

San Francisco Bay Conservation and Development Commission

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December 21, 2022

TO: Enforcement Committee Members

FROM: Matthew Trujillo, Enforcement Policy Manager (415-352-3633;
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SUBJECT: Draft Minutes of December 21, 2022 Enforcement Committee Meeting

1. **Call to Order.** Meeting is called to order by Chair Gilmore at 9:30 AM.
2. **Roll Call.** Mr. Trujillo calls roll. Commissioner Eisen, Commissioner Wagenknecht, Chair Gilmore are present.
3. **Public Comment.** Ms. Malan reports no public commenters.
4. **Approval of Draft Minutes from the December 8, 2022 Meeting.** Commissioner Eisen moves, Commissioner Wagenknecht seconds; unanimous vote to approve minutes.
5. **Enforcement Program Manager's Report.** Mr. Trujillo presents five items
 - a. A case update since December 8, 2022. BCDC Enforcement received no new cases, resolved 3 cases, and issued moved three cases along to the next milestone in its milestone-based case resolution strategy. As of today, there are 93 unresolved cases in the queue.
 - b. An update on the effort to backfill the CPA II vacancy since it was posted November 29, 2022. No applications have been received.
 - c. Follow-up to the committee's direction at the last meeting on December 8th to return to the negotiating table with the Family Gun Club and attempt a negotiated resolution to bring to you on January 25th. Brent is exchanging settlement proposals with Respondents' counsel.
 - d. Request for end-of-the-year feedback from the Committee members.

Committee Feedback:

- i. Chair Gilmore: I would like to have a discussion between staff and committee members about what to do about documents that are submitted after the submission deadline. What is staff's thinking as to why they ended up in the packet? What is committee-members' thinking about what to do with that? Please do at a meeting without a hearing.
 1. Commissioner Eisen: Do we have regulations about that?
 - a. Mr. Plater: Yes, there is a regulation. He explains what the regulation is and presents an analysis with examples of its application.

2. Chair Gilmore: It is important to have the discussion to figure out how to navigate the gray areas.
3. Commissioner Wagenknecht concurs. A presentation by staff will help internalize by the committee. A full discussion needs to be had.
 - ii. Chair Gilmore: Please find out from senior staff why the current opening is a six-month position and come back with a reply. We're asking for somebody who's senior and experienced, but someone like that will not want to take a six-month job. So, please ask and follow up.
 1. Mr. Trujillo: I will.
 - iii. Commissioner Eisen: Will you be acting on my prior feedback on how to format and display the case count and disposition figures in your formal reports?
 1. Mr. Trujillo: Yes.
- e. Finally, Mr. Trujillo briefs the Committee on the decision to withdraw the two hearing items from today's agenda. The two hearing items were a proposed Complaint for Administrative Civil Penalties and a Proposed Cease and Desist Order and Complaint for Administrative Civil Penalties against the same entity Seaplane Investment LLC, which operates a seaplane port in Mill Valley, Marin County. The enforcement case is ER2019.063.00. Between failure to pay their standardized administrative penalties and the maximum penalties accrued for six separate unresolved permit and statutory violations, enforcement staff sought to impose a total of \$201,170 in penalties, in addition to resolution of the outstanding violations. This postponement has occurred because the respondent's new counsel and Mr. Trujillo had a conversation on Monday morning, whereby they found that there appeared to be common ground to build on together to arrive at a resolution that is consistent with BCDC's enforcement policies and acceptable to the respondents. Given the lateness of that conversation, and with guarantees that the respondents will come to the negotiating table with an understanding of the parameters within which we can negotiate, enforcement staff decided that it was prudent and preferable to make a final attempt to resolve this case amicably. In a showing of good faith, the respondent has scheduled a meeting this afternoon to kick off the process. If the parties are able to arrive at a negotiated resolution to this case, enforcement staff will bring that forward to this Committee for a hearing and vote. If a negotiated resolution cannot be reached, then staff will with a hearing and vote on the items withdrawn from today's agenda.

Committee Feedback:

- i. Chair Gilmore: It's always good to attempt to negotiate. I commend staff on attempting a negotiating resolution.
- ii. Commissioner Wagenknecht: I agree, but let's not draw this out.

1. Mr. Trujillo: It is our intent to resolve this quickly.
- iii. Commissioner Eisen: Has the respondent had no counsel or have they hired new counsel?
 1. Mr. Trujillo: New counsel.
- iv. Commissioner Eisen: That's a good reason to re-attempt negotiations, but I agree with Commissioner Wagenknecht that we should not drag it out.

6. Postponed

7. Postponed

8. Chair Gilmore introduces item, asks presenters to identify themselves. Present are Lynn Turner, Planner at Anchor QEA, Marine Vie, Anchor QEA, Jason Cashman for the Port of Stockton.

- a. Ms. Klein provides introductory remarks
- b. Ms. Turner introduces the presentation, Ms. Vie delivers presentation:
 - i. Project background:
 1. Vicinity map
 2. Key elements of the proposed restoration project
 - ii. Requested permits and approval statuses
 1. Anticipated permits and approval status:
 - a. US Army Corps of Engineers - application submitted
 - b. US Fish & Wildlife Service - informal consultation initiated
 - c. Office of Historic Preservation - Anchor QEA archaeologist is drafting report
 - d. Port of Stockton – Documentation supporting California Environmental Quality Act compliance underway
 - e. Water Boards - Application submitted
 - f. BCDC - Application submitted
 - g. Delta Stewardship Council - consistency determination received in December 2022.
- c. Q & A
 - i. Commissioner Wagenknecht: Appreciate the rundown of all the permits. We Commissioners often don't realize the raft of steps that have to be taken with these projects. Adrienne, it seems like they are moving forward with all the permits and getting ready to do the work next year. Do you agree?
 - a. Ms. Klein: Yes.

- ii. Commissioner Eisen: Materials were moved to Simmons Island when the Port of Stockton did dredging? Is the new plan to move 38,000 cubic yards of new materials somewhere else?
 - a. Ms. Turner: A very long time ago, this was one of the sites that was identified for use of material for levee maintenance. They didn't. The material remains in place, unused. In the past, an attempt was made to come up with a solution but was unsuccessful. We have in recent years convened a stakeholder group to find a way for all parties to agree to use the material on site for beneficial purposes to enhance the duck club habitat and recreational aspects.
- iii. Commissioner Eisen: Is there a better process to permit this project using JARPA, Adrienne? Is it appropriate?
 - a. Ms. Klein: I don't know. I will find out and report back.
- d. Chair Gilmore: Any public comments?
 - i. No written comments, no raised hands. Public comment closed.
- e. Ms. Klein: I recommend that we report back on this matter when the project has all of its approvals. Hopefully that will happen this year and work will be able to happen during the 2023 season.
 - i. Chair Gilmore: Let's do that. Thank you.

9. Adjournment. Chair Gilmore asks for a motion to adjourn. Commissioner Wagenknecht moves, Eisen seconds. Adjournment at 10:11 AM.