

Enforcement Case ER2017.004.00

Unauthorized Solar Power Plant, Richmond, Contra Costa County

Item 6

April 11, 2024

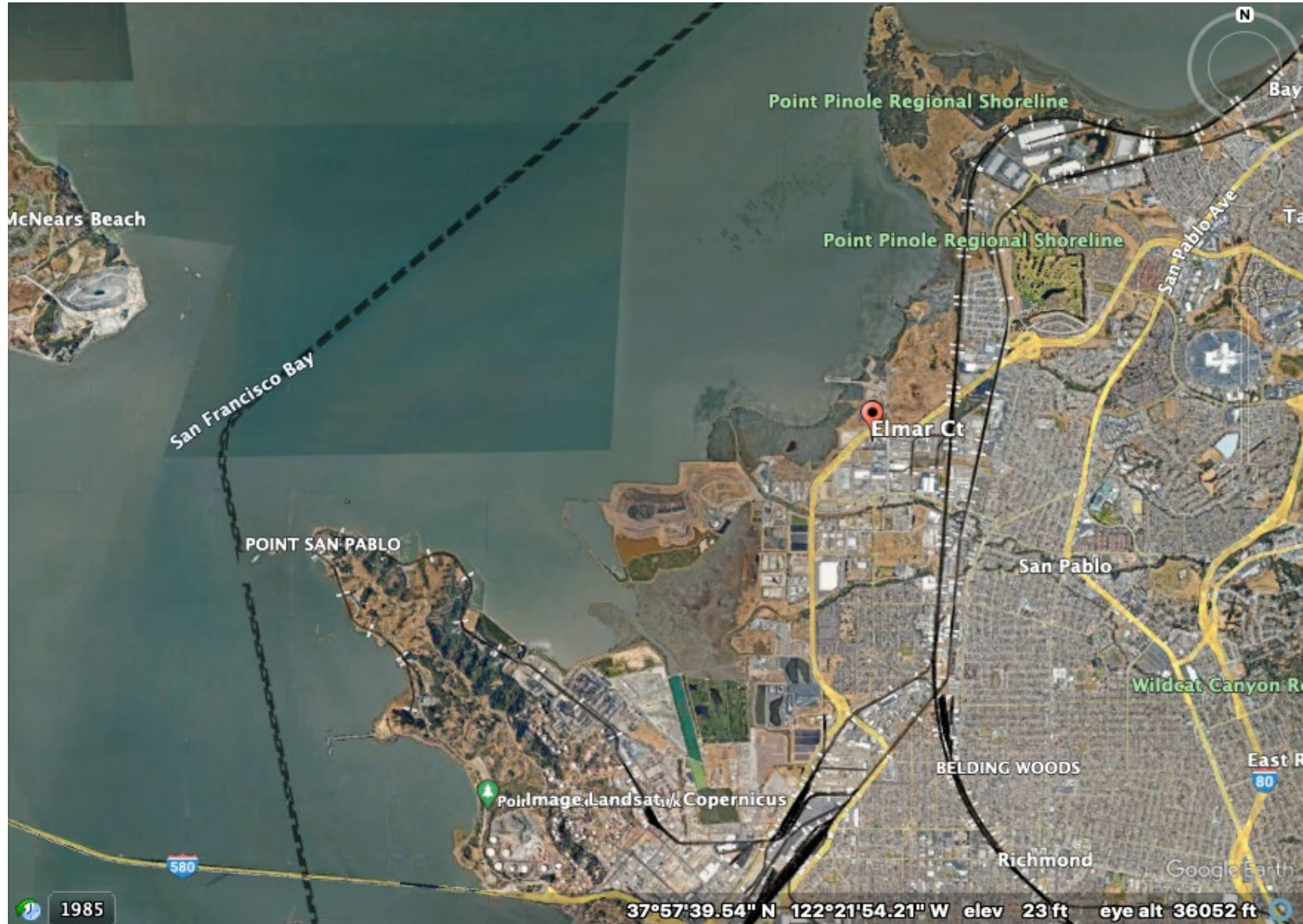
Adrienne Klein, Principal Enforcement Analyst



