

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

October 1, 2009

**TO:** All Commissioners and Alternates

**FROM:** Will Travis, Executive Director (415/352-3653 [travis@bcdc.ca.gov](mailto:travis@bcdc.ca.gov))  
Adrienne Klein, Chief of Enforcement (415/352-3609 [cbox@bcdc.ca.gov](mailto:cbox@bcdc.ca.gov))  
Tim Eichenberg, Chief Counsel (415/352-3655 [time@bcdc.ca.gov](mailto:time@bcdc.ca.gov))

**SUBJECT: Recommended Enforcement Decision Regarding Proposed Stipulated Commission Civil Penalty Order No. CCD 1-09; Donald Krohn, Rozzi, LLC**  
(For Commission consideration on October 15, 2009)

## Summary and Recommendations

BCDC commenced an enforcement action against Donald Krohn, Rozzi, LLC (the Respondent), on March 22, 2007, for the failure to provide and maintain public access improvements as required by Special Conditions II-B-3 and II-B-4 of BCDC Permit No. M84-37. On October 3, 2007, the staff notified the Respondent that a \$9,500 standardized fine had accrued for the failure to provide public access improvements, and that a \$6,000 standardized fine had accrued for the failure to maintain the public access improvements. The \$9,500 fine for the failure to provide the public access improvements was subsequently dropped, and on November 2, 2007, the Respondent appealed the \$6,000 fine for the failure to maintain the public access improvements to the Executive Director. On December 5, 2007, the Chair of the Commission and the Executive Director denied the appeal and informed the Respondent that if he did not pay the \$6,000 standardized fine within 30 days, formal enforcement proceedings would be commenced and that he would be liable for additional penalties. The Respondent corrected the violation and sold the property, but failed to pay the fine. To resolve the enforcement action, the staff and the Respondent have agreed to stipulate to the Proposed Civil Penalty Order No. CCD 1-09, and pay a civil penalty of \$10,000. The Enforcement Committee, upon considering all of the evidence admitted into the record by staff and respondent, on September 24, 2009, approved the settlement and adopted this proposed enforcement decision



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and recommends that the Commission issue proposed Stipulated Civil Penalty Order No. CCD1-09 to the respondent.

Attached to this memorandum are the following documents: (1) the Recommended Enforcement Decision by the Enforcement Committee (Attachment One); (2) the Proposed Order (Attachment Two); and (3) the Stipulation to the Order by the Respondent (Attachment Three).

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## ATTACHMENT ONE (Recommended Enforcement Decision)

October 1, 2009

**TO:** All Commissioners and Alternates  
**FROM:** BCDC Enforcement Committee  
**SUBJECT:** **Recommended Enforcement Decision Regarding Proposed Civil Penalty Order No. CCD 1-09; Donald Krohn, Rozzi LLC**  
(For Commission consideration on October 15, 2009)

### Enforcement Committee Recommendations

The Enforcement Committee recommends that the Commission adopt this enforcement decision and issue proposed Civil Penalty Order No. CCD 1-09 (the proposed order) to Donald Krohn, Rozzi LLC (the respondent). The Proposed Order would require the respondent to pay \$10,000 to resolve the violation that is the subject of this action. The proposed order is attached to this recommendation.

### Enforcement Decision

#### Background

On February 14, 2007, Mark Appelbaum, an attorney with Heller Ehrman LLP, representing Rozzi LLC, called Staff to inquire about purchasing the subject property. On March 6, 2007, BCDC staff (Staff) conducted a site visit to the property to check for permit compliance with Mark Appelbaum, attorney for the prospective new owner, and Russ Sherman, property manager for the prospective new owner. Staff noted numerous permit violations of the permit's public access conditions and explained the violations to Mr. Appelbaum and Mr. Sherman.

On March 21, 2007, Staff was informed by Miles Imwalle, an attorney representing the previous owner of the subject property, Hines Holdings Inc., that Donald Krohn of Rozzi LLC was the new owner of the property as of March 21, 2007. Mr. Imwalle submitted a grant deed to Staff.

On March 22, 2007, Staff sent an enforcement letter to Mr. Krohn informing him of the outstanding permit violations, the process for resolving the violations, and the civil penalties



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that may accrue under BCDC regulations (14 CCR § 11386(e)(3)) if the violation is not resolved within 35 days. The process for resolving the violations included submitting a request to amend the permit to authorize the changed layout of the public access pathway, adding two benches to the public pier, and relocating the public parking spaces. The letter noted the following permit violations observed during the March 6, 2007 site visit:

1. **Public Access Improvements.** No public parking spaces were designated and no public access signs were installed, as required by Special Condition II-B-3 of the permit.
2. **Maintenance.** The pathway and landscaping was not maintained as required by Special Condition II-B-4 of the permit.

