

Statement of Defense on behalf of the City of South San Francisco
for the Violations Alleged in Sections II.A II.K of the
Violation Report/Complaint
(BCDC Permit No. 1998.011.02 and Enforcement File No. ER2000.097)

The City of South San Francisco (“City”) as a co-permittee with Trux Airline Cargo Services (“Trux”) to BCDC Permit No. 1998.011.02 (“Permit”), submits this Statement of Defense (“Statement”) in response to the March 23, 2016 Violation Report (“Report”). The City has reviewed the analysis set forth in the Report and respectfully submits that BCDC’s commencement of formal enforcement proceedings was unnecessary and the imposition of the maximum administrative civil penalty of \$30,000 for 10 of the 11 alleged violations, and \$15,000 administrative civil penalty for the alleged violation noticed on January 19, 2016, is unreasonably high. The Legislature directed BCDC under the McAteer-Petris Act to consider the nature, circumstance, extent, gravity of the violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, the voluntary removal or resolution efforts undertaken, prior history of violations, and other matters as justice may require.¹ The following mitigating circumstances must be considered by BCDC:

- There is no evidence in the record establishing that the public was ever prevented from accessing public access areas within the City’s jurisdiction;
- There is no evidence that any of the alleged violations actually damaged the San Francisco Bay’s (“Bay”) natural resources, nor evidence that such alleged violations had the potential to damage the Bay’s natural resources;
- Five of the eleven alleged violations were remedied prior to receiving the March 23, 2016 Report;
- As of the date of this Statement, eight of the eleven have been resolved and the remaining three will be remedied upon approval of the final documentation;
- BCDC indicated in the January 19, 2016 notice email that the unauthorized gate/fence (Violation K) can be authorized in the current amendment proposal before BCDC, thereby implying this alleged violation was simply a procedural error;
- The protracted Permit process was not entirely the responsibility of the co-permittees, as there was 7-year gap in communication regarding the outstanding Permit requirements between the parties from 2008 through 2015;

¹ Government Code Section 66641.9

- The record reflects the City's ongoing good faith effort to respond to BCDC's concerns to comply with special Permit conditions; and
- Prior BCDC enforcement actions impose much smaller civil penalties for BCDC violations that actually damaged, or had the very real possibility to significantly damage, the Bay's natural resources.

In consideration of all of the mitigating circumstances and facts of this case, including the fact that the vast majority of violations have already been remedied, the co-permittees history of compliance with BCDC conditions, and that the alleged violations never threatened Bay natural resources or the public's access to it, the City respectfully requests that BCDC coordinate with the co-permittees to finalize the remaining documentation necessary to address the remaining concerns and eliminate or significantly reduce the amount sought for administrative civil penalties in this matter.

I. ARGUMENT SUMMARY

A. No Denial of Public Access to the Bay

The majority of the alleged violations identified in the Report are administrative in nature and none of the alleged violations identified in the Report caused damage to the Bay's natural resources nor prevented public access to the Bay. The co-permittees acknowledge that it is important to comply with the administrative requirements of the Permit. However, the co-permittees contend that imposing maximum penalties for administrative requirements, such as failure to post all of the required signage and failure to amend the permit to reflect the as-built condition, is unreasonably punitive, especially considering that many of the administrative requirements had already been addressed at the time the Report was issued.

BCDC's November 15, 2001 and July 30, 2015 letters evidence that at least 10 of the 11 alleged violations in this matter were determined by the Executive Director to be violations that would *not* result in significant harm to the Bay's resources or to existing or future public access. (*BCDC Exhibit #13; BCDC Exhibit #32*)

The only remaining alleged violation that was not noticed in the above two letters is Violation II.K of the Report. Violation II.K was discovered and notice provided to the permittees on January 19, 2016. (*BCDC Exhibit #39*) BCDC indicated in the notice that the unauthorized gate/fence located between the parking structure and public parking area can be authorized under the proposed amendment the City and Trux had submitted. (*BCDC Exhibit #39*) Accordingly, this alleged violation is procedural in nature and presents no risk in harming the Bay's natural resources or to existing or future public access.

The City respectfully requests that BCDC reconsider its mandate under the McAteer-Petris Act and re-evaluate the nature, circumstance, extent, and gravity of these alleged violations, the fact that these alleged violations are susceptible to resolution (and in most

instances, have been resolved), the voluntary efforts undertaken by the co-permittees, and the fact that the co-permittees' have no prior history of violations.

B. The Majority of Violations Have Been Remedied

At the time the Report was issued, the co-permittees had already remedied or were very close to remedying all of the listed violations. The commencement of enforcement proceedings and imposition of the maximum administrative civil penalties in light of the co-permittees substantial compliance and continued efforts to fully address the remaining violations was unreasonably punitive and diverted resources away from the co-permittees efforts to finalize the remaining issues.

C. Seven Years of No Contact Between BCDC and Parties

Formal correspondence between BCDC and the permittees regarding outstanding Permit requirements did not occur between 2008 and April of 2015. This was not a result of any bad faith on behalf of the City. During the seven year gap in time, there was turnover and/or reassignment of BCDC and City staff involved with the Permit. The outstanding Permit violations were brought to light as City staff and Mr. Simms re-engaged BCDC to negotiate a Permit amendment to allow expansion of the ParkSFO parking structure. A July 30, 2015 letter from BCDC formally restarted the enforcement process.

BCDC should consider in its pursuit of this enforcement action and calculation of the administrative civil penalty amount that since re-engaging with BCDC, the City has actively worked to resolve all alleged permit violations within its control.

D. BCDC Triple Counts Some Violations of Special Conditions

The manner of counting special permit violations has a significant impact on the calculation of statutory maximum administrative civil liability. Although each violation is subject to a separate penalty of up to \$30,000 under the McAteer-Petris Act, a single act by a permittee that violates multiple legal requirements is still a single violation. For example, at pages 2-3 of the March 23, 2016 enforcement letter, BCDC treats the alleged failure to post one Bay Trail sign, one Public Shore sign, and three public shore parking signs as one violation, the alleged failure to provide and maintain signage for public parking spaces as a second violation, and the failure to conform with the final approved plans due to the lack of proper signage as a third violation. The act of failing to provide proper signage should be counted as a single violation. It is unreasonable to interpret the McAteer-Petris Act such that BCDC can increase the statutory maximum administrative civil penalty set by the Legislature by enacting multiple duplicative penalties for the same act, or here, failure to act.

