

RED Exhibit C: Respondent's Statement of Defense (SOD), 71 pages



December 1, 2022

Lawrence J. Goldzband
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SF Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94102

**Statement of Defense of Seaplane Investments, LLC to
San Francisco Bay Conservation and Development Commission's TWO Violation
Reports/Complaints for the Imposition of Administrative Civil Penalties,
Enforcement Investigation No. ER2019.063.00**

Dear Mr. Goldzband:

Our firm has been retained by Seaplane Investments, LLC ("SI"), the recent purchaser of the subject property in Sausalito, to represent them in connection with its receipt of various alleged violations and enforcement actions taken by San Francisco Bay Conservation and Development Commission ("BCDC") against SI, all of which appear, confusingly, to be identified under Enforcement No. ER2019.063.00, although they involve violations from decades past against previous owners as well as certain paper violations that appear to be resolved. The most recent correspondence from BCDC to Mr. Lou Vasquez, dated October 27, 2022 ("Oct Violation Report" or "Complaint 2")), suggests that there are only three outstanding violations against SI related to unpaid fines; however, Ms. Klein's email on November 10, 2022, confirms that both the six violations contained in the July 29, 2022 Violation Report sent to SI ("July Violation Report" or "Complaint 1") under Enforcement No. ER 2019.063.00 and the three violations contained in the Oct Violation Report will be reviewed together at an Enforcement Hearing on December 21, 2022. While this approach is not clear from previous correspondence, this Statement of Defense ("SOD") will address all nine violations alleged collectively in Complaints 1 and 2. This SOD supplements and wherever inconsistent, supersedes the SOD filed by Mr. John Sharp, on September 2, 2022, in connection with the July Violation Report.

SI reserves the right to rely upon all of documents contained in BCDC's Complaint 1 and Complaint 2, including all corresponding attachments as referenced herein.

I. Executive Summary

The first set of violations included in Complaint 1, with the one minor exception of the boat ramp, involve uses, repairs, and alleged work completed by other entities decades before SI's ownership of the property, and in one instance, is alleged to have occurred

47 years ago. Accordingly, it is surprising to find that Complaint 1 names SI as the sole respondent at this point, when it is clear from the extensive record that Mr. Steven Price of Commodore Marina was the primary violator along with the lessee at the time, Seaplane Adventures, and that both of these parties have been in serious negotiations with BCDC for years to address all but one of the alleged violations in Complaint 1 and were in continued negotiations even after SI took over the property. What remains unclear is why these two parties appear to no longer be named in Complaint 1, as if their culpability for violations that they are alleged to have caused has magically evaporated upon SI's purchase of the property. Mr. Price still exists and should be held solely responsible for any fines, fees, or penalties associated with all unauthorized fill and public access violations – with the exception of the seaplane launch ramp, as discussed below.

SI has been – and continues to be- more than willing to work with BCDC on proactive permitting to bring the existing site into compliance, including working with BCDC on new features that BCDC has requested, such as a pedestrian bridge and potential quiet title actions with the County to improve the site. However, SI cannot be forced, or legally made, to pay civil penalties and fines associated with past violators for features that SI not only never caused, but is actively trying to retroactively permit and address. The actual violator still exists, has counsel, is financially solvent, and has been in negotiations with BCDC for the past several years working to resolve these issues. There is absolutely no justification, whatsoever, to go after SI for the exorbitant use violations identified in Complaint 1, totaling \$180,000 based on start dates that are decades before SI's existence, much less ownership of the property.

The McAteer-Petris Act is not a strict liability statute, and SI has had nothing to do with the unauthorized fill identified in Complaint 1, with the small exception of being the property owner when the emergency seaplane launch repairs took place in March 2022. As an innocent property owner whose every action has indicated a willingness to proactively bring the property into compliance – and improve it --SI should not be penalized for the actions of others. Since purchasing the property, SI has actively worked to address every one of BCDC's concerns, no matter how complicated or confusing they might be, including accepting assignment of permits, filing proactive after-the-fact applications, repainting parking lines, removing temporary vehicles from Yolo Street, working with the County to resolve title issues in connection with a desired pedestrian bridge, and even taking action against tenants to avoid any further unauthorized uses while BCDC reviews permit applications.

In Complaint 2, the Oct Violation Report, BCDC seeks \$21,170 for three paper violations that have, in BCDC's own language, already been 'resolved.' Complaint 2 then attempts to assess SI for double the standardized fines for an alleged failure to assign existing permits and to complete houseboat relocation within a specified timeframe. As described in detail below, SI took great pains to both receive assignment of the applicable permits and to ensure the houseboat was relocated within three weeks of receiving its first formal notice from BCDC. Conversely, BCDC failed to follow its own

procedures in levying such fines, adjusted timeframes to charge the maximum fines without cause, and failed to state a valid claim that would justify the application of standardized fines for any of these alleged violations. As established below, the two permit assignment claims do not violate any actual permit conditions and the houseboat delay and “failure to authorize” resulted from BCDC’s failure to respond to a valid permit extension request made on August 9, 2022. The strategy of identifying new permit conditions that never previously existed and then issuing enforcement actions and fines based on such non-existent conditions occurs throughout BCDC’s enforcement process under Enforcement No. 2019.063.00.

As discussed below, Complaints 1 and 2 are troubling on a number of legal, due process, and public policy grounds. Chief among these is the deafening truth that SI did not actually commit any of the alleged use and public access violations. Despite their collective page-length (236 pages for Complaint 1 and 127 pages for Complaint 2), the Complaints never actually articulate BCDC’s theory for why SI, the new innocent property owner that has been diligently working with BCDC on proactive permitting should be held liable for the alleged bad acts of the previous owner, Mr. Steven Price and the existing tenant, Seaplane Adventures. Indeed, SI was not even a permittee on the existing permits when BCDC lodged the first violation notice on October 8, 2021, complaining that certain permit conditions had been violated. (See Complaint 1, Exhibit 21.) In certain limited circumstances, BCDC can and should pursue penalties against arms-length landowners for the bad acts of their tenants and users. In those unique cases, the violator is either unknown or financially insolvent and pursuing the landowner is appropriate and necessary, as a last resort, to remedy the violation.

We understand BCDC’s concern over the emergency seaplane ramp construction in March 2022, which SI shares. BCDC should have been notified in advance of this emergency work and Seaplane Adventures should have worked directly with staff to identify a solution to ensure that Seaplane Adventures could comply with Federal Aviation Association (FAA) safety requirements. SI has taken steps to remove the tenant from any management decisions related to uses on the property. However, as shown below, the seaplane launch ramp was an emergency repair required to comply with FAA safety requirements and to avoid further damage to the existing seaplanes. (See John Sharp Statement of Defense, dated September 2, 2022 “Sept 2022 SOD”.) BCDC’s normal course of dealings when such emergencies occur is to work directly with the permittee on emergency permits, not to issue Cease and Desist Orders and mandate removal of necessary minor construction that quite literally has kept a business afloat during a pandemic. It is unclear why BCDC would take such a harsh position against such a small feature designed to minimize impacts to the Bay. SI stands ready to work with BCDC on proactively permitting this design. To the extent BCDC believes that such fines are warranted; however, they should be levied against the actual violator – Seaplane Adventures– and not against SI.

The Factual Backgrounds provided in both Complaints conveniently gloss over SI’s repeated efforts to work with BCDC on a proactive permitting approach to bring the

property into compliance and to possibly even enhance the existing public access. Indeed, SI currently has an application pending before BCDC to address any outstanding issues. SI remains dedicated to working with BCDC to bring the property into compliance on a proactive basis, and to possibly even add new features desired by BCDC, but it cannot do so with a \$201,170 sword of Damocles hanging above its head. This money could be instead spent towards completing the permitting process, enhancing the bike path, enhancing landscaping and public access, and working with BCDC on its desired pedestrian bridge. BCDC has taken such a strident tone that at this point, SI is left with no other option but to vigorously defend against such wild accusations and unjustified fines and penalties.

Complaints 1 and 2 fail to provide SI with its basic due process rights namely clear notice of actual violations and the opportunity to appeal and protest such violations in a timely manner. BCDC failed to properly notify SI of all potential violations in its October 8, 2021 letter, and distinctly failed to offer an opportunity to appeal or plead its case before doubling standardized fines and chose instead to simply call the matter 'closed'. In addition, BCDC inexplicably separated and expanded the violations identified in July 2022 under the same enforcement number without justification. It then issued a Cease and Desist Order in the middle of it all and continued to file warnings and increase fines without once giving SI the opportunity to appeal such claims and all the while asking SI to delay an enforcement hearing to "resolve and negotiate" all violations.

Throughout the entire process, the permit side of the house was issuing permit amendments and extensions (as late as January 2022) and processing after-the-fact authorizations (February and March 2022), giving the clear impression that BCDC was working with SI on proactive permitting, not assessing additional fines. Any reasonable person trying to comply with BCDC's regulations would be utterly confounded by the manner in which BCDC has haphazardly notified SI of potential violations and unilaterally increased fines, while simultaneously issued permits and requested hearing delays to continue amiable negotiations. Even BCDC's own Enforcement Policy Manager, Mr. Trujillo, was truly confused by BCDC's process and had to do forensic research within BCDC to explain the situation to SI. This should never be the case. BCDC is required to clearly notify a 'permittee' of potential standardized fines (not a potential permittee) and provide a clear opportunity to appeal such fines. It is also required to provide a clear violation report stating all potential violations against a respondent and has the burden of proof of stating a clear claim of violation, which BCDC has failed to do all nine times.

Even after Mr. Trujillo's efforts to clear up the matter by email and phone, BCDC issued a second complaint in October 2022 without even hosting a negotiation on the first or an enforcement hearing. At that point, it was not clear whether BCDC was trying to proactively permit, work out a resolution, or actively and aggressively pursue SI for past violations committed by previous owners. SI was left in the dark about which step to take next and hired this firm to help navigate the quagmire. It was only through a response from Ms. Klein to an email from this firm, on November 10, 2022, (two weeks

after the Oct Violation Report was sent) that SI learned that the enforcement hearing scheduled for December 21, 2022, would now address all nine violations from both Complaints 1 and 2. BCDC has failed to meet its burden of providing clear notice and following the procedures established in 14 CCR Chapter 13, Subchapter 2, Secs 11321, 11323, 11387, 11388.

Moreover, the timing for this response provides SI with little to no recourse to fully respond to the myriad of violations being launched against them. Complaint 1 is 236 pages long with 28 exhibits and includes potential violations dating back decades. Complaint 2 is 127 pages long with 7 exhibits. SI has hired new counsel to help navigate the complicated file and has been given essentially 20 days, starting November 10, 2022, and inclusive of the Thanksgiving holiday, to respond in writing. Moreover, SI is expected to fully respond to nine violations in two Complaints lasting 47 years on a 7-question form of less than 2 pages. We object to this unreasonable timing and process. Yet, in a good faith effort to continue working well with BCDC, SI has diligently endeavored to respond in a timely manner.

The nine violations against SI also fatally suffer from what, in legal parlance, is known as “unclean hands” and laches. BCDC, and not SI, chose to allow Commodore to maintain unpermitted improvements for years. BCDC, not SI, failed to resolve past violations with Mr. Price, Commodore Marina, and Seaplane Adventures, even though the parties had been working together up until the sale of the property. And now, when BCDC finally decides to take more formal action, it assesses penalties against the new innocent property owner, SI, as maximum penalties and fines in the “Duration in Days” for each violation, including one violation that BCDC claims has lasted 47 years. BCDC is attempting to make SI pay for the sins of others and to atone for BCDC’s own delays and inability to resolve the violations with the previous owner, the actual violator. For all of these reasons, we object.

Notwithstanding SI’s objections, SI responds to both the July Violation Report (Complaint 1) and the Oct 27, 2022 Violation Report (Complaint 2) as set forth herein and provides the mandatory Statement of Defense form as Exhibit A attached to this document.

II. Statement of Facts

This case involves a classic scenario in which BCDC has failed to resolve violations against the actual violator at issue, Mr. Price owner of Commodore Marina and Aaron Singer, owner Seaplane Adventures, and as a result, is resorting to transferring full liability from decades past violations against the new innocent property owner, without proper due process, notice, or legal justification. The innocent purchaser here is SI, who since buying the property in July 2021, has made every possible effort to address BCDC’s concerns and to proactively bring the property into permit compliance to address any existing complaints, justified or otherwise.

As discussed further below, the history of compliance and violations against this property is complicated and unnecessarily convoluted. Forensic research has been necessary to simply determine the extent of the violations lodged against SI, much less the legal justification for bringing such claims against a new owner and not simply resolving them against the actual violators before July 2021. Further confusing matters, BCDC has simultaneously threatened enforcement with one hand and issued permit extensions for the property with the other over the past decade. Under the McAteer-Petris Act and BCDC's own regulations, if a permit is out of compliance, BCDC must rectify the compliance issue before reissuing said permit with an amendment for additional construction.

One of the few things that is clear from the long and complicated record is that BCDC has long had issues with the previous owner, Mr. Price of Commodore Marina, and was indeed in the process of resolving those issues with Mr. Price, albeit months after the regulations required such resolution, when SI purchased the property in July of 2021. It also appears that most of the violations were issued as a result of complaints from residential neighbors who have long wanted the existing seaplane operations, run by a separate entity Seaplane Adventures, put out of business.

However, what is abysmally unclear in the record is why BCDC failed to follow its own enforcement procedures and resolve such enforcement actions against the actual violators in 2020, in 2021, or now. BCDC's enforcement actions make no mention whatsoever of any ongoing process with Mr. Price and Seaplane Adventures or what justification BCDC would have for dropping such enforcement efforts against the actual violators and shifting all blame and liability solely to SI. SI's purchase of the property does not make Mr. Price any less culpable for previous violations of the McAteer Petris Act. Indeed, the facts show that the parties were near resolution when SI purchased the property in July of 2021.

Here is the statement of facts that SI admits to be true.

On August 24, 1973, BCDC issued a permit to Commodore Properties (the "1973 Permit or "Permit 1973.014"), which was later assigned to Steven Price, owner of the property before SI and operator of Commodore Marina. Mr. Price remained the permittee of the 1973 Permit until it was assigned by Mr. Price to SI on October 28, 2021. The 1973 Permit has been amended and reissued four times – one time in 2017 to include relocation of Houseboat #11 (1973.014.01) and three other times to extend the construction deadline for relocation of the Houseboat. (Permits 1973.014.02, 1973.014.03, 1973.014.04, the last one issued January 25, 2022.)

Standard Condition IV.C. in the 1973 Permit allows for permit assignment from one owner to another, but does not identify a specific timeframe within which such assignment must take place. (See Complaint 1, Exhibit 6A, Standard Condition IV.C.)

