

**SEAPLANE INVESTMENT, LLC
ENFORCEMENT CASE ER2019.063**

**AGENDA ITEM 5 FORMAL ENFORCEMENT PROCEEDING
PROPOSED CCD2023.003.00 FOR THREE RESOLVED VIOLATIONS**

**AGENDA ITEM 6 FORMAL ENFORCEMENT PROCEEDING
PROPOSED CCD2023.002.00 FOR SIX UNRESOLVED VIOLATIONS**

ADRIENNE KLEIN

TUESDAY, MAY 30, 2023

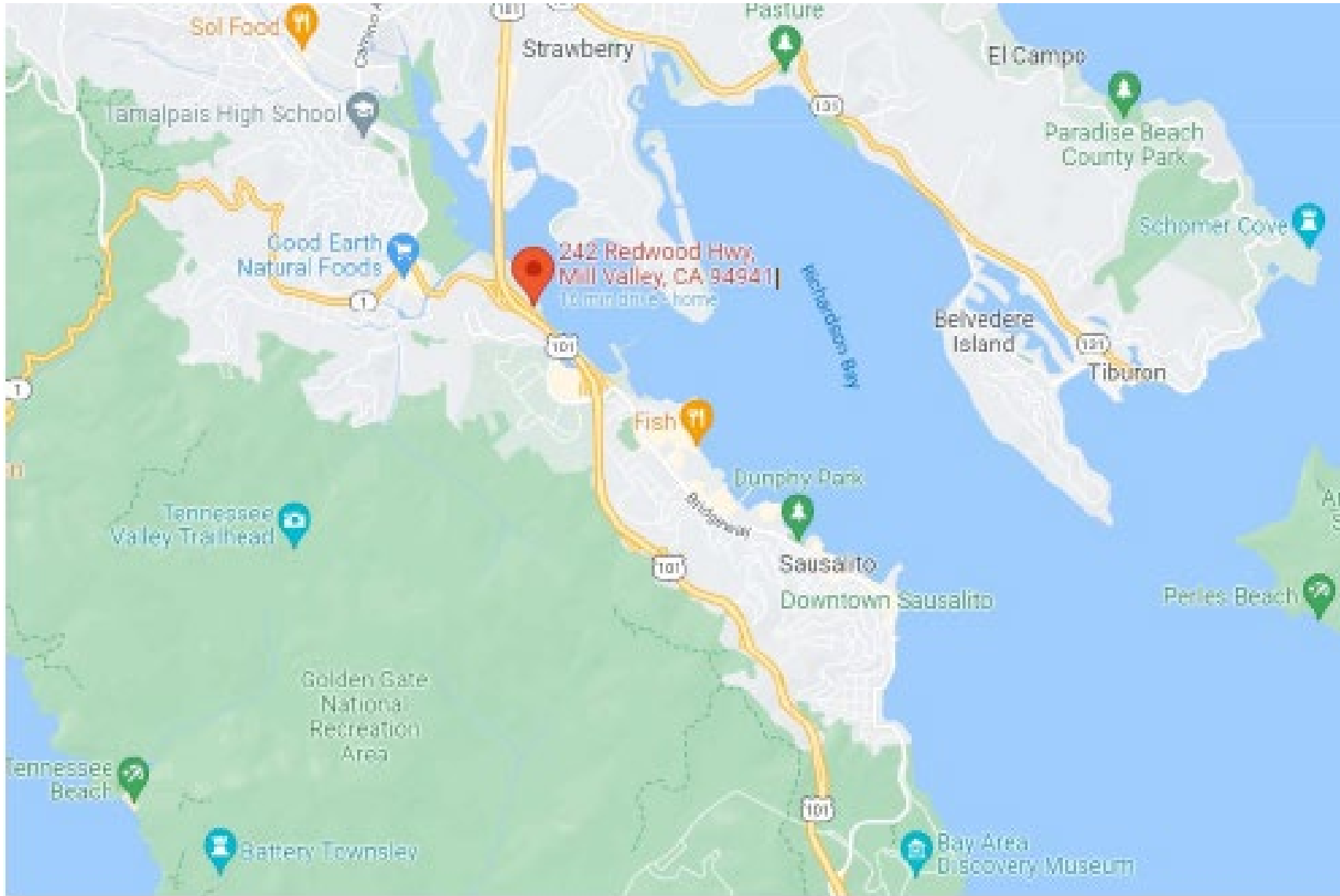
1:00 PM TO 3:00 PM



OUTLINE

- Location of Violations
- Timeline of Events
- Summary of Two Permits
- Summary of Violations
 - Three Resolved Violations, Agenda Item 5
 - Six Unresolved Violations, Agenda Item 6
- Item 5, CCD2023.003.00 - Defenses and Rebuttals, Staff Recommendation and Respondent's Presentation
- Item 6, CCD2023.002.00 - Defenses and Rebuttals, Staff Recommendation and Respondent's Presentation

