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September 22, 2022

BY ELECTRONIC MAIL
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Re: BCDC Enforcement Case No. 2019.063
Seaplane Investment, LLC, 240 Redwood Highway, Mill Valley

Dear Mr. Plater:

We write to you to on behalf of our client, the Richardson Bay Environmental Protection Association ("RBEPA") regarding:

1) The *Violation Notice to Resolve Permit and McAteer-Petris Act Violations located at 240 Redwood Highway, Mill Valley 94941 (BCDC Enforcement Case ER2019.063, Permit 1973.014.02 issued to Commodore Marina and Permit m1985.030.01 issued to Commodore Helicopters, Inc. and Walter Landor)* ("NOV") issued by the San Francisco Bay Conservation and Development Commission ("BCDC") on September 15, 2020;
2) The *Violation Report/Complaint For Administrative Imposition Of Civil Penalties in Enforcement Case ER2019.0* issued by BCDC on July 29, 2022; and
3) *Statement of Defense* ("SOD"), Seaplane Investments, LLP ("Seaplane"), submitted September 2, 2022.

We request that you enter this letter and its attachments into the administrative record for this matter. In this letter, we do not address the facts on which the NOV and subsequent Complaint are based, as they are largely if not entirely uncontested. Instead, we address the legal issues raised by Seaplane in its SOD, and their policy implications, which we trust you and BCDC more generally, will consider in responding to Seaplane's SOD.

We applaud BCDC taking aggressive enforcement action against Seaplane Investment, LLP ("Seaplane"). Such action is long overdue and fully justified given Seaplane's egregious behavior. Seaplane has steadfastly refused to remove or otherwise address the numerous violations set forth in BCDC's 2020 NOV. Yet, it readily found the time and resources to conduct its most outrageous illegal action yet--constructing an all-new steel-reinforced concrete ramp into the Bay without notice to BCDC or, likely, the County of Marin (County). But for RBEPA's diligent surveillance, Seaplane's outrageous further act of illegal Bay filling may have gone unnoticed by BCDC. BCDC ordered Seaplane to remove the illegal ramp, but of course, Seaplane has yet again refused to take any compliance action.

Seaplane clearly believes that it is above the law. It therefore not only disregards BCDC's exercise of its statutory enforcement authority by refusing to take the corrective actions required in the NOV, but it doubles down by taking further actions in violation of the Public Resources Code statutes that animate BCDC's authority. Substantial penalties, as well as injunctive relief requiring reversal of illegal filling activities, are therefore justified to address this lawless attitude.

I. Seaplane's "Statement of Defense" Lacks Credible Factual Evidence or Legal Argument.

A. Seaplane Has No "Mandate" Pursuant to the Federal Aviation Act to Conduct Any of the Illegal Fill Activity In which It Has Engaged.

In two places in its Statement of Defense ("SOD"), Seaplane falsely alleges that its placement of illegal fill, whether additional dock pilings, dock extensions, or worse, the large new concrete steel reinforced ramp, were part of Seaplane's "mandate" to do so under the Federal Aviation Act. *See* pp. 1, 3. This allegation, is, in a word, nonsense.

In support of this argument, Seaplane references two declarations by FAA employees filed in Seaplane's *failed* lawsuit against the County seeking damages for its shutdown during the Covid epidemic. However, those declarations provide absolutely no support for Seaplane's absurd suggestion that it was "required" to illegally fill the Bay by the FAA or the Federal Aviation Act. All the declarations state is that Seaplane has registered with the FAA as an "air taxi operator" under CFR Part 298, effective April 23, 2019, as amended on May 14, 2021. So what? This certification of Seaplane as an "air taxi operator" permits Seaplane to conduct limited air operations, namely, non-stop passenger carrying flights that begin and end in the same airport and are conducted within a 25-mile radius of the airport. As a consequence, Seaplane is exempted from most FAA safety regulations. See 14 CFR § 119.1(e) and 14 CFR §§ 91.147 and 119.1. But this certification is entirely irrelevant to BCDC jurisdiction and to the illegal filling and other permit violations reflected by the ground conditions at Seaplane's property, the County property leased by Seaplane, and on Yolo Street, that are at issue in BCDC's NOV.

Seaplane fails to identify any specific FAA rule or regulation applicable to Seaplane that addresses any of the ground conditions that BCDC has identified as violations of the McAteer Peetris Act. Nor do they cite to any judicial precedent where land use and land-based permit issues such as those raised by BCDC's NOV have been preempted. That is because there are none. The few statutes and regulations referenced by Seaplane, including those in the two attached FAA employee declarations, concern the operation of Seaplane's airplanes, not its ground facilities or dock. The ground operations of such small, private ground-based facilities simply are not regulated by the FAA. Seaplane's operator is apparently prepared to appear and make similarly vague allegations of FAA safety requirements or pre-emption of BCDC regulations, but that bluster will be devoid of meaningful legal authority or substance. If Seaplane had any relevant legal authority to cite, they would do so in their SOD, but they do not, so they cannot. Instead, they rely on vague references to irrelevant statutes and regulations. This

is clearly inadequate, given that "[t]he party asserting federal preemption has the burden of persuasion." *Elam v. Kansas City S. Ry. Co.*, 635 F. 3d 796, 802 (5th Cir. 2011).

In contrast, in our January 8, 2022 letter (*see* Attachment A), RBEPA provided BCDC counsel with extensive citations to applicable caselaw authority establishing beyond any doubt that no FAA rules or regulations apply to ground-based operations at seaplane bases and that local land use laws and regulations, such as those enforced by BCDC, are not preempted by any FAA statute or regulation. Simply stated, numerous decisions by both federal and state courts have held that local land use control is not preempted by federal aviation regulation and that compliance with such controls is mandatory.

The best example of these legal principles is *Gustafson v. City of Lake Angelus*, 76 F. 3d 778 (6th Cir. 1996*), cert den.* 519 U.S. 823 (1996). In that case, plaintiff landowner was forbidden by local ordinances from landing his seaplane on a nearby lake. Landowner brought suit against the city claiming the ordinances were preempted by federal law and enforcement of the ordinances violated his constitutional rights. The appellate court reversed the trial court's grant of relief to landowner and affirmed grant of relief to the city defendants. The appellate court held that the ordinances were not preempted by federal law because the Federal Aviation Act and its regulations concerning seaplanes and aircraft landing sites indicated that the designation of landing sites were not pervasively regulated by federal law, but instead were a matter left primarily to local control, and within the federal aviation framework, *local zoning ordinances governing land use had to be complied with* (emphasis added). The court found that the ordinances were reasonable limitations on the use of the lake and were rationally related to a legitimate government interest in safety.