The public access improvements were subsequently corrected and that violation was resolved. However, the public access maintenance violations continued. Between May - August, 2007, Staff notified Mr. Krohn on numerous occasions that the fines for failure to maintain the public access area were increasing. The public access maintenance violations were finally corrected on August 16, 2007.

The failure to maintain the public access area is subject to a standardized fine of \$6,000. Mr. Krohn subsequently appealed the fine to the Executive Director. The appeal was denied and, as of the date of this mailing, the fine has not been paid.

Although Mr. Krohn corrected the violation after he sold the property on July 16, 2007, he has refused to pay the standardized fine of \$6,000. Therefore he is no longer eligible for a standardized fine under 14 CCR § 11386(e)(3), and is now subject to additional civil penalties of \$10 - \$2,000 per day up to \$30,000 for the failure to pay penalties under Section 66641.5(e) of the McAteer-Petris Act. The violation was outstanding for 116 days, the length of Mr. Krohn's ownership of the property (from March 21-July 16, 2007).

Staff sent Respondent a Violation Report and a Statement of Defense Form on May 15, 2009, notifying him that for his failure to pay the standardized fine an administrative penalty of \$29,000 was recommended to the Enforcement Committee. The Respondent did not respond to the Violation Report or submit a Statement of Defense Form, but agreed to pay an administrative penalty of \$10,000 to resolve the violation in accordance with Section 66641.9(a) of the McAteer-Petris Act.

#### **Essential Staff Allegations**

Civil penalties are justified because Mr. Krohn failed to pay his fine for the failure to maintain public access improvements as required by Special Condition II-B-4 of Permit No. M84-37. Mr. Krohn was made aware of all outstanding BCDC permit violations prior to purchasing the subject property; BCDC Staff repeatedly offered their assistance to help Mr. Krohn correct the violations without accruing civil penalties; Mr. Krohn failed to respond to numerous efforts to resolve the violation over a period of several years; and Mr. Krohn failed to maintain public access improvements for 116 days.

#### **Allegations Admitted or Not Contested by the Respondent**

The respondent did not submit a statement of defense.

#### **Allegations Denied by the Respondent**

Not applicable.

#### **Respondent's Defenses and Mitigating Factors**

Not Applicable.

**Staff Rebuttals**

Not applicable.

**Summary and Analysis of Unresolved Issues**

Not applicable.

**Statement of Whether the Executive Director Has Issued a Cease and Desist Order**

None has been issued.

**Proposed Order**

A copy of the proposed order is attached to, and included as part of, this enforcement decision.



Bay Conservation and Development Commission

## ATTACHMENT TWO (Proposed Order)

October 15, 2009

Donald Krohn, Rozzi LLC  
655 Montgomery Street, Suite 1410  
San Francisco, CA 94111

**SUBJECT:** Commission Civil Penalty Order No. CCD 1-09,  
Donald Krohn, Rozzi LLC, 655 Montgomery Street , Suite 1410, San Francisco, CA,  
94117

**Effective Date:** October 15, 2009

Dear Mr. Krohn:

### I. Civil Penalty Order

The San Francisco Bay Conservation and Development Commission (the Commission or BCDC) seek administrative civil penalties to resolve the penalties raised the enforcement action ("the action") against Rozzi, LLC.

Therefore, pursuant to California Government Code Sections 66641.6, 66641.5(e) and 66641.9(a), the Commission hereby orders the respondent to pay \$10,000 to the Commission within 30 days of the issuance of this order in the manner noted in Section III-C below.

### II. Findings

This order for civil penalties is based on the following findings:

- A. The respondent owned property located at 1890 Powell Street in the City of Emeryville (the "property") from March 21, 2007 to July 15, 2007.
- B. The property consists of a commercial parcel with a restaurant structure and parking lot that the owner leases to Chevy's Fresh Mex Restaurant.
- C. The Commission has Bay and shoreline band jurisdiction at the site pursuant to the McAteer-Petris Act and California Government Code Sections 66610(a) and 66610(b).
- D. On June 11, 1984, the Commission issued Permit No. M84-37 (the permit), to Host International, Inc. (the former owner of the property), which includes special conditions.

