

RED Exhibit A: Civil Penalty Order CCD2023.003.00

San Francisco Bay Conservation and Development Commission

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Commission

Civil Penalty Order: CCD2023.003.00

Effective Date: [Pending Commission action, scheduled for Enforcement Committee consideration on May 30, 2023]

Respondents: Seaplane Investment, LLC

To Seaplane Investment, LLC:

I. Civil Penalty Order

Pursuant to Cal. Gov. Code § 66641.6, Respondents are hereby ordered to:

- A. Pay administrative civil liability of twenty-one thousand and one hundred and seventy dollars (\$21,170) to BCDC by cashier's check made payable to the Bay Fill Clean-up and Abatement Fund within thirty (30) days of issuance of this Order. The administrative civil liability consists of:
 1. Five thousand four hundred and forty dollars (\$5,440) for the failure to provide the permit assignment form required by Standard Condition IV.C. of Permit 1973.014.04 between August 20, 2021, and January 3, 2022.
 2. Five thousand four hundred and forty dollars (\$5,440) for the failure to provide the permit assignment form required by Standard Condition IV.E. of Permit M1985.030.01 between August 20, 2021, and January 3, 2022.
 3. Ten thousand dollars two hundred and ninety dollars (\$10,290) for the failure to complete a houseboat remodeling and relocation work prior to permit expiration and continuing to work with an expired permit between August 31, 2021, and January 25, 2022.
- B. If administrative civil liability is not paid within thirty (30) days of issuance of this Order the Executive Director is authorized to refer the matter to the Attorney General pursuant to Cal. Gov. Code § 66641.7(b), Cal. Gov. Code § 66641.5, and/or Cal. Gov. Code § 66641.

II. Findings

Factual Findings

This Commission Civil Penalty Order is based on the findings set forth below. The enforcement record in support of these findings includes all documents cited herein and all documents identified at Cal. Code Regs. tit. 14, § 11370.



- A. Permit 1973.014.04, which applies to Marin County APN 052-247-01 (Block 167), was originally issued to Commodore Marina, LLC, on August 24, 1973. Standard Condition IV.C of the permit states “The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute, and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.” Complaint Exhibits 2A-E.
- B. Permit M1985.030.01, which applies to Marin County APN 052-247-02 (Block 164), was originally issued to Commodore Helicopters, Inc., and Walter Landor on August 25, 1988, and amended once on December 28, 1989. Standard Condition IV.E states “The rights derived from this amended permit are assignable as provided herein An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the original application and request for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.” Complaint Exhibit 3.
- C. On July 21, 2021, title for both parcels transferred from Commodore Marina LLC to Seaplane Investment LLC. Complaint Exhibit 1.
- D. On October 8, 2021, BCDC issued a letter to Shannon Sullivan, Authorized Representative, Seaplane Investment LLC, and Mr. Sharp, Counsel to Seaplane Adventures, LLC, commencing standardized fines pursuant to Regulation 11386 for five violations, three of which are relevant to this proceeding:
 - a. Violations 1 and 2. Two permit assignments necessary because of the title transfer; and
 - b. Violation 3. Failing to complete houseboat renovations and relocation by the August 31, 2021, deadline authorized by BCDC Permit 1973.014.03. Complaint Exhibit 4.