Accordingly, the City requests that BCDC treat the alleged failure to provide proper signage, failure to maintain proper signage, and failure to conform with the final approved plans due to improper signage, as a single violation of the Permit conditions.

E. Maximum Civil Penalties are Inconsistent With Other Recent BCDC Enforcement Proceedings

Recent BCDC enforcement actions highlight the difference between the enforcement action in this instance and other BCDC enforcement actions for more serious violations.

In 2007, BCDC initiated formal enforcement action against the San Pedro Cove Homeowners Association (“HOA”) and the original developers of the property for failure to obtain written approval of final construction plans prior to installing the public access overlook deck and pathway, failure to provide and maintain the required public access facilities, failure to provide and maintain signage, failure to permanently guarantee the open space area known as the Eastern Wildlife Area, failure to permanently guarantee the open water area, and failure to permanently guarantee the public access areas.² Similar to the facts in the case against the City, the alleged violations against the HOA extended back almost 15 years and potential administrative civil penalties totaled approximately \$180,000. BCDC agreed in that case to stay the civil penalties in exchange for the San Pedro Cove Homeowners Association commitment to remedy the alleged violations. Accordingly, the imposition of a civil penalty was used only to “provide an incentive to achieve compliance.”³ (*Attachment 51*) No penalty was assessed purely as a punitive measure.

Contrast the treatment of the HOA to the enforcement action against the City and Trux. In this case, the City and Trux worked proactively to cure five of the eleven violations prior to even receiving the formal March 23, 2016 enforcement letter. The additional violations have all been subsequently remedied or are in the final stages of completion. The permittees did not attempt to leverage a waiver of administrative civil penalties as “incentive” to remedy any alleged violation. Imposing maximum administrative civil penalties for cured violations is punitive in nature. It is also entirely inconsistent with recent enforcement actions involving similar violations over analogous periods of time. While in one BCDC enforcement action administrative civil penalties are waived in order to incentivize a permittee’s cooperation, here, the permittees’ proactive action is punished with the most stringent penalty available to BCDC. Inconsistent application of BCDC’s enforcement proceedings in this way incentivizes a permittee to refrain from curing alleged violations until a waiver of administrative penalties is obtained in exchange. The City respectfully requests that BCDC apply its enforcement authority consistently and in a manner that furthers access to and protection of the Bay.

² http://www.bcdc.ca.gov/cm/2010/08-05_CCD4-09.pdf (*Attachment 51*)

³ http://www.bcdc.ca.gov/cm/2010/08-05_CCD4-09.pdf, p. 3. (*Attachment 51*)

F. City Has Made a Substantial and Good Faith Effort to Address BCDC's Concerns and Comply With all Permit Requirements

As the factual record demonstrates, the City and Trux have been responsive and cooperative with BCDC throughout the entire permit process. The co-permittees acknowledge that the process has been drawn out. However, once the matter resurfaced after the seven-year lull, the co-permittees have actively engaged with BCDC to remedy the outstanding issues in earnest. This is demonstrated by the fact that once BCDC reengaged the co-permittees a substantial number of BCDC's concerns were remedied within a matter of months.

II. FACTS OR ALLEGATIONS CONTAINED IN THE VIOLATION REPORT THAT YOU ADMIT (WITH SPECIFIC REFERENCE TO PARAGRAPH NUMBER IN THE VIOLATION REPORT)

The City admits no fault.

III. FACTS OR ALLEGATIONS CONTAINED IN THE VIOLATION REPORT THAT YOU DENY (WITH SPECIFIC REFERENCE TO PARAGRAPH NUMBER IN VIOLATION REPORT)

See Section V below for a detailed analysis and explanation of all facts and allegations disputed by the City, as well as mitigating circumstances.

IV. FACTS OR ALLEGATIONS CONTAINED IN THE VIOLATION REPORT OF WHICH YOU HAVE NO PERSONAL KNOWLEDGE (WITH SPECIFIC REFERENCE TO PARAGRAPH NUMBER IN VIOLATION REPORT)

The City has no comment under this section.

V. OTHER FACTS WHICH MAY EXONERATE OR MITIGATE YOUR POSSIBLE RESPONSIBILITY OR OTHERWISE EXPLAIN YOUR RELATIONSHIP TO THE POSSIBLE VIOLATION:

A. Violation A – Failure to Permanently Guarantee all Public Access Areas, in Violation of Special Condition II.B.2, Public Access Area Guarantee

As the record reflects, the City and Trux have been actively engaged in a good faith effort extending back to 2001 to comply with the permit condition requiring a permanent guarantee to all public access areas. As BCDC acknowledges in the July 30, 2015 letter, the City and Trux could not build a portion of the required trail as provided in the Permit due to the fact that part of the trail was on land not owned by any permittee. (*BCDC Exhibit #32*). Notably, the alleged violation is not the failure to construct the public access area, but the failure to *first* amend the Permit to reflect the “as-built public access area” *before* the City could permanently guarantee it. The City contends this alleged procedural error does not

warrant the maximum \$30,000 administrative civil penalty given the below history reflecting the City and Trux's good faith effort to comply. As of the date of this Statement, the City has received comments from BCDC regarding the recording documentation to guarantee the public access and is in the process of finalizing such documentation for City-approval. Below is a detailed timeline of events that demonstrate that the City has at all times made a good faith effort to cooperate with BCDC and comply with Permit conditions.

On June 7, 2001 Robert Simms (representative of Trux) sent a letter to BCDC confirming the completion of the public park. In his letter, he reasonably requested an extension for the completion of the Bay Trail walkway and bike path because the path and trail were located on property owned by both the City and the San Francisco International Airport ("SFIA"). Throughout the remainder of 2001, BCDC and Mr. Simms were in regular contact regarding unexpected construction delays and the lengthy SFIA permit process, which necessitated several extensions for completion of the improvements *(Attachment 1, 2, 3, 4, 5 & 6)*

Between March and July of 2002, the co-permittees and BCDC exchanged emails regarding additional amendments to the Permit. *(Attachment 8) (Attachment 10)* On July 12, 2002, the City wrote to BCDC about its concern with the lack of approval for seven public access design plans submitted over that year and requested a meeting with BCDC's Executive Director, SSF Council Member, SSF City Manager and Mr. Simms.