Outline

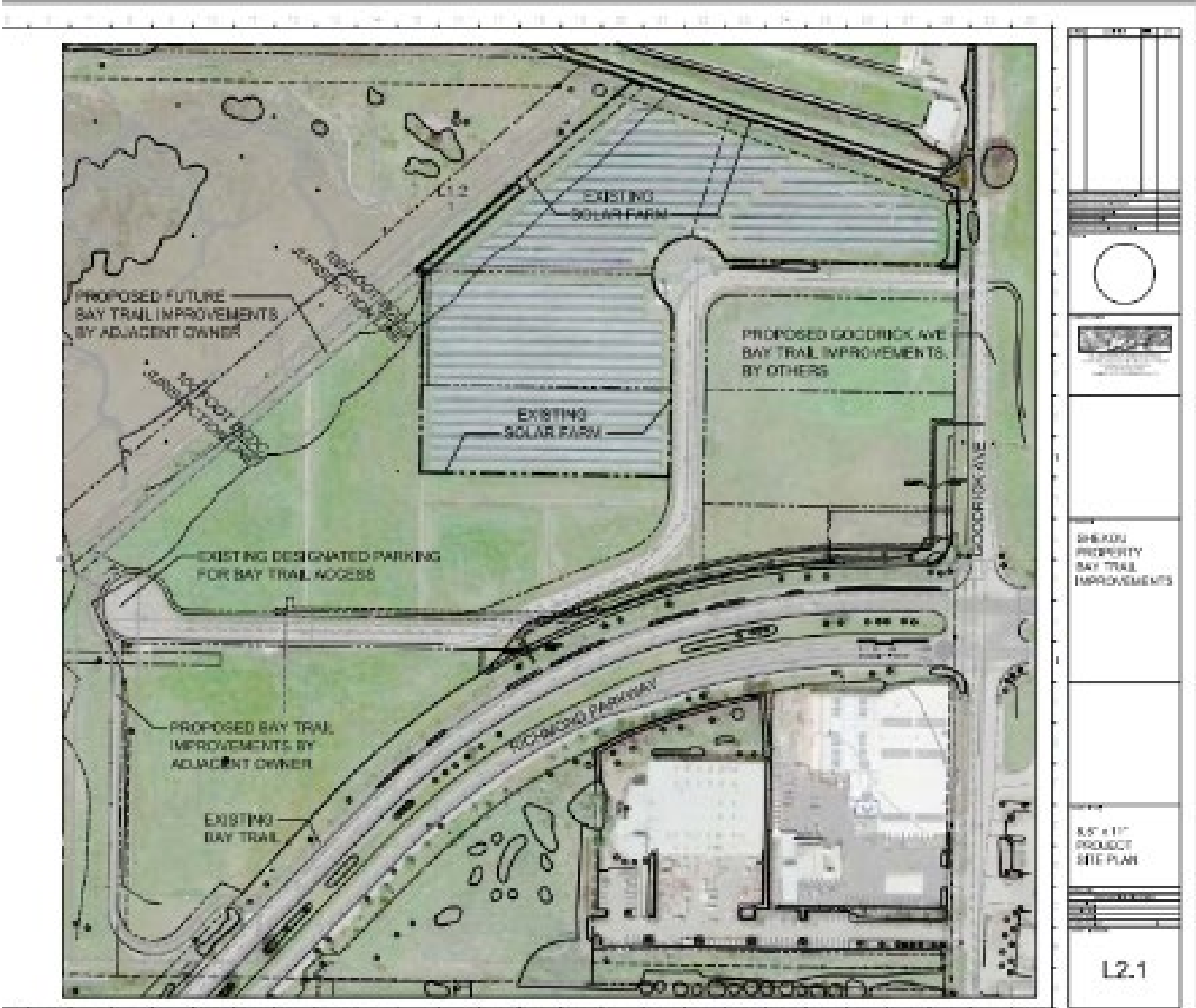
- Location
- Violation
- Timeline
- Cease and Desist
- Civil Penalty
- Executive Director Recommendation

