now, just one final point on the two things that  
19 Mr. Dhillon just cited that he had emailed to us yesterday,  
20 late yesterday. One of them you do have before you, you do  
21 have these text messages, because they were submitted as an  
22 exhibit to Mr. Dhillon's statement of defense.

23 The second one shows the work that he did on the  
24 property prior to the violations. So not only was this  
25 evidence submitted very late in this process, we also do not

1 view it as relevant to the violations that are before you.

2 With that I will stop.

3 CHAIR SCHARFF: I have a quick question, Ms. Donovan.  
4 It seems that Mr. Dhillon's defense is as you have stated,  
5 and we will ask him to confirm that, but it seems to be that  
6 the Legislature should not have included this in  
7 jurisdiction because this is rain water, not tidal wetlands.  
8 That's how I understood it, is that your understanding of  
9 it?

10 MS. DONOVAN: That is my understanding of what  
11 Mr. Dhillon is saying, although I don't want to speak for  
12 him.

13 CHAIR SCHARFF: Fair enough.

14 MS. DONOVAN: There is background on the law to  
15 establish that that is not the case also.

16 CHAIR SCHARFF: Mr. Dhillon, is that a fair statement  
17 of what your defense is, that this is rainwater falling on  
18 this, it is not tidal, and therefore BCDC should not have  
19 jurisdiction and the Legislature erred by including BCDC's  
20 jurisdiction in that? Is that a fair statement of your  
21 defense?

22 MR. DHILLON: Exactly. And the lack of any water after  
23 the rains stop for six months is proof that -- the tidal and  
24 the coastal water is not seasonal. Just the lack of any  
25 water there is the proof that all the water that collects on

1 the property is rain water.

2 One more point regarding the email. From the point  
3 that I talked to Ms. Soumoy on the phone and then I asked  
4 her to send me an email, I never read the email because I  
5 had no reason. She sent me the email, it was sitting in my  
6 mailbox and is still sitting there. The only time I opened  
7 it was when all this trouble started.

8 CHAIR SCHARFF: Mr. Dhillon, I think, first of all,  
9 BCDC is not going after you on this as if you did it on  
10 purpose, as if there was intent, because otherwise there  
11 would be fines associated with this. What staff is  
12 basically asking is to have a Cease and Desist Order and  
13 that you prepare a report that shows the extent of what you  
14 did and how you would rectify it.

15 Is that correct, Ms. Donovan?

16 MS. DONOVAN: Yes, that is correct.

17 CHAIR SCHARFF: I think you have raised a -- the only  
18 defense you have raised, you basically said, I did the work,  
19 I did it unintentionally, I thought everything would be  
20 okay. This wasn't done on purpose but I did do the work but  
21 BCDC doesn't have jurisdiction. So if BCDC does have  
22 jurisdiction then we should find that, we should go with the  
23 staff recommendation which includes no fines and includes  
24 for you to go get a report and to fix this. I just wanted  
25 to make sure that you understood that was my understanding



1 of it, and if the understanding is not correct then I wanted  
2 to give you the opportunity to address anything on that  
3 issue. But it is really those issues. We understand that  
4 you said you didn't do it on purpose and as far as I can  
5 tell staff is not pushing that you did and not asking for  
6 fines. I don't know if you have any comments on that.

7 MR. DHILLON: Yes I do and thank you for giving me the  
8 opportunity to clarify that. Since I was told by BCDC that  
9 they didn't have jurisdiction I think they don't have a case  
10 to pursue.

11 CHAIR SCHARFF: So that's the estoppel argument that  
12 Ms. Donovan mentioned, that you are basically arguing that  
13 BCDC should be estopped because you acted in reliance on  
14 that email.