On August 25, 1988, as amended through December 28, 1989, BCDC issued Permit M85-30 (the "1985 Permit") to Commodore Helicopters and Walter Landor. (See Complaint 1,

Exhibit 7), which authorized installation and repair of a tidal gate, repair and maintenance of an existing heliport landing pad, installation of a fuel storage tank to meet safety requirements, and any after-the-fact authorizations to approve the existing heliport pad.

While there is some discrepancy in the record, formal violations against the previous owner appear to start as early as June 9, 2010 (and possibly earlier), when BCDC staff opened Enforcement File ER2010.021, which ultimately was closed and merged with Enforcement File ER2019.063. It is unclear from the record why BCDC failed to follow through with the 2010 enforcement as there are no violation reports, enforcement hearing dates, or resolution correspondence that we could find identified in the record.

Instead of resolving these potential violations, BCDC repeatedly amended and reissued 1973 Permit in 2017, 2019, 2021, and 2022 to allow for the relocation of Houseboat #11, saying nothing about unauthorized uses that may need to be corrected under the permit. Each amendment included a finding that all fill on the property was the minimum necessary and in compliance with the McAteer-Petris Act. (See Complaint 1, Exhibit 6A, Findings p. 8.)

More substantial violations were raised against Mr. Price in 2020, in what appears to be a response to complaints to BCDC from neighbors on December 12, 2019. (See Complaint 1, Exhibit 17.)

On January 31, 2020, BCDC staff member Adrienne Klein visited the property stating in notes that the staff of Seaplane Adventures “were very helpful and friendly.” Ms. Klein told the lessees “that the owners should not panic upon hearing from [BCDC],” indicating that no major issues were identified on the property (See Ms. Klein’s Site Visit Notes, January 31, 2020, site visit, Complaint 1, Exhibit 18A.) Ms. Klein stated that the features of potential concern had been there since 1946 and identified the potential need for retroactive authorization for the repairs made to the “U” shape docks constructed by lessee, Seaplane Adventures, to ensure safe seaplane tour operations. (Id.) The site visit report does not reference any issues related to landscaping needs, missing public pathways, or other permit violations.

After assuring the lessee that they ‘shouldn’t worry’, BCDC sent a violation report on February 18, 2020, to Steven Price the owner of Commodore Marina and Aaron Singer the owner of Seaplane Adventures, identifying long standing violations, relating to the expansion of docking facilities, relocation of a fueling station and a reconstruction of a ramp and opened Enforcement File 2019.063. (See Complaint 1, Exhibit 19.) The February 2020 Notice appears vague and asks the permittees themselves to ‘identify unauthorized uses’, when BCDC’s regulations and California law clearly place the burden on BCDC to identify and substantiate such claims.

SI notes that the February 18, 2020, Notice of Violation, failed to notify Seaplane Adventure’s attorney, John Sharp, who found out about the potential violations in early March and contacted BCDC to resolve the issues. (See Complaint 1, Section IV.I, p. 5.)

Complaint 1 claims that from “March – Sept [2020], progress was delayed due to the pandemic,” but it fails to note that Mr. Sharp sent repeated emails, calls, and follow ups to address the issue and that BCDC cancelled several meetings during which time the previous owners could have received additional guidance and resolved the compliance issues.

Obviously, the pandemic had a devastating effect on all parties, the brunt of which was felt, as we understand it, by Mr. Singer whose business was shuttered and almost forced into bankruptcy like many small businesses at that time. Indeed, it was certainly an odd time for BCDC to choose – during the worst of a pandemic- to raise violations that allegedly had been ongoing, according to BCDC’s own July Violation Report, for decades. However, we suspect the effort was in direct response from neighboring owners who as we understand it, had regularly lobbied against the seaplane tour operations.

Regardless, once BCDC initiated an enforcement action, it had an obligation under the regulations to complete the effort, which it could have done any time after issuing the February 2020 Violation Report. (BCDC held enforcement meetings on other matters on March 12, 2020, April 9, 2020, April 22, 2020, etc.) BCDC could have, and was required under law, to resolve the issue with the actual violators.

BCDC issued another extension of Permit 1973 on September 2, 2020. This second amendment to Permit 1973 reaffirmed all terms of the 1973 Permit and does not mention any existing violations of permit conditions. (See Corrected Permit 1973.014.02, Time Extension, issued on September 2, 2020, Complaint 2, Exhibit 02C.)

Two weeks later, BCDC issued an updated Violation Report against Mr. Price on September 15, 2020. (See September 15, 2020 Violation Report attached to Complaint 1, Exhibit 20, the “Sept 2020 Violation Report”).) The Sept 2020 Violation Report alleged violations related to everything from failure to record a map to a claim that Mr. Price must prepare a new survey at his own expense to identify BCDC’s new jurisdiction. The Sept 2020 Violation Report also claimed that: “[the permittee] is responsible for identifying all fill and uses that lack authorization, even if not asked about herein.” (Id.) Again, California law and BCDC’s regulations place the burden squarely on BCDC, not the respondent, to both identify and prove up any potential violations of the McAteer-Petris Act. The Sept 2020 Violation Report gave the previous owners 60 days to address a laundry list of violations, and did not set a hearing enforcement date as required by BCDC enforcement regulations (14 CCR 11321.)

We understand from discussions with the previous owners and BCDC’s statements, that Mr. Price and Mr. Singer’s attorneys, Neil Sorenson and John Sharp, respectively, submitted various correspondence to BCDC on November 12, 2020, November 13, 2020, January 15, 2021, and June 15, 2021, with information regarding the site history, current site uses, an airport master record, and general responses to BCDC allegations, and that the resolution process was moving forward. It is also SI’s understanding that several meetings and iterative negotiations between Mr. Price and BCDC staff ensued during

this time and that the previous owner was working with BCDC on a resolution to any permit compliance issues.

SI further understands that to address BCDC's complaints, Mr. Price paid for and submitted a new survey to BCDC on January 19, 2021 (although SI has never been given a copy of this survey, and it is not included in Complaints 1 or 2). These submittals and correspondence indicate BCDC's direct engagement with the previous owner and lessee to resolve outstanding violations.

On April 16, 2021, BCDC reissued and amended the 1973 Permit granting Mr. Hedelman, the owner of Houseboat #11, an extension until August 31, 2021, to complete relocation of his houseboat.

On June 24, 2021, Ms. Adrienne Klein provided an email to Mr. Price, Mr. Sorenson (Price's attorney), and Mr. Sharp (Mr. Singer's attorney) summarizing the outstanding violations on the property, proposing an approach for resolution, and requesting to meet with the violators and their counsel, on July 12, 2021 to resolve all outstanding matters. (See Exhibit B attached herein.) We understand that BCDC met with Mr. Price, Mr. Sorenson, Mr. Singer, and Mr. Sharp, the actual alleged violators to resolve all outstanding permit violations on July 12, 2021.

What remains unclear is whatever happened in that meeting and why BCDC appears to have completely abandoned such efforts to resolve outstanding violations with the actual violators. According to BCDC, Mr. Price remained the permittee until January 3, 2022. It is not clear why any of the past violations have been leveled against SI and why BCDC has not moved forward with its intended fines, violations, and enforcement actions against the actual violators under Enforcement No. 2019.063.00 with whom they have been working for over a decade and in earnest for at least the last three years.

On July 21, 2021, Seaplane Investments, LLC, (SI) purchased the property. Lou Vasquez is the managing member of SI and a San Francisco developer who recently constructed an approximately 17-acre park on behalf of the City of San Francisco and has a long history of ensuring permit compliance and good faith dealings with BCDC. Mr. Vasquez has had absolutely nothing, whatsoever, to do with the alleged violations in Complaints 1 and 2, with the exception of signing a permit assignment form and being the property owner when the emergency seaplane launch ramp was constructed by tenant, Seaplane Adventures.

On September 24, 2021, Mr. Sharp shared with BCDC the news that the property was under new ownership and that the new owners were very willing to proactively work with BCDC to bring the site into compliance. This letter also reiterated Seaplane Adventure's need to repair the seaplane launch. We note that Mr. Vasquez is not copied on this letter. (See letter from Mr. Sharp to Ms. Klein, dated September 24, 2021, attached herein as Exhibit C.)

Rather than work collaboratively with SI or reach out to Mr. Vasquez, the managing member of SI, BCDC sent its first direct correspondence to SI in the form of a Violation Notice on October 8, 2021. (See October 8, 2022 letter, Complaint 1, Exhibit 21, the “Oct 8, 2021 Letter”). For unknown reasons, this letter is not addressed to the current permittee at the time, Mr. Price, who as the permittee was the party responsible for assigning said permits to the subsequent owner. The Oct 8, 2021, letter is also not addressed to Aaron Singer, the owner of Seaplane Adventures, who had been identified in the February 18, 2020 Violation Notice and for whom Mr. Sharp had been working with BCDC to resolve outstanding compliance issues. The letter appears to unilaterally and without cause or explanation assume that SI is now fully at fault for any and all violations ever caused on the property, including Mr. Price’s failure to assign the 1973 Permit and the 1985 Permits over to SI.

In addition to permit assignment requests, the Oct 8, 2021, letter paradoxically includes a violation for failing to complete the houseboat on time (too late) and for completing the work without authorization (too early). (See discussion below).

The Oct 8, 2021, letter also vaguely states that there may be decades long violations associated with the seaplane access docks, the fueling tank, parked vehicles, stored planes, and the seaplane launch ramp of Trex boards in the Yolo Street ROW. The letter also includes a vague potential violation related to public access, but does not clarify the ways in which SI is out of compliance stating only that SI must “submit an obtain approval of plan that complies with Special Condition 11.C.4.c and construct such plan by December 31, 2021.”

Even though this is the first letter ever sent directly to SI, who had not been privy to any previous discussions, the letter mandates that SI must submit an after-the-fact application or permit amendment for all items within two weeks, even though SI was not yet the permittee of either the 1975 Permit or the 1985 Permit. As described below, this letter fails to follow BCDC’s regulations 14 CCR 11321 regarding the commencement of enforcement proceedings and 14 CCR 11387 regarding the commencement of standardized fines, and it fails to identify the potential violations against the new owner, SI or state clearly SI’s opportunity to protest such violations.

With the exception of the two permit assignment “violations,” all other issues (unauthorized uses, public access, unauthorized fill) referenced in the Oct 8, 2021, letter represent violations leveled against the previous owners and operators, Mr. Price of Commodore Marina, and Mr. Singer of Seaplane Adventures, which parties BCDC was, as recently as August 2021, still in negotiations with to resolve such issues.

Although SI has in no way been involved in any of the alleged violations, they proceeded diligently to work with the previous owners and tenants to comply with BCDC’s requests to proactively bring the property into compliance. SI filed two permit assignment forms for both the 1973 and 1985 Permits on October 28, 2021 (See October 28, 2021, letter and attachments from Mr. Sharp to Ms. Klein, attached herein as Exhibit D). BCDC

claims that permit assignments were completed on January 3, 2022, but that does not match the attached letter from Mr. Sharp to Ms. Klein, dated February 28, 2021, including executed permit assignment forms. The October 28, 2021 letter also includes pictures confirming that Houseboat #11 has been relocated. (Id.) The October Violation Report suggests that this issue was not resolved until January 25, 2022, but SI strongly disputes this fact. The houseboat was relocated as of at least October 28, 2021, according to Exhibit D, but BCDC delayed its response and approval of such relocation until January 2022.

Ms. Klein's January 6, 2022, email confirmed receipt of permit assignments, two months after they were filed, stating that each of these assignment issues had accrued \$3,000 in fines, but did not explain which permit condition has been violated, why such fines would have accrued, or identify the required process under 14 CCR 11388 by which SI could establish that such violations never occurred. This email, not based on any existing enforcement matters against SI, also references vague and random outstanding unauthorized uses that require SI to immediately pay \$8,000, without any opportunity to challenge said violations. Even the most sophisticated property owner would be confused by this email and would remain unclear about how to defend their rights, cure the problem, or object to the accusation, rights which are afforded every potential respondent under the law.

To further confuse matters, BCDC issued an amendment to Permit 1973.014.04 three weeks later on January 25, 2022, to SI for an after-the-fact authorization for the houseboat, making no mention whatsoever of fines associated with this matter or violations on the property. (See January 25, 2022 Klein email to Mr. Sharp, Complaint 2, Exhibit 02E.)

SI continued its proactive compliance approach and filed a permit application on February 28, 2022, to cover any remaining outstanding features that appeared to be of concern to BCDC, including the boat docks, fuel tank, seaplane storage and repair, and including some of BCDC's new requests for upgrades to the public access, such as a new connection through Yolo Street, upgraded landscaping, board walking transition aprons to bike path, new parking, ADA signage, and transition ramps. (See February 28, 2022 Permit Application Package, Complaint 1, Exhibit 23, referred to as the "Feb 2022 Application".) As discussed below, many of the features included in the Feb 2022 Application were added at BCDC's request and were never required by either the 1973 Permit or the 1985 Permit, including construction of public access improvements within the Yolo Street ROW, pending County approval.

While the Feb 2022 Application was processing, the tenant, Seaplane Adventures, became aware of safety issues related to the disrepair of the seaplane launch ramp when one of its seaplanes was damaged during entry/exit from the water, which could be considered a violation of the Federal Aviation Administration's (FAA) safety regulations (See Sharp September 2, 2022, SOD.). On March 14, 2022, SI understands that its tenant, Seaplane Adventures undertook emergency repairs to fix the seaplane

launch to avoid further damage. The construction design matches the dimensions described in the Feb 2022 Application pending before BCDC, however, it was constructed out of plastic slide mats affixed to concrete grade instead of the Trex board referenced in the application to ensure the safety of the planes and compliance with FAA's requirements. SI was not involved in this construction and recognizes that Seaplane Adventures should have reached out both to SI and to BCDC beforehand. Of the nine violations, this is one violation that makes logical sense, but should be handled against Seaplane Adventures as an emergency repair that requires after-the-fact authorization, not as an affirmative violation, and definitely not against SI.

On March 15, 2022, BCDC's Counsel, Mr. Plater issued a Cease and Desist Order (CD2022.002.00) to halt construction of the emergency seaplane launch ramp and ordered SI, not Seaplane Adventures, to restore the area to its original condition without any consideration of the safety or emergency issues related to this feature. The CDO is not addressed to Seaplane Adventures, the tenant and operator who completed the construction, only to SI, the owner of the property who likely would be sued for tortious interference with another business if it actually followed BCDC's orders and directly removed a safety feature from Seaplane Adventure's business operations. Instead, SI continued efforts to proactively continue processing its permit application with BCDC to include the seaplane launch.

On March 30, 2022, BCDC filed an incompleteness letter for the application requesting additional information for the Feb 2022 Application. (See Complaint 1, Exhibit 26.) The March 30, 2022, letter indicated a willingness to permit the seaplane fuel tank and fueling pumps, the new seaplane launch ramp, the foam floating seaplane docks and fuel station, repairs to the seaplane docks, storage of the planes, and a berm across Yolo Street to support the heliport pad authorized in by Permit M85-30. This letter did not raise any issues associated with the existing heliport pad or raised boardwalk or any other potential violations, with the exception of the emergency seaplane launch ramp construction. And yet, while the permit analyst side of the house worked on proactive permitting lulling the property owner into a false sense of security, the enforcement side proceeded to issues unjustified violations.

On June 12, 2022 BCDC issued another Cease and Desist Order regarding the boat ramp, which it again directed solely against SI, not Seaplane Adventures or Mr. Price. This CDO expands the March 12th version including features that have been in place for decades, most of which are on the County's property. This CDO is in direct contradiction to BCDC's March 30, 2022, letter working with SI to permit such features after-the-fact.

On July 14, 2022, Mr. Sharp sent a letter identifying SI's continued diligence in trying to bring the property into compliance even after the previous owners failed to do so and highlighting why the seaplane launch ramp was a necessary and emergency repair. BCDC did not respond to this letter.

Instead, on July 29, 2022, BCDC issued Complaint 1, a massive, sprawling Violation Report against SI only, not against Seaplane Adventures (the constructor of the emergency launch), not against Steven Price of Commodore Marinas (the property owner when 5 of the 6 violations took place), and not against the County (the property owner of Yolo Street where most of the public access issues are located). Complaint 1 dredges up past violations for decades past that went unresolved with the prior owners. Note that this report, which ostensibly summarizes all violations, says absolutely nothing about any potential violations related to delayed permit assignments or the relocated houseboat.

Complaint 1 identified the following six violations:

1. **Violation 1: Public Access: Violation of 1973 Permit Condition IIC.1.a, IIC.1.b, IIC.4.b, IIC.4.c:** failing to provide some public access improvements, including portions of public shoreline pathways, signage, and connections within the Yolo ROW owned by the County.
2. **Violation 2: Public Access Landscaping and maintenance - 1973 Permit Condition IIC.2:** failing to maintain the landscaping and public pathways, although the report does not clarify exactly what landscaping or pathways are in need of repair.
3. **Violation 3:** Suggests there is unauthorized fill in the Bay or the shoreline band in the Yolo street right of way violating Special Condition II.D, including vehicle parking/ seaplane storage, repair and maintenance and a seaplane fueling tank. This violation appears to relate to an area owned by the County, but the Compliant is not directed to the County. This violation also includes a request for an approximately three-foot-high, elevated asphalt path across Yolo Street to allow for pedestrian access during high tides. Most of these references are to areas that are owned by the County and refer to areas within BCDC's shoreline band.
4. **Violation 4:** Unauthorized fill for a helicopter pad and four walkways that have been in place since 2008. This violation appears to be referenced for the very first time in this complaint as we could not find any previous reference to this alleged violation in any previous report against Mr. Price, Mr. Singer, or violation notices to SI.
5. **Violation 5: Unauthorized fill** for the "U" shaped docks and three fingers, which were currently the subject of the Feb 2022 Application pending before BCDC.
6. **Violation 6:** Unauthorized Seaplane launch ramp emergency construction referenced above.

All of the features (with the exception of the heliport and four walkways, which had never before been raised by BCDC that we could find in the record) were included in the after-the-fact authorization Feb 2022 Application request pending before BCDC at the time Complaint 1 was issued. For all of these fines, some according to BCDC dating back 47 years, BCDC imposed the maximum civil penalty against SI, totaling \$180,000.

It is unfathomable why BCDC would feel the need to issue a violation report and exorbitant fines for features that it was actively involved in permitting after-the-fact with the new property owner. It's also inconceivable why such violations were levied against SI only, and not against Mr. Price the actual violator, or Seaplane Adventures, the tenant who constructed the seaplane launch ramp, or the County, the property owner of Yolo Street.

Two days after filling Complaint 1, in the middle of the 35-day period that the Respondent had to provide a Statement of Defense, BCDC sent a new enforcement notice on August 2, 2022, also labeled as Enforcement No 2019.063.00, this one related to 'standardized fines' identified in the Oct 8, 2021 letter, which as described below, were never clearly defined. The August 2, 2022 letter informed SI that they needed to immediately pay \$12,300 in standardized fines for paper violations associated with the two permit assignments and the houseboat relocation. BCDC does not grant SI the opportunity to object to the fines or underlying violations on which the fines were based, nor did it clarify why BCDC would file a second standardized fines notice related to the same enforcement number 2019.063.00 two days after it issued a full-fledged, 236-page Violation Report on July 29, 2022, confounding the most skilled of practitioners, much less the average property owner. This letter directed the Respondent to submit a check for \$12,300 by no later than September 1, 2022 or face additional fines and penalties. Ironically, these fines were due the day before the Statement of Defense related to Complaint 1, Enforcement No 2019.063.00, was due. (See Complaint 2, Exhibit 06.)

The August 2, 2022, letter also stated that the duration for the permit assignment violations was October 8, 2021 through January 3, 2022, resulting in a standardized fine of \$3,000 per assignment violation and that the duration of Violation 3 (houseboat) was from October 8, 2021 through January 25, 2022, resulting in standardized fines of \$6,300. The letter failed to acknowledge or reference SI's letter to BCDC on October 28, 2021, which included both permit assignment forms and proof that the houseboat had been relocated.

And still, even with all the confusion, accusations, and failure to provide basic due process, SI tried diligently to resolve the issues by filing a Statement of Defense in early September. We understand that Mr. Sharp attempted to reach out to both Ms. Klein and Mr. Plater to resolve the issues through a negotiated settlement by phone calls in early September and an email on September 1, 2022, but received no response. On September 2, 2022, Mr. Sharp filed a Statement of Defense in response to Complaint 1; however, Mr. Sharp did not ask Lou Vasquez or SI to review this SOD and instead filed it without identifying some very obvious due process violations related to the Violation Report. This Statement of Defense supplements and amends the September 2, 2022, SOD, filed by Mr. Sharp to ensure that SI receives a fair and full accounting of events and a comprehensive defense.

Mr. Trujillo, BCDC's Enforcement Policy Manager, reached out to Mr. Sharp in early September to request a delay for the enforcement hearing to allow time for "negotiations between the parties" to which Sharp agreed, suggesting that: 1) all violations would be addressed together (as they're all under the same enforcement number); and 2) that the fines would not be assessed while the parties were still in negotiations. (See email from Mr. Trujillo to Mr. Sharp, September 6, 2022 attached as Exhibit E.) Mr. Sharp agreed to delay the enforcement hearing with the understanding that all parties would continue to work together on a proactive permitting approach to address any outstanding violations. Recall that at this time, SI was still in the process of responding to BCDC's March 30, 2022, letter related to an ongoing permitting process for any necessary after-the-fact uses of the property.

Just days after SI agreed to delay the enforcement hearing in order to resolve the violations through a stipulated order between the parties, BCDC issued a "FINAL WARNING LETTER" to SI on September 21, 2022, that confusingly references Enforcement No. 2019.163.00 again, but only discussed the three paper violations. In this letter, BCDC removed SI's opportunity to appeal the paper violations and unilaterally concluded that the standardized fines must be almost doubled before even hearing the Respondent's position through either a Statement of Defense or an enforcement hearing.

If this all sounds extraordinarily confusing, it's because it is. Nine different violations are being alleged through two different timelines under the same enforcement number (a number we note that was originally allocated to Mr. Price and Mr. Singer, not to SI), with very little direct notification to SI. It was so confusing, in fact, that Mr. Sharp had to reach out to Mr. Trujillo to have him explain: 1) what violations in fact are still being alleged and against whom; 2) which violations were left outstanding in light of the two different violation notices and the pending Feb 2022 Application; 3) what the timeline for responding and/or objecting might be; and 4) why the August 2, 2022 letter referenced the paper violations in the Oct 8, 2021, letter, but failed to mention the other public access and unauthorized uses referenced in the same letter and/or the outstanding July Violation Report.

Mr. Trujillo, the lead Enforcement Policy Manager at BCDC, was stumped. He told Mr. Sharp that he "understood his confusion" (See Trujillo Email, September 23, 2022, Exhibit F) and needed to check back in with his team to decipher the various tracks of violations. Two days later, he explained by email, without justification, that there were two tracks of violations, no opportunity to protest the paper violations, that the September 21, 2022 letter identified the opportunity to appeal, which was required pursuant to 14 CCR 11387, 11388. (Id.)

Before Mr. Trujillo and Mr. Sharp were able to schedule a meeting to discuss the violations or negotiate a settlement, BCDC issued Complaint 2 on October 27, 2022, also under Enforcement No. 2019.063.00. Complaint 2 alleges the following violations:

1. **Violation 1** related to SI's alleged failure to comply with Permit 1973.014.03, Standard Condition IV.C, regarding permit assignment. Complaint 2 now claims this violation started on August 20, 2021 (137 days – 4 ½ months), which is three months earlier than the October 8, 2021 start date referenced in the August 2, 2021 letter, resulting in significantly higher fines (See Complaint 2, Section VIII Table, and compare it with August 2, 2022 letter, Complaint 2, Exhibit 06.)
2. **Violation 2** makes the same permit assignment claim with respect to Permit M1985.030.00 also extending the start date from October 8, 2021 to August 20, 2021, again with no justification. (id.)
3. **Violation 3** is perhaps the most perplexing in that it claims that the Respondent is liable both for failing to complete houseboat relocation work by August 31, 2021, the date of expiration, **and** for continuing the work with an expired permit, suggesting that the Respondent was both too late and too early on such relocation.

By this point, SI had been simultaneously asked by BCDC: 1) to continue the proactive permitting process (March 30, 2022 letter); 2) Cease and Desist an emergency seaplane launch ramp that would bankrupt a business and cause potential FAA violations (March 15, 2022); 3) pay double the fines for resolved paper violations without ever having an opportunity to appeal the underlying alleged violation in the first instance (August 2, 2022); 4) pay \$180,000 in fines associated with violations that BCDC had inexplicably purported to transfer from Commodore Marina– the actual violators - to SI; 5) delay an enforcement hearing to negotiate settlement on all issues; and 6) pay fines immediately or face further consequences. This process has been so fraught with due process violations, inconsistencies, and confusion that it has taken Rudder Law Group, LLP 16 pages to simply recount the actual record and decipher the laundry list of enforcement threats, violation reports, permitting requests, and unresolved issues created by BCDC.

All the while, SI has been diligently working with BCDC permit analysts to: 1) complete permit assignments; 2) file after-the-fact authorizations for work it had no part in constructing; 3) pay for new landscape maintenance and design plans to satisfy BCDC's new landscaping requests and desires; 4) work with the County to attempt to gain sufficient control and ownership over Yolo Street to meet BCDC's new demands; and 5) hire new counsel to ensure that they are both fairly represented and can proactively work with BCDC.

Contradict this behavior with that of the previous owner, Mr. Price, who based on the documents in the record, failed to file permit applications, failed to address the public access issues for several years, failed to comply with the County's lease, and tried to lob all liability for past actions onto the new owners.

We submit that the above description, complete with corresponding references and attachments, are the undisputed facts of the matter and show a careless disregard for the rights of SI and a hypocritical approach to both permitting on one hand while

leveling unjustified fines and penalties with the other. We respectfully request that all of these facts, which are so critical to the violation analysis be added to the Administrative Record for all violations contained in Complaints 1 and 2, falling under Enforcement Matter No 2019.063.00.

III. Affirmative Defenses

A. The Complaints Fail to State a Claim Against SI

The Complaints name SI as the respondent, but completely fail to articulate a cognizable claim against SI, with the possible exception of the emergency seaplane launch ramp, which should (as described below) have been handled as an emergency permit and should have been lodged against Seaplane Adventures, if anyone, the tenant who completed the construction. For this reason alone, Complaints 1 and 2 against SI must fail. SI demurs as follows.

1. Each Category of Violation in the Complaint Fails to State a Claim

Complaints 1 and 2 leveled against SI collectively set forth nine categories of violations, confusingly bifurcated between 'resolved' and 'unresolved' violations in two different parallel sets of enforcement correspondence, all with the same enforcement number 2019.063.00 at times against three different respondents – Mr. Price, Mr. Singer, and now SI. The claims against SI are fatally flawed and should be rejected for the reasons outlined herein. Below we address each of the nine violation claims individually, starting with the 'resolved' or 'paper' violations lodged in Complaint 2, the October 27, 2022 Violation Report.

Three Paper Violations

Complaint 2 not only fails to state an actual claim for any of the three violations, but it is a gross example of arbitrary enforcement. First, as shown below, the assignment conditions in Permits 1973 and 1985 do not contain a deadline by which assignment must take place. Accordingly, there was no actual violation. Second, SI provided assignment forms on October 28, 2021, within 35-days of receiving notice that BCDC would like such assignment to take place. Third, BCDC confirmed to SI that all violations were resolved on January 6, 2022, and then inexplicably, eight months later, issued a violation report to pay fines and penalties associated with these violations, issued under the same enforcement number as other ongoing violations (which, we add, were in the process of being negotiated with BCDC). Even more egregious, the August, 2, 2022 initial notice of these fines said that the three 'paper' violations happened from October 8, 2021-January 2022, but Complaint 2 inexplicably expanded these violations by three full months with no justification whatsoever to start on August 20, 2021, which has the significant effect of almost doubling already unreasonable fines. Most importantly, none of the three paper violations identified in Complaint 2 state a valid claim or identify an actual violation of a permit condition.

a. Violations 1 and 2 – Failure to Assign

Permit 1973.014.03, Standard Condition IV.C, states the following:

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.

(See Complaint 2, Exhibit 02A, Section IV.C.)

Similarly, Permit 1985.030.01 Standard Condition IV.4 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.

(See Complaint 2, Exhibit 03, Section IV.4.)

These are the two permit conditions cited by BCDC as having been violated in Complaint 2, Section VI. Yet nowhere, in either of these two conditions does BCDC require that the assignment take place within a specified period of time, much less within 30 days of property transfer. The permit condition does not include any timeframe at all. BCDC cannot identify a violation without first identifying a permit requirement that has been violated.

We also note that the Oct 8, 2021, letter requesting that Mr. Price assign the permit does not create a new permit condition that has thereafter been violated. BCDC staff is not authorized to unilaterally add permit conditions to existing permits without Commission approval and the permittee's consent.

The January 6, 2022, email from Ms. Klein to Mr. Sharp (again failing to copy Mr. Vasquez) claims that: "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. 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.” (See January 6, 2022 Klein Email attached to the August 2, 2022, letter, Complaint 2, Exhibit 06.)