> "Clearly, the FAA defers to local zoning ordinances, since this regulation [14 C.F.R. § 157.7(a)] requires the establishment of an airport in compliance with a municipality's land use plan. As the [FAA] regulation states, the proponent of the establishment of an airport must comply with any local law, ordinance or regulation. Moreover, the regulation indicates that environmental impact and land use compatibility are matters of local concern and will not be determined by the FAA. Thus, in contrast to *Burbank*, in which the Supreme Court stated that the FAA made clear its intent to pervasively regulate aircraft noise, FAA regulation 14 C.F.R. § 157.7 indicates that the FAA does not intend to pervasively regulate the designation of the location of airports. We find no regulations governing the designation of the location of private airfields or seaplane landing sites. Under 14 C.F.R. § 157.7, the FAA recognizes that within the federal aviation framework, local zoning ordinances governing land use must be complied with. We believe this rationale applies in the present case, which concerns water use. Under the general provisions of the Act, an airplane landing area is defined as follows: "landing area" means a place on land *or water*, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo. 49 U.S.C. § 40102(28) … (emphasis added). Since a landing area includes a body of water, we find no merit to plaintiff's argument that 'the inland waters,' such as Lake Angelus, are part of the navigable airspace of the United

> States over which the federal government exerts preemptive control. The inland waters are part of the earth's surface, and water (as well as land) use compatibility are matters of local control.... If federal preemption were found in the present case, a 'governmental vacuum' would occur because the federal government does not regulate the location of seaplane landing sites, and state and local governments would be shorn of their regulatory authority. *See Garden State Farms,* 77 N.J. at 449. The result would be entirely impracticable, and every lake in the United States would become a potential airport for seaplanes. In regard to the location of commercial airports, the FAA has indicated that it will not adopt regulations controlling local land use, because the needs of each locality are unique and different. *See* 14 C.F.R. § 157.7. Courts have recognized that federal aviation law does not preempt local regulation of the location of airports or heliports, which must comply with local zoning ordinances. Just as Congress did not intend to create a regulatory vacuum with respect to the location of commercial or privately operated airports and heliports on land, we believe Congress did not intend to create a vacuum with respect to the location of seaplane landing sites on water but left the matter to local control."

Id. at 788-89. *See also Roma, III, Ltd. v. Board of Appeals of Rockport*, 478 Mass. 580, 588 Mass. Supreme Ct. 2018) ("Federal case law, however, has distinguished the preempted regulation of flight operations from the permitted regulation of aircraft landing sites," citing *Gustafson.*)

In addition to the extensive caselaw cited in our January 8 letter, BCDC should also be aware of *SeaAIR NY, Inc. v. City of New York*, 250 F.3d 183 (2d Cir.1981), which has particular applicability here. In *SeaAIR*, New York City ("City") issued a permit for the seaplane base that contained the following restriction: "To further minimize noise impacts on the general public, commercial air tour operations shall not be permitted at any time. The term 'commercial air tour' means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing." In response, SeaAir, a commercial air tour company, like Seaplane here, filed suit alleging that the restriction violated the Supremacy, Due Process, and Equal Protection Clauses of the Constitution, as well as various federal statutes. The primary argument in SeaAir's complaint, as with Seaplane's SOD here, was that the City was preempted by federal aviation statutes from prohibiting the operation of sightseeing seaplanes at the East 23rd Street base. The District Court upheld the City's ban on commercial air tour operations, finding that because the operations at issue were not in interstate commerce, they could not preempt any local regulation, including the outright banning of the operation. That holding was upheld by the Second Circuit on appeal. Here, of course, Seaplane too is limited by its Air Taxi certificate to round trip flights starting and ending at the same airport (the Sausalito "seaplane base"), meaning its operations are also entirely intrastate. Thus, as in *SeaAIR*, no federal statute can preempt local land use laws, even those addressing noise or banning the operations altogether.

As a matter of policy, BCDC must reject Seaplane's unfounded assertions of preemption, lest its regulatory authority over every airport within BCDC's jurisdictional reach be improperly curtailed and the fundamental regulatory mission of BCDC thwarted.

B. Where the Seaplane Base is Private, It Is Subject to Local Land Use Controls.

Additionally, the fact that the "seaplane base" at issue here floats over submerged County land leased by Seaplane is another reason there can be no federal preemption of County or BCDC land use regulations, including noise regulations. "Although state and local governments are precluded from regulating aircraft noise, the Supreme Court did not preclude municipalities, acting as owners and operators of airports, from imposing noise regulations, 'based on [their] legitimate interest in avoiding liability for excessive noise generated by the airports they own.' *Alaska Airlines Inc. v. City of Long Beach*, 951 F.2d 977 (9th Cir. 1991); *Burbank,* 411 U.S. at 635-36, n. 14 ('We do not consider here what limits, if any, apply to a municipality as a proprietor.'); *see Griggs v. Allegheny Cty.*, 369 U.S. 84, 88-90 (1962)." *City of Tipp City v. City of Dayton*, 204 F.R.D. 388 (S.D. Ohio 2001).

Thus, the County has authority to regulate the seaplane activities being conducted on and from County property in any manner necessary for it to avoid being held liable for the nuisance conditions being caused by the seaplane operations, including noise limitations.

C. Seaplane Has No Legal Authority Under Its Lease with the County to Add to the Floating Seaplane Dock or Change the Uses on the Dock.

Seaplane claims that it made additions to its dock to repair damage caused after storms. However, Seaplane offers no evidence whatsoever in support of such allegations, such as damage reports, photos of damage caused, cost documentation or even weather records. Given its surreptitious construction of the new concrete ramp, and its false allegations of federal preemption authority, Seaplane's bald assertion in this regard carries no credibility.

Moreover, this explanation does not justify the multiple additional side extensions added to the original dock, which have nothing to do with alleged "storm repairs." They were simply to expand the dock space for the benefit of Seaplane, without a BCDC permit. Moreover, the addition of refueling apparatus on the dock, again without a BCDC permit, was also unrelated to "storm repairs."

Finally, the unpermitted, added fill (piles, crossbeam and added dock pieces) are all in breach of Seaplane's lease with the County ("Lease"). (*See* Attachment B hereto). Paragraph 5 of the Lease provides:

> "No enlargement or expansion of the uses of the existing improvements nor physical expansion of said dock shall be allowed."

The Lease does not provide for the use of the dock for refueling purposes, therefore, the refueling line and pump on the dock are in breach of the Lease. All of the dock additions are also illegal "enlargements" or "expansions." The Lease area is only that area under the exact configuration of the original dock. *See* Exhibit C to the Lease, Attachment B hereto. Therefore, all additions are not on land leased from the County and are in breach of the Contract. This means Seaplane has no basis in law to seek BCDC approval for this "fill" in areas which it has

no legal right to occupy. Seaplane should be ordered to immediately remove all of these illegal and unauthorized dock expansions and increased use expansions (refueling equipment).