15 MR. DHILLON: Yes. And what I am saying is, we leave  
16 the slate the way it is now. From now on I will not do  
17 anything on the property until I consult with BCDC. I have  
18 no plans. What my intent is to do whatever it takes, do all  
19 the work, my homework, to see if BCDC has jurisdiction over  
20 my property. If BCDC has jurisdiction over my property  
21 there is no way that a little guy like me can do anything on  
22 the property. So all I am saying is what I did -- and  
23 actually, if BCDC had told me they had jurisdiction it would  
24 have saved me so much trouble. Now I am looking at a  
25 judgment of \$61,000. If BCDC had stopped me and they had

1 told me they had jurisdiction I would not have done any work  
2 and I did not have to go through all this trouble. I have  
3 been through a lot of trouble, a lot of hassle. A guy like  
4 me to defend myself, it is very stressful, it is very  
5 stressful. And imposition of that \$61,000 --

6 CHAIR SCHARFF: We have no jurisdiction over the  
7 \$61,000.

8 MR. DHILLON: I understand, I understand.

9 CHAIR SCHARFF: (Overlapping) the Water Board.

10 MR. DHILLON: What I am saying is, if BCDC had told me,  
11 I don't have jurisdiction, we wouldn't be here today, we  
12 wouldn't be here today. I think BCDC shouldn't pursue  
13 anything against me and let's, you know, figure it out if  
14 BCDC has jurisdiction. If BCDC has jurisdiction, we  
15 determine that, I am all for it. I have no problem, I will  
16 not do any work on the property. That's all I'm asking.

17 And the fill that has been placed on the property, most  
18 of that fill is not on those five acres, that's outside the  
19 five acres. Whatever fill is that may be, if you say that  
20 you have jurisdiction and it is on that part of the  
21 property, it is very insignificant, it is very  
22 insignificant, it would not do any damage to the property.

23 I already been through a lot. I would request that if  
24 you use your discretion to leave me alone and I promise you  
25 I would not do anything on the property without your

1 blessing.

2 CHAIR SCHARFF: Thank you very much, Mr. Dhillon.

3 Do other Committee Members have questions they would  
4 like to pursue?

5 COMMITTEE MEMBER VASQUEZ: I do. I'm sorry.

6 CHAIR SCHARFF: GO ahead.

7 COMMITTEE MEMBER VASQUEZ: I was trying to follow the  
8 rules and raise my hand.

9 CHAIR SCHARFF: You know, there's only three of us so  
10 you can just raise your hand (raised hand) and I'll see it.

11 COMMITTEE MEMBER VASQUEZ: Isn't that really what the  
12 Order says, that we are going to ask him to stop all that he  
13 is doing right now and then review when he submits a plan  
14 that says -- I'm assuming it's a plan that has to be  
15 developed by somebody who understands BCDC and understands  
16 all the conditions that would be in place. We are not going  
17 to impose any fines right now but simply to give concurrence  
18 that he is going to stop it, a legal stop, and not do  
19 anything else and come back and submit a plan to us that  
20 will determine what needs to be done. So I don't think we  
21 are acting as if we are going to punish him right now but  
22 the plan should determine, working with our staff, what  
23 things need to be repaired or what maybe what doesn't need  
24 to be repaired.

25 But to the issue of 55 acres (sic). That's six 10-yard

1 dump trucks. I don't know how many trucks went out there, I  
2 think that has to be established. I don't know the quality  
3 of the fill. I know with the County a fill or grading  
4 permit requires that you find out where the fill came from  
5 and the quality of the fill in doing any of that work. I  
6 don't think the City of Vallejo is any different.

7 MR. DHILLON: Can I respond?

8 CHAIR SCHARFF: Sure, go ahead.

9 MR. DHILLON: What BCDC wants me to do is to hire a  
10 technical person to do a delineation report. That is, that  
11 would be talking \$10,000, \$15,000, \$20,000. And then to a  
12 corrective action to move that dirt, I don't know what that  
13 is going to take. So as far as the quality of the fill or  
14 the amount, actually it is not 55 acres, it is 5 acres. The  
15 total property consists of just a little under 8 acres.

16 COMMITTEE MEMBER VASQUEZ: I'm sorry, I said "acres," I  
17 meant "yards."

18 MR. DHILLON: Oh, sorry. So the quality of the fill is  
19 clean dirt. I am very picky. When I bought this piece of  
20 property I picked up every stone, every piece of wood. You  
21 could see the picture, the property looked like a golf  
22 course. I am a very picky person so I am not going to bring  
23 anything unless it is clean dirt on the property. So there  
24 is no question about, you know, the quality of the fill.