This is categorically false. The Oct 8, 2021, letter did not commence the issuance of standardized fines, as discussed below, because neither the 1973 Permit nor the 1985 Permit contained any such time requirement and BCDC is not authorized to unilaterally create a permit condition after the fact and then levy fines based upon such newly created conditions. Moreover, as described below under the due process claims, the Oct 8, 2021, letter did not meet the requirements of 14 CCR 11387 to commence the issuance of such standardized fines.

Even more insulting, BCDC unjustifiably increased the standardized fines by unilaterally extending the start date of such alleged violations from October 8, 2021 (per the August 2, 2022 letter) to August 20, 2021 (per Complaint 2) increasing fines from three to six months, with no regulatory justification. This claim must be dismissed against SI.

Moreover, any such a requirement would be applicable to the permittee at the time, Mr. Price, not the unsuspecting new owner. But regardless, it is plainly bad faith to increase fees by unilaterally extending the violation timeline after stating in the August Notice that the violation began on October 8, 2021 (which is also incorrect), not August of 2021.

Even if the October 8, 2021 letter had started a timeclock, which it did not, SI provided an assignment form to BCDC on October 28, 2021, NOT January 3, 2022. (See attached Exhibit D.) There may have been some delays and requests for additional information from BCDC related to these assignments, but BCDC’s delay should not be held against the prospective permittee. Here again, SI was diligently attempting to comply with BCDC’s requests and was summarily punished for it.

Finally, as discussed further below, in the due process section, SI was never afforded a proper opportunity to appeal the underlying violation resulting in the fines as required by 14 CCR 11387 & 11388. For all of these reasons, these two violations and any associated fines, must be dismissed.

b. Violation 3 – Houseboat Relocation

Similarly, BCDC fails to state a claim with respect to the relocated houseboat, violation 3, Complaint 2. BCDC’s literal claim is both that: 1) the houseboat was completed too late, and 2) was completed too early - in advance of receiving the extension request so it was “unauthorized”. The Respondent is essentially damned if they do, damned if they do not complete construction.

Moreover, Complaint 2 glosses over the fact that BCDC had received a valid request for an extension from Mr. Hedelman, the houseboat owner on August 9, 2021, which BCDC

chose to ignore. Mr. Hedelman, concerned that he might not meet the August 31, 2021 deadline (established by Amendment 3 to the 1973 Permit) sent a formal request to BCDC for an extension on August 9, 2021. (See p. 3 of the Oct 8, 2021 letter, attachment included in Complaint 2, Exhibit 06.) BCDC failed to respond to Mr. Hedelman's request and three months later claimed that Mr. Hedelman was "a marina tenant not authorized to request amendments." (Id.) This claim makes no logical sense. First, Mr. Hedelman owns the houseboat at issue. Second, BCDC granted the previous extension for the houseboat relocation directly to Mr. Hedelman on April 16, 2021. (See April 16, 2021 letter, Complaint 2, Exhibit 02D.) Finally, the January 25, 2022, letter from BCDC which ultimately granted an 'after-the-fact' authorization for the houseboat specifically referenced Mr. Hedelman's August 9, 2021 request as the valid request that BCDC was responding to, **six months later**, completely debunking any claim that such a request was invalid. (See January 25, 2022 Permit Extension, Complaint 2, Exhibit 02E)

If BCDC believed the August 9, 2021, extension came from the wrong party, it should have clarified this to both Mr. Hedelman and to SI at the time to rectify the issue. We are not aware of any correspondence from BCDC to either Mr. Hedelman or to SI clarifying this issue. Instead, BCDC simply added this as a new violation to the laundry list of violations against the new owners in the Oct 8, 2022, letter suggesting that the work was both completed too late (past August 31, 2021) and too early (before BCDC issued an extension). (Id.) Indeed, it boggles the mind to consider how it is that SI, not even a permittee at the time, might be held liable for the failure of a previous owner to complete construction on time, when BCDC failed to respond to a good faith extension request to complete such construction. It's a no-win situation for any good faith property owner. BCDC's delays should not result in the Respondent's liability.

Moreover, BCDC regularly issues permits to tenants completing work on the property, so it is unclear why BCDC claimed that it could not issue an extension to Mr. Hedelman, especially, since the previous extension was granted directly to him. These kinds of inconsistent, confusing, and arbitrary actions violate BCDC's obligations under California administrative law.

Even more egregious, Mr. Sharp's October 28, 2021, letter and attached photos, confirm that the houseboat had been relocated by October 28, 2021. (See attached Exhibit D.) The January 25, 2022, permit extension was issued a full three months after work had been completed and six months after requested. Again, BCDC has failed to state a claim and is instead attempting to pin its own bureaucratic delays on an innocent property owner trying to comply with permit requirements.

As described above and in the due process section, SI has never been given an opportunity to appeal this alleged violation or associated fines, in violation of 14 CCR 11388. Violation 3 in Complaint 2 must be dismissed against SI, including any associated fines and penalties.

Unresolved Violations from Decades Past Identified in the
July Violation Report or Complaint 1

c. Violation 1 from Complaint 1

In the July Violation Report, BCDC claimed that SI was in violation of the 1973 Permit Conditions IIC.1.a, IIC.1.b, IIC.4.b, IIC.4.c by failing to provide certain improvements in the public access area, including portions of public pathways, failing to provide public signage, and the connection to the County public pathway. BCDC does not provide any maps identifying the exact location of these ‘missing pathways’ or landscaping to provide any clear indication to SI what, if anything, is missing from the public access areas except to reference Exhibits 1 and 2 of the July Violation Report. Exhibits 1 and 2 offer a collection of grant deeds and property reports establishing SI’s ownership in the property, but do not in any way clarify which “missing” pathways or public access features BCDC believes to be required under Permit Conditions IIC.1.a, IIC.1.b, IIC.4.b, or IIC.4.c. Complaint 1 also claims that this violation should be levied against SI as having started 47 years ago, which is ludicrous given BCDC’s repeated reissuance of the 1973 Permit (as recently as January 2022), and the fact that SI did not own the property until last year.

This allegation fails on its face for several reasons. First, the 1973 permit issued 47 years ago did not have a Permit Condition II.C related to public access. Permit Condition II.C. in the original 1973 Permit relates to the use of solid fill, not public access maintenance requirements. (See Original 1973 Permit, Exhibit G.) This permit condition does not reference pathway connections or landscaping. Due process requires BCDC to clearly state the Permit Condition in violation at issue. (14 CCR 11321.)

Giving the most deferential interpretation possible to BCDC, one could assume that BCDC meant to reference Condition II.B.4.b. in the original 1973 Permit which merely requires the permittee to “Landscape the public access area referred to in II-B-1a and 11-B-1b according to the approved landscape plans and requirements” (Id.), but BCDC again failed to identify the ways in which the current property was out of compliance with such plans, failing to state a clear permit violation or claim.

Another interpretation could be that BCDC was attempting to reference the Special Conditions identified in the latest amendment to Permit 1973, issued on January 25, 2022, which at most would render violations as starting ten months ago, not 47 years, but here again, these claims and conditions are vague, confusing, and do not conform with BCDC’s requirement to state a clear claim of the exact permit condition being violated and how such violations may be cured. Nor has BCDC provided evidence to justify bringing such claims against an innocent new owner.

In the amended version of the 1973 Permit, Standard Condition II.C.1.a and b require a recordation over the following portions of the property for exclusive rights of the general public 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 Special Condition 11.C.1.b below; and
- b. A strip of land east of the area described in Special Condition 11.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.

(See 1973 Permit Standard Condition IV.C. attached to Complaint 1, Exhibit 6A,) BCDC confirmed in Complaint 1 that these two public access requirements were satisfied stating, “On September 17, 1974, Marin County recorded a Notice of Restrictions to dedicate the public access satisfying what was at the time Special Condition II.B of Permit 1973.014.00 and which is now Special Condition II.C of Permit 1973 .014.01.” (See Complaint 1, Section IV.B, p.4.) This language clearly states that Special Condition II.C of Permit 1973.014.01 was satisfied on September 17, 1974 through the public access dedication. This comports with amendments 2-4 of the 1973 Permit, which do not further amend Special Condition II.C. or call into question the status of compliance with this condition. (See all Permit 1973 Permit Amendments, Complaint 1, Exhibit 6A.) Accordingly, Special Condition II.C., in particular, the requirement to preserve such areas in perpetuity under Special Condition IIC.1.a, IIC.1.b have not been violated and BCDC has failed to state a claim with respect to these two permit conditions.

Special Condition IIC.4.b requires landscaping according to the previously approved plans and Special Condition II.C.4.c requires an 8-foot bike path, which is not even referenced in the July Violation Report. Complaint 1, Violation 1 vaguely references a failure “to provide some of the required public access improvements including portions of the public shore pathways, all the public shore signage and the public access connection from the site to the County public access west of the site.” (Complaint 1, pp 1-2.) Looking back at the various correspondence provided over the years between BCDC and previous owners, it is extremely difficult to determine which, if any, pathways are missing in the public access, and what, if any, specific landscaping may be required. To this day, SI is unsure of the exact landscaping that BCDC would like to see on the site. Under California law and BCDC’s own regulations, BCDC is required to clearly state the violations levied against respondent and provide respondent an opportunity to cure. 14 CCR 11387.

Yet even though such alleged violations are vague and fail to state an actual claim, SI has continued to work with BCDC to identify any necessary landscaping that BCDC would like to see added to the public access area. Specifically, SI has filed a proposed landscaping plan as part of the Feb 2022 Application in an effort to address BCDC’s desires and provided pictures of the existing bike pathway that has been around since the Price Administration. (See February 28, 2022 Application from SI included in Complaint 1, Exhibit 23.) This permit effort and the corresponding landscaping plan are still pending. Unfortunately, SI has been forced to divert all its attention to defending

against \$200,000+ fines for violations against prior owners, when it would much rather be working with BCDC on refining the proposed landscaping plan through proactive permitting efforts.

Complaint 1 also references the January 31, 2020, site visit as the 'start date' for some of these violations (in addition to 47 years) and cites the site visit notes included in Exhibits 18A and 18B with Complaint 1 as further proof of such start date. We note again, that such site visit took place a year and half before SI took ownership of the property. Moreover, the site visit notes talk only about the ways Seaplane Adventures might go about permitting the U-shaped docks after the fact. There was no mention whatsoever of missing pathways or necessary landscaping. Not only has BCDC failed to state a clear claim of how in fact the bike path is missing, but it cannot rely on site visit notes that do not even reference such a violation as the start date for fines and penalties, particularly when such site visit took place prior to SI's ownership. Such claims would never be upheld by a court of law as providing any kind of adequate notice of such violations.

In addition, we understand that SI has already worked with staff to ensure that the site contains the 8-foot bike path as identified in the pictures included in the Feb 2022 Application. (See Complaint 1, Exhibit 23.) Accordingly, it is again not clear what, if any, ongoing violation exists with respect to the bike path.

In the event that such violations had existed since 1973, as suggested in Complaint 1, BCDC would not be authorized to amend and reissue the 1973 Permit in 2017, 2019, 2021, and 2022 without addressing, or at the very least, raising such issues. None of the 1973 Permit Amendments reference any existing compliance issues associated with public access requirements and instead find that the proposed fill is in compliance with the McAteer-Petris Act.

Even if such violations (47 years ago or in January 2022) did exist, they would have been caused by previous owners, Mr. Price and potentially Seaplane Adventures to whom Complaint 1 should be directed. As described above, BCDC issued such violation fines and penalties against Mr. Price in 2020, and was working with him up until days before the property was sold; it is unclear how or why this effort has magically disappeared, but violators do not get absolved from liability simply by selling their property. BCDC has provided no evidence to justify why such violations and fines related to alleged violations that started and ostensibly continued for decades, were not resolved against Mr. Price or why SI would be vicariously liable for such alleged violations.

It is particularly troubling that BCDC proposes the maximum penalty for such fines (\$30,000) against an innocent, new property owner whose only actions have been to proactively bring the site into compliance. Even though SI had no clear indication what landscaping might be missing, SI included a proposed landscaping plan in its Feb 2022 Application, which plan identified the location of the current bike path, the removal of any parking within the public right of way, and proposed connections to the County

pathway, provided SI is successful in obtaining the necessary approvals from the County (Complaint 1, Exhibit 23.) To the extent that BCDC believes that certain landscaping features are missing, it can and should request that such features be added as part of the proactive permitting process. SI would be happy to work with BCDC to revise and refine the landscaping features on the site. But there is no legal justification for applying \$30,000 worth of public access violations against a new owner diligently working to bring the site into compliance, particularly when no clear violations have been identified.

To further confuse matters, Ms. Klein and BCDC staff have mentioned at times the desire for an additional pedestrian bridge across Yolo Street (owned by the County) to connect up to the County's existing public pathway. While the current property owners would be more than willing to work with BCDC on potentially installing additional pathways through a proactive permitting process to improve the site, these pathways are not identified as conditions to the 1973 Permit and most certainly do not rise to the level of a valid claim of violation. Indeed, construction of pathways within Yolo Street could not have been authorized under the 1973 Permit because the permittee did not own Yolo Street. The County did. SI has no issue working with BCDC on these new features as part of the permitting process, including working with the County for necessary access, but they in no way rise to the level of a maximum fine violation.

For all of these reasons, Violation 1 in Complaint 1 must be dismissed.

d. Violation 2 in Complaint 1– Public Access Maintenance

Violation 2 in the July Violation Report is essentially a restatement of Violation 1, claiming that public access was not maintained pursuant to Permit Condition II.C.2. For all of the reasons identified above, BCDC fails to state an actual claim or violation here. Indeed, the Oct 8, 2021, letter regarding public access issues combined these two potential violations because they both appear to relate to the same public access area. Complaint 1 does not explain how it is that SI has failed to maintain the public access pathways or provide an opportunity to cure. Nor does it provide any additional facts to distinguish this violation from violation #1 above, and consequently, why the same violation would garner an additional \$30,000 maximum penalty. A skeptic, or more importantly a court of law, might view this as an unjustified attempt by BCDC to raise a separate violation to garner additional fees, without providing a shred of evidence to support it.

For the same reasons identified above, Complaint 1 fails to state a claim regarding Violation 2. First, it fails to identify the actual public access improvements that have been mismanaged or to distinguish such claims from Violation 1. Second, Complaint 1 similarly identifies a start date for such violation as January 31, 2020, when SI did not own the property and could not possibly have mismanaged the area. Third, as described above and again under the vicarious and strict liability sections, BCDC has made no legal showing to justify holding SI responsible for things that happened years

before it took ownership of the property. To the extent that the previous owner failed to maintain the public access areas, BCDC should continue to enforce any fines and fees against Mr. Price, not SI.

