

RED Exhibit B: Violation Report and Complaint, ER2019.063.00 with exhibits including corrected Exhibit 2 and Corrected Exhibit 21, i.e. w/o Attachments 1 and 4 and with Attachments 2 and 3

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Via Certified Mail and Email

July 29, 2022

Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109
AND

Seaplane Investment, LLC
242 Redwood Highway
Mill Valley, CA 94941

Email: Lou Vasquez, lou@bldsf.com

SUBJECT: San Francisco Bay Conservation and Development Commission (BCDC) Enforcement Case ER2019.063.00

Dear Lou Vasquez:

This letter commences a formal enforcement proceeding for the two unresolved violations (and others) outlined in the letter issued on October 8, 2021. Your opportunity to resolve those two violations using standardized fines will terminate within 35 days of issuance of this letter.

Enclosed you will find a Violation Report/Complaint for Administrative Imposition of Civil Penalties in BCDC Enforcement Case ER2019.063.00, which alleges that you have violated and continue to violate the McAteer-Petris Act and BCDC Permits 1973.014.01 and M1985.030.01 at APN 052-247-01 and APN 052-247-02, and on the Yolo Street right-of-way. This site is also known by its address, 242 Redwood Highway, Mill Valley, Ca.

You will also find a copy of BCDC's enforcement regulations. The regulations establish BCDC's administrative procedures for enforcement cases, including the information you must provide in your Statement of Defense responding to the allegations made in the Violation Report/Complaint.

A hearing to address these allegations has been scheduled before BCDC's Enforcement Committee on September 21, 2022, at 9:30 am. You must submit a Statement of Defense to BCDC on or before September 2, 2022, pursuant to BCDC Regulation Section 11322(a). Please note BCDC's current office address: 375 Beale St., Suite 510, San Francisco, CA 94105.



Seaplane Adventures LLC
Enforcement Case ER2019.063.00

July 29, 2022
Page 2

If you have any questions about BCDC's enforcement procedures feel free to contact me by phone or email.

Sincerely,

Adrienne Klein

ADRIENNE KLEIN
Principal Enforcement Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3609
Fax: 415-352-3606
Email: adrienne.klein@bcdc.ca.gov
Website: www.bcdc.ca.gov

cc: Law Offices of John E. Sharp 24 Professional Center Parkway, Suite 110 San Rafael, CA
94903 ATTN: John E. Sharp, Esq. Email: admin@johnsharplaw.com
Aaron Singer, aaron@seaplanes.org

Enclosures: Violation Report/Complaint with Exhibits, ER2019.063.00
BCDC Enforcement Regulations with Appendix I
Statement of Defense Form

AK/mm

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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Sent Via Certified and Electronic Mail

July 29, 2022

Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109

AND

Seaplane Investment, LLC
242 Redwood Highway
Mill Valley, CA 94941

Email: Lou Vasquez, Manager
<lou@bldsf.com>

SUBJECT: Notice of Violation of the McAteer-Petris Act: Unauthorized Activity in BCDC's San Francisco Bay & Shoreline Band Jurisdiction

BCDC Case Number: ER2019.063.00

Permit Numbers: 1973.014.01 and M1985.030.01

Date Mailed: July 29, 2022

35th Day after Mailing: September 2, 2022

60th Day after Mailing: September 27, 2022

Enforcement Committee Hearing Date: September 21, 2022

VIOLATION REPORT/COMPLAINT FOR ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES

ENFORCEMENT CASE ER2019.063.00

Seaplane Investment, LLC

(Respondent)

**Guidance to
Respondent**

FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND



DESIST ORDER, A PERMIT REVOCATION ORDER, AND/OR A CIVIL PENALTY ORDER WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.

The San Francisco Bay Conservation and Development Commission is issuing this Violation Report/Complaint for the administrative imposition of civil penalties and the enclosed statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of either the Commission's laws or a Commission permit. The Violation Report/Complaint contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and refers to all pertinent evidence that the staff currently relies on. All the evidence that this report refers to is available in the enforcement file for this matter located at the Commission's office. To view the enforcement file and/or to have copies made at your expense, contact Adrienne Klein of the Commission's staff at 415-352-3609 or adrienne.klein@bcdc.ca.gov or Brent Plater of the Commission's staff at 415-352-3628 or brent.plater@bcdc.ca.gov.

The staff also intends that the Violation Report/Complaint inform you of the nature of the possible violation so that you can fill out the enclosed Statement of Defense form and otherwise be prepared for Commission enforcement proceedings.

Receipt of the Violation Report/Complaint and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold an enforcement hearing, and the Commission will ultimately determine what, if any, enforcement action to take.

Careful reading and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the violation report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact as quickly as possible Adrienne Klein at 415-352-3609 or adrienne.klein@bcdc.ca.gov or Brent Plater at 415-352-3628 or brent.plater@bcdc.ca.gov. Thank you for your cooperation.

**Violation Report and
Complaint for Administrative
Imposition of Civil Penalties**

I. Person or persons believed responsible for illegal activity:

Seaplane Investment, LLC

II. Brief description of the nature of the illegal activity:

- A. Violation 1. Respondent is violating Permit 1973.014.01, Special Condition II.C.1.a. and II.C.1.b. and II.C.4.b. and II.C.4.c., Public Access, by failing to provide some of the required public access improvements including portions of the public shore pathways,



all the public shore signage and the public access connection from the site to the County public access west of the site.

- B. Violation 2. Respondent is violating Permit 1973.014.01, Special Condition II.C.2, Maintenance, by failing to maintain some of the provided public access improvements including the existing public shore pathways and landscaping.
- C. Violation 3. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or its shoreline band in the Yolo Street right of way. Some of this unauthorized fill also violates Permit 1973.014.01, Special Condition II.D, Use of Solid Fill, by using areas designated to be used only for landscaping, landscaped public access, and pedestrian and bicycle pathways for private use. The unauthorized fill includes:
 - 1. Vehicle parking and/or equipment storage;
 - 2. Seaplane storage, repair and maintenance;
 - 3. Seaplane fueling tank (in place as of at least 2003); and
 - 4. An approximately three-foot-high, elevated asphalt path across Yolo Street to allow for pedestrian access during high tides (in place as of at least 2008).
- D. Violation 4. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of an unauthorized helicopter landing pad and four paved walkways on Block 164 (in place as of 2008).
- E. Violation 5. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay consisting of expansion of an existing u-shaped floating dock during three separate episodes by adding a “cross-beam” dock, and three fingers, one long and two short, two pilings and relocating an on-water fueling station on property owned by Marin County (on or about 2011, 2018 and 2019).
- F. Violation 6. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of excavation and fill to construct a new (and apparently expanded) concrete and rebar water access ramp in the Yolo Street right-of-way (in March 2022).

III. Description of and location of property on which illegal activity occurred:

The violations are occurring at APN 052-247-01 (Block 164) and APN 052-247-02 (Block 167), which are located on either side of Yolo Street, a Marin County public right-of-way. The violations are also occurring on property owned by Marin County. Exhibits 1 and 2.

The property is at low elevation with much of it located in the Commission’s San Francisco Bay jurisdiction as defined by Section 66610(a) of the McAteer-Petris Act, including the helicopter port and much of the Yolo Street right-of-way. As a result of its low elevation, the property regularly floods. Exhibits 3, 4 and 5.



IV. Name of owner, lessee (if any), and other person(s) (if any) who controls property on which illegal activity occurred:

Seaplane Investment, LLC .

V. Approximate date (and time if pertinent and known) illegal activity occurred:

The violations summarized in Section II and described in further detail in Section VI have been ongoing for many years except for the water access ramp construction project that occurred in March 2022.

VI. Summary of all pertinent information currently known to the staff in the form of proposed findings with references to all pertinent supporting evidence contained in the staff's enforcement file (the file is available at the Commission's offices for your review; you should call the above listed staff enforcement officer to arrange to review the file or obtain copies of any or all documents contained in the record at your expense):

- A. Permit 1973.014.01, which applies to APN 052-247-01 (Block 164), was originally issued to Commodore Marina, LLC, on August 24, 1973. The originally authorized work was to have been completed by March 1, 1975. In the Bay, the amended permit authorizes fill placement for landscaped public access and landscaping to improve shoreline appearance, berm construction around the heliport landing pad, and for an existing 11 houseboat marina. In the shoreline band, the permit authorizes placement of fill to raise the grade over 0.66 acres of the site, office building renovation, and 17 parking spaces. The permit has been amended three more times to allow completion of a single houseboat reconstruction project and relocation of two houseboats, on November 21, 2017 (Amendment Two), September 2, 2020 (Corrected Amendment Two), April 16, 2021 (Amendment Three) and January 25, 2022 (Amendment Four). Exhibit 6A.
- B. On September 17, 1974, Marin County recorded a Notice of Restrictions to dedicate the public access satisfying what was at the time Special Condition II.B of Permit 1973.014.00 and which is now Special Condition II.C of Permit 1973.014.01. Exhibit 6B
- C. Permit M1985.030.01, which applies to APN 052-247-02 (Block 167), was originally issued to Commodore Helicopters, Inc., and Walter Landor on August 25, 1988, and amended once on December 28, 1989. In the Bay the permit authorizes repair of a tidal flap gate, and in the shoreline band it authorizes placement of 23 cubic yards of aggregate over a 640 square foot area to protect a helicopter landing pad from flooding, installation of a fuel storage tank and fuel containment area to meet safety standards, paving of a 1,400 square foot area and fill of a 2,370 square foot area with 88 cubic yards of fill. The authorization is entirely after-the-fact. Exhibit 7.
- D. On or before December 2003, Respondent or a predecessor placed an unauthorized fuel tank in the Yolo Street right-of-way. Exhibits 8 and 9.

- E. On or before September 2008, Respondent or a predecessor installed a second, unauthorized helicopter landing pad and four unauthorized walkways. Exhibits 10 and 11.
- F. In 2011, 2017, and 2109 Respondent conducted three distinct, unauthorized dock expansion and/or repair activities.¹ Exhibits 12, 13, 14, 15, and 16.
- G. On December 12, 2019, BCDC received a report of possible violations at the site consisting of failure to provide the required public access and installation and use of unauthorized fill consisting of multiple dock expansions, a fuel tank and fueling lines seaplane repair and maintenance with no containment of possible contaminants Exhibit 17.
- H. On January 31, 2020, BCDC staff conducted an unscheduled site visit to Commodore Marina and Seaplane Adventures. During this site visit, staff observed that the boat docks did not comply with site plan located in the permit file. Staff learned that two pilings had been replaced and that the fueling station on the dock had been relocated from a pre-existing dock section to a location on the illegally expanded dock. Staff observed the absence of required public shore signs; a dumpster located in a required public access area; and severe shoreline erosion adjacent to the required public shoreline. Staff took site visit notes and photographs. Exhibit 18A and 18B.
- I. On February 18, 2020, BCDC issued an initial contact notice to Respondent's predecessors in interest citing violations of Permits 1973.014.01 and M1985.030.01 and the McAteer-Petris Act. The letter requests the permittees to contact BCDC staff within 15 days. Exhibit 19.
- J. On March 2, 2020, John Sharp, Law Offices of John Sharp, contacted BCDC to state that he represents a predecessor in interest, and that they had only recently seen BCDC's letter. He requested that BCDC contact him to discuss a reasonable time for his clients to respond.
- K. Between March 2 and September 15, 2020, progress was delayed due to the onset of the COVID-19 pandemic. BCDC responded to Mr. Sharp, parties engaged in a telephone call and both entities agreed to conduct research.
- L. On September 15, 2020, BCDC issued another letter to Respondent's predecessor in interest. The letter summarized the two permits' requirements, the violations of the permits and the McAteer-Petris Act identified at that time, and provided direction to correct the violations. The letter identified two violations at the site consisting of:
 - a. Multiple violations of Permit 1973.014.01, Special Condition II.C., Public Access, consisting of landscaping, pathway, and signage deficiencies; and

¹ Respondent states that the work that occurred in 2017 was an emergency. A BCDC permit is required for emergency work. Respondent did not contact BCDC to provide pre-notification of this storm damage and their intent to conduct work in SF Bay.



- b. Multiple violations of Permit 1973.014.01, Special Condition II.D., Solid Fill, consisting of floating fill for Seaplane access docks, a fuel tank, seaplane storage, derelict fencing and docks and a water access ramp overlay made of Trex boards².

The letter requested the following additional information: A summary of other site development that may have occurred between permit issuances and the date of the letter; clarification of ownership of the Yolo Street right-of-way; Preparation and submittal of a site survey to identify the location of the Bay (located at MHW 5.47 feet NAVD88) and the shoreline band; whether the flap gate was functional; and whether there were plans to pursue any fill or shoreline protection in light of the extensive erosion of the existing protective structures. The letter asked for a response within 60 days. Staff attached a copy of each amended permit to the letter. Exhibit 20.

- M. On November 13, 2020, January 15, 2021, and June 15, 2021, Respondent's counsel submitted three letters with information regarding the site history, current site uses, an airport master record, and general responses to BCDC allegations but did not resolve any of the violations. On January 19, 2021, Respondent also submitted a surveyed metes and bounds map of the permit required public access area (stippled) described in the recorded legal instrument, responsive to one of staff's requests. Exhibit 21, Attachment 3.
- N. On July 14, 2021, the parties conducted a virtual meeting. During the meeting, BCDC staff directed Respondent to submit a permit amendment application by August 30, 2021, so that BCDC could assess and potentially resolve the violations with an after-the-fact authorization of the unauthorized fill and uses that had occurred at the site. Staff also directed Respondent to provide a public access plan for staff review and approval and subsequent implementation by Respondent. Because BCDC cannot authorize fill on a third party's property without their consent, staff also directed Respondent to file a quiet title action for the Yolo Street right-of-way if it claimed title to it. Exhibit 21, Attachment 2.
- O. On July 21, 2021, title for both parcels transferred from Commodore Marina LLC to Seaplane Investment LLC. Exhibits 1 and 2.
- P. On August 25, 2021, Mr. Sharp informed staff that Respondent could not meet the August 30, 2021, deadline to submit a permit amendment application.
- Q. On September 3, 2021, to facilitate Respondent's compliance with the public access provisions of the permit, BCDC staff provided with them with a proposed public access plan created using a metes and bounds map of the dedicated public access area. Exhibit 21, Attachment 3 (see blue line and notes in yellow).

² This structure was entirely removed and reconstructed by Respondents on March 14, 2022, without BCDC authorization, and is the subject of ECD2022.01.



- R. Between July 14 and October 8, 2021, Respondent did not resolve any of the violations nor did they submit a permit amendment application. On October 8, 2021, BCDC issued a letter to Shannon Sullivan, Authorized Representative, Seaplane Investment LLC, and Mr. Sharp, Counsel to Seaplane Adventures, LLC, commencing standardized fines pursuant to Regulation 11386 for five violations:
- a. Violations 1 and 2. Two permit assignments necessary because of the title transfer;
 - b. Violation 3. Failing to complete houseboat renovations and relocation by the August 31, 2021, deadline authorized by BCDC Permit 1973.014.03;
 - c. Violation 4. The unauthorized placement of fill and uses consisting of installation of extensions to the Seaplane access docks, a Seaplane fueling tank, parking vehicles, and storing planes and a ramp overlay made of Trex boards in the Yolo Street right-of-way; and
 - d. Violation 5. The failure to comply with the public access requirements of the permit consisting of the failure to install and/or maintain landscaping, pathways, signage, and a connector pathway and to allow parking in a portion of the public access area. Exhibit 21.
- S. On January 3, 2022, Lou Vasquez, Manager, Seaplane Investments LLC, executed two permit assignment forms for BCDC Permits 1793.014.01 and M1985.030.01, respectively, resolving Violations 1 and 2 as described on October 8, 2021. Exhibit 22.
- T. On January 12, 2022, Mr. Sharp submitted a brief letter summarizing the site history and describing future use of the property.
- U. On January 25, 2022, Violation 3, the houseboat project, was resolved by the issuance of an after-the-fact and third extension of completion time through October 31, 2021. Exhibit 6A.
- V. On February 28, 2022, Mr. Sharp submitted a letter to BCDC to which was attached an Abbreviated Regionwide Permit Application requesting permission to install and use existing boat docks, an existing seaplane launch ramp (composite lumber placed on grade) and an existing fuel tank, public access improvements, ADA parking and asphalt transitions along shoreline access path. The application included site plans and photographs. Exhibit 23.
- W. On March 14, 2022, a member of the public notified BCDC that Seaplane Adventures was constructing new structures in the Bay. The report included clear, low tide images of the unauthorized excavation and fill placement work taking place in BCDC's Bay and/or shoreline band jurisdictions. A staff photograph of the completed project, dated April 22, 2022, is also included. Exhibits 24A-E.
- X. On March 15, 2022, the Executive Director issued ECD2022.002.00 to Respondent to halt unauthorized work in BCDC's San Francisco Bay and shoreline band jurisdictions and require its removal and restoration of the site to its prior condition. Respondent



undertook this unauthorized work less than one month after applying to BCDC for related work. Exhibit 25.

- Y. On March 30, BCDC staff responded to the application requesting the following information to enable it to be filed as complete: Confirmation of staff's summary of the project description and provision of the missing information; a survey of the BCDC jurisdiction and quantification of the fill to be placed therein; a set of project plans with details about what they should portray; an application processing fee; proof of legal interest for the private and public property, local approval from Marin County for the project including for the work in the Yolo Street ROW, other agency approvals such as from the RWQCB, a CEQA determination, a list of interested parties, a public access proposal, a flooding assessment, and information about whether and how fueling of Seaplanes is conducted to preclude adverse impacts to water quality. The letter also directed Seaplane Investment, LLC to post a public notice; that staff would not consider the recent unauthorized ramp construction project as part of this application; and that Seaplane Adventures must remove the unauthorized ramp work as required by ECD2022.011.00. Exhibit 26.
- Z. On June 14, 2022, the Executive Director re-issued ECD2022.002.01 to Respondent. Exhibit 27.
- AA. On July 14, 2022, Mr. Sharp submitted a letter that claims the property and operation is exempt from BCDC jurisdictions because it is regulated by the Federal Aviation Administration (FAA). Exhibit 28.
- BB. Respondent has applied for and obtained two BCDC permits for the fill and uses at the property and taken assignment of these rights and obligations. Respondent has two valid BCDC Permits that have governed its activities for decades. Neither permit has ever been challenged or held to be preempted by federal law. None of the violations alleged here address the FAA's field of regulation.
- CC. As of the date of mailing of this Violation Report, Respondent has retained the unauthorized concrete ramp it has been twice ordered to remove by BCDC's Executive Director; has not installed the missing public access improvements and maintenance, nor even provided staff with a plan to do so; and has not responded to staff's application filing letter dated March 30, 2022.

VII. Provisions of law or Commission permit that the staff alleges has been violated:

McAteer-Petris Act Section 66632(a)

Permit 1973.014.01, Special Condition II.C.1.a. and II.C.1.b. and II.C.4.b. and II.C.4.c.,
Public Access

Permit 1973.014.01, Special Condition II.C.2, Maintenance

Permit 1973.014.01, Special Condition II.D, Use of Solid Fill

Permit M1985.030.01



VIII. The staff is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding. The amount of the proposed penalty is as follows:

Civil liability may be administratively imposed by the Commission on any person or entity for any violation of this title, or any term or condition of a permit issued by or on behalf of the Commission, in an amount which shall be not less than ten dollars (\$10), nor more than two thousand dollars (\$2,000), for each day in which that violation occurs or persists. The Commission may not administratively impose a fine of more than thirty thousand dollars (\$30,000) for a single violation.

Commission staff proposes a penalty of \$180,000 for the following two violations of the MPA. In determining the amount of administrative civil liability (penalty), staff has considered: (1) with respect to each violation, (A) the nature, circumstance, extent, and gravity of the violation, (B) whether the violation is susceptible to removal or resolution, and (C) the cost to the State of California in pursuing enforcement action; and (2) with respect to the violators, (A) the ability to pay, (B) the effect on their ability to continue in business, (C) any voluntary removal or resolution efforts and any prior history of violations, (D) the degree of culpability, (E) the economic savings, if any, resulting from the violation, and (F) such matters as justice may require.

Prohibited Activity	Permit Provision Violated	Total Days	Proposed Daily Penalty Amount	Proposed Total Penalty
Violation 1. Failing to provide all the required public access improvements consisting of public shore pathways, landscaping, signage, and a public access connection from the site to the County public access west of the site.	Permit 1973.014.01, Special Condition II.C.1.a. and II.C.1.b. and II.C.4.b. and II.C.4.c., Public Access	47 years since original permit expiration on March 1, 1975 909 days since January 31, 2020 staff site visit	\$1,500	\$30,000
Violation 2. Failing to maintain some of the required public access improvements.	Permit 1973.014.01, Special Condition II.C.2, Maintenance	909 days since January 31, 2020 staff site visit	\$1,000	\$30,000
Violation 3. Using legally filled portions of Block 167 and Yolo Street,	McAteer-Petris Act Section 66632(a)	19 years since 2003	\$2,000	\$30,000



Prohibited Activity	Permit Provision Violated	Total Days	Proposed Daily Penalty Amount	Proposed Total Penalty
designated to be used only for public access, for private uses such as parking, equipment storage, Seaplane storage, repair and maintenance, fuel tank, and asphalt path across Yolo Street.	Permit 1973.014.01, Special Condition II.D, Use of Solid Fill,			
Violations 4. Placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of a second helicopter landing pad (asphalt) and four walkways (also asphalt) on Block 164.	McAteer-Petris Act Section 66632(a)	14 years since 2008	\$1,000	\$30,000
Violations 5. Placing unauthorized fill in San Francisco Bay on at least three separate episodes consisting of expansion of an existing u-shaped floating dock, pilings, and relocating a fuel station.	McAteer-Petris Act Section 66632(a)	11 years since 2011	\$1,000	\$30,000
Violations 6. Placing unauthorized fill in San Francisco Bay consisting of excavation and fill to construct a new (and apparently expanded) concrete and rebar water access ramp in the Yolo Street right-of-way.	McAteer-Petris Act Section 66632(a)	137 days since March 14, 2022	\$2,000	\$30,000
			Total Penalty	\$180,000



IX. Any other statement or information that the staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violation:

In addition to the civil penalty order mentioned in Section VIII, above, the Commission's staff will also recommend a cease and desist order that will require Respondent to:

1. Remove all unauthorized structures and fill placed in BCDC's jurisdiction unless after-the-fact BCDC authorization is obtained by a date certain.

X. List of staff exhibits:

Exhibit 01: Real Quest Property Detail Reports and Grant Deeds for APNs 052-247-01 (Block 167) and 052-247-02 (Block 164)

Exhibit 02: Real Quest depiction of Blocks 164, 167 and Marin County property

Exhibit 03: Undated aerial Image of property location within Marin County

Exhibit 04: Undated aerial overview of property at closer range

Exhibit 05: Undated but most recent available Google Earth aerial image of property with street labels, zoomed in close enough to identify the unauthorized fill and uses

Exhibit 06A: Permit 1973.014.01, and three time extensions (Amendment Two, Corrected Amendment Two, Amendment Three and Amendment Four)

Exhibit 06B: Recorded Legal Instrument dedicating public access area

Exhibit 07: Permit M1985.030.01

Exhibit 08: December 2003, aerial image depicting second fuel tank and single helicopter landing pad

Exhibit 09: January 31, 2020, photographs showing aircraft fueling tanks

Exhibit 10: September 2008, aerial image depicting second helicopter landing pad and four elevated asphalt walkways

Exhibit 11: January 31, 2020, photographs showing second helicopter landing pad

Exhibit 12: November 2011 aerial image of first of three episodes of fill for docks

Exhibit 13: February 2018 aerial image of second of three episodes of fill for docks

Exhibit 14: June 2019 aerial image of third of three episodes of fill for docks

Exhibit 15: January 31, 2020 staff photographs showing current fill for docks

There is no exhibit 16.

Exhibit 17: December 12, 2019 Online Enforcement Report Form.

Exhibit 18A: January 31, 2020 Staff site visit notes

Exhibit 18B: January 31, 2020 Selection of relevant staff site visit photographs

Exhibit 19: February 18, 2020 Initial Contact Notice from BCDC to Owners

Exhibit 20: September 15, 2020 Violation Notice from BCDC to Owners

Exhibit 21: October 8, 2021, 35-day standardized fines letter and Attachments 1, 2, 3

Exhibit 22: January 3, 2022 Two Assignment Forms for Permits 1973.014.01 and M1985.030.01, and Operating Agreement

Exhibit 23: February 28, 2022 Application Submittal from John Sharp



Exhibit 24A: January 31, 2020, staff photograph depicting ramp before unauthorized reconstruction

Exhibit 24B, C, E: March 14, 2022 photographs of unauthorized ramp construction project and two emails notifying staff of the violation

Exhibit 24D: April 22, 2022 staff photograph of completed concrete ramp

Exhibit 25: Executive Director Cease and Desist Order ECD2022.001.00 w/o exhibits

Exhibit 26: March 30, 2022 BCDC '30-day' application response letter

Exhibit 27: Re-issued Executive Director Cease and Desist Order ECD2022.001.01 w/o exhibits

Exhibit 28: July 14, 2022, letter from John Sharp to Brent Plater

XI. Additional Administrative Record Documents

Description
Enforcement File ER2019.063.00
Permit File 1973.014.03
Permit File M1985.030.01
Executive Director Cease & Desist Order File ECD2022.002.00 & .01
Enforcement File ER2021.021
San Francisco Bay Plan
Richardson Bay Special Area Plan



Property Detail Report

For Property Located At :

240 REDWOOD HWY FRONTAGE RD, MILL VALLEY, CA
94941-6600



Owner Information

Owner Name: SEAPLANE INVESTMENT LLC
Mailing Address: 315 LINDEN ST, SAN FRANCISCO CA 94102-5109 C039
Vesting Codes: // CO

Location Information

Legal Description:
County: MARIN, CA APN: 052-247-01
Census Tract / Block: 1302.02 / 1 Alternate APN:
Township-Range-Sect: Subdivision: SAUSALITO LAND & FERRY CO
Legal Book/Page: Map Reference: /
Legal Lot: 164 Tract #:
Legal Block: School District: TAMALPAIS UN
Market Area: School District Name: TAMALPAIS UN
Neighbor Code: Munic/Township: SAUSALITO SCHOOL AREA

Owner Transfer Information

Recording/Sale Date: / Deed Type:
Sale Price: 1st Mtg Document #:
Document #:

Last Market Sale Information

Recording/Sale Date: 07/26/2021 / 07/21/2021 1st Mtg Amount/Type: \$1,750,000 / PRIVATE PARTY
Sale Price: \$3,500,000 1st Mtg Int. Rate/Type: /
Sale Type: FULL 1st Mtg Document #: 47903
Document #: 47902 2nd Mtg Amount/Type: /
Deed Type: GRANT DEED 2nd Mtg Int. Rate/Type: /
Transfer Document #: Price Per SqFt: \$240.35
New Construction: Multi/Split Sale: MULTIPLE
Title Company: OLD REPUBLIC TITLE
Lender: PRIVATE INDIVIDUAL
Seller Name: COMMODORE MARINA LLC

Prior Sale Information

Prior Rec/Sale Date: 07/26/1996 / Prior Lender: HELLER FIRST CAP CORP
Prior Sale Price: \$750,000 Prior 1st Mtg Amt/Type: \$750,000 / CONV
Prior Doc Number: 40595 Prior 1st Mtg Rate/Type: / ADJUSTABLE INT RATE LOAN
Prior Deed Type: GRANT DEED

Property Characteristics

Year Built / Eff:	1954 /	Total Rooms/Offices	Garage Area:
Gross Area:	14,562	Total Restrooms:	Garage Capacity:
Building Area:	14,562	Roof Type:	Parking Spaces:
Tot Adj Area:		Roof Material:	Heat Type:
Above Grade:		Construction:	Air Cond:
# of Stories:		Foundation:	Pool:
Other Improvements:	Building Permit	Exterior wall:	Quality:
		Basement Area:	Condition:

Site Information

Zoning:	>	Acres:	>2.20	County Use:	>COMMERCIAL (51)
Lot Area:	>96,000	Lot Width/Depth:	> x	State Use:	>
Land Use:	>COMMERCIAL (NEC)	Res/Comm Units:	> /	Water Type:	>
Site Influence:	>			Sewer Type:	>

Tax Information

Total Value: \$1,015,570
Land Value: \$639,433
Improvement Value: \$376,137
Total Taxable Value: \$1,015,570

Assessed Year: 2021
Improved %: 37%
Tax Year: 2021

Property Tax: \$21,340.20
Tax Area: 90013
Tax Exemption:



2021-0047902

RECORDING REQUESTED BY:

Old Republic Title Company

Escrow No.: 0224054343
APN: 052-247-01, 052-247-02
240-242 Redwood Highway Frontage
Road, Mill Valley, CA

Recorded		REC FEE	20.00
Official Records		TAX	3850.00
County of			
Marin			
SHELLY SCOTT			
Assessor-Recorder			
County Clerk			
		AO	
12:16PM 26-Jul-2021		Page 1 of 3	

When Recorded Mail Document and Tax Statements to:

Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

Grant Deed

Exempt from fee per GC27388.1(a)(2); document is subject to the imposition of documentary transfer tax

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is \$3,850.00
 computed on full value of property conveyed, or
 computed on full value less of liens and encumbrances remaining at time of sale.
 Unincorporated area: City of

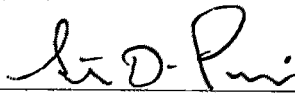
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Commodore Marina, LLC

hereby GRANT(S) to
Seaplane Investment, LLC, a California limited liability company

that property in Unincorporated area of Marin County, State of California, described as follows:
* * * See "Exhibit A" attached hereto and made a part hereof. * * *

Date: July 21, 2021

Commodore Marina, LLC, a California limited liability company

By: 
Steven D. Price, its sole member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sonoma

On Jul 22 2021 before me, Dorian Hahs a Notary Public, personally appeared Steven D. Price, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~(is)~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ ~~they~~ executed the same in ~~his~~ ~~her~~ ~~their~~ authorized capacity(ies), and that by ~~his~~ ~~her~~ ~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

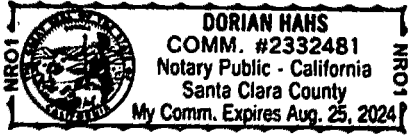
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Dorian Hahs

Name: Dorian Hahs
(Typed or Printed)

(Seal)



ORDER NO. : 0224054343

EX. A REF. PG. 1

EXHIBIT A

The land referred to is situated in the unincorporated area of the County of Marin, State of California, and is described as follows:

Parcel One: (APN: 052-247-02)

Block 164, as shown upon that certain map entitled, "Official Map of Lands of the Sausalito Land and Ferry Company", recorded April 26, 1869 in Rack 1 of Maps, at Pull 9, in the Office of the County Recorder of the County of Marin, State of California.

Excepting therefrom that portion conveyed by Benj F. Washington, Rodmond Gibbons and L.L. Bullock. a Board of Tide Land Commissioners, to Thomas Ryan, recorded May 26, 1871 in Book "K" of Deeds at Page 588.

Also excepting therefrom any portion thereof included in the right of way of the Northwestern Pacific Railroad.

Parcel Two: (APN: 052-247-01)

Block 167, as shown upon that certain Map entitled, "Official Map of Lands of the Sausalito Land and Ferry Company", recorded April 26, 1869 in Rack 1 of Maps, at Pull 9, in the Office of the County Recorder of the County of Marin, State of California.

Property Detail Report

For Property Located At :
,, CA



Owner Information

Owner Name: **SEAPLANE INVESTMENT LLC**
Mailing Address: **315 LINDEN ST, SAN FRANCISCO CA 94102-5109 C039**
Vesting Codes: **// CO**

Location Information

Legal Description:		APN:	052-247-02
County:	MARIN, CA	Alternate APN:	
Census Tract / Block:	/	Subdivision:	SAUSALITO LAND & FERRY CO
Township-Range-Sect:		Map Reference:	/
Legal Book/Page:		Tract #:	
Legal Lot:		School District:	TAMALPAIS UN
Legal Block:	164	School District Name:	TAMALPAIS UN
Market Area:		Munic/Township:	SAUSALITO SCHOOL AREA
Neighbor Code:			

Owner Transfer Information

Recording/Sale Date:	/	Deed Type:	
Sale Price:		1st Mtg Document #:	
Document #:			

Last Market Sale Information

Recording/Sale Date:	07/26/2021 / 07/21/2021	1st Mtg Amount/Type:	\$1,750,000 / PRIVATE PARTY
Sale Price:	\$3,500,000	1st Mtg Int. Rate/Type:	/
Sale Type:	FULL	1st Mtg Document #:	47903
Document #:	47902	2nd Mtg Amount/Type:	/
Deed Type:	GRANT DEED	2nd Mtg Int. Rate/Type:	/
Transfer Document #:		Price Per SqFt:	
New Construction:		Multi/Split Sale:	MULTI
Title Company:	OLD REPUBLIC TITLE		
Lender:	PRIVATE INDIVIDUAL		
Seller Name:	COMMODORE MARINA LLC		

Prior Sale Information

Prior Rec/Sale Date:	07/26/1996 /	Prior Lender:	HELLER FIRST CAP CORP
Prior Sale Price:	\$750,000	Prior 1st Mtg Amt/Type:	\$750,000 / CONV
Prior Doc Number:	40595	Prior 1st Mtg Rate/Type:	/ ADJUSTABLE INT RATE LOAN
Prior Deed Type:	GRANT DEED		

Property Characteristics

Year Built / Eff:	/	Total Rooms/Offices		Garage Area:	
Gross Area:		Total Restrooms:		Garage Capacity:	
Building Area:		Roof Type:		Parking Spaces:	
Tot Adj Area:		Roof Material:		Heat Type:	
Above Grade:		Construction:		Air Cond:	
# of Stories:		Foundation:		Pool:	
Other Improvements:	Building Permit	Exterior wall:		Quality:	
		Basement Area:		Condition:	

Site Information

Zoning:	>	Acres:	>1.00	County Use:	>VACANT-INDUSTRIAL (40)
Lot Area:	>43,560	Lot Width/Depth:	> x	State Use:	>
Land Use:	>INDUSTRIAL LOT	Res/Comm Units:	> /	Water Type:	>
Site Influence:	>			Sewer Type:	>

Tax Information

Total Value: \$112,841
Land Value: \$112,841
Improvement Value:
Total Taxable Value: \$112,841

Assessed Year: 2021
Improved %:
Tax Year: 2021

Property Tax: \$2,429.46
Tax Area: 90013
Tax Exemption:

Exhibit 2. RealQuest depiction of Blocks 167 (left) and 164 (right). A portion of the docks is located on property owned by Marin County.



Exhibit 3. Location of 240-242 Redwood Highway Frontage Road, north of City of Sausalito, Marin County

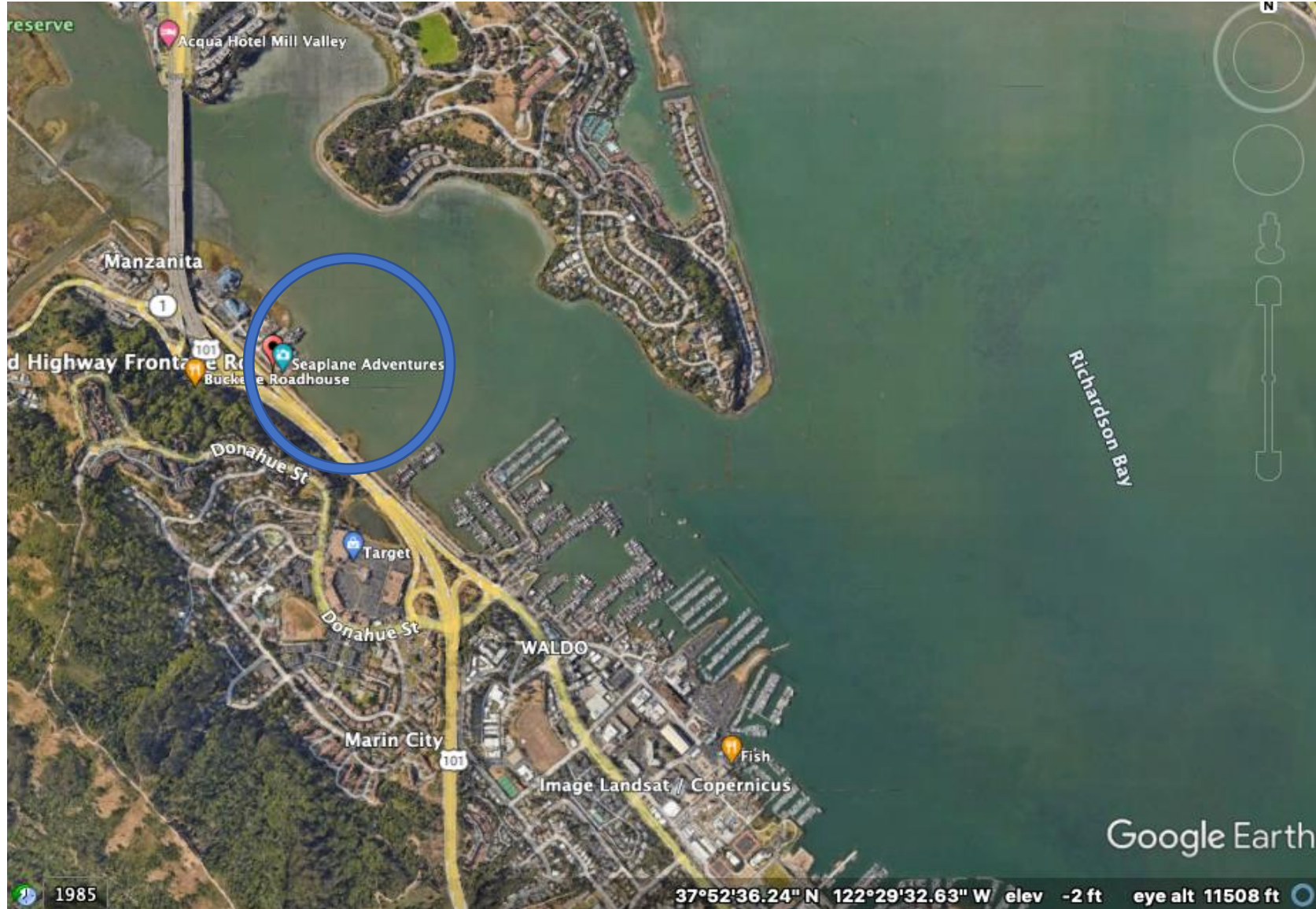


Exhibit 4. Site Overview of 240-242 Redwood Highway Frontage Road, Marin County



Exhibit 5. Most recent available aerial image depicting unauthorized fill for docks, second heliport pad and walkways, Seaplane storage, fuel tank, parking and absent public access



San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

November 21, 2017

Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, California 95448

ATTENTION: Steve Price

SUBJECT: BCDC Permit No. 1973.014.01 (Amendment No. One)

Dear Mr. Price:

Enclosed please find an original of BCDC Amended Permit No. 1973.014.01, stamped "BCDC Original," and one copy, stamped "Permittee's Copy," both executed by the Executive Director, incorporating the amendment requested in Mr. Harold Hedelman's letter dated September 26, 2017. In the amended permit, deleted language has been ~~struck through~~ and added language has been underlined.