25 I am asking, you know, let's start with a clean slate.

1 I am all with you, I am willing to work with you, I will do  
2 anything to make you happy, you know, but let's determine if  
3 BCDC has jurisdiction. We could be fighting over this not  
4 knowing if BCDC has jurisdiction over this property.

5 CHAIR SCHARFF: Commissioner Gilmore, do you have any  
6 comments you want to make?

7 COMMITTEE MEMBER GILMORE: Yes. Actually I have so  
8 many thoughts swimming through my head it's hard for me to  
9 kind of organize them (laughter), but I am going to just  
10 sort of jump right in.

11 Mr. Dhillon, you seem to be hung up on whether or not  
12 BCDC has jurisdiction and you want to quote/unquote  
13 "determine that." I think it is pretty clear from the staff  
14 report, and I am going to speak for my fellow colleagues  
15 here, that we think we have jurisdiction. So in your mind  
16 how would you go about determining whether or not BCDC has  
17 jurisdiction? Are you talking about potentially bringing an  
18 action against this and/or if it is something else how long  
19 do you expect that to take?

20 MR. DHILLON: I do not plan to bring any action against  
21 BCDC, I don't have the resources and I don't have the will.  
22 There is few -- there is water runoff from the neighboring  
23 properties. Every property that is around my property  
24 potentially is discharging water onto my property. First I  
25 wanted to address that, including the Sonoma Boulevard which

1 is, you know, owned by Caltrans. All the water that runs  
2 off Sonoma Boulevard, it drops into my property.

3 My intent is just to sit back and address any water  
4 discharged on my property that is not supposed to be there,  
5 address that, and then see if there is any water that  
6 collects on the property after that.

7 COMMITTEE MEMBER GILMORE: Sir, that, no, no, no, no.

8 MR. DHILLON: Okay.

9 COMMITTEE MEMBER GILMORE: That doesn't work for us  
10 because you are alleging the fact that we don't have  
11 jurisdiction; we are telling you that we do, okay?

12 MR. DHILLON: Okay.

13 COMMITTEE MEMBER GILMORE: And we are moving forward or  
14 we will be moving forward on the assumption that we have  
15 jurisdiction, and your sitting around and waiting to see or  
16 whatever your approach is could take years. We are not  
17 interested in that.

18 MR. DHILLON: But in the meantime there is, I am not  
19 doing any work on the property. I guess you missed what I  
20 said earlier that the six months of dry period there is no  
21 tidal and coastal water on the property. That in itself  
22 determines that there is no coastal or tidal water on the  
23 property.

24 COMMITTEE MEMBER GILMORE: Sir, sir.

25 MR. DHILLON: Mm-hmm.

1           COMMITTEE MEMBER GILMORE: And I think you missed what  
2 Ms. Donovan said. BCDC's jurisdiction in this particular  
3 case does not stem from the presence or absence of tidal  
4 action, our jurisdiction stems from what the Legislature did  
5 in enacting the provisions of the Code that it did. Now, it  
6 is a separate issue as to whether or not you believe what  
7 the Legislature did was right, but that is not before us  
8 today. What is before us is that the Legislature enacted a  
9 law and under that law your piece of property is deemed to  
10 be within BCDC's jurisdiction. It has nothing to do with  
11 whether or not there is tidal action on your piece of  
12 property, the Legislature said X and so it is X. BCDC is a  
13 creature of the state and we are bound to follow the law  
14 that the Legislature sets up.