The BCDC design recommendations, memorialized in the June 18, 2002 letter from Brad McCrae (BCDC), noted that the cost of improvements would be \$450,000. The City noted that this was much higher than anticipated. *(Attachment 12)* BCDC was not sympathetic to the City's concern of costs associated with these improvements. Ande Bennett (BCDC) responded on July 23, 2002 stating that BCDC's preference is still the March 27, 2002 proposal. BCDC agreed to have a meeting between all parties and requested a price break-out prior. *(Attachment 13)*

On June 03, 2002, the City sent a follow-up amendment request to Mr. Bennett. *(Attachment 11)* Due to BCDC's rejection of the City's proposed design plans, and because the City is required to have City Council approval for design plans (especially when improvement costs will reach almost half a million dollars), the City wrote,

"Since you [BCDC] have not accepted any of the designs we have submitted to date, I can only provide you with a range of potential dates for completion," and later suggests, "after you receive the letter listing the various design options that we schedule a meeting prior to June 14, 2002 on site with BCDC staff to discuss the constraints and select an option upon which we can proceed".

On December 26, 2002, Robert Hahn, City Senior Civil Engineer (City), mailed BCDC a check for \$100 representing a fee to amend the Permit and extend completion time for the project as outlined in a previous letter. *(Attachment 14)* BCDC responded 6 months later on July 11, 2003. *(Attachment 15)*

On March 3, 2004, BCDC requested a 90-day extension for BCDC to act on the amendment request. (*Attachment 16*)

In March of 2006 SFIA and the City exchanged a series of communications regarding the Preliminary Design Submittal for North Access Road Public Access Project. The City faxed BCDC the SFIA comments on the Preliminary Design requesting feedback. (*Attachments 18, 19 & 20*)

On November 20, 2006, Robert Hahn submitted final drawings for approval (dated April/June 2006) for North Access Road Public Access Project to BCDC. These plans were contingent upon obtaining a Use Permit from SFO. (*Attachment 21*) BCDC did not respond to Mr. Hahn's amendment request for 143 days, approving Amendment No. Three on April 12, 2007. BCDC also acknowledges that in reviewing the BCDC permit file, BCDC never finalized the application process for Amendment No. Four. (*Attachment 22*)

The City and BCDC exchanged a number of emails in December of 2007 regarding Amendment No. Four. (*Attachment 17*)

On January 26, 2008, Robert Hahn, emailed Ande Bennett regarding the "secondary connection" and its proposed location along North Access Road. (*Attachment 17*) In response, Ande Bennett wrote on January 30, 2008 acknowledging that it was unlikely that a trail realignment could happen given the complications that would result for the airport. (*Attachment 17*)

On June 11, 2015, BCDC and the co-permittees had a conference call to discuss the pending application to amend the Permit. (*Attachment 25*) Then on June 19, 2015, SFIA issued a letter to Mr. Simms regarding two revocable permits (Permit No. 3500 and Permit No. 3950) that address concerns with use of Airport property in permanently guaranteeing public access to the land. (*Attachment 24*)

On July 30, 2015, BCDC wrote to the City and Trux regarding an "After-the-Fact Permit Amendment and Enforcement Conditions" acknowledging difficulty in meeting the permit requirement due to the fact that the trail is not located entirely on the co-permittees' property. (*Attachment 25*)

On August 27, 2015, Brian McMinn and Robert Simms submitted Amendment No. Four. (*Attachment 27*)

On September 8, 2015, the City and Trux met with BCDC to discuss compliance issues and Permit requirements. On September 29, 2015, Maggie Weber wrote the City and Trux to memorialize the September 8, 2015 meeting. BCDC acknowledged there was a misunderstanding regarding "Exhibit A" and requested a revised Exhibit A showing all public access amenities located on all the properties subject to and required by the permit. BCDC further acknowledged that, although the Permit required one distinct public access area be recorded, that was not possible due to the fact that the co-permittees have distinct ownership interests. Thus, BCDC admitted that two separate legal instruments and exhibits must therefore be recorded. BCDC would then review the legal instrument submitted by

Trux in 2003, twelve years prior. (*Attachment 28*) *Attachment 29* shows the revised legal description of Exhibit A with attached plans exhibiting public access demonstrate that the City complied with BCDC's request.

In November and December of 2015, BCDC and the City exchanged numerous emails regarding revisions to the draft permanent guarantee instrument. These communications evidence the City's continued efforts to work with BCDC to remedy any alleged violations. (*Attachments 31, 41 & 32*)

On February 5, 2016 Mr. McMinn and Mr. Simms submitted an Amendment No. Four to BCDC Permit 11-98 focusing specifically on the request to amend Special Conditions II.B.2. (*BCDC Exhibit #41*)

On April 5, 2016, Mr. Hahn requested that Triad Holmes produce a land survey exhibit of Parcel 2, land owned by the City of South San Francisco (*Attachment 38*).

On April 6, 2016, Mr. Zeppetello emailed Mr. Simms to thank him for submitting the draft Open Space Guarantee in Word format as well as provided feedback on his Exhibits. (*Attachment 39*)

On April 11, 2016, Mr. Hahn followed up with BCDC to say that the City had not received BCDC's comments on the legal description for the dedicated easements on North Access Road. (*Attachment 41*) On April 11, 2016, BCDC responded to the City to say that BCDC typically waits to review legal descriptions until they have the entire permanent guarantee package. (*Attachment 41*)

On April 15, 2016, Mr. Hahn submitted a document cover sheet for recording documents, legal description and plats for the dedicated bike lanes in pdf and word formats (originally submitted December 2015) to Marc Zeppetello. (*Attachment 45*)

On April 20, 2016, Ms. Weber emailed the City its initial comments regarding the City's April 15, 2016 submissions. (*Attachment 45*)

On April 26, 2016, the City emailed BCDC an Agreement Imposing Public Access Restrictions on the Use of Real Property in Microsoft Word format. (*Attachment 9*) BCDC responded that it would review and provide back redline comments. (*Attachment 29*)

On May 4, 2016, Marc Zeppetello emailed Mr. Hahn with requested revisions and comments on the legal description for public access guarantee. (*Attachment 50*)

On Friday May 6, 2016, Marc Zeppetello emailed to acknowledge that he incorrectly referenced the public access guarantee as an open space guarantee and to request a legal description with plat map of the property owned by the permittee as well as a legal description and plat map of the property owned, leased or controlled by the permittee that is being dedicated for public access (or open space). On Saturday, May 7, 2016, Brian McMinn informed Mr. Zeppetello that Robert Hahn and/or the Engineering staff would follow up to produce the requested documents. (*Attachment 46*) *Attachment 49* represents a copy of

the Public Access Improvements Exhibit for BCDC permit No. 1198 submitted with the original permit.