Permit Condition II.C.2. requires general maintenance of the public access areas which SI has provided. Since taking ownership of the property, SI has taken proactive steps to maintain the public access areas, including removing temporarily parked vehicles, adding signage, and removing any potential obstacles to public access. All of these actions have been established for BCDC staff in photographs provided as part of SI's Feb 2022 Application along with a proposed landscape management plan to address any new requests or concerns that BCDC might have. BCDC has failed to provide any evidence of mismanagement during SI's ownership, and indeed, the record reflects SI's improved management of the site.

To the extent that BCDC has any additional concerns or requests with respect to maintenance of the public access area, SI is more than happy to address them during the ongoing permit process associated with the permit application filed on February 28, 2022.

BCDC has failed to state a claim against SI in Violation 2, Complaint 1. The fines and violations should be dismissed. In addition to being unjustified, the \$30,000 fine would be much better spent finalizing a complete permit to address BCDC's remaining concerns and desires.

e. Violation 3 from Complaint 1– Unauthorized Fill

Complaint 1 also claims that SI used fill either in San Francisco Bay and/or its shoreline band in the Yolo Street right of way (ROW) violating Permit 1973.014.01, Special Condition II.D, Use of Solid Fill, which states:

“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. (See Complaint 1, Exhibit 6A.)

According to BCDC, this ‘unauthorized fill’ includes:

- i. vehicle parking and/or equipment storage;
- ii. seaplane storage, repair and maintenance;
- iii. seaplane fueling tank (in place as of at least 2003),
- iv. an approximately three-foot-high, elevated asphalt path across Yolo Street to allow for pedestrian access during high tides (in place as of at least 2008).

BCDC does not specify whether these features are indeed in Bay jurisdiction or within the shoreline band. Under the McAteer-Petris Act, only features placed within BCDC's Bay jurisdiction would be considered ‘fill’; all things within BCDC's shoreline band jurisdiction would be considered development, which causes far fewer impacts to the

Bay. BCDC fails to distinguish between the two in Complaint 1, further confusing matters and insinuating a much larger impact to the Bay.

From what we can tell, these features, if they existed at all, were within the shoreline band (see photos and figures in the Feb 2022 Application) and would be considered, if anything, development, not fill. This is a very important distinction under the McAteer-Petris Act and cannot be glossed over or conflated.

We also understand that any temporary vehicle parking has been removed from the public access within the Yolo Street ROW as has all seaplane storage, repair, and maintenance as indicated in the photos filed with SI's Feb 2022 Application. Moreover, the description of this "unauthorized use of fill" for vehicles and storage appears eerily similar to the public access violations alleged in Violations 1 and 2, in Complaint 1. Here again, it is unclear why these same features would be triple counted as additional, new violations that each garner a maximum penalty of \$30,000 against the new owner who had nothing to do with installing these features.

The seaplane fueling tank has been in place since 2003 and has been shown on all aerials and project designs associated with the four different amendments to Permit 1973, and has never been raised by BCDC as an issue in any permit reissuance. In an effort to address BCDC's concerns, SI has included this fueling tank in its Feb 2022 Application for after-the-fact authorizations (Complaint 1, Exhibit 23.) Lodging this violation against SI is not only unwarranted and against public policy, but it breaks BCDC's own promise in the Oct 8, 2021 letter to "not commence a penalty clock for this permit violation" based on SI's willingness to permit after-the-fact requests for authorization, which SI has done. (See Oct Letter, Complaint 1, Exhibit 21.)

BCDC has failed to state a claim against SI for this violation and these uses, and it is tantamount to bad faith to suddenly suggest that features that have been in place for decades are new, are somehow distinct from those identified in Violations 1 and 2, and should be levied against the new owner whose only actions to date have been to proactively bring the property into compliance.

Regarding the elevated asphalt path, we understand that this was put in place by the previous owners at the request of BCDC to provide a connection across Yolo Street for pedestrian access in 2008. We fail to see how this pedestrian access can be considered an unauthorized use of solid fill that was meant for exclusive public uses including "pedestrian and bicycle pathways" as required by Special Condition II.D. BCDC has failed to state a claim related to this pathway, and importantly, has failed to justify why such a claim, if valid, would be made against SI and not the previous owners.

The only actions that SI has taken with respect to these features has been to remove any obstacles within the existing public access pathways, file a request for after-the-fact authorizations for features that cannot be moved, and request authorization from the County to work with BCDC on BCDC's new desired pedestrian bridge. It boggles the mind why BCDC would choose to issue significant fines and violations against SI for

these claims rather than continue to work collectively with SI to proactively permit the site the way both parties desire.

For the same reasons stated above, BCDC has failed to introduce any evidence to suggest that SI should be held liable for these features, and accordingly, has failed to state a claim against SI for this violation and these uses.

f. Violation 4 from Complaint 1

Violation 4 in Complaint 1 also fails to state a claim against SI and may represent the most egregious claim raised. BCDC claims that “on or before September 2008, Respondent or a predecessor installed a second, unauthorized helicopter landing pad and four unauthorized walkways” and that such efforts should be the responsibility of SI. (See Complaint 1.)

First, the idea that “Respondent” SI had anything to do with this property 14 years before they purchased it is preposterous; we strongly deny this claim. Statements like this make it difficult to believe that BCDC staff is trying to work in good faith with SI to bring the property into compliance. SI has absolutely no idea who placed the helicopter landing pad and boarded walkways and has been assured that such things are covered under existing Permit M85-30, as amended through December 28, 1989.

BCDC acknowledges that this work was completed by others in 2008, but from our review of the record, it does not appear that BCDC staff has ever once raised these features as potential issues or violations with Commodore Helicopters or Commodore Marina, the actual perpetrators of any such previous actions. This alleged violation is not included in the Violation Notice issued on February 18, 2020 to Mr. Price of Commodore Marina and Mr. Singer of Seaplane Adventure (See Complaint 1, Exhibit 19.) Nor is it included in the September 15, 2020, Violation Report against Mr. Price (See Complaint 1, Exhibit 20.) Nor is this violation referenced in the June 25, 2020, email summary that Adrienne Klein provided to Mr. Price, detailing all existing violations on the property and potential resolutions. (See Klein email attached as Exhibit B.)

What’s worse, once SI took over the property in July 2021, the point apparently at which BCDC decided to halt all enforcement against the actual violators and turned its full attention and hostility towards the innocent new property owner- even then, BCDC failed to reference the heliport or the four walkways as potential violations in the Oct 8, 2021, letter to Seaplane Investments, LLC.

BCDC also failed to mention that the heliport pad as associated paved walkways were features that might require after-the-fact authorizations when SI was working with BCDC to prepare after-the-fact permit applications in January and February of 2022.

No, it is not until July 29, 2022, after failing to raise such issues with the previous owners and 14 years have passed since the features at issue were installed, that BCDC references the heliport pad and four walkways as potential violations for the very first time against

new, innocent owners. There is no justification under the law given for this new addition, nor any evidence provided as to why this new violation would be leveled against SI who purchased the property 13 years after the alleged offense, particularly when such owners were in the process of requesting after-the-fact authorizations for any questionable features on the site.

To add bad faith injury to insult, Complaint 1 assesses this new violation, which quite literally has never been raised before - with a 'fine' start date of **2008**, which results in applying the maximum penalty of \$30,000 against a completely innocent owner who has not been given any opportunity to bring the feature into compliance through proactive permitting. This violation fails to state a claim of violation against SI and reflects an arbitrary, capricious, and strict-liability attempt to gouge a new property owner, whose sole crime has been working diligently with BCDC to bring the property into compliance. This violation must be dismissed.

g. Violation 5 from Complaint 1

Violation 5 in the July Violation Report claims that SI is violating the McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay relating to the expansion of an existing u-shaped floating dock during three separate episodes by adding a "cross-beam" dock, and three fingers, one long and two short, two pilings and relocating an on-water fueling station on property owned by Marin County (on or about 2011, 2018 and 2019). (Complaint 1, Section II.E.) This violation again fails to state a claim against SI, who purchased the property in July 2021.

As established above, SI did not own the property until after this construction occurred, and accordingly, could not have placed any docks or fingers in the Bay. As repeated throughout this SOD, BCDC is required to lodge such violations and complaints against the actual violators. It is curious why BCDC does not name Mr. Price, the owner of the property at the time, or Seaplane Adventures, the entity that completed the construction for its seaplane business, or even the County, who owns the portions of the underlying property at issue in connection with these violations. Indeed, the September 15, 2020, Violation Report against Mr. Price identified this alleged violation, which should have been resolved between the parties well before SI took ownership. (See Complaint 1, Exhibit 20.)

Moreover, SI disputes the facts alleged. Seaplane Adventures did not construct the original docks – they have been in place since 1946, prior to the McAteer-Petris Act. We also understand from Mr. Singer that the cross beam was not a new feature added to the site, but rather a repair made when the existing crossbeam was totally destroyed in a 2017 storm. Mr. Singer relocated the destroyed part of the dock to another area to avoid creating waste, but he removed this feature at BCDC's request and has worked with SI to help file an after-the fact authorizations for additional fingers and maintenance bays that are necessary to maintain the Seaplane Adventures business.

Even though SI had nothing to do with installing these docks, these features have been included in the Feb 2022 Application to receive any necessary after-the-fact authorizations as suggested by Ms. Klein during the January 2020 site visit, although there may be an argument that such docks were authorized under the existing permit as necessary repairs of existing docks. Nevertheless, SI would prefer to ensure proactive compliance for all features on the site.

For all of the reasons stated above, it is unconscionable for BCDC to count these 2011 repairs as a violation against SI who took ownership a decade later, for purposes of levying the maximum penalty— another \$30,000 – against SI.

BCDC has failed to provide any evidence to show that SI should be held liable for these features and has failed state a claim against SI for this violation. We respectfully request that BCDC continue to work with SI to permit such features as part of the ongoing permit process.

To the extent that BCDC feels the need to bring actual violations and fines against the violator, they should continue the process they started in September 2020 against Mr. Price. To the extent that BCDC maintains that the underlying landowner must be named as a co-respondent, it should also be naming the County as a respondent.

h. Violation 6 from July 29, 2022 Report – Emergency Seaplane Launch Ramp

Violation 6 claims that the Respondent violated the McAteer-Petris Act, Government Code Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of excavation and fill to construct a new (and apparently expanded) concrete and rebar water access ramp in the Yolo Street right-of-way (in March 2022). As described above in the statement of facts and in Mr. Sharp’s September 2, 2022, Statement of Defense, Seaplane Adventures, not SI, undertook these necessary emergency actions to address major safety issues and to comply with FAA regulations. (See September 2022 SOD, p. 1.)

We understand that BCDC was made aware of the need to repair the seaplane launch ramp as early as September 24, 2021, after it was badly damaged in a storm, but SI and Seaplane Adventures waited to work with BCDC on proactive compliance before undertaking any construction. In an effort to bring the project site into compliance on behalf of Seaplane Adventures, SI included the proposed ramp in the Feb 2022 Application, but while the application was processing, the tenant, Seaplane Adventures, damaged one of its seaplanes during entry/exit from the water due to the ramp’s state of disrepair. (See photos of the ramp in disrepair and corresponding seaplane damage attached as Exhibit H.) As described in the September SOD and the statement of facts, this type of hazard could be considered a violation of the Seaplane Adventure’s Air Carrier Certificate issued by the FAA pursuant to safety regulations, which require

Seaplane Adventures to ensure that its seaplane business is "properly and adequately equipped and able to operate safely under" aviation safety rules set out by statute and by FAA regulations. ((49 U.S.C. §§ 44705, 44711; 14 CFR Part 119; See Sharp September 2022 SOD, Declaration of Thorpe.) This issue became more pressing given the damage the ramp was causing to seaplanes and the fact that it was March, the beginning of the seaplane tourist season, after two abysmal years of a pandemic that nearly bankrupt Seaplane Adventures.

On March 14, 2022, SI understands that its tenant, Seaplane Adventures undertook emergency repairs to fix the seaplane launch ramp to maintain the safety of the seaplanes and to be in compliance with FAA requirements. We understand that the construction of this emergency ramp matches the size and shape described in the Feb 2022 Application pending before BCDC, but it was constructed out of plastic slide mats affixed to concrete grade instead of the Trex board referenced in the application to ensure the safety of the planes and compliance with FAA's requirements.

SI was not involved in this construction and recognizes that Seaplane Adventures should have reached out both to SI and to BCDC beforehand. This feature should be treated as an emergency repair that requires after-the-fact authorization. If indeed, BCDC wants to enforce this as a violation rather than an emergency repair, it should be lodged against Seaplane Adventures, not SI. BCDC has once again failed to make the connection between this repair and SI's culpability.

BCDC's request to SI to remove the feature through a Cease and Desist Order makes no sense. This feature is a critical part of Seaplane Adventures business and SI could be held liable for tortious interference with said business (that was already faltering) if it unilaterally went in and removed a critical safety feature from another business. SI literally had no way to respond to this, but asked Seaplane Adventures to provide a description to include this necessary feature in SI's upcoming supplement to the pending February 2022 Permit Application Package.

We also note that the 1973 Permit authorizes "In kind repair and replacement as long as work does not result in enlargement of the authorized structural footprint and only involves materials approved for use in SF Bay. See 2017 Amendment to Permit 1973.014.01, p.14, Special Condition, IV.O, which likely would have included the necessary seaplane launch ramp repair.

For all the reasons stated above, BCDC has failed to state a claim of violation, particularly one against SI. SI should not be held liable for the emergency repairs of

Seaplane Adventures. These are two different entities and should be treated as such and this claim against SI should be dismissed.

SI is more than happy to revise the Feb 2022 Application to include the revised seaplane launch ramp to ensure proactive compliance going forward.

B. Due Process Violations: The Complaint Fails to Comply with Law or BCDC's Regulations

1. Complaints 1 and 2 Fail to Comply with CA Law

California Government Code section 66641.6(a) empowers BCDC to issue complaints for administrative civil penalties. However, such complaints "shall allege the act or failure to act that constitutes a violation of law." Because Complaints 1 and 2 both fail to make such mandatory allegations against SI, both Complaints against SI should be dismissed as a matter of law. Further, 14 CCR section 11302 specifies that only certain specific actions may constitute grounds for the imposition of civil penalties by BCDC. These are: (1) the undertaking of any activity that requires a BCDC permit without having obtained such a permit; or, (2) the violation of any term or condition of a BCDC permit. Because SI did not undertake any activity that required a permit or violated a permit, and because both Complaints fail to cognizably allege as much, the Complaints against SI should be dismissed as a matter of law.

