

San Francisco Bay Conservation and Development Commission

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December 16, 2020

TO: Enforcement Committee Members

FROM: Priscilla Njuguna, Enforcement Policy Manager (415/352-3640;
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SUBJECT: Approved Minutes of December 16, 2020 Enforcement Committee Meeting

1. Call to Order. The meeting, held remotely via Zoom, was called to order by Chair Scharff at 9:30 A.M.

2. Roll Call. Present were Chair Scharff and Commissioners Gilmore and Vasquez. Chair Scharff stated that a quorum was present.

Staff in attendance were the 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, was also in attendance.

Chair Scharff stated that general Public Comment (Agenda Item #3) would be deferred and held as the last item before adjournment.

4. Approval of Draft Minutes from the December 10, 2020 Meeting

MOTION: Commissioner Gilmore moved for approval of the December 10, 2020 meeting minutes. Commissioner Vasquez seconded and the motion carried unanimously with a hand vote of 3-0-0 with Commissioners Gilmore, Vasquez, and Chair Scharff voting “YES”, no “NO” votes, and no “ABSTAIN” votes.

5. Enforcement Report. Ms. Njuguna reported that since the previous week’s meeting, one case had been opened and one closed. The total caseload was 230. Staff continue to work on the resolution of the oldest cases, and to refine case management and review procedures to ensure they are effective in meeting the enforcement goals of deterrence, consistency, fairness and transparency.

Staff has reached out to the City of Oakland regarding the accumulation of trash at the encampment at Union Point Park. The City is working on a resolution; staff will provide updates to the Enforcement Committee when available.

6. Public Hearing and Possible Vote on a Recommended Enforcement Action Regarding the Richardson Bay Matter; Proposed Settlement Agreement with the City of Sausalito. Chair Scharff began by emphasizing that BCDC appreciates the time that the City of Sausalito has devoted to negotiating the agreed-upon commitments regarding Richardson Bay with BCDC staff. The two entities have now reached an agreement that advances compliance of state law while accommodating the existing situation.

Ms. Klein presented a summary of the agreed-upon commitments. She noted that the matter is controversial, complex, and has been ongoing for many years and gave a brief historical background on the matter.

Ms. Klein reminded the Commissioners that all the lands in Richardson Bay are subject to the public trust. Private residential uses are generally not permitted on lands held in trust for the people of the state. The Richardson Bay Special Area Plan requires that vessels and floating structures used for residential purposes (i.e., houseboats and liveaboards) should be allowed only in recreational or houseboat marina berths when consistent with and in compliance with state law and local codes. The Plan, which was finalized in 1984, further states that all anchor-outs should be removed from Richardson Bay.

While these proposed commitments address what BCDC expects Sausalito to do to make City waters compliant with state law, as well as the damage that has been done to Richardson Bay subtidal habitat, some of the details as to how this is done will be developed later.

Ms. Klein explained the terms of the agreement, as follows:

Vessel Influx Management. Sausalito has an ordinance that prohibits any person from mooring a vessel in City waters more than 10 hours without permission from the Chief of Police. The ordinance allows the City to remove any vessels that remain in City waters longer than 72 hours. Sausalito is committing to ongoing enforcement of these ordinances. The City is also committing to regular patrols of City waters and informing BCDC of any vessel that is permitted to stay in City waters for more than 30 days.

Removal of Existing Vessels. The City has committed to remove all unlawfully anchored vessels by the end of 2025. The three vessels that arrived after January 22, 2018 will be removed first; the “legacy” vessels that arrived before then will be transitioned off Richardson Bay before the end of 2025. The City will comply with the Marin County Public Health Order relating to COVID-19 and ensure that no enforcement action places any individual in a more adverse position vis-à-vis the coronavirus.

Cooperation in Regional Efforts. Sausalito committed to continue cooperating in actions that address the broader issues of Richardson Bay:

- Discussions being led by State Senator Mike McGuire to identify various initiatives that could facilitate the creation of housing.
- Not to take any actions that will make it more difficult to resolve the broader effort to remove unlawfully anchored vessels from Richardson Bay. BCDC recognizes that this is an interconnected regional issue. There is a disproportionate reliance by anchor-outs on Sausalito resources compared to other communities on Richardson Bay, nevertheless it is important for the City to be part of the regional solution, and they have agreed to do so.

Mitigation for Past and Prevent Further Subtidal Habitat Damage. Ms. Klein noted that eelgrass is an important resource in California, and Richardson Bay supports between 300-650 acres of eelgrass on a fluctuating basis. Vessels and their ground tackle have caused between 50-85 acres of damage to the Richardson Bay eelgrass beds. Illegally anchored boats have been shown to pose a threat to eelgrass. It was important to BCDC that the City of Sausalito commit to mitigation for eelgrass damage occurring in City waters as a result of these vessels.

- The City has agreed to provide a survey of damage to BCDC no later than August 31, 2021. It will be based on the assembled data produced by Merkel and Associates, Audubon, and others working in Richardson Bay on this issue.
- The City will develop a plan to mitigate damage, to be submitted to BCDC by June 30, 2022. Goals will include compensatory mitigation at a ratio of no less than 1.2 to 1 for the mitigation area to the impact area.
- The City will prepare a list of measures to avoid/minimize future damage to eelgrass habitat anchored in City waters. It will be submitted to BCDC by August 31, 2021.
- The City will monitor and adaptively manage restoration activities for at least 10 years from the date mitigation efforts are implemented.