On May 11, 2016, BCDC emailed the co-permittees to request an updated land survey for the permanent guarantee since the one submitted also included public access area 5, which is not required by the Permit and impacts Permit No. 1998.008. BCDC requested an updated survey be submitted. The letter also indicated that BCDC issued Amendment No. Four on May 10, 2016. Notably, the Executive Director determined that the “after-the-fact authorization” for the as-built public access was a “minor repair or improvement”, pursuant to Government Code Section 66632(f). (*Attachments 47 & 48*)

The above timeline of correspondence and actions demonstrate that the co-permittees have engaged in extensive efforts to comply with the Permit condition requiring a permanent guarantee of all public access areas. Where complications and delays arose, often through no fault of the City, steps were taken to remedy any alleged defects. For purposes of evaluating what constitutes a fair and reasonable administrative civil penalty, the City reminds BCDC that the alleged violation is not the failure to construct the public access area, but the failure to *first* amend the Permit to reflect the “as-built public access area” *before* the City permanently guarantees it. This alleged procedural error does not warrant a \$30,000 administrative civil penalty, the maximum allowable under the statute, given the history between BCDC and the co-permittees evidencing substantial efforts to remedy the situation. Furthermore, the seven year gap in communication from 2008 to 2015 left the City and Trux under a false impression that any alleged defects were no longer an issue for BCDC.

The City respectfully requests that BCDC eliminate or significantly reduce the proposed administrative civil penalty of \$30,000 in consideration of the time and effort expended by the co-permittees and the fact that the alleged violation will be remedied shortly pending final City-approval.

B. Violation B - Failure to permanently guarantee the open space area for wild life habitat.

The dedication of tidal lands between the “fingers” for wildlife habitat initially presented a potential concern regarding the Public Trust Doctrine. After the City confirmed that it could proceed with an open space conservation easement between the “fingers”, the City immediately began to work with the surveyor to finalize the legal description and plat to include the tidal lands between the “fingers.”

The Record, as highlighted below in a series of correspondences and actions between the permittees and BCDC, again reflects the co-permittees’ good faith efforts to comply with the special condition to permanently guarantee the open space area for wild life habitat. Trux has received BCDC’s comments to the draft recording documents and is in the process of finalizing the documents for approval. The City contends that this alleged violation, which will be remedied imminently, does not warrant the maximum \$30,000 administrative civil penalty. Below is a detailed timeline of events that demonstrates that the co-permittees have made substantial efforts to comply with BCDC Permit conditions.

On August 24, 2001 and November 19, 2001, Trux submitted both the public access instrument and the open space instrument to BCDC for review. BCDC responded on November 29, 2001 (*Attachment 5*) informing Trux that corrections were needed and to express the expectation that both the City and Trux be included on the agreements.

On March 19, 2002, BCDC wrote a letter to the City regarding the enforcement of special conditions of the Permit. BCDC welcomed the City's proposal to assume active responsibility for completing the public access (*Attachment 7*).

In a March 27, 2002 letter, the City memorialized its position of taking an administrative role and managing a portion of the mitigation for Robert Simms (Trux). This letter also served as a formal amendment request to the Permit and a formal request to supersede the October 15, 2001 request by Mr. Simms. (*Attachment 8*)

On March 3, 2003, Mr. Simms provided Ms. Sampson with a third revised draft of the required permanent guarantee documents for the public access and open space areas located on Trux property, pursuant to Ms. Sampson's August 29, 2002 comments. (*BCDC Exhibit #23*). There is no evidence in the record indicating that BCDC was not satisfied with this submittal. After many years passed, BCDC and the co-permittees re-engaged communication over the permitting process. A series of subsequent communications between the permittees and BCDC transpired from July 30, 2015 to December 18, 2015. These communications memorialized in person meetings, requested legal documents, and revisions of legal instruments. (*Attachments 25, 28, 31, 41 & 32*) Notably, BCDC acknowledges that although the Permit requires one public access area be recorded, this was not possible because the City and Trux are co-permittees with separate and distinct ownership interests. Accordingly, two separate legal instruments and exhibits must be recorded. *Attachment 10* is a revised legal description of Exhibit A with attached plans exhibiting public access.

On April 6, 2016, Mark Zeppetello, BCDC Counsel, emailed Robert Simms to thank him for submitting the draft Open Space Guarantee and for providing feedback on his Exhibits. BCDC also advised Mr. Simms that he should "retain a surveyor to review the legal descriptions and associated plats, make necessary revisions, and confirm that all exhibits are correct and comply with the instructions on [their] website for completing public access, view corridor, and open space forms . . ." (*Attachment 39*)

On April 11, 2016, Robert Hahn followed up with Maggie Weber to say that the City had not received BCDC's comments on the legal description for the dedicated easements on North Access Road. Maggie Weber responded the same day to inform the City that BCDC typically waits to review legal descriptions until they have the entire permanent guarantee package. (*Attachment 41*)

On March 29, 2016, Trux submitted draft recording documents for BCDC review and approval. The City received comments from BCDC indicating that the previously prepared and submitted open space dedication from the City needed to include the submerged lands north of the most northerly finger. As explained above, the dedication of

tidal lands presented a possible concern in connection with the Public Trust Doctrine that required further analysis by the City. Once the City confirmed that an open space conservation easement for wildlife habitat between the “fingers” was permissible, the City immediately took steps to work with the surveyor to finalize the legal description and plat to include the tidal lands between the “fingers.”

The City respectfully requests that BCDC eliminate or significantly reduce the proposed administrative civil penalty of \$30,000 for this violation.

C. Violations C., D. & E. - Failure to post signage.

BCDC acknowledges in its April 7, 2016 email to the co-permittees that Violations II.C, II.D., and II.E have been resolved. (*Attachment 40*) Therefore, the City focuses its response to these alleged violations on the manner in which BCDC imposes administrative civil penalties.