D. Seaplane has Been Uncooperative and Belligerent From the Issuance of the NOV.

It has been two years since BCDC issued the September 15, 2020 NOV. The NOV required the then property owner, Commodore Marina LLC ("Commodore"), to provide various information and to remove illegally placed "fill." To our knowledge, neither Commodore, nor the current owner Seaplane, nor their tenant, Seaplane Adventures, have provided much of the information required in the NOV and have done nothing to correct or address the violations outlined in the NOV. Instead, as noted above, Seaplane has only exacerbated its violations. BCDC sent correspondence dated October 8, 2021 to Seaplane, noting the past non-compliance as well as new permit violations and demanding compliance by a date certain, but that date has come and gone without compliance (again, to our knowledge). Instead, in an act of belligerence, Seaplane, without any notice to BCDC, constructed a large, new steel-reinforced concrete ramp, replacing a pre-existing wooden or plastic (Trex decking) ramp. Seaplane claims financial woes as a basis for not having responded timely or fully, but these should be disregarded, given that it had no problem financing the construction of the large, new and illegal concrete ramp when it wanted it. In light of these years of non-cooperation and subsequent belligerent violation of BCDC's statute and regulations, substantial penalties and injunctive relief, including the removal of the illegally constructed new concrete ramp, are fully justified.

E. Yolo Street Remains Dedicated to Public Use.

Although Seaplane claims it has rights to use Yolo Street as its own private property, the fact remains that it is dedicated to public use. The County has not renounced its rights to accept that dedication and Seaplane has not filed a Quiet Title Action. Therefore, the public may use Yolo St. to obtain access to the Bay. Moreover, the County's Lease to Seaplane provide, in paragraph 2, that:

> "Lessee further agrees that no attempt shall be made by Lessee to forbid the full and free use by the public of all navigable waters near [the] Premises."

Yet, by placing an aviation gas tank, parked airplanes, and a chain across the boat ramp with a sign reading "No Trespassing" (all within 50 feet of the shoreline), this is just what Seaplane is doing. For these reasons, we fully support BCDC's demand that these obstacles to public access be removed forthwith.

II. Conclusion.

Seaplane deserves the penalties BCDC has proposed, but that is not enough. Seaplane must be ordered to remove the illegal fill it has placed over lands to which it has no rights and for which it has no permits, especially the new concrete ramp, which it had built in bad faith without notice to the BCDC.

Yours very truly,

John D. Edgcomb

Attachments (2)

cc: Marin County Deputy Counsel J. Brady (JBrady@marincounty.org)

ATTACHMENT A

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January 18, 2022

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Re: BCDC Enforcement Case No. 2019.063
Commodore Marina, 240 Redwood Highway, Mill Valley

Dear Mr. Plater:

We are writing to you to on behalf of our client, the Richardson Bay Environmental Protection Association ("RBEPA") regarding the *Violation Notice to Resolve Permit and McAteer-Petris Act Violations located at 240 Redwood Highway, Mill Valley 94941 (BCDC Enforcement Case ER2019.063, Permit 1973.014.02 issued to Commodore Marina and Permit m1985.030.01 issued to Commodore Helicopters, Inc. and Walter Landor)* ("NOV") issued by the San Francisco Bay Conservation and Development Commission ("BCDC") on September 15, 2020.

It has been more than a year since BCDC issued the NOV. The NOV required the property owner, Commodore Marina LLC ("Commodore"), to provide various information and to remove illegally placed "fill." To our knowledge, Commodore and its tenant, Seaplane Adventures ("Seaplane"), have provided little of the information required in the NOV and has done nothing to correct or address the violations outlined in the NOV. In the meantime, Commodore has sold the property, but the new owner, Seaplane Investment, LLC, has not provided the required information or corrected the illegal fill either. BCDC has issued further correspondence dated October 8, 2021, noting the past non-compliance as well as new permit violations and demanding compliance by a date certain, but that date has come and gone without compliance (again, to our knowledge). It is time for penalties to be assessed. RBEPA requests that BCDC act as required by law in accordance with the MPA by taking formal enforcement action requiring the cessation of operations and assessment of penalties the requested information is fully provided and the violations set forth in the NOV are corrected, or, in the alternative, revoke the BCDC permits issued to Commodore, putting an end to the ongoing violations.

In the June 15, 2021 letter from John Sharp, counsel for Seaplane Adventures ("Sharp letter"), to BCDC, he makes various claims, including a federal law preemption claim, which are unsupported. By addressing and rebutting Mr. Sharp's assertions, we hope to prompt further action from you and BCDC in this important matter.

Rebuttal to Sharp Letter

There are numerous misstatements of fact and law in Mr. Sharp's letter. Additionally, Mr. Sharp acts as though Seaplane Adventures has unlimited time to correct clear and blatant violations of its lease with the County and its legal obligations to BCDC to not place "fill" in or on the Bay. Sadly, the County's and BCDC's inaction to date indulge these fantasies of Mr. Sharp and his client Seaplane Adventures. Any further delay is unacceptable.

1. **Sharp's FAA Preemption Claims Are Unsupported and Contrary to Extensive Legal Authority.**

    a. The "Airport Master Record" Has No Substantive Legal Effect on BCDC's Ability to Exercise Its Land Use Authority.

The bald assertion on p. 4 of the Sharp letter that "[t]he Airport Master Record is the Federal Aviation Commission's expression of jurisdiction over use of the property by Seaplane Adventures" is meaningless. First, the 1985 document he references is outdated. It does not list the recent or current site owners or correct contact information. More importantly, nothing in the Airport Master Record reflects that the FAA has "asserted jurisdiction" over the facility. Nowhere in that document does the FAA "assert jurisdiction" of any kind. It is not a federal operating permit. In fact, the seaplane "base" is a private facility with neither a federal nor an active state operating permit. It only has a County-issued conditional use permit, issued under the County Zoning Code (improperly).

Instead, as described in FAA Advisory Circular No. 150/5200-35A (attached hereto):

> "The FAA is authorized under Title 49 United States Code 47130, Airport Safety Data Collection, *to collect, maintain, and disseminate accurate, complete, and timely airport data for the safe and efficient movement of people and goods through air transportation.* The FAA accomplishes this through the Airport Safety Data Program, which is the FAA's primary means for gathering aeronautical information on landing facilities. This [Advisory Circular] is organized to reduce the burden of correctly completing and submitting Forms 5010-3 and 5010-5 to the FAA." (Emphasis added).

Facilities themselves report the information to the FAA, which simply adds that information to its Airport Safety Data Program, which in turn generates Airport Master Records. To our knowledge the FAA conducts no ongoing inspections of private facilities for compliance with non-existent seaplane base regulations, such as the Commodore facility, and exerts no ongoing "jurisdiction" or other authority over such facilities. Mr. Sharp cites to no other authority to support his self-serving conclusion that the record constitutes evidence of an FAA assertion of jurisdiction.

    b. Numerous Federal and State Courts Have Held that Federal Law Does Not Preempt Local Enforcement of Land Use Controls Over Airports and Seaplane Facilities.

Numerous courts have recognized that the mere approval by the FAA of a landing site proposed by its operator is advisory only and the operator of the facility must still comply with all local land use requirements.