VICINITY MAP – 240-242 REDWOOD HIGHWAY, MARIN COUNTY



SITE PLAN – 240-242 REDWOOD HIGHWAY, MARIN COUNTY



BOUNDARIES OF PARCELS 167 (LEFT) AND 164 (RIGHT)



TIMELINE (1 OF 4)

- August 24, 1973 - BCDC Permit 1973.014.01 issued to Commodore Marina LLC. Later amended a total of four times.
- September 17, 1974 - Notice of Restrictions to dedicate public access is recorded in Marin County
- August 25, 1988 - BCDC Permit M1985.030.01 is issued to Walter Landor.
- Sometime before December 2003 – Unauthorized fuel tank installed in Yolo Street right-of-way, plus parking and Seaplane storage and repairs. (*Unresolved Violation #3*)
- Sometime before September 2008 – Unauthorized helicopter landing pad and four walkways. (*Unresolved Violation #4*)
- In 2011, 2017, 2019 – Unauthorized dock expansions. (*Unresolved Violation #5*)
- December 12, 2019 – Public submits a report to BCDC alleging unauthorized activities at Commodore Marina and Seaplane Adventures.
- January 31, 2020 - Staff site visit reveals public access violations.
- February 18, 2020 – BCDC issues a Violation Notice and Initial Contact Letter to Commodore Marina and Seaplane Adventures.
- September 15, 2020 – BCDC issues letter outlining permit requirements, onsite violations and requests restoration of public access and a permit application including site plans.

TIMELINE (2 OF 4)

- November 13, 2020, January 15 and June 15, 2021 – Respondent’s former Counsel submitted three letters to BCDC.
- July 14, 2021 – Virtual meeting concludes with selection of August 30, 2021, as date to receive BCDC amendment application.
- July 21, 2021 – Title for Parcels 164 and 167 transfers from Commodore Marina LLC, to Seaplane Investment, LLC.
- Between July 14 and October 8, 2021, Respondent does not resolve any violations nor does Respondent submit a permit amendment application.
- October 8, 2021 – BCDC issues Notice of Violation that commences an administrative civil penalty clock:
 - Two permit assignment violations. (*Resolved Violations #1 and #2*)
 - Two unauthorized fill violations (houseboat work and floating docks, fuel tank, private uses of public Yolo Street right-of-way). (*Resolved Violation #3 and Unresolved Violations #3, #4 and #5*)
 - One public access violation. (*Unresolved Violations #1 and #2*)

TIMELINE (3 OF 4)

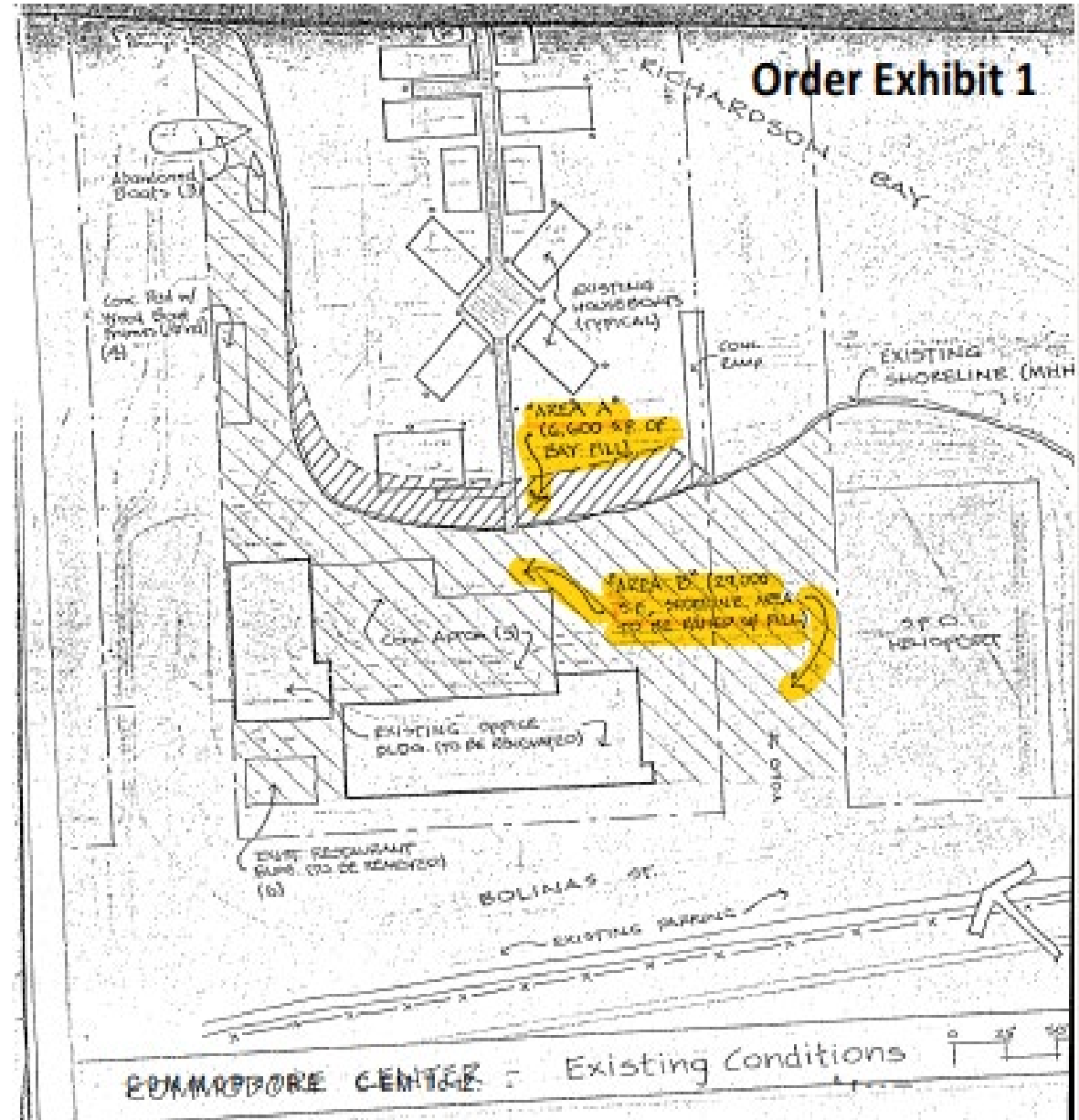
- December 17, 2021– Respondent submits evidence that houseboat project is complete, which partially resolves houseboat violation.
- January 3, 2022 – Lou Vasquez, Manager, Seaplane Investment, LLC, executes two permit assignment forms for Permits 1973.014.01 and M1985.030.01, which resolves both assignment violations and allows houseboat extension application to be filed as complete.
- January 25, 2022 – BCDC issues third houseboat completion time extension retroactive to October 31, 2021, which fully resolves houseboat violation.
- February 28, 2022 – Former Counsel John Sharp submits abbreviated regionwide permit application to address public access and fill violations.
- March 14, 2022 – Public submits a report of unauthorized excavation and fill for a new water access ramp. (*Unresolved Violation #6*)
- March 15, 2022 – BCDC issues Executive Director (ED) Cease and Desist Order ECD2022.002.00 to halt unauthorized work in BCDC jurisdiction and require its removal and site restoration.
- March 30, 2022 – BCDC issues a letter of response to the incomplete permit application, requests additional information and directs compliance with ECD2022.002.00.
- June 14, 2022 - BCDC re-issues ECD2022.002.01 to halt unauthorized work in BCDC jurisdiction and require its removal and site restoration.

TIMELINE (4 OF 4)

- August 2, 2022 – BCDC directs Respondent to pay \$12,300 in standardized fines to resolve two assignment violations and one violation involving working on a houseboat with an expired permit.
- July 29, 2022 – BCDC issues Violation Report and Complaint to Respondent for six unresolved violations (VR&C #1).
- September 2, 2022 - Respondent files a Statement of Defense (SOD #1).
- September 6, 2022 – Respondent waived 60-day date for a public hearing.
- September 14, 2022 - BCDC re-issues ECD2022.002.02 to halt unauthorized work in BCDC jurisdiction and require its removal and site restoration.
- September 21, 2022 – BCDC issues a Final Notice to Respondent to pay \$12,300 in standardized fines to avoid commencement of a second formal enforcement proceeding.
- October 7, 2022 – Failed settlement conference between staff and former counsel John Sharp.
- October 26, 2022 – BCDC issues a Complaint to Respondent for three resolved violations (Complaint #2).
- December 1, 2022 - Respondent files a Statement of Defense (SOD #2).
- December 21, 2022 – BCDC postpones two scheduled public hearings for second round of settlement negotiations with Rudder Law Group, Respondent’s counsel.
- December 2022 – March 2023 – Settlement negotiations occur and fail.

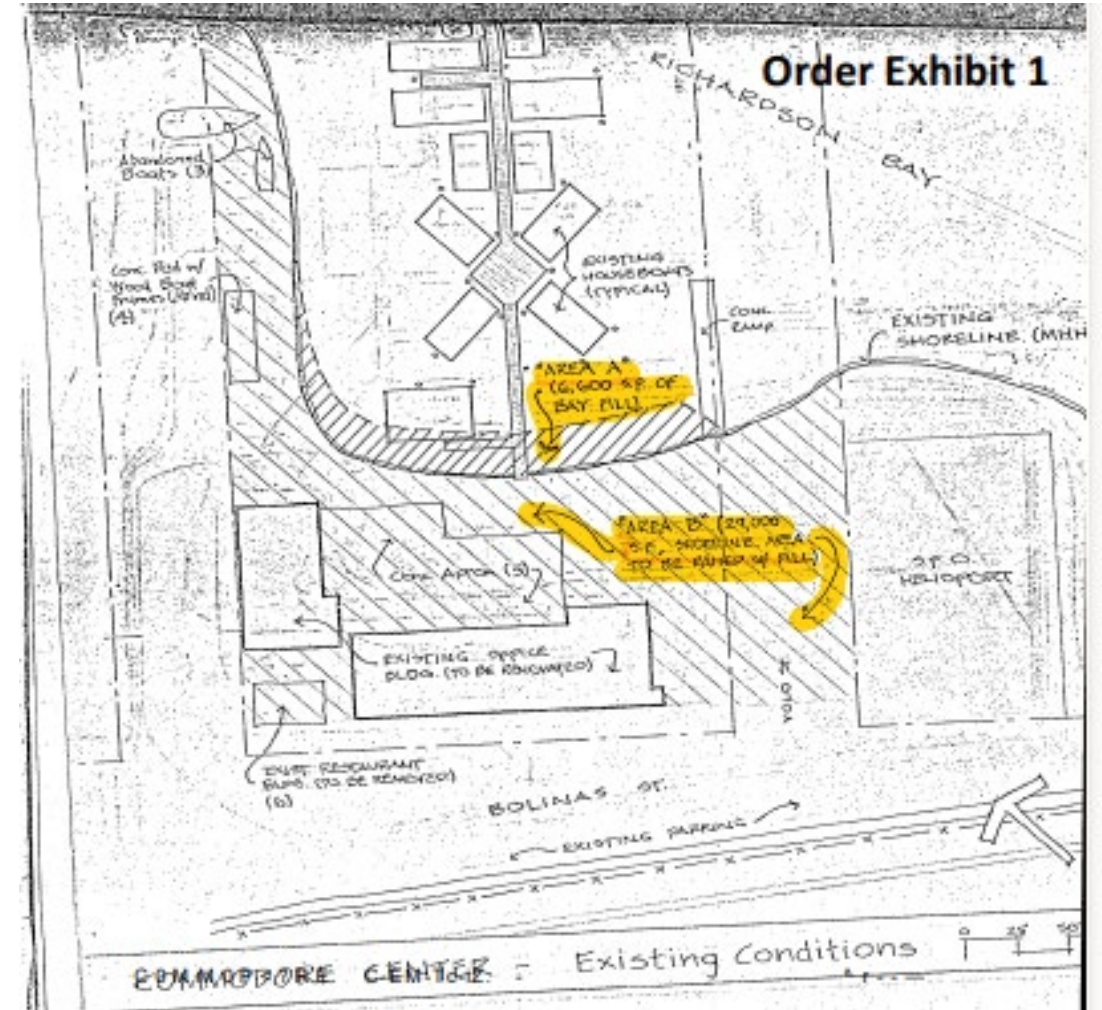
PERMIT 1973.014.04 IN THE BAY

- Fill placement for a bulkhead
- Fill placement on 6,000 square feet of Bay surface on Block 167, Yolo and Parepa Streets for landscaped public access and landscaping to improve shoreline appearance
- Construction of a 2-foot-high berm around the heliport landing pad on Block 164 and a flap gate
- Reconstruction of an existing houseboat mooring pier including pilings and sewer lines, etc., and realignment of 11 existing houseboats



PERMIT 1973.014.04 IN THE SHORELINE BAND

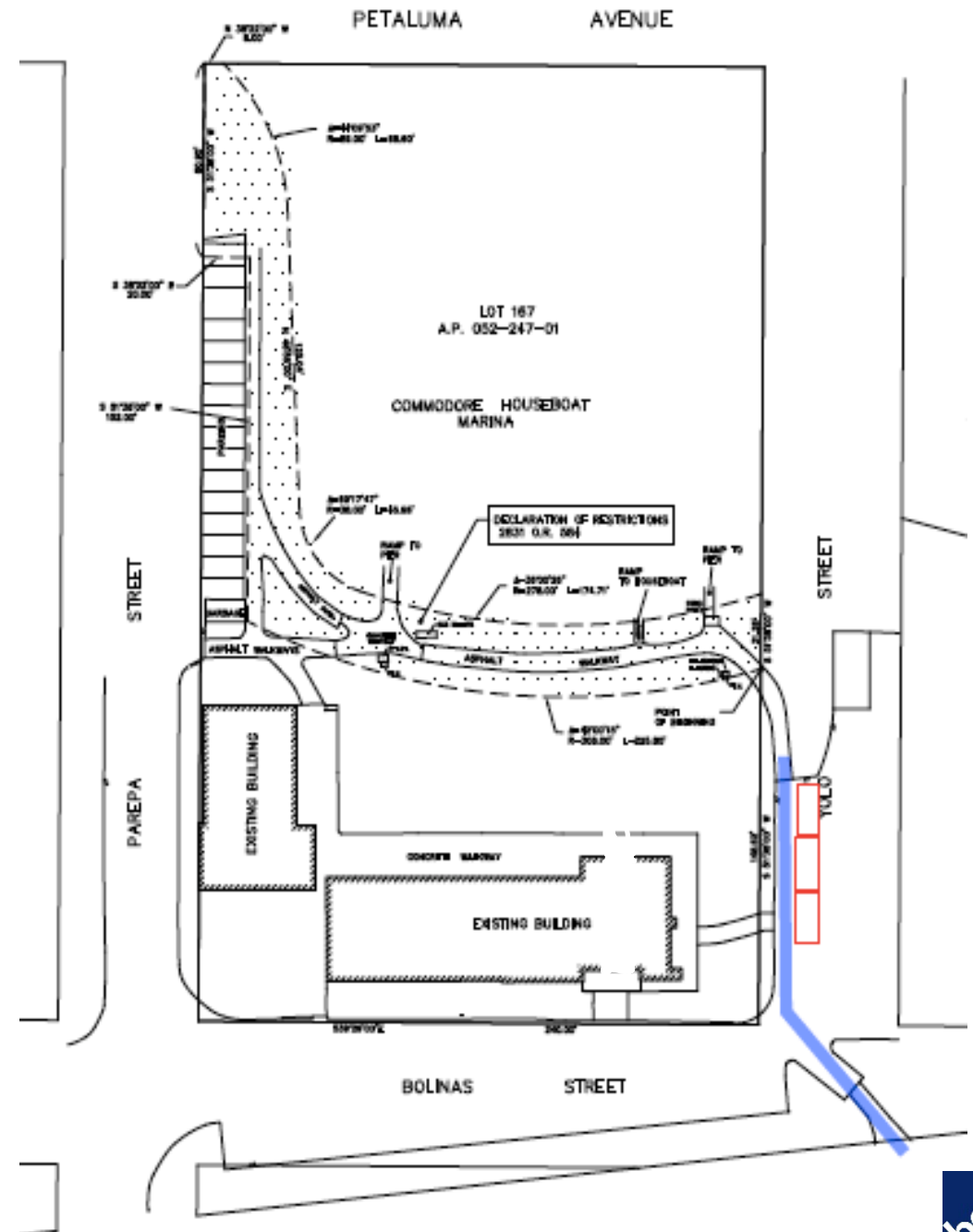
- Placement of fill over a 29,000-square-foot area (0.66 acres) to raise the grade over of the site to establish proper drainage and to be used for project landscaping
- Landscaped public access and auto circulation parking
- Office building renovation for continued office use
- Construction of 17 parking spaces



1973 PERMIT-REQUIRED PUBLIC ACCESS (PA) METES AND BOUNDS MAP

STIPPLED AREA - BLOCK 167 DEDICATED PUBLIC ACCESS WITH 8-FOOT-WIDE PATHWAY TO NORTHEAST END OF PROPERTY

BLUE LINE - YOLO STREET REQUIRED PATHWAY AND CONNECTION TO OFFSITE ACCESS ON COUNTY PROPERTY



IMAGES OF 1973 PERMIT REQUIRED PUBLIC ACCESS



PERMIT 1985.030.01 – IN THE BAY AND SHORELINE BAND

- Repair of a tidal flap gate
- Placement of 23 cubic yards of aggregate over a 640 square foot area to protect a (single) 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
- Fill of a 2,370 square foot area with 88 cubic yards of fill

TERMS AND CONDITIONS OF PERMIT APPROVAL

- Commencement and Completion Dates
- Work May Not Occur After Permit Expiration Without Benefit of a Permit Amendment Extending Completion Date
- Permit Assignment Required At Time of Sale or Transfer

RESOLVED VIOLATIONS 1 THROUGH 3 – ITEM 5 COMPLAINT FOR PENALTIES

1. Failure to resolve penalty portion of an assignment violation of Permit 1973.014.04 using standardized fines.
2. Failure to resolve penalty portion of an assignment violation of Permit M1985.030.01 using standardized fines.
3. Failure to resolve penalty portion using standardized fines of a violation involving failure to complete a houseboat remodeling and relocation project after expiration of Permit 1973.014.04 and continuing work with an expired permit.

UNRESOLVED 1973 PERMIT AND MPA VIOLATIONS 1 THROUGH 6 – ITEM 6

1. Failure to provide required public access (Special Condition II.C of Permit 1973.014.04)
2. Failure to maintain public access (Special Condition II.C of Permit 1973.014.04)
3. Placement of unauthorized fill on Yolo Street – Vehicle parking, Seaplane storage/repair, fueling tank, asphalt path (McAteer-Petris Act Section 66632(a) and Special Condition II.D of Permit 1973.014.04)
4. Placement of unauthorized fill on Parcel 164 - Helicopter landing pads and walkways [McAteer-Petris Act Section 66632(a)]
5. Placement of unauthorized fill in the Bay - Floating docks [McAteer-Petris Act Section 66632(a)]
6. Placement of unauthorized fill in the Bay and shoreline band - Water access ramp [McAteer-Petris Act Section 66632(a)]

UNRESOLVED VIOLATION 1 - FAILURE TO PROVIDE PERMIT 1973.014.04 REQUIRED PUBLIC ACCESS



UNRESOLVED VIOLATION 2 - FAILURE TO MAINTAIN PERMIT

1973.014.04 PUBLIC ACCESS



UNRESOLVED VIOLATION 3 - PLACEMENT OF UNAUTHORIZED FILL YOLO (SEAPLANE STORAGE, ETC., FUELING TANK, ASPHALT PATH)



May 30, 2023

UNRESOLVED VIOLATION 4 PLACEMENT OF UNAUTHORIZED FILL (SECOND HELICOPTER LANDING PAD AND WALKWAYS)



UNRESOLVED VIOLATION 5 PLACEMENT OF UNAUTHORIZED FILL - FINGERS ADDED TO U-SHAPED FLOATING DOCKS

January 2020



May 30, 2023

June 2019

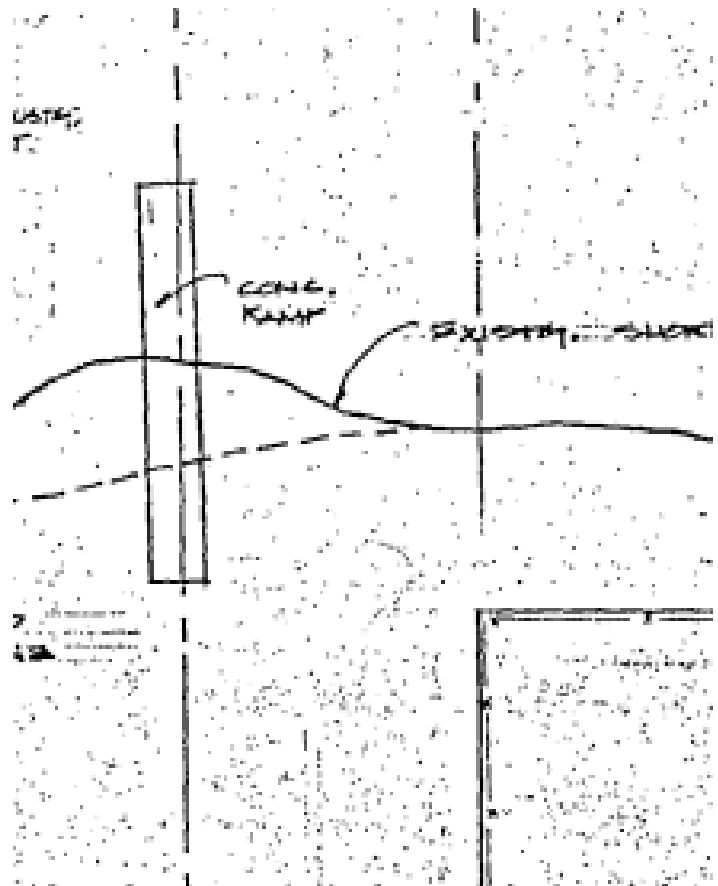


22

September 2008



UNRESOLVED VIOLATION 6 - UNAUTHORIZED FILL WATER ACCESS RAMP (1973 SITE PLAN; JANUARY 2020; FEBRUARY 2022 SITE PLAN)



An aerial photograph of a waterfront property with numbered callouts (10-17) pointing to various features. To the left of the photo is a list of conditions:

- 10 EXISTING 10'-8" x 3'-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



UNRESOLVED VIOLATION 6 - UNAUTHORIZED FILL FOR WATER ACCESS RAMP, MARCH 14, 2022



ITEM 5 DEFENSES - THREE RESOLVED VIOLATIONS (1 OF 2)

1. Permit assignment condition is enforceable.
2. Partial resolution of a violation within 35-days of standardized fine commencement does not resolve violation nor halt standardized fine accrual.
3. Houseboat remodeling and relocation project was incomplete at time of permit expiration and completed while permit was expired.
4. Failure to resolve the penalty portion of a violation subject to standardized fines prior to revocation of that option increases the duration of the fineable period.
5. Timing of issuance of Complaint favored Respondent.
6. The standardized fine process was executed in a manner consistent with the regulations and penalties are appropriate.

ITEM 5 DEFENSES - THREE RESOLVED VIOLATIONS (2 OF 2)

7. The BCDC Complaint was issued in a manner consistent with MPA Section 66641.6(a) and Regulation Section 11302; it describes the provisions of the permit MPA that were violated.

8. BCDC correctly named Respondent, Seaplane Investment LLC.

9. Respondent owns the parcels subject to the complaint and is responsible for resolving all violations, inherited and undertaken.

DEFENSE #1 - OPERATING AGREEMENT OF SEAPLANE MANAGEMENT, LLC

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

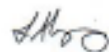
Name and Address	Percentage Interest
Aaron Singer [ADDRESS]	21.0%
Loring Sagan [ADDRESS]	15.98%
Lou Vasquez [ADDRESS]	14.98%
Mali Richlen [ADDRESS]	15.6%
Grant Barbour [ADDRESS]	14.98%
Scott Eschelman [ADDRESS]	14.98%
Tyler Kepler [ADDRESS]	2.5%
Totals	100%

DEFENSE #1 - OPERATING AGREEMENT OF SEAPLANE MANAGEMENT, LLC

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

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

MANAGER:



Lou Vasquez

OTHER MEMBERS:



Signature

Aaron Singer

Print Name

ITEM 5 STAFF RECOMMENDATION – RESOLVED VIOLATIONS

CCD2023.003.00

- Pay \$21,170 in administrative civil penalties
- \$5,440 (= \$40/day x 136 days) for failure to provide a permit assignment form required by Condition IV.C of Permit 1973.014.04 between August 20, 2021, and January 3, 2022.
- \$5,440 (= \$40/day x 136 days) for failure to provide a permit assignment form required by Condition IV.E of Permit M1985.030.01 between August 20, 2021, and January 3, 2022.
- \$10,290 (= \$70/day x 147 days) for failure to complete houseboat remodeling and relocation project prior to permit expiration and continuing work with an expired permit between August 31, 2021, and January 25, 2022.