- E. On January 3, 2022, Lou Vasquez, Manager, Seaplane Investments LLC, submitted two, executed permit assignment forms for BCDC Permits 1793.014.01 and M1985.030.01, respectively, resolving Violations 1 and 2 as described in the letter dated October 8, 2021. Complaint Exhibit 5.
- F. On December 17, 2021, Respondent submitted photographic evidence that the houseboat had been relocated to the authorized position and the two pilings and work platform had been removed from SF Bay and, on January 25, 2022, BCDC issued Permit 1973.014.04, the after-the-fact extension of completion time to complete the houseboat remodeling and relocation project, thereby resolving Violation 3 as described in the letter dated October 8, 2021. Complaint Exhibit 2E.
- G. On August 2, 2022, BCDC informed Respondent to pay \$12,300 in standardized fines for Violations 1 through 3. The letter stated that the duration of Violations 1 and 2 was from October 8, 2021, to January 3, 2022, resulting in a standardized fine of \$3,000 per assignment violation. The letter stated that the duration of Violation 3 was from October 8, 2021, to January 25, 2022, resulting in standardized fine of \$6,300 for the violation. The letter directed Respondent to submit a check for \$12,300 made payable to the SF Bay Fill Clean-up and Abatement Fund within days or by September 2, 2022. Complaint Exhibit 6.
- H. Between August 2, 2022, and September 21, 2022, Respondent did not submit the \$12,300 dollar standardized fine.
- I. On September 21, 2022, staff issued a Final Notice Letter to Respondent stating that Respondent had thirty-five days, or until October 26, 2022, to resolve the penalty portion of the violations using standardized fines. Complaint Exhibit 7.
- J. Between September 21, 2022, and October 26, 2022, Respondent did not submit the \$12,300 dollar standardized fine.
- K. As of the date of mailing of this Complaint, Respondent has not submitted the standardized fines accrued for two permit assignment violations that persisted between August 20, 2021 (thirty days following July 21, 2021, the property purchase date), and January 3, 2022, and for working on a houseboat remodeling and relocation project with an expired permit between August 31, 2021, and January 25, 2022.
- L. On December 1, 2022, Respondent submitted a Statement of Defense.

Legal Findings

- A. The Commission finds that Respondent has violated and is violating:
 - 1. Between August 20, 2021, thirty days following the July 21, 2021, property

- purchase date, and January 6, 2022, Respondent violated Permit 1973.014.03, Standard Condition IV.C, Permit Assignment, by failing to submit a fully executed permit assignment form and supporting legal documentation (Violation 1);
2. Between August 20, 2021, thirty days following the July 21, 2021, property purchase date, and January 6, 2022, Respondent violated Permit M1985.030.00, Standard Condition IV.E, Permit Assignment, by failing to submit a fully executed permit assignment form and supporting legal documentation (Violation 2);
 3. Between August 31, 2021, to January 25, 2022, Respondent violated Authorization Section I.C, Deadlines for Commencing and Completing Authorized Work, of Permit 1973.014.03 and Section 66632(a) of the McAteer-Petris Act by failing to complete houseboat remodeling and relocation work in SF Bay by August 31, 2021, the date of expiration, and continuing the work with an expired permit (Violation 3); and
- B. The Commission finds that in this matter BCDC staff correctly identified three distinct violations.
- C. The Commission also finds that based on the factors provided by MPA Section 66641.9, a \$21,170 penalty for three (3) violations is appropriate.
- D. Since assuming ownership of the property on July 21, 2021, Respondent became responsible for the three violations, which have existed for 137 days (two permit assignments) and 146 days (failing to complete work prior to permit expiration and continuing to work with an expired permit). After considering the factors required by McAteer-Petris Act § 66641.9, BCDC staff recommends a \$5,440 penalty for each assignment violation and a \$10,290 penalty for working with an expired permit, totaling \$21,170 in administrative liability.
- E. The Commission finds that the nature and extent of harm caused by these violations is minor but permit requirements were nonetheless ignored that should have been fulfilled in a timely fashion. Each violation could have been resolved without imposition of administrative civil penalties, but Respondent was slow to complete the necessary paperwork and may not have done so without direction to do so from the BCDC staff.
- F. The Commission finds that while the violations are susceptible to resolution and, in fact, physically resolved, the violations were not resolved swiftly enough to avoid the issuance of the letter, dated October 8, 2021, that commenced the standardized fines penalty clock nor, following issuance of that letter, resolved swiftly enough to avoid the accrual of standardized fines. Since Respondent failed to resolve the penalty portion of the three violations with the accrued standardized fines (or with the procedures provided pursuant to Chapter 13, Enforcement Procedures, of the Commission's

Regulations), staff commenced this formal enforcement proceeding against Respondent to resolve the penalty portion of three resolved 'paper' violations.