> "The Federal Aviation Administration (FAA) has acknowledged that land use matters within the federal aviation framework are intrinsically local. For example, the regulation concerning the procedures governing the establishment of a civil airport indicates the following: 'FAA determinations. (a) The FAA will conduct an aeronautical study of an airport proposal and, after consultations with interested persons, as appropriate, issue a determination [*i.e.,* an "Airport Master Record"] to the proponent and advise those concerned of the FAA determination. While determinations consider the effects of the proposed action on the safe and efficient use of airspace by aircraft and the safety of persons and property on the ground, *the determinations are only advisory*. A determination does not relieve the proponent of responsibility for compliance with any local law, ordinance or regulation, or state or other Federal regulation. Aeronautical studies and determinations will not consider environmental or land use compatibility impacts.' 14 C.F.R. § 157.7(a)." (Emphasis added).

Gustafson v. City of Lake Angelus, 76 F. 3d 778, 784-85 (6th Cir. 1996), *cert den.* 519 U.S. 823 (1996). *Gustavson* is particularly relevant in that it addresses a city's ordinance prohibiting seaplane landings on a local lake. As such, it is worthy of extensive citation here. In upholding the ordinance against plaintiff's Supremacy Clause challenge, the court first held that the FAA's own regulations support non-preemption of local zoning and land use ordinances:

> "Clearly, the FAA defers to local zoning ordinances, since this regulation [14 C.F.R. § 157.7(a)] requires the establishment of an airport in compliance with a municipality's land use plan. As the [FAA] regulation states, the proponent of the establishment of an airport must comply with any local law, ordinance or regulation. Moreover, the regulation indicates that environmental impact and land use compatibility are matters of local concern and will not be determined by the FAA. Thus, in contrast to *Burbank*, in which the Supreme Court stated that the FAA made clear its intent to pervasively regulate aircraft noise, FAA regulation 14 C.F.R. § 157.7 indicates that the FAA does not intend to pervasively regulate the designation of the location of airports. We find no regulations governing the designation of the location of private airfields or seaplane landing sites. Under 14 C.F.R. § 157.7, the FAA recognizes that within the federal aviation framework, local zoning ordinances governing land use must be complied with. We believe this rationale applies in the present case, which concerns water use. Under the general provisions of the Act, an airplane landing area is defined as follows: "landing area" means a place on land *or water*, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo. 49 U.S.C. § 40102(28) ... (emphasis added). Since a landing area includes a body of water, we find no merit to plaintiff's argument that 'the inland waters,' such as Lake Angelus, are part of the navigable airspace of the United States over which the federal government exerts preemptive control. The inland waters

> are part of the earth's surface, and water (as well as land) use compatibility are matters of local control."

Many subsequent decisions by both federal and state courts have held that local land use control is not preempted by federal aviation regulation and that compliance with such controls is mandatory, often citing *Gustavson*. This wealth of authorities finding that local zoning controls are not preempted by federal law explains why the Sharp Letter offers no caselaw in support.

As further noted by the court in *Gustavson*, the FAA itself acknowledges that local zoning controls are not preempted by federal law:

> "In several cases, the FAA has indicated that within the federal aviation framework, it does not concern itself with land or water use zoning issues. In *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F. Supp. 678, 683 (N.D.N.Y. 1989), the FAA challenged portions of a local ordinance which attempted to regulate parachute jumping, aircraft operations, and aircraft noise, but the FAA specifically stated: 'To the extent the ordinance regulates land use in the Town of Gardiner, it is not preempted by federal regulation of aviation.'
>
> In another case, *Dallas/Fort Worth Int'l Airport Bd. v. City of Irving*, 854 S.W.2d 161, 169 (Texas Ct. App.), *vacated by*, 868 S.W.2d 750 (Tex. 1993), the FAA stated, 'whether the airport is required to obtain a local permit [for an expansion project] is a matter of local law and is not relevant to the approval of the federal project.'
>
> In *Citizens Against Burlington, Inc. v. Busey*, 290 U.S. App. D.C. 371, 938 F.2d 190, 197 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991), the court upheld the municipal regulation of a heliport, pointing out that the FAA in an Environmental Impact Statement had written: 'In the present system of federalism, the FAA does not determine where to build and develop civilian airports, as an owner/operator. Rather, the FAA facilitates airport development by providing Federal financial assistance, and reviews and approves or disapproves revisions to Airport Layout Plans at Federally funded airports.'
>
> The FAA has, thus, made clear that although FAA regulations preempt local law in regard to aircraft safety, the navigable airspace, and noise control, the FAA does not believe Congress expressly or impliedly meant to preempt regulation of local land or water use in regard to the location of airports or plane landing sites -- whether for airplanes, helicopters or seaplanes. As a reviewing court, we must give great deference to the views of a federal agency with regard to the scope of its authority. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984)."

Gustafson at 786.

c. Where the Airport or Seaplane Base is Private, It Is Subject to Local Land Use Controls.

Moreover, the fact that the Commodore "seaplane base" is a private facility that effectively serves only two airplanes, those in service of the Seaplane Adventures private tour operation, is another reason there is no preemption of County or BCDC land use regulations by federal law. Again, as stated in *Gustafson*:

> "We believe the present case is analogous to *Faux-Burhans v. County Commissioners of Frederick County*, 674 F. Supp. 1172 (D. Md. 1987), *aff'd*, 859 F.2d 149 (4th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), in which the owner of an airplane landing strip, who wanted to create a private airport, brought suit, challenging the county's zoning restrictions on airfield operations. The district court in *Faux-Burhans* found that the county zoning restrictions were not preempted by federal law and the Court of Appeals for the Fourth Circuit affirmed. The district court in *Faux-Burhans* examined the Supreme Court's opinion in *Burbank* and found it distinguishable. The court found that whereas the local noise regulations in question in *Burbank* clearly infringed upon federally preempted regulation of the navigable airspace, the plaintiff, Faux-Burhans, could point to no federal statute or regulation explicitly or implicitly preempting regulation of the size or scope of operations at a private airport (an airport not 'otherwise open to air travel in general'). *Id.* at 1174. The court stated, 'Certainly, these are all areas of valid local regulatory concern, none of which is federally preempted, and none of which inhibits in a proscribed fashion the free transit of navigable airspace. And just as certainly, no federal law gives a citizen the right to operate an airport free of local zoning control.' *Id.*
>
> We believe a similar rationale applies in the present case. *Faux-Burhans* involved use restrictions imposed on the creation of a private airport by local zoning ordinances. If a municipality, by zoning ordinances, may impose use restrictions on the creation of a private airport, we believe it may also impose use restrictions on a body of water within the municipality and prohibit the landing of seaplanes without being preempted by federal law. Just as the owner of an airplane does not have the authority to land wherever he chooses on land and must comply with local zoning ordinances, the owner of a seaplane does not have the authority to land a seaplane wherever he chooses.
>
> . . .
>
> Similar policy concerns are at issue in the present case. It is not feasible for Congress to determine how local land or bodies of water within a municipality are to be used in regard to the location of aircraft landing sites. The needs of a state such as Alaska, in which seaplanes play a vital commercial role, and Michigan, in which seaplanes are used primarily for recreation, are different, and this difference requires local, not national, regulation. The federal government, rather than 'preempting the field,' has not entered the field and exerts no control over the location of seaplane landing sites. If the federal government intended to preempt, we believe there would be a mass of regulations concerning seaplane landing sites, which simply do not exist. No federal statute or regulation addresses the action prohibited by the City of Lake Angelus ordinances or