The City respectfully requests that BCDC reconsider imposing any administrative civil penalty for these violations, let alone the *maximum* possible, where all parties are in agreement that the violations have been remedied. As noted above, BCDC has stayed the penalty portion in other similar enforcement actions as an incentive for permittees to cure alleged violations. Here, the co-permittees proactively remedied these alleged violations. Any administrative civil penalty would serve no benefit other than to punish the co-permittees. This appears unreasonable and inconsistent given prior BCDC enforcement actions. Punitive penalties after a permittee remedies an alleged violation leads to the conclusion that a permittee should not cure any alleged violation without first negotiating a stay from BCDC. The co-permittees’ genuine efforts to remedy the violation should not be punished more harshly than a permittee who complies only after BCDC stays penalties.

The City further argues that the alleged failure to post proper signage is a single failure to act, and should not result in three separate penalties. Imposing three separate \$30,000 administrative civil penalties for the alleged failure to post proper signage appears inconsistent with the authority provided to BCDC under Government Code section 66641.6 that provides BCDC with the authority to impose a fine of not more than \$30,000 for a single violation. Moreover, a \$90,000 fine for failure to post proper signage unfairly burdens the City, and correspondingly the tax payers for which the signage was meant to benefit.

In light of these facts, including BCDC enforcement actions staying the civil penalty in exchange for curing the violation, the City respectfully requests that BCDC not impose a punitive administrative civil penalty for a violation to post proper signage that already has been remedied.

D. Violation F - Failure to screen the parking structure by not placing landscaping on its south and east sides to reduce visual impacts of the structure from the BCDC required public access area, in violation of Special Condition II.B.4.g, of the Permit.

The failure to screen the parking structure is an alleged violation for which co-permittee Trux had sole responsibility. Nevertheless, as co-permittee, the City contends that the alleged failure to screen the parking structure was not a willful omission by Trux to disregard Special Condition II.B.4.g (see Trux's Statement of Defense). Indeed, the record shows that the restrictions by Shell Oil and the SFIA to plant shrubs or trees over existing pipelines initially complicated efforts to satisfy this Special Condition. Despite these complications, the co-permittees cooperated with BCDC in good faith and consequently, the violation has been substantially addressed. BCDC acknowledges in its April 4, 2016 communication that this violation is resolved, with the exception of fixing the seating in the finger park, violations II.F (visual screening) and II.G (maintenance). (*Attachment 37*) The remaining components are within the purview of Trux. It is City's understanding that this violation will be remedied once the photographs submitted by Trux are approved by BCDC.

Accordingly, the City focuses its response on the punitive administrative civil penalty of \$30,000 for this remedied violation. The City contends that a maximum civil administrative penalty for failing to screen a parking structure is unreasonable and also inconsistent with prior BCDC enforcement actions. Maximum administrative civil penalties should be reserved for willful and egregious BCDC violations, not permittees who have shown a willingness to comply, and in fact, have remedied the alleged violation. There is no evidence in the record to suggest the co-permittees willfully violated the permit conditions, nor any evidence that significant harm occurred as a result. Below is a detailed timeline of events that demonstrates that a good faith effort was made to comply with this BCDC Permit condition.

On July 13, 2009, Ande Bennett of BCDC determined the landscaping plan submitted was approvable, pending Airport acceptance and the inclusion of sufficient mulch and/or other erosion control devices. (*Attachment 23*)

During a site visit on June 19, 2015, Maggie Weber observed that there was no landscaping that reduced the visual impacts created by the parking structure. Additionally, she requested that when Robert Simms submit the final landscaping plan, he should also include irrigated vegetation that will reduce visual impacts of the south and east sides of the parking structure from the public access areas. (*Attachment 25*)

In Robert Simms response letter to Maggie Weber of BCDC (*Attachment 26*), he highlights the restriction by Shell Oil and the SFIA to plant shrubs or trees over existing pipelines. The land on the south side of the parking structure is owned by SFIA and a pipeline, owned by Shell Oil, runs under the property on the south side of the parking structure. Also in this response letter, Robert Simms said that, "Brad McCrae provided a conceptual sketch that required planting of tall shrubs and low shrubs on the building perimeter, and low drought resistant plantings on the south side of the trail. Pursuant to the

required restrictions, the landscaping plan was prepared by Molly Duff. The plan was approved and the plants were installed pursuant to the plan. Ande Bennett inspected and approved the installation of the landscaping.” (*Attachment 26*)

A letter dated September 29, 2015 from BCDC, (*Attachment 28*) expressed that the November 24, 1998 Planting Plan prepared by Molly Duff was never approved. The City was notified of this procedural error approximately 17 years after the fact. The letter goes on to say that the staff comments were “minor” in nature and that the plan could have been conditionally approved so long as the benches and signage were included. Because the finger park landscaping Planting Plan generally appears to conform to the proposed Planting Plan, BCDC staff could accept the landscaping to conform to the submitted Planting Plan. (*BCDC Exhibit #35*)

In response to BCDC’s comments, Bob Simms submitted a landscape plan on February 10, 2016 and a revised plan on March 29, 2016. (*Attachment 37*)

On April 1, 2016, Maggie Weber emailed Robert Simms with feedback on the landscaping plan, requesting that *Baccharis Pilularis Consanguinea* in the Finger park be replaced, “to *Baccharis pilularis* ‘Pigeon Point’ or another lower variety of coyote bush to increase feeling of personal safety and dissuade undesirable behaviors in the area.” (*Attachment 37*)

Jeanne Lau, the Landscape Architect working with Robert Simms, emailed Maggie Simms on April 4, 2016 with updated plans that incorporated her April 1st feedback. (*Attachment 37*)

On April 4, 2016, Maggie Weber approved the planting plan and granted authorization for implementation. In her email, Maggie Weber says that the violation report will be resolved, except for the penalties component, pending the following are addressed: fixing the seating in the finger park, violations II.F (visual screening) and II.G (maintenance). (*Attachment 37*)

As the above correspondence and actions of the City and Trux demonstrate, the co-permittees have at all times have been cooperatively working with BCDC to remedy the alleged violation of Special Condition II.B.4.g.

E. Violation G - Failure to maintain BCDC – required public access improvements and areas, in violation of Special Condition II.B.6, Maintenance, of the Permit.

The co-permittees contend that the public access areas of the park have been consistently maintained. Trux has retained a landscape professional and gardener who regularly cleans and maintains the area. The co-permittees contend that there is no evidence in the record to support otherwise. Accordingly, the City respectfully requests that BCDC eliminate entirely the administrative civil penalty for this alleged violation.