Vicinity Map – Elmar Court/Freethy Boulevard Richmond, Contra Costa County (1 of 2)



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Vicinity Map (2 of 2)



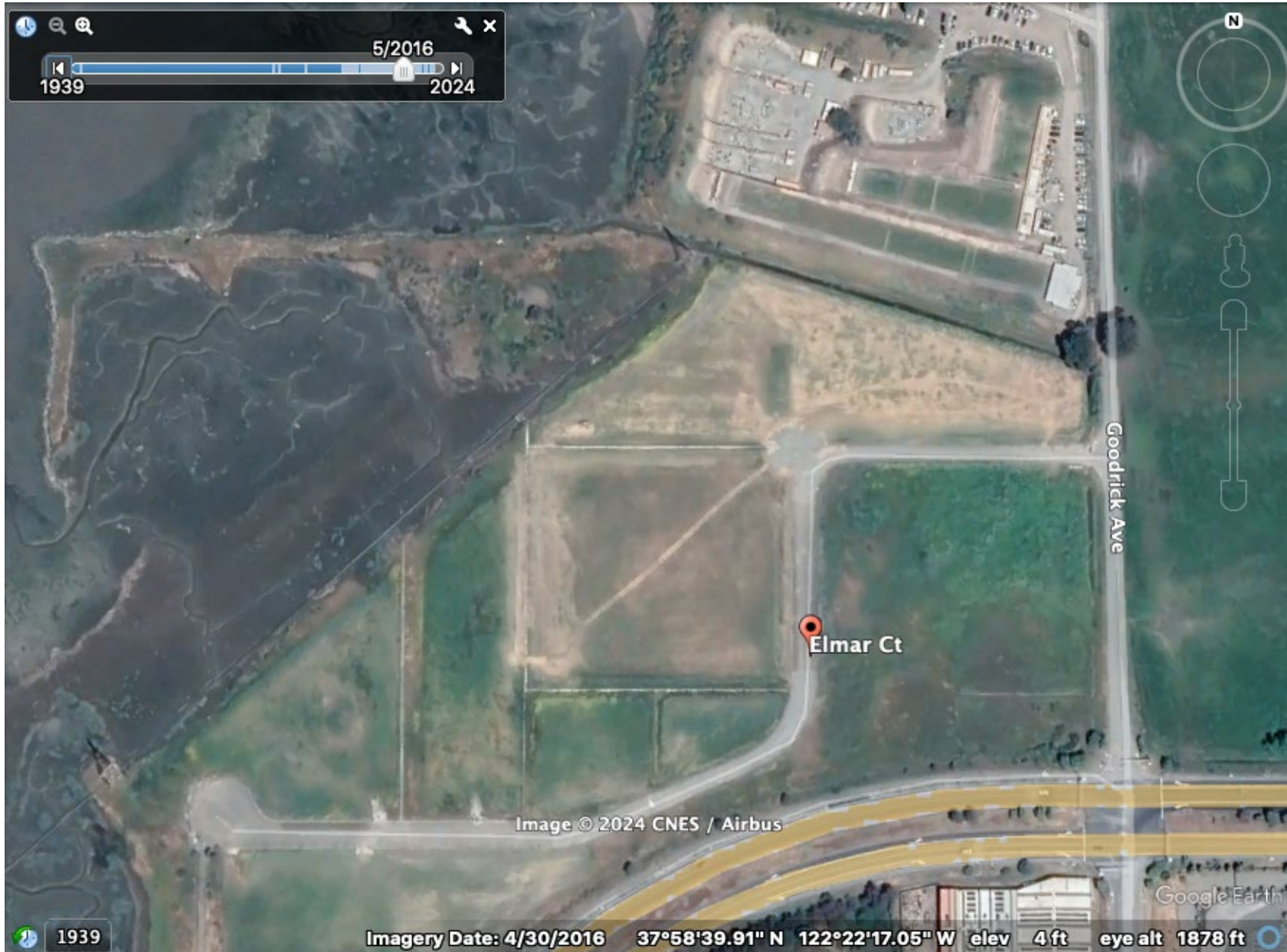
McAteer-Petris Act Violation

- Unauthorized installation and use of a two-megawatt, photovoltaic solar power plant within the Commission's jurisdiction