**Commission Civil Penalty Order No. CCD 1-09**

Donald Krohn, Rozzi LLC

October 15, 2009

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- E. The permit binds all future owners and possessors of the property under 14 CCR §10503(d).
- F. Special Condition II-B-4, Maintenance, requires the permittee to permanently maintain all of the public access improvements at the site.
- G. On March 6, 2007, staff members , Carolynn Box, and Adrienne Klein conducted a site visit to the property to check for permit compliance with Mark Appelbaum, attorney for the prospective new owner, and Russ Sherman, property manager for the prospective new owner. Staff noted numerous permit violations of the permit's public access conditions, and explained the violations to Mr. Appelbaum and Mr. Sherman.
- H. On March 21, 2007, Miles Imwalle, an attorney with Morrison and Foerster LLP informed staff that Donald Krohn, Managing Member of Rozzi LLC purchased the property as of March 21, 2007, and submitted a grant deed to staff.
- I. On March 22, 2007, staff sent an enforcement letter to Mr. Krohn informing him of the outstanding permit violations, the process for resolving the violations and the civil penalties that may accrue under BCDC regulations (14 CCR §11386(e)(3)).
- J. Between May and August 2007, staff notified Mr. Krohn several times of the increasing fines for the violations of his permit.
- K. On August 16, 2007, staff verified that the public access maintenance violation had been corrected. However, because the violation had taken 116 days to resolve while Rozzi, LLC owned the property, a fine of \$6,000 had accrued under BCDC regulations.
- L. On November 2, 2007, Mr. Appelbaum submitted a letter of appeal to BCDC for the accrued fine of \$6,000 for the maintenance violation pursuant to BCDC regulations (14 CCR §11386(i)).
- M. On November 26, 2007, Ms. Bomkamp filed a memorandum to Will Travis, BCDC Executive Director, and Sean Randolph, BCDC Chairman, regarding Rozzi LLC's appeal of civil penalties. Staff recommended that Rozzi, LLC pay the \$6,000 fine for the maintenance violation because: (1) prior to purchase of the Chevy's property, Mr. Krohn was aware of the maintenance violation and that BCDC intended to actively pursue it; (2) staff contacted Mr. Krohn and his representatives five times between June and August, 2007 to check on progress of the maintenance; (3) photographs of the corrected maintenance violation were not submitted as promised; (4) Mr. Krohn and his representative were unresponsive to many of the staff's numerous attempts to contact them and offer assistance; and (5) imposition of the \$6,000 fine was required for failure to rectify the maintenance violation for 116 days under BCDC's regulations (14 CCR §11386(e)(3)), and to help deter noncompliance with future permit conditions. Mr. Travis and Mr. Randolph upheld the fine.

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Donald Krohn, Rozzi LLC

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- N. On December 5, 2007, staff informed Mr. Appelbaum by letter that his client was liable for a fine of \$6,000 for failure to comply with the maintenance condition for 116 days and that payment was due within 30 days.
- O. In January 2008, Ms. Bomkamp left BCDC and Nina Bacey joined the staff and took over the enforcement case. Between January 29, 2008 and July 24, 2008, Ms. Bacey contacted Mr. Appelbaum and Mr. Krohn on numerous occasions in an attempt to resolve the permit violations and to collect the outstanding \$6,000 civil penalty.
- P. On May 13, 2008, Mr. Appelbaum called Ms. Bacey to inform her that Mr. Krohn sold the property on July 15, 2007. When staff learned Mr. Krohn had sold the property, staff ended all outstanding permit violations against Mr. Krohn.
- Q. On July 24, 2008, staff sent Mr. Krohn a letter stating that his outstanding civil penalty of \$6,000 could no longer be resolved under the standardized fines due to excessive delays on his part to pay the fine. The letter also stated that Mr. Krohn could resolve the matter and avoid the civil penalty order by settling the outstanding penalty for the maintenance violation by paying an administrative penalty in the amount of \$12,600 by August 22, 2008. Mr. Krohn did not respond.
- R. On May 15, 2009, staff sent Mr. Krohn a Violation Report and Statement of Defense Form for the Imposition of Civil Penalties, notifying him that it was recommending an administrative penalty of \$29,000.
- S. On September 10, 2009, the staff mailed a public notice and meeting materials to Mr. Krohn informing him that the Enforcement Committee would be meeting on September 24, 2009, to consider his matter.
- T. On September 22, 2009, Mr. Krohn called Adrienne Klein to request postponement of the hearing.
- U. On September 23, 2009, Ms. Klein informed Mr. Krohn that staff was not inclined to postpone the matter but that it would be willing to resolve the matter for a lesser penalty.
- V. On September 24, 2009, Mr. Krohn contacted Ms. Klein to indicate his willingness to settle the matter, and Mr. Krohn and Tim Eichenberg agreed to reduce the civil penalty to \$10,000 if paid within 30 days of Commission action on the matter.