Coordinate Waterfront Management. Sausalito will continue the mobile shower program, the annual debris box collections, and the Safe Harbor program for transitioning anchor-outs from City waters into berths (and hopefully then into permanent housing).

Reporting Requirements. The City of Sausalito will report monthly to Enforcement staff, three times a year to the Enforcement Committee, and annually to the Commission.

Ms. Klein provided the staff recommendation that the Enforcement Committee recommend that the Commission authorize the Executive Director to execute an agreement with the specified commitments.

Sausalito City Councilmember Joan Cox stated that the City is aligned with the majority of terms described by Ms. Klein and noted that some details would be finalized offline. Ms. Cox stressed that it is vitally important to the City of Sausalito that they sign and execute the agreement in 2020. The City was grateful for the cooperation of the Enforcement Committee and BCDC staff in expediting the drafting and completion of the agreement.

Sausalito Mayor Jill Hoffman thanked everyone who had worked on the agreement to get it to this point.

Questions and Discussion

Commissioner Gilmore asked how the provisions in the agreement will get funded. She noted that every state and local jurisdiction has taken a big financial hit from COVID-19. She particularly noted that the City of Sausalito has promised to step up patrols, complete an eelgrass study and mitigation which are going to be expensive. Councilmember Cox answered that the City sets aside money each year for waterfront management that they anticipate using to fund this new agreement. In addition, the agreement contains provisions that the City can meet and confer with BCDC should the City need to extend any of the deadlines as a result of financial or logistical challenges arising from the pandemic. The City is also seeking grant funding for the eelgrass mitigation efforts, and some of the reports due to BCDC will be taken from vessel survey efforts already being completed.

Adam Politzer, Sausalito City Manager, added that the City has a restricted funding source, the tidelands fund, which are revenues the City receives from rental agreements with the marinas and other businesses along its shoreline. This money will be used to help support the police department patrolling efforts.

Chair Scharff said that he would also like to see the agreement signed by the end of the year. He asked about the minor issues still needing to be settled to which Ms. Cox had referred. Ms. Donovan responded that staff will work with the City to identify available grant funds and other resources to accomplish the eelgrass mitigation commitment. In terms of process, staff was recommending that the Enforcement Committee agree to recommend that the Commission authorize the Executive Director to enter into an agreement containing the terms just discussed. If the Committee agreed, this would be presented to the full Commission in January before the Executive Director would sign. The City of Sausalito understands that this is BCDC's recommended process. The City plans to sign the agreement before BCDC does.

Chair Scharff asked if the Commission must sign off on the agreement. Ms. Donovan stated that in as much as this is an agreement to resolve an action and staff is not issuing an order, Commission approval is not mandated by the regulations; however, partly because of the importance of the

agreement, staff is recommending that it go to the Commission before the Executive Director signs. The next Commission meeting is scheduled for January 21.

Mr. Politzer stated that he is leaving his position as City Manager on December 31, 2020, and he is authorized to sign the agreement on behalf of the City.

Chair Scharff asked Councilmember Cox and Mayor Hoffman if they see any problems politically with the agreement. Mayor Hoffman replied that the Council has been working in this direction for six years. The last time they met, they voted to authorize Mr. Politzer to sign it for them; they would like for the same team to see it through to its resolution.

Commissioner Vasquez thanked everyone for working on the agreement. He thanked Councilmember Cox for her leadership, tenacity, and knowledge of the subject which she has presented to the Committee on a number of occasions.

Public Comment

Robbie Powelson stated that he was continually shocked by the behavior of BCDC. He asserted that he thought pushing forward this kind of mass eviction during the pandemic is shocking. He stated that people have lost their homes because of the callousness of BCDC, which refuses to work on housing. He claimed that part of public trust is to allow people their Fourth Amendment right to rest and find shelter. He stated that he has not gotten a response to the emails he has sent. He claimed that it had been a long process during which BCDC Commissioners have already made up their minds. He stated that this agreement does not mean the fight is over.

MOTION: Commissioner Gilmore moved to close Public Comment. Chair Scharff seconded and the motion unanimously carried with a hand vote of 3-0-0 with Commissioners Gilmore, Vasquez, and Chair Scharff voting "YES", no "NO" votes, and no "ABSTAIN" votes.

Ms. Donovan stated that staff was recommending for the Committee to recommend that the Commission authorize the Executive Director to execute an agreement that will include the terms discussed at this meeting. Staff will work on finalizing the agreement as quickly as possible with the recognition that Sausalito intends to sign by the end of the month. The agreement will then be taken to the Commission before the Executive Director signs on BCDC's behalf.

Sausalito confirmed their agreement with the staff recommendation.

MOTION: Commissioner Gilmore moved to approve the staff recommendation. Commissioner Vasquez seconded. The motion carried unanimously with a vote of 3-0-0 with Commissioners Gilmore, Vasquez, and

Chair Scharff voting “YES”, no “NO” votes, and no “ABSTAIN” votes.

3. General Public Comment. There was no general public comment.

7. Future Agenda Items. Ms. Njuguna stated that there were no future agenda items.

She informed the Committee that the next meeting was scheduled for January 14 and that Staff would send out a comprehensive calendar of Enforcement Committee meetings in 2021.

Commissioner Gilmore asked when new commissioners might be added to the Enforcement Committee. Mr. McCrea responded that Executive Director Goldzband is working closely with Commission Chair Wasserman to populate the Enforcement Committee.

8. Adjournment. Chair Scharff adjourned the meeting at 10:13 A.M.