

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING
PARTIAL TRANSCRIPT - ITEMS 5 - 7

ONLINE/TELECONFERENCE MEETING
HOSTED BY THE SAN FRANCISCO BAY
CONSERVATION AND DEVELOPMENT COMMISSION
SAN FRANCISCO, CALIFORNIA

TUESDAY, MAY 30, 2023

1:00 P.M.

Reported by: John Cota

A P P E A R A N C E SEnforcement Committee

Marie Gilmore, Chair

Rebecca Eisen

Sanjay Ranchod

John Vasquez

Counsel to the Committee

Shari Posner, Deputy Attorney General
Office of the Attorney General

BCDC Staff

Rachel Cohen, Enforcement Analyst

Adrienne Klein, Principal Enforcement Analyst

Margie Malan, Legal Secretary

Brent Plater, Lead Enforcement Attorney

Matthew Trujillo, Enforcement Policy Manager

Respondent

Jillian Blanchard
Rudder Law Group

Mali Richlen, Seaplane Investments, LLC
Lou Vasquez, Seaplane Investments, LLC

Other Speakers/Presenters

Nikki Wood

Andrew Wait

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P R O C E E D I N G S

1:08 p.m.

1
2
3 COMMITTEE CHAIR GILMORE: Okay. We are on to Item 5,
4 a public hearing and a vote on a recommended enforcement
5 decision to adopt a proposed Civil Penalty Order
6 CCD2022.003.00 to impose a total of \$21,170 in
7 administrative civil penalties on Seaplane Investment, LLC
8 operating out of Mill Valley, Marin County. Following a
9 hearing on the matters at issue, this Committee will vote
10 on whether to adopt the Executive Director's recommended
11 enforcement decision.

12 The record for this matter includes the Violation
13 Report and Complaint, the Respondents Statement of Defense,
14 the recommended Enforcement Decision and Proposed Order and
15 all other items identified by BCDC Regulation 11370.

16 So at this time, will the representative or
17 representatives for the Respondent please identify yourself
18 and your association with the Respondent, for the record.

19 MS. BLANCHARD: Yes, hello, Committee Members and
20 Commissioners. This is Jillian Blanchard with Rudder Law
21 Group. We represent Seaplane Investments, LLC, the
22 Respondent for both Agenda Items 5 and 6. I also have here
23 with me Mr. Lou Vasquez and Mali Richlen, who are both
24 managers at Seaplane Investments and manage the site, for
25 any questions.

1 CHAIR GILMORE: Okay, thank you very much. Okay.

2 So before we get started, a couple of ground rules.

3 One is, well, let me back up.

4 For the sake of hopefully ease, I am going to call
5 this item, for shorthand, the "paper violations" (gestured
6 air quotes), and the item number 6 the physical violations,
7 okay.

8 And let me ask Respondents, how much time do you think
9 you need to present your case on the paper violations?

10 You're muted.

11 MS. BLANCHARD: Apologies, thank you. The paper
12 violations, I can do it, I can squeeze it in, although I'd
13 like to have 15 minutes. I can squeeze it in in a shorter
14 period if necessary, but 15 minutes would be great.

15 CHAIR GILMORE: Okay.

16 And Mr. Plater, how long do you think you need for
17 your presentation on the paper violations?

18 MR. PLATER: Thank you, Chair Gilmore. Actually,
19 Adrienne is the lead on this case so she will be bringing
20 the -- presenting today on the cases.

21 CHAIR GILMORE: Okay, Adrienne?

22 MS. KLEIN: We have a partially combined presentation
23 and I will endeavor to keep it to a total of 30 minutes.

24 CHAIR GILMORE: I would prefer to take them one at a
25 time. Is it possible for you to split your presentation?

1 Because what I am considering is giving presenters 15
2 minutes on this item and we can talk about the timeframe
3 for the next item when we get to it.

4 MS. KLEIN: I have a combined timeline of events and I
5 was planning to present the nine violations and then do two
6 separate sections for the defenses and the recommendations.
7 Defenses, rebuttals and staff recommendations.

8 CHAIR GILMORE: Okay, let's -- so how about --

9 MS. KLEIN: (Overlapping).

10 CHAIR GILMORE: I'm sorry?

11 MS. KLEIN: Well, I don't think I can reorganize.

12 CHAIR GILMORE: You're breaking up. You're now
13 frozen.

14 Shari.

15 MS. POSNER: I just wanted to note, and Adrienne, that
16 for the sake of an administrative record, if Adrienne had
17 to, if the BCDC side had to present the timeline twice I
18 think that would be okay. At the end of the day these are
19 separate matters so they need separate records. So to the
20 extent the staff can make an adjustment I think that is
21 going to be what is needed for clarity of the record,
22 Chair.

23 CHAIR GILMORE: Yes. I have no problem with you
24 presenting a combined timeline and if you have to do it
25 twice, that's fine. But I would really prefer to keep the

1 items separate to the paper violations versus the physical
2 violations. Because the record is so voluminous, I'm
3 afraid we are going to get lost.

4 So how about if we for this first item, and we'll
5 revisit it when we get to the second one. Everybody gets
6 15 minutes. Okay. So you are going to get 15 minutes to
7 make your presentations to the Committee and presentations
8 must be limited to responding to the evidence that is
9 already part of the enforcement record and the policy
10 implications of such evidence. So that's one thing.

11 And then the second thing is, I am sure everybody
12 received in the middle of the holiday weekend a rather
13 voluminous set of, of new materials. So at this point in
14 time I want to ask Ms. Blanchard if there was anything in
15 that set of materials that was recently discovered or could
16 not have reasonably been discovered and presented to the
17 Committee ahead of May 25?

18 MS. BLANCHARD: Thank you very much, Chair Gilmore,
19 and sincere apologies. I myself did not want to have to
20 file a letter on Saturday of a Memorial Day weekend. I did
21 so because there were some claims raised for the very first
22 time, some misstatements of fact in the record, recommended
23 enforcement decision related to the six violations. There
24 was also a public comment that was shown to us for the very
25 first time as part of the agenda package from Edgcomb Law,

1 which was a letter, it was a set of two different letters
2 received by staff in January and March of this year but we
3 never received a copy of it until receiving the agenda
4 package, both raising different claims.

5 And so in order to clarify the record related to the
6 misstatements of fact in the recommended enforcement
7 decision, and these new letters that we were just seeing
8 for the first time, we felt it necessary to provide highly
9 relevant evidence in the form of the permit application
10 submittal package. There has been some suggestion, I don't
11 want to get too much into the substance.

12 CHAIR GILMORE: Yes, please don't because here's the
13 thing. Just about all of that could have been submitted
14 ahead of time and I am not inclined to have that particular
15 set of materials become part of the record. One, because
16 it is not timely, and two, because there is no way that it
17 was reasonable to expect members of this Committee to not
18 only read those documents but digest them. And so, no.

19 MS. BLANCHARD: And I am very sorry about that. And
20 what I will do is I will highlight the most relevant pieces
21 in my presentation.

22 CHAIR GILMORE: No, I am not letting, I am not letting
23 the information come in. If it is information that was in
24 your Statement of Defense --

25 MS. BLANCHARD: Yes.

1 CHAIR GILMORE: Yes, then you may speak to that.

2 MS. BLANCHARD: Well.

3 CHAIR GILMORE: But nothing new that was in the May 25
4 letter. You may highlight things that were in your
5 Statement of Defense and that's fine, that's perfectly
6 acceptable.

7 MS. BLANCHARD: If I could just add one piece. The
8 one critical piece is the permit application supplement
9 that was filed on April of 2023. So it could not have been
10 filed with the Statement of Defense because it was filed in
11 April of 2023. We copied enforcement staff on it. We
12 expected that they would include it in their recommended
13 enforcement decision as part of talking about levels of
14 compliance on the part of Seaplane Investments, but it was
15 completely ignored. So it is critical that this commission
16 understand what that permitting package includes and that's
17 why we, in addition to providing --

18 CHAIR GILMORE: Okay, you are getting, you are getting
19 too far into argument. I just wanted to set some ground
20 rules, okay.

21 MS. BLANCHARD: Sure.

22 CHAIR GILMORE: So let's get on our way and get into
23 the nuts and bolts. Because like I said, the record is
24 very voluminous and I think you are going to have some
25 questions from the Committee, all right.

1 MS. BLANCHARD: Sure. Sure.

2 CHAIR GILMORE: So I am going to invite our Principal
3 Enforcement Analyst Adrienne Klein to give her presentation
4 summarizing the Violation Report, Complaint and recommended
5 Enforcement Decision. You have 15 minutes; and, Ms. Klein,
6 please limit your presentation to issues of controversy.

7 MS. KLEIN: All right, my screen should be visible.

8 CHAIR GILMORE: Yes.

9 MS. KLEIN: Great. Good afternoon, Chair Gilmore.
10 Just one moment, please. Make sure I can drive. Okay.
11 Apologies. Going forward, not back. I'm not sure why I am
12 having that problem. Okay, I've got it sorted, thank you
13 for your patience. Okay.

14 Good afternoon, Chair Gilmore and Committee Members.
15 Today's public hearings will address nine violations
16 associated with BCDC case enforcement number ER2019.063.
17 Staff issued a Violation Report --

18 CHAIR GILMORE: Okay, Adrienne, you're frozen. You're
19 still frozen.

20 MS. KLEIN: Margie, I am -- if you want to promote me
21 to a Panelist, I joined on the phone. Let's see --

22 MS. MALAN: I'll do that. Okay, Adrienne, you are
23 good to go.

24 MS. KLEIN: I'll have to get my microphone working. I
25 don't think you can hear me on the computer.

1 CHAIR GILMORE: We can hear you.

2 MS. MALAN: Unmute, please.

3 MS. KLEIN: Margie, can you mute me on the laptop so I
4 am not in surround sound. Is this connection better?

5 CHAIR GILMORE: I think so. I am cautiously
6 optimistic.

7 MS. MALAN: Yes, your phone is still muted. I can't
8 control it on my end.

9 MS. KLEIN: I might have to -- I'll log out and come
10 back in. It won't let me use my microphone. Difficulties.
11 You -- can you hear me?

12 CHAIR GILMORE: Yes.

13 MS. KLEIN: Can you see me?

14 CHAIR GILMORE: Yes.

15 MS. KLEIN: Okay, let's try that again, my apologies.
16 I can hear myself twice. Margie, can you --

17 MS. MALAN: We can hear you. Adrienne? Adrienne, we
18 can see and hear you.

19 MS. KLEIN: Okay, so continuing on. We issued the
20 second Violation Report and Complaint in July 2022 to
21 resolve six unresolved violations. I'm sorry, first to
22 resolve six violations and the second as a complaint for
23 administrative penalties to resolve the penalty portion of
24 three violations.

25 So we have got an outline. That will consolidate the

1 timeline of events and I'll separate the rest as best as
2 possible.

3 So this is a vicinity map to orient you to the site.
4 The address is 240-242 Redwood Highway Frontage Road in an
5 unincorporated area of Marin County.

6 This image shows the site looking to the northeast.
7 The site contains a number of businesses and operations
8 that will be described during the presentation. While some
9 of these ground level uses and the associated fill appear
10 to have been ongoing in 1965 versus seaplane flights, which
11 are not part of these hearings, any changes to the ongoing
12 uses and associated fill within BCDC's jurisdiction,
13 including maintenance, that occurred after enactment of the
14 McAteer-Petris Act, hereinafter referred to as the MPA,
15 requires a BCDC permit or permit amendment. BCDC permits
16 run with the land and new owners are responsible for
17 resolving inherited violations in addition to violations
18 they undertake themselves. New owners should, but in this
19 case did not, contact BCDC as part of a due diligence
20 review to ascertain site status in relation to the law and
21 existing BCDC permits.

22 This aerial image has an overlay of the approximate
23 locations of the two privately owned parcels, number 164 to
24 the right and 167 to the left, with the street rights of
25 way surrounding them. The docking facility is located on

1 Marin County property.

2 I have got four slides to review the timeline of
3 events.

4 Starting in August '73, the 1973 permit was issued to
5 Commodore Marina, and that permit has been amended a total
6 of four times.

7 In '74, Permittee recorded the restriction to dedicate
8 the public access required by the permit in Marin County.

9 In '88, a permit was issued to Walter Landor for the
10 helicopter operations, whereas the '73 permit pertains
11 primarily to the activities on Parcel 167 and in the water.

12 Sometime before December '03, an unauthorized fuel
13 tank was installed in the Yolo Street right-of-way, plus
14 parking and seaplane storage and repairs in areas reserved
15 for public access.

16 Sometime before 2008, an unauthorized helicopter
17 landing pad and fill for walkways was placed on Parcel 164.

18 During three separate occasions in the 2000s,
19 unauthorized expansions or repairs were made to the
20 seaplane docking facility.