I am issuing this amendment, which is included in the attached amended permit, on behalf of the Commission and upon the following findings and declarations:

1. This amendment to the permit is issued pursuant to Regulation Section 10810 upon the same criteria provided for the issuance of administrative permits in that the project authorized by this amendment, is a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).
2. The amendment to the permit is consistent with the San Francisco Bay Plan and the McAteer-Petris Act because the proposed project will not adversely affect the Bay nor public access to and enjoyment of the Bay consistent with the project.

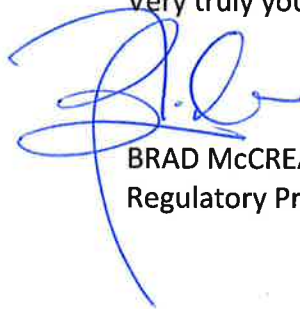
You must (1) **complete** the acknowledgment section of the amended permit stamped "BCDC Original," which indicates that you have read and that you understand all of the terms and conditions of the amended permit, and (2) **return** that entire executed "BCDC Original" to the Commission's office within the ten-day time period. The copy stamped "Permittee's Copy" should be retained by you for your records along with the Notice of Completion and Declaration of Compliance form, which you must return to the Commission upon project completion.

Furthermore, your permit contains special conditions which require you to take certain specific actions. Please understand that **no** work may commence on the project until the permit stamped "BCDC Original" is executed and returned to the Commission. Until the Commission receives the executed permit, Mr. Hedelman does not have the necessary authorization for the work authorized under the permit. The commencement of any work within the Commission's jurisdiction without the necessary authorization from the Commission is a violation of the McAteer-Petris Act and could subject you to substantial fines.

Steve Price
Commodore Marina, LLC
November 21, 2017
Page 2

If you should have any questions regarding the amended permit or the procedure outlined above, please contact Erik Buehmann of our staff at 415-352-3645 or erik.buehmann@bcd.ca.gov.

Very truly yours,



BRAD McCREA
Regulatory Program Director

Enc.

BM/EB/ra

cc: Harold Hedelman

PERMIT NO. 1973.014.01

Commodore Marina, LLC

NOTICE OF COMPLETION AND DECLARATION OF COMPLIANCE

San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Ladies and Gentlemen:

You are hereby informed that the work authorized by the above-referenced amended permit was completed on _____.

I have personally reviewed the terms and conditions of the amended permit, the final plans approved by or on behalf of the Commission, and the completed project and hereby certify that the project is in compliance with all terms and conditions of the amended permit and conforms to the plans previously reviewed and approved by or on behalf of the Commission. I further certify that all conditions of the amended permit, particularly with regard to plan review, public access areas and improvements, recordation, open space restrictions and other special conditions have been met.

I, _____, hereby declare under penalty of perjury that the foregoing is true and correct and that if called upon to testify to the contents of this notice, I would so testify.

Executed on this _____ day of _____, 20____,

at _____, California.

(Permittee)

Print Name and Title

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

PERMIT NO. 1973.014.01

(Originally Issued on August 24, 1973, and Amended Through November 21, 2017)

AMENDMENT NO. ONE

Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, California 95448

On August 16, 1973, the San Francisco Bay Conservation and Development Commission, by a vote of 17 affirmative, 0 negative, approved the resolution pursuant to which this the original permit is was issued. Moreover, on November 21, 2017, pursuant to Commission Regulation Section 10822, the Executive Director approved Amendment No. One, to which this amended permit is hereby issued:

I. Authorization

- A. **Authorized Project.** Subject to the conditions listed below, the applicant is granted permission to do the following work and make the following uses of its property at 240 Redwood Highway, County of Marin:
1. **In the Bay.**
 - a. Construct a bulkhead and place clean earth fill landward of the existing vegetation line on approximately 6,600 square feet of Bay surface on Block 167, Yolo and Parepa Streets, for landscaped public access and landscaping to improve shoreline appearance (Original Authorization);
 - b. Construct an approximately 2-foot high berm on the northeast and southeast edge of the Marin County Heliport landing pad and install a flap-gate on the east corner of the berm (Original Authorization);
 - c. Reconstruct an existing 2,880-square-foot houseboat mooring pier by removing 23 existing piles, driving 17 new piles and installing sewer lines and other service utilities (Original Authorization);
 - d. Realign 11 existing houseboat berths along the reconstructed dock and connect all houseboats to a shoreside sewer system (Original Authorization); and
 - e. Remove an abandoned houseboat and barge (Original Authorization);
 - f. Relocate the existing approximately 1,528-square-foot houseboat moored at Berth #11 approximately 18 feet to the northwest to remove it from an existing right-of-way, including removing eight 18-inch-in-diameter wood pilings and installing, using, and maintaining approximately four new pilings (12-inches-in-diameter) at the new berth (Amendment No. One);



PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 2

- g. Install, use, and maintain an approximately 112-square-foot float for access to the boat at Berth #11 and remove the existing approximately 224-square-foot float (Amendment No. One);
- h. Renovate, use, and maintain the houseboat at Berth #11, including replacing two first-story and two second-story cantilevered decks, totaling approximately 247 square feet to replace removed decking totaling approximately 96 square feet (Amendment No. One); and
- i. Relocate the existing houseboat at Berth #10 7-8 feet to the northwest to accommodate the relocated houseboat at Bert #11 and extend, use, and maintain an approximately 35-square-foot float to provide access to the houseboat Berth #10 (Amendment No. One).

2. Within the 100-foot shoreline band

- a. Place clean earth fill over approximately 29,000 square feet (0.66 acre) of shoreline surface area to establish proper grade for drainage and to be used for project landscaping, landscaped public access, and automobile circulation and parking (Original Authorization);
- b. Renovate an existing office building for continued office use (Original Authorization);
- c. Remove abandoned boat hulls, a concrete pad with wooden boat frames, a concrete apron, and a restaurant building (Original Authorization); and
- d. Construct and use 17 parking spaces for houseboat residents (Original Authorization).

B. Based on Application Dated This amended authorization is generally pursuant to, and limited by the original application dated May 9, 1973, and the letter dated August 28, 2017, requesting Amendment No. One, including all accompanying and subsequent correspondence and exhibits, and subject to the modifications required by conditions herein.

C. Deadlines for Commencing and Completing Authorized Work. The project authorized in the original authorization was to commence by March 1, 1974, and was to be diligently pursued to completion within one year of commencement, no later than March 1, 1975, unless an extension of time was granted by a further amendment of the original permit.

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

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The project authorized in Amendment No. One must commence by November 1, 2018, and must be diligently pursued to completion within one year of commencement, no later than November 1, 2019, unless an extension of time is granted by a further amendment of this amended permit.

II. Special Conditions

The authorization made herein shall be is subject to the following special conditions, in addition to the standard conditions in Part IV:

A. Construction Document(s). The improvements authorized herein shall be built generally in conformance with the following documents:

1. Amendment No. One: "Hedelman Houseboat," prepared by Hayden Collective, dated August 10, 2016.

The permittee(s) is responsible for assuring that all construction documents accurately and fully reflect the terms and conditions of this amended permit and any legal instruments submitted pursuant to this amended authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment. No further plan review is required for the work authorized by Amendment No. One.

B. Construction Document(s) Review and Approval. For work not authorized in Amendment No. One, or any substantial changes to work authorized by Amendment No. One, no work whatsoever shall commence pursuant to this amended permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 45 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. If final construction document review is not completed by or on behalf of the Commission within the 45-day period, the permittee(s) may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A of this amended permit (Amendment No. One).

1. Document Details. All construction documents shall be labeled with: the Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas and view corridor(s) required herein. Documents for shoreline protection projects must be dated and include the preparer's certification of project safety and contact

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

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information. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment (Amendment No. One).

2. **Conformity with Final Approved Documents.** All authorized improvements and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment (Amendment No. One).
3. **Discrepancies between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions of this [amended] permit or legal instruments, the special condition shall prevail (Amendment No. One).
4. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the amended permit and/or consultation with the Commission Design Review Board (Amendment No. One).

A. Plan Review

1. ~~No fill whatsoever shall be placed and no work whatsoever shall be performed at any location pursuant to this permit until all final site, architectural, landscaping, grading, and engineering plans (including topographic survey) for the project, including work to be performed in compliance with conditions, are submitted to, and reviewed and approved by or on behalf of the Commission. In each instance, plan review shall be completed within 30 days after receipt of the plans to be reviewed. Approval or disapproval shall be based upon conformity with this permit.~~
2. ~~Plans shall include the following items:~~
 - a. ~~A detailed site plan showing the relationship of the property, including existing and permitted improvements, to development on surrounding properties;~~

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 5

- ~~b. A detailed landscape plan showing proposed trees, shrubs, ground cover, lighting, benches, signing, trash and litter receptacles, pathway, and pathway surface material, and irrigation system;~~
- ~~c. A topographic map of the subject property on a two foot contour interval;~~
- ~~d. An engineering plan showing solid earth fill and riprap to be placed and bulkhead and berm to be constructed;~~
- ~~e. An engineering plan for the piers, including a sketch of a typical pier;~~
- ~~f. An overall bicycle/pedestrian circulation plan showing connections to appropriate facilities or possible future facilities on adjoining properties; and~~
- ~~g. An overall automobile circulation and parking plan.~~

BC. Public Access

1. Prior to the commencement of any construction, applicant by instrument(s) acceptable to counsel to BCDC, shall have irrevocably subjected its interest in the following portions of the project property to the exclusive rights of the general public for viewing, fishing, walking, sitting, bicycling, and related purposes:
 - a. In Block 167, a 30-foot wide strip of land, landward of the bulkhead authorized herein, extending from Yolo Street to the area described in ~~II.B.1b~~ Special Condition II.C.1.b below; and
 - b. A strip of land east of the area described in ~~II.B.1a~~ Special Condition II.C.1.a above, to the eastern property line of Block 167, and between Parepa Street and the southern edge of the parking spaces authorized herein to the new bulkhead authorized herein and the shoreline on south.
2. Prior to the commencement of any construction authorized by the Original Permit, the applicant shall be instrument(s) acceptable to counsel for BCDC agree to undertake, or agree with a public agency for said agency to undertake, permanent maintenance responsibility for the facilities required by Special Conditions II.C.1.a ~~II.B.1a~~ and II.C.1.b ~~II.B.1b~~.
3. Prior to the commencement of any construction authorized by the Original Permit, applicant, by instrument(s) acceptable to counsel to BCDC, shall have permanently guaranteed that the area of the applicant's property now subject to tidal action outboard of the bulkhead and berm authorized herein shall remain in its present natural state, except for the changes authorized under this permit.

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 6

4. Prior to occupation of any of the renovated offices or new houseboats authorized by the Original Permit herein, the applicant shall make the following improvements within the areas reserved for public access:
 - a. Remove debris from the shoreline of the property;
 - b. Landscape the public access area referred to in Special Condition II.C.1.a and II.C.1.b ~~II.B.1a and II.B.1b~~ according to the approved landscape plans and requirements (see ~~II.A.1~~ Special Condition II.B); and
 - c. Provide an 8-foot-wide all-weather pathway suitable for pedestrian and bicycle use leading from the existing Marin County Bike Path adjacent to Bolinas Street to the shoreline by either paralleling Yolo Street in Block 167, or if permission is received from the County of Marin, by passing within Yolo Street, hence along the shoreline to the northeast edge of the property.
 5. Applicant shall provide, if it is determined during plan review (see ~~II.A.1~~ Special Condition II.B) that on-street parking for the use of the general public using the public access area is not adequate, free parking on the project site for the general public using the public access area.
- CD. Use of Solid Fill.** The fill approved herein for Block 167, Yolo and Parepa Streets, shall be used only for project landscaping and landscaped public access, pedestrian and bicycle pathways, and in Block 164 for heliport flood control purposes only.
- DE. Houseboats.**
1. Permittee may moor not more than 11 houseboats at the project site, all within Block 167, which shall, when first moored and at all times thereafter, float at a tidal stage of +5.0 feet MLLW datum without any dredging being required to meet this condition. Any houseboat which replaces an existing moored boat (and which itself was not so moored on August 16, 1973) must be of equal or lesser draft than the houseboat it replaces.
 2. Plan approval as provided in Special Condition II.B ~~II.A.1~~ shall specify the precise location of houseboat moorings to be allowed, and have attached in writing the name of the berth lessee, name (if any) of the boat, and the dimensions and draft of the boat. No plan review approval is required for the work authorized by Amendment No. One.
 3. On or before March 1, 1975, all boats that are occupied as residences within the project area shall have received a certificate of occupancy from the County of Marin; any boat not meeting these requirements shall have been removed from the project site prior to that date. Furthermore, prior to that date all structures shown on the

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 7

application for BCDC permit as an "abandoned houseboat" shall either have received a building permit and/or certificate of occupancy from the County of Marin for use as a dwelling and be moored at one of the new berthing sites approved herein, or shall have been removed from the site.

4. Prior to the mooring of any new houseboat or the relocation of an existing houseboat to a new berth authorized herein after initial occupation of the new berth and the listing of its lessee in compliance with ~~II.D.2~~ Special Condition II.E.2 above, applicant shall provide in writing the name and address of the new lessee, name (if any) of the boat, berthing location of the boat prior to mooring at the project site and mooring location at the project site and the mooring destination of the replaced boat, and the dimensions and draft on the new or relocated boat.

EF. Water Quality (Original Authorization)

1. The water edge of the fill shall be faced with either a bulkhead or engineered riprap so as to minimize erosion, siltation, and other distribution of fill materials.
2. Provisions shall be made in plans approved pursuant to Special Condition II.B ~~II.A.1~~ for removal of all sunken debris from the shoreline and houseboats areas where there would be a hazard to water quality.
3. The reconstructed houseboat mooring pier authorized under this original permit shall contain sewage connections to an existing public sewer system (Sausalito-Marín City Sanitary District) and pumpout facilities capable of accepting all wastes from vessels serving each houseboat to be moored alongside and it shall be a condition of any lease or rental agreement written or oral, expressed or implied, that each houseboat shall be linked to the sewer line and any violation by such a houseboat of the Regional Water Quality Control Board standards shall be grounds for eviction. Each houseboat shall be sewerred within 48 hours of its berthing and remain permanently sewerred thereafter.

FG. Safety. The design and construction of all structures, solid fill, and method of securing houseboats to the pier authorized herein, shall be such as to comply with any conditions as to engineering recommended by the Commission's Engineering Criteria Review Board.

H. Water Quality Protection (Amendment No. One). The permittee shall ensure that activities authorized herein occurring in the Commission's Bay jurisdiction fully comply with the San Francisco Bay Regional Water Quality Control Board ("RWQCB") Water Quality Certification dated October 4, 2017.

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

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III. Findings and Declarations

This amended authorization permit is issued given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

A. Solid Fill (Original Authorization).

1. As limited by Special Condition II.C ~~II.B-1~~ and II.C ~~II.D~~, the solid fill approved herewith for Block 167, Yolo and Parepa Streets would be a minor fill for improving shoreline appearance (specifically as defined in Commission Regulation Section 10700, previously Commission Regulation Section 10433).
2. The present appearance of the Bay and shoreline in the area proposed for filling is characterized by decaying structures, abandoned automobiles, ragged shore elevations, and general clutter which adversely affects enjoyment of the Bay and its shoreline within the site area itself and with adjacent areas of the Bay and shoreline; it is economically infeasible to improve that shoreline appearance without fill; the amount of filling approved (6,600 square feet) is the minimum necessary to improve shoreline appearance; and the propose project features extensive landscaping of fill and adjacent areas which improve the shoreline appearance.
3. There is no alternative upland location available for the landscaped shoreline because that is the area of existing adverse appearance.
4. The nature, location, and extent of the fill are such as to minimize harmful effects to the Bay; the fill would be safely engineered and Special Condition II.C.3 ~~II.B-3~~ will insure that the filling will to the maximum extent feasible establish a permanent shoreline. The area to be filled, which is presently used for parking, is not of high ecological value because of the abandoned automobiles and debris in the area
5. The solid fill approved herewith for Block 164 is for airport use, a water-oriented use (Government Code Section 66605(a)) and is the minimum necessary to achieve the purpose of the fill (Government Code Section 66605(c)). There is no alternative upland location to place the solid earth berm for the only upland area is the heliport landing pad itself (Government Code Section 66605(b)).
6. The uses proposed appear to be consistent with the public trust under which the permittee may hold the property.

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B. Houseboat and Boat Docks (Original Authorization).

1. There were on August 16, 1973, at Commodore Properties, 11 houseboat moorings. It appears that there were the same number of moorings in said areas on November 10, 1969. The permittee may have legal rights to maintain within said areas moorings for said number of houseboats, even though said houseboats will not be "floating" at all stages of the tide on all days.
 - a. No dredging will be necessary to enable the houseboats moored as authorized herein to meet the requirements of Special Condition II.E.1 H-D-1.
 - b. Dredging in these areas might adversely affect the ecology of the Bay because of the polluted nature of the sediments in the Bay bottom in this area.
 - c. Mooring of the houseboats as authorized herein would not cause a harmful amount of sedimentation and probably would not adversely affect the ecology of the Bay, and in any event, would affect the ecology far less than the dredging required to enable houseboats moored there to float at all times.
3. The relocation of houseboat berths authorized by this permit will improve the appearance of that part of Richardson Bay covered by this permit.
4. The proposed mooring of houseboats complies with the San Francisco Bay Plan policies on houseboats in that the boats will be connected to a shoreline sewage treatment facility (as established in Special Condition II.E.3 H-E-3), will require no fill except for piers on pilings and is acceptable to the local government having jurisdiction.

- C. Fill and Changes of Use Within a Shoreline Band (Original Authorization).** The project will, in the final design to be approved pursuant to Special Condition II.B H-A-1, provide maximum feasible public access to the shoreline of Richardson Bay consistent with continuation of the existing use of the property primarily for houseboat mooring and office use.

- ED. Conclusion (Original Authorization).** For all these above reasons, the public benefit from the fill authorized herein would clearly exceed public detriment from the loss of water areas, therefore, the project authorized by the original permit is consistent with the San Francisco Bay Plan, the McAteer-Petris Act, the California Environmental Quality Act, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone.

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- E. Amendment No. One. Amendment No. One authorizes the relocation of the existing houseboat at Berth #11, authorized by the original permit, to remove the houseboat from encroaching upon a "paper street" right-of-way held by the County of Marin. The houseboat at Berth #11 and the houseboat at Berth #10 will be relocated, and the floats used to access the houseboat will be replaced. The float used to access the houseboat at Berth #11 will be reduced in size, and the float for Berth #10 will be slightly expanded. Eight existing pilings will be removed and replaced with four pilings to support the houseboat at Berth #11, resulting in a net decrease of nine-square-feet of solid fill in the Bay. Amendment No. One also authorizes the renovation of the houseboat at Berth #11. The renovation will include the replacement of decks at the first and second story of the houseboat that were removed in 2016 due to the deck's dilapidated condition. The renovated decks will result in a net increase of approximately 151 square feet of new cantilevered fill.

Special Condition II.A and II.B has been revised in Amendment No. One to provide for future plan review consistent with the Commission's current practice. No further plan review is required, however, for work authorized by Amendment No. One. Special Condition II.H has been included to ensure the work is consistent with the approval by the Regional Water Quality Control Board. The work authorized by Amendment No. One is consistent with the requirements set forth in Special Condition II.E. As a result, the project authorized by Amendment No. One is consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan, including the policies related to Other Uses of the Bay and Shoreline concerning houseboats. The work authorized by Amendment No. One is consistent with the requirements related to minor fill to improve shoreline appearance, minimum fill, and alternative upland location as applied in the findings of the original permit. The project authorized by Amendment No. One constitutes a project similar to a routine repair, reconstruction, replacement, removal and maintenance that does not involve any substantial enlargement or change in use as defined in Regulation Section 10601(a)(6), that has no greater adverse impact on the Bay than the listed activities, as defined in Regulation Section 10601(e)(3), and thus, constitutes a "minor repair or improvement" for which the Executive Director may issue an amendment to an administrative permit, pursuant to Government Code Section 66632(f) and Code of Regulations Section 10820.

- DE. California Environmental Quality Act. ~~Other Environmental Effects~~. Pursuant to Regulation Section 10931(a), the project authorized by ~~this~~ the original permit is ~~was~~ categorically exempt from the requirement to prepare an environmental impact report.

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On September 12, 2017, the Regional Water Quality Control Board, as lead agency for the project authorized by Amendment No. One, certified that the project was categorically exempt from the requirement to prepare environmental documentation pursuant to Section 15301 of the CEQA Guidelines.

EG. Coastal Zone Management Act. The Commission further finds, declares, and certifies that the activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

IV. Standard Conditions

- A. ~~All required permissions from governmental bodies must be obtained before the commencement of work; this includes, but is not limited to, the U.S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.~~
- B. ~~Work authorized herein must commence prior to March 1, 1974, or this permit will lapse and become null and void. Such work must also be diligently prosecuted to completion and must be completed by March 1, 1975, unless an extension of time is granted by amendment of the permit.~~
- C. ~~The attached Notice of Completion shall be returned to the Commission within 30 days following completion of the work.~~
- D. ~~Work must be performed in the precise manner and at the precise locations indicated in your application.~~
- E. ~~Work shall be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. Any seepage returning to the Bay will be subject to the regulations of the Regional Water Quality Control Board.~~
- F. ~~The rights derived from this permit are assignable, but such assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the application for this permit and the permit itself, and agrees to be bound by the conditions hereof.~~

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- ~~G. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or to his assignee if the permit has been effectively assigned.~~
- ~~H. This permit shall not take effect unless the permittee executes a copy of this letter and returns it to the Commission within fifteen days after the date hereof.~~
- A. Permit Execution.** This amended permit shall not take effect unless the permittee(s) execute the original of this amended permit and return it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. Permit Assignment.** The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.
- D. Permit Runs with the Land.** Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.

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- F. Built Project Must Be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.
- G. Life of Authorization.** Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.
- H. Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the amended permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- I. Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This amended permit reflects the location of the shoreline of San Francisco Bay when the amended permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this amended permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignees if the amended permit has been assigned.
- K. Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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placed in reliance on this amended permit shall be subject to removal by the amended permittee(s) or their assignees if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

L. Permission to Conduct Site Visit. The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

M. Abandonment. If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

N. Best Management Practices

1. Debris Removal. All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee(s), its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.


2. Construction Operations. All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee(s) shall immediately retrieve and remove such material at its expense.

O. In-Kind Repairs and Maintenance. Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.

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

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission

By: 

BRAD McCREA
Regulatory Program Director

BM/EB/ra

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn.: Certification Section
Environmental Protection Agency
Marin County Planning Department

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____ Commodore Marina, LLC
Permittee

On _____ By: _____

Print Name and Title

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

**PERMIT NO. 1973.014.02
(Amendment No. Two)
TIME EXTENSION**

December 20, 2019

Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, California 95448

SUBJECT: BCDC Permit No. 1973.014.02; Time Extension

To Whom It May Concern:

As requested in your letter dated November 7, 2019 and received in our office on November 14, 2019, you are hereby granted an extension of completion time until October 31, 2019 for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10822, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact me at 415-352-3645 or erik.buehmann@bcdc.ca.gov.

Very truly yours,



Erik Buehmann
Coastal Program Manager

EB/ra

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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**CORRECTED PERMIT NO. 1973.014.02
(Amendment No. Two)
TIME EXTENSION**

September 2, 2020

Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, California 95448

SUBJECT: Corrected BCDC Permit No. 1973.014.02 (Amendment No. Two); Time Extension


To Whom It May Concern:

As requested in your letter dated November 7, 2019 and received in our office on November 14, 2019, you are hereby granted an extension of completion time until October 31, 2020 for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10822, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact me at 415-352-3645 or erik.buehmann@bcdc.ca.gov.

Very truly yours,

DocuSigned by:

DE28A8DB779F45C...

ERIK BUEHMANN
Bay Resources Program Manager

EB/ra

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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April 16, 2021

Commodore Marina
1083 Vine Street #244
Healdsburg, California 95448
via email: <haroldhedelman@gmail.com>

SUBJECT: BCDC Permit No. 1973.014.003; Time Extension

Dear Mr. Harold Hedelman:

As requested in your letter dated October 29, 2020 and received in our office on November 10, 2020, you are hereby granted an extension of completion time, until August 31, 2021, for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01.

The construction activities authorized at 240 Redwood Highway in the City of Mill Valley, Marin County, shall be built generally in conformance with the plan titled “11 Commodore Heliport remodel, Remodel – Refurbish Houseboat,” prepared by Leal Royce Charonnat Architect + Engineering, dated November 26, 2018.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10810, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact Rowan Yelton of our staff at 415-352-3613 or rowan.yelton@bcdc.ca.gov.

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency
Steve Price, <steve@priceandmulvihill.com>
Adrienne Klein, <adrienne.klein@bcdc.ca.gov>

LJG/RY/ra



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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January 25, 2022

Seaplane Investment LLC
315 Linden Street,
San Francisco, CA 94102
Via email: <lou@bldsf.com>
ATTN: Lou Vasquez, Manager

SUBJECT: BCDC Permit No. 1973.014.04 (Amendment No. Four); Time Extension

Dear Mr. Vasquez:

As requested in your letter dated August 9, 2021 and received in our office August 9, 2021, you are hereby granted an after-the-fact extension of completion time, until October 31, 2021 for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01. The construction activities authorized were built generally in conformance with the plan titled “11 Commodore Heliport remodel, Remodel – Refurbish Houseboat”, prepared by Leal Royce Charonnat Architect + Engineering, dated November 26, 2018.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10810, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact Rowan Yelton of our staff at 415-352-3613 or rowan.yelton@bcdc.ca.gov.

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency
Harold Hedelman, houseboat owner, <haroldhedelman@gmail.com>
Aaron Singer, Seaplane Investment LLC, <aaron@seaplane.com>
Adrienne Klein, San Francisco Bay Conservation and Development Commission
<adrienne.klein@bcdc.ca.gov>

LJG/RY/ra



NOTICE OF RESTRICTIONS

The San Francisco Bay Conservation and Development Commission in administering the public trust for commerce, fisheries and navigation pursuant to Article XV of the California Constitution through the McAteer-Petris Act (Government Code Sections 66600 through 66661), and in implementing the San Francisco Bay Plan, has issued BCDC Permit No. 14-73, dated August 24, 1973, and determined that certain lands subject to tidal action in San Francisco Bay shall remain in their natural state to protect the public welfare by avoiding impairment of natural Bay functions and assuring regional values as described in the San Francisco Bay Plan.

The property which shall remain in its natural state is situated in the County of Marin, State of California, and consists of a portion of Block 167 referred to in the legal description set forth in Exhibit "A" attached hereto lying to the east of the real property described in Exhibit "A" attached hereto now subject to tidal action (which portion of Block 167 is hereinafter referred to as the "outboard property".)

NOW THEREFORE, the undersigned hereby agree that the outboard property shall forever remain in its natural state.

This Covenant shall not inhibit the San Francisco Bay Conservation and Development Commission, or its successors, or the State of California from administering the public trust as it may pertain to the outboard property in some different

fashion at some future date.

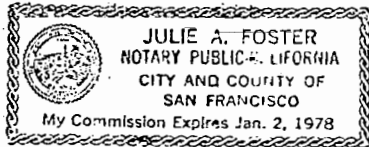
IN WITNESS WHEREOF, the undersigned have executed the within instrument the 19th day of August, 1974.

Walter Landor
WALTER LANDOR
Alexis Tellis
ALEXIS TELLIS

STATE OF CALIFORNIA)
) SS.
CITY AND COUNTY OF SAN FRANCISCO)

On this 19th day of August, 1974, before me, Julie A. Foster, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared WALTER LANDOR known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate

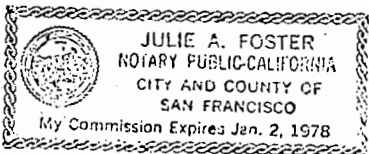


Julie A. Foster
NOTARY PUBLIC

STATE OF CALIFORNIA)
) SS.
)

On this 19th day of August, 1974, before me, Julie A. Foster, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared ALEXIS TELLIS known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



Julie A. Foster
NOTARY PUBLIC

That certain Real Property situate in the County of Marin,
State of California, described as follows to wit:

BEGINNING at a point in the southeasterly line of Block 167,
as shown on that certain map entitled "Official Map Lands of the
Sausalito Land and Ferry Company" recorded April 26th., 1969 in
Rack 1, pull 9 of Maps, Marin County Records, which point bears
North $51^{\circ} 38'$ East 148.62 ft. from the most southerly corner of
the aforesaid Block 167; running thence from said point of
beginning along said southeasterly line, North $51^{\circ} 38'$ East
31.38 ft.; thence leaving said line northwesterly on a curve to
the right of radius 278 ft., whose center bears North $33^{\circ} 37' 47''$
East through a central angle of $36^{\circ} 00' 26''$ for a distance of
174.71 ft.; thence on a compounding curve to the right of radius
38 ft., whose center bears North $69^{\circ} 33' 15''$ East through a
central angle of $69^{\circ} 17' 47''$ for a distance of 45.96 ft.; thence
North $48^{\circ} 56'$ East 125.04 ft.; thence on a curve to the left of
radius 89 ft., whose center bears North $41^{\circ} 04'$ West through a
central angle of $44^{\circ} 09' 53''$ for a distance of 68.60 ft. to a point
in the northeasterly line of the aforesaid Block 167; running
thence along said line, North $38^{\circ} 22'$ West 8.0 ft. to the most
northerly corner thereof; running thence along the northwesterly
line of said Block, South $51^{\circ} 38'$ West 80.90 ft.; thence leaving
said line, South $38^{\circ} 22'$ East 20 ft.; thence South $51^{\circ} 38'$ West
152 ft.; running thence southeasterly on a curve to the left of
radius 308 ft., whose center bears North $77^{\circ} 26' 19''$ East
through a central angle of $42^{\circ} 00' 15''$ for a distance of 225.80 ft.
to the point of beginning.

THIS STAMP CONFIRMS
RECORDING DATA ONLY

RECORDED AT REQUEST OF

Commodore Prop.

T. 55 MIN. PAST 7 M.

SEP 17 1974

Official Records of Marin County, Calif.

N. J. Liccomini

FEE \$ 5.00 RECORDER

33530

EXHIBIT "A"

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned, WALTER LANDOR and ALEXIS TELLIS, doing business as COMMODORE PROPERTIES, are the owners of that certain real property situate in the County of Marin, State of California, described in Exhibit "A" attached hereto (which property is hereinafter referred to as the "burdened property"); and,

WHEREAS, the undersigned propose to perform certain work and make certain improvements upon the burdened property; and

WHEREAS, in order to perform said work the undersigned have obtained Permit No. 14-73, dated August 24, 1973, from the San Francisco Bay Conservation and Development Commission (hereinafter referred to as the "Commission"); and

WHEREAS, said permit contains certain conditions and the purpose of this instrument is to satisfy Special Conditions B-1 and B-2 of said permit.

NOW THEREFORE, the undersigned hereby declare as follows:

1. That the use of the burdened property shall hereafter be restricted only to viewing, fishing, walking, sitting, bicycling and related purposes by the general public.
2. That the undersigned shall maintain all improvements in the burdened property made in conformity with said permit except landscaping.
3. That nothing herein contained shall be deemed to be a gift or dedication of any portion of the burdened property to the general public or for the general public or for any public purpose whatsoever, it being the intention

of the undersigned that this Declaration shall be strictly limited to and for the purpose herein expressed.

4. That the covenants and restrictions herein created shall be a burden upon the burdened property and shall run with the land and shall be binding upon any future owner but only during his time of ownership. At such time as the undersigned conveys the burdened property, they shall no longer be bound to perform any of the provisions hereof as to said property.

5. That this Declaration of Restrictions may be revoked or modified as to the burdened property only by recording of an instrument of revocation or modification, as the case may be, executed and acknowledged by the then owner of the applicable property and by the Commission or its statutory successor, in which event this instrument shall be revoked or modified as provided in such instrument.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed this *19th* day of *August*, 1974.

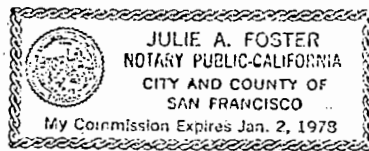

WALTER LANDOR


ALEXIS TELLIS

STATE OF CALIFORNIA)
) SS.
CITY AND COUNTY OF SAN FRANCISCO)

On this *19th* day of *August*, 1974, before me the undersigned, a Notary Public, State of California, duly commissioned and sworn, personally appeared WALTER LANDOR, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco, State of California, the day and year in this certificate first above written.



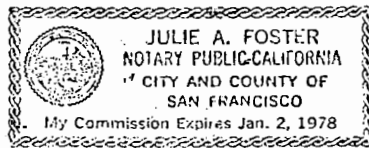
Julie A. Foster

NOTARY PUBLIC

STATE OF CALIFORNIA)
) SS.
CITY AND COUNTY OF SAN FRANCISCO)

On this *19th* day of *August*, 1974, before me the undersigned, a Notary Public, State of California, duly commissioned and sworn, personally appeared ALEXIS TELLIS, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco, State of California, the day and year in this certificate first above written.



Julie A. Foster

NOTARY PUBLIC

That certain Real Property situate in the County of Marin,
State of California, described as follows towit:

BEGINNING at a point in the southeasterly line of Block 167,
as shown on that certain map entitled "Official Map Lands of the
Sausalito Land and Ferry Company" recorded April 26th., 1869 in
Rack 1, pull 9 of Maps, Marin County Records, which point bears
North $51^{\circ} 38'$ East 148.62 ft. from the most southerly corner of
the aforesaid Block 167; running thence from said point of
beginning along said southeasterly line, North $51^{\circ} 38'$ East
31.38 ft.; thence leaving said line northwesterly on a curve to
the right of radius 278 ft., whose center bears North $33^{\circ} 37' 47''$
East through a central angle of $36^{\circ} 00' 26''$ for a distance of
174.71 ft.; thence on a compounding curve to the right of radius
38 ft., whose center bears North $69^{\circ} 38' 13''$ East through a
central angle of $69^{\circ} 17' 47''$ for a distance of 45.96 ft.; thence
North $48^{\circ} 56'$ East 125.04 ft.; thence on a curve to the left of
radius 89 ft., whose center bears North $41^{\circ} 04'$ West through a
central angle of $44^{\circ} 09' 53''$ for a distance of 68.60 ft. to a point
in the northeasterly line of the aforesaid Block 167; running
thence along said line, North $38^{\circ} 22'$ West 8.0 ft. to the most
northerly corner thereof; running thence along the northwesterly
line of said Block, South $51^{\circ} 38'$ West 80.90 ft.; thence leaving
said line, South $38^{\circ} 22'$ East 20 ft.; thence South $51^{\circ} 38'$ West
152 ft.; running thence southeasterly on a curve to the left of
radius 308 ft., whose center bears North $77^{\circ} 26' 19''$ East
through a central angle of $42^{\circ} 00' 15''$ for a distance of 225.80 ft.
to the point of beginning.

THIS STAMP CONFIRMS
RECORDING DATA ONLY.

RECORDED AT REQUEST OF

Commodore Prop.

1:55 MIN. PAST 4 P. M.

SEP 17 1974

Official Records of Marin County, Calif.