15           MR. DHILLON: But let me, let me respond to that. The  
16 White Slough Protection and Development Act gave you that  
17 jurisdiction based on the presumption or assumption that  
18 there is coastal and tidal water. BCDC cannot have  
19 jurisdiction over any property without the presence of  
20 coastal and tidal water. That simple. If there is no  
21 coastal or tidal water --

22           COMMITTEE MEMBER GILMORE: Sir.

23           MR. DHILLON: -- BCDC has no jurisdiction.

24           COMMITTEE MEMBER GILMORE: Sir. Sir. Sir.

25           MR. DHILLON: Yes, ma'am.

1 COMMITTEE MEMBER GILMORE: I appreciate your argument.  
2 However, you are bringing that argument in front of the  
3 wrong entity. That is an argument that you would have to  
4 make to the state legislature because this is an Act enacted  
5 by the state legislature. We have to follow what the state  
6 legislature tells us to do. If you have a problem with that  
7 then you take it up with the state legislature, not with us.

8 MR. DHILLON: But irrespective of the state legislature  
9 the BCDC cannot have jurisdiction over any property without  
10 coastland tidal water, that simple.

11 CHAIR SCHARFF: So, Mr. Dhillon.

12 COMMITTEE MEMBER GILMORE: No, let me, let me -- go  
13 ahead, Chair.

14 CHAIR SCHARFF: I was just going to say, Mr. Dhillon, I  
15 think this is a fruitless discussion on your part. If you  
16 believe that we don't have jurisdiction, we believe we have  
17 jurisdiction, the Legislature has given us jurisdiction, you  
18 either need to file some action in court to invalidate the  
19 state law. We will not be doing that, we do not believe  
20 that is appropriate, we think we have jurisdiction. That  
21 argument is not going to go anywhere with this body so I  
22 think it is fruitless to continue to go back and forth on  
23 this issue.

24 I think what I am interested in getting to is I think  
25 that I wanted to have a brief discussion with you about how



1 we move forward, given that we haven't voted yet. But I  
2 believe that we will pretty soon move forward and I think we  
3 need to have a little discussion on that and maybe that's  
4 where we are. Assuming we do move forward with the  
5 enforcement, the Cease and Desist Order, I wanted to get a  
6 sense that you understood what you need to do.

7 Because I do actually understand that you think you  
8 didn't do anything wrong and you didn't intend to at this  
9 point, but you are going to have to hire the person. Yes,  
10 you are going to have to spend the money to do it. And I  
11 think that is part of why we are not fining you, we want to  
12 give you the resources to go ahead, make the report, get it  
13 done, and then we need to figure out how can we restore the  
14 damage you have done to the property. And I think that is  
15 in a cooperative manner that gets it done, is what our  
16 interests are here. And so that's where we are on this, I  
17 think. I wanted to see if my fellow Commissioners agree  
18 that's sort of where we are on this? I haven't heard quite  
19 from everyone yet so raise your hand if you want to say  
20 something further.

21 MS. DONOVAN: Chair, I did want to remind you, I  
22 believe we have a hand raised for public comment so I wanted  
23 to ensure that --

24 CHAIR SCHARFF: Okay. So we will do that before we  
25 take any vote, we will listen to the public as well.

1 COMMITTEE MEMBER VASQUEZ: I just want to say, Greg,  
2 you have pretty much summarized the issue.

3 CHAIR SCHARFF: And Commissioner Gilmore, I appreciate  
4 you putting that out there because I think that Mr. Dhillon  
5 sort of needs to understand that the jurisdictional issue is  
6 not going anywhere. So assuming we have jurisdiction, you  
7 know, we just want to make sure that you understand what you  
8 need to do.

9 Ms. Donovan, I assume we have people that, you know,  
10 consultants and stuff that we can refer to him or how does  
11 that process work so he can get going on that? Because  
12 February will be here before we know it.

13 MS. DONOVAN: I believe we could work with him to help  
14 identify some people. As he has already stated, he is  
15 subject to an action by the Regional Board as well. We can  
16 talk to their staff and see what recommendations, if any,  
17 they have made. We will try to assist him in complying with  
18 the Order, yes.

19 CHAIR SCHARFF: All right. I guess we should go to the  
20 public then. We have an Attendee. Avi, would you like to  
21 speak for three minutes?

22 MS. MALAN: Avi.

23 AVI: Hi, thank you so much. So yeah, I'm Avi. I am  
24 actually speaking to another Cease and Desist Order brought  
25 on the Union Point encampment and I am really concerned. I

1 first just want to say that --

2 CHAIR SCHARFF: This is not the appropriate time right  
3 now. We will come back to general public comment for things  
4 not on the agenda. When we get to it I'll call on you then,  
5 Avi, all right?