21 In 2019, BCDC received the first of two reports of
22 unauthorized activities at the site and conducted a site
23 visit the following month, just prior to the pandemic. We
24 also issued a Notice of Violation to Commodore Marina and
25 Seaplane Adventures, notifying them of the report we

1 received and outlining our understanding of the allegations
2 at that time.

3 After having conducted extensive file review between
4 February and September, we issued a second letter outlining
5 the permits requirements, our understanding of the onsite
6 violations and providing recommendations on how to resolve
7 them.

8 In 2020 and 2021 we received three letters from
9 Respondent's former counsel, which provided some useful
10 information but none of which resolved any of the
11 violations.

12 We held a meeting initiated by us, virtual due to the
13 pandemic, in July 2021, and selected the date of August 30
14 to receive an amendment application, which is still a way
15 to resolve a majority of the violations.

16 That same month ownership transferred of both
17 privately owned parcels from Commodore to Seaplane; and no
18 application was received by August 30th or even before
19 October 2021, on which date we issued a letter commencing a
20 standardized fine clock, having now felt that by that time
21 sufficient progress on voluntary resolution had been made.
22 Our understanding of the violations in that -- at that
23 time -- we cited five violations in that letter.

24 At the end of 2021 we received evidence that the
25 houseboat remodeling project had been completed.

1 In January 2022 we received two permit assignment
2 violations. Also that month we issued the Fourth Amendment
3 to the '73 permit, which fully resolved the unauthorized
4 work occurring at the marina between permit expiration and
5 issuance of a retroactive extension of time to complete the
6 houseboat remodeling project.

7 We received a permit application, an abbreviated
8 nationwide permit application, not a permit amendment
9 application, in February 2028 (sic) and responded to that
10 application at the end of March.

11 In the middle of March, two weeks after receiving the
12 permit application, we received a report of unauthorized
13 activities occurring at the site, i.e., construction of a
14 new water access ramp. This violation is considered very
15 egregious and the day after BCDC issued its first Executive
16 Director Order to halt that work and require its removal
17 and site restoration. That ED Order lasts for 90 days and
18 was therefore reissued twice.

19 We, as I think I mentioned, responded to the
20 application in February, in March.

21 In August of 2022, three paper violations had been
22 resolved, subject to -- and were subject to standardized
23 fines. We issued a letter asking for payment of those
24 standardized fines.

25 In July we issued a Violation Report and Complaint for

1 the six unresolved violations.

2 We received a timely Statement of Defense and waiver
3 of the requirement to have the hearing within 60 days.

4 In September we reissued the ED Order for a second
5 time and also a Final Notice requesting payment of the
6 standardized fines to avoid commencement of a second formal
7 enforcement proceeding.

8 We held a failed settlement conference on October 7
9 and issued a second complaint to resolve the three resolved
10 violations in October.

11 We also received a timely-filed Statement of Defense
12 for that complaint.

13 We had scheduled to hold these public hearings in
14 December of 2022 but postponed those hearings until today
15 to undertake settlement negotiations, which took place
16 during this winter and unfortunately failed.

17 That completes the timeline and now I'll summarize the
18 two permits.

19 In the Bay the 1973 permit authorizes fill placement
20 for a bulkhead and that fill is shown in the smaller of the
21 two hatched areas near the houseboats; fill placement on
22 Block 167, Yolo and Parepa Streets, for landscaped public
23 access and landscaping to improve shoreline appearance;
24 construction of a berm around the heliport landing pad on
25 Block 164; and reconstruction of an existing 11 houseboat

1 marina.

2 In the shoreline band the '73 permit authorizes
3 placement of fill in the larger of the two hatched areas to
4 raise the grade for project landscaping; landscaped public
5 access and auto circulation. And note that that filled
6 area goes all the way back to the line of Bolinas Street
7 here. So these areas are to be used for public access, not
8 private uses. The permit also authorized office building
9 renovation for continued office use; construction of 17
10 parking places on Parepa Street; and much or all of the
11 fill authorized to elevate the low-lying site has been
12 washed away over time by frequent tidal inundation.

13 Within the stippled area on this image, which is the
14 dedicated public access area, the permit requires an eight-
15 foot-wide all-weather pathway suitable for pedestrian and
16 bicycle use, leading from the Marin County bike path along
17 the site to the northeast edge of the property. The permit
18 requires landscaping, parking for the general public, and
19 as mentioned, it should be used only for public access
20 purposes. And on the heliport pad, for flight control
21 purposes only.

22 The two photos on the left show extensive erosion of
23 and tidal inundation on the required public access pathway
24 on Parepa Street and a failure to maintain the site to
25 prevent or address these erosive conditions. The photo on

1 the right shows the path near Yolo Street in decent
2 condition, but without any public shore signs.

3 So this first photo on the left is looking from the
4 Bay, back toward the office building, and you can see the
5 path is eroded to the point of being gone and the tidal
6 marsh vegetation is growing in as a result of the erosion
7 of shoreline protection here that has not been maintained.

8 The middle photo shows flooding and tidal mud brought
9 in along the pathway surface.

10 The 1985 permit authorizes repair of a tidal flap
11 gate.

12 And in the shoreline band, placement of aggregate to
13 protect the heliport landing pad from flooding,
14 installation of a fuel storage tank and fuel containment
15 area, paving and fill placement.

16 Both permits include commencement and completion
17 dates. And though permits run with the land, they also
18 require preparation of a permit assignment form to transfer
19 the rights and obligations of each permit from the seller
20 to the purchaser.

21 I will now describe the three resolved violations,
22 relevant because they were subject to standardized fines
23 that Respondent failed to pay by October 26, 2022,
24 forfeiting its opportunity to resolve the penalties by
25 paying 12,300 in standardized fines, and resulting in

1 issuance of a complaint for penalties of a larger amount.

2 Violations 1 and 2 occurred between August 20, 2021,
3 which is 30 days following the July 21, 2021 property
4 purchase date, and January 6, 2022, the date staff approved
5 the two permit assignment forms. The fully executed permit
6 assignment forms resulted in resolution of the violations
7 on January 6, 2022, but accrued standardized fines were not
8 paid between August 2 and October 26.

9 Violation 3 occurred between August 31, 2021, the date
10 of expiration of the 1973 permit, and January 25, 2022, the
11 date of issuance of the Fourth Amendment to that permit.
12 That amendment resulted in resolution of the violation, but
13 accrued standardized fines were not paid, also between
14 August 2 and October 26.

15 I had planned to describe the unresolved violations
16 but I could now proceed to the defenses for these three
17 resolved violations. That is what you would like me to do,
18 Chair Gilmore?

19 CHAIR GILMORE: Yes, please.

20 MS. KLEIN: So the Item 5 defenses for the three
21 resolved violations are:

22 Defense 1: The requirement to complete a permit
23 assignment form at the time of property transfer is
24 enforceable and needs to happen as soon as possible after
25 transfer. Respondent argues that because the permit

1 condition does not include a due date, they never need to
2 comply with it. They are incorrect and the complaint gives
3 a 30 day grace period for penalty assessment from the date
4 of transfer to submittal and approval of the assignment
5 form.

6 Defense 2: Respondent did not provide two completed
7 assignment forms, nor halt houseboat remodeling work, nor
8 submit a filed request to extend the permit completion date
9 within 35 days of receiving the October 2021 letter that
10 initiated standardized fines. By the time Respondent had
11 filed the compliant documents in January 2022 they had
12 accrued standardized fines. Partial resolution of a
13 violation within the 35-day grace period means that
14 standardized fines will accrue and be owed.

15 Defense 3: For 147 days between August 31, '21, the
16 expiration date of the 1973 permit, and January 25, 2022,
17 the date of issuance of the Fourth Amendment that
18 retroactively extended the completion date of that '73
19 permit, Respondent conducted unauthorized houseboat
20 remodeling work. Respondent claims that BCDC claims that
21 the project was completed too late, i.e., after permit
22 expiration, and too early before extending the completion
23 date. Both conditions are true and Respondent conducted
24 unauthorized work.

25 Defense 4: The penalty portion in a formal

1 enforcement proceeding is from the date the violation
2 began, to the date of resolution. Whereas the penalty
3 period in the standardized fine process commences upon
4 issuance of the letter that starts a standardized fine
5 clock to the date of resolution of the violation or
6 violations. The standardized fine time period is less than
7 the total duration of each violation and also includes a
8 35-day time -- grace time period, pardon me. Therefore,
9 the number of days Respondent is subject to daily penalties
10 has changed from 87 to 136 days for the assignment
11 violations, and from 109 to 147 days for the houseboat
12 remodeling and relocation project. Respondent falsely
13 argues that the fines should be dismissed because staff
14 lengthened the duration of each violation. As noted, the
15 actual duration of each of the two -- of each of the three
16 violations has not changed, but the days subject to
17 administrative penalties now covers the entire period of
18 each violation.

19 Defense 5: Respondent incorrectly argues that the
20 issuance of the Complaint eight months after Staff notified
21 Respondent that the violations had been resolved, increased
22 the penalty. In fact, the timing favored Respondent,
23 giving them more time to resolve the penalty portion of the
24 violations with standardized fines than if the Complaint
25 had been issued sooner.

1 Defense 6: BCDC staff issued three letters pertaining
2 to the standardized fines. First in October '21 that
3 commences the standardized fine clock, second in August '22
4 informing Respondent to pay the accrued \$12,300 in
5 standardized fines within 30 days, and third, in September
6 2022, a final warning letter to pay the standardized fines
7 within 35 days of that September letter to avoid the
8 commencement of a formal enforcement proceeding.

9 On October 1, 2022, BCDC's enforcement regulations
10 were updated. Citing these newly adopted regulations that
11 were inapplicable to the communications issued and
12 procedures applied prior to their adoption, Respondent
13 falsely claims that it was improperly noticed of its option
14 to appeal standardized fines and/or never afforded a proper
15 opportunity to appeal the fines, and therefore that the
16 Complaint and associated fines should be dismissed.
17 Respondent is incorrect, it was properly noticed and
18 penalties are appropriate.

19 Defense 7: The Complaint meets the legal standards of
20 the law and regulations. It cites the actions that
21 constitute the McAteer-Petris and permit violations.
22 Respondent incorrectly argues that the complaint fails to
23 do so and should therefore be dismissed.

24 Defense 8: There is one owner of the property and
25 that single owner is responsible for resolving the

1 unresolved violations and paying administrative penalties
2 for them.

3 Defense 9: BCDC permits run with the land and
4 Respondent is responsible for the site conditions as they
5 existed at time of transfer, whether or not Respondent was
6 aware of the inherited violations. In *Leslie Salt vs. BCDC*
7 the California Court of Appeals found that the McAteer-
8 Petris Act holds landowners strictly liable for
9 unauthorized fill placed by third persons on their
10 property. The court determined that strict liability, and
11 this is a quote, "is an appropriate and traditional
12 consequence of the possession and control of land, and more
13 than justified because of important public policy
14 objectives the MPA is designed to achieve." End quote.
15 Therefore, Respondent's defense that it is not responsible
16 for inherited violations is not substantiated and
17 Respondent has a legal obligation to resolve each of them.

18 Further, Aaron Singer, owner and operator of Seaplane
19 Adventures, has been a constant figure at the site.
20 Formerly as a tenant of Commodore Marina and now as an
21 owning partner of Seaplane Investment, LLC as of July '21,
22 as shown in this slide, which lists his name in first
23 position as a 21% interest owner.

24 And also in this slide, where he has signed.

25 Further, Build, Inc. and Lou Vasquez have at least one

1 BCDC permit and have knowledge of the BCDC regulatory
2 requirements.

3 So the staff recommendation for these three resolved
4 violations is to pay a \$21,170 administrative civil penalty
5 within 30 days of order issuance. That would be two \$5,440
6 penalties for two failures to provide a permit assignment
7 form required by Standard Condition IV.C of the '73 permit
8 and IV.E of the '85 permit, between August 2021 and January
9 3, 2022.

10 And a \$10,290 penalty for failure to complete a
11 houseboat remodeling and relocation project prior to permit
12 expiration and continuing work with an expired permit
13 between August '21 and January '22.

14 And that concludes the Item 5 presentation.

15 CHAIR GILMORE: Thank you, Adrienne.

16 Next, I am going to invite the Respondent's attorney,
17 Ms. Blanchard, to present your side. I am going to remind
18 you of the time limit. And please stick to the relevant
19 violations or the proposed Order and pay particular
20 attention to where there are items in controversy.

21 MS. BLANCHARD: Absolutely. Thank you very much,
22 Commissioner Gilmore. Committee Members, I am going to try
23 to share my screen here. There we go. Can everyone see
24 that?

25 CHAIR GILMORE: Yes.

1 MS. BLANCHARD: Okay, great. I will get started.
2 Okay. So as mentioned, I am Jillian Blanchard with Rudder
3 Law Group and I will be talking to you in this agenda item
4 about the three resolved paper violations.

5 Main points to keep in mind. I am going to try and
6 focus on the areas of controversy. But there are a number
7 of facts that we need clarified for the record that we
8 believe the Commission would take into great consideration,
9 as would a reviewing court, so we will make them as clear
10 as we can and as fast as we can here.