2. BCDC Failed to Provide SI Due Process or Comply With BCDC Regulations Regarding the Procedures for Imposing Standardized Fines

SI has been denied basic due process throughout the enforcement process, including BCDC's failure to comply with the procedures for issuing standardized fines under 14 CCR 11387 and 11388, and its failure to properly commence violation proceedings under 14 CCR 11321 which regulations require BCDC to: 1) clearly identify the violation against the actual violator; 2) allow an opportunity to cure and/or deny such allegations; and 3) only then levy fines and penalties.

As discussed at length above, the Oct 8, 2021, letter is the very first communication that BCDC sent to SI, and it fails to adequately notify SI of the potential accrual of standardized fines or provide an opportunity to appeal as required under 14 CCR 11387 and 11388. Section 11387 requires that for any issuance of fines, BCDC must provide written notice to the person(s) responsible for the alleged violation(s) that identifies the specific nature of the violations, and provide notice that both standardizes fines may apply if respondent does not either cure the violation or establish that it did not occur within 35-days. 14 CCR 11387 (a) and (b); 11388.

The Oct 8, 2021, letter does not identify that standardized fines may apply, is not addressed to the actual permittee – Mr. Price - and does not in any way notify SI that it is entitled, under the law, to refute such violations within 35-days to avoid standardized fines. The letter instead casually references in parenthesis that SI must pay "any

standardized fines that may accrue,” if SI doesn’t do exactly as BCDC directs. This letter in no way complies with BCDC’s regulations Sections 11387 or 11388. (See Complaint 1, Exhibit 21.) Moreover, as discussed above, BCDC also failed to identify actual permit violations that were being violated.

BCDC continued to send repeated correspondence to SI on January 6, January 25, and March 30, 2022, related to proactive permitting of the site, none of which correspondence referenced SI’s opportunity to object to the paper violations and none of which provides actual notice required under 14 CCR 11387 and 11388 to commence the imposition of standardized fines.

Ms. Klein’s January 6, 2022, email vaguely references “two [other alleged] violations, pertaining to unauthorized fill and uses and failure to comply with the public access requirements” as pending and “unresolved” stating that fines for these will each begin accruing a daily fine on January 12, 2022. (See August 2, 2022 Letter, Complaint 2, Exhibit 06.) Here again, BCDC fails to provide adequate notice of potential standardized fines or provide an opportunity to cure to avoid said fines, as required by California law, nor does it contain the requisite information required to formally commence enforcement proceedings pursuant to Commission Regulation 11321. Even the most sophisticated property owner would be confused by these emails and be unsure about how to defend itself. SI has been given no notice of its rights to cure the problem or to object to the various accusations; rights that are afforded to every potential respondent or defendant under the law.

On August 2, 2022, BCDC sent a completely illogical letter to SI related to standardized fines claiming: 1) that SI has not rectified the alleged paper violations within 35-days of the Oct 8, 2021 letter (even though such assignments and houseboat notifications were sent to BCDC on October 28, 2021 and the Oct 8, 2021 letter did not start the penalty clock), 2) standardized fines had accrued starting on October 8, 2021 the very first date that BCDC ever contacted SI and well before the required 35-day appeal period; and 3) that such fines were due within 30 days or would be increased. Once again, BCDC failed to provide SI with 35-days to to object to the underlying violations and closed the window on any opportunity to object, stating that the “timeframe has passed”. But based on the actual record, the standardized fine timeclock never officially began, and SI was never formally afforded such rights, to which it was entitled under the law.

The follow up “Final Warning Letter” to SI on September 21, 2022, references a 35-day clock, but does not identify SI’s inherent right to object to the underlying violations underpinning the fines at issue, as required by 14, CCR 11388, instead claiming that SI’s only option is to pay the fines or face additional civil penalties. (See Complaint 2, Exhibit 07.) This is direct contradiction to Mr. Trujillo’s claim in the September 23, 2022, email that such letter identified SI’s right to appeal. (See attached Exhibit F.)

Even more upsetting, all of these notifications came after BCDC asked SI to delay enforcement hearings to negotiate a resolution. As described in painstaking detail in

the statement of facts above, the complicated, overlapping and inconsistent correspondence provided by BCDC to SI has left SI utterly confused by the process and with little recourse.

SI is entitled, as are all respondents, to know exactly what they are being accused of and have the opportunity to object to such violations, pay such fines if appropriate, or cure the problem, once they are provided adequate notice. (14 CCR 11387, 11388.) None of that has happened here. Indeed, SI has yet to receive an enforcement hearing to be able to object to the paper violations upon which the ever increasing standardized fines are based.

Accordingly, standardized fines should fail on due process grounds alone.

Even if we assume that BCDC followed its regulations and provided adequate notice and an opportunity to cure on Oct 8, 2021, which it clearly did not particularly since SI was not the permittee at the time, any violations identified in the letter would not start accruing until at the very earliest, 35 days from October 8, 2021, or November 13, 2021. Complaint 1 absurdly suggests the following timelines for five of the six violations:

1. Violation 1 –Started 47 years ago with the original 1973 permit and 909 days since the January 31, 2020 site visit – all under previous ownership
2. Violation 2 –909 days since the January 31, 2020 site visit – all under previous ownership
3. Violation 3- 19 years (2003) while under previous ownership
4. Violation 4 –14 years (2008) while under previous ownership
5. Violation 5 – Unauthorized fill related to u-shaped floating docks and relocating fuel dock – 11 years (2011) while under previous ownership

All of these violations are being assessed against the new purchaser without any recourse or opportunity to cure. Even if these violations could be levied against SI, which they cannot, the longest possible violation start date would be 35 days from actual notice, which was not sufficiently provided until Complaint 1 on July 29, 2022.

Because BCDC failed to follow proper procedures in commencing standardized fines and failed to identify the actual violator, these standardized fines must be dismissed.

3. BCDC Failed to Comply With Its Regulations Regarding the Proper Commencement of Violations

BCDC also failed to clearly commence enforcement violations against SI as required by 14 CCR 11321. Section 11321(b) requires that if BCDC intends to commence an enforcement action against a new entity, they must issue a violation report and/or complaint that “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.” The violation report must clearly state the permit conditions that have been

violated and provide an opportunity to respond to such violations in a Statement of Defense. 14 CCR 11321.

No such opportunity was afforded to SI until Complaint 1 was issued on July 29, 2022. The Oct 8, 2021 letter, rather than commencing an enforcement matter against a new entity, appears to be BCDC's attempt to pick up the discussion, negotiations, violation reports, and all correspondence that had been ongoing between BCDC, Mr. Price, and Seaplane Adventures – two completely different entities from SI – and to illegally transfer liability onto SI without giving them proper notice of the violations at issue or an opportunity to respond. The Oct 8, 2021, letter lazily states: "Please refer to our letter to you dated September 15, 2020." This letter was never sent to SI; it was a violation notice sent to the actual violator, Mr. Price. SI never had a chance to respond to whatever was raised in the September 15, 2020 letter because it was directed to previous owners a year before SI purchased the property.

In addition to failing to properly commence enforcement proceedings, the Oct 8, 2021, letter fails to grant a 35-day reprieve as required by BCDC's regulations or clearly state the actions that need to be taken to resolve all currently outstanding violations as identified in the July Violation Report. Instead, it references correspondence between BCDC and previous owners as methods of compliance, which is ludicrous and creates infeasible deadlines requiring the filing of new permit applications within two weeks (October 30, 2021) for "unauthorized fill" that BCDC itself never clearly defines and that SI is hearing about for the very first time.

As discussed, the Oct 8, 2021, letter also improperly identifies SI as a 'permittee'. SI had not yet received assignment from the previous owner. Under BCDC's regulations, this letter should have been addressed to the actual violator, Mr. Price of Commodore Marina, NOT to SI. To the extent that BCDC wanted to bring a separate, cognizable claim against SI, it needed to issue a notice of violation in compliance with 14 CCR 11321, clearly identifying why the new owner should be held responsible for actions that happened decades earlier, clearly identifying potential violations and granting SI an opportunity to respond. None of that happened.

To further confuse matters, BCDC has continued throughout the process to work with SI as if they are following a proactive permitting approach, not launching enforcement actions. The January 25, 2022, letter granting amendment 4 to Permit 1973.014.04 does not reference any enforcement issues, and as discussed above, BCDC would not have been able to legally reissue an amendment to the 1973 Permit unless the property was deemed in compliance with the law, leaving SI with the reasonable impression that BCDC was working with SI on proactive permitting approaches, not enforcement violations.

BCDC goes on to accept SI's Feb 2022 Application and provided a 30-day notice letter, indicating again, its willingness to work proactively with SI on permitting and saying nothing about outstanding fines or violations.

It is not until the July Violation Report, which includes violations that are not even referenced in the Oct 8, 2021 letter, that SI was provided an opportunity to respond to apparent violations that have been ongoing for decades, some of which are being referenced for the very first time such as a helicopter pad and four raised walkways since 2008. As indicated above in detail, both Complaints 1 and 2 fail to state an actual claim against SI. SI has been denied basic due process, on which these claims alone should fail.

C. The Complaint Fails to Allege Vicarious Liability

Despite the 236 pages in Complaint 1 and the 128 pages in Complaint 2 (both with multiple attachments), neither complaint ever actually articulates any theory for why SI should be liable for the actions of the previous owners and tenants, who BCDC was actively engaged with immediately prior to SI's ownership. It is unclear why the liability of these previous actors, Mr. Price, Commodore Marina, Seaplane Adventures has magically disappeared upon the sale of the property. To the extent BCDC is relying on such a theory, it had the burden of including it in the July Complaint, and it failed to do so. As such, Complaint 1 against SI must be dismissed.

Although the burden is squarely on BCDC, SI does the Commission the courtesy here of guessing, literally, why BCDC might justify its notion that SI should be held vicariously liable for the acts of the previous owner.

D. No Strict Liability Standard Applies

SI recognizes that in certain limited circumstances, BCDC can and should pursue penalties against arms-length landowners for the acts of their tenants and users and prior owners. In those unique cases, the violator is either unknown or financially insolvent and pursuing the new landowner is appropriate and necessary to remedy the violation as a matter of last resort. *See, e.g., Leslie Salt Co. v. BCDC* 153 Cal.App.3d 605 (1984) (upholding a rare strict liability standard against a landowner where the violator (who dumped "several hundred tons of earth, gravel, asphalt, broken concrete and other demolition materials, along with a barge-like structure" on wetlands and the adjacent shoreline) was totally "unknown" and limiting liability to the unknown "responsible person" would have frustrated the purpose of the McAteer-Petris Act). Here, by dramatic contrast, the alleged violator is more than merely "known" to BCDC.

BCDC has been actively and directly negotiating with the violator(s) for almost 10 years. Mr. Price is a reputable businessman, not a midnight dumper. As is clear from the statement of facts, BCDC had been working to resolve issues between with Mr. Price and his attorney along with Mr. Singer and his attorney even after the property was transferred to SI. What is not clear, and absolutely unjustified, is what appears to be BCDC's immediate shift of liability from Mr. Price and Seaplane Adventures, the actual violators with whom BCDC was negotiating, to SI, an innocent purchaser whose actions have all indicated SI's ongoing willingness to work with BCDC on proactive compliance.

E. The Complaint Unlawfully Retaliates Against SI

Reading the language of the two Complaints, a trier of fact might not be able to tell that SI has been diligently, and actively, pursuing efforts to bring the property into compliance, even though it had absolutely nothing to do with the placement of any unauthorized features in the first instance, to the extent such fill or unauthorized development exists. Indeed, SI has been working faster and more diligently than BCDC. Yet, throughout the complaints, BCDC casually and inappropriately refers to SI as having ‘committed’ certain violations that it had absolutely no control over and has been actively trying to address at its own expense.

We understand from Mr. Sharp’s notes that tensions between BCDC and Seaplane Adventures mounted when the emergency seaplane launch ramp was constructed. Again, this was a necessary safety feature that could have easily been addressed as an after-the-fact emergency with Seaplane Adventures, as BCDC regularly handles such emergencies in this manner. The work was done by Seaplane Adventures, *not* SI. We also assume that BCDC was under increased pressure from neighboring owners to find ways to shut down the Seaplane Adventures. SI is not sure whether it was these actions that caused BCDC to throw the book at SI as the new owner, dredging up violations from 47 years ago, separating the same public access issue into three different violations to garner \$90,000 in penalties, and creating new violations involving the heliport pad that have never before been raised. But whatever the reason, these violations are not justified against SI for all the reasons identified above.

Throughout the two complaints, SI’s consistent efforts to work with BCDC are minimized and distorted to such an extent that the SI’s efforts to comply with previous notices are painted more like a set of admissions against a violator rather than the diligent work of an innocent new owner seeking to bring the property into compliance. Not only is SI given no credit for its diligence, it is now being penalized for it.

BCDC was concerned about parked cars in Yolo Street, so SI moved them. BCDC wanted the permits assigned, so SI pushed Mr. Price to assign them. BCDC wanted the houseboat relocated, so SI ensured that it was completed. BCDC wanted an after-the-fact authorization for any questionable features on the site, so SI paid for and submitted the Feb 2022 Application to address them. BCDC asked for additional landscaping (without providing clear guidance as to what was required by the permit), so SI hired a consultant and proposed a new landscaping plan as part of the Feb 2022 Application. BCDC asked for a brand new pedestrian bridge over County property to the County’s public pathway, even though no such features were required in either permit, so SI started diligently working with the County on the access needed to potentially provide such a bridge through proactive permitting. All of the correspondence between BCDC and SI since SI took ownership in 2021, described in detail above in our Statement of Facts, clearly demonstrates SI’s concerted and ongoing effort to work with BCDC to address the very convoluted and varied violations alleged by BCDC. A careful read of the Complaints reveals that all of BCDC’s substantial evidence is against the previous

owner, Steve Price Commodore Marina, and potentially Seaplane Adventures, and has absolutely nothing to do with SI's actions on the property.

Ironically, it was only after SI took great pains and expense to file new plans and applications with BCDC, that BCDC chose to take an expansive formal enforcement action against SI as the new owner. Retaliating against diligent and innocent property owners is not only legally inappropriate, it is bad public policy, the kind of public misstep that will have a chilling effect on reporting to and cooperation with agencies such as BCDC in the future.

F. The Complaint Is Barred by the Doctrine of Unclean Hands

The doctrine of "unclean hands" is a legal defense for respondents such as SI where complainants such as BCDC have engaged in materially unreasonable conduct related to the subject matter of the complaint, particularly where such conduct prejudiced the respondent.

Here, BCDC has engaged in materially unreasonable conduct in two key respects, both of which have prejudiced SI. First, as detailed above, BCDC insisted, and continues to insist, that SI is responsible in penalties and violations for features that were constructed years before SI owned the property. Because of SI's willingness to file an after-the-fact application, which the previous owner – and violator- could never seem to manage, SI is now being forced to expend significant human and financial resources in responding to nine violations (some overlapping) related to improvements that SI literally had no control over. For some inexplicable reason, BCDC has decided to drop all efforts against Mr. Price and Seaplane Adventures, and instead lob all further complaints against an innocent property owner trying to come into compliance. This does not comport with California law, BCDC's regulations, or even good public policy.

Second, BCDC repeatedly led SI to believe that it could resolve all violations through proactive permitting by issuing permit extensions, responding to permit application requests, and asking to delay enforcement hearings to resolve issues. All of these actions would lead any reasonable respondent and property owner to believe that the violations were going to be resolved amiably. BCDC has now assessed the maximum fines available for every sprawling violation for a total of \$201,170, against an innocent property owner whose only crime has been to try to bring the property into compliance. These fines are being levied at the maximum amount because BCDC has failed to resolve these issues with the prior owners and actual violators.

G. The Complaint Is Barred by the Doctrine of Laches

Complainants such as BCDC are estopped from making claims against SI under the legal doctrine of laches where the complainant has engaged in unreasonable delays that prejudiced the respondent. Here, BCDC's unreasonable delay is undisputed. According to BCDC itself, it has failed to resolve alleged violations against the actual violators and has taken decades to act on most of these violations, in one case, 47 years. Whether 10

or 47 years, these are objectively unreasonable amounts of time to bring an action such as Complaint 1, particularly against a new owner. BCDC's failure to work with the previous owners and tenants for the past decade has resulted in unreasonable, unfair, and unjustifiable fines being levied against the new owners, SI, as added daily fines, in direct contradiction to BCDC's own standardized fine requirements.

Whether it was BCDC's spirit of settlement, its lack of leadership, or its soft negotiation style, the pivotal fact remains that BCDC, not SI, is the enforcement agency here, and should have resolved all of these substantive violations with the previous owner. BCDC, and not SI, chose to allow Mr. Price to maintain unpermitted improvements for years. And now, years later when BCDC finally decides to act, it assesses penalties against the new owners which are measured in the "Duration in Days" of the alleged violations. Any reasonable trier of fact would conclude that the Complaint is barred by BCDC's unreasonable delay.

H. The Complaint Fails to Comply with Government Code §66641.9

Government Code section 66641.9 mandates that in determining the amount of administrative civil liability to impose under the complaint, BCDC must take into consideration the nature, circumstance, extent, and gravity of the violations alleged, whether the violations are susceptible to removal or resolution, the cost to BCDC in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on its ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

It appears that BCDC has completely failed to evaluate *any* of these criteria with respect to SI. SI has no prior history of violations and has no culpability whatsoever related to the violations in Complaints 1 and 2; SI has only ever taken actions to resolve any issues through proactive permitting. Moreover, the seaplane launch ramp repair was an emergency necessary to continue Seaplane Adventures in business, a fact which appears to have been completely ignored in these Complaints. Absent such consideration and findings, BCDC may not seek civil penalties from SI. If it had embarked on this mandatory evaluation, SI is confident that the amount of penalties assessed against SI would be astronomically lower than the over \$200,000 BCDC is currently seeking.

IV. Conclusion

For the reasons set forth above, Seaplane Investments, LLC respectfully requests that both Complaint 1 and Complaint 2 against it be dismissed by BCDC.

SI reiterates its desire to continue to work with BCDC to proactively address any after-the-fact issues that remain, to improve public access on the site, and to address BCDC's new requests for a pedestrian bridge. We look forward to the opportunity to work with enforcement staff to dismiss these violations and to continue processing the Feb 2022 Application.

Very truly yours,



Jillian Blanchard

Enclosures: Exhibit A – Statement of Defense Form
Exhibit B– June 24, 2022 Email from A. Klein to Sorenson, Price, and Sharp
Exhibit C– September 24, 2021 Letter from Mr. Sharp to Ms. Klein
Exhibit D– October 28, 2021 Letter from Mr. Sharp to Ms. Klein
Exhibit E– September 6, 2022 Email from Mr. Trujillo to Mr. Sharp
Exhibit F – September 23, 2022, Email from Mr. Trujillo to Mr. Sharp
Exhibit G – Original 1973 Permit
Exhibit H – Photos of Seaplane Damage in Feb/March 2022

cc: Greg Scharff, Chief Counsel, BCDC
Brent Plater, Lead Enforcement Attorney
Adrienne Klein, Principal Enforcement Analyst, BCDC
Lou Vasquez, Seaplane Investments, LLC
Grant Barbour, Seaplane Investments, LLC

EXHIBIT A

Statement of Defense Form

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **ADRIENNE KLEIN** OR **BRENT PLATER** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY **August 29, 2022** MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

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

The forms should also be emailed to Margie Malan at margie.malan@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):

Seaplane Investments, LLC ("SI") specifically admits all facts contained in its Statement of Defense, dated December 1, 2022, submitted herewith (the "SOD"). This SOD supplements and clarifies any facts stated or responses provided by Seaplane Adventure's counsel, John Sharp in a Statement of Defense, dated September 2, 2022 (the "September 2, 2022 SOD").

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

Seaplane Investments, LLC, generally denies all facts that are not set forth in this Statement of Defense, dated December 1, 2022, submitted herewith. Specifically, SI denies any involvement in any of the nine violations alleged in the July 29, 2022 Violation Report and the October 27, 2022 Violation Report, reflecting two different enforcement efforts both under Enforcement No. 2019.163.00. See the attached SOD for a detailed account of the specific facts being denied by SI.

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):

SI only has 'personal knowledge' of the facts as set forth in the facts as stated in the SOD, submitted herewith, dated December 1, 2022.

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):

Please see the detailed SOD submitted herewith, dated December 1, 2022, which provides a lengthy discussion of the facts that exonerate SI from the alleged violations and the attached exhibits included herewith this SOD, dated December 1, 2022, listed specifically below under #6.

5. Any other information, statement, etc. that you want to make:

Please see the detailed SOD submitted herewith, dated December 1, 2022, which should be entered into the Administrative Record for any violation proceedings associated with any and all violations listed under Enforcement No. 2019.163.00 against SI. SI looks forward to the opportunity to work with BCDC Permit Analysts to complete the permitting process on this site.

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):

Those documents listed in the SOD attached herewith, dated December 1, 2022, and the following attached documents:

Statement of Defense, dated December 1, 2022,

Exhibit A: This Statement of Defense Mandatory Form

Exhibit B: Email from Ms. Klein to Mr. Sorenson, Mr. Price, and Mr. Sharp, June 24, 2021;

Exhibit C: Letter from Mr. Sharp to Ms. Klein, September 24, 2021;

Exhibit D: Letter from Mr. Sharp to Ms. Klein, October 28, 2021 with attachments;

Exhibit E: Email from Mr. Trujillo to Mr. Sharp, September 6, 2022

Exhibit F: Email from Mr. Trujillo to Mr. Sharp, September 23, 2022

Exhibit G: Original 1973 Permit

Exhibit H: Photos of Seaplane Damage in Feb/March 2022

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:

EXHIBIT B
Email from Adrienne Klein to Sorenson,
Price, Sharp, and Singer, dated June 24,
2021



From: Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov>
Sent: Thursday, June 24, 2021 7:57 PM
To: Plater, Brent@BCDC <brent.plater@bcdc.ca.gov>; Njuguna, Priscilla@BCDC <priscilla.njuguna@bcdc.ca.gov>; Delaporta, Megan@BCDC <megan.delaporta@bcdc.ca.gov>; Creech, John@BCDC <john.creech@bcdc.ca.gov>; John Sharp <john@johnsharplaw.com>; Steve Price <steve@seaplane.com>; neil@sorensenlaw.com
Subject: 240 Redwood Highway, Mill Valley 94941 (BCDC Enforcement Case ER2019.063 and BCDC Permit Nos. 1974.013. and M1985.030)

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

Steve Price,
Neil Sorenson
John Sharp

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

Gentlemen,

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

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

Please immediately proceed with the preparation of a request to amend the 1973 permit to pursue authorization for the unauthorized dock reconfiguration, ramp and changes to the SeaPlane Operations that have occurred since 9/17/1965, such as fill placement in the Bay and shoreline hand and/or an intensification of use of the Yolo Street right of way for SeaPlane

and shoreline band and/or an intensification of use of the Yolo Street right of way for boat ramp storage, a fuel tank and car parking. As part of this amendment request, you will need to: 1. File a quiet title action for the Yolo Street corridor to make non-public uses of that right of way pursuant to direction that we (and you, we believe) have received from Marin County; 2. Prepare and submit a map that locates today's edge of Bay (at 5.47 feet NAVD88 mean high tide elevation) and 100 foot shoreline band; 3. Provide fill amounts and other information including plans relevant to ongoing operations at the site in the Bay and shoreline band; 4. Submit approvals from the RWQCB and USACE or evidence that none are necessary; and 5. Submit an application fee for a non-material amendment to a major permit resulting from an enforcement action, pursuant to our fee schedule <https://www.bcdc.ca.gov/legal/summary-permit-application-fee-chart.html>. I expect the fee may be 75% of either \$600 or \$800? There may be other components of the amendment request, to be discussed during our meeting, such as how to address the significant erosion along the shoreline edge that is or will soon adversely affect the existing required public access, though it may make sense to pursue that work as part of a separate amendment request.

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

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

Sincerely,

Adrienne Klein
SF BCDC
41-5252-3609

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

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

[Click here to join the meeting](#)

Or call in (audio only)

+1 628-212-0619, 778982819# United States, San Francisco

Phone Conference ID: 778 982 819#

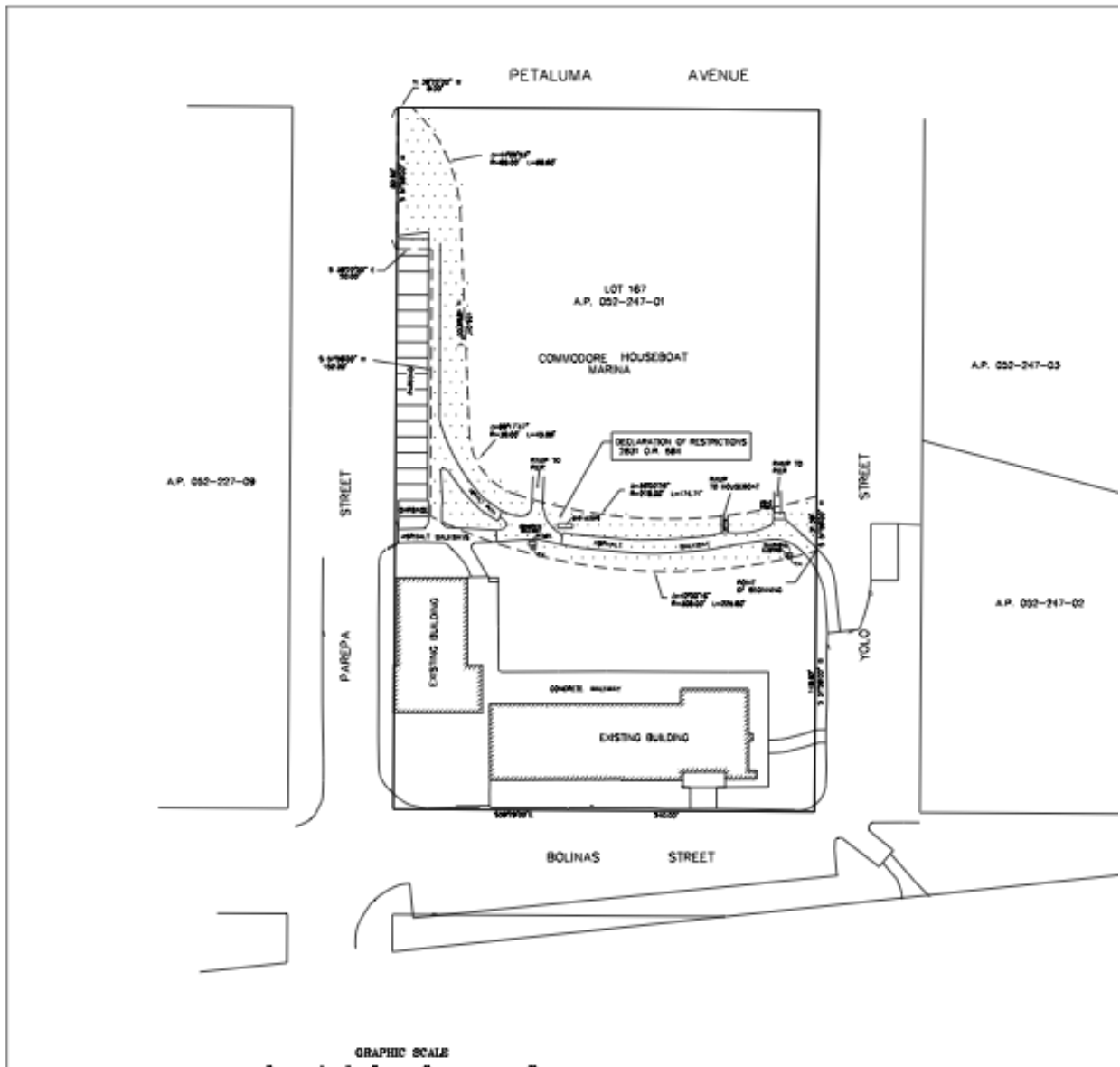
[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

Plater, Brent@BCDC <brent.plater@bcdc.ca.gov>; Njuguna, Priscilla@BCDC <priscilla.njuguna@bcdc.ca.gov>; Delaporta, Megan@BCDC <megan.delaporta@bcdc.ca.gov>; Creech, John@BCDC <john.creech@bcdc.ca.gov>; John Sharp <john@johnsharpplaw.com>; Steve Price <steve@seaplane.com>; neil@sorensenlaw.com <neil@sorensenlaw.com>



Permit No.
M1985....)[1].pdf





2020.11.12 Neil
Sorens...tter.pdf



2020.11.13 John
Sharp Letter.pdf



Recorded Legal
Instru...[1].pdf



Permit No.
1973.014.00.pdf



2021.06.15 John
Sharp...DC.pdf



2020.09.15
BCDC...ne.pdf





© 2021 Google

Google Earth

1985

37°52'42.20" N 122°30'44.57" W elev -2 ft eye alt 314 ft

EXHIBIT C

Law Offices of
JOHN E. SHARP
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903

John E. Sharp
john@johnsharplaw.com

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

September 24, 2021

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

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

Re: *Commodore Marina / Seaplane*

Dear Adrienne:

The purpose of this letter is to confirm our recent conversation during which I advised that 240 and 242 Redwood Highway are under new ownership by Seaplane Investments, LLC ("Seaplane"). Seaplane is embarking upon the process of master planning of the site.