6 AVI: Okay, thank you. My apologies.

7 CHAIR SCHARFF: No, no worries, it's confusing with  
8 Zoom.

9 All right, so back to this item. Does someone wish to  
10 make a motion?

11 COMMITTEE MEMBER VASQUEZ: So moved.

12 MS. POSNER: Excuse me. I just started to say, you  
13 need to close the public hearing, I believe.

14 CHAIR SCHARFF: Okay, yes. Could I have a motion to  
15 close the public hearing?

16 COMMITTEE MEMBER GILMORE: So moved.

17 COMMITTEE MEMBER VASQUEZ: That was part of my motion.

18 CHAIR SCHARFF: All right. Do you want to do a roll  
19 call vote on closing the public hearing?

20 MS. NJUGUNA: Certainly. Commissioner Gilmore?

21 COMMITTEE MEMBER GILMORE: Yes.

22 MS. NJUGUNA: Commissioner Vasquez?

23 COMMITTEE MEMBER VASQUEZ: Yes.

24 MS. NJUGUNA: Chair Scharff?

25 CHAIR SCHARFF: Yes.

1 COMMITTEE MEMBER VASQUEZ: So the second part of my  
2 motion was to recommend approving the staff recommendation.

3 COMMITTEE MEMBER GILMORE: And I'll second it.

4 CHAIR SCHARFF: Okay. All in favor raise your hand.  
5 (Show of hands.)

6 CHAIR SCHARFF: All right, and that passes unanimously.

7 COMMITTEE MEMBER GILMORE: May I?

8 CHAIR SCHARFF: Go ahead, go ahead, Commissioner.

9 COMMITTEE MEMBER GILMORE: Can I just make one comment.  
10 I got the sense as we going --

11 THE REPORTER: Excuse me, Chair Scharff. Staff needs  
12 to read the recommendation.

13 COMMITTEE MEMBER GILMORE: Oh, sorry.

14 CHAIR SCHARFF: Staff, would you like to read the  
15 recommendation.

16 MS. DONOVAN: The recommendation is to approve the  
17 Cease and Desist Order that was put in front of you and  
18 direct staff to prepare a recommendation for the Commission  
19 to adopt the Order.

20 CHAIR SCHARFF: Thank you. I think that was a helpful  
21 clarification for people listening.

22 Go ahead, Commissioner Gilmore.

23 COMMITTEE MEMBER GILMORE: I had a comment. As I was  
24 listening to the conversation I got the distinct impression  
25 that Mr. Dhillon believes that there is some potential for

1 development on this property once he has worked through the  
2 BCDC process. My understanding from the zoning of this is  
3 that this property is not developable and I just kind of  
4 wanted to put that out there.

5 CHAIR SCHARFF: I had the same confusion, actually,  
6 because I thought the zoning on this does not seem to  
7 support any development at all, but I figured that wasn't  
8 really before us. But yes, I noticed that as well.

9 All right. Is Mr. Dhillon still with us?

10 MR. DHILLON: I am, I am.

11 CHAIR SCHARFF: We have now voted to impose the Cease  
12 and Desist Order; I just wanted to make sure you understood  
13 that. And so from our point of view we have jurisdiction,  
14 we are moving forward. I would ask that you work  
15 cooperatively with staff and get these things done because  
16 if it doesn't happen, we have been really lenient and nice  
17 to you, frankly. Staff could have come forward asking for  
18 all sorts of fines if they wanted to.

19 I think they appreciated that you have been cooperative  
20 with them to this point and I just don't want it to come  
21 back to us where you haven't done what staff has asked and  
22 that then fines and that kind of stuff become necessary. So  
23 I did want to point that out to you and I did want to ask  
24 that you work cooperatively with staff.

25 And that you also look at the deadlines. The deadline

1 is, I think, February 21st or whatever to have that report  
2 completed? I actually don't have it in front of me, the  
3 date, but I think it is around then. I just want to make  
4 sure you looked at it correctly and that you figure out how  
5 to get those dates.