11 Seaplane Investments is a wholly separate entity from
12 Seaplane Adventures, first and foremost, and they have been
13 diligently trying to comply with what we view to be a
14 moving ball of compliance since purchasing the property in
15 July of 2021. I note that a good deal of the timeline that
16 was referenced before took place in advance of July of
17 2021. I'll cover that in the six violations; as you call
18 them, Commissioner Gilmore, the physical violations. That
19 is how I refer to them as well.

20 So the three allegations here have had zero impact on
21 the Bay. They have been fully resolved for over a year and
22 a half. And as you all know, Commissioners, BCDC is not
23 authorized to levy either standardized fines or civil
24 penalties for violations that did not take place. So it is
25 imperative at this, the very first opportunity to have

1 Seaplane Investments' rights adjudicated, that you,
2 Commissioners, look to determine whether any violations
3 took place in the first instance.

4 I do not want to go into too much detail. Adrienne
5 provided a lot of chronology. I'd like to highlight a few
6 important dates that were missed in the timeline provided
7 by BCDC staff.

8 First and foremost, on April 16, 2021, before Seaplane
9 Investments took ownership, BCDC issued its extension for
10 the relocation of Houseboat number 11 to Mr. Harold
11 Hedelman, who owns the houseboat. That was expired on
12 August 31.

13 And then in July, as you heard, Seaplane Investments
14 took ownership.

15 On August 9, Harold Hedelman, the same party who
16 received the previous extension, requested another
17 extension, three weeks in advance of that deadline of
18 August 31.

19 Unfortunately, BCDC staff did not respond to that
20 request.

21 The only response they did provide was on October 8,
22 2021, which this is a very important fact that can be
23 proved on the record. This is the first point of contact
24 from BCDC to Seaplane Investments, was on October 8, 2021.
25 And in that letter they suggested that the houseboat

1 extension request was not valid, even though it had been
2 submitted by the previous party who received the previous
3 extension from BCDC.

4 On October -- here is the most important date that
5 staff failed to mention in their presentation. On October
6 28, less than a month after receiving the very first notice
7 from BCDC. So in 20 days. Seaplane Investments ran
8 around, got the permit assignment form from Mr. Price, the
9 previous owner, which was no mean feat, and filed two
10 permit assignment forms with BCDC, one for the 1985 permit,
11 one for the 1973 permit, within 20 days. They also filed
12 pictures showing the houseboat relocation as complete and
13 asked what additional retroactive authorization they might
14 need because they had already filed an extension request on
15 August 9.

16 There was a request for additional information from
17 BCDC staff, additional paperwork in the form of an
18 Operating Agreement. And notably, it is interesting just
19 mentioning something that staff just brought up, this idea
20 that Mr. Singer has such a big role to play in Seaplane
21 Investments. In fact, BCDC did not accept Aaron Singer's
22 signature on the permit assignment form and asked -- one of
23 the things that went back and forth between October and
24 December of 2022 was the request to have Mr. Vasquez, Lou
25 Vasquez, sign the permit assignment form because Mr. Singer

1 owns 4% of the Seaplane Investments, LLC. What you were
2 looking at was an LLC Operating Agreement related to a
3 management company that is partial owner. I don't want to
4 get into the weeds there, but the point being that Lou
5 Vasquez is the Managing Member.

6 And then it was all resolved on January 6 according to
7 BCDC.

8 And then also importantly, on January 25, BCDC, this
9 is really critical, they issued the after-the-fact
10 authorization for the houseboat relocation and made it
11 retroactive to the very valid August 9 Hedelman request.

12 The rest of this chronology is in the Statement of
13 Defense.

14 I just want to highlight here the August 2 letter.
15 Nowhere in that letter is the word appeal used, which is a
16 requirement for adequate notice. It was not. They were
17 not notified that they had the opportunity to appeal these
18 underlying violations, nor that an appeal period would be
19 closed if they did not respond making an appeal request.

20 The remaining chronology is here as well. But I want
21 to just highlight a couple of things that become relevant,
22 not just for these three violations, but for the six
23 violations that we will be talking about in a minute.
24 Which is, the very, very confusing communication between
25 BCDC and Seaplane Investments during this time.

1 They received the July Violation Report at the end of
2 July that did not include any of the three paper
3 violations. Four days later they got the August 2 letter
4 saying now that standardized fines were due for three
5 different violations that were under the same enforcement
6 number without any reference to the July Violation Report.
7 And then while they are busy filing their Statement of
8 Defense, their previous practitioner, Mr. John Sharp, filed
9 the Statement of Defense but he was confused as to whether
10 or not it was covering everything or not and he
11 specifically reserved the right in that Statement of
12 Defense to file additional evidence because he was getting
13 conflicting messages from staff.

14 Indeed, on September 6, BCDC's Enforcement Manager,
15 Mr. Trujillo, contacted Mr. Sharp and asked them to delay
16 the hearing to reach a resolution for all nine violations.
17 So here Seaplane Investments feels like they are getting,
18 they are moving forward with some form of settlement,
19 recognizing that they may need to file additional evidence
20 if things aren't resolved. And in the midst of that they
21 receive a final warning letter related to the three
22 violations. So it was highly confusing.

23 And I have to admit myself, even working with BCDC in
24 over 20 years, productively with your staff, I was highly
25 confused by the communication between Seaplane and BCDC as

1 to whether they were working with them on permitting,
2 whether they were issuing violations, whether they were
3 related to six violations or three violations, whether they
4 were delaying a hearing, whether an appeal period was
5 closing, it was really, really complicated.

6 And yet we tried in earnest to work with staff on a
7 settlement because this property owner is the first
8 property owner that BCDC has probably seen in decades that
9 really wants compliance on this site. That is a primary
10 objective for Seaplane Investments. As Ms. Klein
11 mentioned, Lou Vasquez is a Managing Member and he is very
12 familiar with what needs to be done. He has helped to
13 build a 17 acre park on the waterfront in South San
14 Francisco and he only wants to improve the public access
15 here as well. But we are repeatedly being diverted to
16 defend Seaplane Investments' rights by these violations.

17 So let's look at the violations because rather than
18 being able to reach a settlement that might have involved
19 some fines here, we now are being forced to adjudicate the
20 rights to say, did a violation occur?

21 And when you review, as you know, Commissioners,
22 whether a permit condition was violated, actual permit
23 language is key. Here is the 1985 actual permit language
24 related to the assignment of permits. The very first
25 sentence is what you need to read. "The rights derived

1 from this amended permit are assignable..." This is a
2 permissive allowance only, it is not an affirmative duty on
3 either Mr. Price, the permittee, or Seaplane Investments,
4 the transferee.

5 However, we recognize the value and need for permits
6 to run with the land, which is another one of the
7 requirements. And we also recognize, as someone who works
8 with you a lot, that of course you have revised this
9 language in the permits that you issue today. You have
10 made it really clear that assignment is required within a
11 certain period of time, and it is because these conditions
12 were permissive only and they were unclear. So we are not,
13 as staff suggests, saying that assignment is not necessary.
14 We are only saying that the language in this permit does
15 not justify an actual violation having occurred.

16 And the most important piece to understand is that
17 even if this had been required, Seaplane Investments filed
18 a permit assignment form within 20 days of receiving its
19 very first notice from BCDC. They are not saying it wasn't
20 required. They are not even trying not to comply. They
21 did their due diligence to try and comply within 20 days.

22 BCDC asked for additional information. They filed
23 that additional information, and things were resolved on
24 January 3. But that cannot be levied as an actual
25 violation based on this permit condition language. But

1 Seaplane Investments is being charged over \$5,000 for no
2 actual violation.

3 Very similarly, when you look at the permit from 1973.
4 Again, the Commission, as you know, and a reviewing court,
5 will look directly at this permit condition language to
6 see, was there an actual violation. That's what matters
7 here in adjudicating these rights.

8 And here we will acknowledge this is a much more
9 affirmative condition in that it at least says that
10 assignment is absolutely required. And again, for the
11 record, I want to be clear, Seaplane Investments has never
12 claimed that they are not going to accept permit
13 assignment, in fact, they worked quickly to make it happen.
14 All we are saying is that the language here does not
15 justify an assessment of fines or penalties. Because what
16 happened for the '73 permit, while this is an affirmative
17 requirement, there is absolutely nowhere written that there
18 is a 30-day deadline within which the permit assignment
19 must be completed. It just doesn't exist. And as you
20 know, Commissioners, staff is not authorized to add in
21 language into the permit conditions themselves.

22 So also importantly, a permit assignment form was
23 filed within 20 days of receiving the first notice so
24 permit assignment is complete. There is no violation
25 there. As soon as permit assignment was done, actually,

1 Seaplane Investments, as we'll talk about in the next
2 hearing, immediately filed a permit application to address
3 what they saw and understood to be any potential feature on
4 the property that required after-the-fact authorization.
5 So they are in no way suggesting that they don't need to
6 comply. In fact, all they want to do is compliance. They
7 are just constantly being battered by unlawful violations.
8 Here, they were being charged 5,000.

9 I want to talk really quickly about the houseboat
10 violation, although I mentioned it a bit in the chronology.
11 Because we believe that the August 9 houseboat extension
12 request that BCDC never responded to is a critical piece of
13 missing information in their timeline. It was a valid
14 request sent three weeks before the expiration date. They
15 were in the middle of completing the houseboat
16 construction. And as you know, it can cause additional
17 impacts to the Bay to stop a construction project like that
18 that is pretty small, that can be done quickly, that
19 waiting for BCDC staff to respond. We understand that
20 staff is extraordinarily busy, which is why we give one
21 another grace when I work with permitting staff a lot on
22 these things, which is why we are so surprised that there
23 is such an aggressive stance being taken on this houseboat
24 violation. And the report says that there has been a
25 failure to request an extension. That is patently false

1 and it is proven by BCDC's own correspondence in which they
2 issued a houseboat extension, retroactive back to this very
3 valid August 9 request. And for this they are being
4 charged over \$10,000.

5 We also want to note the previous owner, Mr. Price,
6 received three different houseboat authorizations. Could
7 not complete the project in over five years. Seaplane
8 Investments took charge of the property and completed the
9 project within months. And then asked -- had filed the
10 valid extension request and worked things out with BCDC
11 within months, and then filed a very valid permit
12 application for what it believed to be unauthorized
13 features, which we'll talk about in the next hearing.

14 MS. MALAN: Two minutes remaining.

15 MS. BLANCHARD: Thank you. I will tell you that
16 unlawful issuance of fines cannot be supported by the
17 Commission or by a reviewing court. And courts would look
18 very harshly on the fact that there are unclean hands in
19 this case in that BCDC delayed the response to the
20 houseboat extension request.

21 Due process concerns are key here. Nowhere in any of
22 the correspondence is the word appeal used or being told
23 that a window will be closing. Instead, they were told
24 that you can have your rights adjudicated in an enforcement
25 hearing and they asked -- they were asked to delay that

1 hearing and this is the first time they are having the
2 right to adjudicate the underlying violations.

3 These are some of the claims that are made in the
4 recommended Enforcement Decision that we want to have
5 clarified for the record.

6 Respondent was not slow to complete paperwork. That's
7 false and provable in the record. On October 8 from the
8 first notice, they received from BCDC they responded in 20
9 days and then they repeatedly responded to additional
10 information requests, reaching resolution on January 3.
11 The nature and extent of the harm caused is minor.

12 I want to just say quickly, we see a very clear
13 solution here. Fairly adjudicate Seaplane's rights. These
14 permit conditions weren't violated so you must dismiss
15 these, but work with us on compliance and improvements in
16 the six violations. Because that is all Seaplane
17 Investments is looking for here, fair adjudication,
18 fairness in due process and a public policy of promoting
19 compliance and protecting Bay resources, because you have a
20 willing property owner who for the first time in decades
21 can bring this site into compliance.

22 MS. MALAN: Forty seconds.

23 MS. BLANCHARD: Thank you. The only thing I want to
24 note in the timing is that Ms. Klein was not cut off at a
25 certain time, she went farther than 15 minutes. However, I

1 am done. I will take any of your questions and I very much
2 appreciate your time.

3 CHAIR GILMORE: Thank you.

4 All right, Committee Members. I'm sure there are
5 questions. Who wants to go first? Anybody? Commissioner
6 Eisen.

7 COMMISSIONER EISEN: I just want to understand what
8 Ms. Blanchard just said about the 1 and 2 fines. If I
9 understand it, our position is that the owner should have
10 filed, the new owner should have filed a permit assignment.
11 And that because the language of the permits did not
12 specifically say that that must be done within 30 days, it
13 was permissible for the permit assignment to be filed after
14 30 days. Is that, is that a fair summary of what your
15 defense is?