- G. The Commission finds the cost to the state in pursuing this case since 2019 was high. Staff invested time identifying the two permit assignment violations and the expired permit/unfinished project violation, advising Respondent how to resolve each of the three violations and reviewing Respondent's submittals for completeness. Because the violations were not resolved by October 8, 2021, staff drafted and issued a 35-day enforcement letter to commence a standardized fine penalty clock to incentivize speedy resolution of the violations. While the 35-day letter achieved its intended outcome and caused resolution of the violations, between August 2, 2022, and October 26, 2022, Respondent failed to pay the associated standardized fines that had accrued between October 8, 2021, and January 3, and January 25, 2022, respectively, requiring staff to draft and issue a Complaint to resolve the penalty portion of these three violations using a formal enforcement proceeding and administrative penalties pursuant to Section 66641.5(e) of the McAteer-Petris Act.
- H. The Commission finds that Respondent is culpable for the violations as it did not submit two approvable permit assignments until January 3, 2022, 166 days after it took ownership of the property on July 21, 2021, and it did not obtain after-the-fact authorization for the unauthorized completion of the houseboat remodeling and relocation project until January 25, 2022, 147 days after the August 31, 2022, permit expiration date.
- I. The Commission finds the Respondent's inferred inability to pay is not substantiated by any evidence. Furthermore, staff finds that had Respondent resolved the penalty portion of each violation using standardized fines it would have saved time and money.
- J. Based on these penalty factors the Commission finds that a \$40 penalty per day for each of two failures to take assignment of Permit 1973.014.03 and Permit M1985.030.00 (Violations 1 and 2), an \$70 penalty per day for the failure to complete a houseboat remodeling and relocation work in SF Bay by August 31, 2021, the date of expiration, and continuing the work with an expired permit. (Violation 3).
- K. The Commission finds that Respondents have been responsible for: Violations 1 and 2 for 136 days from August 20, 2021 (which is 30 days following July 21, 2021, the property purchase date), to January 3, 2022; and Violation 3 for 147 days from August 31, 2021, the date of expiration of Permit 1973.014.03, to January 25, 2022, to date of issuance of Permit 1973.014.04. These time periods were calculated for the Violation Report and Complaint for Administrative Civil Liability, which was mailed to Respondent on October 27, 2022.
- L. The Commission thus finds that it is appropriate that each of the three violations are subject to less the maximum penalty allowed by the MPA: \$5,440 for each permit

assignment violation, and \$10,290 for working with an expired permit, for a total administrative civil liability of \$21,170.

III. Terms

- A. The Executive Director may grant an extension of time for demonstrated good cause to comply with any provision of this Order. The Executive Director shall inform the Enforcement Committee Chair and the Commissioners of any extensions that are granted under this provision.
- B. This Order does not affect any duties, rights, or obligations established under private agreements or by the laws and regulations of other public bodies.
- C. This Order does not constitute a recognition of property rights.
- D. This Order is effective upon issuance thereof.

IV. Judicial Review

- A. Under Cal. Gov. Code §§ 66639 & 66641.7(a), within thirty days after service of a copy of a civil penalty order issued by the Commission, an aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

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

LAWRENCE J. GOLDZBAND, BCDC Executive Director

Date

LJG/bp/mm

Full Commission Motion and Action:

Please check one of the four boxes indicating your decision, then sign and return the memorandum to BCDC Staff:

By a vote of __ yeses, __ noes, and __ abstentions, the Commission concurs with the Enforcement Committee's Recommended Enforcement Decision and issues the proposed Cease and Desist and Civil Penalty Order.

By a vote of __ yeses, __ noes, and __ abstentions, the Commission votes to dismiss this matter and declines to issue the proposed Cease and Desist and Civil Penalty Order for the reasons specified in the attached memorandum.

By a vote of __ yeses, __ noes, and __ abstentions, the Commission votes to remand the matter back to the Enforcement Committee for further action for the reasons specified in the attached memorandum.

By a vote of __ yeses, __ noes, and __ abstentions, the Commission rejects the Enforcement Committee's Recommended Enforcement Decision and decides to consider the entire matter de novo at the Commission meeting on _____.

Zachary Wasserman, Commission Chair
San Francisco Bay Conservation and Development Commission

Date: