

RED Exhibit B - Complaint for Administrative Civil Penalties with exhibits, dated
October 27, 2022, ER2019.063.00

San Francisco Bay Conservation and Development Commission

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

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

Via Certified and Electronic Mail

October 27, 2022

Lou Vasquez, Manager
Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109
Email: lou@bldsf.com

SUBJECT: Commencement of Second Formal Enforcement Proceeding (BCDC) Enforcement Case ER2019.063.00

Dear Lou Vasquez:

This letter commences a second formal enforcement proceeding for administrative penalties for three resolved “paper” violations as outlined in the letter issued on August 2, 2022. Your opportunity to resolve those violations using standardized fines terminated on October 26, 2022, as outlined in the letter addressed to you and dated September 21, 2022.

Enclosed you will find a Complaint for Administrative Imposition of Civil Penalties in BCDC Enforcement Case ER2019.063.00, which alleges that you failed to pay standardized fines to fully resolve two violations of BCDC Permit 1973.014.01 (failure to complete a required permit assignment form and completing a houseboat remodel and relocation with an expired permit) at APN 052-247-01 and one violation of BCDC Permit M1985.030.01 (failure to complete a required permit assignment form) at APN 052-247-02. This site is also known by its address, 242 Redwood Highway, Mill Valley, Ca.

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

A hearing to address these allegations has been scheduled before BCDC's Enforcement Committee on December 21, 2022, at 9:30 am. You must submit a Statement of Defense to BCDC on or before December 1, 2022, pursuant to BCDC Regulation Section 11322(a). Please note BCDC’s current office address: 375 Beale St., Suite 510, San Francisco, CA 94105.



Seaplane Investment, LLC
Enforcement Case ER2019.063.00

Page 2
October 27, 2022

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

Sincerely,

DocuSigned by:

7A7D306B857043F
ADRIENNE KLEIN

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

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

Enclosures: Complaint for Administrative Civil Penalties with Exhibits, ER2019.063.00
BCDC Enforcement Regulations with Appendix I
Statement of Defense Form

AK/mm

San Francisco Bay Conservation and Development Commission

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

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

Sent Via Certified and Electronic Mail

October 27, 2022

Lou Vasquez, Manager
Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109
Email: lou@bldsf.com

SUBJECT: Notice of Complaint for Administrative Civil Penalties

BCDC Case Number: ER2019.063.00

Permit Numbers: 1973.014.04 and M1985.030.01

Date Mailed: October 27, 2022

35th Day after Mailing: December 1, 2022

60th Day after Mailing: December 26, 2022

Enforcement Committee Hearing Date: December 21, 2022

COMPLAINT FOR ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES

ENFORCEMENT CASE ER2019.063.00

Seaplane Investment, LLC

(Respondent)

**Guidance to
Respondent**

FAILURE TO RESPOND TO THIS COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CIVIL PENALTY ORDER WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THE ALLEGATIONS OR TO INTRODUCE ANY EVIDENCE.

The San Francisco Bay Conservation and Development Commission is issuing this Complaint for the administrative imposition of civil penalties and the enclosed statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of either the Commission's laws or a Commission permit. The Complaint contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and refers to all pertinent evidence that the staff currently relies on. All



the evidence that this report refers to is available in the enforcement file for this matter located at the Commission's office. To view the enforcement file and/or to have copies made at your expense, contact Adrienne Klein of the Commission's staff at 415-352-3609 or adrienne.klein@bcd.ca.gov or Brent Plater of the Commission's staff at 415-352-3628 or brent.plater@bcd.ca.gov.

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

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

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

Complaint for Administrative Imposition of Civil Penalties

I. Person or persons believed responsible for illegal activity:

Seaplane Investment, LLC

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

- A. Violation 1. Between August 20, 2021, 30 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.
- B. Violation 2. Between August 20, 2021, 30 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.
- C. Violation 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 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.



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

The now-resolved violations occurred at APN 052-247-01 (Block 164) and APN 052-247-02 (Block 167), which are located on either side of Yolo Street, a Marin County public right-of-way. The violations also occurred on property owned by Marin County. VR&C Exhibit 1.

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

Seaplane Investment, LLC; County of Marin

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

Violations 1 and 2, summarized in Section II and described in further detail in Section VI, occurred between August 20, 2021, 30 days following the July 21, 2021, property purchase date, and January 6, 2022, the date staff approved the two permit assignment forms. The fully executed permit assignment forms resulted in resolution of the violations on January 6, 2022, but the accumulated standardized fines were never paid.

Violation 3, summarized in Section II and described in further detail in Section VI, occurred between August 31, 2021, the date of expiration of Permit 1973.014.03, and January 25, 2022, the date of issuance of Permit 1973.014.04. The issuance of Permit 1973.014.04 resulted in resolution of the violation on January 25, 2022, but the accumulated standardized fines were never paid.

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

- A. Permit 1973.014.04, which applies to 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." VR&C Exhibits 2A-E.
- B. Permit M1985.030.01, which applies to 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.” VR&C Exhibit 3.

- C. On July 21, 2021, title for both parcels transferred from Commodore Marina LLC to Seaplane Investment LLC. VR&C 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. VR&C 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. VR&C 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. VR&C 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. VR&C 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 35 days, or until October 26, 2022, to resolve the penalty portion of the violations using standardized fines. VR&C 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 (30 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.

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

McAteer-Petris Act Section 66632(a)

Cal. Code Regs. tit. 14, Sec. 11386(h) (2021)

Permit 1973.014.01, Standard Condition IV.C, Permit Assignment

Permit 1973.014.01, Authorization Section I.C, Deadlines for Commencing and Completing Authorized Work

Permit M1985.030.01, Standard Condition IV.E, Permit Assignment

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

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

Commission staff proposes a penalty of \$21,170 for the following three violations of the MPA. In determining the amount of administrative civil liability (penalty), staff has considered: (1) with respect to each violation, (A) the nature, circumstance, extent, and gravity of the violation, (B) whether the violation is susceptible to removal or resolution, and (C) the cost to the State of California in pursuing enforcement action; and (2) with respect to the violators, (A) the ability to pay, (B) the effect on their ability to continue in business, (C) any voluntary removal or resolution efforts and any prior history of violations, (D) the degree of culpability, (E) the economic savings, if any, resulting from the violation, and (F) such matters as justice may require.



Prohibited Activity	Permit Provision Violated	Total Days	Proposed Daily Penalty Amount	Proposed Total Penalty
Violation 1. Failing to provide the required permit assignment for 87 days following receipt of the October 8, 2021, letter.	Permit 1973.014.04, Standard Condition IV.C	136 days from August 20, 2021 (30 days following July 21, 2021, the property purchase date), to January 3, 2022	\$40	\$5,440
Violation 2. Failing to provide the required permit assignment for 87 days following receipt of the October 8, 2021, letter.	Permit M1985.030.01, Standard Condition IV.E	136 days from August 20, 2021 (30 days following July 21, 2021, the property purchase date), to January 3, 2022	\$40	\$5,440
Violation 3. Failing to complete a houseboat remodeling and relocation work in SF Bay by August 31, 2021, the date of expiration of Permit 1974.014.003 and continuing the work with an expired permit.	McAteer-Petris Act Section 66632(a) Permit 1973.014.04, Authorization Section I.C, Deadlines for Commencing and Completing Authorized Work.	147 days, from August 31, 2021, to January 25, 2022	\$70	\$10,290
			Total Penalty	\$21,170

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

On July 29, 2022, staff mailed a Violation Report and Complaint to Respondent for other violations also part of Enforcement Case ER2019.063.00. On October 14, 2022, staff mailed a Recommended Enforcement Decision and proposed Order to the Enforcement Committee to address these other violations. This other matter was tentatively scheduled for a public hearing on October 26, 2022, which was postponed on October 19, 2022.

X. List of staff exhibits:

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

Exhibit 02A: Permit 1973.014.01

Exhibit 02B: Permit 1973.014.02, Time Extension, issued on December 20, 2019

Exhibit 02C: Corrected Permit 1973.014.02, Time Extension, issued on September 2, 2020

Exhibit 02D: Permit 1973.014.03, Time Extension, issued on April 16, 2021

Exhibit 02E: Permit 1973.014.04, Time Extension, issued on January 25, 2022

Exhibit 03: Permit M1985.030.01

Exhibit 04: October 8, 2021, 35-day standardized fines letter and Attachment 1 (one of four original attachments)

Exhibit 05: January 3, 2022, Two Assignment Forms for Permits 1973.014.01 and M1985.030.01, and Operating Agreement

Exhibit 06: August 2, 2022, Standardized Fines Due Letter with all four attachments

Exhibit 07: September 21, 2022, Final Notice to Resolve with Standardized Fines Letter without its attachment

XI. Additional Administrative Record Documents

Description
Enforcement File ER2019.063.00
Permit File 1973.014.03
Permit File M1985.030.01
Executive Director Cease & Desist Order File ECD2022.002.00, .01 and .02
Enforcement File ER2010.021
San Francisco Bay Plan
Richardson Bay Special Area Plan



Property Detail Report

For Property Located At :

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



Owner Information

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

Location Information

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

Owner Transfer Information

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

Last Market Sale Information

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

Prior Sale Information

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

Property Characteristics

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

Site Information

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

Tax Information

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

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

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



2021-0047902

RECORDING REQUESTED BY:

Old Republic Title Company

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

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

When Recorded Mail Document and Tax Statements to:

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

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

Grant Deed

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

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

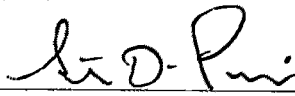
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Commodore Marina, LLC

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

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

Date: July 21, 2021

Commodore Marina, LLC, a California limited liability company

By: 
Steven D. Price, its sole member

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

State of California
County of Sonoma

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

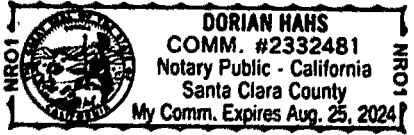
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Dorian Hahs

Name: Dorian Hahs
(Typed or Printed)

(Seal)