16 MS. BLANCHARD: If I may, Commissioner Eisen, thank
17 you for your question. It's essentially a fair assessment.
18 What it is, what we are saying is that permit assignment is
19 important and necessary; and in the case of the '73
20 assignment, it was required. But nowhere in either of the
21 two permits does it say that it must be completed within 30
22 days. And since permit assignment was completed within
23 months of transfer of ownership, there is no underlying
24 violation here.

25 COMMISSIONER EISEN: Okay, good, I think I did

1 understand that.

2 And so then my next question, Adrienne, what I think I
3 just heard is that we did not respond at all to this, I am
4 trying to keep all my dates straight, this August 9 request
5 for an extension. That that was ignored but later
6 acknowledged in the January 25, 2022 documents where we
7 retroactively allowed for the extension back to August 9,
8 2021. Can you just clarify whether or not we did respond
9 to that August 9, 2021 request for an extension?

10 MS. KLEIN: I cannot. It is in the record but I don't
11 recall.

12 COMMISSIONER EISEN: Okay.

13 MS. KLEIN: That was not work that I did.

14 I don't agree with Ms. Blanchard. BCDC included a
15 copy of the regulations outlining the appeal process in its
16 October 8 letter. So Ms. Blanchard stated that she was not
17 notified of the appeal procedures under the regulations.
18 That's not accurate. She herself stated that the paperwork
19 submitted within 35 days was incomplete and did not comply
20 with the assignment requirements and was later submitted.

21 We take a different position that the assignment --
22 there was more than 30 days granted. There was time prior
23 to issuance of that October 8, 2021 letter and we didn't
24 receive a voluntarily submitted assignment form, we only
25 started to receive that paperwork after we commenced

1 standardized fines. I believe, although I am not 100
2 percent sure, that Ms. Blanchard may be conflating the
3 Third Amendment with the Fourth Amendment for the extension
4 of time to complete the houseboat project. It was very
5 protracted but I believe that the fourth request was
6 extended. And staff appears to have made a mistake and
7 issued the Third Amendment to the houseboat owner, not the
8 operator, but that was corrected with the Fourth Amendment.

9 COMMISSIONER EISEN: Okay. I am not sure, I am not
10 sure I understand yet. The position I think Ms. Blanchard
11 took was that there was a specific request for an extension
12 on August 9, 2021 that we did not respond to until much,
13 much later. That's what I am trying to learn. Is that an
14 accurate statement?

15 MS. KLEIN: I'm sorry, I don't know the answer at this
16 moment, I would have to pull up the Violation Report and
17 look at the record.

18 COMMISSIONER EISEN: Okay.

19 CHAIR GILMORE: Anybody else have other questions?

20 COMMISSIONER VASQUEZ: This is, John. This is a lot
21 of stuff to go through.

22 CHAIR GILMORE: Yes.

23 COMMISSIONER VASQUEZ: You know, it's almost like, who
24 do we believe? In fairness to both sides, I would
25 certainly like a little more opportunity to think about all

1 this and at least, you know. Because questions are now
2 coming up and I am not even sure how to ask the question.

3 CHAIR GILMORE: Yes. Fair enough.

4 I have a question for staff. Somebody, I forget
5 whether it was Ms. Blanchard, said something about -- this
6 goes back to the assignment. I think, Adrienne, you said
7 that there was an incomplete assignment and then it didn't
8 get resolved until January. Okay. So can you walk me
9 through the steps of the incomplete assignment, what was
10 wrong with it. Because my recollection is that they
11 attempted to file the paperwork for the assignment within
12 the same month that they got the letter. So what -- can
13 you expound on the circumstances around the incomplete
14 assignment?

15 MS. KLEIN: Sure. There is a form that ideally seller
16 and purchaser both complete. And in addition to -- and
17 that form was submitted within the 35 days of October 8.
18 But what we didn't receive until sometime later was the
19 Operating Agreement, the ownership interest that was
20 necessary as part of the documentation to affirm who was
21 the new owner. So that documentation is almost more
22 important than the form itself.

23 CHAIR GILMORE: Got it, okay. So you were missing --
24 so they actually signed the assignment form and then later
25 realized that they needed to submit, or staff told them

1 that they needed to submit an Operating Agreement, and that
2 was not submitted until, let's say, January or late
3 December.

4 MS. KLEIN: Correct. But we did inform Respondent
5 that both pieces, both information, both pieces of
6 information were necessary to fully comply with the permit
7 requirement. That was outlined in the October 8 letter.

8 CHAIR GILMORE: Okay, all right. And then the
9 houseboat. So we've got, I guess, the owner of the
10 houseboat asking for a permit extension before the permit
11 expired, right? There is nothing in the record as to what
12 happened to that request. The permit expired at the end of
13 August. And what the expectation was was that the owner
14 should have stopped work on the houseboat but they didn't.
15 They went on and completed the project and then sometime
16 later asked for a permit extension; is that correct?

17 (No audible response.)

18 CHAIR GILMORE: Okay. So the question that I have is,
19 if the permit was going to expire at the end of August and
20 the new permit retroactively approved the work, why didn't
21 the new permit go back to the date when the old permit
22 would have expired, but instead it goes back to the date
23 when there was a request for a permit extension?

24 MS. KLEIN: I did not make that decision. I think the
25 relevant point here, not to get lost in the weeds, is that

1 the permittee failed to apply in advance of permit
2 expiration for an extension of completion time, continued
3 work with an expired permit, and completed the project with
4 an expired permit. BCDC did Respondent a favor by issuing
5 a retroactive approval to grant an extension of completion
6 time. And the only reason that fines accrued is because
7 that all took place more slowly than the 35 days after
8 October 8, 2021.

9 CHAIR GILMORE: Am I the only one here who has a
10 problem with the fact that the person doing the
11 construction attempted to apply for a permit before the
12 permit expired? I mean, clearly they were in the wrong for
13 once the permit expired continuing the work, I get that.
14 But if they asked three weeks before the permit expired and
15 there was, for whatever reason, no response from BCDC, am I
16 the only one that has a problem with that?

17 COMMISSIONER EISEN: You are not.

18 CHAIR GILMORE: Commissioner Eisen.

19 COMMISSIONER EISEN: I have a question, and I know we
20 can't get into details about it, but I gather there were
21 settlement discussions. Were there separate discussions on
22 the three resolved issues and different settlement
23 discussion on the six unresolved, or was there one whole
24 discussion about all nine of them, which didn't resolve all
25 the issues and therefore we are here at this hearing rather

1 than back in settlement discussions?

2 Because it seems to me that the issue of the three
3 resolved violations should be easily settled, you know.
4 Reasonable minds can come together on that if, in fact,
5 they were -- maybe not on the six unresolved, we haven't
6 heard anything about that yet. But at least as to those
7 three you would think that some resolution could be
8 reached. I just don't know if an effort was made to
9 separate them in that way.

10 MS. BLANCHARD: Commissioner Gilmore, may I respond to
11 that?

12 CHAIR GILMORE: Please.

13 MS. BLANCHARD: Okay. Absolutely, Commissioner Eisen,
14 they were treated as one whole to try and resolve the
15 entire thing. That is all Seaplane Investments has been
16 wanting to do is to reach a settlement that won't cause
17 bankruptcy but will allow compliance on the site. So
18 without divulging privileged settlement conversations, of
19 course, I can tell you that we were, even though we believe
20 these fines to be unauthorized, we were willing to agree to
21 a certain amount of fines in the whole to be able to
22 resolve all of the violations and to move forward on the
23 focus of compliance. Unfortunately, staff -- we don't need
24 to get into the details, but we were unable to reach a
25 number that that was sufficient for staff.

1 CHAIR GILMORE: Thank you.

2 MR. TRUJILLO: And I can --

3 CHAIR GILMORE: Any other?

4 MR. TRUJILLO: I can --

5 CHAIR GILMORE: Please.

6 MR. TRUJILLO: -- speak to -- again, I don't -- I need
7 to be very careful about getting into the details. But to
8 I guess the second part of Commissioner Eisen's question.
9 Well, yes, we did attempt to tackle the entire issue and
10 resolve the entire case as being one case with two
11 different components. Even within those discussions there
12 was discussion about how to address the standardized fine
13 issue discretely.

14 CHAIR GILMORE: Okay, thank you.

15 Any other Commissioner comments?

16 COMMISSIONER RANCHOD: This is on a different aspect
17 of the issues here. Commissioner, Chair Gilmore, you said
18 earlier we weren't going to consider material that was
19 submitted late, some numbers that we received this morning,
20 actually. Because there was a reference in there to the
21 financial standing of --

22 CHAIR GILMORE: Yes, let's not get into that.

23 COMMISSIONER RANCHOD: Right. So I don't want to get
24 into that but I want to ask a clarifying question, which
25 is, was there information in the record prior to any new

1 submittal by Respondent to counsel here about the financial
2 standing of Seaplane Investments, LLC?

3 CHAIR GILMORE: My recollection, and somebody can
4 correct me, was that there was not financial information
5 other than the stated that they would not have an ability
6 to pay the fines. It was a statement.

7 MS. KLEIN: That is correct.

8 MS. BLANCHARD: May I address that point just to
9 clarify, a statement of fact?

10 CHAIR GILMORE: Yes. Be very careful about your May
11 25 submittal because that's not coming in.

12 MS. BLANCHARD: I 100 percent acknowledge that. We
13 did submit the profit and loss statement to staff that was
14 then again attached to the May 25 that we are not talking
15 about, but that profit and loss statement should be in the
16 record.

17 COMMISSIONER RANCHOD: When do you believe that was
18 submitted?

19 MS. BLANCHARD: It was between December and March in
20 discussions with staff.

21 COMMISSIONER RANCHOD: Thank you.

22 CHAIR GILMORE: Oh, wait a minute. So that was part
23 of the settlement negotiations.

24 MS. BLANCHARD: But it was not confidential. It was
25 made public.

1 CHAIR GILMORE: Okay, thank you for that.

2 MS. KLEIN: But that would be late-submitted evidence.

3 CHAIR GILMORE: This is true. All right.

4 Commissioner discussions. Oh, Shari, please.

5 MS. POSNER: I am not sure. I just want to remind you
6 about the public part of the hearing. And I don't know if
7 you want to do deliberations or if you want the public
8 hearing.

9 CHAIR GILMORE: Thank you. Thank you for that very
10 timely reminder. Okay. Before we get to deliberations are
11 there any public comments?

12 MS. MALAN: Chair Gilmore, no public comments.

13 CHAIR GILMORE: Okay, thank you.

14 MS. MALAN: Actually, sorry about that, there is one,
15 Nikki Wood.

16 MS. WOOD: Hi, my name is Nikki Wood and I have been a
17 resident --

18 MS. MALAN: You have three minutes.

19 MS. WOOD: Okay. I have been a resident of Marin for
20 20 years and I own a business here. If you enforce this
21 Order you will be forcing historic seaplane operations to
22 rip out an essential safety feature and essentially close
23 down. Seaplane is, it is probably the only seaplane
24 operations of its kind on the West Coast and it has been
25 around since 1947. It promotes recreation over the Bay and

1 brings tourism dollars to the county. The property owners
2 are willing to comply so why would you charge them
3 excessive fines that will prevent them from complying?
4 That's like the opposite of your mission. It'll hurt Bay
5 resources and the public trust and recreation on the Bay.

6 The owner didn't cause any of the violations so why
7 are they being treated like they did? I support the
8 dismissal of all violations and urge the Commission to work
9 on permitting -- on a permitting approach with a property
10 owner who by all accounts wants to work with the BCDC to
11 comply. That's it. Thank you.

12 MS. MALAN: Thank you.

13 CHAIR GILMORE: Thank you very much.

14 Okay. And Margie, just for the record can you -- I
15 just want to state that we have received numerous written
16 public comments on this item as well as the next item and
17 they have been posted to the BCDC website. So I am just
18 trying to make our court reporter's job a little easier.

19 John.

20 MS. MALAN: Chair Gilmore, we have one more public
21 comment.

22 CHAIR GILMORE: Oh, okay. Hang on, John. Go ahead.

23 MS. MALAN: Andrew.

24 MR. WAIT: Hi, my name is Andrew Wait, I have been a
25 Marin resident for about 30 years and a Bay Area resident

1 for over 40 years. You know, I do appreciate the
2 Commission's mission. I am a happy, grateful user of the
3 Bay and I have seen over the last 40 years huge
4 improvements in the environmental state of the Bay.

5 I am trying to resolve two things in my mind. Number
6 one is, the Bay isn't being damaged by any of this. A huge
7 amount of time, energy and money is being spent on
8 something that sort of isn't in direct alignment with the
9 mission of this, of your organization.

10 But what I also see, and I've seen it for 30 years
11 now, is a pattern of harassment of this particular
12 business. Usually, there's a kind of a dark organization
13 in the background that I don't understand like Edgcomb Law.
14 Like I don't know what -- who they are or what their goal
15 is other than to get these guys shut down.

16 So I appreciate what you are trying to do. But
17 listening to this process, it feels to me like there's --
18 everyone would be served by negotiating in good faith, by
19 getting off of this weird use of semantics to replacing or
20 repairing that ramp, and to some degree, some recognition
21 that all small businesses that we rely on for the quality
22 of life of our community are fragile financially, and
23 throwing huge six figure fines at them is damaging to
24 everything. For example, they contribute about 170,000 to
25 local and state budgets and are a productive employer of 15

1 people and are a net plus for our community. So I think
2 anything you guys can do to realign with your mission and
3 with the support of an organization that has been around in
4 good faith, providing a great service for 45 years, is what
5 everybody wants out of this. Thank you.

6 MS. MALAN: Thank you very much.

7 Chair Gilmore, that's all we have.

8 CHAIR GILMORE: Okay, thank you, Margie.

9 John, I think I saw you with your hand up.

10 COMMISSIONER VASQUEZ: Yes. This question is, I'm
11 sorry, to Shari. If we were to postpone any action and set
12 another hearing date and ask everybody to go back and maybe
13 put their thinking caps on, could that information that was
14 being requested to be part of the record, could it come
15 back to us at that time?

16 MS. POSNER: So I think there is no way to actually --
17 if you are asking me could you, quote, continue the hearing
18 and leave it open, I don't think you can. You could send
19 it back to the staff to try and work things out and if they
20 can't work things out, come back. In terms of --

21 COMMISSIONER VASQUEZ: What --

22 MS. POSNER: In terms of evidence, I do think it would
23 still be considered late evidence. Obviously, it is
24 certainly stuff that could be considered if there were
25 settlement discussions, which is a sort of different animal

1 than the enforcement hearing procedures. Did that make
2 sense?

3 COMMISSIONER VASQUEZ: Yes, it does. Thank you.

4 CHAIR GILMORE: Committee Members, I have to tell you,
5 I am feeling uncomfortable about some of this, particularly
6 the houseboat issue. Yes.

7 Oh, Ms. Klein.

8 MS. KLEIN: Thank you, Chair Gilmore. I was taking a
9 moment to look at the record relating to that issue so I
10 have the -- let me lower my hand here. I have the
11 extension of time pulled up. I don't understand the
12 concern that is being raised by Ms. Blanchard. We issued
13 two -- is there an allegation that there is a gap in time?
14 So each time extension states, it is issued on a certain
15 date and it states the new completion date of the permit.
16 Yes, I am just unclear on what the issue is. We extended
17 the completion date from August 31, 2021 to October 31,
18 2021.

19 CHAIR GILMORE: Okay. Well, so I will talk about what
20 my issue is. My issue with that is, if indeed the owner of
21 the houseboat had applied for a permit extension before the
22 permit actually expired, and had BCDC either worked --
23 well, had worked on it and extended the permit, the amount
24 of timing for the fines would not have been as long or
25 there may not have been any fines if the permit had been

1 extended before the original permit expired. That is my
2 problem.

3 MS. KLEIN: Well, my recollection is that that
4 initial -- so we didn't include that record as part of this
5 complaint, we included the extensions of time looking
6 forward. It would have been an incomplete complaint and we
7 would have responded with the additional information that
8 was required and we wouldn't have received it and work
9 would have continued past the expiration date with an
10 unfiled application.

11 CHAIR GILMORE: Wait, wait, wait back up, you just
12 confused me. Say that again and say it slowly.

13 MS. KLEIN: Again, I am going from memory, I am not
14 looking at the record. But normally, applicants don't
15 submit a filed application on the first go-round. They
16 make the request and usually something is missing; and we
17 will let them know what that is. And once we get the
18 remainder of the information we are able to file and act on
19 the request. So perhaps we didn't get a fee associated
20 with that request for an extension of time. Again, I don't
21 have that information in front of me.

22 CHAIR GILMORE: So I think the conjecture here is the
23 request for the extension of time on August 8 or 9 or
24 whatever it was, was incomplete. And then at some point in
25 time in the future it became complete and staff acted on it

1 and then retroactively extended the permit. But I think
2 everybody agrees here that work should have stopped once
3 the permit expired and it didn't. Okay.

4 Ms. Blanchard.

5 MS. BLANCHARD: Thank you, Chair Gilmore. I just want
6 to correct for the record because I have the exhibits to
7 the Violation Report handy in front of me. There was no
8 request after the August 9 extension request. There was no
9 subsequent notification from BCDC to the -- either
10 Mr. Hedelman or Seaplane Investments or Mr. Price, the
11 permittee at the time, to say that that was inaccurate. It
12 is not -- the BCDC Commission, of course you know, is not
13 authorized to levy a violation for conjecture as to whether
14 or not we could have resolved that violation. We were not
15 given the opportunity to resolve any concerns about that
16 houseboat extension request. And there was no additional
17 information filed in October or November to further support
18 that August 9 request. All that was filed were pictures to
19 show that the construction had been completed. That's all
20 on the record for folks to see. And it was only until
21 January 25 that staff then retroactively approved that
22 authorization back to August 9, but no additional
23 corrections were made to that extension request.

24 CHAIR GILMORE: Ms. Klein.

25 MS. KLEIN: Thank you. You will recall that we did

1 not receive the Operating Agreement until December or
2 January, and that Operating Agreement was a document that
3 was necessary not only for the permit assignment, but also
4 to file this fourth request for an extension of completion
5 time, as complete. So until we received that the
6 application was incomplete. And we did notify Respondent
7 that this documentation was necessary and missing to file
8 the application as complete.

9 CHAIR GILMORE: Thank you.

10 MS. BLANCHARD: I don't want to go back and forth but
11 I would love to clarify that.

12 CHAIR GILMORE: Wait, hold on. Shari Posner, please.

13 MS. POSNER: Thank you, Chair Gilmore. I just want to
14 ask that whoever is speaking, particularly either the
15 staff, BCDC staff or the Respondent, to please say the full
16 date of whatever they are talking about. I mean, month and
17 year, at least. Because this does cover, arcs over
18 numerous years and for sake of the record, it is confusing
19 if someone says December and January and you don't know
20 what years you are straddling.

21 CHAIR GILMORE: Thank you. Commissioner Eisen, I
22 thought I saw you with your hand up.

23 COMMISSIONER EISEN: Yes. I was going to say I feel
24 similarly about this issue to Commissioner Vasquez. I feel
25 like I could ask more coherent and competent questions if I

1 had -- I think timelines are extraordinarily helpful and I
2 appreciate the two timelines that we have seen. But having
3 an integrated timeline that the parties can indicate what
4 they agree on and what they don't agree on for us to study
5 between now and maybe a continued hearing date so that we
6 can really hone in on the, as you put it originally, the
7 disputed issues, as opposed to the undisputed issues.

8 So for example, I know that the ownership changed, or
9 I think I heard that the ownership changed on July 21, '21.
10 I think July 21, 2021. But that something else occurred in
11 July 2021. I think Adrienne mentioned that the BCDC asked
12 for a meeting to discuss the permit amendment. So I am not
13 sure where those two dates fit vis-à-vis each other. So
14 having some kind of an integrated timeline that both sides
15 could work on together and indicate their areas of dispute
16 also might facilitate conversation that could lead to a
17 resolution. A resolution or more coherent hearing, either
18 of which would be better than where we sit today, I think.

19 CHAIR GILMORE: Yes. Shari.

20 MS. POSNER: I just want to remind the Committee and
21 the Chair that I don't think there is a way to leave the
22 hearing open so the options are, you know, to either send
23 it back and see if it can come back. If there is no
24 ability to resolve it. But I am not sure -- otherwise it
25 comes back for a new hearing, I guess is what I am saying.

1 I think that the options are basically what are listed at
2 the end of the recommended Enforcement Decision. To accept
3 the recommended Decision, to decline the recommended
4 Decision, or to accept it with some conditions. If the
5 Enforcement Committee decides that they feel like this is
6 something the parties can try to work on to resolve, I know
7 in the past that has happened in other proceedings and that
8 seems like that's another, that's another option. I just
9 wanted to clarify that.

10 CHAIR GILMORE: I appreciate that, actually, and --
11 okay, this is going to sound -- so on this item and also on
12 the next item, which we haven't even begun to discuss, I
13 think my preference would be, one, to send the parties back
14 to see if they could work out some sort of a settlement on
15 that. If the settlement negotiations fail, if I heard
16 Shari correctly, then it comes back as a new hearing. And
17 if it does come back, I think Rebecca's suggestion of the
18 timeline that the parties could work on with areas of
19 agreement, or actually just disagreement, would be very
20 helpful to this Committee.

21 The other question that I have for Shari is that if
22 this -- if we send it back to staff and settlement
23 negotiations fail and it comes back as a new hearing, the
24 record is still the record that we have you here today; is
25 that correct?

1 MS. POSNER: That's correct.

2 CHAIR GILMORE: Okay. All right. Thank you.

3 So that's sort of what I am thinking about. What do
4 Committee Members think?

5 COMMISSIONER EISEN: I like it.

6 CHAIR GILMORE: John, I see your hand up, I'm sorry.

7 COMMISSIONER VASQUEZ: Thank you, Marie. You and I
8 have been on this Committee for a while and we know if we
9 are not really clear in our recommendations or have
10 concerns and we push it forward to the entire Commission,
11 then generally they are going to be somewhat confused. And
12 we have seen a couple of them where they have come back
13 three times. I actually voted as a Commissioner not to
14 send it back to us because I thought we had done the work.
15 I would like to be very confident and clear about any
16 decision I would want to move forward. So I think I agree
17 with you in that. If we send it back and bring it back as
18 a new, a new hearing, that would be the best.

19 CHAIR GILMORE: Okay, thank you. Sanjay.

20 COMMISSIONER RANCHOD: Yes, I was going to say that
21 the record for this is pretty voluminous. Even for
22 somebody who is an attorney this is difficult to comprehend
23 and piece together, especially when there appear to still
24 be disputed aspects of the facts. So I think to the extent
25 that we ask the parties to resume discussions to try to

1 resolve these, these issues, it would be helpful if there
2 can be agreement on a statement of facts and a
3 comprehensive timeline so that everybody is clear about
4 what occurred when, and try to narrow the issues in dispute
5 and focus on those allegations where there really has been
6 demonstrable impact.

7 I do want to say I can tell that staff has done a
8 tremendous amount of work on these matters and it is
9 confusing, and the timeline dates back beyond when current
10 folks were involved, in many instances, so that makes it
11 difficult. And I appreciate all the time that's gone into
12 this in working this up for the Committee's consideration
13 today. So I know people have been working hard on this.

14 And I appreciate the intent of both sides to try to
15 reach an agreement here. That's not always the case when
16 we have enforcement matters. Sometimes it is not clear
17 that the Respondent is interested in, in ultimately
18 remedying the situation and in doing right by what we need
19 for the Bay.

20 So I think I would support your direction, Chair
21 Gilmore, to ask the parties to continue to work on this and
22 see if they can narrow the issues. At least narrow the
23 issues, even if they are not able to fully resolve them, so
24 that when it comes back to this Committee we can be more
25 clear about what we feel comfortable and confident in

1 recommending to the full Commission.

2 CHAIR GILMORE: Thank you, Sanjay, I appreciate that.
3 And I don't want staff to think that our sending it back
4 means that you did not prepare an adequate record, because
5 I think you guys did an incredible amount of work on it and
6 it shows. I think the problem that we are having here is
7 that staff works with this day in and day out and it is
8 like a second language to you. It is not to us and that
9 makes it very, very difficult. And I think John was right
10 when he made the comment about, if we are having this much
11 trouble trying to piece together what is going on, it is
12 going to be twice as bad before the entire Commission. And
13 I would really want to be in the position that whatever
14 this Committee recommends to the full Commission, we can
15 stand behind it and explain why we did what we did, because
16 people are going to want to know. Brent.

17 MR. PLATER: Thank you for that, it is very helpful
18 advice on how we can present this and make it more clear
19 for you and also for the Commission. One possible
20 additional way we can do that is perhaps narrow the areas
21 for these three violations that we need to discuss with the
22 Respondent. What I am hearing so far is that the Committee
23 members have concerns about Violation 3, which deals with
24 the houseboat remodeling and the possibility that there was
25 some, potentially some delay in BCDC responding to the

1 application for extension of time for the permit.

2 But I have not heard the same concerns for the
3 Violation 1 and Violation 2, that's for the two violations
4 where the permit assignment form for the two different
5 permits that apply in this case, did not, were not
6 submitted to us in a timely fashion. I thought that
7 Adrienne had addressed the concerns initially raised by
8 explaining how we need both a signature and also some
9 evidence to document that the person signing the form is in
10 fact authorized to make that representation on behalf of
11 the new owners. So if that, if that is the case, then
12 perhaps those two violations can be resolved today and the
13 third one can return for additional consideration. If that
14 is not the case, if there is some additional clarity that
15 you need us to provide on those two violations, that would
16 be a welcome, a welcomed instruction.