> delineates the boundaries of local control in regard to seaplane landing sites. We find this absence of federal regulation significant. The Supreme Court, in *Pacific Gas & Electric Co. v. State Energy Resources Conservation and Dev. Comm'n*, 461 U.S. 190, (1983), stated that the Court must focus on whether the matter on which the local government asserts the right to act is in any way regulated by the federal Act and found that the only reasonable inference to be drawn from silence is that Congress intended local governments to continue to regulate. *Id.* at 208. If federal preemption were found in the present case, a "governmental vacuum" would occur because the federal government does not regulate the location of seaplane landing sites, and state and local governments would be shorn of their regulatory authority. *See Garden State Farms,* 77 N.J. at 449. The result would be entirely impracticable, and every lake in the United States would become a potential airport for seaplanes. In regard to the location of commercial airports, the FAA has indicated that it will not adopt regulations controlling local land use, because the needs of each locality are unique and different. *See* 14 C.F.R. § 157.7. Courts have recognized that federal aviation law does not preempt local regulation of the location of airports or heliports, which must comply with local zoning ordinances. Just as Congress did not intend to create a regulatory vacuum with respect to the location of commercial or privately operated airports and heliports on land, we believe Congress did not intend to create a vacuum with respect to the location of seaplane landing sites on water but left the matter to local control."

Gustavson at 788-89.

Many courts have followed *Gustavson*:

> "Although the Federal Aviation Act gives the federal government exclusive sovereignty over United States airspace, the area of land-use regulation is still within the purview of state government." *Emerald Dev. Co. v. McNeill*, 82 Ark App. 193, 198 (2003), (citing *Gustafson v. City of Lake Angelus*, 76 F. 3d 778 (6th Cir. 1996*), cert den.* 519 U.S. 823 (1996). In *Gustafson*, plaintiff landowner was forbidden by local ordinances from landing his seaplane on a nearby lake. Landowner brought suit against the city, its mayor, and police chief, and claimed that the ordinances were preempted by federal law and enforcement of the ordinances violated his constitutional rights. The appellate court reversed the trial court's grant of relief to landowner and affirmed grant of relief to the city defendants. The appellate court held that ordinances were not preempted by federal law because the Federal Aviation Act and its regulations concerning seaplanes and aircraft landing sites indicated that the designation of landing sites were not pervasively regulated by federal law, but instead were a matter left primarily to local control, and within the federal aviation framework, *local zoning ordinances governing land use had to be complied with* (emphasis added). The court found that the ordinances were reasonable limitations on the use of the lake and were rationally related to a legitimate government interest in safety."

Lucas v. People's Counsel for Baltimore Cnty., 147 Md. App. 209, (Ct. of Sp. Appeals 2002).

Similarly, in *Roma, III, Ltd. v. Board of Appeals of Rockport*, 478 Mass. 580 (Mass. Supreme Court, 2018), the court held:

> "Federal case law, however, has distinguished the preempted regulation of flight operations from the permitted regulation of aircraft landing sites. *Gustafson v. City of Lake Angelus*, 76 F. 3d 778 (6th Cir. 1996), *cert den.* 519 U.S. 823 (1996), the court upheld a municipal ordinance prohibiting seaplanes from landing on a lake, reasoning that Federal regulation of airspace and the regulation of aircraft in flight is distinct from the regulation of the designation of aircraft landing sites, "which involves local control of land ... use." Similarly, in *Condor Corp. v. City of St. Paul*, 912 F.2d 215, 219 (8th Cir. 1990), the court upheld a municipal land use decision denying a permit for the operation of a heliport, concluding that there was 'no conflict between a city's regulatory power over land use, and the [F]ederal regulation of airspace.' *See Hoagland*, 415 F.3d at 696-697 (town zoning ordinance designating heliport as special use requiring special permission of zoning board of appeals not preempted by FAA); *Faux-Burhans v. County Comm'rs of Frederick Cnty.*, 674 F. Supp. 1172-1174 (D. Md. 1987) *aff'd* 859 F.2d 149 (4th Cir. 1988), *cert. denied* 488 U.S. 1042 (1989) ('no [F]ederal law gives a citizen the right to operate an airport free of local zoning control'). Within the Federal aviation framework, land use matters are 'intrinsically local,' *Gustafson*, 76 F.3d at 784, and the zoning of a heliport 'remains an issue for local control.' *Hoagland*, 415 F.3d at 697."

See also Boch v. Tomassian, 23 LCR 175, Mass. Land Court (2015); *Broadbent v. Allison*, 155 F. Supp. 2d 520 (W.D.N.C. 2001) (where landowners sought to close down the entire airport rather than merely shift the direction of takeoffs and landings, they raised a land use issue, which is a matter for a state court and local government to resolve and is distinguished from the FAA's purview by 14 C.F.R. § 157.7(a), their claim was not preempted).

d. Where Airports or Seaplane Bases Are Owned or Operated by Local Governments, They Have Even More Extensive Rights to Regulate Free from Preemption by Federal law to Prevent Their Exposure to Nuisance Damages.

Even local noise regulations are free from preemption where the airports at issue are owned or operated by local authorities so that they can avoid nuisance liability. "Although state and local governments are precluded from regulating aircraft noise, the Supreme Court did not preclude municipalities, acting as owners and operators of airports, from imposing noise regulations, 'based on [their] legitimate interest in avoiding liability for excessive noise generated by the airports they own.' *Alaska Airlines Inc. v. City of Long Beach*, 951 F.2d 977 (9th Cir. 1991); *Burbank,* 411 U.S. at 635-36, n. 14 ('We do not consider here what limits, if any, apply to a municipality as a proprietor.'); *see Griggs v. Allegheny Cty.*, 369 U.S. 84, 88-90 (1962)." *City of Tipp City v. City of Dayton*, 204 F.R.D. 388 (S.D. Ohio 2001).

Here, the only seaplane "facility," namely the seaplane dock, is located on land leased by Commodore from the County of Marin ("County"). Thus, the County has authority to regulate the seaplane activities being conducted on and from County property in any manner necessary for it to avoid being held liable for the nuisance conditions being caused by the seaplane operations, including noise limitations.

Simply put, there is no FAA jurisdiction over the land use enforcement issues presented in the BCDC's September 15, 2020 NOV and nothing in the Sharp Letter supports any different conclusion.

2. The Sharp Letter Misstates the Status of the Operating Conditions in the Facility's Permit.

A statement on p. 3 of the Sharp Letter misstates the administrative record, claiming that the County Planning Commission "deleted prior [County Use Permit] conditions 1, 3 and 6 on the basis of federal preemption arguments...." Two points are relevant here. First, the Planning Commission did not delete any permit conditions from the Use Permit. Instead, Final Resolution No. PC17-007 only recommended (mistakenly) to the County Board of Supervisors that the 1981 Use Permit remain in effect except that three conditions contained therein be removed as being preempted by federal law. The Board of Supervisors, however, never took any further action on this recommendation. Thus, all permit conditions remain in effect today. Second, if the Board of Supervisors does consider acting on this recommendation, the RBEPA will object, pointing out that the Planning Commission was misinformed as to the application of federal law by Mr. Sharp and others and that those permit conditions are not preempted. However, that is an issue for another day because none of those three permit conditions, which all relate to airplane operations,[1] address the conditions on the land or the seaplane dock addressed in the BCDC's September 15, 2020 NOV. Thus, the Planning Commission recommendations have no relevance to BCDC's enforcement of the NOV.

3. The Public Would Seek Access to the Bay at Yolo Street but for Seaplane Obstructions.

In a particularly cynical passage in the Sharp Letter, he claims that:

> "Historically, we do not believe the public seeks to access the bay anywhere near the area in question."

We submit that to the extent the public does not seek access to Richardson Bay via Yolo Street, it is because Seaplane Adventures ignores the BCDC permit provisions mandating public access and does all it can to block such access. For example, Seaplane Adventures has parked one or both of its seaplanes on Yolo St. for large parts of the last few years, surrounded by orange stanchions and yellow caution tape, largely blocking any public access. Indeed, one of Seaplane Adventures' seaplanes has been parked on Yolo St. for months. And as if that anti-public access message was not clear enough, Seaplane Adventures has erected poles and extended a chain between it at the water's edge, across their unpermitted concrete boat ramp, with a sign reading

[1] The three conditions prohibited: 1) seaplane approaches over Strawberry Point except as necessary for safe operation; 2) no-power seaplane approaches except when necessary for safe operations, and 3) no seaplane operations exceeding 86 dB of noise.

"No Trespassing."[2] Of course, there is also the unpermitted avgas fuel tank on Yolo Street as well. Why would the public seek access with these obstacles to access and chains and warnings in place? If these major obstacles were removed, as they should be to meet the conditions of the BCDC permit, the public very likely would utilize this Bay access point, located so close to Highway 101, for boat, kayak and standup paddleboard launching and utilizing the public parking spots to do so. There are precious few such access points in Sausalito. Plainly, Seaplane Adventures discourages public access so it can have unlimited access to Yolo Street and its public parking areas for its plane storage and maintenance activities. Ensuring public access to the Bay is a fundamental goal of the BCDC's mission. BCDC required public access as part of the conditions attached to the BCDC permit issued that allowed Commodore to add fill to its property. These obstacles to public access (planes, chains and fence and avgas tank) must be removed.

4. BCDC Should Commence Assessment of Penalties and Take Other Enforcement Measures Until the Permit Holder Complies with the BCDC Permit and the NOV.

The BCDC NOV identifies two major violations of the BCDC permits issued for the operations being conducted by Commodore/Seaplanes at 240 Redwood Highway, Mill Valley 94941 ("Site"), and requests information to update the files for the Site. The first violation identifies that Commodore/Seaplanes has not dedicated a public access area or implemented the conditions outlined in an approved landscaping plan as required by the BCDC permit 1973.014.02. One of BCDC's core functions under the MPA is to protect public access and to ensure projects within its jurisdiction provide maximum public access to the Bay shoreline. The NOV clearly specifies that "within 60 days of issuance of this letter, we expect you to restore the public access to permit compliant conditions." Yet, nine months later, and the Site remains in the same condition as it was prior to issuance of the NOV, yielding no public access to the shoreline. BCDC must begin penalizing the site owner for failing to fully and timely respond to BCDC's requirements and operating in violation of its permits.

The second violation specified in the NOV identifies unauthorized fill and structures at the Site, including, but not limited, to a floating dock, a wooden ramp for seaplanes, operation of two to three seaplanes beyond the approved flying hours, and a fuel tank (stored within 50 feet of the shoreline). These should all be required to be removed as well. As we pointed out to the County and BCDC, the lease from the County to Commodore does not include the land beneath the illegal floating dock additions. Thus, this is not simply a permit amendment issue. Seaplane Adventures would also have to obtain an amended lease, which it is not seeking to our knowledge. We would oppose it if they did. Second, Seaplane Adventures has no need for these additions. They are improper and unnecessary fill. Moreover, they are not being truthful when they say these additions have some relation to storm repair.

[2] These obstacles put the lie to Mr. Sharp's claim that "Seaplane does not maintain any barrier-like structure, fencing, docks or floats." He also ignores the fence across the entrance to Seaplane's floating dock.

5. The Health and Environmental Impacts of the Lead Emissions from Seaplane Adventures' Seaplanes Need to be Evaluated.

In addition to the BCDC Complaint, we sent a letter on behalf of RBEPA on December 17, 2020, in which we requested a formal response from BCDC to our request that Commodore/Seaplanes be required to perform an environmental assessment in connection with the unauthorized fill identified in the NOV. We have pointed out on numerous occasions that there is an ongoing and cumulative risk of lead exposure from past and current operations by Commodore/Seaplanes to sensitive receptors in the area. As we noted in our December 17, 2020 letter, for the years 2016-2019, Seaplane Adventures' DHC-2 aircraft released approximately 70 pounds of toxic lead directly into the air in and around Richardson Bay. Lead is a toxic substance dangerous to humans, especially children, when bioavailable, as in the air emissions from Seaplane Adventures' DHC-2 aircraft, which burn leaded aviation gas. After months of silence, we wrote again to BCDC on May 6, 2021, requesting BCDC provide an update and formal response on its consideration of the lead contamination issues. To date, we have not received a response from BCDC. With COVID-19 restrictions being lifted, Seaplane Adventures is ramping up its operations and, in turn, exacerbating and/or continuing to contribute to the cumulative lead contamination at the Site and around Richardson Bay.

Conclusion.

We request that BCDC: 1) take immediate enforcement action and/or revoke the BCDC permits issued to Commodore/Seaplanes for their ongoing violations and lack of compliance with the conditions specified in the NOV; 2) provide a formal response to our request that BCDC require that the current property owner and Seaplane Adventures perform an environmental assessment to address lead concerns.

We further request that BCDC act promptly in resolving this case and, pursuant to the Commission's Enforcement Procedures, impose applicable civil penalties for the facility owner's failure to respond to the NOV requirements pursuant to Title 14 CCR §§11301-303 and the timeline to resolve enforcement cases required to be created and implemented by the Commission pursuant to Government Code Section 66640.1.

RBEPA looks forward to your response.

Yours very truly,

John D. Edgcomb

cc: Marin County Deputy Counsel J. Brady (JBrady@marincounty.org)
Supervisor Stephanie Moulton-Peters (SMoulton-Peters@marincounty.org)

ATTACHMENT B

TIDELANDS LEASE AGREEMENT

THIS LEASE, is entered into this 9th day of July, 2013, by and between **COUNTY OF MARIN**, a political subdivision of the State of California, hereinafter referred to as "County" and **COMMODORE MARINA, LLC**, located at 242 Redwood Highway, Mill Valley, hereinafter referred to as "Lessee."

WITNESSETH

WHEREAS, County is the owner of certain real property situated in Richardson Bay, Sausalito, County of Marin, State of California, hereinafter called "Property", commonly known as Assessor Parcel No. 052-247-03; and

WHEREAS, the Property was purchased by the County in 1983 from the Northwestern Pacific Railroad Company as part of the Mill Valley to Sausalito rail line acquisition; and

WHEREAS, a floating dock owned and operated by Commodore Marina, LLC, of approximately 172 feet in length exists on the Property and predates the County's ownership of the property; and

WHEREAS, the floating dock has been utilized for Seaplane operations since approximately 1945 and is now under management of Lessee; and

WHEREAS, Marin County Community Development Agency (CDA) issued the Seaplane operation a Use Permit in 1953 and later modified in 1981 applying six conditions of use; and

WHEREAS, the dock is considered an encroachment onto County lands and Lessee desires to lease a portion of the Property for continued use, maintenance, and management of said seaplane dock.

NOW, THEREFORE, in consideration of the following terms and conditions, the parties hereto agree as follows:

1. Description of Premises. The Property is described in the deed to the County of Marin, Deed Reference No. 1983-0065632 and more particularly described

 7/9/13 CM

under "Parcel T" of said Deed, "Parcel One", attached hereto as Exhibit "A", and by reference made a part hereof. Said Property, as shown in Exhibit "B" comprises approximately 1.2 acres more or less of submerged tideland, situated in Richardson Bay, County of Marin, State of California, known as Assessor's Parcel No. 052-247-03. The Premises herein leased is described as an area along the northerly boundary line of the Property of approximately 172 lineal feet as shown in Exhibit "C", attached hereto and by reference made a part hereof.

2. Use. Lessee agrees to maintain and manage the Premises as a Seaplane dock as described herein, and subject to restrictions listed under Section 7.

Any other uses by Lessee not specifically granted herein shall be requested by written notice to County. Lessee agrees to comply with all applicable laws and regulations when using Premises for said purposes. Lessee agrees there shall be no unreasonable interference with navigation by any work herein authorized. Lessee further agrees that no attempt shall be made by Lessee to forbid the full and free use by the public of all navigable waters near Premises.

3. Term. The term of this Lease shall be ten (10) years, commencing on execution of this Lease, as dated above.

4. Rent. Lessee shall pay County Two Hundred Dollars ($200) per month for the entire term. Lessee has the option to pay the Rent in advance on an annual basis in the amount of Two Thousand Four Hundred Dollars ($2,400) or less with a ten (10%) percent annual payment discount. Rent is subject to the accumulative increase over the previous year in the Consumer Price Index (CPI) Pacific Cities, San Francisco-Oakland-San Jose, All Urban Consumers (CPI-U). County shall calculate the increase based on the latest CPI data available as of the anniversary date and shall issue a Notice to Lessee with demand of payment. Said Rent shall be paid by Lessee regardless of Lessee's receipt of an invoice from the County. If the resulting number is less than the Lease rent amount in effect, no adjustment shall be made in the Lease amount for the coming year. If the resulting number is greater than the Lease rent amount in effect, the Lease amount for the coming year will be adjusted to that number. If for any reason the CPI is discontinued then the parties hereto shall agree on another index to provide the proper adjustments, and the County shall have the final say in the decision. Rent shall become due and payable upon commencement of this Lease.

Said rent shall be made payable to the County of Marin, and mailed to:

5. Construction, Reconstruction and Maintenance. Lessee shall be responsible for the maintenance and upkeep of their improvements referred to in Section 1, in a safe condition in accordance with all applicable laws, ordinances, rules, orders and regulations of any federal, state, regional, county or municipal entities having jurisdiction. No enlargement or expansion of the uses of the existing improvements nor physical expansion of said dock shall be allowed.

6. Revocation/Termination. Violation, revocation or cancellation of any required permit shall automatically, upon notice, terminate this lease. Upon any termination of this lease, Lessee shall have sixty (60) days after receipt of written notice to do so from County to remove the dock, and all necessary incidents thereto and all prepaid rent shall be prorated and returned to Lessee.

7. Limiting Conditions. County and Lessee agree that this lease shall be limited by, and that Lessee shall be bound by said aforementioned Use Permit which allows for four commercial seaplanes at the dock, limiting two Seaplanes for revenue producing purposes. The conditions of approval include the following:

a. No approaches over Strawberry Point except in the judgment of the pilot when necessary for safe operation. This condition is not intended to allow repeated approaches over Strawberry Point under unsafe conditions. Strawberry Point shall be defined as the area south of the Seminary.
b. Richardson Bay to be used for arrivals and departures only, i.e., no touch and go operations. A school shall be allowed to operate from the base, but training maneuvers, with the exception of sailing or idling type and initial takeoff and final landing must take place in other areas.
c. No power approaches to be used except when necessary for safe operation.
d. Transient airplanes will not be allowed the use of base facilities by the operator.
e. Maximum of four commercial aircraft at the base, but only two may be simultaneously used for revenue producing purposes.
f. At no time should an aircraft operated by the commercial operator exceed 86 decibels.

8. Insurance. Lessee, at Lessee's own cost and expense shall maintain liability insurance on an "occurrence" basis for the benefit of the Lessee as named insured and the County, its officers, elected and appointed officials, agents, boards,

commissions, and employees as additional insured against claims for bodily injury, death, personal injury and property damage liability with a limit of not less than $5,000,000 Combined Single Limit, per occurrence and aggregate in connection with Lessee's use of the Premises. All such insurance shall be effected under valid and enforceable policies and shall be issued by insurers licensed to do business in the State of California and with general policy holder's rating of at least A and financial rating of VIII or better as rated by A.M. Best's Insurance reports and shall provide that County shall receive thirty (30) days written notice from the insurer prior to any cancellation of coverage or diminution of limits.

On or before the date this Lease entered into, Lessee shall furnish County with a certificate evidencing the aforesaid insurance coverages and renewal policies or certificates shall be furnished to County at least thirty (30) days prior to the expiration date of each policy.

9. Indemnification. County shall in no case be liable for any damage or injury and Lessee hereby waives all claims against County for damage, injury or death to any person or property arising or asserted to have arisen from any cause whatsoever. Lessee agrees to indemnify, hold harmless and defend County of and from any and all loss, cost, damage, liability and expense, including attorneys' fees arising out of any claim for damage, injury or death to any person or property in, on or about the Premises or any improvements thereon from any cause whatsoever

Lessee hereby waives any claim against County, its Board of Supervisors, officers, employees or agents for any and all damage or loss caused in connection with, or as a result of the denial of any permit, or due to any suit or proceedings directly or indirectly attacking the validity of this agreement or any part hereof, or as a result of any judgment or award in any suit or proceeding declaring this agreement null, void or voidable, or delaying the same or any part thereof from being carried out.

10. Assignment. Lessee shall not transfer or assign this lease or any interest therein either voluntarily or by operation of law without first entering into a **Consent to Assignment** and payment of concurrent transfer fee and processing costs in the amount of Five Hundred Dollars ($500.00). Consent to Assignment by County shall not be unreasonably withheld. Consent to one assignment by County shall not be deemed consent to any further or subsequent assignment.

11. Possessory Interest. Lessee acknowledges that they have been informed that under Section 107 of the Revenue and Taxation Code of the State of California, the Marin County Assessor is required to place a value on all possessory interests. Possessory interest is defined as the right of a private taxable person or entity to use property owned by a tax-exempt agency for private purposes. A possessory interest tax

will, therefore, be levied by the County Assessor on this property against the Lessee as of the lien date, which is March 1 of each year.

12. Notices. Any notice, demand or other communication required or permitted under the provisions of this lease shall be effective when in writing and either personally delivered or addressed and deposited, postage prepaid, certified or registered, in the United States mail, as follows:

County: County of Marin
Department of Public Works
Real Estate Division
P. O. Box 4186, Civic Center
San Rafael, CA 94913-4186

Lessee: Commodore Marina, LLC
242 Redwood Highway
Mill Valley, CA 94941
Attn: Steven Price

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Tidelands Lease Agreement the day and year first above written.

COUNTY:

Judy Arnold, President
Board of Supervisors

Date: 7/9/13

ATTEST:

Deputy Clerk

Approved as to form:

Deputy County Counsel

LESSEE:

Steven Donald Price
Commodore Marina, LLC

Date: 6/12/13

EXHIBIT "A"

PARCEL "T"

ALL THAT real property situated in the County of Marin, State of California, described as follows:

PARCEL ONE:
BEGINNING at the Northwest corner of Petaluma and Shasta Streets being 400 feet Northeasterly from Bolinas Street in the Town of New Sausalito, thence Northwesterly along the Southerly line of Petaluma Avenue 240 feet to the Easterly line of Yolo Street, thence Southwesterly at right angles 180 feet to the shore line of Richardson's Bay at ordinary high tide, thence along said shore line by the following true courses and distances, South 21 1/2° East 132 feet, South 29 1/4° East 117 feet to the Westerly line of Shasta Street and thence Northeasterly 240 feet and eleven inches to the point of beginning.

BEING all the tide lands in Block No. 164 in said town of New Sausalito according to the map entitled, "Map No. 1 of Salt Marsh and Tide Lands situate in the County of Marin, State of California", and is now on file in the office of said Commissioners at San Francisco.

EXHIBIT "B"

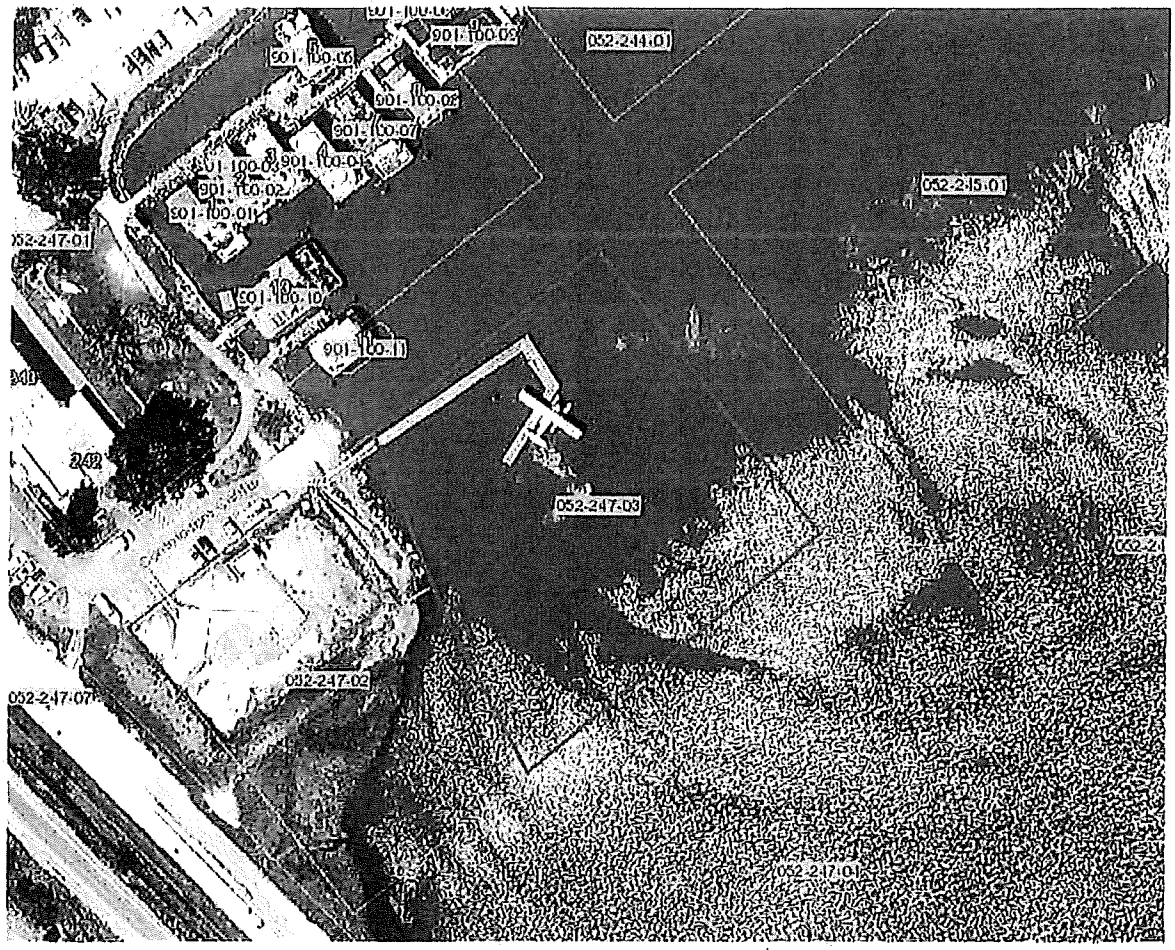

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EXHIBIT "C"