Timeline (1 of 3)

- 2000 and 2017 - Respondents purchased four parcels
- In 2014, Respondents retained land surveyors to survey the site and a contractor and project manager to obtain permits from the City of Richmond and the US Army Corps of Engineers
- In summer of 2016, Respondents completed construction of an unauthorized fenced, two-megawatt solar power plant at the site

Site Preparation, April 30, 2014, Google Earth Image



April 11, 2024



Installed Solar Panels, August 13, 2016, Google Earth Image



April 11, 2024

Timeline (2 of 3)

- January 2017 - The public reported the violation to BCDC staff, who opened an enforcement case, informed Respondents that solar power plant construction and operation without a BCDC permit is a McAteer-Petris Act violation and to apply for after-the-fact authorization, and initiated a standardized fines penalty clock
- 2019 - Respondents submitted an incomplete permit application and staff notified them of the information needed to file it as complete
- 2019-2021 – With BCDC staff consent, Respondents worked with Richmond Development Company, City of Richmond, and BCDC staff to develop a joint public access proposal for the solar power plant and the adjacent proposed project, a commercial marijuana business

Timeline (3 of 3)

- 2021 - Respondents informed staff they would independently proceed with their permit application
- 2022 - Respondents responded to staff's 2019 application filing letter, staff requested additional information to file as complete. No response for two years
- February 16, 2024 – BCDC staff commenced formal enforcement proceeding by issuing a violation report and complaint
- March 22, 2024 - Respondents did not submit a Statement of Defense

Cease and Desist Order

- Cease and desist from violating Section 66632(a) of the McAteer-Petris Act by ceasing operations at the plant until and unless BCDC authorization is obtained, after-the-fact.
- By June 30, 2024, submit a filed, BCDC permit application with a feasible public access plan to install and operate the portion of the unauthorized two-megawatt, photovoltaic solar power plant and any other fill located within BCDC's jurisdiction.
- If a permit application is not filed as complete by June 30, 2024, and/or if Respondents fail to obtain after-the-fact BCDC authorization within ninety (90) days of completing their permit application, then Respondents shall entirely remove all unauthorized fill from the Commission's jurisdiction within sixty (60) days of written notice to that effect by or on behalf of the Executive Director.

McAteer-Petris Act Section 66641.9 Penalty Factors

- Nature and extent of harm caused by the violation
- Susceptibility to resolution
- Cost to the state
- Culpability
- Penalties are appropriate
- Respondents submitted no defenses regarding their ability to pay

Administrative Civil Penalty Policy, Appendix J

- Staff proposes a \$30,000 penalty
- Gravity of harm: **moderate**
- Extent of deviation from the statutory requirement to secure a permit prior to construction: **major**
- \$1,200 penalty per day (within a range of \$1,200-\$1,600)
- Duration of violation is 2,965 days, during which time Respondent failed to correct the violation by seeking and obtaining a permit or removing the unauthorized fill from BCDC jurisdiction
- By law, penalty is capped at \$30,000

Recommended Enforcement Decision

1. Cease and desist from violating Section 66632(a) of the McAteer-Petris Act by ceasing operations at the plant **until** and unless BCDC authorization is obtained, after-the-fact
2. By June 30, 2024, submit a filed, BCDC permit application with a feasible public access plan to install and operate the portion of the unauthorized two-megawatt, photovoltaic solar power plant and any other fill located within BCDC's jurisdiction
3. If a permit application is not filed as complete by June 30, 2024, and/or if Respondents fail to obtain after-the-fact BCDC authorization within ninety (90) days of completing their permit application, then Respondents shall entirely remove all unauthorized fill from the Commission's jurisdiction within sixty (60) days of written notice to that effect by or on behalf of the Executive Director
4. Pay an administrative civil penalty of \$30,000 within 30 days of order issuance