17 CHAIR GILMORE: Rebecca.

18 COMMISSIONER EISEN: Yes, I do have questions about 1
19 and 2, that is why I asked whether the argument was that
20 the permit language itself is not clear as to what exactly
21 is needed when there is a transfer of ownership. And that
22 it is certainly is not clear about how much time needs to
23 elapse between when the ownership transfers and that new
24 permit amendment is filed. So I do have questions about
25 that, whether that can be clarified. It doesn't -- it is

1 not so much a timeline question as an interpretation of the
2 permit language. I think that what was pointed out to us
3 is that the language in terms of the transfer is different
4 in the two permits that are before us and that the second
5 one is clearer than the first. But -- or maybe it was the
6 first one that was clearer than the second. But neither of
7 them say, you have X number of days.

8 If the staff said to the owner, now that there is a
9 change in ownership you have X days to do this, and they
10 didn't do it within that timeframe, that's another, that's
11 another matter. But if they were supposed to know from
12 reading the permit that they had 30 days, the permit
13 doesn't, in fact, have that language in it. So I do have
14 some questions about those things that maybe could get
15 clarified or resolved or narrowed down in a conversation
16 between the parties.

17 MR. PLATER: That's very helpful, Commissioner Eisen.
18 And if I may, just to let you know how we have been
19 thinking about it so that we can further narrow down the
20 next steps to make sure that you understand how we were
21 thinking about it and you can give us some additional
22 direction as needed. As we read these assignment
23 requirements in these permits, they do not have a date that
24 says you must do it within X number of days after the
25 transfer occurs and so that can be read in one of two ways.

1 It could be read to, well, you can do it when you get
2 around to it as the new owner, which is more or less what
3 we hear from the Respondent at the moment, we did it in a
4 couple of months, that should be good enough. Or the other
5 way you can read about it is that it applies immediately.
6 That as soon as the transfer occurs without the assignment
7 form being submitted, it is a violation immediately.
8 Right? Those are the, those are the boundaries of how you
9 could think about it.

10 And so what we did in this case in trying to calculate
11 those violations was split that difference. Where we said,
12 all right, if you count the permit assignment form as
13 being, that permit assignment term is being violated
14 immediately upon transfer without submission of the form,
15 but then give them 30 days for free. This is why in the
16 calculation we subtracted 30 days from the totality to give
17 them the reasonable amount of time to come into compliance
18 with that requirement. Then we calculate the penalty that
19 way sort of to build in some, some accommodation for -- the
20 most likely scenario is that people won't do it immediately
21 upon transfer, it is something that's going to come out
22 through subsequent disclosures or something like that.

23 So that is how we have been thinking about it is to,
24 you know, essentially approach the penalty calculation on a
25 daily basis in that way. Because the alternative, which

1 is, you know, is too amorphous. We will always have this
2 debate where, you know, any subsequent return of an
3 assignment form will be arguably consistent with a
4 provision that just has no date and therefore can be
5 whatever the Respondent thinks is the appropriate time.

6 CHAIR GILMORE: Adrienne.

7 MS. KLEIN: Thank you, Chair Gilmore. Just wanted to
8 remind you that Permittees never submitted an appeal of the
9 standardized fines for these three resolved violations, or
10 Respondent never submitted an appeal. All of these
11 arguments could have been made and considered by the
12 Executive Director and the Commission Chair as part of an
13 appeal of the standardized fines. That process was
14 completely un-availed of.

15 Property transfer took place on July 21st in the year
16 of 2021, as everyone is aware. Staff did not issue our
17 letter starting standardized fines -- July, August,
18 September, October -- until almost three months later,
19 October, early October of the year 2021.

20 The burden, I would say. So no due diligence call was
21 made to BCDC at time of transfer or prior to transfer to
22 ask for a compliance status on the permit, although we were
23 actively engaged in enforcing the violations.

24 So when we issued the October letter starting the
25 clock, Respondent -- and I looked at that October letter

1 today and we clearly outlined the documentation. And that
2 is in your record, Complaint Exhibit, I believe, 2D or E or
3 F, we specifically outlined the documentation required to
4 complete the assignment process in very clear details.
5 Commissioner Eisen, not all of the details are included in
6 our permit conditions. But we -- that's why we are here,
7 that's what we do as the staff, we answer all those
8 questions.

9 Ms. Blanchard mentioned that staff is here to serve
10 the permittees and the public and that is what we do. We
11 don't want to bring items before you, we do everything we
12 can to prevent coming to this stage. So I think those are
13 the points I wanted to make.

14 CHAIR GILMORE: Okay. Ms. Blanchard.

15 MS. BLANCHARD: Thank you very much, Commissioner
16 Chair. I just wanted to clarify a couple of quick points
17 if it's helpful.

18 The notion of splitting the difference with respect to
19 the 30 day requirement, it is a requirement under the law
20 that the language be in the permit conditions, staff is not
21 authorized to write that in.

22 But more importantly, it is very much the case that
23 all of your permits coming out of your permitting analyst
24 staff today does include a very clear 30 day requirement.
25 In fact, I'll be coming before you next month with a permit

1 that will be reviewed that has a very clear permit
2 assignment clause that has a 30 day requirement and is very
3 clear about what needs to be filed.

4 The permit assignment form that was filed with staff
5 on October 28 was signed by a member of the LLC who is
6 authorized to sign on behalf of the LLC. BCDC asked for an
7 Operating Agreement which we timely provided to establish
8 that. But the permit assignment form was filed within 20
9 days and the Operating Agreement was filed within a couple
10 weeks after that when we learned that they wanted
11 additional information.

12 And the only other point I want to make in
13 consideration of this is that Seaplane was trying to
14 comply. They might need, as Ms. Klein said, they need
15 guidance from staff to figure out, okay, what exact
16 documents are we looking for because it is not in the
17 condition.

18 But the other piece to keep in mind is that there are
19 two parties. They needed to get the signed form from
20 Mr. Price. And Mr. Price is not mentioned anywhere in any
21 of these violations. And he ostensibly, according to
22 staff, had the same affirmative duty to complete a permit
23 assignment form. That's all I wanted to add. Thank you.

24 CHAIR GILMORE: Okay. Anybody else have anything that
25 they want to say? Oh, Sanjay.

1 COMMISSIONER RANCHOD: Just following up on this point
2 about the assignment forms. So, can somebody clarify for
3 me what was the incomplete aspect of the assignment forms
4 at the point that they were actually submitted for the
5 first time?

6 CHAIR GILMORE: Adrienne?

7 MS. KLEIN: The documentation showing ownership.

8 COMMISSIONER RANCHOD: And is that in --

9 MS. KLEIN: The Operating Agreement.

10 COMMISSIONER RANCHOD: So the Operating Agreement was
11 not submitted with the, with the forms. And then that was
12 subsequently provided a couple of weeks later, as counsel
13 just stated.

14 MS. KLEIN: Weeks or more, I have to look at my
15 timeline, but it was provided subsequently and after
16 standardized fines; after the 35 day grace period had run.

17 MR. TRUJILLO: They resolved their violation on
18 January 3, 2022 by submitting two executed permit
19 assignment forms and the executed Operating Agreement. And
20 by then they had accrued the two standardized fines of,
21 well, 3,000 each for Violations 1 and 2, according to the
22 letter that we had sent asking for standardized fines dated
23 October 2, 2022. I mean, sorry, August 2, 2022.

24 CHAIR GILMORE: Okay. I have a question about permit
25 amendments. So let's say somebody had a permit in 1975 to

1 build a dock. And they come to us again and they want to
2 amend the permit because they need to do repairs and
3 enlarge the dock. Okay. The attorney in me wants to know,
4 what does that look like? Do you attach the original
5 permit and then the amendment is specifically to what it is
6 they want to do? I mean, or does the amendment give you an
7 opportunity to go back and clean up language?

8 MS. KLEIN: Both.

9 CHAIR GILMORE: So we just issued a permit in what was
10 it, January? Well actually, late 2022 and I think in early
11 2023 and we left in the same language about timing and of
12 assignments and things?

13 MS. KLEIN: Okay, I've got it, Commissioner Gilmore.
14 We haven't issued an amendment in 2023, just to be clear.
15 So the Fourth Amendment extending the completion time for
16 the houseboat project was early -- was in the month of
17 January in the year of 2022. No amendments have been
18 issued since then. When we issue -- mostly, as you all
19 know, when we issue amendments we update the in-line body
20 text of the amendment. However, when we issue extensions
21 of commencement and completion time, we issue a separate
22 document. So it is a permit amendment, but it is not in-
23 line and therefore no changes to the existing permit
24 language take place. We only change the start or
25 completion date, whatever has been requested, and we make

1 clear what that change is. And then the next time we do a
2 substantial update to the permit we incorporate that
3 amendment, that extension of completion time in this case,
4 to be specific.

5 MR. TRUJILLO: So to help you visualize, a time
6 extension usually consists of maybe a page, maybe two pages
7 stating, you applied for an extension on this date, we are
8 granting that extension. This applies only to this
9 timeline. And that's it. There is no, to answer your
10 question, no copy attached of the full permit. It is a
11 simple statement.

12 CHAIR GILMORE: Thank you. That was, that was very
13 helpful. Once again, this is -- you guys deal with this
14 every day and you would never think to ask yourself that
15 question. But we don't and so I wanted to know what it
16 looks like. Okay, so let's move on.

17 Anybody have anything else to say? Adrienne.

18 MS. KLEIN: May I point you to Exhibits 2B, C, D, and
19 E of the Complaint? And on my screen those are on pages 40
20 through 44 about.

21 CHAIR GILMORE: Okay, why don't you keep talking while
22 we try to find it.

23 MS. KLEIN: I can put them up if that would be
24 helpful.

25 CHAIR GILMORE: That would be very helpful.

1 MS. KLEIN: Okay. So, I could go up and show you the
2 back end of the 1973 permit. So, I am just showing you the
3 back of it now. You can see all this underlined text
4 struck through and underlined. We are in the Standard
5 Conditions section. This would have been removed text,
6 newly added text, the standing text would not have been
7 outlined.

8 CHAIR GILMORE: Got it.

9 MS. KLEIN: And then here is the second extension of
10 completion time.

11 CHAIR GILMORE: Got it.

12 MS. KLEIN: So, it is a stand-alone communication.
13 And the same is true for the Corrected Second Amendment,
14 the Third amendment and the Fourth Amendment.

15 CHAIR GILMORE: Great. Thank you, that was very
16 helpful. And I thought I saw before you started sharing
17 your screen that John had his hand up.

18 COMMISSIONER VASQUEZ: Yes, thank you. I am still a
19 little confused about not having a timeline. I mean,
20 Brent, you said that we assume there is a 30 day grace
21 period, but how does the applicant know that?

22 MR. PLATER: So I should -- maybe I misspoke on the
23 assumption. So the terms and conditions in the permit for
24 a variety of reasons often aren't up to date, the most
25 standard version that we have in our permitting department.

1 But the 30 days grace period, essentially, that we applied
2 in this case for calculating penalties was to make it
3 consonant with this process we have for -- this updated
4 process we have for getting these assignment forms in. So
5 we were making it consistent with BCDC's existing practice
6 by eliminating those extra 30 days of penalties when we
7 made this penalty calculation. So there's a column in the
8 Violation Report and Complaint that establishes that there
9 were 136 days of violations, which -- and it spells out how
10 it subtracts the 30 days following acquisition of the
11 property, to help explicate that for you. And the record
12 that we have had in the communications with the Respondents
13 has also, we have been reflecting that throughout the
14 entire process that this has been an ongoing concern,
15 including the portion, the time period that we were trying
16 to resolve it informally through the standardized fine
17 process.

18 CHAIR GILMORE: Can I just jump in here for a second?

19 COMMISSIONER VASQUEZ: Yes.

20 CHAIR GILMORE: I am not sure I heard the answer to
21 John's question. I think he's talking about in the
22 original instance, right, before the assignment is filed.
23 Staff has this expectation that you are going to complete
24 the assignment within 30 days. But how would the applicant
25 know that or the new purchaser of the property? How would

1 they know that? Where would they find out that
2 information?

3 MR. PLATER: As I read our permits, and you know, I
4 would appreciate direction on this, but as I read these
5 terms, I read them as saying it is required immediately.
6 As you are selling the property to another person you need
7 to be processing these, these forms along with the sale and
8 submitting them to BCDC. We don't read them as saying you
9 have, the permit gives you an extra 30 days to do this or
10 anything like that. It is required immediately, right.

11 Now, what we do provide when they come in to request
12 the forms or to find out how they actually do this, is on
13 those forms, we have a form that says, you know, submit the
14 signature, the documentation, 30 days to do it, on that
15 form. And so when we were -- none of that happened in this
16 case. Like we were doing everything after the fact. And
17 so to ensure we weren't providing additional penalties
18 beyond what would have been imposed had they actually
19 complied with the existing procedures that have these built
20 in timeframes in them, we just subtracted 30 days from the
21 total number of violations so we wouldn't have to argue
22 about whether that was unduly penalizing the Respondents in
23 this case to give them a similar kind of process.