**III. Civil Penalty Order**

Pursuant to California Government Code Sections 66641.5 through 66641.9, the Commission hereby orders Rozzi, LLC, to pay a civil penalty of \$10,000 for the following violations:

- A. Pursuant to Government Code §66641.4, staff has determined that a total fine of \$29,000 accrued for the alleged violations for: (1) failure to maintain the public access area required by a Commission permit for 116 days during the

**Commission Civil Penalty Order No. CCD 1-09**

Donald Krohn, Rozzi LLC

October 15, 2009

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time Rozzi, LLC owned the property (March 22, 2007 - July 15, 2007); (2) refusal to pay the standardized fine of \$6,000; and (3) additional civil penalties of \$10 to \$2,000 per day up to \$30,000, assessed at \$250 per day for 116 days.

- B. Rozzi, LLC disagrees that a total fine of \$29,000 is an appropriate fine for the alleged violations. However, BCDC and Rozzi, LLC agree that payment of a \$10,000 fine will adequately redress the alleged violations stated in Section II above.
- C. Within 30 days of the issuance of this Order, Rozzi, LLC shall submit a cashier's check in the amount of \$10,000, payable to the Bay Fill Clean-up and Abatement Fund.
- D. If Rozzi, LLC does not pay the \$10,000 civil penalty within 30 days of this Order required under Section III-C above, Donald Krohn, Rozzi, LLC agrees to pay the total fine of \$29,000 immediately by cashier's check made out to the Bay Fill Clean-up and Abatement Fund, which BCDC has determined has accrued for all alleged violations under Government Code §66641.5.

**IV. Stipulation**

Rozzi, LLC has stipulated to the issuance of this proposed order by stipulation dated October 1, 2009.

**V. Disclaimer of Effect of Order on Private Rights of Public Regulation**

This order shall have no effect on any duties, rights, or obligations established by private agreement or by the laws and regulations of other governmental bodies.

**VI. Waiver of Right to Appeal**

By stipulating to the issuance of this order, Rozzi, LLC waives any right to contest the issuance of this order in any manner whatsoever.

**VII. Possible Court Action for Noncompliance**

Strict compliance with this order is required. Pursuant to the McAteer-Petris Act, Government Code Section 66641.7(b), failure to comply strictly with any and all terms and conditions of this order can result in the Commission requesting the Attorney General to institute an action in the appropriate superior court to collect and recover any administrative civil penalties imposed pursuant to Sections 66641.5 and 66641.6.

Executed at San Francisco, California on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

**Commission Civil Penalty Order No. CCD 1-09**

Donald Krohn, Rozzi LLC

October 15, 2009

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WILL TRAVIS

Executive Director  
San Francisco Bay Conservation  
and Development Commission

**ATTACHEMENT THREE**

**PROPOSED STIPULATED CIVIL PENALTY ORDER NO. CCD 1-09  
(ER 07-08) ROZZI, LLC**

**STIPULATION FORM**

1. I, Donald Krohn hereby declare that I have read and understand the Proposed Enforcement Decision and Civil Penalty Order No. CCD 1-09 ("proposed order") dated October 15, 2009, and that I agree to the issuance of the proposed order, a copy of which has been provided to me and which is attached.
2. I understand that by stipulating to this proposed order, I waive all rights to contest the issuance of this order before the Commission's Enforcement Committee and the Commission and all rights to contest the order in court.
3. I also understand that by stipulating to this proposed order, I am agreeing to comply with all of its terms and conditions and that any failure to comply with the order could result in the Commission seeking court enforcement of the order, additional court imposed penalties, or both.
4. I understand and accept that my stipulation to this proposed order is an agreement with the Commission staff only, and that the Enforcement Committee and Commission will exercise their own independent judgment when they review this proposed order and may accept it, disapprove it, or recommend alternative terms and conditions. If the Enforcement Committee or the Commission recommends alternative terms and conditions, I shall have the option of agreeing or disagreeing with that recommendation. However, unless the Commission issues an order in this case to which I have previously stipulated in writing, a public hearing on a contested enforcement action will be scheduled for the next available meeting.
5. If the party named in the proposed order is an entity other than an individual, I further stipulate that I have the authority to bind that entity.

Executed on \_\_\_\_\_, 2009, at \_\_\_\_\_, California.

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Donald Krohn, Managing Member  
Rozzi, LLC  
Montgomery Washington Tower  
655 Montgomery Street, Suite 1410  
San Francisco, CA 94111  
415-344-0400