UNRESOLVED 1973 PERMIT AND MCATEER-PETRIS ACT VIOLATIONS 1 THROUGH 6 – ITEM 6

1. Failure to provide required public access (Special Condition II.C)
2. Failure to maintain public access (Special Condition II.C)
3. Placement of unauthorized fill on Yolo Street – Vehicle parking, Seaplane storage/repair, fueling tank, asphalt path (McAteer-Petris Act and Special Condition II.D)
4. Placement of unauthorized fill on Parcel 164 - Helicopter landing pads and walkways (McAteer-Petris Act)
5. Placement of unauthorized fill in the Bay - Floating docks (McAteer-Petris Act)
6. Placement of unauthorized fill in the Bay and shoreline band - Water access ramp (McAteer-Petris Act)

ITEM 6 DEFENSES - SIX UNRESOLVED VIOLATIONS

1. Respondent is responsible for site conditions at time of purchase.
2. Whether it is repair or new construction, the unauthorized concrete and rebar water access ramp work conducted by Respondent in March 2022 constitutes unauthorized fill in BCDC jurisdiction and requires BCDC authorization.
3. Pre-existing uses became subject to the McAteer-Petris Act as of its enactment, e.g., the 1973 permit authorized changes to an existing houseboat marina and renovations to an existing office building.
4. BCDC's regulatory authority is not pre-empted by Marin County nor by the FAA.
5. Respondent must provide adequate title to the rights-of-way as part of any applications for permits or amendments.
6. Administrative civil penalties are appropriate.
7. Covid did not interrupt communication.

DEFENSE 2 - MPA 66632(A) AND REGULATION 10601(A)(6) AND 10601(B)(5) MINOR REPAIRS AND IMPROVEMENTS

“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...”

“...routine repairs, reconstruction, replacement, removal or maintenance of a structure that do not involve any substantial enlargement or changes in use.”

DEFENSE #2 - WATER ACCESS RAMP – BEFORE AND AFTER IMAGES PORTRAY MAJOR CONSTRUCTION PROJECT



ITEM 6 DEFENSES - SIX UNRESOLVED VIOLATIONS

1. Respondent is responsible for site conditions at time of purchase.
2. Whether it is repair or new construction, the unauthorized concrete and rebar water access ramp work conducted by Respondent in March 2022 constitutes unauthorized fill in BCDC jurisdiction and requires BCDC authorization.
3. Pre-existing uses became subject to the McAteer-Petris Act as of its enactment, e.g., the 1973 permit authorized changes to an existing houseboat marina and renovations to an existing office building.
4. BCDC's regulatory authority is not pre-empted by Marin County nor by the FAA.
5. Respondent must provide adequate title to the rights-of-way as part of any applications for permits or amendments.
6. Covid did not interrupt communication.
7. Administrative civil penalties are appropriate.

DEFENSE 7. MPA SECTION 66641.9(A)

“In determining the amount of administrative civil liability, the commission shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.”

ITEM 6 STAFF RECOMMENDATION – UNRESOLVED

VIOLATIONS CCD2023.002.00

- Cease and desist from violating the MPA and Permits 1973.014.01 and M1985.030.01
- By December 31, 2023, build and maintain the permit required public access pursuant to a plan to be submitted to staff by August 31, 2023, and submit a Notice of Completion
- By June 30, 2024, remove non-public uses from Yolo Street and remove all unauthorized fill unless by December 31, 2023, a filed application has been submitted and by March 31, 2024, a permit or amendment has been obtained
- By March 31, 2024, , prepare and submit a sea level rise and shoreline flooding adaption plan for the permit required public access areas
- Within 30 days or order issuance, pay \$180,000 in administrative civil penalties (\$30,000 x 6 violations)