24 So yes, that's how we read it. We read this term --
25 and I think that's similar with how we read most permit

1 terms. If there is no date specified it is due
2 immediately, not whenever they want to get to it. Those
3 are really the two options. And if it's -- and I think
4 that's consistent with how we've read BCDC's permits from
5 all kinds of terms and conditions that are -- that specify
6 requirements without deadlines attached to them.

7 MR. TRUJILLO: And I would like to add something to
8 that explanation, if I may. Brent is 100 percent correct.
9 But kind of moving on from that when it comes to this idea
10 around this specific instance of violation. When it was
11 determined that this was a violation, they didn't comply
12 with at least the spirit of the permit, we sent out the 35
13 day letter. And the 35 day letter is just that, it gives
14 Respondents notice that within 35 days they need to take
15 corrective action to correct a violation of a permit, the
16 law, what have you. And if you can do that within 35 days
17 then you will not be charged a fine. So that letter was
18 sent stating that very thing on October 8, 2021. It went
19 into great detail as to what they needed to do to resolve
20 this violation, to correct this problem that was
21 identified, and they had 35 days as they, you know, it is
22 built into the regulations as a grace period, I call it, to
23 provide us that before fines even kicked in.

24 When they failed to do that within the 35 days they
25 racked up a fine. A standard fine as outlined in the

1 letter but also outlined in the regulations. And when they
2 failed or when they refused to pay that standardized fine
3 then we had to issue the Violation Report and Complaint
4 which essentially takes the matter out of the 35 day letter
5 kind of territory, takes it out of standardized fine
6 territory, and it now becomes part of a violation that we,
7 like any other violation that is part of an order, where we
8 apply the standard of, you know, laid out in the McAteer-
9 Petris Act.

10 But in terms of notice, they had plenty of notice to
11 get this done. They had a period of not just 30 but 35
12 days to resolve this. They didn't do it at the 35 days.
13 When they finally did do it, it wasn't -- the fines hadn't
14 maxed out. They had not provided -- and then they refused
15 to pay the fine, sorry. They had racked up a fine of, as I
16 had mentioned before, \$3,000 per violation, which is
17 standard, because of the date that the violation was
18 ultimately resolved, and they refused to pay that. And
19 that's why we are here. Because when somebody refuses to
20 pay a standardized fine we have to collect through an
21 order. That's what this is.

22 CHAIR GILMORE: Okay.

23 COMMISSIONER VASQUEZ: Thank you, Matthew.

24 CHAIR GILMORE: Rebecca.

25 COMMISSIONER EISEN: Okay, I just want to be clear in

1 understanding what Brent and Matthew just said. So the
2 ownership on this property changed on July 21, 2021. So I
3 think what you are saying, Brent, is that what we would
4 expect is that this assignment be filed essentially then,
5 July 21, 2021. And it wasn't and we ultimately sent a
6 letter on October 8, 2021 saying, you have 35 days to get
7 this permit assignment completed and this is what you need
8 to put in it to make sure it is completed. And then in
9 that 35 days following October 8, 2021 those documents were
10 not filed.

11 MR. TRUJILLO: Correct.

12 COMMISSIONER EISEN: Since they were not filed within
13 the 35 days we go back to where we could have filed, we
14 could have started running the penalties, and that made the
15 start date on the penalties 30 days after July 21, 2021
16 when the ownership changed. So on August 31 the penalties
17 began to accrue because they didn't take advantage of the
18 35, you know, get out of jail free card that we gave them.
19 Is that, is all of that accurate?

20 MR. TRUJILLO: Up to the point where I believe you
21 said, we go back to. So how the standardized fines work is
22 it's broken out into kind of spans of days. So at day 36,
23 because 35 days is the grace period, at day 36 fines kick
24 in. Between day 36 and say day, I think 60, there's a set
25 fine. And then between 60 and 90 or 95 there's another set

1 fine. And then after 125 days then we are able to abandon
2 the standardized fine process and take them forward. We
3 did not do that. We gave them -- in fact we didn't have to
4 because they were able to settle it all by January 3, which
5 put them, I believe, in the 60 day range and that's how we
6 assessed a fine of \$3,000 because that's what the
7 regulation said. So we sent them a letter. Go ahead.

8 COMMISSIONER EISEN: Just tell me what the start date
9 is on the fine that we are assessing. What is the start
10 date?

11 MS. KLEIN: Yes, 30 days after July 21, year 2021. So
12 we -- one correction or adjustment I would make to how you
13 phrased that last piece that you said, Commissioner Eisen,
14 was that it is not that they accrued, it's that we were
15 following the provisions of the law that outlines that
16 there should be penalties for each day a violation occurs
17 or persists. And we knocked off 30 days and started, and
18 calculated the duration of that violation, at which we
19 assessed, I believe, a daily penalty of \$40. Which,
20 ironically, is possibly less than the per-day penalty for
21 the standardized fines period but the duration is longer so
22 the total comes out higher.

23 COMMISSIONER EISEN: So 8/31/2021 is the start date
24 that we are calculating the penalties from?

25 MR. PLATER: I believe it's --

1 MS. KLEIN: Give or take a day. Sorry, Brent.

2 MR. PLATER: August 20, 2021, which is 30 days after
3 July 21, 2021.

4 COMMISSIONER EISEN: Got it. Got it.

5 MR. PLATER: The date they acquired the property.

6 COMMISSIONER EISEN: Okay.

7 CHAIR GILMORE: Ms. Blanchard.

8 MS. BLANCHARD: Yes. I appreciate the conversation
9 and the attempts to clarify the facts. I'd like to just
10 make a couple things clear that I've just looked up in the
11 record. And by the way, I commiserate with you,
12 Commissioners, on how confusing the timeline is because it
13 was very confusing to Seaplane Investments in trying to
14 comply.

15 One, there was an issue with Mr. Plater saying that
16 these are implied requirements. As I am sure you know,
17 Commissioners, it is unlawful to levy fines on implied
18 requirements. But more importantly, the suggestion that
19 Seaplane was not trying to comply in earnest or did not
20 comply in earnest is not correct.

21 The October 28 submittal included a signed permit
22 assignment form. To which I have in my records and can
23 share this with you, Ms. Klein responded saying, you needed
24 to provide the Operating Agreement as well. Which
25 Mr. Sharp their previous counsel provided on November 1,

1 within the 35 day period. So if that was the big concern,
2 it was complied with.

3 So then they asked -- they reviewed the Operating
4 Agreement it took them some time to do that, and then they
5 asked to have someone else sign the permit assignment form.
6 Which is BCDC's prerogative, but it is not something that
7 should be levied against Seaplane Investments, who was
8 trying to diligently comply.

9 In January we received emails to say everything was
10 absolutely resolved.

11 And it was not until August, after the concern about
12 the seaplane ramp, that we received a letter saying that
13 standardized fines would now apply, when we thought they
14 were completely resolved.

15 The other piece I want to add in here is this question
16 about whether or not the appeal period closed. Even if
17 they had been given adequate notice, which they had not,
18 the word appeal was never included in the notifications.
19 Mr. Trujillo had called Mr. Sharp and asked him at the
20 beginning of September, during this appeal period (gestured
21 air quotes), to waive the hearing requirement to work out
22 resolutions. So if you are a rational practitioner trying
23 to defend your Respondent you might think, okay, great,
24 we'll work out settlement. There's no reason to file some
25 sort of reservation for an appeal here. It's very

1 understandable that nothing additional was filed because
2 there was a request to waive the enforcement hearing where
3 such rights would be adjudicated. These are just important
4 facts that I want to make sure are in your consideration as
5 we work through these things. But we are very happy to
6 work out a statement of facts with BCDC staff that you can
7 review, if that would be helpful.

8 CHAIR GILMORE: That would be very helpful. Okay. I
9 get the sense, we are going to have to make a motion on
10 this. One is to send the matter to staff for settlement
11 talks. If that is not successful, then it comes back to us
12 with exactly the record that we have today. And we have
13 requested a mutual timeline and we want the issues of
14 disagreement narrowed down and specific so we could, we
15 could hone in on those specific issues. Did I leave
16 anything out? John.

17 COMMISSIONER VASQUEZ: Is this one just for 5 or does
18 it include 6?

19 CHAIR GILMORE: Yes, I am going to make, I am going to
20 make the same motion for 6.

21 COMMISSIONER VASQUEZ: Okay.

22 CHAIR GILMORE: But I think I have to open the public
23 hearing for that one.

24 COMMISSIONER VASQUEZ: Yes, all right.

25 CHAIR GILMORE: Rebecca.

1 COMMISSIONER EISEN: And I think it is also important
2 for us to have some discussion on 6 because if we have the
3 same motion for 6, I think it will be helpful to staff and
4 Respondent to know what our issues are on 6 as well.

5 CHAIR GILMORE: Exactly, exactly. All right. So I
6 guess I'll make that motion. Does somebody want to second
7 it?

8 COMMISSIONER EISEN: (Raised hand).

9 CHAIR GILMORE: Okay, Rebecca is seconding that. And
10 we are going to have to take a roll call vote; so, Margie.

11 COMMISSIONER RANCHOD: Can someone recite the motion
12 we are voting on?

13 THE REPORTER: Thank you, Commissioner Ranchod. This
14 is the reporter. I was going to say, Madam Chair, could
15 you try to be as concise as you can as to what your motion
16 actually is? I know it's difficult but it would help me
17 out tremendously, thank you.

18 CHAIR GILMORE: Okay. Sending the matter back to
19 staff and Respondents to see if they can resolve the
20 issues. If that fails, it comes back to us with exactly
21 the evidence before us today. No new evidence. The
22 parties are going to, I guess the word is negotiate or
23 stipulate a timeline, and they are going to narrow down
24 issues of disagreement.

25 THE REPORTER: And that motion was seconded by

1 Commissioner Eisen?

2 CHAIR GILMORE: Yes.

3 COMMISSIONER VASQUEZ: Yes.

4 THE REPORTER: Thank you so much.

5 CHAIR GILMORE: Okay, Margie.

6 MS. MALAN: Commissioner Eisen?

7 COMMISSIONER EISEN: Yes.

8 MS. MALAN: Commissioner Vasquez?

9 COMMISSIONER VASQUEZ: Yes.

10 MS. MALAN: Commissioner Ranchod?

11 COMMISSIONER RANCHOD: Yes.

12 MS. MALAN: Chair Gilmore?

13 CHAIR GILMORE: Yes. Okay, thank you very much. That
14 was Item 5. All right.

15 Now we are on to Item number 6, which is a public
16 hearing and a vote on a recommended enforcement decision to
17 adopt a proposed Cease and Desist and Civil Penalty Order
18 CCD2023.002.00 to address the permit violations and
19 unauthorized development in the Bay and 100 foot shoreline
20 band jurisdictions at 240-242 Redwood Highway Frontage
21 Road, Mill Valley, in Marin County. And vote whether to
22 adopt a recommended enforcement decision proposed by the
23 Executive Director, which includes a proposed Cease and
24 Desist and Civil Penalty Order to require remedial actions
25 at the site and payment of \$180,000 in administrative

1 liability.

2 The record for this matter includes the Violation
3 Report and Complaint, Respondent's Statement of Defense,
4 the recommended Enforcement Decision and proposed Order and
5 all other items identified by BCDC Regulation 11370.

6 And just for the record, will the representative for
7 the Respondent please identify yourself and your
8 relationship to the Respondent. Thank you.

9 MS. BLANCHARD: Certainly. Good afternoon,
10 Commissioner Chair and Committee Members. This is Jillian
11 Blanchard with Rudder Law Group representing Seaplane
12 Investments, LLC for Item number 6. I also have with me
13 Lou Vasquez and Mali Richlen, two Managing Members of the
14 Seaplane Investments site.

15 CHAIR GILMORE: Okay, do we think that we can do the
16 presentations in 15 minutes, Ms. Blanchard, for this one?

17 MS. BLANCHARD: I would love to tell you yes but there
18 is a lot here as you might imagine. I can do my level best
19 but there's a lot of contested issues to cover.

20 CHAIR GILMORE: Okay. Let's, let's start with 20.
21 Ms. Klein, you get 20 also. And I am going to ask you,
22 once again, both sides, to limit the presentations to the
23 evidence that is already made part of the enforcement
24 record and the policy implications of that evidence. I am
25 going to now invite Principal Enforcement Analyst Adrienne

1 Klein to give her presentation, which is going to summarize
2 the Violation Report, the Complaint and recommended
3 Enforcement Decision.

4 MS. MALAN: Chair Gilmore?

5 CHAIR GILMORE: Yes.

6 MS. MALAN: Pardon me, but Shari has her hand up.

7 CHAIR GILMORE: Oh, I'm sorry, I can't see it. Shari.

8 MS. POSNER: Hi, Chair Gilmore. I just wanted to make
9 sure. We are now -- the meeting was scheduled for 1:00 to
10 3:00, we are at 3:15, and I am just concerned about whether
11 or not you will be able to have, complete what you are
12 trying to complete and not end up with half of a hearing.
13 I realize there could be a result that was similar to in
14 the first hearing. But nonetheless, I don't know if you
15 know how long your quorum will last, I guess is what I'm
16 asking?