F. Violation H - Failure to submit past – due monitoring reports for the wild life habitat surrounding the “finger” parking areas.

This violation has been fully resolved. In a September 29, 2015 letter from Maggie Weber, she indicates that this violation would be resolved upon submittal and approval of two reports conforming to the Permits requirements. (*BCDC Exhibit #35*) On February 9, 2016, Mr. Simms, provided the wildlife Habitat Assessment to Maggie Weber. (*Trux’ Exhibit D*) On August 21, 2015, Mr. Simms submitted a response to BCDC’s July 30, 2015 compliance letter and requested direction from BCDC regarding acceptable requirements for a qualified biologist. (*Attachment 26*)

On November 4, 2015, Mr. Simms requested BCDC staff’s approval of his selected biologist to perform the habitat monitoring required around the “Finger Parking” areas and prepare the monitoring reports. Ms. Weber approved the selected biologist on November 5, 2015. (*Attachment 30*)

Mr. Simms submitted a Habitat Assessment Report to Maggie Weber on February 9, 2016. On February 10, 2016 she emailed him to thank him for completing the first report and to let him know that staff would review the first of two reports and let him know if there were any questions. (*Attachment 36*) BCDC has not responded with any indication that the report was not acceptable. The second report will be submitted in five years which is the interval stipulated in the original Permit.

Accordingly, the City contends that this alleged violation has been resolved. A maximum civil penalty of \$30,000 is therefore unreasonable given the nature of the alleged violation and the fact that it has been remedied to BCDC satisfaction.

G. Violation I and Violation J- Failure to authorize by an amendment to Special Conditions of the permit, re-alignment of a section of the public access walkway and changes to the width and location of sidewalks and bike lanes / Construction of two 5 – foot wide bike lanes instead of 8 – foot wide bike lanes

The City has substantially complied with the requirement under the Permit to build public access walkways, sidewalks and bike lanes. Due to operational concerns, the location of the public access walkways and sidewalks and the width of the bike lanes differ from the previously submitted plans. The City has been actively engaged in a good faith effort with BCDC to amend the Permit to comport with the as-built environment. Consequently, the City substantially complied with the Permit and furthered the intent of the Permit by constructing public amenities and ensuring that the public had access to the Bay. The City contends that a maximum administrative penalty of \$30,000 for what amounts to an administrative condition that has since been remedied is unreasonable. The City provided the access required by the Permit and has coordinated with BCDC to comply with the administrative hurdles to amend the Permit.

In light of the below facts evidencing the co-permittees' good faith efforts to comply with this special condition, the City respectfully requests that the administrative civil penalty be waived, or at the very least, significantly reduced.

On July 6, 2001, BCDC approved a June 8, 2001 extension request, for the completion of the Bay trail walkway and bike path until October 31, 2001. After review of the permit and project status, BCDC granted permission to proceed with opening the parking facility as long as there was agreement to finish additional outstanding improvements within a three-month time period (*Attachment 2*)

On July 30, 2015, Maggie Weber issued a letter to Robert Simms and Brian McMinn (*Attachment 25*) in regards to items concerned with stated violation "I", requesting that no later than August 30, 2015, the following be completed and/or submitted:

1. An application to amend the permit after-the fact to revise the language in Section I.A and Special Condition II.B.4.d of the Permit so it accurately reflects the as-built public access areas on site and associated ownership interests, including amending Special Condition II.B.2 to reflect that only the public access areas owned by you shall be subject to the permanent guarantee;
2. A revised Exhibit A that shows the public access areas-as built that will replace Exhibits A1, A2, and C; and
3. Any relevant leases.

An amendment request was submitted on August 27, 2015, (*Attachment 27*) to Amend Special Conditions II.B.4.d ... bike lanes along North Access Road to the traffic signal and crosswalk on the south side of the bridge over the San Bruno Channel and a new 10.0' wide pathway from the property from North Access Road on the north side of the San Bruno Channel to the new "finger" park, including crosswalks where necessary.

On August 21, 2015, Mr. Simms submitted a response to the letter dated July 30, 2015 from BCDC. In this letter Mr. Simms states that, "On September 11, 2003, Park SFO drafted an amendment request requesting that permit 11-98 be amended to reflect the change in Section 11.B.4.d to show the realignment of the trail to the north side of the San Bruno Channel." (*Attachment 26*)

BCDC's September 29, 2015 response cites the September 8, 2015 conversation between Mr. McMinn, Mr. Simms, and BCDC. The letter further acknowledges BCDC's misunderstanding regarding Exhibit A and requests a revised Exhibit A be submitted clearly showing all public access amenities located on all the properties subject to and required by the Permit. (*Attachment 28*)

On January 19, 2016, BCDC emailed the City with comments regarding the site visit that took place that same day. Regarding stated violation letter I, BCDC requested a revised Exhibit A-1. (*Attachment 33*)

On February 5, 2016, amendment No. Four to BCDC Permit 11-98 was submitted to BCDC. (*Attachment 35*)

During a field meeting on March 10, 2016, Ms. Weber identified that bike lane widths on North Access Road were 5-feet-wide and did not conform to approved plans that she had. (*Attachment 42*)

On April 7, 2016, Ms. Weber emailed Mr. McMinn to request that a revised amendment request and revised, legible, Exhibit C for the permit be submitted. (*Attachment 42*)

On April 9, 2016, the City emailed BCDC to inform the agency that the City is signing the amendment request and submitting a revised Exhibit C on April 11, 2016. (*Attachment 42*) The City also expressed that language to the amendment request was being added because of Caltrans and City bike lane requirements, as well as the problem of having to reduce automobile lanes on North Access Road to substandard widths to comply with the special condition. (*Attachment 42*)

On April 11, 2016, BCDC emailed the City stating that “revised language for item 2 of your amendment request sounds good”. (*Attachment 42*)

The updated request for Amendment No. Four to the Permit (*Attachment 43*) was submitted on April 11, 2016 to BCDC. (*Attachment 44*)

On April 12, 2016, BCDC acknowledged receipt. (*Attachment 44*) On April 15, 2016, the City submitted a document cover sheet for recording documents, legal description and plats for the dedicated bike lanes in pdf and word formats (originally submitted December 2015) to BCDC. (*Attachment 45*)

H. Violation K -Construction of an unauthorized gate and fence.

Alleged Violation K was brought to attention of the City on January 19, 2016 during a site visit by Maggie Weber who identified an unauthorized gate/fence between the parking structure and public parking area. This is the *only* violation for which the City never received a mailed written notice containing (1) the nature of the alleged violation and each and every action that must be taken to correct the violation; (2) the fact that if the alleged violation is fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any civil penalty; and (3) the fact that if the alleged violation is not fully corrected within 35 days of mailing of the notice, the person believed to be responsible for the alleged violation may be subject to the payment of civil penalty.⁴

The subsequent email from Ms. Weber stating that BCDC would authorize the gate/fence within the City’s current proposed amendment supports the argument that this

⁴ California Code of Regulations Section 11386.

alleged procedural violation never threatened to harm the Bay's natural resources or public access. Therefore, the application of standardized fines should have applied to this violation. The City respectfully requests that the \$15,000 administrative civil penalty be stayed due to fact that the City was not properly noticed under BCDC's own regulations. Moreover, the record reflects that at all times, the City has in good faith attempted to work with BCDC to remedy this alleged violation, as outlined below.

