

San Francisco Bay Conservation and Development Commission

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February 24, 2021

TO: Enforcement Committee Members

FROM: Priscilla Njuguna, Enforcement Policy Manager (415/352-3640;
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SUBJECT: Approved Minutes of February 24, 2021 Enforcement Committee Meeting

1. Call to Order. The meeting, held remotely via Zoom, was called to order by Chair Scharff at 9:31 A.M.

2. Roll Call. Present were Chair Scharff and Commissioners Gilmore, Vasquez, and Wagenknecht.

Staff in attendance included Executive Director, Larry Goldzband; 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.

3. Public Comment. There was no public comment.

4. Approval of Draft Minutes from the February 11, 2021 Meeting

MOTION: Commissioner Gilmore moved for approval of the February 11, 2021 meeting minutes. Commissioner Vasquez seconded. The motion carried unanimously with a roll call vote of 4-0-0 with Commissioners Gilmore, Vasquez, Wagenknecht, and Chair Scharff voting “YES”, no “NO” votes, and no “ABSTAIN” votes.

5. Enforcement Report. Ms. Njuguna provided an update of achievements so far in 2021. Staff opened 22 cases and closed 36 cases. Of the latter, 10 had no violation; eight were duplicates of existing cases; five were resolved by through local and/or government agencies; 11 had documentation that helped in their resolution; and 2 minimal impact cases were also closed. The total caseload as of February 18, 2021 was 196, a decrease of 15 cases from the caseload on December 31, 2020.

Ms. Njuguna stated that staff continues to refine case review and management procedures to ensure their effectiveness in meeting enforcement goals (deterrence, consistency, fairness, and transparency).

Executive Director Goldzband reported that he had appeared before the State Budget Subcommittee regarding the Budget Change Proposal for the Bay Fill Clean Up and Abatement Fund. He will appear again before the Senate Budget Subcommittee on March 2, likely to provide the same testimony.

6. Oldest Case Update. Ms. Klein reported on the oldest cases as follows:

- Enforcement Case No. ER1988.024 involves a collapsed seawall which resulted in the closure of a required public access stairway. The property owner has retained an engineer who is working on a plan so that staff can provide an amendment to authorize the repair work.
- Enforcement Case No. ER1990.026 pertains to a 1985 consistency determination issued to the Army Corps of Engineers for beneficial reuse of material dredged material in the Stockton ship channel -- a large project involving over one million cubic yards of dredging, of which 350,000 cubic yards was authorized to be placed at one of the duck clubs located in the Suisun Marsh Preservation Act jurisdiction. The fill was not all beneficially re-used and was not removed within 10 years of its placement as required. The parties have developed a conceptual plan for beneficial re-use and are awaiting the appropriate permits from each of the resource agencies to allow this work.
- Enforcement Case No. ER1995.002 pertains to a homeowner in Greenbrae who inherited a violation involving unauthorized construction of pile-supported deck and docks. Staff has obtained the homeowner's cooperation to sign a permit for recordation to put future owners on notice of the unauthorized work which will include a condition that by a certain future date a portion of the unpermitted work must be removed.
- Enforcement Case No. ER1998.013 involves a permit that BCDC approved in January at India Basin Shoreline Park for a large multi-residential development. In 1993 the City and County of San Francisco obtained a permit from BCDC for two public parks that were separated by some private property. There was a requirement to dedicate these areas through a legal instrument recorded on title which never occurred. In the interim of many years, one of the parks was not properly maintained. Enforcement staff will soon meet with appropriate representatives of the City of San Francisco Department of Parks and Recreation to discuss the maintenance issue as well as permit modifications to reflect changes in other authorizations.
- Enforcement Case No. ER1999.034 involves a family residence in Alameda in which two properties were owned by the same party. BCDC inadvertently granted an authorization for a boat dock one

property on the permit for the other property. Staff is working with the property owner to correct the second property permit and grant authorization for the work at the correct address.

Questions and Discussion

Commissioner Vasquez commented that he was impressed about progress staff has made. He asked what has enabled staff to do a better job, emphasizing that their work seems to be coming along very well. Ms. Njuguna responded that having additional staff has been helpful, as has the planning that had been in place before she and Ms. Donovan joined the enforcement team. The work to improve the program had actually begun in 2017 or even earlier.

Commissioner Gilmore agreed that the enforcement program has come a long way quickly and she complimented the staff. She then pointed out that maintenance issues come up frequently, particularly regarding city and county property. She asked if staff has any way of letting local governments know that they have other permits with lagging maintenance requirements when BCDC is issuing them new permits. Ms. Njuguna responded that when staff receives requests for new permits, they look through the case database to see if there are open enforcement cases that can be addressed simultaneously. If there are, staff can try to get some traction with the local government entity. This strategy has had mixed success depending on the local government's resources. Mr. McCrea added that BCDC does not have any legal means to hold up a permit application because of violations on a different permit that the city or county is holding. He noted that in conversations about the new permit, staff can highlight past problems and permittees will usually address those issues in the spirit of cooperation.