17 CHAIR GILMORE: That is a very good question. Does
18 anybody have -- Commission Members, Committee Members, I'm
19 sorry, does anybody have time limits?

20 COMMISSIONER VASQUEZ: This is John, I do, I have to
21 leave at 4:00.

22 CHAIR GILMORE: Okay. Anybody else?

23 COMMISSIONER RANCHOD: I have a hard stop at 3:45, I'm
24 sorry.

25 CHAIR GILMORE: Okay, so we will be losing quorum.

1 Shari, what do you suggest we do?

2 MS. POSNER: Again, I don't believe there is any
3 really provision in the regulations for having half a
4 hearing or continuing an open hearing. So I guess it is
5 probably best to continue the hearing but I don't see why
6 you couldn't do that with direction to -- whatever
7 direction the body would like to give to the parties on
8 when this matter comes back. It just seems to me that it
9 would be very unlikely. It sounds like there could be
10 close to an hour of presentations, and that doesn't even
11 include questions, public comment and deliberations. So
12 sorry about that.

13 CHAIR GILMORE: No, good point. We could continue
14 this and have it come back to do what we just did with Item
15 5. Because I think it is going to be helpful for staff --
16 and see, this is difficult, though. Because if we continue
17 this, staff, I think it will be difficult for both sides to
18 enter into robust discussions because they will not have
19 had our input on this. But maybe I'm wrong. Does the
20 staff or the Respondent's attorney want to weigh in on
21 that?

22 MS. KLEIN: My presentation -- oh, apologies.

23 CHAIR GILMORE: No, go ahead.

24 MS. KLEIN: It should be no more than ten-ish minutes.
25 I just have to summarize the six violations, the defenses

1 and the rebuttals.

2 CHAIR GILMORE: Ms. Blanchard? Oh, she already said
3 she's -- okay, never mind. Brent.

4 MR. PLATER: I just do want to note that we have tried
5 to resolve this once before so we have some sense of where
6 the difficulties will lie in trying a second time. So, you
7 know, I wouldn't say that I am particularly hopeful that
8 the outcome would be any different but perhaps there will
9 be a way in between that we can at least put together
10 something that helps the Committee Members understand more
11 precisely which issues are, in fact, contested and relevant
12 to the arguments we are presenting to you.

13 CHAIR GILMORE: So I take that to mean that you are in
14 favor of continuing this item to another date. Is that
15 what I am hearing?

16 MR. PLATER: Well, of course I would prefer it to be
17 resolved in our favor right now but what I am hearing is
18 that's not an option --

19 CHAIR GILMORE: Correct.

20 MR. PLATER: -- because of the time limits on quorum.
21 So given that we will potentially lose quorum, you know, we
22 could schedule a follow-up, you know, with some time built
23 in to try and build some clarity between the staff and the
24 Respondent on the specific facts that we agree upon and try
25 to isolate the issues more concretely for you.

1 CHAIR GILMORE: Well, I would suggest that you follow
2 the blueprint that we laid out in the last item, you know,
3 the consolidated timeline and agreed upon statement of
4 facts. Ms. Blanchard.

5 MS. BLANCHARD: Yes. I just want to flag for the
6 record, I want to make sure that Seaplane Investments'
7 rights are fairly adjudicated. I definitely hear the time
8 constraints and respect that significantly and I appreciate
9 you taking the time already. I don't feel as pessimistic
10 as Mr. Plater about the opportunity to discuss with,
11 particularly Mr. Scharff, some opportunities for
12 settlement. I think if the Commissioners were able to give
13 us some direction on certain things it might be helpful.

14 One in particular that we'd like some direction on
15 because our complaint, as you'd hear, is really with
16 respect to unauthorized fines. We have absolutely no
17 problem with permit compliance, timelines for compliance,
18 and everything that is required to bring that site into
19 compliance. I just want that to be very, very clear. So
20 if the direction from the Commission could be to staff that
21 that is the focus, instead of potentially bankrupting a
22 small company with unauthorized fines when they didn't
23 commit any of these violations, that would absolutely move
24 the needle and let us work towards a very clear opportunity
25 for compliance that would protect Bay resources.

1 CHAIR GILMORE: That is a very lawyer-like statement.
2 (Laughter.) I commend you. Matthew.

3 MR. TRUJILLO: Yes, just wanted to lend my support to,
4 I guess, Brent's position, in that I think a continuance is
5 best given the circumstances.

6 CHAIR GILMORE: Okay. Shari.

7 MS. POSNER: I was just going to say, I think, Chair
8 Gilmore, it would be helpful if, because we have sort of
9 introduced the item so I think if you want to make a motion
10 similar to the motion. I mean, I realize there may be more
11 discussion. When the time comes in saying, there should be
12 a motion.

13 CHAIR GILMORE: Yes, yes, yes, I figured that. I am
14 just trying to kind of get a sense of what staff wants and
15 next steps before I make a motion. John.

16 COMMISSIONER VASQUEZ: This question is to Shari. We
17 have started to discuss Item 6 but we haven't opened the
18 public hearing yet, I don't think so.

19 CHAIR GILMORE: Not yet.

20 COMMISSIONER VASQUEZ: So can we continue this to
21 another date, and maybe one before the whole group meets,
22 again over all this? Say maybe next week if we, if we can
23 find a time very quickly to hear it so that we have an
24 opportunity to have a couple, well, the last one lasted a
25 couple hours, to speak on this one. It is just a single

1 item itself.

2 MS. POSNER: So I am going to try and unpack that,
3 Commissioner Vasquez.

4 COMMISSIONER VASQUEZ: All right, thank you.

5 MS. POSNER: I think that we did introduce the item
6 but I don't think that actual presentations have been made.

7 COMMISSIONER VASQUEZ: Correct.

8 MS. POSNER: There has been some, a little back and
9 forth that one could say was argumentative by both sides,
10 but I don't think that the presentations have been made.
11 So I do think that if someone wanted to entertain a motion
12 of some kind that would be a continuance, I think that we
13 are not in the middle of the hearing proper and that really
14 the public wouldn't have much to comment on, substantively
15 speaking, because there haven't been presentations made.

16 In terms of timing, I personally can't, obviously,
17 comment on/speak to that. But it sounds to me what you are
18 saying is you would like to have the parties present and
19 then provide some guidance and then have them -- I am
20 trying to understand the process that you are envisioning,
21 as opposed to giving them more time than a week. And I
22 guess that's, again, up to the Committee. To me, I think
23 that it's up -- however, you guys fashion it and whatever
24 works for people's schedules and make sense to get the
25 productive kind of result you would like.

1 COMMISSIONER VASQUEZ: Yes. We didn't give a time for
2 5. I am saying that we bring this one back for a scheduled
3 meeting, just the item itself. We can then give our input.
4 They have plenty of time then to do the presentation, we
5 have plenty of time for discussion. And if, if the kinds
6 of things we are looking for are similar to Item 5, we find
7 that in Item 6, then staff and the Applicant have an
8 opportunity to kind of work all that together. Rather
9 than -- I'd rather push it off a little farther but I want
10 to have this hearing as soon as possible so that there is
11 some guidance to Item 6 itself like we did with Item 5. I
12 hope that makes sense.

13 MS. POSNER: Yes, I mean --

14 CHAIR GILMORE: Shari, you're muted.

15 MS. POSNER: You are asking me from a procedural
16 standpoint would that be an option?

17 COMMISSIONER VASQUEZ: Yes.

18 MS. POSNER: That would be an option. I think you
19 just need to decide which option you are going to go down
20 as a Committee.

21 COMMISSIONER VASQUEZ: Okay.

22 CHAIR GILMORE: Sanjay.

23 COMMISSIONER RANCHOD: I believe we have the next
24 Enforcement Committee hearing scheduled for June 8. I
25 don't know if we can continue this to that agenda or if

1 there is a procedural hiccup with that, but that could be
2 one option, it is not too far out. I think it also would
3 give the parties some time to reconsider their positions on
4 the open issues. And if, as it has been inferred, one of
5 the big issues here to making further progress and
6 resolving the items in this matter is, in fact, the penalty
7 amount, in the context of confidential settlement
8 discussions the parties can -- the Respondent can provide
9 more information about their financial status and I think
10 staff can take into account the sense of the Committee here
11 and the discussions we have had over the last two hours.
12 But could somebody clarify whether that is an option
13 procedurally to continue this hearing to the Eighth?

14 MR. TRUJILLO: Yes, I can. But, Commissioner Eisen,
15 if you would prefer to speak before I --

16 COMMISSIONER EISEN: The only thing I have to say is
17 that I have already let Margie know that June 8 is probably
18 not going to work for me because of some surgery. As long
19 as we have a quorum I guess you could proceed without my
20 input, although I would, you know, like, especially since I
21 have heard everything so far, to be able to participate, if
22 possible.

23 MR. TRUJILLO: So that's what I was going to say.
24 June 8, we have learned as of today, we don't have a
25 quorum. There is also the consideration of proper notice.

1 Now the regulations do say that notice of a further hearing
2 can be given at this hearing. But in order to do that we
3 would need a very specific date and time, otherwise we
4 would be, we would have to send the notice in writing ten
5 days prior to any hearing.

6 CHAIR GILMORE: Okay. Since June 8 we do not have a
7 quorum, what about June 21? It is our next regularly --
8 the meeting after June 8.

9 MR. TRUJILLO: We do have a quorum for that date and
10 we have two items on the agenda, both briefings, at least
11 tentatively. We have to coordinate because -- sorry, those
12 items were originally meant to go on the 8th, now we are
13 looking at putting them on the 21st, but we could probably
14 push those off if need be.

15 CHAIR GILMORE: Okay. So let's do this. Let us
16 continue this item, this is Item number 6, to our June 21st
17 meeting. John, you're --

18 COMMISSIONER VASQUEZ: Is that a motion?

19 CHAIR GILMORE: Yes, that will be a motion.

20 COMMISSIONER VASQUEZ: I'll second it.

21 CHAIR GILMORE: Okay, motion by Gilmore, seconded by
22 Vasquez. We will need a roll call vote for this.

23 MS. MALAN: Commissioner Eisen?

24 THE REPORTER: Madam Chair?

25 CHAIR GILMORE: Yes.

1 THE REPORTER: I have two dates here. I heard June
2 24th and then you just mentioned June 21st. I am not clear
3 on that.

4 CHAIR GILMORE: It is June 21st. If I said the 24th I
5 misspoke because that's a Saturday and none of us are going
6 to be here on Saturday.

7 THE REPORTER: Okay, thank you.

8 COMMISSIONER EISEN: And is that a 9:30 or a 1:00
9 o'clock meeting?

10 MR. TRUJILLO: That is the 9:30 regularly scheduled
11 meeting.

12 CHAIR GILMORE: Thank you for that. So the motion is
13 to continue this item to June 21st at our regularly
14 scheduled time of 9:30. And that was my motion.

15 COMMISSIONER VASQUEZ: And that was my second.

16 CHAIR GILMORE: Yes. And Commissioner Vasquez
17 seconded.

18 So, Margie, can you call the roll, please?

19 MS. MALAN: Commissioner Eisen?

20 COMMISSIONER EISEN: Yes.

21 MS. MALAN: Commissioner Vasquez?

22 COMMISSIONER VASQUEZ: Yes.

23 MS. MALAN: Commissioner Ranchod?

24 COMMISSIONER RANCHOD: Yes.

25 MS. MALAN: Chair Gilmore?

1 CHAIR GILMORE: Yes.

2 Okay, so we have officially continued this item. All
3 right, so that is it for us today. I want to just thank
4 staff and Respondent's counsel. The record on this is
5 voluminous. I think everybody did their best to make it as
6 coherent as possible. I just want to thank all of you for
7 your efforts and we will see you on the 21st.

8 Let's see. I need a motion and a second to adjourn
9 the meeting.

10 COMMISSIONER RANCHOD: So moved.

11 COMMISSIONER EISEN: Vasquez --

12 CHAIR GILMORE: Vasquez moves, Eisen seconds. All in
13 favor.

14 (Show of hands and ayes.)

15 CHAIR GILMORE: Motion carries unanimously. Thank
16 you, everyone. We are now adjourned.

17 (Thereupon, the Enforcement Committee meeting was
18 adjourned at 3:29 p.m.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing San Francisco Bay Conservation and Development Commission Enforcement Committee meeting and that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said Committee meeting, or in any way interested in the outcome of said matter.


IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of June, 2023.



JOHN COTA

CERTIFICATE OF TRANSCRIBER

I, RAMONA COTA, a Certified Electronic Reporter and Transcriber, certify that the foregoing is a correct transcript, to the best of my ability, from the electronic recording of the proceedings in the above-entitled matter.


_____ June 12, 2023
RAMONA COTA, CERT**478