On January 22, 2016, Robert Hahn followed up with Maggie Weber via email regarding the construction of the gate/fence to express that it would need to be addressed by Mr. Simms since it appears to be adjacent to and/or part of the Parking Structure *(Attachment 34)*

In a February 5, 2016, request for Amendment No. Four to the Permit, co-permittees requested approval for the fence and gates that "were placed there after the bridge was installed to prevent the trespassers from entering the driveway unlawfully, and prevent safety, and security hazards." *(Attachment 35)*

In a modified Amendment No. Four request for provisions to the Permit, submitted on April 11, 2016 to Maggie Weber, the above request for approval of the fence and gate are included. *(Attachment 43)*

Accordingly, the City contends that in light of the recent discovery and quick response to remedy the concern, civil penalties in the amount of \$15,000 are unreasonable. The violation was only brought to the attention of the City in January of this year via email. *(BCDC Exhibit #39)* The City was not provided the same notice nor opportunity to remedy this violation pursuant to section of 11386 of BCDC regulations as were the other 10 alleged violations despite the fact that this alleged violation was "minor". *(Attachment 48)* The record also demonstrates that the City began working to remedy this alleged violation within three days of being notified by email. The City respectfully request that BCDC consider the City's efforts and reduce or eliminate entirely the administrative civil penalty for this alleged violation.

VI. CONCLUSION

The co-permittees acknowledge that the Permit process has been ongoing, but maintain that such delay is not entirely the responsibility of the co-permittees. The co-permittees have been actively and consistently coordinating with BCDC throughout the entire process and have been responsive to BCDC's concerns. The violations cited in the Report are administrative in nature and never damaged the Bay's natural resources nor denied the public access. The co-permittees have substantially complied with all of the requirements of the Permit and had remedied a significant number of the violations prior to the Report even being issued. The remaining issues have been diligently pursued and will be remedied imminently. In light of these facts and mitigating circumstances, the co-permittees request that the parties continue to cooperatively address the remaining concerns and that administrative penalties be substantially reduced and/or eliminated.

VII. ANY OTHER INFORMATION, STATEMENT, ETC., THAT YOU WANT TO MAKE

The City's full response is contained under section V of this document.

VIII. DOCUMENTS, EXHIBITS, DECLARATIONS UNDER PENALTY OF PERJURY OR OTHER MATERIALS THAT YOU HAVE ATTACHED TO THIS STATEMENT TO SUPPORT YOUR ANSWERS OR THAT YOU WANT TO BE MADE PART OF THE ADMINISTRATIVE RECORD FOR THIS ENFORCEMENT PROCEEDING (PLEASE LIST IN CHRONOLOGICAL ORDER BY DATE, AUTHOR, AND TITLE AND ENCLOSE A COPY WITH THIS COMPLETED FORM)

1. June 7, 2001 letter from Robert Simms to Brad McCrae (BCDC)
2. July 6, 2001 letter from BCDC to Trux Airline Cargo Services granting an extension
3. October 15, 2001 letter from Robert Simms to Steve McAdam RE: Amendment to BCDC Permit
4. November 15, 2001 letter from BCDC to Robert Simms RE: Status of Amendment Request and Enforcement
5. November 29, 2001 letter from BCDC to Robert Simms RE: Review of Public Access and Open Space Instruments
6. January 29, 2002 letter from Robert Simms (REST Investments) to Ande Bennett (BCDC)
7. March 19, 2002 letter from BCDC to City of South San Francisco Public Works RE: Enforcement of Permit Conditions
8. March 27, 2002 letter from the City of South San Francisco to Ande Bennett of BCDC
9. Agreement Imposing Public Access Restrictions on the Use of Real Property (*submitted to BCDC on April 26, 2016*)
10. April 26, 2002 letter from BCDC to the City of South San Francisco Public Works Department
11. June 3, 2002 letter from Barbara Hawkins, City of South San Francisco to Ande Bennett, BCDC
12. July 12, 2002 letter from South San Francisco City Engineer to BCDC
13. July 23, 2002 letter from BCDC to Barbara Hawkins, City Engineer
14. December 26, 2002 letter from Robert Hahn to Ande Bennett, BCDC RE: North Access Road Public Access Project; Fee to Amend BCDC Permit Application No. 11-98; City Letter to BCDC Dated December 13, 2002.
15. July 11, 2003 letter from BCDC to John Gibbs and Robert Simms, City of South San Francisco RE: Execution of Amendment No. Three to BCDC Permit No. 11-98 (BCDC Application No. 11-98 and ER00-97)
16. March 03, 2004 email from Brad McCrae to Robert Hahn and John Gibbs
17. January 30, 2008 email from Ande Bennett, BCDC to Robert Hahn, City of South San Francisco