6 And if it doesn't look like you can make that date  
7 there is also provision in the Order to allow you to request  
8 the Executive Director, upon a showing of good cause, to  
9 give you more time. But good cause means good cause, which  
10 means that you are immediately on this, that you are  
11 diligently pursuing it, that it is not that it is a few days  
12 before and you haven't found someone, you haven't started.  
13 So I just really wanted to impress upon you the need to move  
14 forward on this.

15 So, thank you for your appearance today.

16 MR. DHILLON: Can I comment?

17 CHAIR SCHARFF: Sure.

18 MR. DHILLON: As you see there is an expense related to  
19 whatever you are asking me to do. What happens down the  
20 road? Under the gun I would do this. You ask me to. If  
21 you approve what the prosecution wants you to I would do  
22 this under the gun, I have no choice. I spend some money.  
23 Down the road it's figured somehow, it's figured out that  
24 BCDC or Water Board didn't have jurisdiction, what happens  
25 then? What happens to my effort, my expense? Me going

1 through all this hard work, hardship, what happens to that?

2 CHAIR SCHARFF: We need to move on but I will briefly  
3 answer your question. Unless you file a lawsuit in court  
4 that seeks to invalidate this law which gives us  
5 jurisdiction, unless you are going to do that then there  
6 will be no overturning of the jurisdiction, no one will ever  
7 decide that we don't have jurisdiction. So unless you are  
8 going to do that, which I am not going to give you advice  
9 one way or the other, but unless you are going to take that  
10 action, and that means you would have to consult with an  
11 attorney and all of that, then we have jurisdiction and I  
12 think you just basically have to live with the fact that we  
13 have jurisdiction.

14 I guess, you know, we also are a little confused as to  
15 why you think you could develop this property in any way as  
16 well. But be that as it may, I think that you need to make  
17 that choice immediately if you are going to file suit. But  
18 frankly, during the pendency of a lawsuit unless you get an  
19 injunction stopping us from enforcing our Orders you are  
20 going to have to comply with them.

21 MS. DONOVAN: Chair, if I could say something briefly?

22 CHAIR SCHARFF: Sure.

23 MS. DONOVAN: This is for the benefit of the record and  
24 Mr. Dhillon. In accordance with the motion that you have  
25 just voted to adopt, staff is going to be preparing for the

1 Commission the Enforcement Committee's recommendation that  
2 this order be adopted in January, because the next  
3 Commission meeting that we could get this on calendar will  
4 be January. We will work with Mr. Dhillon so that he  
5 understands how this process gets completed and then, as we  
6 stated, we will work with him in complying with an Order  
7 assuming that the Commission does vote to adopt the Order  
8 and that it gets issued by BCDC.

9 COMMITTEE MEMBER VASQUEZ: Thank you, Karen. I was  
10 going to ask you to kind of lay that out but you did that so  
11 thank you.

12 CHAIR SCHARFF: All right. Okay. So I think we are  
13 going to move on to the next item, which would be -- are we  
14 to public comment now, is that where we are?

15 MS. NJUGUNA: Yes, that is.

16 CHAIR SCHARFF: All right, that's what I thought.

17 COMMITTEE MEMBER VASQUEZ: Chair, I am going to leave  
18 now. Thank you.

19 CHAIR SCHARFF: Okay. Thank you very much, John.

20 (Thereupon, the Enforcement Committee  
21 meeting continued to Item 3.)

22 --oOo--

23

24

25 .



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, John Cota, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing San Francisco Bay Conservation and Development Commission Enforcement Committee meeting and the recording was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of December, 2020

  
\_\_\_\_\_  
JOHN COTA

CERTIFICATE OF TRANSCRIBER

I, RAMONA COTA, a Certified Electronic Reporter and Transcriber, certify that the foregoing is a correct transcript, to the best of my ability, from the electronic recording of the proceedings in the above-entitled matter.

 \_\_\_\_\_ December 14, 2020

RAMONA COTA, CERT\*\*478