In planning for future use of the site, Seaplane will submit an amendment request to BCDC (and, to the extent necessary, to Department of Fish and Wildlife, Army Corps. of Engineers, and Regional Water Quality Control Board), as contemplated in your correspondence of June 15, 2020, and as discussed during our site visit of August 10, 2021. Work has commenced on an updated survey, the Yolo Street corridor issue, and the plans for public access and amendment to address existing fill and uses will be primary in these efforts.

I have exchanged emails with Ms. Farley, Ms. Culpepper and Mr. Olhaver, respectively, at the above-mentioned agencies. Allowing for Seaplane to work with its design professionals and produce the historic documents you reference, Seaplane anticipates filing the applications referenced in your correspondence not later than 60 days from the date of this letter, subject to any processing by the above-referenced agencies, while prioritizing and pursuing resolution of the following issues in the meantime.

Adrienne Klein
September 24, 2021
Page 2

Seaplane Ramp

The seaplane ramp damaged in the 2019 storm is beyond repair and needs to be replaced. We will apply for a 25-30 feet wide, 4-6" thick concrete ramp with plastic sheeting anchored to the ramp by stainless-steel countersunk bolts to provide a smooth, easily replaceable surface for sliding the seaplanes in and out of the water safely and efficiently. This solution will replace the current ramp footprint, would minimize the amount of material fill, would be more durable in storms and would be easy to maintain and repair for many years into the future.

Seawall

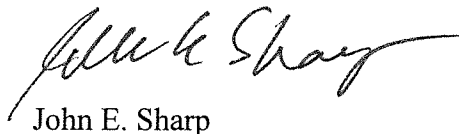
We will apply to move the current 2-3 foot berm on the inside of the courtyard to the outside of the shoreline access path along the Bay shoreline. We would construct a hybrid structural/earthen retaining wall the length of the pathway along the houseboats which will protect the shoreline access path, the existing courtyard and buildings and the parking lots from high tides and sea-level rise, while enhancing and protecting access.

Shoreline Access

Shoreline access will be maintained and enhanced with the current path through the parking lot and along the shoreline next to the houseboat docks and out to the eastern most shoreline at the end of the houseboat parking lot. BCDC-furnished signage indicating shoreline access pathway will be installed and ADA parking on the south side of the office building will be relocated to clear access.

Seaplane continues to appreciate the collaborative spirit in which BCDC has approached this matter and looks forward to resolving the many moving parts to the satisfaction of all involved.

Very truly yours,
LAW OFFICES OF JOHN E. SHARP



John E. Sharp

JES/aea

cc: Aaron Singer (via email)
John Creech (via email)
Priscilla Njuguna (via email)



EXHIBIT D
October 28, 2021 Letter from Mr.
Sharp to Ms. Klein

Jillian Blanchard <jblanchard@rudderlawgroup.com>

FW: Commodore/Seaplane

2 messages

Aaron Singer <aaron@seaplane.com>

Mon, Nov 28, 2022 at 12:53 PM

To: Jillian Blanchard <jblanchard@rudderlawgroup.com>, Lou Vasquez <lou@bldsf.com>, Grant Barbour <grant@bldsf.com>

Aaron Singer

CEO | [Seaplane Adventures](#)

GP | [Seaplane Investments](#)

aaron@seaplane.com | (c) 415-272-6540

www.seaplane.com

COME FLY WITH US!

From: John Sharp <john@johnsharplaw.com>
Date: Thursday, October 28, 2021 at 3:57 PM
To: Klein, Adrienne@BCDC <adrienne.klein@bcdca.gov>
Cc: Aaron Singer <aaron@seaplane.com>
Subject: Commodore/Seaplane

Adrienne:

Attached please find my letter of this date, the assignments, signed by grantor and grantee and current (taken today) photos confirming movement of the houseboat, piles and floating items, such that nothing exists south of the permitted area.

Your letter of October 8, 2021 requests after-the-fact permit applications for the houseboat. May we assume that, in light of the above-described actions, the permit applications are moot?

In your email of October 26, you also asked for a "Notice of Completion" of the houseboat move. In looking at the Commission's online form of Notice of Completion, it seems overly broad to simply confirm that the houseboat has been moved. Will you please advise if there is another form we should be submitting or, alternatively, whether we are able to rely on the forthcoming photographs.


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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5 attachments

 **A. Klein (10-28-21).pdf**
37K

 **IMG_9032.pdf**
1134K

 **IMG_9104.pdf**
999K

 **Assignment_BCDC_Permit_14-73_10.27.21 (Fully Executed).pdf**
193K

 **BCDCPermit14-73Assgt.2_10.27.21 (Fully Executed).pdf**
191K

Law Offices of
JOHN E. SHARP
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903

John E. Sharp
john@johnsharplaw.com

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

October 28, 2021

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

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

Re: *Commodore Marina / Seaplane*

Dear Mr. Klein:

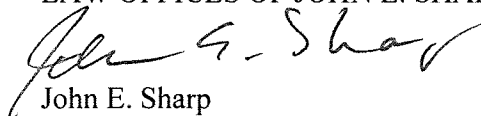
We herewith submit the following:

- 1) Assignment of BCDC Permit by former Commodore Marin LLC to Seaplane Investment, LLC signed by Mr. Price for assignor and Mr. Singer for assignee;
- 2) Two current photographs (taken within the last 24 hours) evidencing house boat of the south end of the site has moved within the correct of all floating materials and fill have been moved. Under the circumstances, we understand that any previously unauthorized intrusions by the houseboat have been resolved.

We look forward to continuing to work toward resolution of any remaining matters set forth in your letter October 8 2021.

If you have any questions or please do not hesitate to call me.

Very truly yours,
LAW OFFICES OF JOHN E. SHARP


John E. Sharp

JES/ls

cc: Aaron Singer (via email)
Priscilla Njuguna (via email)

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)

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. 14-73

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 Investment 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 20th day of Oct, 2021, at

Sonoma, California.


(signature of assignor or person executing for assignor)

(full name, address, and telephone number of entity or person taking assignment)

by its General Partner
(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. 14-73, and the permit itself, as amended through Amendment No. 1973.014.03
dated 4/16/21, and hereby accepts those rights, interest, and obligations in BCDC Permit
No. 14-73, as amended, and agrees to be bound by all the terms and conditions of the
permit and any amendments.

Executed on this 10/28/2021 day of 10/28/2021, 2010/28/2021 at
242 Redwood Hwy Mill valley CA 94941, California.

DocuSigned by:

BC8A044649C9441...
(signature of assignee or person executing for
assignee)

Revised 2/2/00

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)

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. 14-73

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 Investment 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 20th day of Oct, 2021, at

Sacramento, California.


(signature of assignor or person executing for assignor)

(full name, address, and telephone number of entity or person taking assignment)

by its General Partner
(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. 14-73, and the permit itself, as amended through Amendment No. 1973.014.03
dated 4/16/21, and hereby accepts those rights, interest, and obligations in BCDC Permit
No. 14-73, as amended, and agrees to be bound by all the terms and conditions of the
permit and any amendments.

Executed on this 10/28/2021 day of 10/28/2021, 2010/28/2021 at
242 Redwood Hwy Mill Valley CA 94941, California.

DocuSigned by:

BC8A044649C9441...

(signature of assignee or person executing for
assignee)

Revised 2/2/00





EXHIBIT E WAIVER AND RESOLUTION REQUEST

Jillian Blanchard <jblanchard@rudderlawgroup.com>



FW: 60-day Deadline Waiver Request - ER2019.063.00 Seaplane Investment LLC

1 message

John Sharp <john@johnsharpplaw.com>
To: Jillian Blanchard <jblanchard@rudderlawgroup.com>
Cc: John Sharp <john@johnsharpplaw.com>

Thu, Nov 17, 2022 at 12:05 PM

From: Trujillo, Matthew@BCDC <Matthew.Trujillo@bcdc.ca.gov>
Sent: Tuesday, September 6, 2022 12:52 PM
To: John Sharp <john@johnsharpplaw.com>
Cc: Plater, Brent@BCDC <brent.plater@bcdc.ca.gov>; Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov>
Subject: 60-day Deadline Waiver Request - ER2019.063.00 Seaplane Investment LLC

Dear John:

I am contacting you to request a waiver of the sixty-day hearing requirement to provide some opportunity for stipulated Order negotiations between the parties. I would like to tentatively calendar an Enforcement Committee hearing date of October 13, 2022 rather than its currently calendared date of September 21, 2022. Are you amenable to this request?

Best Regards,

MATTHEW TRUJILLO
Enforcement Policy Manager
(415) 352-3633
Matthew.Trujillo@bcdc.ca.gov
<http://bcdc.ca.gov/enforcement>

San Francisco Bay Conservation and Development Commission
[375 Beale St., Suite 510](#)
[San Francisco, CA 94105](#)
FAX: (415) 352-3606
Main Number: (415) 352-3600
Business Days & Hours:
M-F 8:30a – 5:00p



EXHIBIT F

September 23, 2022, Email from Trujillo to Sharp

From: Trujillo, Matthew@BCDC <Matthew.Trujillo@bcdc.ca.gov>
Sent: Friday, September 23, 2022 3:21 PM
To: John Sharp <john@johnsharplaw.com>
Cc: Plater, Brent@BCDC <brent.plater@bcdc.ca.gov>; Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov>
Subject: Phone Call Follow-up (ER2019.063.00)

Hi John,

To follow up on and summarize our phone call this afternoon, I explained to you that there are currently two enforcement tracks to resolve all of the issues in the case against Seaplane Investments, LLC (BCDC Enforcement Case ER2019.063.00).

The notice of termination of the opportunity to resolve three violations using standardized fines dated September 21, 2022 (copy attached) refers to the final steps necessary to resolve the first three violations described in the 35-day letter dated October 8, 2021 (Violations One, Two and Three; copy attached). Those violations were resolved as of January 3, 2022, January 3, 2022, and January 25, 2022, respectively, and the total standardized administrative fines due as a result is \$12,300. Staff sent a letter on August 2, 2022 (copy attached) requesting payment of the fines due by September 1, 2022. When payment was not received by September 1st, we sent a letter on September 21, 2022 notifying your client that failing to pay the standardized fines (or submit an appeal) within 35 days of the mailing date may result in elevating the matter to formal enforcement. To be clear, if we receive the payment of these penalties immediately, this component of the enforcement case will be resolved.

The second track is the impending Enforcement Committee hearing scheduled for October 13, 2022 where we will present for the Committee's consideration a recommended enforcement decision and proposed cease and desist and civil penalty order including fines totaling \$180,000 for six violations of the McAteer-Petris Act and your client's BCDC permit conditions that are outlined in the Violation Report and Complaint that was mailed on July 29, 2022. During our call you asked me for clarification on the number of violations (6) in the violation report, and I said that I understand your confusion and will get back to you with a clarification after I've consulted my team. We will discuss this matter on Monday morning at our staff meeting and I will follow up with you afterward.

Best Regards,

MATTHEW TRUJILLO
Enforcement Policy Manager
(415) 352-3633

EXHIBIT G
Original 1973 Permit

STATE OF CALIFORNIA

RONALD REAGAN, Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3586



PERMIT NO. 14-73

August 24, 1973

Commodore Properties
Ferryboat Klamath
Pier 5
San Francisco, California 94111

ATTENTION: Mr. Alexis Tellis

Gentlemen:

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 permit is issued:

I. Authorization

A. 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;

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;

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;

d. Realign 11 existing houseboat berths along the reconstructed dock and connect all houseboats to a shoreside sewer system;

e. Remove an abandoned houseboat and barge; and

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;

b. Renovate an existing office building for continued office use;

c. Remove abandoned boat hulls, a concrete pad with wooden boat frames, a concrete apron, and a restaurant building; and

d. Construct and use 17 parking spaces for houseboat residents.

B. This authorization is pursuant to, and limited by, the application dated May 9, 1973, and accompanying exhibits.

II. Special Conditions

The authorization is subject to the following Special Conditions:

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;

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 rip-rap 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.

B. 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 below;

b. A strip of land east of the area described in II-B-1a 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

2. Prior to the commencement of any construction, 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-B-1a and II-B-1b.

3. Prior to the commencement of any construction, 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.

4. Prior to the occupation of any of the renovated offices or new houseboats authorized 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 II-B-1a and II-B-1b according to the approved landscape plans and requirements (see II-A-1 above); 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) 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.

C. 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.

D. 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 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.

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 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 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.

E. Water Quality

1. The water edge of the fill shall be faced with either a bulkhead or engineered rip-rap 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-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 permit shall contain sewage connections to an existing public sewer system (Sausalito-Marin City Sanitary District) and pumpout facilities capable of accepting all wastes from vessels serving each houseboat to be moored along side 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 sewered within 48 hours of its berthing and remain permanently sewered thereafter.

F. 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.

III. Findings and Declarations

This permit is issued on the basis of the Commission's findings and declarations that the work authorized is consistent with the McAteer-Petris Act and the San Francisco Bay Plan for the following reasons:

A. Solid Fill

1. As limited by Special Condition II-B-1 and II-C, the solid fill approved here-with for Block 167, Yolo and Parepa Streets would be a minor fill for improving shoreline appearance (specifically as defined in Commission Regulation 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 proposed project features extensive landscaping of fill and adjacent areas which would 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-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 ~~my~~ hold the property.

B. Houseboats and Boat Docks

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.

2. a. No dredging will be necessary to enable the houseboats moored as authorized herein to meet the requirements of Special Condition II-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), 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. The project will, in the final design to be approved pursuant to Special Condition II-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.

D. Other Environmental Effects. Pursuant to Regulation Section 10931(a), the project authorized by this permit is categorically exempt from the requirement to prepare an environmental impact report.

E. Conclusion. For all these reasons the public benefit from the fill authorized herein would clearly exceed public detriment from the loss of water areas.

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, 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, the permit itself, and agrees to be bound by the conditions hereof.

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 permittee executes a copy of this letter and returns it to the Commission within fifteen days after the date hereof.

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

Enc.

CHARLES R. ROBERTS
Executive Director

cc: Permit Section, U. S. Army Corps of Engineers
San Francisco Bay Regional Water Quality Control Board, Attn: Certification Section
Environmental Protection Agency, Attn: Don Thomas
Marin County Parks and Recreation Department
Marin County Planning Department
Marin County Department of Public Works, Attn: Irving Schwartz, Land Development Engineer
Marin County Department of Public Works, Attn: George Lawson, Marine Inspector

bcc: Mrs. Clark Kerr

Commodore Properties

PERMIT NO. 14-73

Page Seven

Receipt acknowledged, contents understood and agreed to:

Executed at San Francisco

Commodore Properties

Applicant

On Sept. 8, 1973

By: Alexis Tellis /s/

Owner

Title

**EXHIBIT F
PHOTOS OF SEAPLANE DAMAGE**