18. March 07, 2006 letter from John C. Mui, SFIA Building Inspection and Code Enforcement Manager to Robert Hahn, City of South San Francisco
19. March 10, 2006 fax transmittal from Robert Hahn to Brad McCrae RE: Comments on North Access Road Pathway from SFO
20. March 13, 2006 email to Robert Hahn from Brad McCrae regarding fax (attachment 24) to provide a response to SFIA comments on project
21. November 20, 2006 letter from Robert Hahn to Brad McCrae dated RE: North Access Road Public Access Project Final Drawings Approval
22. April 12, 2007 letter from Brad McCrae to Robert Hahn, Re: Plan Approval; North Access Road Trail Amendment No. Three
23. July 13, 2009 letter from Ande Bennett, BCDC to Robert Hahn, City of South San Francisco
24. June 19, 2015 letter from SFIA to Robert Simms, RE: BCDC Mitigation Obligations and SFO Permits
25. July 30, 2015 letter from Maggie Weber, BCDC to Robert Simms and Brian McMinn RE: After-the-fact Permit Amendment and Enforcement of Conditions for Park SFO
26. August 21, 2015 letter from Robert Simms to Maggie Weber, BCDC, RE: Response to July 30, 2015 "After-the-fact" Permit Amendment
27. August 27, 2015 letter from Brian McMinn and Robert Simms to Maggie Weber, BCDC RE: Amendment No. 4 to BCDC Permit 11-98: Revisions to the Permit
28. Letter from Maggie Weber, BCDC to Robert Simms and Brian McMinn, dated September 29, 2015 RE: After-the-Fact Permit Amendment and Enforcement of Conditions for Park SFO; Memorialize September 8, 2015 meeting
29. April 26, 2016 email from Brian McMinn to Janee Carter regarding BCDC Permit 11-908
 - 29A. Copy of Public Access Exhibit A – Legal Description
30. November 4-5, 2015 emails between Robert Simms and Maggie Weber regarding approval of biologist for wildlife report
31. November 10, 2015 email from Maggie Weber to Robert Simms, Marc Zeppetello, Adrienne Klein and Brian McMinn
32. December 11, 2015 Legal Description for Public Access Areas submitted by the City of South San Francisco to BCDC
33. January 19, 2016 email from Maggie Weber to Robert Simms on RE: Planting plan, signage, amendment application for BCDC Permit No. 1998.011.04
34. January 21-22, 2016 email correspondence between Maggie Weber and Robert Hahn, RE: Exhibits A-1 and gate/fence
35. February 5, 2016 letter from Brian McMinn, City of South San Francisco and Robert Simms, Park SFO RE: Amendment No. 4 to BCDC Permit 11-98: Revisions to the Permit
36. February 9-10, 2016 emails between Robert Simms and Maggie Weber, regarding wildlife report
37. March 29, 2016 - April 4, 2016 email correspondence between BCDC and REST Investments regarding landscaping plan
38. April 5, 2016 faxed request to Triam Holmes to produce land survey of Parcel 2 by Robert Hahn

39. April 6, 2016 email from Marc Zeppetello to Robert Simms re: Open Space Guarantee docs
40. April 7, 2016 email from Maggie Weber to Robert Simms acknowledging receipt of installed parking signs
41. December 11, 2015 - April 11, 2016 email correspondence between regarding legal descriptions
42. April 07-11, 2016 email correspondence between Maggie Weber and Brian McMinn
43. April 11, 2016 letter from Permittees to BCDC RE: Revision to the Permit 11-98
44. April 11-12, 2016 emails between Marissa Garren, on behalf of Brian McMinn to Maggie Weber and subsequent response
45. April 15, 2016 – April 20, 2016 email correspondence between Robert Hahn, Marc Zeppetello and Maggie Weber, regarding legal descriptions and cover sheets for recording document
46. April 26, 2016 email from Maggie Weber (BCDC) responding to Robert Hahn (City)
47. May 11, 2016 email correspondence from Maggie Weber of BCDC to the City regarding land survey for Public Access Guarantee and fourth amendment to BCDC Permit 1198
48. May 10 Letter from Jaime Michaels, Chief of Permits, BCDC, containing Amended BCDC Permit No. 1998.011.04
49. Public Access Improvements Exhibit for BCDC Permit No. 1198
50. May 4, 2016 email from Marc Zeppetello (BCDC) to Robert Hahn (City) with requested revisions and comments on the legal description for open space guarantee
51. Recommended Enforcement Decision Regarding Proposed Commission Cease and Desist and Civil Penalty Order No. CCD 4-09; San Pedro Cove Homeowners Association, Al Lamperti (Lamperti Incorporated), and the Charles E. Paganini Estat, available at: http://www.bcdc.ca.gov/cm/2010/08-05_CCD4-09.pdf.

IX. NAME OF ANY PERSON WHOSE DECLARATION UNDER PENALTY OF PERJURY WAS LISTED IN THE VIOLATION REPORT AS BEING PART OF THE STAFF'S CASE WHO THE RESPONDENT WANTS TO CROSS-EXAMINE, ALL DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, AREA OR AREAS OF INFORMATION ABOUT WHICH THE RESPONDENT WANTS TO CROSS-EXAMINE THE WITNESS, INFORMATION THAT THE RESPONDENT HOPES TO ELICIT IN CROSS-EXAMINATION, AND THE REASON(S) WHY SOME OTHER METHOD OF PROVING THIS INFORMATION IS UNSATISFACTORY

The City wishes to preserve its right to potentially cross-examine Maggie Weber, BCDC Enforcement Officer, regarding all correspondences and documents relating to the Permit and this enforcement action for which she has personal knowledge of.⁵ The purpose of cross-examining Ms. Weber is to dispute BCDC's characterization of the facts indicating

⁵ California Code of Regulations Section 11322(b).

that the co-permittees have not been acting in good-faith to resolve any alleged violations. The violation report references and/or relies on Ms. Weber. Declarations and other written evidence do not provide the City with its due process rights in this regard.

The City wishes to preserve its right to potentially cross-examine Ande Bennett, BCDC, regarding all correspondences and documents relating to Violation A, including the design proposals, for which Mr. Bennett has personal knowledge of.⁶ The purpose of cross-examining Mr. Bennett is to illicit additional information not contained in the exhibits and attachments regarding BCDC's rationale for refusing to consider additional design proposals in light of the \$450,00 costs associated with the March 27, 2002 design proposal, among other facts. The violation report references and/or relies on Mr. Bennett. Declarations and other written evidence do not provide the City with its due process rights in this regard.

The City wishes to preserve its right to potentially cross-examine Marc Zeppetello, BCDC Chief Counsel, regarding all correspondences and documents relating to the Permit and this enforcement action for which he has personal knowledge of.⁷ The purpose of cross-examining Mr. Zeppetello is to dispute BCDC's characterization of the facts indicating that the co-permittees have not been acting in good-faith to resolve any alleged violations. The violation report references and/or relies on Mr. Zeppetello. Declarations and other written evidence do not provide the City with its due process rights in this regard.

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⁶ *Id.*

⁷ California Code of Regulations Section 11322(b).