ORDER NO. : 0224054343

EX. A REF. PG. 1

EXHIBIT A

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

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

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

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

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

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

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

Property Detail Report

For Property Located At :
,, CA



Owner Information

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

Location Information

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

Owner Transfer Information

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

Last Market Sale Information

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

Prior Sale Information

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

Property Characteristics

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

Site Information

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

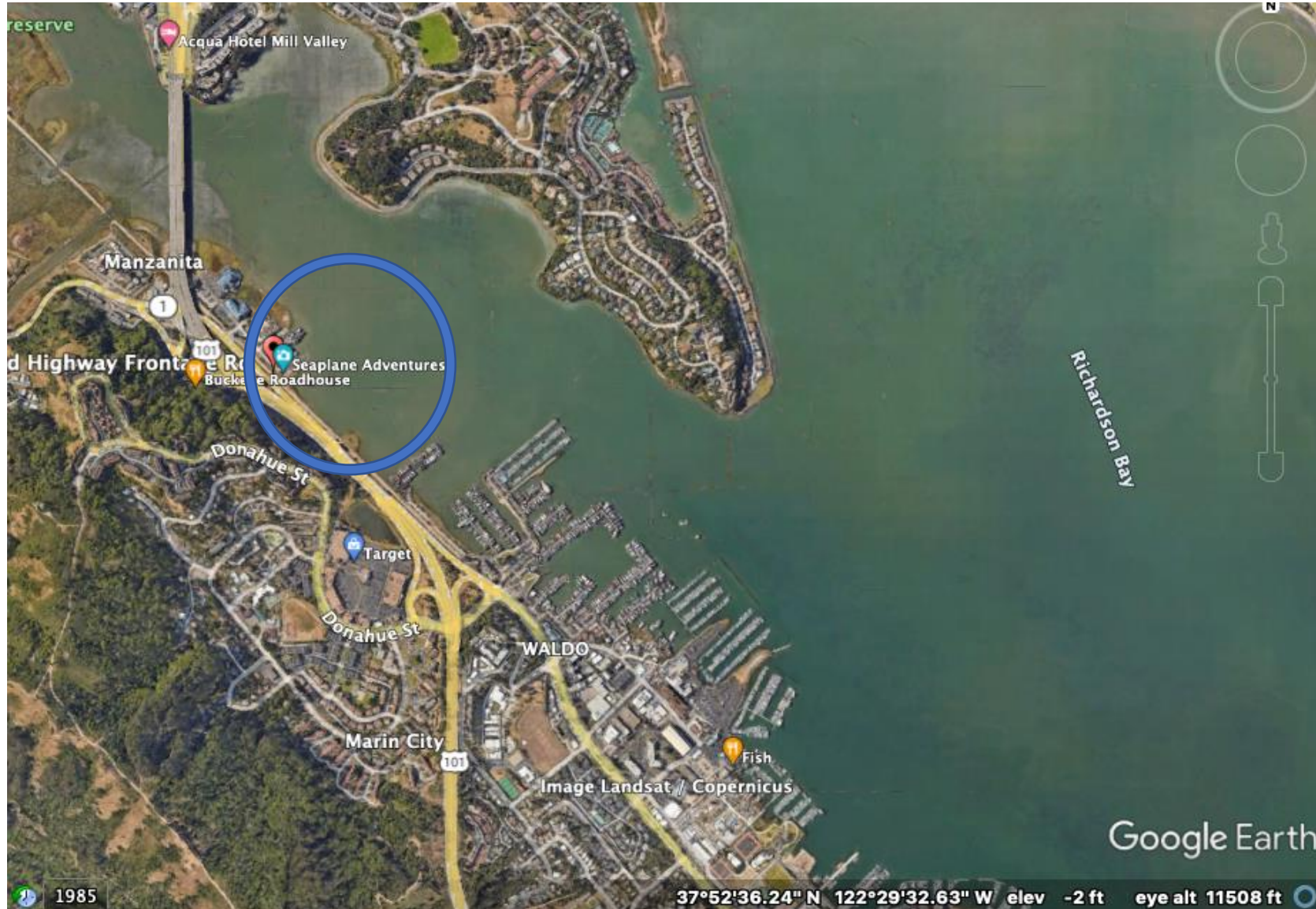
Tax Information

Total Value:	\$112,841	Assessed Year:	2021	Property Tax:	\$2,429.46
Land Value:	\$112,841	Improved %:		Tax Area:	90013
Improvement Value:		Tax Year:	2021	Tax Exemption:	
Total Taxable Value:	\$112,841				

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



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



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



San Francisco Bay Conservation and Development Commission

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

November 21, 2017

Exhibit 02A

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

ATTENTION: Steve Price

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

Dear Mr. Price:

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

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

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

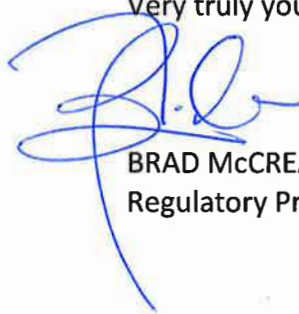
You must (1) **complete** the acknowledgment section of the amended permit stamped "BCDC Original," which indicates that you have read and that you understand all of the terms and conditions of the amended permit, and (2) **return** that entire executed "BCDC Original" to the Commission's office within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

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

Steve Price
Commodore Marina, LLC
November 21, 2017
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If you should have any questions regarding the amended permit or the procedure outlined above, please contact Erik Buehmann of our staff at 415-352-3645 or erik.buehmann@bcd.ca.gov.

Very truly yours,



BRAD McCREA
Regulatory Program Director

Enc.

BM/EB/ra

cc: Harold Hedelman

PERMIT NO. 1973.014.01

Commodore Marina, LLC

NOTICE OF COMPLETION AND DECLARATION OF COMPLIANCE

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

Ladies and Gentlemen:

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

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

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

Executed on this _____ day of _____, 20____,

at _____, California.

(Permittee)

Print Name and Title

San Francisco Bay Conservation and Development Commission

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

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

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

I. Authorization

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



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

2. Within the 100-foot shoreline band

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

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

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

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

II. Special Conditions

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

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

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

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

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

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

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

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

A. Plan Review

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

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

BC. Public Access

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

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

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

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

EF. Water Quality (Original Authorization)

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

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

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

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III. Findings and Declarations

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

A. Solid Fill (Original Authorization).

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

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B. Houseboat and Boat Docks (Original Authorization).

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

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

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

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

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

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

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

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

IV. Standard Conditions

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

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

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

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 14

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

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

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

N. Best Management Practices

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


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

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

PERMIT NO. 1973.014.01
Commodore Marina, LLC
(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)
AMENDMENT NO. ONE
Page 15

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

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

By: 

BRAD McCREA
Regulatory Program Director

BM/EB/ra

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

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____ Commodore Marina, LLC
Permittee

On _____ By: _____

Print Name and Title

San Francisco Bay Conservation and Development Commission

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

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

Exhibit 02B

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

December 20, 2019

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

SUBJECT: BCDC Permit No. 1973.014.02; Time Extension

To Whom It May Concern:

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

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

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

Very truly yours,



Erik Buehmann
Coastal Program Manager

EB/ra

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



San Francisco Bay Conservation and Development Commission

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

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Exhibit 02C

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

September 2, 2020

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

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

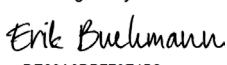
To Whom It May Concern:

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

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

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

Very truly yours,

DocuSigned by:

DE28A8DB779F45C...

ERIK BUEHMANN
Bay Resources Program Manager

EB/ra

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



San Francisco Bay Conservation and Development Commission

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

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April 16, 2021

Exhibit 02D

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

SUBJECT: BCDC Permit No. 1973.014.003; Time Extension

Dear Mr. Harold Hedelman:

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

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

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

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

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

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

LJG/Ry/ra



San Francisco Bay Conservation and Development Commission

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

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January 25, 2022

Exhibit 02E

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

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

Dear Mr. Vasquez:

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

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

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

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

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

LJG/RY/ra



SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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



BCDC Original

PERMIT NO. M85-30

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

AMENDMENT NO. ONE

Exhibit 03

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

ATTENTION: Eve Geertsema
 Corporate Secretary

AND

Walter Lander
 1001 Front Street
 San Francisco, California 94111

RECEIVED
 JAN 9 1990

SAN FRANCISCO BAY CONSERVATION
 & DEVELOPMENT COMMISSION

Gentlemen:

I. Authorization

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

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

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

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

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

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

II. Special Conditions

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

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

III. Findings and Declarations

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

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

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
Page 3

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

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

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

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

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

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

PERMIT NO. M85-30

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

AMENDMENT NO. ONE

Commodore Helicopters, Inc.,
and Walter Lander

Page 4

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

IV. Standard Conditions

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

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

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

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

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

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

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

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
Page 5

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

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

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

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


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

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

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
Page 6

their assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

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


WILLIAM TRAVIS
Acting Executive Director

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

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

* * * * *

Receipt acknowledged, contents understood and agreed to:

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

* * * * *

Receipt acknowledged, contents understood and agreed to:

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

San Francisco Bay Conservation and Development Commission

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

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Exhibit 04

Via Certified Mail and Electronic Mail

October 8, 2021

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

For

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

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

Dear Seaplane Investment LLC:

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

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



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

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

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

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

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

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



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

Permit 1973.014.01 authorizes the permittees to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

Sincerely,

Adrienne Klein

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



AK/mm

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

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

Appendix 1. Explanation of Standardized Fines Pursuant to Regulation § 11386**Enforcement Options.**

Pursuant to section 11386 of the BCDC's administrative regulations, you may resolve the penalty portion of each alleged violation by paying the standardized fines described below or you have the option to seek resolution through a formal enforcement proceeding that would involve a public hearing. If any of your actions are determined to be knowing and intentional violations or violate a term of a cease and desist order, the law (sections 66641.5(c) and 66641 of the McAteer-Petris Act, respectively) provides that we may refer this matter to the Office of the Attorney General, which could subject you to significant court imposed penalties.

Cease and Desist and Civil Penalty Order.

If you have not corrected all the alleged violations within 125 days of the date of this letter, you may no longer have the option to settle this matter with standardized fines and we may, pursuant to sections 66638 and 66641.5(e) of the McAteer-Petris Act, commence a formal enforcement proceeding that could lead to the issuance of a cease and desist and civil penalty order with an administratively imposed civil penalty of between \$10 and \$2,000 per day up to a maximum of \$30,000 per alleged violation.

§ 11386 (e)(2) For the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit.

If the alleged violation is fully corrected within 35 days of the date of this letter, no civil penalty will apply.

For each document submitted between 36 and 65 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$1,000 per document.

For each document submitted between 66 and 95 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$3,000 per document.

For each document submitted more than 95 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$3,000 per document plus \$100 per day for each document, from the 96th day to the date the document is received by the staff.

§ 11386 (e)(4) For the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit.

If the alleged violation is *fully corrected* within 35 days of the date of this letter, *no civil penalty* will apply.



If a fileable application is submitted between 36 and 65 days and a permit *amendment* is obtained within 155 days after the date of the mailing of this letter **or** the unauthorized activity is completely corrected between 36 and 65 days then you may resolve the penalty portion of the alleged violation by paying a *standardized fine of \$2,000*.

If a fileable application is submitted between 66 and 95 days and a permit *amendment* is obtained within 185 days after the date of the mailing of this letter or the unauthorized activity is completely corrected between 66 and 95 days then you may resolve the penalty portion of the alleged violation by paying a *standardized fine of \$5,000*.

If a fileable application is submitted **or** the unauthorized activity is completely corrected more than 95 days after the date of the mailing of this letter then you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$5,000 plus \$100 per day from the 96th day to the date a permit *amendment* is obtained or the unauthorized activity is completely corrected.

§ 11386 (e)(3) For the failure to comply with any condition required by a Commission permit.

If the alleged violation is fully corrected within thirty-five days of the date of this letter, then no civil penalty will apply.

If corrected between 36 and 65 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$1,000 for each violation noted above.

If corrected between 66 and 95 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$3,000 for each violation noted above.

If corrected more than 95 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$3,000 for each violation noted above, plus \$100 per day per violation, from the 96th day to the date the required improvements are provided.



Exhibit 05

Assignment of BCDC Permit

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

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

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

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

dated August 24, 1973, as amended through Amendment

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

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

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

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

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

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

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

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

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

DocuSigned by:
Lou Vasquez

(signature of assignee or person executing for
assignee)

Assignment of BCDC Permit

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

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

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

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

dated December 28, 1985, as amended through Amendment

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

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

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

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

Sonoma, California.

DocuSigned by:

Steve Price

(signature of assignor or person executing for assignor)

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

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

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

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

DocuSigned by:
Lou Vasquez

(signature of assignee or person executing for
assignee)

OPERATING AGREEMENT
OF
SEAPLANE MANAGEMENT, LLC

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

RECITALS

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

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

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

AGREEMENT

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

1. FORMATION OF LIMITED LIABILITY COMPANY

1.1 Name and Principal Office.

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

1.2 Purpose.

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

1.3 Addresses of the Members.

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

1.4 Term of the Company.

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

1.5 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CAPITALIZATION OF THE COMPANY

2.1 *Members; Capitalization.*

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

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

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

2.2 *Withdrawal and Return of Capital.*

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

2.3 *Limitation of Liability.*

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

3. COMPANY ACCOUNTING AND DIVISION OF PROFITS

3.1 *Fiscal Year/Accounting Method.*

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

3.2 Distributions.

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

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

3.3 Allocation of Net Income and Net Losses.

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

3.4 Compliance with Regulatory Allocation Requirements.

(a) Notwithstanding any other provision of this Agreement to the contrary, if in any year there is a net decrease in the amount of the Company's Minimum Gain (within the meaning of Treasury Regulation §1.704-2(d)) then each Member shall first be allocated items of Gross Income for such year equal to that Member's share of the net decrease in Company Minimum Gain (within the meaning of Treasury Regulation §1.704-2(g)(1)).

(b) Notwithstanding any other provision of this Agreement to the contrary other than Section 3.4(a), above, if in any year there is a net decrease in the amount of the Partner Nonrecourse Debt Minimum Gain (within the meaning of Treasury Regulation §1.704-2(i)(3)) then each Member shall first be allocated items of Gross Income for such year equal to that Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain (within the meaning of Treasury Regulation §1.704-2(i)(5)).

(c) Notwithstanding any of the provisions above (except Sections 3.4(a) and 3.4(b), which shall be applied first), if in any fiscal year or other period a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6), which creates or increases a negative balance in such Member's Adjusted Capital Account, Gross Income (and items thereof) shall first be allocated to Members with negative Adjusted Capital Account balances at the end of such fiscal year, in proportion to such negative balances, until such balances are increased to zero.

(d) Notwithstanding the provisions of Section 3.3, Net Losses (or items thereof) allocated pursuant to Section 3.3 shall not be allocated to a Member if such allocation would cause or increase a negative balance in such Member's Adjusted Capital Account at the end of the fiscal year of such allocation and shall be reallocated to the other Members, subject to the limitations of this Section 3.4.

(e) Any Net Loss or deductions attributable to Partner Nonrecourse Debt (within the meaning of Treasury Regulation §1.704.2(b)(3)) shall be allocated to the Member who bears the economic risk of loss with respect to such Debt.

(f) Allocations of book and tax items with respect to property contributed by any Member shall be made solely for federal income tax purposes as required by Section 704(c) of

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

3.5 Curative Allocations.

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

3.6 Members Not Resident in California.

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

3.7 Company Records.

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

3.8 Tax Information.

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

3.9 Tax Matters Representative

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

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

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

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

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

4. ADMINISTRATIVE PROVISIONS

4.1 Management Vested in Manager.

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

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

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

4.2 Member Approval for Certain Actions.

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

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

4.3 Competing Ventures.

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

4.4 Reimbursement and Compensation.

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

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

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

5. TRANSFER OF A COMPANY INTEREST

5.1 Compliance With This Agreement.

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

5.2 No Lien or Encumbrance of Interest in Company.

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

5.3 Conditions on Transfer.

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

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

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

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

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

5.4 Right of First Offer.

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

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

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

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

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

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

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

5.5 *Transferee Not Admitted as Member.*

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

5.6 *Divorce of a Member; Spousal Consent.*

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

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

6. DISSOLUTION/TERMINATION OF COMPANY

6.1 *Dissolving Events.*

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

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

Act.

6.2 *Winding Up of the Company.*

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

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

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

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

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

7. LIABILITY AND INDEMNIFICATION OF THE MANAGER AND MEMBERS

7.1 *Liability.*

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

7.2 *Indemnification.*

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

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

8. GENERAL PROVISIONS

8.1 *Entire Agreement*

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

8.2 *Amendments.*

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

8.3 Governing Law.

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

8.4 Meetings of Members; Actions Without Meetings.

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

8.5 Severability.

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

8.6 Counterparts.

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

8.7 Captions.

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

8.8 Survival of Rights.

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

8.9 Additional Documents

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

8.10 Mediation, Arbitration and Attorneys' Fees

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

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

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

8.11 Notices

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

8.12 Gender

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

8.13 No Third Party Beneficiaries.

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

[Signature page follows.]

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

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

MANAGER:



Lou Vasquez

OTHER MEMBERS:



Signature

Aaron Singer

Print Name

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

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

EXHIBIT B
SEAPLANE MANAGEMENT, LLC

Spousal Consent

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

Dated: _____, 20__

Signature of Spouse or Domestic Partner







Name of Spouse or Domestic Partner



Audit Trail

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

Document History

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 VIEWED	07 / 23 / 2021 22:55:26 UTC	Viewed by Aaron Singer (aaron@seaplane.com) IP: 71.13.55.189
 SIGNED	07 / 26 / 2021 16:19:41 UTC	Signed by Aaron Singer (aaron@seaplane.com) IP: 166.205.124.70
 VIEWED	07 / 26 / 2021 16:42:12 UTC	Viewed by Louis Vasquez (lou@bldsf.com) IP: 73.162.17.92
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 COMPLETED	07 / 26 / 2021 16:42:34 UTC	The document has been completed.

San Francisco Bay Conservation and Development Commission

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

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

Via email only

Exhibit 06

August 2, 2022

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

For

ATTN: Lou Vasquez, Manager
Seaplane Investment LLC
315 Linden Street
San Francisco, CA 94102-5109
Email: lou@bldsf.com

SUBJECT: Standardized Fines Due for Violations 1, 2 and 3 as per 10.08.2022 Letter. BCDC Enforcement Case ER2019.063.00, BCDC Permit BCDC Permit 1973.014.01 (and time extensions) (APN 052-247-01)

Dear Mr. Vasquez:

As you are aware, BCDC issued a letter on October 8, 2021 (attached), that commenced a standardized fines penalty clock pursuant to BCDC Regulation 11386 for five¹ violations, three of which are the subject of this letter:

Violations 1 and 2. For failure to submit a document in the form, manner and time required by the permit; i.e., two permit assignments due within 30 days of July 21, 2021, for Permits 1973.014.01 and M1985.030.01, respectively.

¹ BCDC revoked Seaplane Investment, LLC's opportunity to resolve Violations 4 & 5 through the standardized fine process on July 29, 2022, and on the same day initiated formal enforcement proceedings for these violations as well as four others.



Violation 3. For the failure to obtain a permit prior to undertaking the activity that can be authorized by an administrative permit; i.e., failing to complete the houseboat remodel and re-location and removal of two pilings and a work platform prior to the permit completion date of August 31, 2021.

The letter states that any violation that is resolved within 35 days of October 8, 2021, i.e., by November 12, 2021, shall accrue no fine. You resolved zero violations within 35 days; therefore, the following standardized administrative fines have accrued for each violation.

Violations 1 and 2.

The letter states that if a violation involving a missing document is resolved between 36 and 65 days of October 8, 2021, or between November 13 and December 12, 2021, the penalty for each violation is \$1,000. You did not resolve either permit assignment violation during this time.

It further states that if this same violation is resolved between 66 and 95 days of October 8, 2021, or between December 13, 2021, and January 11, 2022, the penalty for each violation is \$3,000.

You resolved both permit assignment violations on January 3, 2022, by submitting two fully executed permit assignment forms and an executed operating agreement, which staff was able to subsequently approve. Therefore, for Violations 1 and 2, you accrued two standardized fines of \$3,000 each, totaling \$6,000.

Violation 3.

The letter states that if a violation involving the failure to obtain a permit prior to undertaking the activity that can be authorized by an administrative permit is resolved between 36 and 65 days of October 8, 2021, or between November 13 and December 12, 2021, the penalty for the violation is \$2,000. You did not resolve Violation 3 by December 12, 2021.

It further states that if this same violation is resolved between 66 and 95 days of October 8, 2021, or between December 13, 2021, and January 11, 2022, the penalty for the violation is \$5,000. You did not resolve Violation 3 by January 11, 2022.

It further states that if this same violation is resolved more than 95 days from October 8, 2021, or any time after January 11, 2022, the penalty for the violation is \$5,000 plus \$100/day from Day 96 to the date of resolution.

On December 17, 2022, Mr. Sharp submitted photographic evidence that the houseboat had been relocated to the authorized position and that the two pilings and work platform had been removed from SF Bay. On January 6, 2022, staff approved the permit assignment to Seaplane Investments LLC enabling the Executive Director to issue the after-the-fact extension of completion time on January 25, 2022, which together with the houseboat's relocation resolved this violation. Thirteen days elapsed between January 12 and 25, 2022. Therefore, you accrued a standardized fine of \$6,300 for Violation 3.



Seaplane Investment, LLC
Enforcement Case ER2019.063.00

Page 3
August 2, 2022

Standardized Fines Due.

The total standardized fine for Violations 1, 2 and 3 is \$12,300. The standardized fines for this violation are due within 30 days of the date of this letter, or by September 1, 2022. Please prepare and submit a cashier's check or money order for \$12,300 made out to the "Bay Fill Clean-up and Abatement Fund." Please include the Enforcement Case ER2019.063.00 identification number on the check and mail it to my attention to the address listed below.

Upon receipt of the standardized fine, the three violations addressed herein will be fully resolved though Enforcement Case ER2019.063 will remain open pending resolution of the violations cited in the Violation Report and Complaint issued to you on July 29, 2022. Your failure to submit this payment may result in additional formal enforcement proceedings, or a referral to the Attorney General for court-ordered collection proceedings.

Sincerely,

Adrienne Klein

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

cc: Aaron Singer, aaron@seaplane.com
Brent Plater, Lead Enforcement Attorney, brent.plater@bcdc.ca.gov

Enclosures:

1. Letter dated October 8, 2021 without attachments
2. Email from Klein to Sharp, dated October 22, 2021
3. Email from Klein to Sharp, dated January 6, 2022
4. After-the-fact Time Extension, dated January 25, 2022

AK / mm



San Francisco Bay Conservation and Development Commission

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

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

Attachment 1

Via Certified Mail and Electronic Mail

October 8, 2021

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

For

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

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

Dear Seaplane Investment LLC:

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

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



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

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

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

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

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

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



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

Permit 1973.014.01 authorizes the permittees to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

Sincerely,

Adrienne Klein

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



AK/mm

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

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



From: [John Sharp](#)
To: [Klein, Adrienne@BCDC](#)
Cc: [Aaron Singer](#); [haroldhedelman@gmail.com](#); [Yelton, Rowan@BCDC](#); [Njuguna, Priscilla@BCDC](#)
Subject: Re: Commodore Marina: Houseboat move (Enforcement Case ER2019.063)
Date: Friday, October 22, 2021 6:24:39 PM

I believe the pilings have been moved. We'll confirm and submit next week.

Thanks,
John

Sent from my iPhone

On Oct 22, 2021, at 5:11 PM, Klein, Adrienne@BCDC
<adrienne.klein@bcdc.ca.gov> wrote:

Dear John,

We would like to issue the TE in October so please complete the permit assignment as soon as possible and advise Rowan and me who will sign on behalf of Seaplane Adventures LLC and provide documentation to support that person's authority to act on behalf of the LLC.

As Aaron knows b/c we met while I was onsite on Wednesday, October 20th, as you reported I observed that the houseboat has been moved north from its prior location. Thank you for undertaking this work and the reason the TE application request should be filed and issued ASAP.

Aaron mentioned, and I observed, that there remain two pilings and floating structure to be removed from the view corridor/right of way. Based on my understanding of the permit requirement, there is no approval for any floating structure to be located south of the houseboat. We also expect that the kayaks we observed in the view corridor will be stored out of the view corridor.

Thank you very much,

Adrienne

From: John Sharp <john@johnsharplaw.com>
Date: Tuesday, October 19, 2021 at 3:21 PM
To: "Yelton, Rowan@BCDC" <rowan.yelton@bcdc.ca.gov>
Cc: Aaron Singer <aaron@seaplane.com>, "Klein, Adrienne@BCDC" <adrienne.klein@bcdc.ca.gov>, "haroldhedelman@gmail.com" <haroldhedelman@gmail.com>
Subject: Commodore Marina: Houseboat move

Hello Rowan,

I represent Seaplane Investments, LLC, the current owners of the property formerly owned by Mr. Price of Commodore Marina. This confirms said ownership, and further, that we are working with BCDC and Ms. Klein, to both complete permit assignments and to submit documentation of the fact that Mr. Hedelman's houseboat has been moved, which we understand to be the case. As requested in Ms. Klein's letter of October 8, 2021, we will provide permit assignments on or before November 15, 2021 and will confirm that the houseboat has been moved on or before October 31, 2021. Please feel free to contact me with any questions or comments.

Thank you,

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

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From: [Klein, Adrienne@BCDC](mailto:Klein,Adrienne@BCDC)
To: [John Sharp](mailto:John.Sharp)
Cc: [Plater, Brent@BCDC](mailto:Plater,Brent@BCDC); [Scharff, Greg@BCDC](mailto:Scharff,Greg@BCDC)
Subject: BCDCC Enforcement Case ER2019.063.00: Updated assignments attached for Permits 1973.014.03 and M1985.030.01 (Seaplane Investments LLC)
Date: Thursday, January 6, 2022 11:27:38 AM
Attachments: [2021.10.08 35 Day Letter Template ER2019.063\[1\].pdf](#)

BCDCC Enforcement Case ER2019.063.00
Permits 1973.014.03 and M1985.030.01
Updated assignment forms and operating agreement

Dear John,

The two assignments forms and related operating agreement submitted on 1/3/2022 have been filed in the above-listed files. No further documentation for Permit M1985.030.01 is required.

However, for Permit 1973.014.03, please advise BCDC if Seaplane Adventures has an ongoing interest in the property governed by this permit or if Seaplane Investments LLC is the sole ownership interest? If Seaplane Adventures has an ongoing interest, the partial assignment should have been used as there continue to be two permittees. If Seaplane Adventures no longer has any interest, please complete a second assignment from in which Seaplane Adventures assigns its permit rights and obligations to Seaplane Investments LLC.

As of January 3, 2022, 87 days had passed since the issuance of the October 8, 2021 letter that commenced the standardized fines outlining four violations (attached). The assignment matter for the 1985 permit is resolved and has accrued a \$3,000 fine. Your timely response to this email will enable resolution of the assignment matter for the 1973 permit, which is currently subject to a \$3,000 fine. The other two violations, pertaining to unauthorized fill and uses and failure to comply with the public access requirements, are pending unresolved and the fines for each of these violations are at \$5,000 and \$3,000, respectively, and will each begin accruing a daily fine of \$100 on January 12, 2022, which is 96 days from October 8, 2021, until those matters are resolved. This is also true for the 1973 assignment matter.

Sincerely,

Adrienne

From: John Sharp <john@johnsharplaw.com>
Date: Monday, January 3, 2022 at 4:02 PM
To: "Klein, Adrienne@BCDC" <adrienne.klein@bcdca.gov>, "Plater, Brent@BCDC" <brent.plater@bcdca.gov>
Subject: Updated assignments attached

Adrienne and Brent:

Attached please find the updated, signed permit assignments between Commodore Marina, LLC and Seaplane Investments, LLC.

Please feel free to call with any questions or comments,

Thank you,

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

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San Francisco Bay Conservation and Development Commission

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

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January 25, 2022

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

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

Dear Mr. Vasquez:

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

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

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

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

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

LJG/RY/ra



San Francisco Bay Conservation and Development Commission

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

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Via Email Only

Exhibit 07

September 21, 2022

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

AND

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

Email: Lou Vasquez, lou@bldsf.com

SUBJECT: FINAL WARNING LETTER - Opportunity to Resolve the Paper Violations Using Standardized Fines Terminates in 35 days (BCDC Enforcement Case ER2019.063.00)

Dear Lou Vasquez:

In the letter dated August 2, 2022, staff notified you that you had accrued \$12,300 of standardized fines for three paper violations and that you must pay those fines by September 1, 2022. As of today's date, BCDC has no record of receiving any payment from you nor have you responded to that letter. That letter states that your failure to pay these standardized fines may result in additional enforcement proceedings or referral to the Attorney General.

This is a final notice letter to inform you that your opportunity to resolve the penalty portion of the three resolved "paper" violations using standardized fines, as outlined in the August 2, 2022, letter will terminate within 35 days of issuance of this letter, on October 26, 2022. If on or before October 26, 2022, you pay the total accrued fine of \$12,300 as outlined in the August 2, 2022, letter these three violations will be fully resolved. If you do not pay the total accrued fine on or before October 26, 2022, staff will commence a second formal enforcement proceeding to collect an administrative civil penalty for each of these violations.

If you have any questions about BCDC's enforcement procedures feel free to contact Brent Plater, Lead Enforcement Attorney, or me by phone or email.



Seaplane Investment, LLC
Enforcement Case ER2019.063.00

Page 2
September 21, 2022

Sincerely,

DocuSigned by:

7A7D306B857043F...

ADRIENNE KLEIN

Principal Enforcement Analyst

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, California 94105

Tel: 415-352-3609

Fax: 415-352-3606

Email: adrienne.klein@bcdc.ca.gov

Website: www.bcdc.ca.gov

cc: John E. Sharp, Esq., admin@johnsharplaw.com
Aaron Singer, aaron@seaplane.org

Enclosure: Letter dated August 2, 2022

AK/mm

§ 11211. Submittal of an Amendment.

(a) Within ten (10) working days of receipt by the Commission of a proposed amendment to the local protection program or component thereof, the Executive Director shall determine whether the proposed amendment meets the submittal requirements of Section 11210.

(b) If the Executive Director determines that the proposed amendment and supporting materials meet the submittal requirements of Section 11210, the Executive Director shall stamp all the materials "Filed BCDC" and the date of filing and notify the entity that submitted the proposed amendment of its filing.

(c) If the Executive Director determines that the proposed amendment does not satisfy the requirements of Section 11210, the Executive Director shall transmit to the entity that proposed the amendment a written explanation of why the proposed amendment and supporting materials do not comply with Section 11210.

(d) The filing of a proposed amendment and supporting materials shall constitute submittal of the amendment pursuant to California Public Resources Code Section 29410.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11212. Processing Amendments to the Local Protection Program or Component Thereof.

The Commission shall process a proposed amendment to the Suisun Marsh local protection program or to any component thereof in accordance with Sections 11202 through 11208, except that amendments designated as minor by the Executive Director under Sections 11213 and 11214 shall be processed only as provided in Section 11214.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11213. Definition of a Minor Amendment.

A minor amendment to the Suisun Marsh local protection program or any component thereof is an amendment that is consistent with California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan and that is one or more of the following:

(a) changes in wording, maps, or diagrams of any general, specific, or area plan, other policy document, zoning ordinance, zoning district map, regulation, or standard that does not change the designated, allowable, or permitted use, density, or intensity of land use or sphere of influence or boundary of any city; or

(b) changes in any certified management plan or policy document of the Suisun Resource Conservation District or the Solano County Mosquito Abatement District that does not change the permitted or allowable use of any land and does not change any water management program or practice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11214. Designation of an Amendment as Minor.

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States

Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice. NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11215. Frequency of Amendments.

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Chapter 13. Enforcement Procedures**Subchapter 1. General Provisions****§ 11300. Grounds for the Issuance of Cease and Desist Orders.**

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

- (1) the violation of a term or condition of a permit,
- (2) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
- (3) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d); Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11302. Grounds for the Imposition of Administrative Civil Penalties.

Any one of the following actions shall constitute grounds for the imposition of civil penalties by the Commission:

- (1) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (2) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5, Government Code; and Sections 29610-29611, Public Resources Code.

HISTORY

- 1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
- 2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer-Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11386.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29601, Public Resources Code.

HISTORY

- 1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
- 2. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil penalties by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and otherwise follow the format for a staff violation report as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution or by appointment by the Chair without Commission objection to assist the Commission in carrying out its enforcement responsibilities.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before a hearing officer, the enforcement committee, or the Commission as part of a Commission enforcement proceeding.

(d) "Hearing Officer," means any person appointed by the Commission to receive evidence, hear arguments, make findings of fact, and recommend to the Commission what action it should take on an enforcement matter.

(e) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(f) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report and a statement of defense form in accordance with Section 11321(c).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

- 1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
- 2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)-(d), and renumbering of former subsection (d) to subsection (f) filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

§ 11320. Staff Investigation and Discovery.

As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180-11181, 66637, 66638 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

- 1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes that the results of an enforcement investigation so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that complies with the format set out in Appendix H,

(2) a complaint for civil penalties that complies with the format set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that complies with the format set out in Appendix I. The violation report and complaint for civil penalties can be combined into a single document so long as it contains all the information required for both.

(b) The violation report shall refer to all documents on which the staff relies to provide a prima facie case and give notice that the documents may be inspected at the Commission's office and that copies will be provided with five days prior notice and upon payment of the cost of copying.

(c) Issuance of a violation report shall occur when the violation report is mailed by certified mail to all persons or entities named as a respondent in the violation report. Issuance of a complaint for civil penalties shall occur when the complaint for civil penalties is mailed by certified mail to all persons or entities named as a respondent in the complaint.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Sections 29610-29611, Public Resources Code.

HISTORY

- 1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11322. Respondent's Required Response to the Violation Report.

(a) Within thirty-five (35) days of the issuance of the violation report and the statement of defense form, each respondent shall submit to the Commission as its office an original and five copies of the completed statement of defense form and an original (or verified copy) and five copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person relied on by staff in its violation report is needed to show or contest a fact alleged in the violation report, the respondent shall request such cross-examination in the statement of defense form. The addendum shall list the name of each person the respondent wants to cross examine, all documents about which the respondent wants to cross examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for civil penalties and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form and all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters, and any request to allow cross-examination.

(d) If the staff wants to cross-examine, the staff shall, within seven days of receiving a statement of defense form, mail to all respondents a list of all persons that the staff wants to cross examine, the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for civil penalties together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) The Executive Director may at his or her discretion extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension and a written demonstration of good cause. The extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for the imposition of administrative civil penalties by submitting a cashier's check in the appropriate amount to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall file his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29610-29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee, the Commission, or a hearing officer, the Executive Director shall mail by regular mail a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5, and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11324. Distribution of the Violation Report, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall mail by regular mail the following materials to each respondent, and to the committee members if the enforcement hearing will be held before the enforcement committee, to the hearing officer if the enforcement hearing will be held before a hearing officer, or to the Commission if the enforcement hearing will be held before the Commission: (1) the violation report, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code, and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11325. Ex Parte Contacts.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12-27-2004; operative 1-26-2005 (Register 2004, No. 53).

§ 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a brief summary of (A) any background to the alleged violation, (B) the essential allegations made by staff in its violation report (C) a list of all essential allegations either admitted or not contested by respondent(s), (D) all defenses and mitigating factors raised by the respondent(s), and (E) any rebuttal evidence raised by the staff to matters raised in the statement of defense form with references to supporting documents;

(2) a summary and analysis of all unresolved issues;

(3) a statement of whether the Executive Director has issued a cease and desist order and its expiration date; and

(4) a recommendation on what action the Commission should take; and

(5) the proposed text of any cease and desist order, permit revocation order, or civil penalty order that the Executive Director recommends that the Commission issue.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66642 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, indicate what matters are already part of the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the reported party(s);

(e) other speakers may speak concerning the matter;

(f) presentations made by the staff, a respondent, and other speakers shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the committee and the Commission shall not allow oral testimony unless the committee and Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to cross-examine all witnesses who are allowed to testify and a right to have rebuttal witnesses similarly testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing

pursuant either to Section 11322(a) or Section 11322(c) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered.

(h) Committee members, a hearing officer, and Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee, hearing officer, or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members, the hearing officer, or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(k) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an Executive Director's recommended enforcement decision within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the completed statement of defense form except to the extent the Executive Director has extended the time for such submittal pursuant to Section 11322(d) or the Commission admits the evidence into the record pursuant to Section 11327(f) and this section. To this end, the Commission, any hearing officer, and the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission, hearing officer, or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner and would be substantially harmed if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury or in the form of another document referred to in a violation report or complaint for the imposition of civil penalties and the declarant or author of the other document is subject to cross-examination as provided in Sections 11321, 11322, and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall consult with the Deputy Attorney General in attendance at the hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).

§ 11330. Adoption of an Enforcement Committee or a Hearing Officer Recommended Enforcement Decision.

After the enforcement committee or a hearing officer has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

- (a) all of the matters required by Section 11326; and
- (b) any further written report on or explanation of the enforcement proceedings as the enforcement committee or hearing officer believes is appropriate.

The enforcement committee or a hearing officer can adopt with or without change the staff recommended enforcement decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director, by the enforcement committee, or by a hearing officer, the staff shall mail the recommended enforcement decision to all respondents and to all Commissioners.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) When the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter to the enforcement committee or hearing officer or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

- (1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or civil penalty order;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed civil penalty order or (B) adopt the recommended enforcement decision with regard to one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed civil penalty order and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee, hearing officer, or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Section 11327 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

When the Executive Director refers an enforcement matter directly to the Commission rather than to the enforcement committee, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10-11-89; operative 11-10-89 (Register 89, No. 30). For prior history, see Register 87, No. 30.

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Civil Penalty Order.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11335. Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11336. Distribution of Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11337. Notice of Public Hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11338. Public Hearing Procedure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11339. Admissibility of Evidence.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

- (1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;
- (2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;
- (3) identification of the property where the activity has been undertaken or may be undertaken;
- (4) a description of the activity;
- (5) the effective date of the order;
- (6) the expiration date, if any, of the order;
- (7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer–Petris Act, the Suisun Marsh Preservation Act, or a permit;
- (8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;
- (9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;
- (10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and
- (11) such other provisions that the Commission has approved, including provisions relating to:
 - (A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;
 - (B) the obligation to conform strictly to the order and the consequences of the failure to do so; and
 - (C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order or a civil penalty order so long as the combined order contains all the information required under these regulations for both such orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued, but he or she shall not do so in a manner that extends the 90–day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11344. Amendments to Cease and Desist Orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and a civil penalty order so long as the combined order contains all the information required by these regulations for both types of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11360. Preparation and Execution of Commission Cease and Desist Orders and Permit Revocation Orders.

The Executive Director shall prepare and sign a cease and desist order or a permit revocation order authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.

§ 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, a civil penalty order, or of any modification of such orders, is complete when the Executive Director executes the original copies of the order or modification and they are stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modifications to each person to whom the order is being issued no later than the second working day following the date of issuance. The Executive Director shall cause to be personally served or mail by registered mail a civil penalty order or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by regular mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification to each person who appeared at the hearing and submitted a written request for a copy as soon as possible after the Commission authorized the order or modification. (For civil penalty orders, see subdivision (d) of Government Code Section 66641.6.)

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

(a) the violation report, including all documents referred to in the report;

(b) any complaint for civil penalties;

(c) all timely filed statement of defense form(s);

(d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;

(e) the staff recommended enforcement decision, including all documents referred to in the recommendation,

(f) minutes of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if eyewitness or expert testimony is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;

(g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;

(h) any enforcement committee's or hearing officer's recommended enforcement decision,

(i) any order that the Commission issues,

- (j) all other materials maintained in the Commission's file for the enforcement matter,
- (k) such other permit or other Commission files as have explicitly been made a part of the record,
- (l) the McAteer-Petris Act,
- (m) the San Francisco Bay Plan,
- (n) the Suisun Marsh Preservation Act,
- (o) the Suisun Marsh Protection Plan,
- (p) the Suisun Marsh Local Protection Program, and
- (q) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29210(e), Public Resources Code. Reference: Sections 66639-66640 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11380. Contents of Complaint for Administrative Imposition of Civil Penalties.

The complaint shall follow the same format as required for a Violation Report in Appendix H to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11381. Commission Hearing on Complaint for Administrative Imposition of Civil Penalties.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either (1) hearing the matter itself within 60 days of the service of the complaint or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint.

(b) The Executive Director shall determine whether to refer a complaint for the administrative imposition of civil penalties to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint for civil penalties to the Commission or to the enforcement committee, he or she shall consider the following factors:

- (1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,
- (2) the relative workloads of the Commission and the enforcement committee at the time,
- (3) whether the complaint involves any policy issues that should be determined by the Commission initially,
- (4) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and
- (5) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11382. Further Procedures for Commission Review of Complaints for the Issuance of Civil Penalty Orders.

The Commission shall follow the procedures established by Sections 11310 and 11321 through 11334 and Sections 11361 through 11370 of these regulations when it considers recommended enforcement decisions from either the staff or the enforcement committee or a hearing officer relative to the possible administrative imposition of civil penalties.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11383. Contents of a Commission Civil Penalty Order.

(a) A Commission civil penalty order shall be signed by the Executive Director and shall contain the following:

- (1) the name(s) of the person(s) required to pay the civil penalty;

(2) the amount of the civil penalty;

(3) the date by which the civil penalty must be paid;

(4) written findings that (1) explain the decision to issue the civil penalty order and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues a civil penalty order may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) A civil penalty order can be combined with a cease and desist order or a permit revocation order so long as the information required under these regulations for both is contained in the combined order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11384. Modification of a Commission Civil Penalty Order.

The Executive Director may modify a civil penalty order if the modification would not alter the amount of the penalty or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11385. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a civil penalty order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a civil penalty order by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11386. Standardized Fines.

(a) This Section shall apply to an enforcement action if the Executive Director determines:

- (1) that an alleged violation is one of the types identified in subsection 11386(e);
- (2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and
- (3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) Except as provided in subsection (g), if this Section applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) believed to be responsible for the alleged violation that contains all of the following information:

- (1) the nature of the alleged violation and each and every action that must be taken to correct the alleged violation;
- (2) the fact that if the alleged violation is fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any civil penalty; and
- (3) the fact that if the alleged violation is not fully corrected within 35 days of mailing of the notice, the person believed to be responsible for the alleged violation may be subject to the payment of a civil penalty and

may resolve the penalty portion of the alleged violation by paying the standardized fine specified in subsections (e), and (f) without having to go through a formal enforcement proceeding pursuant to Sections 11300 through 11385 except as provided in subsection (h).

(c) Except as provided in subsection (g), if the person believed to be responsible for the alleged violation completes each and every corrective action specified in the notice pursuant to subsection (b) within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized or other fine.

(d) Except as provided in subsections (g) and (h), if the person believed to be responsible for the alleged violation fails to complete one or more of the corrective actions required by the notice pursuant to subsection (b) within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the penalty portion of the alleged violation by completing each and every action required by the notice sent pursuant to subsection (b) and by paying a fine in the amount provided in subsections (e) and (f).

(e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing the work authorized by the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each document plus ONE HUNDRED DOLLARS (\$100.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (e)(1) and (e)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement, plus ONE HUNDRED DOLLARS (\$100.00) per day for each violation, from the ninety-sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and

fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS (\$2,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained, or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than 95 days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day to the date the violation is completely corrected.

(f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

(g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to

be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS (\$100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty-five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the amount is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66641.5,

Government Code; and Sections 29201(e) and 29610, Public Resources Code.

HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

Subchapter 1. Marsh Development Permits Issued by Local Governments

Article 1. Application

§ 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as "a marsh development authorization," by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

[The next page is 539.]

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Chapter 13. Enforcement Procedures

Subchapter 1. General Provisions

§ 11300. Grounds for the Issuance of Cease and Desist Orders.

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

- the violation of a term or condition of a permit,
- the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
- the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641(d), Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

- Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
- Redesignation of former subsections (1)-(3) as subsections (a)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11302. Grounds for the Imposition of Administrative Civil Liability.

Any one of the following actions shall constitute grounds for the imposition of administrative civil liability by the Commission:

- the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e) and 66641.6, Government Code; and Sections 29610 and 29611, Public Resources Code.

HISTORY

- New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
- Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
- Amendment of section heading, designation of former subsection (1)-(2) as subsection (a)-(b) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer-Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal

Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66640(a), 66641(b) and 66642(a), Government Code; and Section 29601, Public Resources Code.

HISTORY

- Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
- Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).
- Amendment of subsection (c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil liability by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and follow the format and include the information for a staff violation report/complaint as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution. The Chair shall appoint Commission members or other representatives of the Commission to the enforcement committee with the concurrence of the Commission to assist the Commission in carrying out its enforcement responsibilities. The enforcement committee shall consist of no fewer than four and no more than six Commission members or other representatives of the Commission. A quorum of the enforcement committee necessary to conduct business, to hold hearings and to vote on recommended enforcement decisions shall consist of three members notwithstanding the total number of enforcement committee members. The enforcement committee shall select from its members a chair, who shall serve for a period agreed upon by a majority of the enforcement committee members. The enforcement committee shall conduct its hearings in accordance with the Commission's laws and regulations upon matters referred to it by either the Executive Director or the Commission. The Chair of the Commission may change the members of the enforcement committee from time to time as necessary due to changes in membership of the Commission or to fill vacancies on the committee provided that the Chair notifies the Commission prior to such change at a Commission meeting and the Commission concurs.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before the enforcement committee or the Commission as part of a Commission enforcement proceeding.

(d) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(e) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report or complaint and a statement of defense form in accordance with Section 11321(c).

(f) As used in this Chapter, “significant harm to the Bay’s resources or to existing or future public access” shall be determined based on both the context and intensity of the violation.

(1) “Context” refers to the location of the violation and the characteristics of the area where it occurs. Areas with important environmental or ecological significance (e.g., habitat or refugia for sensitive species) are generally considered to be more significant than previously degraded habitat or areas with limited habitat value, and highly visible and/or frequently used areas are generally considered to be more significant than isolated areas with low visibility or infrequent usage.

(2) “Intensity” refers to the severity of the impact and the degree to which it affects the environment or public access. Violations presenting significant ecosystem hazards (e.g., toxic or biohazardous fill) or involving large portions of a particular site shall generally be considered to be more severe. In addition, violations that substantially interfere with the ability to use designated public access or encompass large portions of a designated public access area will be considered to be more significant.

(3) Where multiple violations are alleged at a site, if a single violation results in harm that is individually limited but cumulatively significant when added to other violations at the site, it shall be determined that the violation has resulted in significant harm to the Bay’s resources or to existing or future public access.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e), 66641.6 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
3. Amendment of subchapter heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability

§ 11320. Staff Investigation and Discovery, and Appointment of a Hearing Officer.

(a) As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

(b) At the request of the Executive Director or the chair of the enforcement committee, or on its own initiative, the Commission may appoint a hearing officer to conduct an investigation or hold a hearing, make proposed findings of fact, and recommend to the Commission what action it should take on an enforcement matter. A hearing officer appointed to hold an enforcement hearing shall proceed in accordance with the procedural requirements of Section 11327 and shall adopt a recommended enforcement decision in accordance with Section 11330.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180, 11181, 66637, 66638, 66641.5(e), 66641.6 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of article heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes, as a result of an enforcement investigation, that any person has caused or threatens to cause significant harm to the Bay’s resources or to existing or future public access, or that the nature, circumstances, extent, and gravity of the violation or violations so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that follows the format and contains the information set out in Appendix H,

(2) a complaint for administrative civil liability that follows the format and contains the information set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that follows the format and requests the information set out in Appendix I. The violation report and complaint for administrative civil liability can be combined into a single document so long as it contains all the information required for both.

(b) The violation report and/or complaint shall list all documents, including any declarations under penalty of perjury, on which the staff relies to provide a prima facie case of the violations alleged and copies of all such documents shall be attached to or accompany the violation report and/or complaint or shall be provided to the respondent in electronic format upon request.

(c) Issuance of a violation report and/or complaint shall occur when the violation report and/or complaint is mailed by certified mail to all persons or entities named as a respondent in the violation report and/or complaint. Upon written consent of the respondent or respondent’s authorized representative, a violation report and/or complaint shall be mailed to the respondent or the respondent’s authorized representative by email.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

§ 11322. Respondent’s Required Response to the Violation Report or Complaint, the Executive Director’s Consideration of the Respondent’s Response, and Extensions of Time.

(a) Within thirty–five (35) days of the issuance of the violation report and/or complaint and the statement of defense form, each respondent shall submit to the Commission at its office an original and one copy of the completed statement of defense form (or an original and one copy of a document providing the information requested by the form) and an original (or verified copy) and one copy of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross–examination of a person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint is needed to show or contest a fact alleged in the violation report and/or complaint, the respondent shall request such cross–examination in the completed statement of defense form. The completed statement of defense form or an addendum shall list the name of each person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint that the respondent wants to cross examine, all documents referred to in such person’s declaration about which the respondent wants to cross–examine, a description

of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for administrative civil liability and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed administrative civil penalty or (2) the completed statement of defense form, copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding in accordance with subsection (a), and any request to allow cross-examination in accordance with subsection (b).

(d) If the staff wants to cross-examine any person whose declaration under penalty of perjury has been submitted with a respondent's completed statement of defense form, the staff shall, within seven days of receiving the completed statement of defense form, mail to all respondents a list of all persons whose declaration under penalty of perjury has been submitted by respondent that the staff wants to cross examine, all documents referred to in such person's declaration about which staff wants to cross-examine the person, a description of the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for administrative civil liability together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) If the Executive Director issues a violation report only, and not a complaint for administrative civil liability, the Executive Director shall for good cause extend the 35-day time limit imposed by subsection (a) upon receipt within the 35-day time limit of a written request for such extension and demonstration of good cause. If the Executive Director issues a violation report and complaint for administrative civil liability or only a complaint for administrative civil liability, the Executive Director shall for good cause extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension, demonstration of good cause, and waiver of and consent to extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b). Any extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for administrative civil liability by submitting a cashier's check in the amount of the penalty proposed in the complaint to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall submit his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

(i) At any time after issuance of a violation report and/or complaint, the Executive Director and a respondent may agree on the terms of a proposed stipulated order or a proposed settlement agreement to resolve a violation or violations, which may include a schedule of corrective actions to be implemented by the respondent and payment of administrative civil penalties. The Executive Director shall include the proposed stipulated order or proposed settlement agreement in his or her recommended

enforcement decision prepared in accordance with Section 11326. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has not submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination in accordance with subsections (a) and (b), the respondent shall submit his or her completed statement of defense form, copies of any supporting documents, and any request for cross-examination within 35 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement. Thereafter, the enforcement matter shall proceed according to these regulations. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has previously submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination, the Executive Director shall prepare a new recommended enforcement decision in accordance with Section 11326 within 30 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement, and thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11415.60, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee or the Commission the Executive Director shall mail by first class mail or send by email, and shall also make available on the Commission's website, a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address, the Deputy Attorney General advising the enforcement committee or Commission, and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed and posted on the Commission's website pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing by first class mail or sending by email, and also making available on the Commission's website, written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11324. Distribution of the Violation Report, Complaint, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall make available on the Commission's website and shall mail by first class mail or send by email the following materials to each respondent, to the committee members if the enforcement hearing will be held before the enforcement committee or to the Commission if the

enforcement hearing will be held before the Commission, and to the Deputy Attorney General advising the enforcement committee or Commission: (1) the violation report and/or complaint for administrative civil liability and all documents or other evidence cited therein or listed on an index of supporting documents or evidence attached thereto, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11325. Ex Parte Contacts. [Repealed]

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12-27-2004; operative 1-26-2005 (Register 2004, No. 53).

§ 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil liability.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a summary of (A) any background to the alleged violation, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), and (D) all defenses and mitigating factors raised by the respondent(s);

(2) any staff response to the defenses, mitigating factors, or arguments raised by the respondent(s), and any rebuttal evidence submitted by the staff to matters raised in the statement of defense form, with references to supporting documents;

(3) a summary and analysis of all disputed issues;

(4) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify all violations for which administrative civil penalties are proposed and include:

(A) the total amount of proposed administrative civil penalties; and

(B) a statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

(5) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

(6) a recommendation on what action the Commission should take; and

(7) the proposed text of any cease and desist order, permit revocation order, order setting administrative civil liability, or stipulated order that the Executive Director recommends that the Commission issue or any settlement agreement that the Executive Director recommends that the Commission approve.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair or enforcement committee chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair or enforcement committee chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and/or complaint for administrative civil liability and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the respondent party or parties;

(e) members of the public may speak concerning the matter;

(f) presentations made by the staff, a respondent, and the public shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the enforcement committee or the Commission shall not allow oral testimony unless the committee or Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to examine or cross-examine all witnesses who are allowed to testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing pursuant either to Section 11322(b) or Section 11322(d) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered. Following cross-examination of a witness whose declaration under penalty of perjury has become part of the enforcement record, a representative of the opposing party shall be entitled to examine the witness on the area or areas of information addressed during cross-examination. Neither cross-examination nor direct examination shall be allowed of any person who has not submitted a declaration under penalty of perjury which has become part of the enforcement record and who has not been identified in writing pursuant to either Section 11322(b) or Section 11322(d), including any member of the public who has commented on an enforcement matter or submitted information related to an alleged violation.

(h) enforcement committee members or Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall rule on any objections to the admissibility of evidence or the acceptance of late evidence and identify any evidence submitted but rejected because it was not filed in a timely manner or in violation of Section 11328.

(k) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(f) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an enforcement committee recommended enforcement decision in accordance with Section 11330 within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the violation report and/or complaint or the completed statement of defense form, except to the extent otherwise provided by Section 11322(d) or the Executive Director has extended the time for such submittal pursuant to Section 11322(f), or the Commission or enforcement committee admits the testimony into the record pursuant to Section 11327(f) and this section. To this end, the Commission or the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner but was unable to do so and would be substantially prejudiced if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence, including but not limited information provided by the public to the Commission or staff or in public comments, may be admitted and used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury and the declarant is subject to cross-examination as provided in Sections 11322 and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair or the enforcement committee chair shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair or the enforcement committee chair shall consult with the Deputy Attorney General advising the Commission or enforcement committee at the hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; Section 29601, Public Resources Code; and Section 351, Evidence Code.

HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).
3. Amendment of subsections (b), (d) and (e) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11330. Adoption of an Enforcement Committee Recommended Enforcement Decision.

(a) After the enforcement committee has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

(1) a summary of (A) any background to the alleged violations, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), (D) the defenses and mitigating factors raised by the respondent(s), and (E) the staff's response to the defenses, mitigating factors, or arguments raised by the respondent(s);

(2) a statement of any rulings by the enforcement committee;

(3) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify the violations for which penalties are proposed and include:

(A) the total amount of proposed administrative civil penalties; and

(B) a statement of the applicable factors set forth in Government Code Section 66641.9 that the enforcement committee considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

(4) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

(5) any further written report on or explanation of the enforcement proceedings as the enforcement committee believes is appropriate;

(6) a recommendation on what action the Commission should take; and

(7) the proposed text of any cease and desist order, permit revocation order, order setting administrative civil liability, or stipulated order that the enforcement committee recommends that the Commission issue or any settlement agreement that the enforcement committee recommends that the Commission approve.

(b) The enforcement committee can adopt with or without change the Executive Director's recommended enforcement decision. The chair of the enforcement committee shall direct Commission counsel to prepare the enforcement committee recommended enforcement decision, provided that: (1) Commission counsel shall submit the enforcement committee recommended enforcement decision to the respondent(s) by email for review not less than three days before the Executive Director mails the recommended decision to the Commission and respondent(s) in accordance with Section 11331; and (2) if the respondent(s) provides written comments on or objections to the recommended decision within two days of receipt thereof, the Executive Director may modify the recommended decision based on such comments or objections, if he or she determines that such modifications are appropriate, and shall include the respondent's comments or objections when mailing the recommended decision to the Commission and respondent(s) in accordance with Section 11331.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11331. Referral of the Recommended Enforcement Decision to the Commission:

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director or by the enforcement committee, the staff shall mail by first class mail or send by email, and shall also make available on the Commission's website, the recommended enforcement decision to all respondents, to all Commissioners, and to the Deputy Attorney General advising the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Codes.

HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) Except as provided in subsection (c), when the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments or comments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

(1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or order setting administrative civil liability;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed order setting administrative civil liability or (B) if the recommended enforcement decision includes one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed order setting administrative civil liability, adopt the recommended enforcement decision with regard to one or more proposed orders and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Sections 11327 and 11328 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

(c) If the respondent(s) agrees in writing to accept the recommended enforcement decision, and the Executive Director also agrees to accept the recommended decision, the Executive Director shall calendar the recommended enforcement decision as a consent item on a Commission meeting agenda. At the Commission meeting, after allowing public comment on the consent item the Commission shall determine by a majority of those commissioners present and voting whether to adopt the recommended enforcement decision on consent without any change and without any further proceedings. If a majority of those commissioners present and voting do not determine to adopt the recommended decision on consent, the Commission shall proceed to act on the matter in accordance with subsections (a) and (b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

The Executive Director shall determine whether to refer an enforcement matter to the Commission or to the enforcement committee. When the Executive Director refers an enforcement matter directly to the Commission, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10-11-89; operative 11-10-89 (Register 89, No. 30). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Order Setting Administrative Civil Liability.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil liability by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, and 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, subsection (a) and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11335. Staff Report and Recommendation. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11336. Distribution of Staff Report and Recommendation. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11337. Notice of Public Hearing. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11338. Public Hearing Procedure. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11339. Admissibility of Evidence. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

(1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;

(2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;

(3) identification of the property where the activity has been undertaken or may be undertaken;

(4) a description of the activity;

(5) the effective date of the order;

(6) the expiration date, if any, of the order;

(7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer-Petris Act, the Suisun Marsh Preservation Act, or a permit;

(8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;

(9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;

(10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and

(11) such other provisions that the Commission has approved, including provisions relating to:

(A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;

(B) the obligation to conform strictly to the order and the consequences of the failure to do so; and

(C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order and/or an order setting administrative civil liability so long as the combined order contain all the information required under these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment of subsection (b) and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued for good cause, but he or she shall not do so in a manner that extends the 90-day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66637, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission for good cause if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director by filing a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11344. Amendments to Cease and Desist Orders. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, or the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and/or an order setting administrative civil liability so long as the combined order contains all the information required by these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of subsections (a)(2) and (b) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order for good cause if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of subsections (b)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11360. Preparation and Execution of Commission Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability.

The Executive Director shall prepare and sign a cease and desist order, a permit revocation order, or an order setting administrative civil liability authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, an order setting administrative civil liability, or of any modification of such orders, is complete when the Executive Director executes the original copy of the order or modification and it is stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modification of such orders to each person to whom the order or modification is being issued and the owner of the property on which any violation addressed by the order occurred no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or modification by email.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by certified mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification of such an order to each person who appeared at the hearing and submitted a written request for a copy no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person who appeared at the hearing and submitted a written request for a copy, except that with the consent of the party to be served, the Executive Director shall serve any such order or order modification by email. In addition, the Executive Director shall post on the Commission's website a copy of a cease and desist order, permit revocation order, or an order setting administrative civil liability, or any modification of such orders no later than the second working day following issuance.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

- (a) the violation report, including all documents referred to in the report;
- (b) any complaint for administrative civil liability;
- (c) all timely filed statement of defense form(s), including all documents submitted therewith;
- (d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;
- (e) the Executive Director's recommended enforcement decision, including all documents and any other evidence referred to or included in the recommendation,
- (f) minutes or a verbatim transcript of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if any oral testimony or any cross-examination and direct examination of a person whose declaration under penalty of perjury has become part of the enforcement record is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;
- (g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;
- (h) any enforcement committee's or hearing officer's recommended enforcement decision,
 - (i) any order that the Commission issues,
 - (j) such other permit or other Commission files as have explicitly been made a part of the record,
 - (k) the McAtteer-Petris Act, if relevant to any of the issues raised in the proceeding,
 - (l) the San Francisco Bay Plan, if relevant to any of the issues raised in the proceeding,
 - (m) the Suisun Marsh Preservation Act, if relevant to any of the issues raised in the proceeding,
 - (n) the Suisun Marsh Protection Plan, if relevant to any of the issues raised in the proceeding,
 - (o) the Suisun Marsh Local Protection Program, if relevant to any of the issues raised in the proceeding, and
 - (p) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66640, 66641.5(e), 66641.6 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11380. Content of Complaint for Administrative Civil Liability.

The complaint shall follow the format and contain the information set out in Appendix H to these regulations. The complaint shall identify the violations for which administrative civil penalties are proposed and include:

- (a) a list or table of all alleged violations for which staff is proposing a penalty;
- (b) the total amount of proposed administrative civil penalties; and

(c) a statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29610 and 29611, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11381. Commission Hearing on Complaint for Administrative Civil Liability.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either: (1) hearing the matter itself within 60 days of the service of the complaint; or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint. With the written consent of the respondent(s) to whom a complaint is issued, the Executive Director shall for good cause extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b).

(b) The Executive Director shall determine whether to refer a complaint for administrative civil liability to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint to the Commission or to the enforcement committee, he or she shall consider the following factors:

- (1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,
- (2) whether the Executive Director has issued a cease and desist order for the violation or violations alleged in the complaint, and whether the Executive has proposed that any order setting administrative civil liability be combined with a Commission cease and desist order and/or a permit revocation order,
- (3) the relative workloads of the Commission and the enforcement committee at the time,
- (4) whether the complaint involves any policy issues that should be determined by the Commission initially,
- (5) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and
- (6) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e) and 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11382. Further Procedures for Commission Review of Complaints for Administrative Civil Liability.

The Commission shall follow the procedures established by Sections 11321 through 11334 of these regulations when it considers a recommended enforcement decision from either the staff or the enforcement committee relative to the possible imposition of administrative civil liability.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11383. Contents of a Commission Order Setting Administrative Civil Liability.

(a) A Commission order setting administrative civil liability shall be signed by the Executive Director and shall contain the following:

- (1) the name(s) of the person(s) required to pay the civil penalties;

(2) the amount of the civil penalties and findings that address the applicable factors set forth in Government Code Section 66641.9 that the Commission considered in determining the amount of the civil penalties;

(3) the date by which the civil penalties must be paid in full, or, if the penalties are to be paid in installments, the amount of each installment and the date by which each installment must be paid;

(4) written findings that (1) explain the decision to issue the order setting administrative civil liability and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues an order setting administrative civil liability may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) An order setting administrative civil liability can be combined with a cease and desist order or a permit revocation order so long as the combined order contains all the information required under these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29610 and 29611, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11384. Modification of a Commission Order Setting Administrative Civil Liability.

The Executive Director may modify an order setting administrative civil liability for good cause if the modification would not alter the total amount of the civil penalties or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11385. Appeal from Modification of an Order Setting Administrative Civil Liability.

(a) A person to whom the Commission has issued an order setting administrative civil liability may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of an order setting administrative civil liability by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

Article 3. Standardized Fines

§ 11386. Applicability of Article.

(a) This Article shall apply to an enforcement action if the Executive Director determines:

(1) that an alleged violation is one of the types identified in Section 11390;

(2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and

(3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) For purposes of this Article, "significant harm to the Bay's resources or to existing or future public access" shall be determined in accordance with Section 11310(f).

(c) If an enforcement action involves both an alleged violation that has not resulted in significant harm to the Bay's resources or to existing or future public access and an alleged violation that has resulted in significant harm to such resources or public access or that is otherwise not subject to resolution under this Article, the Executive Director may, depending on the nature and extent of all the violations and on whether the responsible party has taken appropriate action to resolve the violations, commence Commission enforcement proceedings for all the alleged violations by following the procedures established by Sections 11321 through 11334 of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).
5. New article 3 heading, amendment of section heading and subsections (a)-(a)(10), renumbering of former subsections (b)-(b)(3) to new section 11387, renumbering of former subsection (c) to new section 11388, renumbering of former subsection (d) to new section 11389, renumbering of former subsections (e)-(h) to new section 11390, renumbering of former subsections (i)-(k) to new section 11391, new subsections (b)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11387. Notice of Alleged Violation.

If this Article applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) responsible for the alleged violation(s) that contains all of the following information:

(a) the nature of the alleged violation(s) and each and every action that must be taken to correct the alleged violation;

(b) the fact that if the alleged violation(s) are fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any fine; and

(c) the fact that if the alleged violation(s) are not fully corrected within 35 days of mailing of the notice, the person responsible for the alleged violation(s) may be subject to the payment of a fine and may resolve the alleged violation(s) by taking each and every corrective action required by the notice and paying the standardized fine specified in Section 11390(a) or 11390(b) without having to go through a Commission enforcement proceeding pursuant to Sections 11321 through 11334, except as provided in Section 11390(d).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11386, subsections (b)-(b)(3) to new section 11387 filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11388. Opportunity to Complete Corrective Action without Imposition of a Standardized Fine.

Except as provided in Section 11390(c), if the person responsible for the alleged violation(s) submits to the Executive Director information demonstrating that the alleged violation(s) have not occurred or that such person has completed each and every corrective action specified in the notice pursuant to Section 11387 within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized fine.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11386, subsection (c) to new section 11388 filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11389. Opportunity to Complete Corrective Action with Imposition of a Standardized Fine.

Except as provided in Sections 11390(c) and 11390(d), if the person responsible for the alleged violation(s) fails to submit to the Executive Director information demonstrating that such person has completed each and every corrective action required by the notice pursuant to Section 11387 within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the alleged violation(s) by completing each and every corrective action required by the notice sent pursuant to Section 11387 and by paying a fine in the amount provided in Sections 11390(a) or 11390(b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11386, subsection (d) to new section 11389 filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11390. Violations Subject to a Standardized Fine and Schedule of Standardized Fines.

(a) The following standardized fines shall apply to the following types of alleged violations:

(1) for the failure to return an acknowledged, executed Commission permit before commencing the work authorized by the permit, or, for any permit issued to authorize previously commenced or completed work, for failure to return an acknowledged, executed permit within the time period stated in the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an acknowledged, executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each document plus FIVE HUNDRED DOLLARS (\$500.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (a)(1) or (a)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND

DOLLARS (\$5,000.00) for each violation of each separate permit requirement, plus FIVE HUNDRED DOLLARS (\$500.00) per day for each violation, from the ninety-sixth (96th) day to the date the violation is corrected or the required improvements are provided.

(4) for the failure to obtain a Commission permit or an amendment to a previously issued Commission permit prior to undertaking any activity that can be authorized by an administrative permit or an amendment to previously issued Commission permit:

(A) if either a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted between thirty-six (36) and sixty-five (65) days and a permit or permit amendment is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted between sixty-six (66) and ninety-five (95) days and a permit or permit amendment is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the ninety-sixth (96th) day to the date the fully complete and properly executed application accompanied by a check or money order for the applicable application fee is submitted or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit or an abbreviated regionwide permit:

(A) if either a complete notice of intent to proceed under a regionwide permit or abbreviated regionwide permit is submitted between thirty-six (36) and sixty-five (65) days and the Executive Director approves the notice of intent to proceed within one hundred and fifty-five (155) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted between sixty-six (66) and ninety-five (95) days and the Executive Director approves the notice of intent to proceed within one hundred and eighty-five (185) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FOUR THOUSAND DOLLARS (\$4,000.00);

(C) if a complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected within the same time limits: FOUR THOUSAND DOLLARS (\$4,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the ninety-sixth

(96th) day to the date the complete notice of intent to proceed is submitted or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies:

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by Section 11387: THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than ninety-five (95) days after the mailing of the notice required by Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day to the date the violation is completely corrected.

(b) A person responsible for any alleged violation must pay double the amount listed in subsection (a) to resolve the alleged violation if that person has previously paid or has been assessed but has failed to pay any standardized fine pursuant to subsection (a) and Section 11391 within the five years prior to resolution of the alleged violation.

(c) If a violation resolved pursuant to Section 11388 is repeated by the same person within five years of the resolution of the prior violation, Section 11388 and subsections (a) and (b) shall not apply. Instead, the person responsible for the subsequent violation may resolve the subsequent alleged violation by paying TWO HUNDRED DOLLARS (\$200.00) per day for each day the subsequent alleged violation occurs or persists after the date of the mailing of the notice required by Section 11387.

(d) If the person responsible for the alleged violation does not complete all the required corrective actions within 125 days of the notice mailed pursuant to Section 11387 or does not pay the amount of standardized fines assessed in accordance with this section when payment is due under Section 11391(c) or (d), the Executive Director may commence Commission enforcement proceedings in accordance with Sections 11321 through 11334. If the Executive Director determines that the person responsible for the violation has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for resolution of the violation using the standardized fine process by mailing a notice stating that the process is no longer available. After mailing such notice, the Executive Director shall commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11386, subsections (e)-(h) to new section 11390 filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11391. Notice of Liability for Standardized Fines and Opportunity to Appeal or to Resolve Violation through Commission Enforcement Proceedings.

(a) After the violation has been completely resolved, the Commission staff shall notify the person responsible for the violation by first class mail or email of the amount of standardized fines assessed in accordance with Section 11390. The notice shall state that if any person subject to standardized fines believes that the amount of standardized fines is inappropriate or was not properly determined in accordance Section 11390, that person can appeal the amount of the fines to the Executive Director and the Chair by submitting to the Executive Director within 21 days of the date of the notice a written statement that the person is appealing and the reasons for the appeal. The Commission staff shall submit to the Executive Director a response to the appeal within 14 days after receipt

thereof. The Executive Director and the Chair can reduce the amount of the standardized fines to an amount that they believe is appropriate and can establish a schedule for the payment of the standardized fines in installments.

(b) If any person subject to the standardized fines listed in Sections 11390(a), (b), or (c) believes that the 35-day time limit for resolution without a standardized fine established pursuant to Sections 11387 and 11388 is not feasible, that person may appeal the time limit to the Executive Director and the Chair by submitting to the Executive Director within 35-days of the notice mailed pursuant to Section 11387 a written statement that the person is appealing the 35-day time limit, the reasons for the appeal, and a proposed alternative date to complete the required corrective action. The Executive Director and the Chair can modify the 35-day time limit and the time periods for accrual of standardized fines set forth in Section 11390(a) for the violation as they believe appropriate.

(c) If any person subject to standardized fines does not appeal the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), the full amount of such fines shall be due and payable by cashier's check thirty (30) days after the date of the notice provided under subsection (a).

(d) If any person subject to standardized fines appeals the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), any fines the Executive Director and Chair determine to be appropriate shall be due and payable by cashier's check by the date or dates specified in their decision on the appeal.

(e) Any person receiving a notice under Section 11387 may waive the opportunity to resolve the violation under this Article by submitting a letter to the Executive Director indicating such a waiver and requesting that the violation be resolved through Commission enforcement proceedings in accordance with Sections 11321 through 11334 if that person believes such proceedings are necessary to fairly determine liability for the violation, the appropriate remedy, or the appropriate fine or administrative civil penalty amount. A waiver of the opportunity to resolve a violation under this Article and request that the violation be resolved through Commission enforcement proceedings may be submitted at any time after receipt of a notice under Section 11387 but no later than: (1) twenty one (21) days after the date of the notice provided by Commission staff under subsection (a) of amount of standardized fines assessed, if the person receiving such notice elects not to appeal the amount of such fines to the Executive Director and Chair; or (2) fourteen (14) days after the date of the decision of the Executive Director and Chair on any appeal of the amount of standardized fines. If a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings is submitted after the Commission staff has provided notice under subsection (a) of the amount of standardized fines assessed or after the decision of the Executive Director and Chair on any appeal of the amount of standardized fines, no such fines shall be due pursuant to that notice or that decision, and the appropriate amount of fines or administrative civil penalties shall be determined through Commission enforcement proceedings.

(f) If a person subject to standardized fines fails to pay such fines when due and payable under subsection (c) or (d), as applicable, and if such person has not submitted a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings under subsection (e), the Executive Director shall commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation. In those proceedings, the person subject to such fines may not contest his or her liability for the violation or that the violation occurred, and the Commission shall determine only whether the amount of standardized fines was properly calculated in accordance with Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

Statement of Defense Form

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **ADRIENNE KLEIN** OR **BRENT PLATER** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY **December 1, 2022** MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

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

The forms should also be emailed to Margie Malan at margie.malan@bcdca.gov.

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **ADRIENNE KLEIN** or **BRENT PLATER** of the Commission Enforcement Staff at telephone number **415-352-3609** or **415-352-3628**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report):

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

3. Facts or allegations contained in the violation report of

which you have no personal knowledge (with specific reference to paragraph number in the violation report):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

5. Any other information, statement, etc. that you want to make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

7. Name of any person whose declaration under penalty of perjury was listed in the violation report as being part of the staff's case who the respondent wants to cross-examine, all documents about which you want to cross-examine the person, area or areas of information about which the respondent wants to cross-examine the witness, information that the respondent hopes to elicit in cross-examination, and the reason(s) why some other method of proving this information is unsatisfactory:

Statement of Defense Form

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **ADRIENNE KLEIN** OR **BRENT PLATER** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY **December 1, 2022** MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

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

The forms should also be emailed to Margie Malan at margie.malan@bcd.ca.gov.

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **ADRIENNE KLEIN** or **BRENT PLATER** of the Commission Enforcement Staff at telephone number **415-352-3609** or **415-352-3628**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report/Complaint):

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report/Complaint):

3. Facts or allegations contained in the violation report of which you have no personal knowledge (with specific reference to paragraph number in the violation report/Complaint):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

5. If the Executive Director is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding and if you would be unable to pay the proposed penalty or paying the proposed penalty would have a substantial adverse effect on your ability to continue in business, provide factual information establishing such inability to pay or such adverse effect. Submit all relevant supporting documentation which may include but not limited to audited financial statements and reports (or if not audited, then those that are the basis of tax returns or regulatory filings), balance sheets, profit and loss statements, statements of net worth, annual budgets, bond prospectuses, and tax returns including supporting forms and schedules as may be applicable. Before submitting this information redact (cover or blackout) all personal information including your social security or tax-payer identification number, driver's license/state identification number, financial account number and any other private non-public personal information including a residential address, telephone numbers, or personal email address.

6. Any other information, statement, etc. that you want to make:

7. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

8. Name of any person whose declaration under penalty of perjury was submitted with the violation report/complaint as being part of the staff's case who the respondent wants to cross-examine, identify all documents referred to in such person's declaration about which you want to cross-examine the person, the area or areas of information about which the respondent wants to cross-examine the person, and the information that the respondent hopes to elicit in cross-examination, and state the reason(s) why some other method of proving this information is unsatisfactory.