N. J. Giacomini

FEE \$ 6.00 RECORDER

33529

EXHIBIT "A"

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

THIRTY VAN NESS AVENUE, SUITE 2011
 SAN FRANCISCO, CA 94102-6080
 PHONE: (415) 557-3686



BCDC Original

PERMIT NO. M85-30

(Issued on August 25, 1988, As
 Amended Through December 28, 1989)

AMENDMENT NO. ONE

Commodore Helicopters, Inc.
 240 Redwood Highway
 Mill Valley, California 94941

ATTENTION: Eve Geertsema
 Corporate Secretary

AND

Walter Lander
 1001 Front Street
 San Francisco, California 94111

RECEIVED
 JAN 9 1990

SAN FRANCISCO BAY CONSERVATION
 & DEVELOPMENT COMMISSION

Gentlemen:

I. Authorization

A. Subject to the conditions stated below, the permittees, Commodore Helicopters, Inc., and Walter Lander, ~~is~~ are hereby authorized to do the following:

Location: In the Bay and within the 100-foot shoreline band, at the Commodore Heliport, 240 Redwood Highway, in an unincorporated area north of Sausalito, in Marin County.

Description: (1) In the Bay, repair a tidal flap gate; and (2) within the 100-foot shoreline band:
 (a) ~~Place 170~~ 23 cubic yards of aggregate and pave ~~2,500~~ 640 square feet of an existing heliport landing pad to protect the landing pad from ponding and flooding; ~~and~~
 (b) ~~install~~ install a fuel storage tank and fuel containment area to meet safety standards; (c) pave a 1,400-square-foot area; and
 (d) fill a 2,370-square-foot area with 88 cubic yards of fill. This is an after-the-fact permit ~~application~~ in that the ~~fuel storage tank~~ work has already been completed. The project would not result in any expansion of the helipad.

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
Page 2

B. This amended authority is generally pursuant to and limited by: your (1) the original application submitted by Commodore Helicopters, Inc., dated March 12, 1985, including its accompanying and subsequent correspondence and exhibits; (2) your letter dated April 18, 1989, requesting Amendment No. One, including its accompanying and subsequent correspondence and exhibits; and (3) all conditions of this amended permit.

C. Work authorized herein for filling and paving the helipad must commence prior to June 1, 1989, or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within one year of commencement or by June 1, 1990, whichever is earlier, unless an extension of time is granted by amendment of the permit has already been completed. No additional work may be performed pursuant to this amended permit.

II. Special Conditions

The amended authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

A. Helicopter Pad and Fuel Storage Tank. The helicopter pad shall be filled and paved and the fuel storage tank shall be constructed in accordance with plans prepared by Anrig-Doyle, Civil Engineers, dated July 1, 1988, entitled "Commodore Helicopter."

III. Findings and Declarations

On behalf of the Commission, I find and declare that:

A. The project authorized by this amended permit involves the placement of small amounts of inert inorganic fill to raise the level of an existing helipad and to install a fuel storage tank and containment structure and to pave a 1,400-square-foot area which does not have an adverse effect on present or possible future maximum feasible public access to the Bay, on present or possible future use for a designated priority water-related use, and on the environment, as defined in Regulation Section 10601(b)(1), and involves routine repairs to an existing culvert in the Bay and maintenance to the area by filling and regrading to prevent ponding neither involving any substantial enlargement or change in use, as defined in Regulation Section 10601(a)(9), and thus is a "minor repair or improvement" for which the Executive Director may issue (1) a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a), and (2) an amendment to a permit, pursuant to Regulation Section 10810.

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
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B. The improvements authorized in Amendment No. One were installed prior to any BCDC authorization being granted. After the work had come to the attention of the staff, the staff met with the permittees on March 30, 1989, and informed them that they may be in violation of the McAteer-Petris Act and that they needed to obtain a BCDC permit for the improvements. At the same time, the staff opened Enforcement Case ER89-14 for the possible violation. This amended permit authorizes all of the unauthorized improvements the Commission is aware of. Therefore, once the permittees execute and return this amended permit authorization to the BCDC offices as required by Standard Condition IV-J, the Commission will consider Enforcement Case ER89-14 to be resolved.

C. Notice of Potential for Extension of BCDC Jurisdiction. The plans submitted for Amendment No. One showed the top of the dike approved in BCDC Permit No. 14-73 to be at a present elevation below the line of highest tidal action. Thus, the flood protection function of the dike is compromised and areas behind the dike can be inundated by tidal action. Commission Regulation Section 10123 states that areas subject to tidal action after September 17, 1965, and therefore subject to BCDC "bay" jurisdiction, excludes areas that as a result of natural destruction of man-made works are currently below the line of highest tidal action, but such exclusion is valid "only for a period ending on year after the Commission has given an affected property owner written notice of the potential extension of the Commission's jurisdiction as a result of the destruction."

In accordance with Commission Regulation Section 10123, BCDC herein gives the permittees notice that the areas landward of the dike surrounding the helipad will be considered BCDC "bay" jurisdiction up to the line of highest tidal action, with a corresponding 100-foot shoreline band jurisdiction landward of that line, if the dike is not repaired by December 13, 1990, to remain at an elevation above the line of highest tidal action.

B/ B/ The project authorized by this ~~amended~~ permit is consistent with the McAteer-Petris Act and the San Francisco Bay Plan in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay.

C/ E. The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

D/ F. Pursuant to Regulation Section 11501, the project authorized by this amended permit is categorically exempt from the requirement to prepare an environmental impact report.

PERMIT NO. M85-30

(Issued on August 25, 1988, As
Amended Through December 28, 1989)

AMENDMENT NO. ONE

Commodore Helicopters, Inc.,
and Walter Lander

Page 4

~~E/~~ G. Pursuant to Regulation Section 10620, ~~the~~ the original project was listed with the Commission on August 18, 1988.

IV. Standard Conditions

A. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.

B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within ~~10~~ ten days ~~of the work~~
~~of the work.~~

C. Work must be performed in the precise manner and at the precise locations indicated in your original application and amendment request, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.

D. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittees will be subject to the regulations of the Regional Water Quality Control Board in that region.

E. The rights derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the original application and amendment request for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.

F. Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.

G. Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

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(Issued on August 25, 1988, As
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AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
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H. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If ~~a~~ this amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittees or ~~its~~ their assignee upon receiving written notification by or on behalf of the Commission to remove the fill.

I. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittees or ~~its~~ their assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittees or ~~its~~ their assignee if the amended permit has been assigned.

J. This amended permit shall not take effect unless the permittees execute~~s~~ the original of this amended permit and return~~s~~ it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

K. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the amended permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit.


L. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction up to the line of highest tidal action.

M. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittees or ~~its~~ their

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
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their assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

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




WILLIAM TRAVIS
Acting Executive Director

Enc.
0025r-12/28/88
WT/DP/mm

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
Environmental Protection Agency, Attn: Tom Yokum, P-5
City of Mill Valley, Attn: Planning Department
Planning Advisory Corporation, Attn: Tom Newton

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at MILL VALLEY, CA COMMODORE HELICOPTERS
Applicant
On JAN. 08, 1990 By: 
CORPORATE SECRETARY
Title

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at San Francisco, CA COMMODORE HELICOPTERS/WALTER LANDOR
Applicant
On 1-8-90 By: Anne Coffelt - Program Director
FOR WALTER LANDOR
Title ASST. MGR.

Exhibit 8. December 2003. **Orange Arrow** – Unauthorized Seaplane fuel tank.
Blue Circle – Single heli-port landing pad and helicopter fuel tank, authorized by BCDC in 1985. U-shape dock, authorized by BCDC in 1973.



Exhibit 9. January 31, 2020. Staff photographs depicting authorized heliport fuel tank (round) and unauthorized Seaplane fuel tank (square)



Exhibit 10. September 2008. Unauthorized, second heliport asphalt landing pad and four walkways.



Exhibit 11. January 31, 2020. Staff photograph depicting unauthorized helicopter landing pad and walkway



Exhibit 12. November 2011. First unauthorized dock expansion (“cross beam”).

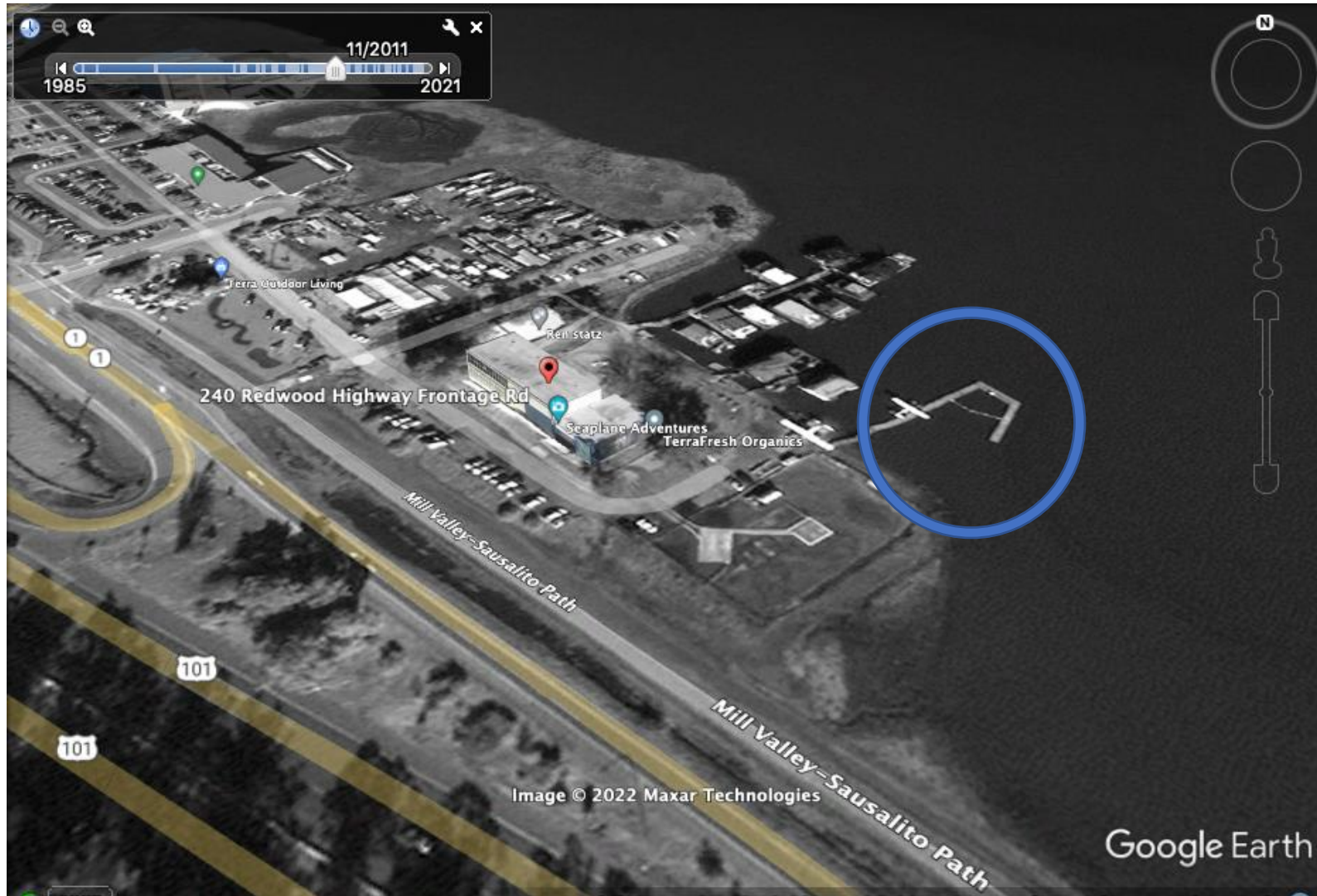


Exhibit 13. February 2018. Second unauthorized dock expansion (single, long finger and “cross beam” replacement).



Exhibit 14. June 2019. Third unauthorized dock expansion (two short fingers).



Exhibit 15. January 31, 2020.
Staff photographs depicting
unauthorized docks (cross-beam,
three fingers), two pilings, and on
water fueling facility.



There is no Exhibit 16

BCDC Enforcement

Submitted by: Anonymous user

Submitted time: Dec 12, 2019, 1:06:30 PM

FormIgnore

Yes

ER#

ER2019.063.00

BCDC Permit #

1973.014 and M1985.030

Score

56

Priority

No

Status

C. ER Open (Active)

Enforcement Staff Assigned

AK

Related ER Cases

ER2010.021

Vicinity of the Alleged Violation

- In the San Francisco Bay (including Richardson's Bay, San Pablo Bay, Suisun Bay, Grizzly Bay, and all marshes and tidelands)
- Within 100 feet of the shoreline of the San Francisco Bay
- In the upland area designated with a Public Shore sign

Address of the Alleged Violation

Surface portion and submerged portion of Yolo Street, which ends at 240 Redwood Highway, Mill Valley, CA 94941 and an adjacent submerged parcel on which a seaplane floating dock is located.

Location of the Alleged Violation

Lat: 37.87881 Lon: -122.51287



County

Marin

Description of the Alleged Violation

2020.01.28 Supplementary report regarding public access violations. Initial report: We believe Commodore Marina LLC and/or Seaplane Adventures are in violation of BCDC's permitting requirement under the McAteer-Petris Act (Gov Code Sections 66600 et seq.) which specifies "any person [who] make[s] any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission." Gov. Code Section 66632(a). Notable apparent violations of BCDC regulations by Commodore Marina LLC's and Seaplane Adventures' operations (or their predecessors) within 100 feet from the shoreline include the following: 1) installing a floating dock between approximately 1968 and 1970 in the Bay; 2) subsequently installing an additional extension to that floating dock; 3) installing a concrete launching ramp on Yolo St. into Richardson Bay; 4) storing and performing maintenance and repairs on seaplanes on Yolo Street; 5) installing a set of large concrete blocks used as tie down lines attached to seaplanes stored within 50 feet of the shoreline; 6) installing and/or maintaining an aboveground leaded aviation gasoline fuel tank sometime between 1982 and 1992, less than 50 feet from the Bay; 7) running a long hose from the above ground aviation gas tank to seaplanes moored to the floating dock to refuel the seaplanes on the Bay. To our knowledge, no BCDC permit was ever granted for any of these activities. These activities and the installation and/or storage of above-ground structures (avgas storage tank, concrete blocks, seaplanes, etc.) hinder public access to the Bay and are inconsistent with the McAteer-Petris Act, which seeks to ensure "maximum feasible public access to the bay and its shoreline." Gov. Code Section 66602. We request that the BCDC investigate these violations and bring the necessary and appropriate action to maintain maximum public access to the Bay and to preserve and enhance the quality and diversity of the wildlife habitats within Richardson Bay.

Date Report Submitted

Dec 12, 2019

Staff Notes

No permit for tank and seaplane storage and fueling operations.

Date ER Case Opened

Dec 30, 2019

When did you first observe the Alleged Violation?

Dec 1, 2018

Suspected Duration or Frequency of Violation

Constant

Do you know who the Responsible Party is?

Yes

Responsible Party's Name (Person and/or Organization)

Most of the violations are taking place on Yolo St. and over an adjacent submerged parcel, both owned by County of Marin. Commodore Marina LLC leases the adjacent submerged property from the County; and Seaplane Adventures operates the seaplanes.

Responsible Party's Address

Steve Price: 1083 Vine Street #244, Healdsburg, CA 95448; Aaron Singer: 242 Redwood Highway Frontage Rd., Mill Valley, California 94941

Responsible Party's Email

steve@seaplane.com ; aaron@seaplane.com

Responsible Party's Phone Number

Steve Price: 415-850-5200 ; Aaron Singer: 415-332-4843

Do you know who the Responsible Party's Representative is?

Yes

Responsible Party's Agent, Representative, or Tenant

Steve Price of Commodore Marina, LLC ; Aaron Singer of Seaplane Adventures

Responsible Party Representative's Address

Steve Price: 1083 Vine Street #244, Healdsburg, CA 95448 ; Aaron Singer: 242 Redwood Highway Frontage Rd., Mill Valley, California 94941

Responsible Party Representative's Email

steve@seaplane.com ; aaron@seaplane.com

Responsible Party Representative's Phone Number

Steve Price: 415-850-5200 ; Aaron Singer: 415-332-4843

Can BCDC staff contact you about this report?

Yes

Reporter Name

John Edgcomb

Reporter Address

Edgcomb Law Group, LLP, One Post Street, Suite 2100, San Francisco, California 94104-5225

Reporter Email

jedgcomb@edgcomb-law.com

Reporter Phone Number

415-399-1555

Please indicate if you wish to remain anonymous.

Yes

Which other agencies, if any, have you contacted about this violation?

Marin County Counsel, County Department of Public Works, and County Community Development Agency.



Site Visit Report

Site Visit Date: January 31, 2020

Permit Number: Permit No. 1974.013, M1985.030 and possible M1980.027 and NOI1995.002

Enforcement Case Number: ER2019.063

Meeting Location: 240 Redwood Highway,

BCDC Staff: Adrienne Klein

Agenda: To view site in response to a complaint.

Notes Summary: The staff was very helpful and friendly and showed me around and explained some of the work that's occurred. I provided my business card, explained why I was there, saw a copy of their permit for the fuel tank, learned that the County had also come for a site visit and informed the staff that the owners should not panic upon hearing from us. I learned that the operation has been occurring since 1946, and that the square fuel tank is for Seaplane and the large, round tank is associated with the heliport, which is a separate business. Apparently, it is called SF Helicopter Tours. 800-400-2404. They don't store helicopters here; they just pick up and drop off patrons. My 'tour guide' concurred when I pointed out that one of the issues was that the boat docks exceed the authorization. They moved the fuel tank to the new section. My initial impression based on how the planes land and take off and tidal constraints, is that they could potentially obtain retroactive authorization for the part that converts the authorized "U" shape to a square shape but that we need more information regarding the finger piers, which she said they don't really use. I noted that none of the float material for any of the docks is contained in plastic boxes and stated that I believe this is a requirement they may have to meet. I also note that the docks appear old. I think she said they'd replaced two pilings and that they plan to remove the old docks and old fence and stored materials shown in the site photos.

See Attached Photos/Drawings for Further Information

Exhibit 18B

Subset selection of photographs from Adrienne Klein's January 31, 2020, site visit to 242 Redwood Highway that are relevant to BCDC's Violation Report allegations. Some of these photographs are used as unique exhibits and therefore appear twice.

































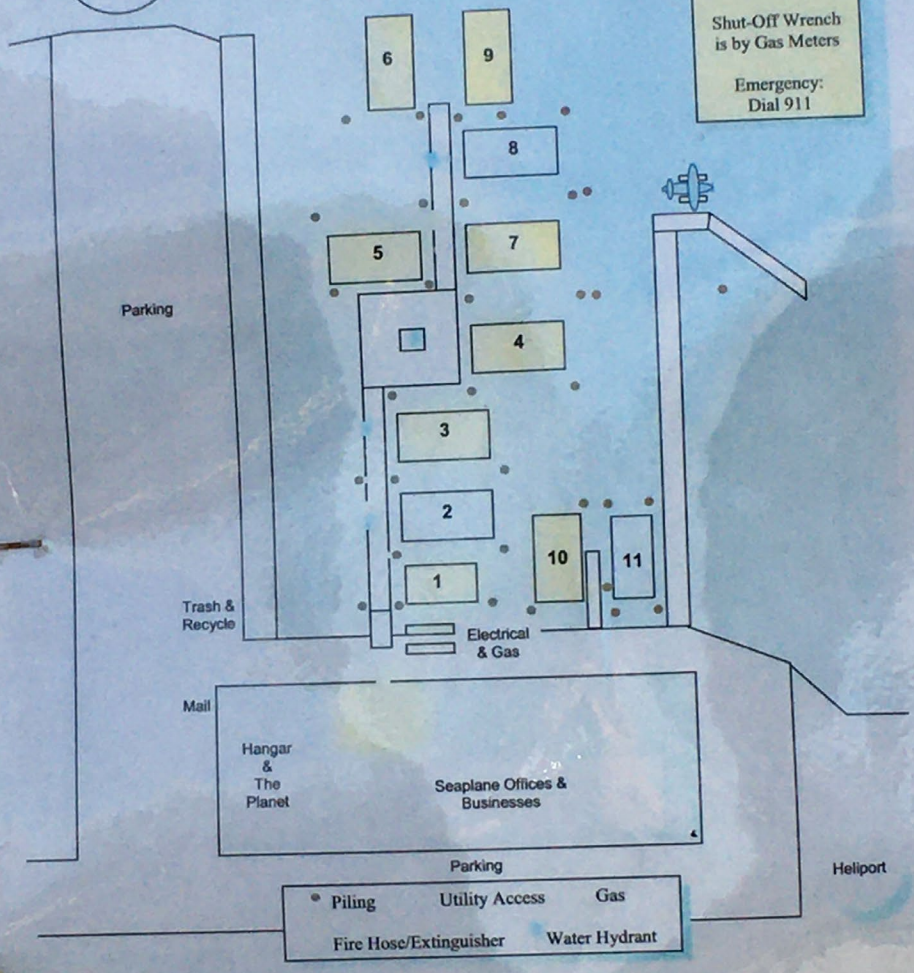
COMMODORE MARINA



Gold-Colored
Boats Have
Gas Lines

Shut-Off Wrench
is by Gas Meters

Emergency:
Dial 911











San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

February 18, 2020

Steven D. Price
Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, CA 95448

Aaron and Tiffany Singer
Seaplane Adventures
242 Redwood Highway Frontage Road
Mill Valley, CA 94941

SUBJECT: Violation Notice. (BCDC Permit Nos. M1974.013 and M1985.030; BCDC Enforcement File No. ER2019.063)

Dear Respondent(s):

On December 12, 2019, BCDC staff received a report regarding alleged unauthorized activities at 242 and 240 Redwood Highway Frontage Rd, Mill Valley, California 94941, as described below.

Alleged Activity/ies:	This Action Represents a Violation of the Following Statute(s) and/or Permit Condition(s):
In San Francisco Bay, expansion of docking facilities, relocation of the fuel station, and reconstruction of a ramp for Bay access	Permit No. 1974.013.02 Permit No. 1985.030 The McAteer-Petris Act
In the shoreline band on Yolo Street, dedicated as a public area, placement of fill and private uses, including a fuel tank, fencing and seaplane and vehicle storage	Permit No. 1974.013.02 including Special Condition II.B, Public Access, and II.C, Use of Solid Fill Permit No. 1985.030 The McAteer-Petris Act

After an initial review of the available information related to this matter, we have opened a BCDC enforcement case (BCDC Enforcement Case No. ER2019.063).

This letter serves as notice that BCDC believes that a violation has occurred. Unless you have received authorization from BCDC to conduct these activities, you must immediately cease and



apply for after-the-fact authority for the unauthorized fill and activities, provide any required public access benefits, and/or restore the site to its prior condition.

We request that you respond within 15 calendar days of the date of this letter and provide any additional information that you believe that we should consider, including, as appropriate, evidence that the violation has been resolved. Please submit this information to Adrienne Klein.

Pursuant to the McAteer-Petris Act and its regulations, BCDC is authorized to conduct enforcement investigations and commence administrative enforcement actions. While this letter does not commence a formal enforcement proceeding, we reserve the right to take formal action, including seeking injunctive relief and/or imposing fines or penalties. A prompt response will be considered in determining the next steps that BCDC pursues.

Thank you for your attention to this matter.

Sincerely,



Adrienne Klein
Coastal Program Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3600
Fax: 415-352-3606
Email: info@bcdc.ca.gov
Website: www.bcdc.ca.gov

cc: Jenna J. Brady, Deputy County Counsel, Office of County Counsel
County of Marin, 3501 Civic Center Drive, Suite 275, San Rafael, CA 94903
Kiana Amiri-Davani, Edgcomb Law Group, LLP
One Post Street, Suite 2100, SF CA 94104-5225
Reid Boggiano, State Lands Commission, reid.boggiano@slc.ca.gov

AK / mm



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

VIA EMAIL ONLY

September 15, 2020

Steven D. Price, Commodore Marina Harbor Master; co-owner,
Seaplanes Adventures and owner, Commodore Helicopters
Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, CA 95448
steve@seaplane.com

SUBJECT: 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)

Dear Steve Price:

On August 24, 1973, BCDC issued Permit 1973.014.00, which has been amended twice first on November 21, 2017 and most recently on December 20, 2019. The original permit authorized the construction of a bulkhead and placement of fill landward of the bulkhead on an approximately 6,600 square foot area of the Bay on Block 167, Yolo and Parepa Streets for landscaped public access and landscaping, construction of a berm on the North East and South East edge of the Marin County Heliport landing pad and installation of a flap gate on the east corner of the berm, reconstruction of an existing 2,880 square foot houseboat mooring pier by removing 23 existing pilings, driving 17 new pilings and installing sewer lines and other service utilities, realignment of 11 existing houseboats along the new dock and connecting them to the shoreside sewer system and removal of an abandoned houseboat. Thereafter, Permit 1973.014.01 authorized the relocation of an approximately 1,528-square-foot houseboat moored at Berth #11 approximately 18 feet to the North West to remove it from the Yolo Street right-of-way, which work was required to have been completed by November 1, 2019. On December 20, 2019, BCDC issued Permit 1973.014.02 to extend the completion date for the



houseboat relocation from November 1, 2019 to October 31, 2020¹. The amended permit is subject to a number of special conditions pertaining to plan review and approval, public access, maintenance, construction timing, water quality protection and houseboat reconstruction and location.

On August 25, 1988, the Commission issued Permit M1985.030.00 to Commodore Helicopters, Inc. This permit authorized the placement of 170 cubic yards of aggregate and paving of 2,500 square feet of an existing heliport landing pad in the shoreline band to protect it from ponding and flooding. It also authorized the installation of a fuel storage tank and fuel containment area to meeting safety standards (after-the-fact). The permit contains a single special condition that requires the authorized work to be constructed in accordance with plans prepared by Anrig-Doyle, Civil Engineers, dated July 1, 1988, entitled "Commodore Helicopter." On December 28, 1989, BCDC issued Permit M1985.030.01 which authorized repairs to a tidal flap gate and in the shoreline band changes to the original authorization that reduced the allowance for aggregate placement from 170 to 23 cubic yards and reduced the paving of the heliport landing pad from 2,500 to 640 square feet and authorized paving of an unspecified 1,400 square foot area and filling of a 2,370 foot area with 88 cubic yards of fill in the Bay. The permit states that all of the work authorized by Permit M1985.030.01 was completed prior to permit issuance and pursuant to Enforcement Case ER1989.014. The permit's findings provide "Notice of Potential for Extension of BCDC Jurisdiction" pursuant to Commission Regulation 10123. As described in more detail below, BCDC provided you with notice of an extension of the Bay jurisdiction, which, as also described below, necessitates a site survey to demarcate the location/s of the mean high tide and marshlands below +5 feet mean sea level and suggests that the fill and uses occurring in the Bay must be for water-oriented purposes, public access or improving shoreline appearance.

On June 9, 2010, BCDC staff identified a possible violation alleging the failure to maintain public access and unauthorized construction of a floating dock and gangway (Enforcement File ER2010.021 has been closed and merged with Enforcement File ER2019.063). Thereafter on June 26, 2017, BCDC staff received a report from architect Bill Kirsch identifying the County requirement that the houseboat located in the Yolo Street right-of-way be located entirely out of said right-of-way and requesting that due to its longstanding location in the right-of-way and challenges of relocating it that it be allowed to stay. Staff at the time located the BCDC permit requirement described above mirroring the County requirement and added the information supplied by Mr. Kirsch to the then open enforcement case record.

On December 12, 2019, BCDC received a report of possible violations regarding a failure to

¹ The letter granting the extension of completion time contains a typographical error and states that the work was to have been completed by October 31, 2019. By copy of the letter dated September 2, 2020, this error was corrected.



provide permit required public access, installation and uses of unauthorized fill within BCDC's jurisdiction and a failure to maintain at least one of the eleven (11) authorized houseboats in a permit compliant manner (BCDC Enforcement File ER2019.063).

Based on the results of a permit file review, site visit, and conversations with you, your tenant and counsel, we believe there are a number of violations of the permit and the law. This letter is intended to accomplish the following:

1. Summarize the relevant permit requirements, the violations of the permits and of the law, and provide general direction on how to correct the identified violations.
2. Request current information regarding any work, fill placement and/or changes in use in the Bay and/or shoreline band that may have occurred without BCDC authorization including but not limited to changes in the intensity of use of the Seaplane operation, changes in intensity of use of the office buildings, dredging and/or placement of any fill anywhere within BCDC's Bay and shoreline band jurisdictions.
3. Among other information requested below, request information regarding:
 - A. Whether Commodore has a legal interest in the Yolo Street right of way occupied by a fuel tank, floating dock and ramp, seaplanes, and parking and where public access is required;
 - B. Plans to address the deteriorated bulkhead around the marina; and
 - C. Impacts caused by frequent tidal inundation to the Seaplane Adventures and Heliport businesses and the associated parking, fueling, public access among other activities not listed but occurring in any tidally inundated areas.

Violations

Violation one - Public Access: Special Condition II.C, Public Access, of Permit 1973.014.02 specifies the public access requirements, which are not currently being provided as required. The file indicates that the permittee fulfilled the permit's implementation terms in the 1970s. However, the approved and recorded legal instrument does not include a map showing the dedicated public access area. Accordingly, we request that you please submit a copy of the approved plans to us, have prepared and submit a survey of the public access area described therein.

Within the dedicated public access area, Special Condition II.C requires you to provide an 8 foot wide all weather pathway for pedestrians and cyclists leading from the existing Marin County bike path to Bolinas Street to the shoreline either paralleling Yolo Street in Block 167 or, if permission is received from Marin County, by passing within Yolo Street, along the shoreline to the northwest edge of the property. The condition also requires you to landscape the public access areas pursuant to approved landscaping plans. A letter to John Heene, Director of Operations, Commodore Helicopters, Inc., from Nancy Wakeman, Assistant Executive Director,



dated August 17, 1989, states that parking space #44 must be removed, that the public access required by the permit must be provided as required and that if the onsite conditions relating to public access are not restored to permit compliant status within 30 days of her letter, BCDC will commence enforcement (Enforcement Case ER1989.014).

While there is a pathway on Parepa Street, east and south of the office building, the connection from the termination of the path on Yolo Street to the County pathway is missing. The site contains no public shore signs. The landscaping does not meet the conditions required in the approved landscaping plans and should be restored with new plantings. Accordingly, you must extend the trail to the west from where it currently ends on Parcel 167 in the Yolo Street corridor (across the parking lot) so that it connects to the County-owned bicycle path. You must also provide information regarding the frequency of flooding in the public access areas in the Parepa and Yolo Street corridors, which appear to be frequently inundated and, as a result, subject to extensive shoreline erosion, potentially necessitating a permit amendment to authorize work to ensure the continued availability of the required public access. In addition, you must install adequate public shore signage, public parking signs and ensure that no parking or other fill or uses (such as equipment related to the houseboat renovation) impedes the required public shore access for pedestrians and cyclists. Finally, you must ensure that the landscaping meets permit requirements. Please provide the required improvements in accordance with existing approved plans or submit new plans for the public access improvements for our review and approval. For all required and absent signage, you must use the current BCDC approved signs and graphics. Given the extensive nature of tidal inundation on the site, consider proposing a salt tolerant landscape palette. Please reference the "Public Access Signage Guidelines – Shoreline Signs", "BCDC Approved Signage Graphics" and "Landscape Guide for the SF Bay - Shoreline Plants" on BCDC's website under "Information Resources/Design Guidelines".

Violation two - Unauthorized fill and uses. Special Condition II.C, Solid Fill, of Permit 1973.014.02 states that the fill approved for Block 167, Yolo and Parepa Streets shall be used only for project landscaping and landscaped public access, pedestrian and bicycle pathways and in Block 164 for heliport flood control purposes. Please describe the areas where fill has been placed, whether it was placed in compliance with the requirements of your permits and advise whether you have conducted any fill placement for flood control since the issuance of this permit and Permit M1985.030.01.

Further, the McAteer-Petris Act requires that all fill and uses at the site that were not in existence as of September 17, 1965 require BCDC authorization. We are aware of the following listed and apparently unauthorized fill placement in the Bay and/or shoreline band and changes in use that require the Commission's approval:

- A. Unauthorized floating fill for boat docks by converting the u-shaped floating dock used by the seaplanes into a square shaped boat dock. We observed on the site visit that the floating docks are old and the flotation material is corroded and breaking off and

decaying into the water column of SF Bay, whereas current DBW standards for flotation foam requires it to be contained in plastic boxes;

- B. Installation of a wooden ramp for the seaplanes to enter/exit the water (the plans note a concrete ramp). When was this constructed;
- C. In the Yolo Street corridor, installation of a fuel tank and storing two to three seaplanes and possible operation of the planes beyond the approved flying hours pursuant to the terms of your approval from Marin County Community Development Agency;
- D. Provide a listing of all the uses occurring in the onsite buildings, the date of occupancy, the number of people employed onsite and visiting the site;
- E. Remove any derelict structures such as old fencing and docks and floats;
- F. Please describe when, where you have installed any fill to elevate any portions of the site, the volume and type of material used;
- G. Please describe all fill placed and uses that occur on Block 164, on Yolo Street and on Block 167, respectively, that are not explicitly authorized in Permits 1973.014.02 and M1985.030.01.

You are responsible for identifying all fill and uses that lack authorization, even if not asked about herein, and either removing said fill and uses from the Commission's jurisdiction or pursuing retroactive authorization to retain said fill and uses.

BCDC Jurisdiction. Permit M1985.030.01 provides notice that unless repaired, the area protected from tidal inundation by a flap gate will become Bay jurisdiction within one year of notice from BCDC staff, pursuant to Regulation 10123. Based on our review of the file, it appears that you did not submit a fileable application to repair this issue within one year (including a possible extension) from the date of being notified by BCDC of this condition, which first occurred on December 28, 1989, and was also discussed again in a letter dated November 19, 1990. On November 26, 1990, Landor Associates submitted a request to amend Permit 1973.014.00, to protect the site from tidal inundation, to which staff responded on December 24, 1990, by stating the additional information required to file the request as complete. It does not appear that you completed this process but if you believe this is incorrect, please let us know. On April 25, 1991, Caitlin Smith, formerly of BCDC, informed Albert Bianchi, formerly of counsel to the property owner, that "BCDC has determined that the Commodore heliport is within our "Bay" jurisdiction. This determination was based on site elevations submitted by Landor & Associates with their application for Amendment Two to Permit [1973.014], and observations of tidal inundation at the site. In addition, we have determined that BCDC regulation Section 10123 does not apply to land which may have previously been in BCDC's shoreline band jurisdiction but has now subsided to an elevation below the line of highest tidal



action. Thus, any proposed fill at the helipad must be authorized under BCDC's laws and regulations pertaining to fill in the Bay.”

Erosion and Tidal Inundation. By letter dated February 24, 2004, you submitted a request to reconstruct the existing bulkhead within the houseboat marina (Block 167), to construct a new bulkhead at the heliport pad and to place fill to raise the elevation of the helipad (Block 164). By letter dated March 26, 2004, Leslie Lacko sent Scott Hochstrasser a letter outlining the additional information that staff required to file the request as complete. By letter dated June 23, 2005, Jennifer Feinberg returned this unfiled application to Mr. Hochstrasser. On April 28, 2008, William Kirsch, Architect, submitted a request on your behalf to replace a rotted wooden revetment, to which Rafael Montes, staff engineer, replied on April 29 and May 15, 2008. It also appears that you did not provide all the information required by staff to file this request as complete.

In addition and as stated above at the beginning of this letter, in light of the low lying elevation of this site and the tidal elevation that demarcates the boundary between SF Bay and the 100-foot shoreline band, which is the mean high tide line (and +5 feet above mean sea level in marshlands), it is anticipated that the site is in the Bay. Please inform us whether the tide/flap gate is operational and, if so, when and how it was repaired and whether it precludes tidal waters from inundating any portion of the authorized heliport pad. Based on site observations, if the tide gate is operational, the site experiences extensive flooding at certain tides. Please prepare a site survey that maps the location of the mean high tidal elevation where no marshlands are present, which at this location is 5.47 feet NAVD88 (data and source provided below). For those portions of the shoreline where marshlands are present, please map the plus five feet mean sea level tidal elevation, which at this location is 3.24 feet NAVD88 plus five feet equals 8.24 feet NAVD88.

In light of the fact that staff has observed the bulkhead erosion and through the record is aware of the frequent and severe tidal inundation, please advise staff if you have undertaken any maintenance at the property since submitting these two incomplete requests. Also inform us whether you have plans to pursue the Commission's authorization to reconstruct the bulkhead, seek permission to raise or otherwise protect any portion of the site from tidal inundation or for any other work.

Legal Interest. Please advise us whether you have permission to occupy and use Yolo, Bolinas and Parepa Streets. Based on 2020 conversations with representatives of Marin County, it appears that the County has advised you to pursue quiet title of the Yolo Street right-of-way. Please advise us if you plan to pursue quiet title of Yolo Street and, if so, if you have commenced that process and how long you expect it to take.

Houseboats. Special Condition No. II.D, Houseboats, of Permit 1973.014.02 requires the eleven (11) authorized houseboats to be moored within Block 167. It also states that the houseboats must float at a tidal stage of 5.0 feet Mean Lower Low Water (MLLW) datum without dredging and that any replacement houseboats must be of an equal or lesser draft than the houseboat it



replaces. Each houseboat must be placed exactly as shown in an approved plan. As noted above, Permits 1973.014.01 and .02, authorized the reconstruction of the houseboat in Berth #11 and require it to be relocated out of the Yolo Street right-of-way and onto Block 167. The permit also authorizes the relocation of the houseboat in Berth #10 and replacement of the floats and associated pilings used to access these two houseboats. This work is required to be completed by October 31, 2020. Based on staff observation, the houseboat reconstruction is incomplete, and the houseboat remains moored beyond the boundary of Block 167 within the Yolo Street corridor. The BDC permit requires the work to occur in compliance with your RWQCB certification. The copy of this certification in our records designates that work may only occur between June 1 and November 30, among other conditions, and it expired on November 30, 2017. Please advise us of the status of this project and whether you will be able to meet this deadline in a permit compliant manner or whether you plan to seek another extension of completion time, in which case you should make said submittal as soon and possible to avoid expiration of this authorization.

Next Steps. Within 60 days of issuance of this letter, we expect you to restore the public access to permit compliant conditions and to submit a fileable request to amend the permit/s to authorize all unauthorized fill and uses, and to remove any unused fill from the site and to legally dispose of it. The process for amending the permits begins with submitting a letter describing the work that requires retroactive approval. Along with the letter, please provide scaled plans depicting BCDC's jurisdiction and required public access areas, discussed above, and a processing fee, which is determined based on the total project cost and is doubled for applications arising out of enforcement actions. Please proceed by seeking a non-material amendment to the existing major permit and, if necessary, a nonmaterial amendment to the administrative permit.

Sincerely,

DocuSigned by:

7A7D306B857043F...

ADRIENNE KLEIN

Principal Enforcement Analyst

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, California 94105

Tel: 415-352-3600

Fax: 415-352-3606

Email: adrienne.klein@bcdc.ca.gov

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Steve Price, Commodore Marina
Enforcement Case No. 2019.063

Page 8
September 15, 2020

cc: Neil Sorenson, Attorney representing Commodore Marina LLC, neil@sorensenlaw.com
Aaron Singer, CEO, San Francisco Seaplane Tours, aaron@seaplane.com
John Sharp, Attorney representing Seaplane Tours, john@johnsharplaw.com
Jenna Brady, Marin County Counsel, JBrady@marincounty.org
Nicole Fairley, RWQCB, Nicole.Fairley@Waterboards.ca.gov
Amanda Culpepper, CDFW, Amanda.Culpepper@Wildlife.ca.gov
Roberta A Morganstern, USACE, Roberta.A.Morganstern@usace.army.mil

Enclosures: Permit 1973.014.01; Corrected Time Extension Letter, issued on September 2, 2020 (also known as Permit 1973.014.02); Permit M1985.030.01; Special Conditions excerpt (inserted below); Tidal Datums (inserted below).

AK /mm



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Via Certified Mail and Electronic Mail

October 8, 2021

ATTN: John E. Sharp
Law Offices of John E. Sharp
24 Professional Center Parkway,
Suite 110 San Rafael, CA 94903
Email: john@johnsharplaw.com

For

ATTN: Shannon Sullivan
Authorized Representative
Seaplane Investment LLC
315 Linden Street
San Francisco, CA 94102-5109

Subject: BCDC Enforcement Case ER2019.063.00, Notice of Violations of the McAteer-Petris Act, BCDC Permit 1973.014.01 (and two time extensions) (APN 052-247-01), and BCDC Permit M1985.030.01 (APN 052-247-02)

Dear Seaplane Investment LLC:

On September 15, 2020, BCDC informed Commodore Marina and Seaplane Adventures that the permittees are in violation of the McAteer-Petris Act for placing fill without a permit and making unauthorized uses in the Bay and shoreline band in violation of special conditions of Permit 1973.014.01, issued to Commodore Marina LLC on November 21, 2017, for failing to provide and maintain required public access and to limit the use of the property to authorized uses. While we have exchanged a number of communications since that time, the respondents have not yet resolved the violations cited in that letter. In addition, there are new violations of Permit 1973.014.01 and Permit M1985.030.01, issued to Commodore Helicopters, Inc. and Water Landor, on December 28, 1989.

On July 14, 2021, in response to submittals from Mr. Sharp on behalf of Seaplane Adventures and Mr. Sorenson on behalf of Commodore Marina, we met to provide clear direction on what the respondents need to do to resolve the violations. In preparation for that meeting, I sent you



an email urging you to prepare and submit a request to amend the permit to retroactively authorize existing unauthorized fill and uses (Exhibit 1). We expected an amendment request in late August 2021. You informed us by telephone that you could not meet that timeline. On August 25, 2021, we requested an alternate date by which we could expect the amendment request. On September 3, 2021, I shared some suggestions for providing the missing public access prepared by our landscape architect (Exhibit 2). John Sharp's most recent communication in a letter dated September 24, 2021, indicated that the actions would be forthcoming. As a result of your failure to submit a site survey that identifies the current edge of Bay and 100-foot-shoreline band, your failure to submit a fileable request to amend the permit to authorize unauthorized fill and uses, and your failure to provide the required and missing public access, we are issuing this notice of violation enforcement letter.

BCDC Permit 1973.014.01 which applies to Assessor Parcel Number (APN) 052-247-01 includes Standard Condition IV.C. entitled Permit Assignment which states that:

The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

On July 21, 2021 Commodore Marina and Seaplane Adventures sold APN 052-247-01 to Seaplane Investment LLC. Former and current permittees have not completed the required permit assignment form with supporting current ownership documentation.

BCDC Permit M1985.030.01 which applies to APN 052-247-02 includes Standard Condition IV.E. entitled Permit Assignment which states that:

The rights derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the original application and amendment request for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.



On July 21, 2021 Commodore Marina and Seaplane Adventures sold APN 052-247-02 to Seaplane Investment LLC. Former and current permittees have not completed the required permit assignment form with supporting current ownership documentation.

Permit 1973.014.01 authorizes the permittees to:

- f. Relocate the existing approximately 1,528-square-foot houseboat moored at Berth #11 approximately 18 feet to the northwest to remove it from an existing right-of-way, including removing eight 18-inch-in-diameter wood pilings and installing, using, and maintaining approximately four new pilings (12-inches-in-diameter) at the new berth;
- g. Install, use, and maintain an approximately 112-square-foot float for access to the boat at Berth #11 and remove the existing approximately 224-square-foot float;
- h. Renovate, use, and maintain the houseboat at Berth #11, including replacing two first-story and two second-story cantilevered decks, totaling approximately 247 square feet to replace removed decking totaling approximately 96 square feet; and
- i. Relocate the existing houseboat at Berth #10 7-8 feet to the northwest to accommodate the relocated houseboat at Bert #11 and extend, use, and main-tain an approximately 35-square-foot float to provide access to the houseboat Berth #10.

Permit 1973.014.01 required this work to be completed by November 1, 2019. On September 2, 2020, BCDC issued Corrected Permit No. 1973.014.02, which authorized a time extension valid until October 31, 2020. On April 16, 2021, BCDC issued Permit No. 1973.014.03, which authorized a time extension until August 31, 2021. On August 9, 2021, Harold Heldman, a marina tenant not authorized to request amendments, submitted a request for an additional time extension that has not yet been filed as complete and has not been issued. Therefore, the houseboat renovation and relocation was not completed by August 31, 2021, as authorized and the work to complete the project that is underway is unauthorized pending an additional time extension.

The McAteer-Petris Act (MPA) in Section 66632(a) relating to permit applications requires:

Any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission and, if required by law or by ordinance, from any city or county within which any part of the work is to be performed. For purposes of this title, "fill" means earth or any other

substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. For the purposes of this section "materials" means items exceeding twenty dollars (\$20) in value.

Permittees have constructed unauthorized boat docks, replaced the boat ramp, installed a fuel tank, and are storing planes and parking on Yolo Street. These activities are the placement of fill and/or a substantial change in use of BCDC's Bay and/or shoreline band jurisdictions and require after-the-fact authorization or removal.

BCDC Permit 1973.014.01 in Special Condition II.C.4.c entitled Public Access requires the permittee to:

Provide an 8-foot wide all weather pathway suitable for pedestrian and bicycle use leading from the existing Marin County Bike Path adjacent to Bolinas Street to the shoreline by either paralleling Yolo Street in Block 167, or if permission is received from the County of Marin, by passing within Yolo Street, hence along the shoreline to the northeast edge of the property.

Permittees have failed to install and/or maintain the public access as required by the permit.

BCDC Permit 1973.014.01 in Special Condition II.D, entitled Use of Solid Fill requires:

The fill approved herein for Block 167, Yolo and Parepa Streets, shall be used only for project landscaping and landscaped public access, pedestrian and bicycle pathways, and in Block 164 for heliport flood control purposes only.

Permittees failed to limit use of Yolo Street exclusively for public access. However, staff will not commence a penalty clock for this permit violation as it would duplicate the penalty clock that will toll for the violations of the McAteer Petris Act. In considering an after-the-fact amendment request from owners, this special condition must be considered.

Pursuant to BCDC Regulation 11386, the applicable provisions of which are specified below, this letter initiates separate penalty clocks for each of the violations listed below with how it/they can be resolved. Seaplane Investment LLC has 35 calendar days from the date of this letter to resolve the violations before fines begin to accrue. A detailed description of how fines accrue is attached to this letter in Appendix 1.

The Permit requirements specified above have not been satisfied. Therefore, Seaplane Investments LLC has four permit violations and one McAteer-Petris Act violation.

Violations One and Two: Failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit in violation of 11386(e)(2) for not submitting permit assignment forms for Permit 1973.014.01 and Permit M1985.030.01.



Staff recommendation to resolve these violations: Complete and submit two permit assignment forms with change in ownership information as required by the permits and as specified on BCDC's website and spelt out below:

- Instructions
 - All owners on the deed must sign the assignment form, either as the people granting the assignment (assignors) or the people accepting the assignment (assignees). Type the name(s) of each signatory under the signature.
 - If the assignor or assignee is an entity, trustee or person with power of attorney, then the authorized representative may sign. The authorized representative must, by signing the form, have the authority to bind the entity or owner to the terms of the permit.
 - Fill in the blanks as appropriate to the permit.
- Attachments
 - Attach a copy of the deed, recent title report or lease that demonstrates that the person (or the entity) accepting the assignment has control over the property.
 - Attach a signature authority if the person signing the form is acting on behalf of an entity, or as trustee or with the power of attorney
- Forms
 - Partial Assignment of BCDC permit (PDF) || MS Word
 - Assignment of BCDC permit (PDF) || MS Word

Violation Three: Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit for unauthorized houseboat renovations and relocation in violation of 11386(e)(4).

Staff recommendation to resolve violation: Submit a fileable application to amend the existing permit so that staff can issue a time extension to complete the proposed work. The application must be submitted by an authorized representative of Seaplane Investment LLC. Harold Heldman is not an authorized representative of Seaplane Investment LLC.

Violation Four: Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit for unauthorized work in the Bay and shoreline band by installing and using a boat dock, and installing and using a Sea Plane fueling tank and a launch ramp in the Yolo Street right-of-way (ROW), parking vehicles and storing and repairing Seaplanes in an unapproved location in violation of 11386(e)(4).

Staff recommendation to resolve violation: Submit a fileable application to amend the permit for all unauthorized activities and obtain authorization after-the-fact for the fill and these activities or remove the unauthorized fill and/or immediately stop all unauthorized



activities. As you have been advised throughout our ongoing communications the fill and activities qualify for review as a nonmaterial permit amendment. Please submit a complete project description, a site survey that maps the location of the mean high tide line, where tidal marsh vegetation is present the location of five feet above mean sea level and the correlating 100 foot shoreline band, project plans, evidence of pursuing quiet title for the Yolo Street ROW as required by the County of Marin, and double the permit application fee because the application will resolve an enforcement action. Please refer to the information in Attachment 2 and in our letter to you dated September 15, 2020 (Attachment 4).

Violation Five: Failure to comply with any condition required by a Commission permit for failure to provide required public access in violation of 11386(e)(3).

Staff recommendation to resolve violation: Submit and obtain approval of a plan to provide the public access required by Special Condition II.C.4.c and construct the required public access pursuant to the staff approved plan. Please refer to our letter to you dated September 15, 2020 (Attachments 2 and 4) and the initial public access suggestion prepared by Ashley Tomerlin, BCDC Bay Development and Design Analyst, shared with Mr. Sharp by email on September 3, 2021 (Attachment 3). Upon completion, you must notify staff by submitting photographs and inviting us to conduct a site visit to verify that conditions are compliant with the permit and to be reviewed and approved plans.

We look forward to assisting you in resolving this enforcement matter by obtaining submissions of both permit assignments with supporting documentation by November 15, 2021; submissions of two separate fileable after-the-fact permit applications no later than October 31, 2021, for the houseboat, and no later than November 30, 2021 for the other unauthorized fill and substantial changes in use; obtaining the remaining permit amendments no later than February 28, 2022; and installing the missing public access area in conformance with approved plans by December 31, 2021. When these actions are completed (and any standardized fines that may accrue are paid) Enforcement Case ER2019.063 will be resolved. You can reach me by phone by calling 415-352-3609 or by email at adrienne.klein@bcdc.ca.gov.

Sincerely,

Adrienne Klein

ADRIENNE KLEIN
Principal Enforcement Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3609
Fax: 415-352-3606
Email: adrienne.klein@bcdc.ca.gov
Website: www.bcdc.ca.gov



AK/mm

- Encls. 1. Appendix of Standardized Fines and Enforcement Options
2. Klein/Sharp Emails between July 14, 2021 and September 3, 2021
3. Ashley Tomerlin, BCDC Bay Development and Design Analyst, Public Access Recommendations, September 3, 2021
4. September 15, 2020 BCDC letter to Commodore

cc: Brent Plater, BCDC Lead Enforcement Attorney, brent.plater@bcdc.ca.gov;
Priscilla Njuguna, BCDC Enforcement Policy Manager, priscilla.njuguna@bcdc.ca.gov;
Aaron Singer, Seaplane Investment LLC, aaron@seaplane.com;
John Sharp, Law Offices of John E. Sharp, Attorney for Aaron Signer, john@johnsharplaw.com;
Steve Price, Seaplane Adventures, steve@seaplane.com;
Steve Price, President and CEO, Price & Mulvihill Investigations, Inc. steve@priceandmulvihill.com;
Neil Sorensen, Attorney at Law, Attorney for Commodore Marina, LLC and Steve Price, Owner, neil@sorensenlaw.com.

Attachment 2

Klein/Sharp Emails between July 14, 2021 and September 3, 2021

Will do.

John E. Sharp
Law Offices of John E. Sharp
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903
(415) 479-1645 (phone)
(415) 295-7020 (fax)

-----Original Message-----

From: Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov>
Sent: Friday, September 3, 2021 11:36 AM
To: John Sharp <john@johnsharplaw.com>
Cc: Njuguna, Priscilla@BCDC <priscilla.njuguna@bcdc.ca.gov>
Subject: Re: Commodore/Seaplane at 240 Redwood Highway, Mill Valley 94941 (Enforcement Case ER2019.063)

Thank you, John,

Please do provide us with a date and also the status of the site survey?

Adrienne

Thank you, Adrienne,
I'm meeting with my client again today, and will provide you a new date early next week.

John E. Sharp
Law Offices of John E. Sharp
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903
(415) 479-1645 (phone)
(415) 295-7020 (fax)

-----Original Message-----

From: Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov>
Sent: Wednesday, August 25, 2021 11:33 AM
To: John Sharp <john@johnsharplaw.com>
Cc: Njuguna, Priscilla@BCDC <priscilla.njuguna@bcdc.ca.gov>
Subject: Commodore/Seaplane at 240 Redwood Highway, Mill Valley 94941 (Enforcement Case ER2019.063)

John,

I have rec'd both of your messages indicating that you could not meet the 8/24 timeline to submit an amendment request that includes a jurisdictional determination, updated ownership information and the other information outlined below and in the attached communications from us. Please provide an alternate date when BCDC can expect your submittal.



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Enforcement Case ER2019.063.00

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Below I have pasted in the email sent as part of our 7/14 meeting invitation and above I have attached the documents that I included with that email for your easy reference.

Thank you and sincerely,

Adrienne

On 8/25/21, 8:19 AM, "John Sharp" <john@johnsharp.com> wrote:

Hi Adrienne,
Don't know if you're back yet. I'm in deposition today. May we talk tomorrow or Friday?
Thanks,
John Sharp

Sent from my iPhone

(Email version of 1:30 pm 7/14/2021 Teams Meeting Invitation per request of John Sharp for reference.)

Steve Price,
Neil Sorenson
John Sharp

Regarding: 240 Redwood Highway, Mill Valley 94941 BCDC Enforcement Case ER2019.063 Permit 1973.014.02 issued to Commodore Marina Permit M1985.030.01 issued to Commodore Helicopters, Inc. and Walter Landor

Gentlemen,

BCDC would like to meet with you via Microsoft Teams to discuss our allegations and your responses and provide direction on next steps, including setting a timeline, to resolve this enforcement matter. I left two of you voice mail messages this afternoon asking that you confirm your availability for this meeting or advise me of other times the week of July 12th if you are not free at the proposed time.

On November 12, 2020 (initial response from Sorenson), November 13, 2020 (initial response from Sharp), January 19, 2021 (diagram of dedicated public access area from Sorenson), and June 15, 2021 (complete response from Sharp), I received your letter responses, to the BCDC letter dated September 15, 2020. Thank you for the time you took to conduct research and provide information responsive to our letter along with other email communications not cited here. This information is attached along with copies of both permits that govern the site and a screen shot of the site for our collective reference.

Please immediately proceed with the preparation of a request to amend the 1973 permit to pursue authorization for the unauthorized dock reconfiguration, ramp and changes to the SeaPlane Operations that have occurred since 9/17/1965, such as fill placement in the Bay and shoreline band and/or an intensification of use of the Yolo Street right of way for SeaPlane storage, a fuel tank and car parking. As part of this amendment request, you will need to: 1. File a quiet title action for the Yolo Street corridor to make non-public uses of that right of way pursuant to direction that we (and you, we believe) have received from Marin County; 2. Prepare and submit a map that locates today's edge of Bay (at 5.47 feetNAVD88 mean high tide elevation) and 100 foot shoreline band; 3. Provide fill amounts and other information including plans relevant to ongoing operations at the site in the Bay and shoreline band; 4.



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Submit approvals from the RWQCB and USACE or evidence that none are necessary; and 5. Submit an application fee for a non-material amendment to a major permit resulting from an enforcement action, pursuant to our fee schedule <https://www.bcdc.ca.gov/legal/summary-permit-application-fee-chart.html>. I expect the fee may be 75% of either \$600 or \$800? There may be other components of the amendment request, to be discussed during our meeting, such as how to address the significant erosion along the shoreline edge that is or will soon adversely affect the existing required public access, though it may make sense to pursue that work as part of a separate amendment request.

The permit required public access area is greater in scope than the permit area required to be dedicated. The public access at the site is not compliant with the permit. Therefore, we also request that you prepare a site plan that clearly designates an accessible public access route at the site as described in your permit. The plan should include proposed signs. Upon receiving plan approval from our Bay Design Analyst, will have to construct the absent public access and post the absent public shore and general public use parking signs. We also believe the landscaping needs to be updated. See the BCDC guideline for public access, landscaping and signs to assist with the preparation of plans that will meet our approval. The guidelines are located part way down the page at this link: <https://www.bcdc.ca.gov/publications/index.html>

We will also discuss the allegations raised by the Richardson Bay Environmental Protection Association pertaining to lead contamination, CEQA/NEPA compliance and the bulkhead in place of the ramp.

Sincerely,

Adrienne Klein
SF BCDC
41-5252-3609

cc: Priscilla Njuguna, Enforcement Policy Manager
Brent Plater, Enforcement Attorney
John Creech, Enforcement Analyst
Megal Delaporte, Legal Intern



Assignment of BCDC Permit

Commodore Marina, LLC; 1083 Vine Street, #244, Healdsburg, CA 95448; (415) 850-5200,
(full name, address, and telephone number of current permittee-assignor)

by its Managing Member,
(title or position of person executing for assignor, e.g., President, Secretary, etc., if any)

Steve Price, assignor, hereby assigns all rights and
(full name of person executing for assignor,
if different from name of assignor)

interests in San Francisco Bay Conservation and Development Commission Permit No. 1973.014.01

dated August 24, 1973, as amended through Amendment

No. 1973.014.03, dated April 16, 2021,
(number and date of last amendment, if applicable; otherwise cross out)

to Seaplane Investments, LLC, a California Limited Liability Company,
(full name of assignee) (type of entity receiving assignment
e.g. a California Corporation, a Nevada
partnership, an individual, etc.)

315 Linden Street, San Francisco, CA 94102,
(full address of person or entity receiving assignment)

Executed on this 1/3/2022 day of 1/3/2022, 201/3/2022, at
Sonoma, California.

DocuSigned by:
Steve Price
(signature of assignor or person executing for assignor)

Seaplane Investments, LLC, 315 Linden Street, San Francisco, CA 94102, (415) 332-4843,
(full name, address, and telephone number of entity or person taking assignment)

by its Manager, Lou Vasquez
(name and title or position of person executing for assignee,
e.g., President, Secretary, etc., if any)

assignee, acknowledges that, he [she or it] has read and understood the application for
Permit No. 1973.014.01, and the permit itself, as amended through Amendment No. Three,
dated 4/16/21, and hereby accepts those rights, interest, and obligations in BCDC Permit
No. 1973.014.03, as amended, and agrees to be bound by all the terms and conditions of the
permit and any amendments.

Executed on this 1/3/2022 day of 1/3/2022, 201/3/2022, at
Santa Rosa, California.

DocuSigned by:
Lou Vasquez

(signature of assignee or person executing for
assignee)

Assignment of BCDC Permit

Commodore Marina, LLC; 1083 Vine Street, #244, Healdsburg, CA 95448; (415) 850-5200,
(full name, address, and telephone number of current permittee-assignor)

by its Managing Member,
(title or position of person executing for assignor, e.g., President, Secretary, etc., if any)

Steve Price, assignor, hereby assigns all rights and
(full name of person executing for assignor,
if different from name of assignor)

interests in San Francisco Bay Conservation and Development Commission Permit No. M1985.030.01

dated December 28, 1985, as amended through Amendment

No. Not Applicable, dated _____,
(number and date of last amendment, if applicable; otherwise cross out)

to Seaplane Investments, LLC, a California Limited Liability Company,
(full name of assignee) (type of entity receiving assignment
e.g. a California Corporation, a Nevada
partnership, an individual, etc.)

315 Linden Street, San Francisco, CA 94102,
(full address of person or entity receiving assignment)

Executed on this 1/3/2022 day of 1/3/2022, 201/3/2022, at

Sonoma, California.

DocuSigned by:

Steve Price

(signature of assignor or person executing for assignor)

Seaplane Investments, LLC, 315 Linden Street, San Francisco, CA 94102, (415) 332-4843,
(full name, address, and telephone number of entity or person taking assignment)

by its Manager, Lou Vasquez
(name and title or position of person executing for assignee,
e.g., President, Secretary, etc., if any)

assignee, acknowledges that, he [she or it] has read and understood the application for
Permit No. M1985.030.01 and the permit itself, as amended through Amendment No. _____,
dated _____, and hereby accepts those rights, interest, and obligations in BCDC Permit
No. _____, as amended, and agrees to be bound by all the terms and conditions of the
permit and any amendments.

Executed on this 1/3/2022 day of 1/3/2022, 201/3/2022, at
Santa Rosa, California.

DocuSigned by:
Lou Vasquez

(signature of assignee or person executing for
assignee)

OPERATING AGREEMENT
OF
SEAPLANE MANAGEMENT, LLC

THIS OPERATING AGREEMENT (the “Agreement”) of Seaplane Management, LLC (the “Company”) is entered into effective June 25, 2021 (the “Effective Date”) by and among (i) Lou Vasquez, an individual, as the manager (the “Manager”) and (iii) the Persons named as the Members on Exhibit A attached hereto.

RECITALS

A. The Company was formed on June 25, 2021, in accordance with the California Revised Uniform Limited Liability Company Act (the “LLC Act”).

B. The Company has been formed to serve as the manager of, and hold an equity interest in, Seaplane Investment, LLC (“Seaplane Investment”). Seaplane Investment has been formed to acquire, hold and manage certain real property identified as 240 – 242 Redwood Highway, Mill Valley, CA 94941 (together with all improvements from time to time thereon, all personal property owned by the Company and used in connection with the ownership or operation thereof, and all rights appurtenant thereto or useful in connection therewith, the “Property”), for investment, appreciation and the production of income.

C. The parties hereto wish to set forth the terms and conditions for the operation and governance of the Company on the terms set forth herein.

AGREEMENT

In consideration of the terms and conditions contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. FORMATION OF LIMITED LIABILITY COMPANY

1.1 Name and Principal Office.

The Members hereby form the Company pursuant to the LLC Act. The business of the Company shall be conducted under the name of Seaplane Management, LLC. The principal office of the Company shall be at 315 Linden Street, San Francisco, California 94102, or at such other place as may be designated in writing by the Manager.

1.2 Purpose.

The primary purpose of the Company is to serve as the manager of, and hold an equity interest in, Seaplane Investment, and to engage in any and all activities necessary or incidental to the foregoing business.

1.3 Addresses of the Members.

The names and addresses of the Members are listed on Exhibit A.

1.4 Term of the Company.

The term of the Company commenced on June 25, 2021, upon the filing of the Articles of Organization, and shall continue until dissolved and terminated in accordance with Section 6 of this Agreement or by operation of law.

1.5 Definitions

As used in this Agreement, the following terms shall have the following meanings:

(a) *“Adjusted Capital Account”*: the Member's Capital Account, reduced by the net adjustments, allocations and distributions described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) and (6) which, as of the end of the Company's taxable year are reasonably expected to be made to such Member, and increased by the sum of (i) any amount which the Member is required to restore to the Company upon liquidation of his or its interest in the Company (or which is so treated pursuant to Treasury Regulation §1.704-1(b)(2)(ii)(c)); (ii) the Member's share of the Company's Minimum Gain (as determined under Treasury Regulation §1.704-2(g)(1)); and (iii) the Member's share of Partner Nonrecourse Debt Minimum Gain (as determined under Treasury Regulation §1.704-2(i)(3)).

(b) *“Adjusted Invested Capital”*: an amount equal to a Member's Capital Contributions, less distributions made to the Member pursuant to Section 3.2(a) of this Agreement.

(c) *“Affiliate”*: the members, partners or constituent shareholders of a Member, or any other partnership, corporation, limited liability company or other entity owned or controlled by a Member or by the same persons who own or control a Member.

(d) *“Agreement”*: this Amended and Restated Operating Agreement, as originally executed and as amended, modified, supplemented or restated from time to time in accordance with its terms.

(e) *“Articles of Organization”*: the Articles of Organization of the Company, as originally filed and as amended or restated from time to time in accordance with this Agreement and with the LLC Act.

(f) *“BBA Rules”*: means the partnership audit rules contained in the Bipartisan Budget Act of 2015 and enacted as Sections 6221 through 6241 of the Code.

(g) *“Book Value”*: with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Book Value of any asset contributed (or deemed contributed) to the Company shall be such asset's gross fair market value at the time of such contribution;

(ii) The Book Value of all Company assets shall be adjusted to equal their respective gross fair market values at the times specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f) if the Manager so elects;

(iii) If the Book Value of an asset has been determined pursuant to clause (i) or (ii), above, such Book Value shall thereafter be adjusted in the same manner as would the asset's adjusted basis for federal income tax purposes except that depreciation or amortization deductions shall be computed under Section 1.5(t)(iv).

(h) *“Capital Account”*: an individual “Capital Account” shall be maintained for each Member. The Capital Account of each Member shall be:

(i) Increased by (i) the amount of money contributed by the Member, (ii) the fair market value of property contributed by the Member net of liabilities secured by such

property that the Company is considered to assume or take subject to under Section 752 of the Code, and (iii) such Member's share of Company Net Income; and

(ii) Decreased by (i) the amount of money distributed to such Member from the Company (other than to any Member in repayment of any loan or advance), (ii) the fair market value of property distributed to the Member by the Company net of liabilities secured by such property that such Member is considered to assume or take subject to under Section 752 of the Code; (iii) such Member's share of Company Net Losses.

For purposes of computing the balance in a Member's Capital Account, no credit shall be given for any capital contribution which the Member is obligated to make until such contribution is actually made. Notwithstanding any other provision in this Agreement to the contrary, the Capital Accounts of the Members shall be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv).

(i) "*Capital Contributions*": the contributions (if any) made by each Member to the Company pursuant to Article 2 of this Agreement.

(j) "*Code*": the Internal Revenue Code of 1986, as amended.

(k) "*Company*": Seaplane Management, LLC, a California limited liability company.

(l) "*Designated Individual*": as defined in Section 3.9(a).

(m) "*Gross Income*": the Company's gross income as determined for federal income tax purposes for each fiscal year or period but computed with the adjustments specified in Sections 1.5(t)(i) and 1.5(t)(iii).

(n) "*LLC Act*": the California Revised Uniform Limited Liability Company Act, as amended from time to time.

(o) "*Majority in Interest*": Members holding a majority of the Percentage Interests in the Company.

(p) "*Manager*": The Manager of the Company is Lou Vasquez.

(q) "*Member*": A Person who: (i) has been admitted to the Company as a Member in accordance with this Agreement and whose name is set forth on Exhibit A attached hereto and (ii) has not resigned or withdrawn as a Member or, if other than an individual, been dissolved.

(r) "*Membership Interest*": A Member's rights in the Company, collectively, including any right to vote or participate in management, and any right to information concerning the business and affairs of the Company provided by the LLC Act.

(s) "*Net Cash Flow*": (i) distributions received by the Company related to Seaplane Investment and/or the Property, plus (ii) any reserves held by the Company to the extent that the Manager determines that such reserves should be released and applied to expenses or distributed to the Members, plus (iii) any other income or receipts of the Company, less (iv) funds expended to repay obligations of the Company or to pay ordinary and necessary expenses of operating the Company, and reserves to meet anticipated expenses as determined by the Manager.

Any reimbursement or compensation paid pursuant to Section 4.4 shall be deducted as expenses of the Company.

(t) *"Net Income and Net Loss"*: the Company's taxable net income or net loss for each fiscal year or other period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this Section 1.5(s) shall be added to such taxable income or subtracted from such taxable loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures under Code Section 704(b) and not otherwise taken into account in computing Net Income or Net Loss pursuant to this Section 1.5(s), shall be subtracted from such taxable income or added to such taxable loss;

(iii) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of such property rather than its adjusted tax basis;

(iv) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account depreciation, amortization or depletion on the assets' respective Book Values in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g)(3); and

(v) The amount of any Gross Income allocated to the Members pursuant to Section **Error! Reference source not found.**, below, shall not be included as income or revenue.

(u) *"Partnership Representative"*: that individual or entity with substantial presence in the United States that represents the Company in any Company tax proceeding as provided under Code Section 6223(a) and corresponding provisions of applicable state law.

(v) *"Percentage Interest"*: as to any Member, the percentage set forth opposite the name of such Member under the like heading in Exhibit A attached hereto.

(w) *"Person"*: any individual or entity, including without limitation a corporation, partnership, association, limited liability company, limited partnership, trust, unincorporated association, government or governmental agency or authority.

(x) *"Property"*: as defined in the Recitals hereto.

(y) *"Pro Rata"*: with respect to all of the Members collectively, in proportion to their relative Percentage Interests at the time or times in question.

(z) *"Seaplane Investment"*: Seaplane Investment, LLC, a California limited liability company.

(aa) *"Tax Matters Representative"*: as defined in Section 3.9(a).

(bb) *"Treasury Regulations"*: final and temporary income tax regulations issued by the U.S. Treasury Department, Title 26 of the Code of Federal Regulations.

2. CAPITALIZATION OF THE COMPANY

2.1 *Members; Capitalization.*

(a) *Initial Capital Contributions; Percentage Interests.* As of the Effective Date, no Member has made capital contributions to the Company. Each Member shall initially have the Percentage Interest set forth on Exhibit A opposite such Member's name. Exhibit A shall be updated from time to time to reflect any changes in the capital contributions or Percentage Interests of the Members, or to reflect the addition or departure of any Member.

(b) *Additional Capital.* If, at any time and from time to time, the Manager determines that the Company requires capital, then the Manager may request that the Members contribute additional capital to the Company in amounts necessary to meet such obligations ("Additional Contributions"). If the Manager determines that Additional Contributions are necessary, the Manager will issue a written notice to the Members setting forth the amount of additional capital that is required. The Members shall not be required to contribute additional capital. In the event that any Members elect to make Additional Contributions, each such participating Member shall contribute his or her Pro Rata share of the additional capital set forth in the notice unless such participating Members agree otherwise.

(c) *Failure to Contribute.* In the event that the Members do not make the full amount of Additional Contributions requested by the Manager in a capital call notice, then the Manager may obtain the necessary capital through other means approved by a Majority in Interest, including loans from Members or third parties, or the admission of additional Members. Unless the Members unanimously agree otherwise, the Percentage Interests of the Members shall not change as a result of any Additional Contribution made by one or more Members.

2.2 *Withdrawal and Return of Capital.*

A Member shall not be entitled to withdraw any part of the Member's Capital Contribution or to receive any distributions, whether of money or property, from the Company except as provided in this Agreement.

2.3 *Limitation of Liability.*

Except as required under the LLC Act or as expressly agreed to in writing by the Member to be charged with such liability, no Member shall be personally liable for any debt, obligation or liability of the Company, whether that debt, obligation or liability arises in contract, tort or otherwise.

3. COMPANY ACCOUNTING AND DIVISION OF PROFITS

3.1 *Fiscal Year/Accounting Method.*

The fiscal year of the Company shall be the calendar year. Contributions by Members shall be kept in a bank account of the Company for the benefit of the Company to assure application of such funds for Company purposes. The Company books shall be kept on the cash method or the accrual method as determined by the Manager. Company funds shall not be commingled with the funds of any Member or any other person, company or entity.

3.2 Distributions.

The Manager shall make distributions of Net Cash Flow to the Members when and as declared by a Majority in Interest in the following manner and order of priority:

- (a) First, to the Members in proportion to the relative amounts of their respective Adjusted Invested Capital, until their Adjusted Invested Capital has been reduced to zero; and
- (b) Thereafter, to the Members in proportion to their Percentage Interests.

3.3 Allocation of Net Income and Net Losses.

For purposes of adjusting the Capital Accounts of the Members, Company Net Income and Net Losses shall be allocated to the Members in compliance with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder in a manner that as closely as possible tracks how distributions, as set forth above in Section 3.2, are made to the Members.

3.4 Compliance with Regulatory Allocation Requirements.

- (a) Notwithstanding any other provision of this Agreement to the contrary, if in any year there is a net decrease in the amount of the Company's Minimum Gain (within the meaning of Treasury Regulation §1.704-2(d)) then each Member shall first be allocated items of Gross Income for such year equal to that Member's share of the net decrease in Company Minimum Gain (within the meaning of Treasury Regulation §1.704-2(g)(1)).
- (b) Notwithstanding any other provision of this Agreement to the contrary other than Section 3.4(a), above, if in any year there is a net decrease in the amount of the Partner Nonrecourse Debt Minimum Gain (within the meaning of Treasury Regulation §1.704-2(i)(3)) then each Member shall first be allocated items of Gross Income for such year equal to that Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain (within the meaning of Treasury Regulation §1.704-2(i)(5)).
- (c) Notwithstanding any of the provisions above (except Sections 3.4(a) and 3.4(b), which shall be applied first), if in any fiscal year or other period a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6), which creates or increases a negative balance in such Member's Adjusted Capital Account, Gross Income (and items thereof) shall first be allocated to Members with negative Adjusted Capital Account balances at the end of such fiscal year, in proportion to such negative balances, until such balances are increased to zero.
- (d) Notwithstanding the provisions of Section 3.3, Net Losses (or items thereof) allocated pursuant to Section 3.3 shall not be allocated to a Member if such allocation would cause or increase a negative balance in such Member's Adjusted Capital Account at the end of the fiscal year of such allocation and shall be reallocated to the other Members, subject to the limitations of this Section 3.4.
- (e) Any Net Loss or deductions attributable to Partner Nonrecourse Debt (within the meaning of Treasury Regulation §1.704.2(b)(3)) shall be allocated to the Member who bears the economic risk of loss with respect to such Debt.
- (f) Allocations of book and tax items with respect to property contributed by any Member shall be made solely for federal income tax purposes as required by Section 704(c) of

the Code. Following any revaluation of the Company's assets and the adjustment of any Member's Capital Account pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(f) to reflect such revaluation, the Members' Capital Accounts shall be adjusted for various items as computed for book purposes with respect to such revalued assets as required by Treasury Regulation §1.704-1(b) and the Members' shares of such items as computed for tax purposes with respect to such items shall be determined as required by Treasury Regulation §1.704-1(b).

3.5 Curative Allocations.

The allocations set forth in Section **Error! Reference source not found.** (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulations sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may affect results which would be inconsistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Manager is authorized to divide other allocations of Net Income, Net Losses and other items among the Members, to the extent that such items exist, so that the net amount of the Regulatory Allocations and the special allocations to each Member is zero. The Manager will have discretion to accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Regulations.

3.6 Members Not Resident in California.

Each Member who is not a resident of the State of California, or who subsequently becomes a nonresident, shall execute and deliver to the Company the agreement required under California Revenue and Taxation Code §18633.5(e). Such agreement shall include, among other things, the agreement of such nonresident Member to file a California state income tax return and to make timely payment of all taxes imposed on such Member by the State of California with respect to the income of the Company.

3.7 Company Records.

The Manager shall maintain, or cause to be maintained, appropriate books, records, and reports for the Company as required by the LLC Act, which shall be available for inspection or copying by the Members as required by the LLC Act.

3.8 Tax Information.

The Manager shall deliver to each Member, within ninety (90) days after the end of each fiscal year of the Company, all information necessary from the Company for the preparation of each Member's state and Federal income tax returns.

3.9 Tax Matters Representative

(a) The Manager shall be the Partnership Representative of the Company (the "Tax Matters Representative"). Each Member (including the Manager) must take such actions as are necessary to perfect such designation. For any tax year that the Tax Matters Representative is not an individual, the Manager shall designate an individual, who would otherwise be eligible to serve as Partnership Representative, as the sole individual through whom the Partnership Representative may act (the "Designated Individual"). The Tax Matters Representative is specifically directed and authorized to take whatever steps deemed necessary or desirable to perfect any such designation, and the Tax Matters Representative and the Members shall execute any forms or statements required in connection therewith.

(b) The Tax Matters Representative shall have full authority to take any action on behalf of the Company under Code Section 6223 including, without limitation, the authority to: (i) manage and control any tax audit or examination of the Company, (ii) represent the Company in connection with any administrative or judicial tax proceeding, (iii) extend the statute of limitations on any tax assessment, (iv) contest or settle any tax assessment or adjustment on behalf of the Company, (v) propose any modification available under Code Section 6225(c) to any underpayment of tax by the Company, (vi) cause the Company to elect the application of Code Section 6226 with respect to any tax underpayment, and (vii) file a request for administrative adjustment of Company tax items, or, to the extent any such request is not allowed in full, file a petition for adjustment with the Tax Court, any District Court, or the United States Court of Federal Claims. The Company shall be responsible for all expenses paid or incurred by the Tax Matters Representative in good faith in connection with any such tax matters. If any state, local or non-U.S. tax law provides for a “tax matters partner”, “partnership representative” or person having similar rights, powers, authority or obligations, the Tax Matters Representative shall also serve in such capacity.

(c) Every Member, on such Member’s tax returns, will treat a Company tax item in a manner that is consistent with the treatment of the item on the Company’s tax return.

(d) All Members will cooperate reasonably with the Tax Matter Representative in connection with any audit, tax proceeding or tax filing including, without limitation: (i) making available to the Tax Matters Representative such personnel or other information of the Member as may reasonably be deemed necessary by the Tax Matters Representative in connection with any audit, tax proceeding or tax filing and (ii) taking such actions requested by the Tax Matters Representative, including filing amended tax returns and paying any tax due in accordance with Code Section 6225(c)(2).

(e) A Member’s obligation under this Section 3.9 will survive the transfer of any interest in the Company by a Member and the termination, dissolution, liquidation and winding up of the Company.

4. ADMINISTRATIVE PROVISIONS

4.1 Management Vested in Manager.

(a) Management of the Company shall be vested in one Manager. The Manager may be, but is not required to be, a Member of the Company. The initial Manager shall be Lou Vasquez. References herein to the “Manager” shall be deemed to refer to the initial Manager, while so appointed. Lou Vasquez may be removed as Manager upon a vote of a Majority in Interest of the Members.

(b) The Manager shall direct, manage and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Agreement or by non-waivable provisions of applicable law, all decisions concerning the management of the Company’s business shall be made by the Manager and the Manager shall have authority to manage and control the business and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company’s business.

(c) Unless authorized to do so by this Agreement, no Member (other than the Manager), attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

4.2 Member Approval for Certain Actions.

Notwithstanding Section 4.1, the Manager shall not take any of the following actions without the prior written approval of a Majority in Interest:

- (a) Incur any indebtedness or guaranty any indebtedness.
- (b) Loan money to any Member.
- (c) Enter into any contract on behalf of the Company.
- (d) Make any distributions under this Agreement.
- (e) Liquidate or dissolve the Company.
- (f) Amend any of the organizational documents of the Company.
- (g) Admit any new Members to the Company.
- (h) Employ or terminate any employee or consultant of the Company.
- (i) Make any expenditure of Company assets in excess of \$1,000.
- (j) Make any amendment to this Agreement, provided that the Manager may unilaterally make any amendment: (i) to reflect transfers permitted under Article 5, (ii) to comply with requirements of income tax laws or regulations, provided that such amendment may not materially diminish the rights or materially increase the obligations of any Member, or (iii) to revise Exhibit A to reflect the addition or substitution of Members, the return of capital to Members, or the creation or sale of additional Membership Interests in the Company.

4.3 Competing Ventures.

Nothing contained herein shall preclude any Member (including a Manager) from purchasing or owning any other property, or rights therein, or in any manner investing in, participating in, developing or managing any other venture of any kind, without notice to the other Members, without participation by the other Members, and without liability to them or any of them. Each Member waives any rights it may have against the others for capitalizing on information received as a consequence of its connection with the affairs of the Company.

4.4 Reimbursement and Compensation.

(a) The Manager shall not receive any compensation for services provided to the Company unless approved by a Majority in Interest of the Members.

(b) The Manager shall be entitled to reimbursement for expenses incurred on behalf of the Company, including but not limited to expenses incurred prior to or in connection with formation of the Company, and any legal fees incurred in the preparation and negotiation of this Agreement and any amendments hereto. The Manager shall also be reimbursed by the Company for the costs of forming and administering the Manager, including but not limited to any legal fees incurred in the preparation and negotiation of the operating agreement of the Manager and any amendments thereto, annual franchise taxes due to the State of California with respect to

the Manager, and costs of preparing state and federal income tax returns of the Manager. There shall be no reimbursement for general overhead costs of the Manager.

5. TRANSFER OF A COMPANY INTEREST

5.1 Compliance With This Agreement.

A Member shall not sell, transfer or assign all or any part of such Member's Membership Interest without strictly complying with Sections 5.2, 5.3 and 5.4 of this Agreement. No sale, transfer or assignment of all or any part of a Membership Interest in violation of this Agreement shall be valid or effective. A Member may not dissociate from the Company without the written consent of the Manager. Dissociation shall not release a Member from any obligations and liabilities under this Agreement accrued or incurred before the effective date of dissociation. A dissociating Member shall have only the rights of a holder of a transferable interest in the Company in respect of the Member's Membership Interest in the Company. Unless all remaining Members consent to the dissociation, the dissociating Member shall not be entitled to a distribution of its transferable interest until the dissolution and liquidation of the Company. The transferable interest of a dissociating Member shall not mean or include any right to share in the income, gains, losses, deductions, credits, or similar items of the Company attributable to any period following dissociation, or any right to information concerning the business and affairs of the Company except as provided in Section 17704.10 of the LLC Act.

5.2 No Lien or Encumbrance of Interest in Company.

No Member may pledge, assign as security, grant a lien upon, or otherwise encumber all or any part of a Membership Interest in the Company except with the consent of the Manager.

5.3 Conditions on Transfer.

The transfer of all or any part of a Membership Interest in the Company will be valid and effective only if the following conditions are satisfied:

(a) *Allowed Transfers.* A transfer will be allowed only by a Member to himself under declaration of trust, to a spouse or child of the Member by testamentary disposition or under declaration of trust (of which the transferring Member is a trustee) or by distribution from such a trust, or to a custodianship (of which the transferring Member is custodian), to a family partnership or limited liability company (of which the transferring Member or his designee is a general partner or manager), or to any transfer to another existing Member. A "family partnership or limited liability company" shall mean a limited partnership or limited liability company in which a majority of the interests are held by a Member, members of his family, or trusts for their benefit. Any other transfer by a Member shall be subject to the right of first offer set forth in Section 5.4.

(b) *Execute Documents.* The transferor and the transferee shall properly execute documents or instruments which the Manager may determine to be necessary or desirable to effect such transfer, including written acceptance, ratification and approval of all of the terms and conditions of this Agreement and its amendments.

(c) *Pay or Assume All Obligations.* The transferor or transferee shall have: (i) performed and paid all obligations owed to the Company or the Manager, and (ii) paid all reasonable expenses of the Company connected with the transfer.

(d) *Compliance With Securities Laws.* The transfer of the ownership interest of the transferor does not, to the reasonable satisfaction of the Manager, violate any state or Federal securities laws.

5.4 Right of First Offer.

Each time a Member proposes to transfer all or any part of its Membership Interest (the "Proposed Transfer Interest") other than pursuant to Section 5.3(a), such Member (a "Transferring Member") shall first offer the Proposed Transfer Interest to Manager, and if the Manager does not accept such offer then to the other Members (each a "Non-Transferring Member"), in accordance with the following provisions:

(a) The Transferring Member shall deliver a written notice ("Option Notice") to the Manager stating (i) the Transferring Member's bona fide intention to transfer the Proposed Transfer Interest, (ii) the Membership Interest to be transferred, and (iii) the purchase price and terms of payment for which the Transferring Member proposes to transfer the Proposed Transfer Interest.

(b) Within sixty (60) days after receipt of the Option Notice, the Manager shall notify the Transferring Member in writing of its desire to purchase a portion and up to all of the Proposed Transfer Interest upon the price and terms of payment designated in the Option Notice. If the Option Notice provides for the payment of non-cash consideration, the Manager may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as reasonably determined by the Manager. If the Manager determines not to purchase all of the Proposed Transfer Interest, it shall provide to the other Non-Transferring Members within such sixty (60) day period a copy of the Option Notice along with written notice of the portion, if any, which the Manager has elected to purchase.

(c) Within sixty (60) days after receipt of notice from the Manager under Section 5.4(b), each Non-Transferring Member shall notify the Transferring Member in writing of its desire to purchase a pro rata portion and up to all of the Proposed Transfer Interest not purchased by the Manager, upon the price and terms of payment designated in the Option Notice. If the Option Notice provides for the payment of non-cash consideration, such purchasing Members each may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as determined by the Manager (or by a Majority in Interest of the Members if the Transferring Member is the Manager). The failure of any Non-Transferring Member to submit a notice within the applicable period shall constitute an election on the part of such Non-Transferring Member not to purchase any of the Proposed Transfer Interest. If any Non-Transferring Member elects not to purchase the pro rata share of the Proposed Transfer Interest that such Non-Transferring Member is entitled to purchase, then the other Non-Transferring Members that have elected to purchase portions of the Proposed Transfer Interest may purchase additional portions of the Proposed Transfer Interest in proportion to their respective Percentage interests.

(d) If the Manager and/or other Non-Transferring Members elect to purchase the Proposed Transfer Interest, then the closing of such purchase shall occur within ninety (90) days after delivery of the last notice required under Section 5.4(b) or 5.4(c). At or before the closing Transferring Member and the purchasing Manager and other Non-Transferring Members

shall execute such documents and instruments and make such deliveries as may be reasonably required to consummate such purchase.

(e) If the Manager and other Non-Transferring Members elect not to purchase, or default in their obligation to purchase, the Proposed Transfer Interest, then the Transferring Member may transfer the Proposed Transfer Interest, providing such transfer (i) is completed within one hundred twenty (120) days after the expiration of the Non-Transferring Members' right to purchase the Proposed Transfer Interest under Section 5.4(c) and (ii) is made at a price equal to or higher than that designated in the Option Notice and on payment terms no more favorable to the buyer than those terms designated in the Option Notice. If the Proposed Transfer Interest is not so transferred within such period, the Transferring Member must give notice in accordance with this Section 5.4 prior to any other or subsequent transfer of the Proposed Transfer Interest.

5.5 *Transferee Not Admitted as Member.*

A transferee allowed under Section 5.3(a) shall be automatically admitted as a substituted Member in the Company. Any other transferee shall be admitted as a substituted Member only with the consent of the Manager. A transferee that does not become a substituted Member shall not be entitled to participate in the management or affairs of the Company or to exercise any rights of a Member but shall be entitled to receive any share of profits and losses and distributions to which its transferor would have been entitled, to the extent of the interest held by the assignee. Until a transferee is admitted as a substituted Member, there shall be no voting rights attached to the transferred economic interest or membership interest. The interest held by the transferee shall be subject to the same restrictions on transfer as are interests held by Members, as set forth in this Section 5. The transferee shall have the same obligations to the Company as a Member holding the same interest would have, including obligations to contribute Supplemental Capital and any unsatisfied obligation of the transferee's predecessor in interest in respect of the interest transferred.

5.6 *Divorce of a Member; Spousal Consent.*

(a) Any former spouse of a Member who receives an interest in the Company upon the divorce of that Member shall be treated as a transferee holding an economic interest under Section 5.5, with no right to participate in the management or affairs of the Company or to exercise any rights of a Member.

(b) It will be a condition precedent to admittance as a Member that the Person seeking to become a Member execute this Agreement and that, if the Person is an individual, the Person's spouse or registered domestic partner execute a Spousal Consent in substantially the form attached to this Agreement as Exhibit B. Further, if a Member is unmarried, divorced from the spouse or registered domestic partner who executes the Spousal Consent or if a Member's spouse or registered domestic partner is deceased, and the Member subsequently marries or remarries or becomes a registered domestic partner, as the case may be, the Member shall cause the Member's new spouse or domestic partner to execute a Spousal Consent..

6. DISSOLUTION/TERMINATION OF COMPANY

6.1 *Dissolving Events.*

The Company shall be dissolved upon the occurrence of any of the following events:

- (a) Consent of a Majority in Interest of the Members to dissolve; or
- (b) Any other event causing the dissolution of the Company under the LLC

Act.

6.2 *Winding Up of the Company.*

(a) Upon dissolution of the Company, the Company shall continue in existence until the winding up of its affairs is completed and the Manager shall wind up the affairs of the Company, liquidate the Company assets, and pay the debts, liabilities and claims against the Company. The Company shall engage in no further business other than as may be necessary to wind up the business of the Company and to distribute Company assets.

(b) Distributions in liquidation may be made in cash or in kind, as determined by the Manager. Distributions in kind shall be valued at fair market value as determined by the Manager and shall be subject to reasonable conditions and restrictions necessary or advisable in the discretion of the Manager in order to preserve the value of the property or other assets so distributed. Any distributions in kind shall be made to the Members in proportion to their allocable share of any such distribution unless otherwise agreed by all Members.

(c) The Net Income and Net Losses of the business during the period of dissolution shall be divided among or borne by the Members in accordance with the provisions of Section 3.3. Any property distributed in kind by the Company, whether in the liquidation or otherwise, shall be valued at fair market value by the Manager and treated (for the purposes of adjusting Capital Accounts) as though the property were sold for such value and the cash proceeds were distributed. The difference between the value of property distributed in kind and its Book Value shall be treated (for the purposes of adjusting Capital Accounts) as Net Income or Net Loss and shall be credited or charged to the Members in proportion to their respective shares of Net Income and Net Losses pursuant to Section 3.3.

(d) The proceeds from the liquidation of Company assets shall be applied and distributed by the end of the Company fiscal year in which liquidation occurs (or, if later, within 90 days after the date of such liquidation) according to the following order:

- (i) First, to pay expenses of winding up the Company and to pay creditors of the Company other than Members, in the order of priority as provided by law;
- (ii) Next, the Liquidating Member shall set up any reserves which they reasonably deem necessary for any contingent or unforeseen liabilities or obligations of the Company other than to the Members (which reserves when they become unnecessary shall be distributed in the remaining priority set forth in this Section 6.2(d)). If such reserves are established, the Company shall comply with the requirements of Treasury Regulation §1.704-1(b) regarding revaluation of Company property, adjustments of the Capital Accounts of the Members and ultimate distributions of such reserves;
- (iii) The remainder, among the Members according to the priorities set forth in Section 0.

7. LIABILITY AND INDEMNIFICATION OF THE MANAGER AND MEMBERS

7.1 *Liability.*

The Manager shall not be individually liable for the return of any contribution made to the Company by the Members. In the absence of fraud, gross negligence, material breach of fiduciary duties, material breach of this Agreement, or willful misconduct by the Manager, the Manager shall not be liable to the Company or the Members for any act or omission concerning the Company business.

7.2 *Indemnification.*

(a) In the absence of fraud, gross negligence, material breach of fiduciary duty, material breach of this Agreement, or willful misconduct on the part of a Manager, a Member, their Affiliates, or any employee or agent of a Manager, the Tax Matters Representative, the Designated Individual, a Member or their Affiliates, the Company shall indemnify and hold each of them harmless from and against any loss, expense, damage or injury suffered or sustained by any of them by reason of any acts, omissions, or alleged acts or omissions arising out of any activity performed in good faith on behalf of the Company, but excluding any claims made by the Company or the Members.

(b) This indemnification shall include, but not be limited to: (i) payment of reasonable attorneys' fees and other expenses incurred in settling any claim or threatened action, or incurred in any finally-adjudicated legal proceeding, and (ii) the removal of any liens resulting from an indemnified matter affecting any property of a Manager, the Tax Matters Representative, the Designated Individual, a Member or their Affiliates, or any employee, shareholder, member or agent of a Manager, a Member or their Affiliates. Notwithstanding the foregoing, this indemnification shall include reasonable attorney's fees, to be paid as incurred, provided that, if there is a reasonable question whether the indemnitee is entitled to indemnification under this section, a court of competent jurisdiction may provide for a reasonable undertaking or other security for the benefit of the Company to ensure repayment of any such advances if it is ultimately determined that such indemnitee is not entitled to indemnification from the Company.

8. GENERAL PROVISIONS

8.1 *Entire Agreement*

This Agreement contains the entire understanding among the Members and supersedes any prior written or oral agreement between them respecting the Company. There are no representations, agreements, arrangements, or understandings, oral or written, among the Members relating to the Company which are not fully expressed in this Agreement, other than any agreements which may exist between Members for the purchase of interests in the Company. This Agreement shall be construed in accordance with its fair meaning and not strictly for or against any party hereto, notwithstanding that this Agreement or any portion hereof may have been drafted by counsel for only one party.

8.2 *Amendments.*

This Agreement is subject to amendment only with the consents required by Section **Error! Reference source not found.** of this Agreement.

8.3 Governing Law.

All questions with respect to the interpretation of this Agreement and the rights and liabilities of the Members shall be governed by the laws of the State of California as they are applied to contracts entered into between residents of California to be performed entirely within California.

8.4 Meetings of Members; Actions Without Meetings.

The Company is not required to hold meetings of the Members, or to maintain minutes of meetings if meetings are held, except at the discretion of the Manager. The Manager may call for and conduct meetings of the Members pursuant to the procedures set forth in the LLC Act. Any action that may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote were present and voted. Any action taken without a meeting shall be effective when the required minimum number of Votes have been received.

8.5 Severability.

If any one or more of the provisions of this Agreement are determined to be invalid or unenforceable, such provision or provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

8.6 Counterparts.

This Agreement may be executed by facsimile or scanned .pdf (or similar electronic file format) and in any number of counterparts and when so executed, all of such counterparts shall constitute a single instrument binding upon all parties notwithstanding the fact that all parties are not signatory to the original or to the same counterpart.

8.7 Captions.

The captions and headings in this Agreement are for reference and convenience only and shall not limit or expand the meaning of the provisions of this Agreement.

8.8 Survival of Rights.

Subject to the restrictions against unauthorized assignment or transfer set forth in this Agreement, the provisions of this Agreement shall inure to the benefit of and be binding upon each Member and his or her heirs, devisees, legatees, personal representatives, successors, and assigns.

8.9 Additional Documents

Each Member agrees to execute and deliver to the Manager any additional documents and instruments which the Manager deem necessary or desirable to carry out the provisions of this Agreement or the business of the Company.

8.10 Mediation, Arbitration and Attorneys' Fees

(a) Any controversy or claim arising out of or relating to this Agreement, the Company or the Members' rights or duties (a "Dispute") shall be resolved by mediation and binding arbitration pursuant to this Section 8.10, which shall be initiated by written notice from any one party to the other parties, of the existence of a Dispute.

(b) Upon delivery of notice of a Dispute pursuant to Section 8.10(a), the parties shall jointly choose an impartial mediator within fifteen (15) business days after the notice of Dispute has been delivered to all parties. The parties shall then engage in mediation to resolve such Dispute for a period of thirty (30) business days, which mediation period may be extended by mutual consent of the parties.

(c) If the parties are unable to resolve the Dispute by mediation or are unable to agree upon a mediator within the periods set forth in Section 8.10(b), then such Dispute shall be resolved by binding arbitration in San Francisco County, California, as selected by the party initiating the arbitration. Such arbitration shall be conducted by JAMS/Endispute or by any other judicial arbitration service agreed to by the parties, and judgment upon the award may be entered in any court of competent jurisdiction. The arbitrator shall apply California substantive law to the proceeding. Discovery of documents shall be allowed only to the extent authorized by the arbitrator, and shall be conducted under the direction of the arbitrator. No other form of discovery, including but not limited to the taking of depositions, shall be allowed. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages provided by California law, but shall not have the power to award punitive damages. The arbitrator shall prepare in writing and provide to the parties an award including factual findings and the reasons on which the decision is based. The prevailing party or parties in such arbitration and any ensuing legal action shall be reimbursed by the party or parties who do not prevail for their reasonable attorney's, accountants', and experts' fees and the costs of such arbitration and action.

8.11 Notices

Any notice shall be in writing and shall be deemed duly given when personally delivered to the Member to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, registered or certified mail, postage prepaid, to the address set forth on Exhibit A for such Member, or to any other address of which the Manager is notified in writing. Notices may also be delivered via e-mail to the e-mail address provided by a Member or Manager, subject to the requirement that receipt of any notice delivered via e-mail is confirmed by return e-mail.

8.12 Gender

As used in this Agreement the masculine, feminine or neuter gender and the singular or plural number will be construed to include the others unless the context indicates otherwise.

8.13 No Third Party Beneficiaries.

Except as otherwise specifically provided in this Agreement, the provisions of this Agreement are not intended to be for the benefit of or enforceable by any third party and shall not give rise to a right on the part of any third party, including without limitation, any right to (i) enforce or demand enforcement of a Member's obligation to make Capital Contributions, to return distributions, or to make other payments to the Company as set forth in this Agreement or (ii) demand that the Company or the Managing Member issue any capital call.

[Signature page follows.]

[Signature Page to Operating Agreement of Seaplane Management, LLC]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

MANAGER:



Lou Vasquez

OTHER MEMBERS:



Signature

Aaron Singer

Print Name

EXHIBIT A
SEAPLANE MANAGEMENT, LLC
List of Members effective June 25, 2021

Name and Address	Percentage Interest
Aaron Singer [ADDRESS]	21.0%
Loring Sagan [ADDRESS]	15.98%
Lou Vasquez [ADDRESS]	14.98%
Mali Richlen [ADDRESS]	15.6%
Grant Barbour [ADDRESS]	14.98%
Scott Eschelman [ADDRESS]	14.98%
Tyler Kepler [ADDRESS]	2.5%
Totals	100%

EXHIBIT B
SEAPLANE MANAGEMENT, LLC

Spousal Consent

The undersigned is the spouse or registered domestic partner of one of the Members of Seaplane Management, LLC, a Delaware limited liability company (the "Company"). The undersigned hereby agrees that he or she has read the Company's Operating Agreement, effective as of June 25, 2021 (the "Operating Agreement"), understands its terms and conditions and agrees to be bound by them. The undersigned agrees that in case of dissolution of his or her marriage to, or domestic partner status with, the Member or beneficiary, he or she will accept a purchase of whatever community property interest (if any) he or she may have in his or her spouse's or domestic partner's, as applicable, membership interest in the Company, on the terms and conditions stated in the Operating Agreement. The undersigned has been advised to seek independent legal advice with respect to his or her execution of this Spousal Consent and has either obtained legal advice or has voluntarily chosen not to do so. The undersigned further acknowledges that the terms and provisions of the Operating Agreement may be modified pursuant to agreement of the parties, including modification of the price and terms of payment for any membership interest to be sold under the Operating Agreement. Any changes to the Operating Agreement will neither terminate nor affect in any manner this Spousal Consent. The undersigned will not take any action in contravention of the Operating Agreement, including, but not limited to, implementing any estate planning documents that are inconsistent with this Spousal Consent.

Dated: _____, 20__

Signature of Spouse or Domestic Partner







Name of Spouse or Domestic Partner



Audit Trail

TITLE	Seaplane Management (no spouse)
FILE NAME	Seaplane Manageme... 7-21-21)[5].docx
DOCUMENT ID	ddb061705358164f4e5c32e764ad7ab40c28750
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	• Completed

Document History

 SENT	07 / 23 / 2021 19:49:20 UTC	Sent for signature to Aaron Singer (aaron@seaplane.com) and Louis Vasquez (lou@bldsf.com) from robbie@bldsf.com IP: 98.37.57.245
 VIEWED	07 / 23 / 2021 22:55:26 UTC	Viewed by Aaron Singer (aaron@seaplane.com) IP: 71.13.55.189
 SIGNED	07 / 26 / 2021 16:19:41 UTC	Signed by Aaron Singer (aaron@seaplane.com) IP: 166.205.124.70
 VIEWED	07 / 26 / 2021 16:42:12 UTC	Viewed by Louis Vasquez (lou@bldsf.com) IP: 73.162.17.92
 SIGNED	07 / 26 / 2021 16:42:34 UTC	Signed by Louis Vasquez (lou@bldsf.com) IP: 73.162.17.92
 COMPLETED	07 / 26 / 2021 16:42:34 UTC	The document has been completed.

From: [Admin](#)
To: [ReceptionDesk@BCDC](#)
Cc: [Klein, Adrienne@BCDC](#); [Plater, Brent@BCDC](#); [John Sharp](#)
Subject: Seaplane Investment, LLC: 240-242 Redwood Highway: BCDC Enforcement Case ER2019.063, Permit 1973.014.01 (APN 052-247-01), and Permit M1985.030.01 (APN 052-247-02)
Date: Monday, February 28, 2022 3:59:55 PM
Attachments: [BCDC Abbreviated Regionwide Permit Application 2.28.22.pdf](#)
[A. Klein \(2-28-22\).pdf](#)

Dear Ms. Klein:

Attached please find a letter to BCDC and BCDC Abbreviated Regionwide Permit Application Form.

A check for the application fees of \$600 is posted as of this date.

Should you have any questions, please do not hesitate to contact Mr. Sharp.

Best regards,

Linda

Linda Soungpanya
Legal Assistant

Law Offices of John E. Sharp
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903
(415) 479-1645

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Telephone: (415) 479-1645
Facsimile: (415) 295-7020

February 28, 2022

VIA EMAIL AND U.S. MAIL
(adrienne.klein@bcdc.ca.gov)

Adrienne Klein
Principal Enforcement Analyst
San Francisco Bay Conservation
and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94105

Re: Seaplane Investment, LLC: 240-242 Redwood Highway: BCDC Enforcement
Case ER2019.063, Permit 1973.014.01 (APN 052-247-01), and Permit
M1985.030.01 (APN 052-247-02)

Dear Ms. Klein:

As you know, this office represents Seaplane Investment, LLC, (“Owner” or “Seaplane”), current owner of the above-referenced property. Please include this correspondence, and attached materials, in the administrative record.

Reference is made to, without limitation, your letters of September 15, 2020 and October 8, 2021, as well as various emails between you and Seaplane’s representatives between February 2020 and the present period. Attached hereto you will find Seaplane’s BCDC Abbreviated Regionalized Permit Application Form. We also include attachments, as referenced in your letter of October 8, 2021. We note that, of the matters you described in that letter, all have been completed and previously documented, with the exceptions of the application and documentation for “fill” on the parcels and documentation of public access to the shoreline. Those tasks comprise the content of this application. We believe that this submittal and attachments accomplish the remaining tasks. For reasons set forth below, with particular regard to surveying, final improvements to shoreline access path at north-east corner of the site which depends on the repair/replacement of the existing bulkhead, and right-of -way acquisition, this application is, of necessity, provisional, and subject to amendment.

With respect to the requested survey, we attach the survey of Lawrence P. Doyle, dated 5/3/21. An updated survey has been commissioned. Owner notes that, given recent Records of

Adrienne Klein
February 28, 2022
Page 2

Survey of San Francisco Bay shoreline, the definition and location of “mean high tide line” is subject to change. Owner will supplement, as appropriate.

Seaplane refers to the following permit and entitlement history:

BCDC Permits:

Permit 1973.014.00; Permit 1973.014.01; Permit M1985.030.00; Permit M1985.030.01; Permit 1973.014.02; Permit 1973.014.03.

Marin County Permits (partial, according to most recent operative permits)

8/28/17: Resolution Number PC-17-007; a resolution recommending that the Board of Supervisors modify the Commodore Marina LLC Seaplane based Use Permit (Assessor’s Parcel: 052-247-01 and -02).

8/28/17: Staff Report to the Marin County Planning Commission.

11/30/12 Planning Information Packet, (“PIP”). County of Marin Planning Permit and Code Enforcement History: (undated, but most recent document referenced is 11/30/12 Price renewal permit).

11/30/12: Notice of Use Permit Renewal to Steven Price from Ben Berto, Principal Planner.

11/30/12: Notice of Use Permit Renewal and attachments.

6/18/2002: Staff Report to the Deputy Zoning Administrator.

5/16/2002: Notice of categorical exemption (CEQA).

7/24/85: Airport Master Record.

All documents are available at your request.

OPERATIVE ENTITLEMENTS

The County of Marin’s record reflects, under Planning permit history, that the Use Permit for the Property (both Assessor’s Parcel number 052-247-01 and -02) was renewed on November

30, 2012, from the Use Permit granted on June 18, 2002. The 2002 approval, which was heard by the Deputy Zoning Administrator on May 23, 2002, describe the project as:

“... an application to consider a 5-year extension to a Use Permit approval originally granted in 1997 for the following improvements in the Commodore Center: (1) a 1,200 square foot children’s recreation center and day camp (Kid’s Headquarters -The Planet); (2) eight artist studios totaling 7,067 square feet of building area; and (3) a 1,240 square foot on-site property management office. The proposed uses occupy portions of existing buildings on a property also currently developed with a seaplane center (Commodore Seaplanes), a heliport, and a houseboat marina (Commodore Marina). Parking proposed for existing and proposed uses includes 17 on-site parking spaces, 3 on-street handicapped spaces, and 47 on-street parking spaces”.

The approval, which was granted a CEQA Categorical Exemption combined office and other uses under one Use Permit, all permitted under then extant zoning.

Under the project analysis set forth in the 2002 Staff Report supporting Use Permit approval, the County described the Seaplane base, a heliport, the 11-houseboat Marina, a daycare center, artist studios, and a property management office. Staff also noted that the seaplane base is permitted under previous Use Permits granted by the County in 1953 and 1983. (Notably, reference is also made to earlier Use Permits, having issued as early as February 6, 1950, but not included in the record of the 2002 approval).

2017 PLANNING COMMISSION REVIEW

On July 17, 2017, Marin County Code Enforcement Director Christy Stanley wrote to Seaplane Adventures and Commodore Marina, referencing a 1981 Use Permit and advising that the COMMUNITY DEVELOPMENT AGENCY had received a formal complaint regarding the number of aircraft being used for revenue producing purposes. Seaplane Adventures has reason to believe that the complaint was a politically-motivated attempt by four or five residents of Strawberry Point, which has been part of a pattern over the course of recent years. The culmination of the July 17, 2017 correspondence was a hearing before the Marin County Planning Commission on August 28, 2017, initiated for review of conditions to Seaplane’s Use Permit. The Planning Commission found no violation of any of Seaplane’s permits, or the conditions thereto, and, in fact, deleted prior conditions 1, 3 and 6 on the basis of federal preemption as briefed and argued by Mr. Singer and the undersigned at the Planning Commission hearing.

The current effort among all stakeholders, including the County and BCDC is to facilitate compliance with any and all historic permits and conditions thereto, and/or updated permitting of the as-built uses at the site.

We attach Seaplane's Airport Master Record, referring to "Site Number 2281.c" and "Commodore Center", dated July 24, 1985. The Airport Master Record is the Federal Aviation Administration's expression of jurisdiction over use of the property by Seaplane Adventures. The Master Record is current and valid for Seaplane's operations. Commodore and Seaplane's leases and permits are also valid and current.

PARKING AND ACCESS

In the parking and traffic and circulation sections of the 2002 approval, County staff states that it has reviewed existing and proposed uses and finds no issue with the supply of on and off-street parking spaces in order to accommodate with the proposed project, with the exception of handicapped parking, which has been addressed. Staff also notes that "the proposed project would not change the existing level of use or exceed the capacity of roadways and freeway interchanges and the surrounding Shoreline Area as defined by the Tamalpais Area Community Plan".

Although parking and access questions regard to the Bolinas Avenue have arisen at various times, those questions appear to have been resolved by a combination of agreements between Seaplane's predecessor, Jack Krystal and the County of Marin. In March of 2019, Commodore Marina LLC, through its attorney, Neil Sorenson, recorded a NOTICE OF INTENT TO PRESERVE EASEMENT. The file is titled "Parepa Street Easement". The recordation on March 20, 2019 appears to have followed settlement of various claims, including those of Commodore's predecessors, pertaining to access for ingress and egress and utilities over Bolinas, Parepa and Yolo Street as said streets are shown on the recorded map, recorded in April 1869. The settlement was ultimately approved by the Marin County Board of Supervisors.

Seaplane is currently in communication with the County, to acquire rights to use and/or acquire the street known as Yolo Street, for shoreline access and parking purposes, as shown in the attachments to this correspondence and application. Meanwhile, you will see a proposal for shoreline access in the application materials. That acquisition is supported by the County. We are actively pursuing it, in that we are determining whether an uncontested action for quiet title, or a resolution of abandonment is the most timely and efficient way of proceeding. In the interim, please see the attached "Interim Shoreline Access Improvement Plan".

In addition to the application document submitted herewith, I am attaching my letters to you of November 13, 2020, June 15, 2021, September 24, 2021, and January 12, 2022. I am

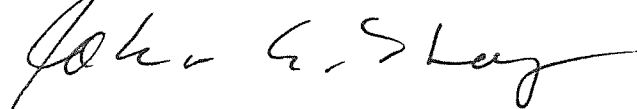
Adrienne Klein
February 28, 2022
Page 5

attaching this correspondence because, together with the application materials set forth herein, it describes the approximately 70-year history of use and permitting at the site, which we believe relates to our collaborative efforts to satisfy sometimes ancient permitting requirements throughout multiple ownerships of the property and the impacts of matters outside the control of Seaplane Investment, LLC on the long, multi-jurisdictional permitting process. Because of this long history and Seaplane's inability to control events prior to its ownership of the property, Seaplane notes that the accompanying application material is submitted without admission of liability. As you know, in earlier communications, I have stated Seaplane's reservation of appeal in reference to any potential fines or penalties. While we hope that the process of achieving conformance of conditions at the site to the permit amendments requested by the BCDC renders any appeal(s) unnecessary.

We recognize and appreciate the Commission's and your patience and cooperation in this process. We also appreciate the multiple site visits among yourself, Mr. Singer and the undersigned.

Seaplane looks forward to its continuing cooperative relationship with the Commission. Please feel free to contact me at your convenience with referenced to any question or comment.

Very truly yours,
LAW OFFICES OF JOHN E. SHARP

A handwritten signature in black ink, appearing to read "John E. Sharp", written in a cursive style.

John E. Sharp

JES/lis

cc: Brent Plater (via email)

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

BCDC Abbreviated Regionwide Permit Application Form

Use this form to:

Provide Notice of Intent to
Proceed with a Project Under
an Abbreviated BCDC
Regionwide Permit

For BCDC Use Only	
Application number:	_____
Fee:	_____
Date filed:	_____
Date notice posted:	_____
Receipt number and date:	_____
Entered PTS:	_____



Making San Francisco Bay Better



Application Checklist

Abbreviated
Regionwide
Permit



Abbreviated
Application Form:

One fully
completed
and signed
original



Large Scale
Project Site Plan

One Copy



8¹/₂"x11"
Project Site Plan

One Copy



8¹/₂"x11"
Vicinity Map

One Copy



Proof of
Legal Interest

One Copy



Permit
Processing Fee

See Summary
of Application
Fees

*Additional drawings are needed for projects that are evaluated by the Commission's Design Review Board or Engineering Criteria Review Board.

State of California

Memorandum

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, California 94105

415-352-3600 | E-mail address: info@bcdc.ca.gov

TO: Project Applicants

FROM: Executive Director, BCDC

SUBJECT: Reassurance

Completing this abbreviated application form is not as difficult as it may look. Few applicants have to complete all parts of the form.

The easiest way to complete the application is to open the form to Box 1, refer to the instructions for Box 1, complete section (a) of Box 1 according to the instructions, and proceed section by section, box by box through the entire form.

We have tried to make the instructions clear, concise and complete. By carefully following the instructions, you will provide us with all the information we need to process your application. If you have any difficulty in completing the form or have any questions about the Commission, please call us at 415/352-3600 or visit our office at 375 Beale Street, Suite 510 in San Francisco.

We look forward to working with you on your project.

October 1996

This publication was prepared with financial assistance from the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, United States Department of Commerce under the provisions of the federal Coastal Zone Management Act of 1972, as amended.

Box 1

Applicant Information

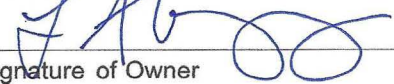
- a. **PROPERTY OWNER:** Individual Private Entity
 Government Non-profit

Name: Seaplane Investment, LLC
Address: 242 Redwood Highway
City, State, Zip: Mill Valley, CA 94941
Telephones: 415 / 748-1855; 415-479-1645 /

- b. **OWNER'S REPRESENTATIVE:** None

Name: John E. Sharp, Esq., Law Offices of John E. Sharp
Address: 24 Professional Center Parkway, Suite 110
City, State, Zip: San Rafael, CA 94903
Telephones: 415 / 479-1645 /
Affiliation to Applicant: Attorney

I hereby authorize John E. Sharp, Esq.
to act as my representative and bind me in all matters concerning this application.



Signature of Owner

02/28/2022

Date (dd/mm/yyyy)

Lou Vasquez

Printed Name of
Owner

- c. **APPLICANT:** Individual Private Entity
 Government Non-profit

Name: Same as above
Address: _____
City, State, Zip: _____
Telephones: _____ / _____ / _____

(Continued on Page 2)

(Applicant Information Continued from Page 1)

d. APPLICANT'S REPRESENTATIVE: None

Name: _____

Address: _____

City, State, Zip: _____

Telephones: _____ / _____

Affiliation to Applicant: _____

*I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.*

Signature of Applicant

Date (dd/mm/yyyy)

Printed Name of Applicant

e. CO-APPLICANT: None Individual Private Entity
 Government Non-Profit

Name: _____

Address: _____

City, State, Zip: _____

Telephones: _____ / _____

f. CO-APPLICANT'S REPRESENTATIVE: None

Name: _____

Address: _____

City, State, Zip: _____

Telephones: _____ / _____

Affiliation to Applicant: _____

*I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.*

Signature of Co-Applicant


Date

Printed Name of Co-Applicant

Box 2

Certification of Accuracy of Information

I hereby certify under penalty of perjury that to the best of my knowledge the information in both Part I and Part II of this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for denying the permit, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.



Signature of Owner or
Owner's Representative



Date

Signature of Applicant or
Applicant's Representative

Date

Signature of Co-applicant or
Co-applicant's Representative

Date

Box 3

Project Information

- a. Project Name: NEW SHORELINE ACCESS IMPROVEMENTS & AFTER-THE-FACT AUTHORIZATIONS
- b. Project Description: AFTER-THE-FACT AUTHORIZATION FOR BOAT DOCKS, FUEL TANK, SEAPLANE STORAGE & REPAIR
NEW BOARDWALK & TRANSITION APRONS TO CONNECT BIKE PATH WITH SHORELINE ACCESS PATH
NEW ADA PARKING & SIGNAGE, STRIPING & ASPHALT TRANSITION RAMPS
- c. Date work is expected to begin: JUNE 1, 2022
Date work is expected to be completed: SEPTEMBER 1, 2022
- d. Does the project involve the placement of fill of any type in San Francisco Bay or within a salt pond, a managed wetland, or a certain waterway ?
 Yes No
If "Yes," complete Box 5.
- e. Does the project involve development within the shoreline band around San Francisco Bay?
 Yes No
If "Yes," complete Box 6.
- f. Total Project Cost: \$ 50,000.00

Box 4

Site Information

- a. Street Address: 242 REDWOOD HIGHWAY
- b. City, County, State, Zip: MILL VALLEY, MARIN, CA, 94941
- c. Assessor's Parcel Numbers): 052-247-01 052-247-02
 None
- d. ID number(s) of previous BCDC permit(s) issued for work on this site: 1973.014.03 M1985.030.01
 None
- e. Provide a brief description of the existing condition of the site, including the present elevations, current vegetation, existing structures and use of the site.

Existing Conditions at 242 Redwood Highway, Mill Valley, CA 94941

The site consisting of two lots (052-247-01 & 052-247-02) is located in Mill Valley, and on Richardson Bay shoreline. The site is developed with a houseboat marina consisting of 11 houseboats and access docks, a Sea Plane launch and landing ramp & dock which includes four adjunct boat docks, two helicopter pads, two fuel tanks, a two-story building, a one-story building, and parking on grade.

The two-story building with a total area of 11,279 sq. ft., and a ground floor elevation of +/- 6.95' (NAVD88) houses the Sea Plane Adventures front office, and other office uses. The one-story building with an area of 4,119 sq. f.t, and a ground elevation of +/- 6.45' (NAVD88) houses the Sea Plane Adventures repair shop and other office uses. The site currently includes an asphalt shoreline access path which will be connected to the existing bike & pedestrian path. The site vegetation consists of lawn on the east and west side of the existing two-story building, Three small tress on the east lawn, and two Eucalyptus trees on the north side of the two-story building. There are seasonal grasses along the bike path and tidal vegetation along the shoreline.

Box 5

Bay Fill Information

(“Fill” means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks....” Cal. Gov. Code Section 66632(a))

a. What is the basic purpose of the new fill in the Bay?

BOAT DOCKS, SEAPLANE LAUNCH RAMP & FUEL TANK (AFTER-THE -FACT)

NEW BOARDWALK W/ ASPHALT CONFORMS, SIGNAGE, ADA PARKING & ASPHALT TRANSITIONS ALONG SHORELINE ACCESS PATH

- | | | | |
|----|--|--------------|-------------|
| b. | Total volume of water, marsh, or salt pond to be filled: | <u>3.25</u> | cubic yards |
| c. | Area to be covered with solid fill: | <u>1,272</u> | square feet |
| d. | Area to be covered with floating fill: | <u>2,422</u> | square feet |
| e. | Area to be covered with pile-supported fill: | <u>544</u> | square feet |
| f. | Area to be covered with cantilevered fill: | <u>0</u> | square feet |
| g. | Area to be covered with any other type of fill.
(Specify type of fill): | | |
| | N/A | <u>0</u> | square feet |
| h. | Total area to be filled: | <u>4,238</u> | square feet |

Box 6

Shoreline Band Information

("Shoreline band" means "...all territory located between the shoreline of San Francisco Bay...and a line 100 feet landward of and parallel with that line..." Cal. Gov. Code Section 66610(b))

a. Types of activities to be undertaken or materials to be placed along the shoreline:

**ONE 20'W x 35'L x 1.5"D SEAPLANE LAUNCH RAMP
MADE OF 2X6 COMPOSITE LUMBER PLACED ON
GRADE (AFTER-THE-FACT)**

b. Will the project be located within a water-oriented priority use area that is designated in the San Francisco Bay Plan?

Yes No

If "No," go to section (c).

If "Yes," indicate which priority use the area is reserved for:

Will the project use be consistent with the priority use for which the site is reserved?

Yes No

If "Yes," go to section (c).

If "No," attach an explanation of how the project can be approved despite this inconsistency.

c. Provide dimensions of portions of all structures to be built within the shoreline band, including length, width, area, height, and number of stories:

**NO BUILDINGS OR STRUCTURES OTHER THAN
ONE 20'W x 35'L x 1.5"D SEAPLANE LAUNCH RAMP**

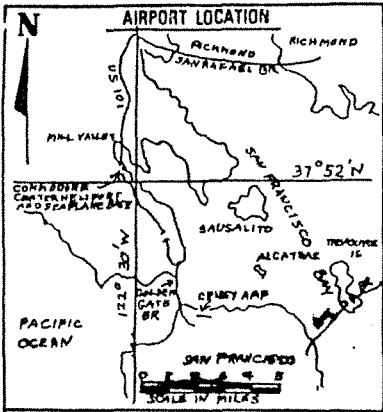
7656L

>1 ASSOC CITY: Sausalito STATE: CA FAA SITE NR: P2281.C
>2 AIRPRT NAME: COMMODORE CENTER COUNTY: MARIN CA
>3 CED TO AIRPRT(NM): P2 NW E REG/ADD: AMP/SFO 7 SECT AFRO,CHT: SAN FRANCISCO

GENERAL		SERVICES	BASED AIRCRAFT	
>10 OWNERSHIP: PRIVATE		>70 FUEL: 1PPLL	90 SINGLE ENG:	3
>11 OWNER: COMMODORE PROPERTIES		>71 AIRFRAME PPRS: MINOR	91 MULTI ENG:	
>12 ADDRESS: FERRY BOAT KLAMATH, PIER 5 SAN FRANCISCO, CA 94111		>72 PWR PLANT PPRS: MINOR	92 JET:	
>13 PHONE NR:		>73 BOTTLE OXYGEN: NONE	TOTAL	3
>14 MANAGER: D WALLACE/P BREINIG		>74 BULK OXYGEN: NONE	93 HELICOPTERS:	
>15 ADDRESS: 242 REDWOOD HWY MILL VALLEY, CA 94941		75 TSNT STORAGE: NONE	94 GLIDERS:	
>16 PHONE NR: 415-332-4843		76 OTHER SERVICES: INSTR	95 MILITARY:	
>17 ATTENDANCE SCHEDULE:			96 ULTRA-LIGHT:	
MONTHS	DAYS			
ALL	ALL			
>18 AIRPRT USE: PUBLIC		FACILITIES		
>19 ARPT LAT: 37-57-48N ESTIMATED		>80 ARPT BCN: N	OPERATIONS	
>20 ARPT LONG: 122-38-45W		>81 APT LGT SKED:	100 AIP CARRIER:	
>21 ARPT-ELEV: 8888 ESTIMATED		>82 UNICOM:	101 COMPUTER:	
>22 ACREAGE: 2		>83 WIND INDICATOR: YES	102 AIR TAXI:	
>23 RIGHT TRAFFIC: NO		84 SEGMENTED CIRCLE: NONE	103 G A LOCAL:	252P
>24 NON-COMP LANDING FEE: NO		85 CONTROL TWR: NO	104 G A ITRNT:	1P
>25 NASF/FEDERAL AGREEMENT:		86 FSS: CAKLAND	105 MILITARY:	
>26 FAR 139 INDEX: N		87 FSS CN ARPT: NO	TOTAL:	2518
		88 FSS PHONE NR: 415-273-6284	OPERATIONS FDR 12	
		89 TOLL FREE NR: 668-1455	MOS ENDING 29MAY85	

RUNWAY DATA					
>30 RUNWAY IDENT	11/29				
>31 LENGTH:	18888				
>32 WIDTH:	249R				
>33 SURF TYPE-COAC	WATER				
>34 SURF TREATMENT					
>35 GROSS WT: SL					
>36 (IN THSCS) D/L					
>37	DTL				
>38	DCTL				
LIGHTING/APCH AIDS		11/29			
>40 EDGE INTENSITY					
>41 NOW ELSPENT 81					
>42 RWY MARK TYPE-COND	/	/	/	/	/
>43 VASI	/	/	/	/	/
>44 THR CROSSING HGT	/	/	/	/	/
>45 VISUAL GLIDE ANGLE	/	/	/	/	/
>46 CHTRLN-TDZ	/	/	/	/	/
>47 RVR-RVV	/	/	/	/	/
>48 REIL	/	/	/	/	/
>49 APCH LIGHTS	/	/	/	/	/
OBSTRUCTION DATA		11/29			
>50 FAR 77 CATEGRY	B(V) /B(V)	/	/	/	/
>51 DISPLACED THR	/	/	/	/	/
>52 CTLG OBSTN	BRIDGE/MILL	/	/	/	/
>53 OBSTN MARKED/LETD	/	/	/	/	/
>54 HGT ABOVE RWY END	58 /158	/	/	/	/
>55 DIST FROM RWY END	1500 /3888	/	/	/	/
>56 CNTRLN OFFSET	288R /388R	/	/	/	/
>57 OBSTN CLNC SLOPE	28:1 /28:1	/	/	/	/
>58 CLOSE-IN OBSTN	/	/	/	/	/
28:1 LANDING LENGTH		11/29			
>60 LANDING RWY-LENGTH	/	/	/	/	/
>61 CTLG OBSTACLE	/	/	/	/	/
>62 HGT-ABOVE THR	/	/	/	/	/
>63 DIST FROM THR	/	/	/	/	/
>64 CHTRLN OFFSET	/	/	/	/	/

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >
 1118 REMARKS:
 A278 FUEL SALE TO TRANSIENTS RESTRICTED TO EMERGENCY ONLY.
 A118 -81 SEAPLANE LAKE NOT MARKED.
 A118 -82 CAUTION: NUMEROUS DRIFT WOOD PILES.

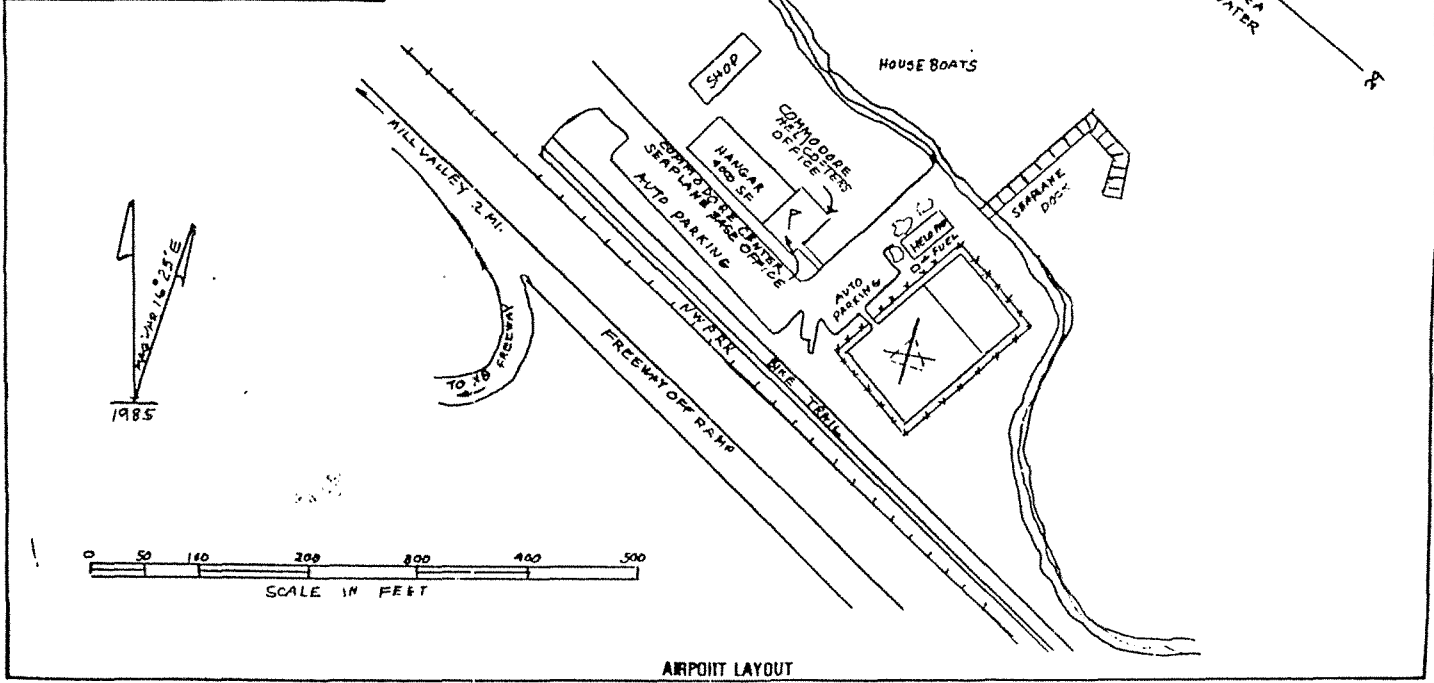


REMARKS:
 1. SEAPIANE LAKE NOT MARKED
 2. CAUTION - NUMEROUS DRIFT WOOD PILES

RUNWAY CATEGORIES

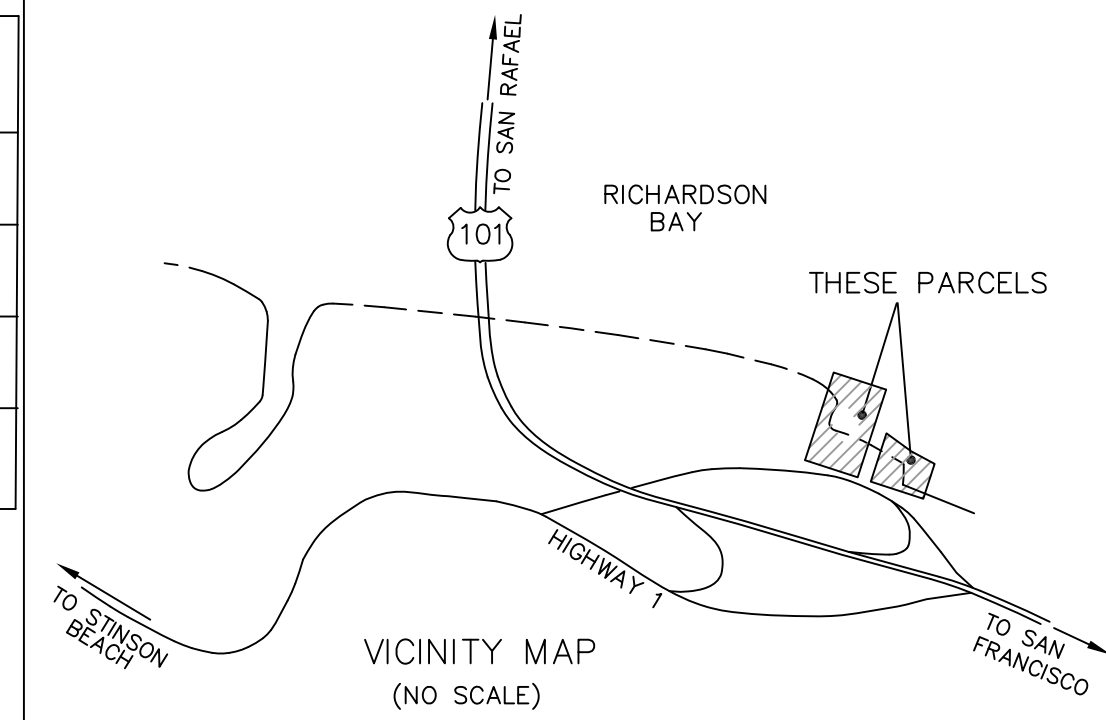
RUNWAY	EXISTING	PLANNED	CORRECTED LENGTH

SITE NO. 2281.C
ACRES - 2
 COMMODORE CENTER
 SAUSALITO, CA 94065
 11/27/85



AIRPORT LAYOUT

EASEMENT TABLE OLD REPUBLIC TITLE COMPANY No. 0224054343-N				
NUMBER	GRANTED TO	PURPOSE	RECORDED	NOTE
4		DECLARATION OF RESTRICTIONS	2831 O.R. 584	
5		DECLARATION OF RESTRICTIONS	2831 O.R. 584	
7	PACIFIC GAS AND ELECTRIC COMPANY	PUBLIC UTILITIES	2961 O.R. 698	ROUTE NOT DEFINED



LANDS OF THE COUNTY OF MARIN
D.N. 83-065632
"K" DEEDS PAGE 588

PARCEL ONE: (APN: 052-247-02)
(TILE REPORT ORDER NO. 0224054343)

RICHARDSON BAY

MAP LEGEND

- M1 SUPPLEMENTARY PLAT OF THE GRANT TO THE COUNTY OF MARIN PARCEL "A", CHAPTER 497, STATUTES OF 1959 VICINITY OF COYOTE CANAL MARIN COUNTY, CALIFORNIA
- M2 HOOL & LOCKETT JOB NO. 2532 1966 & REVISED 1971
- M3 RACK 1 PULL 9

LEGEND

- TREE (AS INDICATED)
- 104.8' TOP OF WALL ELEVATION
- CONCRETE
- GRADE BREAK
- x WIRE FENCE
- o WOOD FENCE
- /// EDGE OF PAVEMENT
- △ SURVEY CONTROL POINT
- ⊕ JOINT POLE
- CONCRETE WALL
- ROCK WALL
- ROCK BORDER
- ⊕⊕ ELECTRIC / GAS METER
- OL OVERHEAD LINES
- ☆ LIGHT
- HANDICAP

NOTES

1. ONLY SIGNIFICANT TREES SHOWN
2. DATUM IS NAVD 1988
3. BENCH MARK E 1444 NGS ELEVATION 12.84 FEET
4. HOUSEBOATS AND FLOATING DOCKS WERE SURVEYED TO ON 3/8/21
5. ONLY VISIBLE UTILITIES WERE LOCATED
6. THE MHW LINE WAS SURVEYED TO ON 3/8/21

DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF MARIN STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE: (APN: 052-247-02)

BLOCK 164, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "OFFICIAL MAP OF LANDS OF SAUSALITO LAND AND FERRY COMPANY", RECORDED APRIL 26, 1869 IN RACK 1 OF MAPS, AT PULL 9, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY BENJ. F. WASHINGTON, RODMOND GIBBONS AND L.L. BULLOCK, A BOARD OF TIDE LAND COMMISSIONERS, TO THOMAS RYAN, RECORDED MAY 26, 1871 IN BOOK "K" OF DEEDS AT PAGE 588.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF INCLUDED IN THE RIGHT OF WAY OF THE NORTHWESTERN PACIFIC RAILROAD.

PARCEL TWO: (APN: 052-247-01)

BLOCK 167, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "OFFICIAL MAP OF LANDS OF SAUSALITO LAND AND FERRY COMPANY", RECORDED APRIL 26, 1869 IN RACK 1 OF MAPS, AT PULL 9, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA.

CERTIFICATION

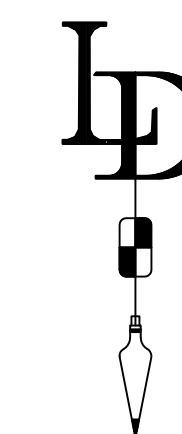
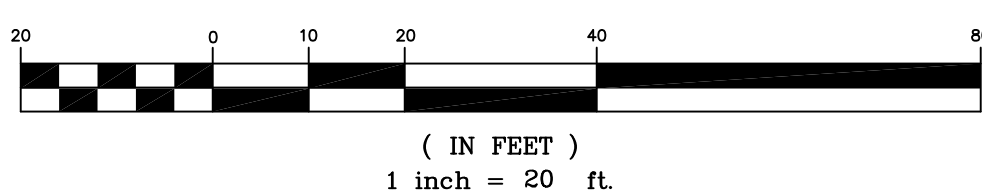
TO: _____
THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2 & 3 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON APRIL 3, 2021.

DATE OF PLAT OR MAP: MAY 3, 2021

LAWRENCE P. DOYLE, PLS 4694

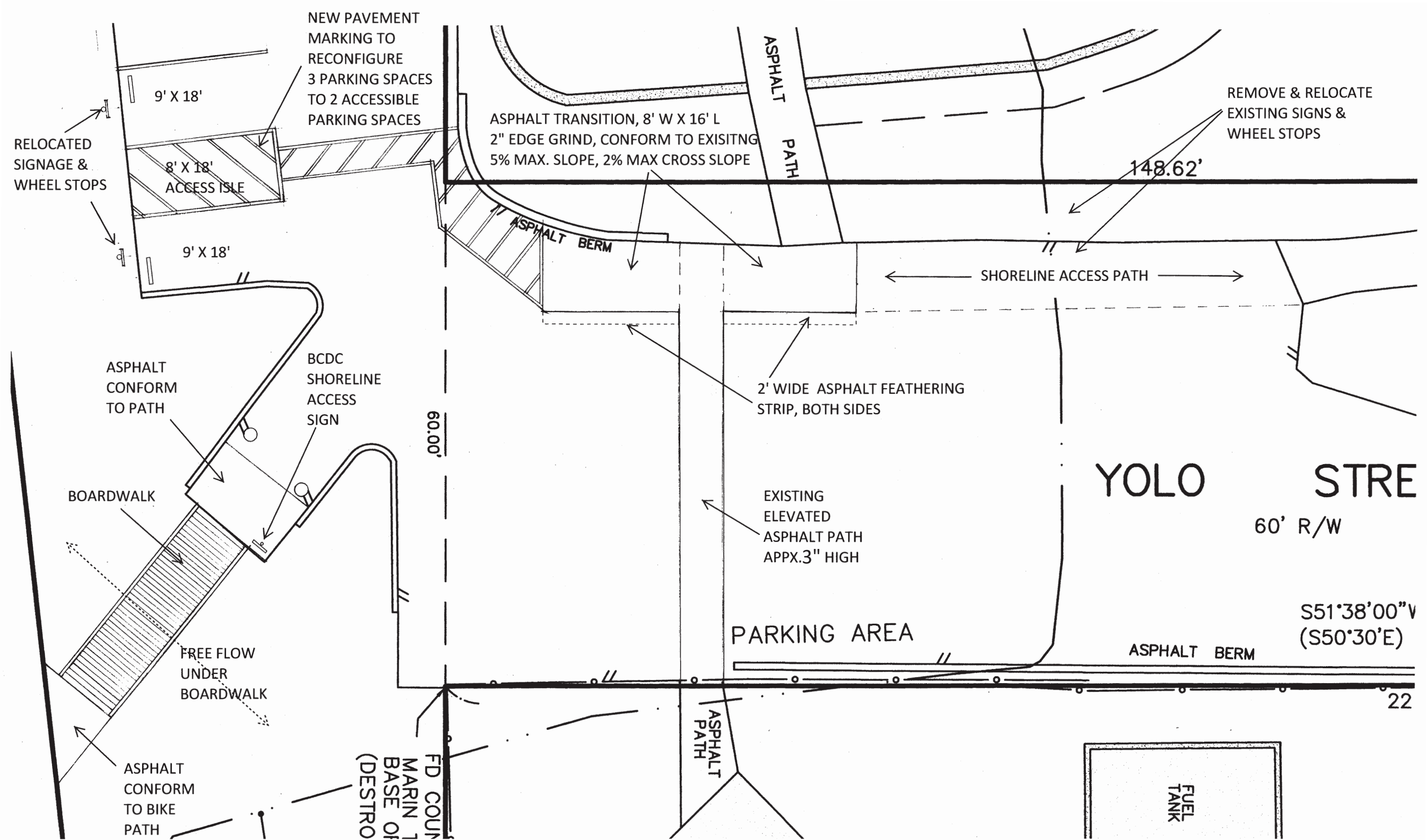
DATED: _____

GRAPHIC SCALE



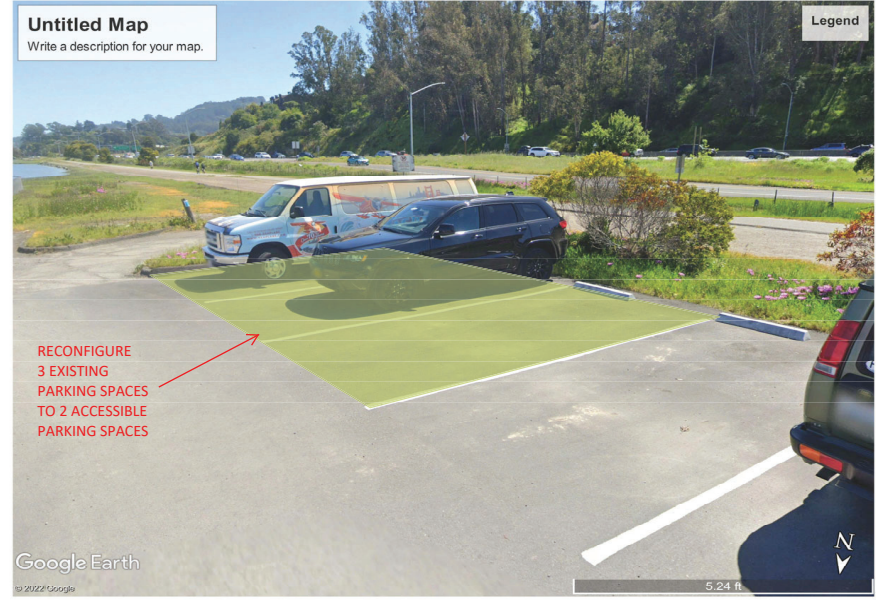
© 2021
THIS DRAWING IS THE PROPERTY OF LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER AND MAY NOT BE DUPLICATED OR USED WITHOUT PERMISSION

ALTA / ACSM	
240-242 REDWOOD HWY / A.P. 052-247-01,02 SAUSALITO MARIN COUNTY CALIFORNIA	
SCALE: 1" = 16'	DRAWN BY:
DATE: 5/3/21	SHEET 1 OF 2
LAWRENCE P. DOYLE	
LAND SURVEYOR/CIVIL ENGINEER	
100 HELENS LANE MILL VALLEY, CA 94941 (415) 388-9585	
DRAWING NO. 2916	



INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN





INTERIM BCDC ACCESS IMPROVEMENTS ANNOTATED PHOTOS



PUBLIC
SHORE





- ① EXISTING MULTI-USE ASPHALT PATH
- ② NEW ADA PARKING SPACES
- ③ SHORELINE ACCESS PATH
- ④ NEW BOARDWALK WITH ASPHALT TRANSITIONS TO EXISTING GRADES
- ⑤ NEW POLE-MOUNTED SHORELINE ACCESS SIGNAGE
- ⑥ NEW ASPHALT TRANSITION RAMP
- ⑦ SEE "INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN" FOR MORE DETAILS
- ⑧ REMOVE EXISTING PARKING SPACES
- ⑨ EXISTING PARKING SPACES TO REMAIN
- ⑩ EXISTING 10'-8" L x 5'-4" W x 4'-0" H ABOVE SURFACE CONCRETE FUEL TANK TO REMAIN
- ⑪ EXISTING FUEL TANK IN CONCRETE CONTAINMENT BDCD PERMIT M1985-030-01
- ⑫ THIS DOCK HAS BEEN REMOVED
- ⑬ 20' W x 35' L RAMP CONSISTING OF 2X6 "TREX" BOARDS ON GRADE
- ⑭ EXISTING BAOT DOCK ADDITIONS TO THE EXISTING SEAPLANE DOCK TO REMAIN
- ⑮ THIS HOUSEBOAT HAS BEEN MOVED TO THE POSITION INDICATED BY DOTTED LINE, 1973.014.03
- ⑯ EXISTING SEAPLANE DOCK TO REMAIN (REPAIRED)
- ⑰ SEAPLANE PARKING & REPAIR AREA

GRAPHIC SCALE 240 ft

PHOTO SITE PLAN OF 242 REDWOOD HIGHWAY, MILL VALELY, CA 94941

Google Earth

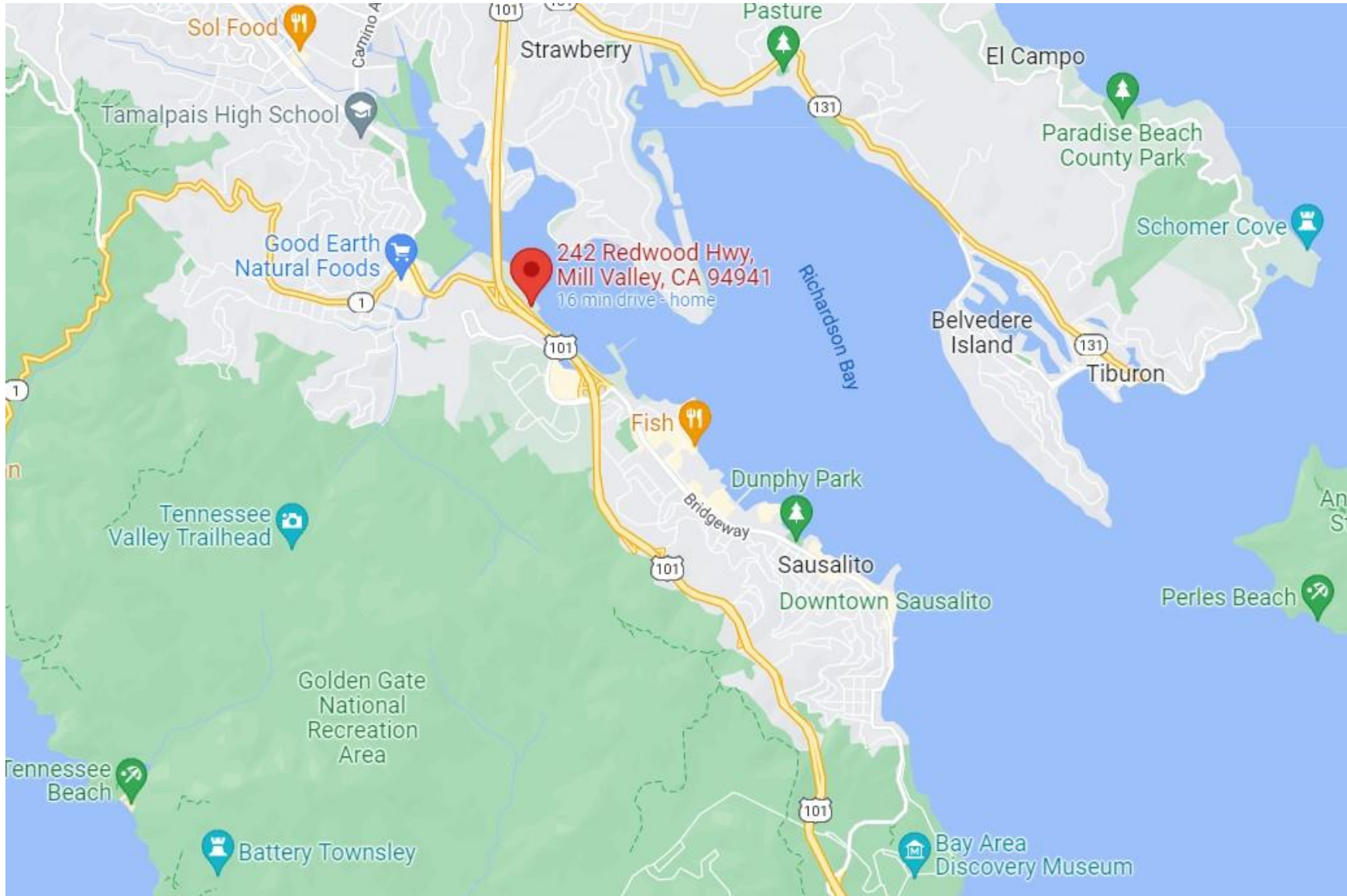


- ① EXISTING MULTI-USE ASPHALT PATH
- ② NEW ADA PARKING SPACES
- ③ SHORELINE ACCESS PATH
- ④ NEW BOARDWALK WITH ASPHALT TRANSITIONS TO EXISTING GRADES
- ⑤ NEW POLE-MOUNTED SHORELINE ACCESS SIGNAGE
- ⑥ NEW ASPHALT TRANSITION RAMP
- ⑦ SEE "INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN" FOR MORE DETAILS
- ⑧ REMOVE EXISTING PARKING SPACES
- ⑨ EXISTING PARKING SPACES TO REMAIN
- ⑩ EXISTING 10'-8"L x 5'-4"W x 4'-0"H ABOVE SURFACE CONCRETE FUEL TANK TO REMAIN
- ⑪ EXISTING FUEL TANK IN CONCRETE CONTAINMENT BCDC PERMIT M1985-030-01
- ⑫ THIS DOCK HAS BEEN REMOVED
- ⑬ 20'W X 35'L RAMP CONSISTING OF 2X6 "TREX" BOARDS ON GRADE
- ⑭ EXISTING BAOT DOCK ADDITIONS TO THE EXISTING SEAPLANE DOCK TO REMAIN
- ⑮ THIS HOUSEBOAT HAS BEEN MOVED TO THE POSITION INDICATED BY DOTTED LINE, 1973.014.03
- ⑯ EXISTING SEAPLANE DOCK TO REMAIN (REPAIRED)
- ⑰ SEAPLANE PARKING & REPAIR AREA

GRAPHIC SCALE 240 ft

PHOTO SITE PLAN OF 242 REDWOOD HIGHWAY, MILL VALELY, CA 94941

Google Earth



VICINITY MAP

242 REDWOOD HIGHWAY, MILL VALLEY, CA 94941

NO SCALE

FILL TYPES & QUANTITIES
 NEW SHORELINE ACCESS IMPROVEMENTS & AFTER-THE-FACT AUTHORIZATIONS
 LOCATED AT
 242 REDWOOD HIGHWAY, MILL VALLEY, CA 94941

ITEM	NO. ON SITE PLAN	LOCATION	FILL	TYPE	MATERIAL	FILL AREA IN SQ. FT.	FILL VOLUME IN C.Y.	AUTHORIZATION
CONFORM	4	PARKING LOT	YES	SOLID	ASPHALT ON GRADE	252	4.67	NEW
CONFORM	4	BIKE PATH	YES	SOLID	ASPHALT ON GRADE	135	2.50	NEW
BOARDWALK	4	TIDAL SWALE	YES	PILE SUPPORTED	WOOD ON PILES	544	0.00	NEW
SHORELINE ACCESS SIGNAGE	5	PARKING LOT	YES	SOLID	STEEL	0	0.00	NEW
ADA PARKING & SIGNAGE	2	PARKING LOT	NO	N/A	N/A	0	0.00	NEW
ASPHALT TRANSITIONS	6	PARKING LOT	YES	SOLID	ASPHALT	128	1.20	NEW
REMOVE PARKING SPACES	8	PARKING LOT	NO	N/A	N/A	0	0.00	NEW
MAINTAIN PARKING SPACES	9	PARKING LOT	NO	N/A	N/A	0	0.00	AFTER-THE-FACT
CONCRETE FUEL TANK	10	PARKING LOT	YES	SOLID	CONCRETE (HOLLOW)	57	8.43	AFTER-THE-FACT
FUEL TANK & CONTAINMENT	11	HELICOPTER PAD	N/A	N/A	N/A	0	0.00	PERMIT M1985-030-01
BOAT DOCK	12	SHORELINE	N/A	N/A	N/A	0	0.00	HAS BEEN REMOVED
SEAPLANE LAUNCH RAMP	13	SHORELINE	YES	SOLID	COMPOSITE LUMBER	700	3.25	AFTER-THE-FACT
BOAT DOCKS	14	BAY	YES	FLOATING	WOOD & FOAM	894	N/A	AFTER-THE-FACT
HOUSEBOAT	15	BAY	N/A	N/A	N/A	0	0.00	PERMIT 1973-014-03
SEAPLANE DOCK	16	BAY	YES	FLOATING	WOOD &FOAM	1,528	N/A	AFTER-THE-FACT REPAIR
SOLID FILL AREA						1,272		
FLOATING FILL AREA						2,422		
PILE SUPPORTED FILL AREA						544		
TOTAL FILL AREA						4,238		

Exhibit 24A. January 31, 2020. Staff photograph depicting water access ramp before its unauthorized reconstruction in March, 2022.