Chair Scharff asked about the India Basin case and specifically why the City and County of San Francisco did not vacate the street. Ms. Klein answered that with the City Department of Public Works interfacing with its own Department of Parks and Recreation, it just did not happen. In the interim, BCDC's practices have changed and staff has not determined exactly what to do with that existing requirement. It is probably that it will be modified and/or eliminated. The requirement for those areas to remain public will be in place.

Chair Scharff asked why we are not taking an enforcement action against the City and County of San Francisco since they are the permittees. Ms. Klein explained that there had been a gap in time such that the effort to have the legal instrument submitted and recorded happened in the early 2000s. Staff now has enough traction with the permittees to achieve voluntary compliance.

Chair Scharff asked what will happen if the City and County do not comply. Ms. Njuguna stated that one of the other considerations in this case is the lower prioritization score. Staff is endeavoring to work on the cases they

prioritized, as mentioned by the state auditor, focusing on cases that have the most detrimental impact. Looking forward, if staff spends too much effort on the old cases, they lose traction on the current cases and what is on the books now. That will lead to stagnation as well. Staff has chosen the oldest cases to take on which staff want to make progress on by June 30, 2021.

Chair Scharff stated that staff seems to be spending a reasonable amount of time on this case now; instead of becoming mired in San Francisco's internal department politics, staff should move forward with enforcement actions rather than continually negotiating with their departments. He asserted that the permittees failure to comply seems bureaucratic and noted that maybe it was time to bring an enforcement action to cause them to comply.

7. Union Point Park Cease and Desist Order CCD2020.001.00 Compliance Update. Ms. Njuguna stated that the Cease and Desist Order approved by BCDC in October 2020 required the City of Oakland to relocate the remaining individuals at Union Point Park by Friday, February 12, 2021. BCDC's Executive Director has since granted a 30-day extension at the request of the City, and BCDC also received a request from the encampment residents.

Ms. Njuguna noted that BCDC has received numerous comments about the park from residents of the surrounding area, as well as from advocates for the park encampment residents.

There are significant concerns about conditions in the park and the safety of the marina occupants. She also noted that there have also been protest that occurred when the City has sought to take actions necessary to clear the Park of encampments. BCDC has consistently worked to ensure that this Park can be used by the surrounding community for the uses that were envisioned when the Park was created, with public funds. That continues to be BCDC's goal, and staff wanted to assure the Commissioners that staff and City representatives are working toward that.

Daryel Dunston, Homelessness Administrator for the City of Oakland, described the background and the actions the City plans to take to meet the requirement to clear the park by March 12. He stated that in October 2020 his office had started messaging to the homeless encampment community that the encampment would be closed by February 12, 2021. The City began to reserve spaces in its homelessness system. Services were provided to a number of people, but in early February approximately nine people out of the original 30 remained at the park. When Public Works crews arrived on February 9 they encountered around 25 demonstrators who had erected blockades preventing the crews from entering. The same situation occurred on February 10 and 11.

City staff worked with the remaining residents, and just a handful now remain; they have agreed to relocate by Friday, February 26. The Public Works crews will return on March 3, 4, and 5 to clean up the area.

Questions and Discussion

Chair Scharff asked when the remaining residents are going to vacate. Mr. Dunston reiterated that it was going to be February 26 and that he will inform the Enforcement Committee if there are any issues.

Public Comment

Brock De Lappe, Harbormaster for the Oakland Marinas, was pleased to hear the progress report from Mr. Dunston. He commented that there needs to be ongoing enforcement once the park is cleared because people continue to come back and occupy the central portion of the park and the eastern parking lot. He stated that long-term, the City should consider installing a gate to close off the eastern parking lot. For the central parking lot, there should be ongoing enforcement of the permits required for overnight parking. The people impacted by these problems have been waiting a long, long time for the park to return to being a park.

8. Future Agenda Items. Ms. Njuguna stated that in the upcoming meetings, staff anticipates bringing a proposed resolution for the Richardson Bay matter. The next meeting is on March 11.

Executive Director Goldzband thanked the City of Oakland for their hard work with regard to Union Point Park. Mr. Dunston hears many different opinions from various people, but he has done tremendous work along with the other staff at the City. Executive Director Goldzband thanked Mr. De Lappe and the live-aboards next to Union Point Park for coordinating with BCDC and having faith in BCDC's ability to work with the City of Oakland. He anticipated good news from Mr. Dunston at the next Enforcement Committee meeting.

Commissioner Wagenknecht stated that he appreciated getting caught up regarding the direction the Enforcement Committee is taking, as well as seeing the professionalism and strong moves we are making to accomplish enforcement and effect changes for the good in the community.

9. Adjournment. Chair Scharff adjourned the meeting at 10:47 A.M.