Exhibit 24B. March 14, 2022. Photograph 1 depicting unauthorized excavation and rebar and concrete ramp construction.



Exhibit 24C. March 14, 2022. Photograph 2 depicting unauthorized excavation and rebar and concrete ramp construction.



Exhibit 24D. April 22, 2022. Staff photograph depicting completed water access ramp.



From: [REDACTED]
Sent: Monday, March 14, 2022 7:05 AM
To: Plater, Brent@BCDC; Bal, Tarisha; Brady, Jenna
Subject: URGENT: Seaplane Adventures--New Unpermitted Seaplane Ramp Construction Underway in SF Bay

Counsel:

We are bringing to your attention this large, new construction project (rebar-reinforced concrete seaplane ramp) currently being undertaken in SF Bay by, we assume, Seaplane Adventures. See the pictures below taken on Sunday 3/13 for evidence of the project currently underway. This is no mere replacement project.

We assume that BCDC has not authorized or permitted this Bay fill and therefore request that enforcement staff order this illegal construction halted immediately.

Furthermore, we understand that no County building permit has been issued for this project, and thus request that the County immediately "red tag" this work, requiring all work to halt.

If any authorization for this Bay fill was previously granted by either BCDC or the County, please advise on what basis that permitting was granted.

Regards, [REDACTED]

[REDACTED]

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.



Please consider the effects on the environment before printing this e-mail.






From: [REDACTED]
Sent: Monday, March 14, 2022 3:12 PM
To: Plater, Brent@BCDC; Bal, Tarisha; Brady, Jenna
Subject: FW: Seaplane Adventures Ramp Concrete Pour

All: And here they are pouring the concrete for their new launching ramp into the Bay today. What does it say about them that they can get this done in such a hurry, without permits apparently, but they can't be bothered to address any of the work that BCDC has been requiring of them for so many months. Please let me know what action the BCDC and the County plan to take in response.

[REDACTED]

[REDACTED]

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San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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March 15, 2022

Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109

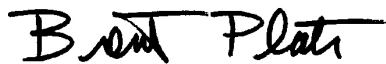
SUBJECT: Executive Director Cease and Desist Order 2022.002

Dear Seaplane Investment, LLC:

The San Francisco Bay Conservation and Development Commission's Executive Director issued the attached Cease and Desist Order today, ordering you to cease activities that violate the McAteer-Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan. The Cease and Desist Order also requires you to restore the sites where the violations occurred, and precludes you from conducting additional violations.

The violations identified in the Cease and Desist Order are also subject to formal Commission enforcement proceedings where additional injunctive relief and civil administrative liability of up to \$2,000 per day for each violation can be imposed. Within the next 90 days you will receive a Violation Report and Complaint that identifies each violation, calculates the expected civil administrative liability, and establishes a hearing date before the Commission's Enforcement Committee.

Sincerely,



Brent Plater
Lead Enforcement Attorney
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3628
Email: brent.plater@bcdc.ca.gov

cc: John E. Sharp, 24 Professional Center Parkway, Suite 110, San Rafael, CA 94903

Enclosure: Executive Director Cease and Desist Order 2022.002



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Via Certified Mail

ISSUED BCDC

Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109

Respondent

EXECUTIVE DIRECTOR CEASE AND DESIST
NO. ECD2022.002.00

Date of Issuance: March 15, 2022

Expiration Date: June 13, 2022

To Seaplane Investment, LLC:

I. CEASE AND DESIST

Pursuant to my authority under California Government Code Section 66637, I hereby order you, Seaplane Investment, LLC (Respondent), all of your agents and employees, and any other persons or companies acting in concert with you, to cease and desist all of the following activities which you have undertaken or are threatening to undertake in violation of the McAteer-Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan.

Specifically, you are ordered to:

- A. Immediately remove all unauthorized fill placed in the San Francisco Bay Conservation and Development Commission's (BCDC's) San Francisco Bay and/or shoreline band jurisdiction within the Marin County public right of way located between APN 052-247-01 and APN 052-247-02. The landward portion of this right of way is called Yolo Street, and the fill is proposed, but not approved by BCDC, in Seaplane Investment, LLC's permit amendment application submitted on February 28, 2022.
- B. Restore the location to its previous condition.



Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.00

Page 2
March 15, 2022

- C. Cease and desist from any further development and/or changes in use on or between APN 052-247-01 and APN 052-247-02, or any other area within BCDC's jurisdiction without prior authorization from BCDC.
- D. Fully comply with the requirements of Section III of this Cease and Desist Order.

II. FINDINGS

The administrative record in support of the findings contained in this Order includes the documents cited herein and all additional documents cited in the Index of Administrative Record attached hereto. This Order is based on the following findings:

- A. Seaplane Investment, LLC owns APN 052-247-01 and APN 052-247-02, which are located on either side of Yolo Street, a Marin County public right of way. Exhibit 1. BCDC Permit 1973.014.01 applies to APN 052-247-01, and BCDC Permit 1985.030.01 applies to APN 052-247.02. Exhibits 2 & 3.
- B. BCDC has an open enforcement matter, ER2019.063, against Seaplane Investment, LLC for several violations of both permits. These violations include: failure to maintain required public access pathways; failure to provide required public access improvements; constructing unauthorized boat docks and ramps; unauthorized construction and storage of planes and other vehicles in the Yolo Street public access right of way; and failure to provide assignment forms for permits assumed by Seaplane Investment, LLC.
- C. On October 28, 2021, BCDC staff sent a 35-day letter to Seaplane Investment, LLC, initiating a penalty clock on five violations. Most of these violations are still outstanding. Exhibit 4.
- D. On February 28, 2022, Seaplane Investment, LLC submitted a permit amendment application to BCDC that proposes to address most of the violations noted in BCDC's October 28, 2021, 35-day letter. However, to date that permit has not been assigned to a permit analyst, nor has it been deemed filed by BCDC. Exhibit 5.
- E. The February 28, 2022, permit amendment application proposes to expand an existing, unauthorized seaplane ramp located at the end of Yolo Street. The application notes that it is an after-the-fact permit application for the seaplane ramp, but also proposes to expand it to a 20'W x 35'L ramp consisting of 2x6 "Trex" boards on grade. See Exhibit 5, p. 24.

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.00

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March 15, 2022

- F. On March 14, 2022, BCDC received reports of a violation in the Yolo Street public right of way. The reports included photographs taken on March 13, 2022, and on March 14, 2022, showing that construction of the proposed expansion of the existing, unauthorized plane ramp had been initiated, introducing substantial amounts of fill into the shoreline band and into the Bay. Exhibits 6 & 7.
- G. This fill is not authorized by any BCDC Permit.
- H. Government Code Section 66632(a) requires any person wishing to place fill, extract materials, or make any substantial change in use of any water, land, or structure within BCDC's jurisdiction secure a permit from BCDC before doing so. No permit has been secured for the fill described in this Order.
- I. Government Code section 66637 and BCDC's regulation at Cal. Code Regs. tit. 14, Sec. 11341 grant the Executive Director the authority to issue a cease and desist order to any person or governmental entity that has undertaken, or has threatened or threatens to undertake, an activity that may require a Commission permit without having obtained a Commission permit, or is inconsistent with a term or condition of a Commission permit. Section 11341 of BCDC's regulations also authorizes the Executive Director to issue consecutive cease and desist orders for a persisting violation.

III. CONDITIONS

Respondent shall perform all of the following activities necessary to come into compliance with the provisions of the McAteer Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan in the timeframe and manner prescribed:

- A. Respondent must immediately remove all unauthorized fill placed in the San Francisco Bay Conservation and Development Commission's (BCDC's) San Francisco Bay and/or shoreline band jurisdiction within the Marin County public right of way located between APN 052-247-01 and APN 052-247-02, and cease from undertaking any further work on either parcel or anywhere else within BCDC's jurisdiction without first securing a permit from BCDC.
- B. Respondents must restore the site to the condition that existed before the unauthorized structure was installed on or before April 15, 2022.

IV. TERMS

- A. Pursuant to Government Code Section 66641, any person or government agency who intentionally or negligently violates any cease and desist order issued, reissued, or amended by the Executive Director may be liable civilly for up to \$6,000 per day in

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.00

Page 4
March 15, 2022

which such violation persists. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission's Executive Director, and upon the request of the Commission, the Attorney General of the State of California may petition the Superior Court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

- B. This order does not affect any duties, rights, or obligations under private agreements or under regulations of other public bodies.
- C. This order does not constitute a recognition of property rights.
- D. Respondent must strictly comply with this Order.
- E. This order is effective upon the date of issuance thereof and shall become null and void ninety days after the date of issuance.

V. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Section 66639 within thirty days after service of a copy of a cease and desist order issued by the Executive Director, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of the order in any judicial proceeding brought to enforce the order or for civil remedies.

DATED: March 15, 2022

DocuSigned by:

FD106E908010417...
LAWRENCE J. GOLDZBAND
Executive Director

List of Exhibits:

- Exhibit 1. Real Quest Reports for Marin County APN 052-247-01 and APN 052-247-02.
- Exhibit 2. BCDC Permit 1973.014.01
- Exhibit 3. BCDC Permit 1985.030.01
- Exhibit 4. October 8, 2021, BCDC 35-day Letter to Seaplane Investment, LLC

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.00

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March 15, 2022

Exhibit 5. February 28, 2021 Seaplane Investment, LLC Permit Amendment

Exhibit 6. March 14, 2022, 7:05 am email report of violation

Exhibit 7. March 14, 2022, 3:12 pm email report of violation

Index of Additional Administrative Record Documents

Document #	Description	Date
1	San Francisco Bay Plan	
2	Richardson Bay Special Area Plan	

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdcd.ca.gov | www.bcdcd.ca.gov

Via Email Only

March 30, 2022

Seaplane Investment, LLC
242 Redwood Highway
Mill Valley, CA 94941
ATTN: Lou Vasquez
Email: lou@bldsf.com

Law Offices of John E. Sharp
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903
ATTN: John E. Sharp, Esq.
Email: admin@johnsharplaw.com

SUBJECT: 240-242 Redwood Highway Seaplane Improvements; (BCDC Permit Application No. 1973.014.05, Enforcement Case ER2019.063.00 and Executive Director Cease and Desist Order ECD2022.002.00)

Dear Mr. Vasquez and Mr. Sharp:

Thank you for your application dated and received in this office on February 28, 2022, for new shoreline access improvements and after-the-fact authorization of boat docks, fuel tank, and seaplane storage at 242 Redwood Highway, Mill Valley in Marin County. Our review of the application has determined that it is incomplete pending the submittal of the following items:

1. Total Project and Site Information

From reviewing your application, it appears that the proposed project would involve the following activities:

- a. Installing improvements to enable required shoreline access. The improvements would consist of:
 1. A [**XX-foot-long by XX-foot-wide**], 544-square-foot wooden boardwalk, supported by [**X number of XX-inch material**] piles;
 2. One [**XX-foot-long by XX-foot-wide**], 135-square-foot asphalt ramp connecting the wooden boardwalk to the Marin County bike path and one [**XX-foot-long by XX-foot-wide**] 252-square-foot asphalt ramp connecting to the seaplane parking lot and shoreline access path;



3. Modifying existing parking spaces for three vehicles to accommodate two 9-foot-wide by 18-foot-long ADA parking spaces along Bolinas Street;
 4. Removing [**X number of**] parking spaces in the seaplane parking lot and placing an 8-foot-wide by 16-foot-long asphalt transition ramp, with two-inch asphalt feathering strip on both sides along the required shoreline access path.
- b. The project additionally proposes after-the-fact authorization of the following components:
1. A 57-square-foot concrete seaplane fuel tank and fueling pumps [**first installed in XXXX year**];
 2. A 20-foot-wide by 35-foot-long composite lumber seaplane launch ramp, [**installed in XXXX year**], and proposed to be replaced. There are very few details on the ramp, and we need more information on this part of the project;
 3. Four wood and encased foam floating boat docks totaling 894 square feet added to the existing, authorized, u-shaped seaplane dock and an unauthorized fuel station;
 4. Repairs to the existing 1,528-square-foot floating seaplane dock;
 5. Storage of, and repairs to, a maximum of [**X number of**] seaplanes; and
 6. Place a berm across Yolo Street to provide elevated access to the heliport pad authorized in Permit M1985.030.00.

Please verify whether the proposed project has been described in full; if not, please provide any missing details including the information in [**brackets**]. Additionally, please provide further detail concerning the proposed work and unauthorized work completed in the Bay and shoreline band described above, including materials, dimensions, and years completed.

2. **Fill in the Bay and Shoreline Band Information**

The proposed project appears to include work in the Commission's Bay and Shoreline Band jurisdictions. Please note that given the presence of tidal marsh vegetation within your proposed project site, the Bay is defined as extending up to five feet above mean sea level for this area or to the upland extent of the marsh vegetation if it is below this elevation. The shoreline band is further defined as the area between the Bay and 100 feet landward of and parallel with that line. Please revise your provided project plans to delineate BCDC jurisdiction on the site. We recommend that we meet with you to discuss the location of our Bay jurisdiction prior to having your surveyor prepare a survey and update the project plans with the jurisdictional lines.



It is not clear from your application which portions of the project will occur within the 100-foot shoreline band versus in the Bay jurisdiction. Please complete Boxes 3 and 4 of the application form for an administrative permit and provide all project details relevant to the Commission's jurisdictions.

3. Project Plans

Please provide a site plan that includes property lines, existing and proposed structures or improvements, the shoreline [up to five feet above Mean Sea Level], any marshes, wetlands, or mudflats, the corresponding 100-foot shoreline band line, scale, north arrow, date, and the name of the person who prepared the plans.

Please also clarify the following details:

1. The Commission's jurisdictions on the project site;
2. It does not appear the boat docks were included in the project plans. Please update the plans to include these structures and specify the dimensions of the boat docks and any pilings, and indicate which ones were preexisting and those that are after-the-fact constructions you are requesting approval for;
3. Clarify the extent of area dedicated to seaplane storage, how many seaplanes may be on site, and the dimensions of the heliport access ramp and whether and how it contributes to onsite ponding following tidally induced site flooding;
4. Specify the maximum parking capacity to be provided, and if there will be spaces dedicated for public access. The existing permit authorizes 17 parking spaces for houseboat residents. Please indicate where these spaces are located – we believe it is Parepa Street - and provide an exhibit that shows all parking areas with parking spaces shown; and
5. As public access is proposed as a part of your project, please provide a public access and/or open space exhibit that clearly indicates the area to be dedicated as public access and/or open space, including width, length, elevations, and monuments, where appropriate. The exhibit must be legible when the exhibit is reduced to 8 1/2" x 11" and include a graphic scale. Please also indicate if any of the parking spaces will be dedicated public shore parking spaces that are free and open to the public.

4. Processing Fee

Your application appears to qualify for a nonmaterial amendment to a major permit. As it is the result of an enforcement action, it is subject to double the standard application processing fee. Please note that Appendix M of the Commission's Regulations define the total project cost as "*expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission's jurisdiction,*" and should include all the new and after-the-fact work that



you are requesting approval for. Your application states that the total project cost is \$50,000. Please confirm the total project cost as stated in your application as \$50,000, or provide an updated estimate. If this total project cost is accurate, a processing fee of \$600 is required for continued processing of the application. If your total project cost is different, please provide an updated estimate and we will let you know what the associated permit fee is.

5. Proof of Adequate Property Interest

Please submit documentation, such as a copy of a grant deed or lease which demonstrates that the applicant has adequate legal interest in the property, or a letter which authorizes the applicant to act on behalf of the property owner for all matters pertaining to this permit. It appears that Marin County owns Yolo Street and you will need local approval for any work in the Yolo Street right-of-way before we can file the application for this project. Please also indicate the party which holds legal interest in the bike path being connected via asphalt ramp to the proposed boardwalk.

6. Other Governmental Approvals

Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. If applicable to the proposed project, we will also need to receive project approval(s) and all "take" authorizations from the state and federal resource agencies. Our regulations prohibit us from filing an application prior to receiving this documentation.

7. Environmental Documentation

Please provide environmental documentation, as required under the California Environmental Quality Act (CEQA), in the form of a categorical or statutory exemption, negative declaration, or other certified environmental impact document.

8. Local Government Approval

Please submit all the relevant documentation which clearly indicates that all the local government discretionary approvals have been received for the project.

9. Interested Parties

It is necessary to have a complete list of interested parties prior to filing an application. Therefore, I am returning Box 9 of the application form so that you can provide a list of adjacent property owners and other parties known to be interested in your project, wherever possible, please include email addresses as all correspondence related to Commission meetings and permits is currently being sent electronically.

10. Public Access

The Commission's law and policies require that proposed development provide the maximum feasible public access consistent with the project. Your proposal appears to include some public access improvements, such as parking modifications, boardwalk construction, and signage to make the already required public access areas in the



existing permit more functional/usable as required by the San Francisco Bay Plan public access policies. Many of these improvements were recommended by staff to help resolve compliance issues for the required public access areas.

The project also includes a request to authorize other new fill, such as the dock expansion, after-the-fact. Please indicate whether any portions of the new fill would be designated for public access purposes or not. Please indicate if there is sufficient public parking along the street or not. Please clarify whether there are any proposed dedicated public access parking spaces associated with the project. For the Yolo and Bolinas Street rights of way, please clarify any proposed parking and the number of spaces. Please note that staff needs to understand the uses on the new fill and would not be able to recommend approval to the Commission for a proposal that does not provide the maximum public access consistent with the project.

Public access improvements associated with project should be sited and designed, managed and maintained to avoid impacts from future sea level rise and flooding. If the proposed public access cannot remain viable given projected sea level rise over the life of the project, alternative, equivalent access would be required. Therefore, please indicate what the estimated life of the project is and assess the effect of a mid- and end-of-century sea level rise based on the 100-year flood projected for the proposed access area. If desired, BCDC staff can provide some additional guidance on this assessment. If the assessment shows that potential flooding at the site would threaten public access viability, the access should be designed to be resilient to a mid-century sea level rise projection. If proposed project and access would remain in place beyond mid-century, an adaptive management plan to address impacts of sea level rise at end of century should be prepared or alternative, equivalent access should be proposed. Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete.

11. Water Quality

Please provide additional details on how and where the seaplanes are fueled any minimization measures that are used to help prevent spills or other impacts to water quality.

Other Issues. In addition to the issues cited above, the following matters should be considered in submitting additional materials to us as part of the application process.

12. Cease and Desist Order

Executive Director Cease and Desist Order ECD2022.002 issued to you on March 15, 2022, requires you to remove the unauthorized fill for a seaplane ramp placed in the Bay and/or Shoreline Band. Therefore, you are required to restore the ramp to the condition that existed before you undertook the recent unauthorized work and BCDC will not be able to evaluate the recently placed fill after the fact as part of this permit application. You may be able to apply for a permit amendment in the future to construct a new, concrete boat ramp, which would be subject to our staff's future evaluation. However,



Seaplane Investment, LLC
Permit Application No. 1973.014.05

March 30, 2022
Page 6

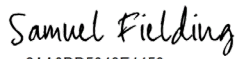
the only boat ramp that staff will evaluate as part of this pending amendment request is a replacement, lumber surface layer.

13. Public Notice

Please find enclosed the "Notice of Application" form to be posted at or near the project site in a prominent location to notify members of the public about the pending application for the proposed project.

If you have any questions, please do not hesitate to contact me at 415-352-3665 or sam.fielding@bcdc.ca.gov.

Sincerely,

DocuSigned by:

2AA0DD5043E4453...
SAM FIELDING

Coastal Program Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3665
Fax: 415-352-3606
Email: sam.fielding@bcdc.ca.gov
Website: www.bcdc.ca.gov

SF / mm

cc: Nicole Fairley, Regional Water Quality Control Board, Nicole.Fairley@Waterboards.ca.gov
Jenna Brady, County Counsel, Marin County, JBrady@marincounty.org
Adrienne Klein, BCDC, adrienne.klein@bcdc.ca.gov

Enclosures: Posting Notice and Permit Application



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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BCDC PERMIT APPLICATION NO. 1973.014.05

Seaplane Investment, LLC

CERTIFICATION OF POSTING OF NOTICE

Sam Fielding

San Francisco Bay Conservation
and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105

RE:

Shoreline access improvements

(brief description of project)

I,

(name of applicant or agent)

hereby certify that on _____,

(date)

I or my agent or employee posted in a prominent location at or near the project site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date: _____

By: _____

(Signature)

Title: _____

(Title)

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

DATE POSTED: _____,

NOTICE OF PERMIT APPLICATION

NOTICE is hereby given that:

Seaplane Investments, LLC has applied for a permit to the **SAN FRANCISCO BAY
CONSERVATION & DEVELOPMENT COMMISSION** to:

Install a boardwalk and asphalt transition ramps to improve shoreline access

at a **PROPERTY** known as:

242 Redwood Highway, Mill Valley in Marin County, CA, 94941.

**Comments or questions on the proposed project should be submitted immediately in writing or by contacting
the Commission,**

Attn: Sam Fielding at 415-352-3665 or sam.fielding@bcdc.ca.gov

**Permit application, any supplementary materials and notice of any hearings related to the above project, are
available for review upon request.**



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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June 14, 2022

Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109

SUBJECT: Executive Director Cease and Desist Order 2022.002.01

Dear Seaplane Investment, LLC:

The San Francisco Bay Conservation and Development Commission's Executive Director reissued the attached Cease and Desist Order today, ordering you to cease activities that violate the McAteer-Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan. The Cease and Desist Order also requires you to restore the sites where the violations occurred, and precludes you from conducting additional violations.

The violations identified in the Cease and Desist Order are also subject to formal Commission enforcement proceedings where additional injunctive relief and civil administrative liability of up to \$2,000 per day for each violation can be imposed. You will receive a Violation Report and Complaint that identifies each violation, calculates the expected civil administrative liability, and establishes a hearing date before the Commission's Enforcement Committee.

Sincerely,



BRENT PLATER

Lead Enforcement Attorney

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, California 94105

Tel: 415-352-3628

Email: brent.plater@bcdc.ca.gov

cc: John E. Sharp, 24 Professional Center Parkway, Suite 110, San Rafael, CA 94903

Enclosure: Executive Director Cease and Desist Order 2022.002.01



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Via Certified Mail

ISSUED BCDC

Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109

Respondent

EXECUTIVE DIRECTOR CEASE AND DESIST
NO. ECD2022.002.01

Date of Issuance: June 14, 2022

Expiration Date: September 12, 2022

To Seaplane Investment, LLC:

I. CEASE AND DESIST

Pursuant to my authority under California Government Code Section 66637, I hereby order you, Seaplane Investment, LLC (Respondent), all of your agents and employees, and any other persons or companies acting in concert with you, to cease and desist all of the following activities which you have undertaken or are threatening to undertake in violation of the McAteer-Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan.

Specifically, you are ordered to:

- A. Immediately remove all unauthorized fill placed in the San Francisco Bay Conservation and Development Commission's (BCDC's) San Francisco Bay and/or 100-foot shoreline band jurisdiction within the Marin County public right-of-way located between APN 052-247-01 and APN 052-247-02. The landward portion of this right-of-way is called Yolo Street, and the fill is proposed to, but not approved by, BCDC in Seaplane Investment, LLC's permit amendment application submitted on February 28, 2022.



Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.01

Page 2
June 14, 2022

- B. Restore the location to its previous condition.
- C. Cease and desist from any further development and/or substantial changes in use on or between APN 052-247-01 and APN 052-247-02, or any other area within BCDC's jurisdiction without prior authorization from BCDC.
- D. Fully comply with the requirements of Section III of this Cease and Desist Order.

II. FINDINGS

The administrative record in support of the findings contained in this Order includes the documents cited herein and all additional documents cited in the Index of Administrative Record attached hereto. This Order is based on the following findings:

- A. Seaplane Investment, LLC owns APN 052-247-01 and APN 052-247-02, which are located on either side of Yolo Street, a Marin County public right-of-way. Exhibit 1. BCDC Permit 1973.014.01 applies to APN 052-247-01, and BCDC Permit 1985.030.01 applies to APN 052-247.02. Exhibits 2 & 3.
- B. BCDC has an open enforcement matter, ER2019.063, against Seaplane Investment, LLC for several violations of both permits. These violations include: failure to maintain required public access pathways; failure to provide required public access improvements; constructing unauthorized boat docks and ramps; unauthorized construction and storage of planes and other vehicles in the Yolo Street public access right-of-way; and failure to provide assignment forms for permits assumed by Seaplane Investment, LLC.
- C. On October 28, 2021, BCDC staff sent a letter to Seaplane Investment, LLC, initiating a penalty clock on five violations. Most of these violations are still outstanding. Exhibit 4.
- D. On February 28, 2022, Seaplane Investment, LLC submitted a permit amendment application to BCDC that proposes to address most of the violations noted in BCDC's October 28, 2021, letter. However, to-date, that permit amendment application has not been deemed filed by BCDC. Exhibit 5.
- E. The February 28, 2022, permit amendment application proposes to expand an existing, unauthorized seaplane ramp located at the end of Yolo Street. The application notes that it is an after-the-fact permit application for the seaplane ramp, but also proposes to expand it to a 20'W x 35'L ramp consisting of 2x6 "Trex" boards on grade. See Exhibit 5, p. 24.
- F. On March 14, 2022, BCDC received reports of a violation in the Yolo Street public right-of-way. The reports included photographs taken on March 13, 2022, and on March 14, 2022, showing that construction of the proposed expansion of the existing,

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.01

Page 3
June 14, 2022

unauthorized plane ramp had been initiated, introducing substantial amounts of fill into the 100-foot shoreline band and into the Bay. Exhibits 6 & 7.

- G. This fill is not authorized by a BCDC permit.
- H. Government Code Section 66632(a) requires any person wishing to place fill, extract materials, or make any substantial change in use of any water, land, or structure within BCDC's jurisdiction secure a permit from BCDC before doing so. No permit has been secured for the fill described in this Order.
- I. Government Code section 66637 and BCDC's regulation at Cal. Code Regs. tit. 14, Sec. 11341 grant the Executive Director the authority to issue a cease and desist order to any person or governmental entity that has undertaken, or has threatened or threatens to undertake, an activity that may require a Commission permit without having obtained a Commission permit, or is inconsistent with a term or condition of a Commission permit. Section 11341 of BCDC's regulations also authorizes the Executive Director to issue consecutive cease and desist orders for a persisting violation.
- J. On March 15, 2022, I issued ECD2022.002.00, pursuant to Government Code section 66637 and section 11300 of BCDC's regulations (14 CCR). ECD2022.002.00 required Respondents to immediately remove the unauthorized fill and restore the site to its previous condition on or before April 15, 2022.
- K. Respondents have failed to comply with the terms and conditions of this Executive Director Cease and Desist Order.
- L. The decision to issue a second consecutive order for this continuing violation is based upon my determination that this activity has resulted in significant harm to the Bay's resources and my immediate intervention is required to ensure that the harm does not continue.

III. CONDITIONS

Respondent shall perform all of the following activities necessary to come into compliance with the provisions of the McAteer Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan in the timeframe and manner prescribed:

- A. Respondent must immediately remove all unauthorized fill placed in the San Francisco Bay Conservation and Development Commission's (BCDC's) San Francisco Bay and/or shoreline band jurisdiction within the Marin County public right-of-way located between APN 052-247-01 and APN 052-247-02, and cease from undertaking any further work on either parcel or anywhere else within BCDC's jurisdiction without first securing a permit from BCDC.

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.01

Page 4
June 14, 2022

- B. Respondents must restore the site to the condition that existed before the unauthorized structure was installed on or before April 15, 2022.

IV. TERMS

- A. Pursuant to Government Code Section 66641, any person or government agency who intentionally or negligently violates any cease and desist order issued, reissued, or amended by the Executive Director may be liable civilly for up to \$6,000 per day in which such violation persists. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission's Executive Director, and upon the request of the Commission, the Attorney General of the State of California may petition the Superior Court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.
- B. This order does not affect any duties, rights, or obligations under private agreements or under regulations of other public bodies.
- C. This order does not constitute a recognition of property rights.
- D. Respondent must strictly comply with this Order.
- E. This order is effective upon the date of issuance thereof and shall become null and void ninety days after the date of issuance.

V. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Section 66639 within thirty days after service of a copy of a cease and desist order issued by the Executive Director, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of the order in any judicial proceeding brought to enforce the order or for civil remedies.

DATED: June 14, 2022

Lawrence J. Goldzband

LAWRENCE J. GOLDZBAND
Executive Director

List of Exhibits:

- Exhibit 1. Real Quest Reports for Marin County APN 052-247-01 and APN 052-247-02.
- Exhibit 2. BCDC Permit 1973.014.01
- Exhibit 3. BCDC Permit 1985.030.01

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.01

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June 14, 2022

- Exhibit 4. October 8, 2021, BCDC 35-day Letter to Seaplane Investment, LLC
- Exhibit 5. February 28, 2021 Seaplane Investment, LLC Permit Amendment
- Exhibit 6. March 14, 2022, 7:05 am email report of violation
- Exhibit 7. March 14, 2022, 3:12 pm email report of violation

Index of Additional Administrative Record Documents

Document #	Description	Date
1	San Francisco Bay Plan	
2	Richardson Bay Special Area Plan	

Law Offices of
JOHN E. SHARP
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903

Exhibit 28

John E. Sharp
john@johnsharplaw.com

Telephone: (415) 479-1645
Facsimile: (415) 295-7020

July 14, 2022

VIA EMAIL AND U.S. MAIL

Brent Plater
Lead Enforcement Attorney
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3628
Email: brent.plater@bcdc.ca.gov



SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Re: *Seaplane Investment, LLC*

Dear Mr. Plater:

This is in response to your letter of June 14, 2022 and the Cease and Desist Order enclosed therewith. Reference is also made to your letter of March 15, 2022 and the letter of March 30, 2022 from Mr. Fielding. Please include this letter in the administrative record.

As you know, Seaplane Investment, LLC. (hereinafter "Seaplane") is in the process of bringing current its applications/permits with BCDC and other entities. Those permits date back to 1953, and some of the improvements for the sea base, including the ramp in question, predate both BCDC and county ordinances. Nevertheless, Seaplane does intend to include the ramp in its applications. Seaplane undertook the process of updating permits on or about September 15, 2020. During that time, Seaplane, as is the case with many entities, struggled with the impacts of Covid 19, including the aftermath of having been closed during its peak revenue-producing months.

Seaplane observes that, as a matter of case law and common law, it has the right and duty to repair improvements to the property. In fact, with reference to the ramp, upon which a previous owner installed an incorrect and untenable solution in the form of installing trex decking to attempt to repair the ramp, Seaplane, according to, without limitation, Part 135 of the Federal Aviation Act must provide safe and adequate ingress and egress for the aircraft to the water.

Brent Plater
Page 2
July 14, 2022

Without entering into an exhaustive examination of the law of preemption, Seaplane is an airline business operating in Marin County, California, as an air carrier, certified pursuant to 14 CFR Part 135 and Part 91 of the Federal Aviation Administration ("FAA") regulations. The FAA grants the authority to operate on-demand, unscheduled air service (also known as charter-type services) in the form of Part 135 certificate. Seaplane and its facilities are strictly controlled by the FAA. Attached please find Seaplane's Airport Master Record with the FAA, as one example. Also see Declarations of Lauralyn J. Remo Temprosa, Dennis M. Thorpe, included herewith.

In addition to placing Seaplane at jeopardy with its duties to the FAA, the literal effect of causing Seaplane to restore the ramp to its condition prior to your letter of March 15, 2022 would be to cause damage to the Bay, hinder public access, and damage Seaplane's aircraft, (which was occurring prior to the repair). Such an interpretation would operate contrary to the spirit and letter of the multitude of laws regulating airports. Moreover, putting back in place a broken ramp falls within the provisions of, without limitation, CA Civil Code Section 1638, which provides that documents should be interpreted to avoid an absurd result. It would, in short, put this airport out of business.

We are aware of the ongoing complaints of a few residents of the Richardson Bay area. These complaints were addressed at the Marin County Planning Commission in 2017. Despite those complaints having been rejected by the Marin County Planning Commission, Seaplane nevertheless seeks to continue to work collaboratively with BCDC, the County and its Neighbors along the Bay, to assure compliance with its permits.

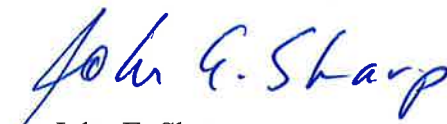
We believe the above points establish that no penalties or fines should be ordered. We understand that penalties and fines are intended to assure compliance. We further believe that, given the circumstances and conditions that have evolved during a period in excess of 70 years, compliance is, at least in part, assured by the ramp being repaired.

Seaplane is acting reasonably as a steward of the portion of the Bay where it lies, while taking care of the unique characteristics of being the only private sea base in California. We look forward to continuing to work with BCDC and will respond to the March 30 letter from Mr. Fielding as soon as reasonably possible.

If you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,

LAW OFFICES OF JOHN E SHARP



John E. Sharp

1 BRIAN M. BOYNTON
Acting Assistant Attorney General
2 JACQUELINE COLEMAN SNEAD
Assistant Branch Director
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8 STEPHANIE M. HINDS (CABN 154284)
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11 San Francisco, California 94102-3495
Telephone: 415-436-6925
12 Sara.winslow@usdoj.gov

13 Attorneys for the U.S. Department of Transportation
and Federal Aviation Administration
14

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

19 SEAPLANE ADVENTURES,) CASE NO. 20-6222 WHA
20 Plaintiff,) **DECLARATION OF DENNIS M. THORPE**
21 v.)
22 COUNTY OF MARIN, CALIFORNIA,)
23 Defendant.)
24)

25 I, Dennis M. Thorpe, declare as follows:
26

27 1. I am employed by the Federal Aviation Administration (“FAA”) as the Manager of the
28 Oakland Flight Standards District Office (“FSDO”) in Alameda, California. I submit this declaration,

1 based on information available to me in connection with my position, to provide the Court with
2 information about certain safety-related certifications that the plaintiff in this action, Seaplane
3 Adventures, has received from the FAA.

4 2. In order for an entity to operate as an air carrier, it must receive an air carrier certificate
5 from the FAA. *See* 49 U.S.C. §§ 44705, 44711. The FAA grants such a certificate if it finds that the air
6 carrier “properly and adequately is equipped and able to operate safely under” aviation safety rules set
7 out by statute and by FAA regulations. *Id.* § 44705; 14 CFR Part 119. San Francisco Seaplane Tours,
8 Inc. (“SFST”) has been granted an air carrier certificate (as noted below, SFST is authorized to do
9 business as “Seaplane Adventures”). SFST’s certificate became effective in 2006. A true and accurate
10 copy of the certificate is annexed hereto as Exhibit A.

11 3. SFST has also been issued operations specifications (“OpSpecs”) describing the kinds of
12 operations it can conduct and certain applicable authorizations, limitations, and procedures. *See* 14 CFR
13 §§ 119.7, 119.33(a)(3). The OpSpecs indicate that SFST is authorized to do business as “Seaplane
14 Adventures.” The OpSpecs authorize SFST to provide on-demand operations in common carriage
15 pursuant to 14 CFR § 119.21(a)(5) and in compliance with FAA safety regulations set forth in 14 CFR
16 Part 135. SFST’s current OpSpecs were last updated in 2019 and are on file with the FAA.

17 4. SFST has also obtained a Letter of Authorization (“LOA”) that authorizes it to conduct
18 nonstop passenger-carrying flights that begin and end at the same airport, and are conducted within a 25-
19 statute mile radius of the airport, in accordance with FAA safety regulations set forth in 14 CFR Part 91.
20 *See* 14 CFR §§ 91.147, 119.1(e)(2). SFST’s current LOA was last updated in 2017 and is on file with
21 the FAA.
22
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28

1 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and
2 correct to the best of my knowledge, information, and belief.

3 Executed on this 16th day of June 2021, in Alameda, California.
4
5

6 DENNIS M Digitally signed by
7 THORPE DENNIS M THORPE
Date: 2021.06.16
10:06:30 -07'00'

8 Dennis M. Thorpe
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Exhibit A



US Department
of Transportation
**Federal Aviation
Administration**

Air Carrier Certificate

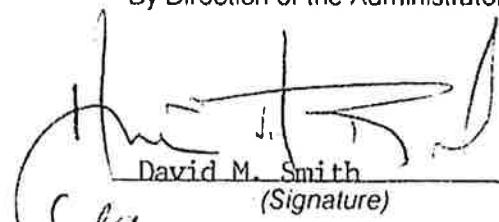
This certifies that

SAN FRANCISCO SEAPLANE TOURS, INC.
242 REDWOOD HIGHWAY
MILL VALLEY, CA 94941

has met the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate and is hereby authorized to operate as an air carrier and conduct common carriage operations in accordance with said Act and the rules, regulations, and standards prescribed thereunder and the terms, conditions, and limitations contained in the approved operations specifications.

This certificate is not transferable and, unless sooner surrendered, suspended, or revoked, shall continue in effect indefinitely.

By Direction of the Administrator.



David M. Smith
(Signature)

for

Manager
(Title)

Western Pacific/Oakland FSDO
(Region/Office)

Certificate number: O2QA052Y

Effective date: August 10, 2006

Issued at: Alameda, CA

1 BRIAN M. BOYNTON
 Acting Assistant Attorney General
 2 JACQUELINE COLEMAN SNEAD
 Assistant Branch Director
 3 MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)
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13 Attorneys for the U.S. Department of Transportation
 and Federal Aviation Administration
 14

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION
 18

19 SEAPLANE ADVENTURES,)	CASE NO. 20-6222 WHA
20 Plaintiff,)	DECLARATION OF
21 v.)	LAURALYN J. REMO TEMPROSA
22 COUNTY OF MARIN, CALIFORNIA,)	
23 Defendant.)	
24)	

25
 26 I, Lauralyn J. Remo Temprosa, declare as follows:

27 1. I am employed by the United States Department of Transportation, as the Associate

28 Director for Air Carrier Fitness in the Office of the Assistant Secretary for Aviation and International

1 Affairs, a component of the Office of the Secretary of Transportation (“OST”). I submit this
2 declaration, based on information available to me in my position, to provide the Court with information
3 about the economic authority that the plaintiff in this action, Seaplane Adventures, has received from
4 OST.

5
6 2. In order for a commercial air carrier to provide “air transportation”—defined as interstate
7 air transportation, foreign air transportation, or the transportation of mail by air—it must either hold a
8 certificate of public convenience and necessity issued by OST or be exempt from that requirement.
9 *See* 49 U.S.C. §§ 41101(a) (certificate requirement); 40109(c) (exemption authority). Under 14 CFR
10 Part 298, an “air taxi operator” is exempt from the certificate requirement if it registers with OST and
11 meets certain requirements. An air taxi operator that registers under Part 298 has economic authority
12 from OST to provide air transportation consistent with applicable regulations.

13
14 3. San Francisco Seaplane Tours, Inc. (“SFST”) has registered with OST as an air taxi
15 operator under Part 298. SFST’s current registration became effective on May 14, 2021, and indicates
16 that SFST does business as “Seaplane Adventures.” SFST’s prior registration, which became effective
17 on April 23, 2019, did not reference the “Seaplane Adventures” name, but was otherwise identical. A
18 true and accurate copy of the current registration is annexed as Exhibit A. A true and accurate copy of
19 the prior registration is annexed as Exhibit B.

20
21 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and
22 correct to the best of my knowledge, information, and belief.

23 Executed on this 16th day of June 2021, in Alexandria, Virginia.

24
25
26 


27
28

Lauralyn J. Remo Temprosa

Exhibit A

PAPER WORK REDUCTION ACT OF 1995

This information is collected to determine whether air taxi operations meet the Department's criteria for an operating authorization under 14 CFR Part 298. We estimate that it will take 30-60 minutes to complete. The use of this form is mandatory. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The OMB Control Number for this collection is 2105-0565. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to: U.S. Department of Transportation, Office of Aviation Analysis (X-56), 1200 New Jersey Avenue, SE, Washington, DC, 20590.

 <p>U.S. Department of Transportation Office of the Secretary of Transportation</p> <p style="text-align: center;">AIR TAXI OPERATOR REGISTRATION AND AMENDMENTS UNDER PART 298 OF THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION</p>	<p>FOR USE BY DOT ONLY</p>
<p>Where to file: Submit this form, in duplicate, along with a Certificate of Insurance (OST Form 6410) evidencing required liability insurance coverage for the aircraft listed in Block 6 of this registration, to:</p> <p style="margin-left: 40px;">Federal Aviation Administration (FAA) Air Transportation Division, AFS-200, Room 831 800 Independence Avenue, S.W., Washington, D.C. 20591</p> <p>Exception: For air taxis located in the <u>State of Alaska</u>, submit this form and the OST Form 6410 to the Federal Aviation Administration (FAA), Alaskan Region Headquarters, AAL-231, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.</p> <p>Fees: The fee for the <u>initial</u> registration of an air taxi is \$8. There is no filing fee for amendments to registrations previously filed.</p>	<p>Effective date of registration/amendments</p> <p style="text-align: center; font-size: 1.2em;">MAY 14, 2021</p>
<p>1a. Name (and DBA, if applicable) and Mailing Address of the Registering Carrier:</p> <p style="margin-left: 40px;">San Francisco Seaplane Tours, Inc. DBA Seaplane Adventures 242 Redwood Hwy Mill Valley, CA 94941</p> <p>1b. Telephone No. <u>415-332-4843</u> Fax No. _____</p> <p>1c. Email: <u>info@seaplane.com</u></p>	<p>3a. Federal Aviation Administration certificate number: O2QA052Y</p> <p>3b. Address of local FAA office:</p> <p style="text-align: right; margin-right: 20px;">5/6/2021</p>
<p>2a. Address of principal place of business (if different from above):</p> <p>2b. Telephone No. _____ Fax No. _____</p>	<p>3c. FAA Telephone No.: <u>510-748-0122</u></p> <p>3d. FAA Principal Operations Inspector: <u>David Jensen</u></p>
<p>4. This filing is the carrier's:</p> <p style="text-align: center;"><input type="checkbox"/> Initial Registration <input checked="" type="checkbox"/> Amendment to reflect changes since previous filing (Complete item 9)</p> <p>If initial registration, give proposed date of commencement of operations: _____</p>	
<p>5. Type of service the carrier intends to perform upon commencement of operations, or, for amendments, service the carrier is currently performing (check all that apply):</p> <p><input checked="" type="checkbox"/> Passenger <input type="checkbox"/> Seasonal <input type="checkbox"/> Air ambulance <input type="checkbox"/> Mail under a U.S. Postal Service contract</p> <p><input type="checkbox"/> Cargo <input type="checkbox"/> Other (Please specify)** _____</p> <p>** For example, if the carrier performs other services such as fire fighting operations for the U.S. Forest Service, it should be indicated here.</p> <p>Companies proposing or operating passenger services of five (5) or more round trips per week on at least one route between two or more points pursuant to published flight schedules which specify the times, days of the week, and places between which such flights are performed may not conduct such operations under this registration. Instead, such companies must be found "fit, willing, and able" to provide such services as a commuter air carrier. See 14 CFR 298, Subpart F.</p>	

6. Aircraft which the carrier proposes to operate in air taxi service or, for amendments, aircraft currently operated:

	Aircraft Make and Model	FAA Registration Number	Passenger Seats Installed*
1.	DeHavilland DHC-2	N5220G	6
2.	DeHavilland DHC-2	N123JL	6
3.			
4.			
5.			

(Add additional sheets if necessary)

* This does not include seats occupied by the pilot or co-pilot unless the latter is available for passenger use.

7. Is the registering carrier a U.S. citizen?

YES NO

Note: An air taxi or commuter registered under Part 298 must be a citizen of the United States. 49 USC 40102(a)(15) defines a U.S. citizen as (a) an individual who is a U.S. citizen; (b) a partnership of which each member is a U.S. citizen; or (c) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

8. If this is an amendment, has the carrier carried passengers in foreign air transportation, that is, between any point in the United States and any point outside thereof, during the past 12 months:

YES NO

9. REPORT CHANGES OR AMENDMENTS TO INFORMATION PREVIOUSLY FILED WITHIN 30 DAYS OF THE EFFECTIVE DATE:

a. Change in Carrier's Name and/or Address (Please specify):

Former Name and Address:

Current Name and Address:

San Francisco Seaplane Tours, Inc.
242 Redwood Hwy
Mill Valley, CA 94941

San Francisco Seaplane Tours, Inc.
DBA Seaplane Adventures
242 Redwood Hwy
Mill Valley, CA 94941

b. Description of Any Other Changes or Amendments (Including additions or deletions of aircraft, change in type of operations, registration numbers, etc.):

10. Certification

I certify that the information contained in this application is complete and accurate to the best of my knowledge. The carrier subscribes to the IATA Inter-carrier Agreement; the IATA Agreement on Measures to Implement the IATA Inter-carrier Agreement, and the ATA Agreement on Provisions Implementing the IATA Inter-carrier Agreement to be Included in Conditions of Carriage and Tariffs (see OST Form 4523-A), and in accordance with those Agreements agrees under Article 22(1) of the Warsaw Convention or the Warsaw Convention as amended by the Hague Protocol that the liability limits for passenger injury or death in international transportation as defined in the Convention are waived in their entirety.

Date: May 5, 2021

Signature: 
(See note)

Name: Saul Aaron Singer
(Please type)

Place: Mill Valley, CA
(City and State)

Title: Owner - President

Note: This registration must be signed by a responsible officer, such as the President, Vice President, Secretary or Treasurer, or partner or owner of the carrier.

TO ENSURE PROPER PROCESSING OF THIS REGISTRATION, PLEASE COMPLETE THIS FORM IN ITS ENTIRETY.

Exhibit B

Approved by OMB
OMB No. 2105-0565
Expires: 6/30/2019

PAPER WORK REDUCTION ACT OF 1995

This information is collected to determine whether air taxi operations meet the Department's criteria for an operating authorization under 14 CFR Part 298. We estimate that it will take 30-60 minutes to complete. The use of this form is mandatory. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The OMB Control Number for this collection is 2105-0565. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to: U.S. Department of Transportation, Office of Aviation Analysis (X-56), 1200 New Jersey Avenue, SE, Washington, DC, 20590.



U.S. Department of
Transportation

Office of the Secretary
of Transportation

**AIR TAXI OPERATOR REGISTRATION
AND AMENDMENTS UNDER
PART 298 OF THE REGULATIONS OF
THE DEPARTMENT OF TRANSPORTATION**

FOR USE BY DOT ONLY



Effective date of registration/amendments

APR 23 2019

Where to file: Submit this form, in duplicate, along with a Certificate of Insurance (OST Form 8410) evidencing required liability insurance coverage for the aircraft listed in Block 6 of this registration, to:

Federal Aviation Administration (FAA)
Air Transportation Division, AFS-200, Room 831
800 Independence Avenue, S.W., Washington, D.C. 20591

Exception: For air taxis located in the State of Alaska, submit this form and the OST Form 8410 to the Federal Aviation Administration (FAA), Alaskan Region Headquarters, AAL-231, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.

Fees: The fee for the initial registration of an air taxi is \$8. There is no filing fee for amendments to registrations previously filed.

1a. Name (and DBA, if applicable) and Mailing Address of the Registering Carrier:

San Francisco Seaplane Tours
242 Redwood Hwy
Mill Valley, CA 94941

3a. Federal Aviation Administration certificate number:

02QA052Y

3b. Address of local FAA office:

Oakland FSDO
1420 Harbor Bay Pkwy
Alameda, CA 94502

1b. Telephone No. 415-332-4843 Fax No. 415-332-4851

1c. Email: info@seanlane.com

3c. FAA Telephone No.:

510-748-0122

3d. FAA Principal Operations Inspector:

Dave Jensen

2a. Address of principal place of business (if different from above):

2b. Telephone No. _____ Fax No. _____

4. This filing is the carrier's:

Initial Registration

Amendment to reflect changes since previous filing (Complete item 9)

If initial registration, give proposed date of commencement of operations: _____

5. Type of service the carrier intends to perform upon commencement of operations, or, for amendments, service the carrier is currently performing (check all that apply):

- Passenger Seasonal Air ambulance Mail under a U.S. Postal Service contract
 Cargo Other (Please specify)** _____

** For example, if the carrier performs other services such as fire fighting operations for the U.S. Forest Service, it should be indicated here.

Companies proposing or operating passenger services of five (5) or more round trips per week on at least one route between two or more points pursuant to published flight schedules which specify the times, days of the week, and places between which such flights are performed may not conduct such operations under this registration. Instead, such companies must be found "fit, willing, and able" to provide such services as a commuter air carrier. See 14 CFR 298, Subpart E.



<p>6. Aircraft which the carrier proposes to operate in air taxi service or, for amendments, aircraft currently operated:</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%; text-align: left;"><i>Aircraft Make and Model</i></th> <th style="width:30%; text-align: left;"><i>FAA Registration Number</i></th> <th style="width:40%; text-align: left;"><i>Passenger Seats Installed*</i></th> </tr> </thead> <tbody> <tr> <td>1. DeHavilland DHC-2</td> <td>N5220G</td> <td>6</td> </tr> <tr> <td>2. DeHavilland DHC-2</td> <td>N123JL</td> <td>6</td> </tr> <tr> <td>3. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>4. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>5. _____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table> <p style="text-align: center;"><i>(Add additional sheets if necessary)</i></p> <p><small>* This does not include seats occupied by the pilot or co-pilot unless the latter is available for passenger use.</small></p>	<i>Aircraft Make and Model</i>	<i>FAA Registration Number</i>	<i>Passenger Seats Installed*</i>	1. DeHavilland DHC-2	N5220G	6	2. DeHavilland DHC-2	N123JL	6	3. _____	_____	_____	4. _____	_____	_____	5. _____	_____	_____	<p>7. Is the registering carrier a U.S. citizen?</p> <p style="text-align: right;"><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><small>Note: An air taxi or commuter registered under Part 298 must be a citizen of the United States. 49 USC 40102(a)(15) defines a U.S. citizen as (a) an individual who is a U.S. citizen; (b) a partnership of which each member is a U.S. citizen; or (c) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.</small></p> <p>8. If this is an amendment, has the carrier carried passengers in foreign air transportation, that is, between any point in the United States and any point outside thereof, during the past 12 months:</p> <p style="text-align: right;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>
<i>Aircraft Make and Model</i>	<i>FAA Registration Number</i>	<i>Passenger Seats Installed*</i>																	
1. DeHavilland DHC-2	N5220G	6																	
2. DeHavilland DHC-2	N123JL	6																	
3. _____	_____	_____																	
4. _____	_____	_____																	
5. _____	_____	_____																	

9. REPORT CHANGES OR AMENDMENTS TO INFORMATION PREVIOUSLY FILED WITHIN 30 DAYS OF THE EFFECTIVE DATE:

a. Change in Carrier's Name and/or Address (Please specify):

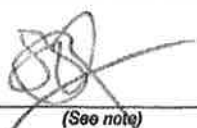
<i>Former Name and Address:</i>	<i>Current Name and Address:</i>

b. Description of Any Other Changes or Amendments (Including additions or deletions of aircraft, change in type of operations, registration numbers, etc.):

~~None~~
 Addition of N123JL to certificate

10. Certification

I certify that the information contained in this application is complete and accurate to the best of my knowledge. The carrier subscribes to the IATA Inter-carrier Agreement; the IATA Agreement on Measures to Implement the IATA Inter-carrier Agreement, and the ATA Agreement on Provisions Implementing the IATA Inter-carrier Agreement to be included in Conditions of Carriage and Tariffs (see OST Form 4523-A), and in accordance with those Agreements agrees under Article 22(1) of the Warsaw Convention or the Warsaw Convention as amended by the Hague Protocol that the liability limits for passenger injury or death in international transportation as defined in the Convention are waived in their entirety.

<p>Date: <u>March 31, 2019</u></p>	<p>Signature:  <small>(See note)</small></p>
<p>Place: <u>Mill Valley, CA</u> <small>(City and State)</small></p>	<p>Name: <u>Saul Aaron Singer</u> <small>(Please type)</small></p>
	<p>Title: <u>President/CEO</u></p>

Note: This registration must be signed by a responsible officer, such as the President, Vice President, Secretary or Treasurer, or partner or owner of the carrier.

TO ENSURE PROPER PROCESSING OF THIS REGISTRATION, PLEASE COMPLETE THIS FORM IN ITS ENTIRETY.

76561

>1 ASSOC CITY: Sausalito STATE: CA FAA SITE NR: P2281.C
>2 AIRCRT NAME: CCMHOCRE CENTER COUNTY: MARIN CA
>3 CED TO AIRCRT(AM): P2 HW 6 REG/ADD: AWP/SFO 7 SECT AFRO,CHT: SAN FRANCISCO

GENERAL		SERVICES	BASED AIRCRAFT
18 OWNERSHIP: PRIVATE		>78 FUEL: 1PPL	90 SINGLE ENG: 3
>11 OWNER: COMMOCRE PROPERTIES		>71 AIRFRAME PPRS: MINOR	91 MULTI ENG:
>12 ADDRESS: FERRY BOAT KLAMATH, PIER 5 SAN FRANCISCO, CA 94111		>72 PWR PLANT PPRS: MINOR	92 JET:
>13 PHONE NR:		>73 BOTTLE OXYGEN: NONE	TOTAL 3
>14 MANAGER: D WALLACE/P BREINIE		>74 BULK OXYGEN: NONE	93 HELICOPTERS:
>15 ADDRESS: 242 REDWOOD HWY MILL VALLEY, CA 94941		75 TSNT STORAGE: NONE	94 GLIDERS:
>16 PHONE NR: 415-332-4843		76 OTHER SERVICES: INSTR	95 MILITARY:
>17 ATTENDANCE SCHEDULE:			96 ULTRA-LIGHT:
MONTHS	DAYS	HOURS	
ALL	ALL	DATA-CUSK	
18 AIRPORT USE: PBLIC		FACILITIES	
19 ARPT LAT: 37-52-48N ESTIMATED		>80 ARPT BCH: N	100 AIP CARRIER:
20 ARPT LONG: 122-38-45W		>81 APT LGT SKED:	101 COMMUTER:
21 ARPT-ELEV: 8988 ESTIMATEE		>82 UNICOM:	102 AIR TAXI:
22 ACRES: 2		>83 WIND INDICATOR: YES	103 G A LOCAL: 252P
>23 RIGHT TRAFFIC: NO		84 SEGMENTED CIRCLE: NONE	104 G A ITRNT: 1P
>24 NON-COMP LANDING FEE: NO		85 CONTROL TWR: NO	105 MILITARY:
>25 NAS/FEDERAL AGREEMENT:		86 FSS: OAKLAND	TOTAL: 2518
>26 FAR 139 INDEX: N		87 FSS ON ARPT: NO	OPERATIONS FDR 12
		88 FSS PHONE NR: 415-273-6284	MOS ENDING 29MAY65
		89 TOLL FREE NR: 668-1455	

RUNWAY DATA						
>30 RUNWAY IDENT	11/29					
>31 LENGTH:	18828					
>32 WIDTH:	2498					
>33 SURF TYPE-CGR	WATER					
>34 SURF TREATMENT						
>35 GROSS WT: SL						
>36 (IN THSCS) DL						
>37	DTL					
>38	DCTL					
LIGHTING/APCH AIDS		11/29				
>40 EDGE INTENSITY						
>41 NOW ELEMENT 81						
>42 RWY MARK TYPE-COND	/	/	/	/	/	
>43 VASI	/	/	/	/	/	
>44 THR CROSSING HGT	/	/	/	/	/	
>45 VISUAL GLIDE ANGLE	/	/	/	/	/	
>46 CNTRLN-TDZ	/	/	/	/	/	
>47 RVR-RVV	/	/	/	/	/	
>48 REIL	/	/	/	/	/	
>49 APCH LIGHTS	/	/	/	/	/	
OBSTRUCTION DATA		11/29				
>50 FAR 77 CATEGRY	B(V) /B(V)	/	/	/	/	
>51 DISPLACED THR	/	/	/	/	/	
>52 CTLG OBSTN	BRIDGE/HILL	/	/	/	/	
>53 OBSTN MARKED/LETD	/	/	/	/	/	
>54 HGT ABOVE RWY END	58 /158	/	/	/	/	
>55 DIST FROM RWY END	1500 /3000	/	/	/	/	
>56 CNTRLN OFFSET	200R /300R	/	/	/	/	
>57 OBSTN CLNC SLOPE	20:1 /20:1	/	/	/	/	
>58 CLOSE-IN OBSTN	/	/	/	/	/	
20:1 LANDING LENGTH		11/29				
>60 LANDING RWY-LENGTH	/	/	/	/	/	
>61 CTLG OBSTACLE	/	/	/	/	/	
>62 HGT-ABOVE THR	/	/	/	/	/	
>63 DIST FROM THR	/	/	/	/	/	
>64 CNTRLN OFFSET	/	/	/	/	/	

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

>118 REMARKS:
A078 FLEL SALE TO TRANSIENTS RESTRICTED TO EMERGENCY ONLY.
A118 -01 SEAPLANE LANE NOT MARKED.
A118 -02 CAUTION: NUMEROUS DRIFT WOOD PILES.

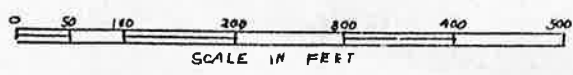
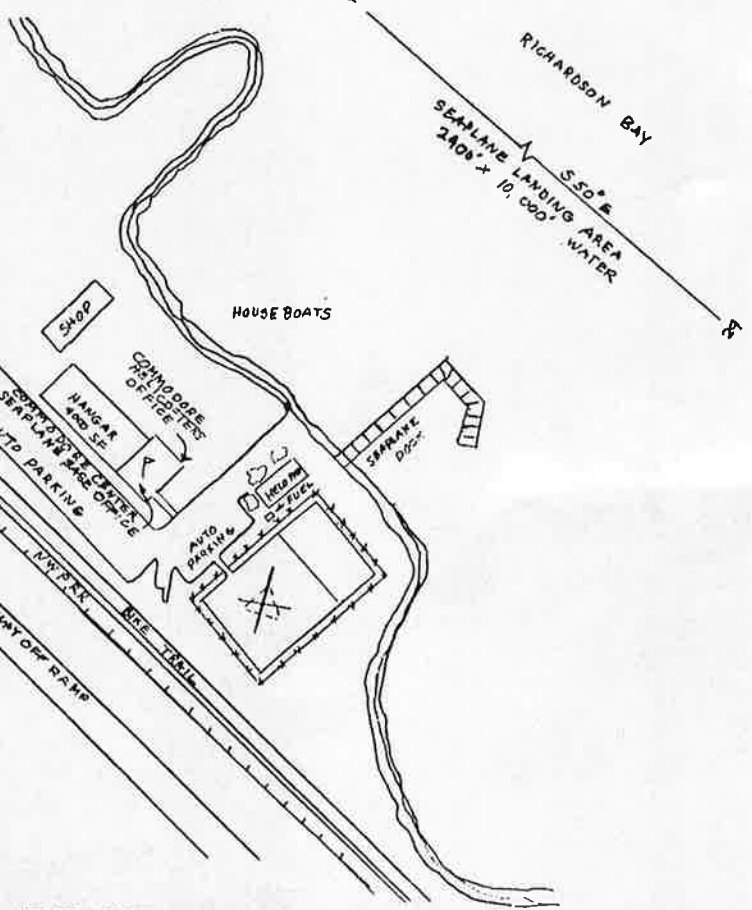
RUNWAY CATEGORIES

SITE NO. 2281.C

RUNWAY	EXISTING	PLANNED	CORRECTED LENGTH

ACRES: 2
 COMMODORE CNTR GPB
 SAUSALITO, CA 94065
 P.V. 27 MAY 85

REMARKS:
 1. SEAPIANE LAKE NOT MARKED
 2. CAUTION - NUMEROUS DRIFT WOOD PILES



AIRPORT LAYOUT

§ 11211. Submittal of an Amendment.

(a) Within ten (10) working days of receipt by the Commission of a proposed amendment to the local protection program or component thereof, the Executive Director shall determine whether the proposed amendment meets the submittal requirements of Section 11210.

(b) If the Executive Director determines that the proposed amendment and supporting materials meet the submittal requirements of Section 11210, the Executive Director shall stamp all the materials "Filed BCDC" and the date of filing and notify the entity that submitted the proposed amendment of its filing.

(c) If the Executive Director determines that the proposed amendment does not satisfy the requirements of Section 11210, the Executive Director shall transmit to the entity that proposed the amendment a written explanation of why the proposed amendment and supporting materials do not comply with Section 11210.

(d) The filing of a proposed amendment and supporting materials shall constitute submittal of the amendment pursuant to California Public Resources Code Section 29410.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11212. Processing Amendments to the Local Protection Program or Component Thereof.

The Commission shall process a proposed amendment to the Suisun Marsh local protection program or to any component thereof in accordance with Sections 11202 through 11208, except that amendments designated as minor by the Executive Director under Sections 11213 and 11214 shall be processed only as provided in Section 11214.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11213. Definition of a Minor Amendment.

A minor amendment to the Suisun Marsh local protection program or any component thereof is an amendment that is consistent with California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan and that is one or more of the following:

(a) changes in wording, maps, or diagrams of any general, specific, or area plan, other policy document, zoning ordinance, zoning district map, regulation, or standard that does not change the designated, allowable, or permitted use, density, or intensity of land use or sphere of influence or boundary of any city; or

(b) changes in any certified management plan or policy document of the Suisun Resource Conservation District or the Solano County Mosquito Abatement District that does not change the permitted or allowable use of any land and does not change any water management program or practice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11214. Designation of an Amendment as Minor.

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States

Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice. NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11215. Frequency of Amendments.

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Chapter 13. Enforcement Procedures**Subchapter 1. General Provisions****§ 11300. Grounds for the Issuance of Cease and Desist Orders.**

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

- (1) the violation of a term or condition of a permit,
- (2) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
- (3) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d); Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11302. Grounds for the Imposition of Administrative Civil Penalties.

Any one of the following actions shall constitute grounds for the imposition of civil penalties by the Commission:

- (1) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (2) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer–Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11386.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment filed 5–22–2003; operative 6–21–2003 (Register 2003, No. 21).

Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil penalties by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and otherwise follow the format for a staff violation report as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution or by appointment by the Chair without Commission objection to assist the Commission in carrying out its enforcement responsibilities.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before a hearing officer, the enforcement committee, or the Commission as part of a Commission enforcement proceeding.

(d) "Hearing Officer," means any person appointed by the Commission to receive evidence, hear arguments, make findings of fact, and recommend to the Commission what action it should take on an enforcement matter.

(e) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(f) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report and a statement of defense form in accordance with Section 11321(c).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

§ 11320. Staff Investigation and Discovery.

As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180–11181, 66637, 66638 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes that the results of an enforcement investigation so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that complies with the format set out in Appendix H,

(2) a complaint for civil penalties that complies with the format set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that complies with the format set out in Appendix I. The violation report and complaint for civil penalties can be combined into a single document so long as it contains all the information required for both.

(b) The violation report shall refer to all documents on which the staff relies to provide a prima facie case and give notice that the documents may be inspected at the Commission's office and that copies will be provided with five days prior notice and upon payment of the cost of copying.

(c) Issuance of a violation report shall occur when the violation report is mailed by certified mail to all persons or entities named as a respondent in the violation report. Issuance of a complaint for civil penalties shall occur when the complaint for civil penalties is mailed by certified mail to all persons or entities named as a respondent in the complaint.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11322. Respondent's Required Response to the Violation Report.

(a) Within thirty-five (35) days of the issuance of the violation report and the statement of defense form, each respondent shall submit to the Commission as its office an original and five copies of the completed statement of defense form and an original (or verified copy) and five copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person relied on by staff in its violation report is needed to show or contest a fact alleged in the violation report, the respondent shall request such cross-examination in the statement of defense form. The addendum shall list the name of each person the respondent wants to cross examine, all documents about which the respondent wants to cross examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for civil penalties and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form and all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters, and any request to allow cross-examination.

(d) If the staff wants to cross-examine, the staff shall, within seven days of receiving a statement of defense form, mail to all respondents a list of all persons that the staff wants to cross examine, the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for civil penalties together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) The Executive Director may at his or her discretion extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension and a written demonstration of good cause. The extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for the imposition of administrative civil penalties by submitting a cashier's check in the appropriate amount to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall file his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29610-29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee, the Commission, or a hearing officer, the Executive Director shall mail by regular mail a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5, and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11324. Distribution of the Violation Report, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall mail by regular mail the following materials to each respondent, and to the committee members if the enforcement hearing will be held before the enforcement committee, to the hearing officer if the enforcement hearing will be held before a hearing officer, or to the Commission if the enforcement hearing will be held before the Commission: (1) the violation report, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code, and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11325. Ex Parte Contacts.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12-27-2004; operative 1-26-2005 (Register 2004, No. 53).

§ 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a brief summary of (A) any background to the alleged violation, (B) the essential allegations made by staff in its violation report (C) a list of all essential allegations either admitted or not contested by respondent(s), (D) all defenses and mitigating factors raised by the respondent(s), and (E) any rebuttal evidence raised by the staff to matters raised in the statement of defense form with references to supporting documents;

(2) a summary and analysis of all unresolved issues;

(3) a statement of whether the Executive Director has issued a cease and desist order and its expiration date; and

(4) a recommendation on what action the Commission should take; and

(5) the proposed text of any cease and desist order, permit revocation order, or civil penalty order that the Executive Director recommends that the Commission issue.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66642 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, indicate what matters are already part of the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the reported party(s);

(e) other speakers may speak concerning the matter;

(f) presentations made by the staff, a respondent, and other speakers shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the committee and the Commission shall not allow oral testimony unless the committee and Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to cross-examine all witnesses who are allowed to testify and a right to have rebuttal witnesses similarly testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing

pursuant either to Section 11322(a) or Section 11322(c) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered.

(h) Committee members, a hearing officer, and Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee, hearing officer, or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members, the hearing officer, or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(k) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an Executive Director's recommended enforcement decision within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the completed statement of defense form except to the extent the Executive Director has extended the time for such submittal pursuant to Section 11322(d) or the Commission admits the evidence into the record pursuant to Section 11327(f) and this section. To this end, the Commission, any hearing officer, and the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission, hearing officer, or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner and would be substantially harmed if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury or in the form of another document referred to in a violation report or complaint for the imposition of civil penalties and the declarant or author of the other document is subject to cross-examination as provided in Sections 11321, 11322, and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall consult with the Deputy Attorney General in attendance at the hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).

§ 11330. Adoption of an Enforcement Committee or a Hearing Officer Recommended Enforcement Decision.

After the enforcement committee or a hearing officer has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

- (a) all of the matters required by Section 11326; and
- (b) any further written report on or explanation of the enforcement proceedings as the enforcement committee or hearing officer believes is appropriate.

The enforcement committee or a hearing officer can adopt with or without change the staff recommended enforcement decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director, by the enforcement committee, or by a hearing officer, the staff shall mail the recommended enforcement decision to all respondents and to all Commissioners.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) When the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter to the enforcement committee or hearing officer or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

- (1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or civil penalty order;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed civil penalty order or (B) adopt the recommended enforcement decision with regard to one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed civil penalty order and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee, hearing officer, or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Section 11327 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

When the Executive Director refers an enforcement matter directly to the Commission rather than to the enforcement committee, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10-11-89; operative 11-10-89 (Register 89, No. 30). For prior history, see Register 87, No. 30.

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Civil Penalty Order.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11335. Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11336. Distribution of Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11337. Notice of Public Hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11338. Public Hearing Procedure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11339. Admissibility of Evidence.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

- (1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;
- (2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;
- (3) identification of the property where the activity has been undertaken or may be undertaken;
- (4) a description of the activity;
- (5) the effective date of the order;
- (6) the expiration date, if any, of the order;
- (7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer–Petris Act, the Suisun Marsh Preservation Act, or a permit;
- (8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;
- (9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;
- (10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and
- (11) such other provisions that the Commission has approved, including provisions relating to:
 - (A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;
 - (B) the obligation to conform strictly to the order and the consequences of the failure to do so; and
 - (C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order or a civil penalty order so long as the combined order contains all the information required under these regulations for both such orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued, but he or she shall not do so in a manner that extends the 90–day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11344. Amendments to Cease and Desist Orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and a civil penalty order so long as the combined order contains all the information required by these regulations for both types of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11360. Preparation and Execution of Commission Cease and Desist Orders and Permit Revocation Orders.

The Executive Director shall prepare and sign a cease and desist order or a permit revocation order authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.

§ 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, a civil penalty order, or of any modification of such orders, is complete when the Executive Director executes the original copies of the order or modification and they are stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modifications to each person to whom the order is being issued no later than the second working day following the date of issuance. The Executive Director shall cause to be personally served or mail by registered mail a civil penalty order or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by regular mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification to each person who appeared at the hearing and submitted a written request for a copy as soon as possible after the Commission authorized the order or modification. (For civil penalty orders, see subdivision (d) of Government Code Section 66641.6.)

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

(a) the violation report, including all documents referred to in the report;

(b) any complaint for civil penalties;

(c) all timely filed statement of defense form(s);

(d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;

(e) the staff recommended enforcement decision, including all documents referred to in the recommendation,

(f) minutes of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if eyewitness or expert testimony is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;

(g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;

(h) any enforcement committee's or hearing officer's recommended enforcement decision,

(i) any order that the Commission issues,

- (j) all other materials maintained in the Commission's file for the enforcement matter,
- (k) such other permit or other Commission files as have explicitly been made a part of the record,
- (l) the McAteer-Petris Act,
- (m) the San Francisco Bay Plan,
- (n) the Suisun Marsh Preservation Act,
- (o) the Suisun Marsh Protection Plan,
- (p) the Suisun Marsh Local Protection Program, and
- (q) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29210(e), Public Resources Code. Reference: Sections 66639-66640 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11380. Contents of Complaint for Administrative Imposition of Civil Penalties.

The complaint shall follow the same format as required for a Violation Report in Appendix H to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11381. Commission Hearing on Complaint for Administrative Imposition of Civil Penalties.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either (1) hearing the matter itself within 60 days of the service of the complaint or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint.

(b) The Executive Director shall determine whether to refer a complaint for the administrative imposition of civil penalties to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint for civil penalties to the Commission or to the enforcement committee, he or she shall consider the following factors:

- (1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,
- (2) the relative workloads of the Commission and the enforcement committee at the time,
- (3) whether the complaint involves any policy issues that should be determined by the Commission initially,
- (4) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and
- (5) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11382. Further Procedures for Commission Review of Complaints for the Issuance of Civil Penalty Orders.

The Commission shall follow the procedures established by Sections 11310 and 11321 through 11334 and Sections 11361 through 11370 of these regulations when it considers recommended enforcement decisions from either the staff or the enforcement committee or a hearing officer relative to the possible administrative imposition of civil penalties.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11383. Contents of a Commission Civil Penalty Order.

(a) A Commission civil penalty order shall be signed by the Executive Director and shall contain the following:

- (1) the name(s) of the person(s) required to pay the civil penalty;

(2) the amount of the civil penalty;

(3) the date by which the civil penalty must be paid;

(4) written findings that (1) explain the decision to issue the civil penalty order and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues a civil penalty order may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) A civil penalty order can be combined with a cease and desist order or a permit revocation order so long as the information required under these regulations for both is contained in the combined order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11384. Modification of a Commission Civil Penalty Order.

The Executive Director may modify a civil penalty order if the modification would not alter the amount of the penalty or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11385. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a civil penalty order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a civil penalty order by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11386. Standardized Fines.

(a) This Section shall apply to an enforcement action if the Executive Director determines:

- (1) that an alleged violation is one of the types identified in subsection 11386(e);
- (2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and
- (3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) Except as provided in subsection (g), if this Section applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) believed to be responsible for the alleged violation that contains all of the following information:

- (1) the nature of the alleged violation and each and every action that must be taken to correct the alleged 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 a civil penalty and

may resolve the penalty portion of the alleged violation by paying the standardized fine specified in subsections (e), and (f) without having to go through a formal enforcement proceeding pursuant to Sections 11300 through 11385 except as provided in subsection (h).

(c) Except as provided in subsection (g), if the person believed to be responsible for the alleged violation completes each and every corrective action specified in the notice pursuant to subsection (b) within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized or other fine.

(d) Except as provided in subsections (g) and (h), if the person believed to be responsible for the alleged violation fails to complete one or more of the corrective actions required by the notice pursuant to subsection (b) within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the penalty portion of the alleged violation by completing each and every action required by the notice sent pursuant to subsection (b) and by paying a fine in the amount provided in subsections (e) and (f).

(e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing the work authorized by the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each document plus ONE HUNDRED DOLLARS (\$100.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (e)(1) and (e)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement, plus ONE HUNDRED DOLLARS (\$100.00) per day for each violation, from the ninety-sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and

fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS (\$2,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained, or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than 95 days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day to the date the violation is completely corrected.

(f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

(g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to

be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS (\$100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty-five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the amount is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66641.5,

Government Code; and Sections 29201(e) and 29610, Public Resources Code.

HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

Subchapter 1. Marsh Development Permits Issued by Local Governments

Article 1. Application

§ 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as "a marsh development authorization," by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

[The next page is 539.]

Statement of Defense Form

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **ADRIENNE KLEIN** OR **BRENT PLATER** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY **August 29, 2022** MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105

The forms should also be emailed to Margie Malan at margie.malan@bcdcc.ca.gov.

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **ADRIENNE KLEIN** or **BRENT PLATER** of the Commission Enforcement Staff at telephone number **415-352-3609** or **415-352-3628**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report):

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

3. Facts or allegations contained in the violation report of

which you have no personal knowledge (with specific reference to paragraph number in the violation report):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

5. Any other information, statement, etc. that you want to make:

6. 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, title and enclose a copy with this completed form):

7. 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:
