

San Francisco Bay Conservation and Development Commission

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

October 30, 2023

TO: Enforcement Committee Members

FROM: Lawrence J. Goldzband, Executive Director, (415/352-3653; larry.goldzband@bcdc.ca.gov)
Greg Scharff, General Counsel & Acting Lead Enforcement Attorney, (415/352-3665; greg.scharff@bcdc.ca.gov)
Adrienne Klein, Principal Enforcement Analyst (415/352-3609; adrienne.klein@bcdc.ca.gov)

SUBJECT: Executive Director’s Recommended Enforcement Decisions and Proposed Stipulated Cease and Desist and Civil Penalty Order Nos. CCD2023.002.00 and CCD2023.003 in BCDC Enforcement Matter ER2019.063.00 for Seaplane Investment, LLC, Sausalito, Marin County
(For Committee consideration on November 9, 2023)

Summary

The Executive Director recommends that the Enforcement Committee adopt this recommended enforcement decision as its recommendation to the full Commission for two stipulated orders. This recommendation includes issuing proposed stipulated Cease and Desist and Civil Penalty Order CCD2023.002.00 to require Seaplane Investment, LLC (“Respondent”) to do the following actions to resolve six unresolved violations, and pay a civil penalty of \$43,800 for six unresolved violations, as follows:

1. Cease and desist from violating Permit 1973.014.04, Permit M1985.030.01 and the McAteer-Petris Act;
2. By June 30, 2024:
 - a. Maintain the permit-required public access along the existing shoreline pathway within Respondent’s current property ownership;
 - b. On Yolo Street from the termination of the shoreline pathway located within the dedicated public access area within Respondent’s property, stripe and maintain by restriping as often as necessary to maintain a clearly delineated public shoreline pathway, an 8-foot-wide accessible path of travel as shown on the Interim Shoreline Access Improvements Plan in Order Exhibit 3 within Respondent’s property;
 - c. Install a total of eight (8) public shore signs consisting of: five (5) Public Shore directional arrow signs on Bolinas (1 sign), Parepa (1 sign) and Yolo (1 sign) Streets and back-to-back signs (2 signs) visible from the Sausalito-Mill Valley Bike Path, and three (3) public shore signs;



- d. Permanently relocate accessible parking spaces to the west side of Bolinas Street as shown in the photographs in Order Exhibit 3;
 - e. On Yolo Street, remove the approximately three-inch-high, elevated asphalt path that was constructed to allow for pedestrian access during high tides;
 - f. Confirm with BCDC staff which helicopter pads and walkways are currently covered within existing Permit M1985.030.01;
3. Within thirty (30) days of completion of the actions required by Section I.B.a through I.B.e and no later than July 31, 2024, submit a BCDC Notice of Completion that confirms the above public access installation and maintenance work cited in Section B above has been completed pursuant to staff-approved plans;
4. Within twelve (12) months of the date of this Order, file a complete application for a Minor Permit Amendment under Permit 1973.014.04 that includes the following required components:
- a. Provide a revised landscaping plan for the areas adjacent to the permit-required public access for review by BCDC staff;
 - b. Request After- the-Fact Authorization for: i. certain items of fill that are not otherwise permitted by M1985.030.01; ii. three fingers within the seaplane docking system not previously authorized under Permit 1973.014.04; and iii. a concrete-and-rebar seaplane launch ramp constructed in March 2022;
 - c. Either: i. design and construct an eight-foot-wide boardwalk connection to the existing Marin County bike path on County property as contemplated in Permit 1973.014.04, if Respondent is able to receive County approval for such boardwalk connection; or: ii. identify an alternative, equivalent-size public access area within Respondent's property site to provide for additional public access, if the County is unwilling to grant Respondent the right to construct and maintain the boardwalk connection; and
 - d. Prepare and submit a sea level rise risk assessment that addresses potential sea level rise in all permit-required public access as well as the additional public access areas identified above; and implement within the timeframes specified in the risk assessment the adaptive measures identified.
5. Due to the financial limitations of Respondent, it may pay its penalties as follows: \$10,000 will be due within 60 days of Order issuance; \$16,900 will come due within 12 months of Order issuance; and \$16,900 will come within 24 months of Order issuance.
6. This recommendation also includes issuing proposed stipulated Cease and Desist and Civil Penalty Order CCD2023.003.00 to require Respondent to pay a \$5,000 administrative civil penalty for three resolved violations. This administrative civil liability may be paid over a twenty-four (24) month period with \$2,500 due within 12 months of Order issuance; and \$2,500 due within 24 months of Order issuance.

Background

This section contains four subsections: I. Background for the Violation Report and Complaint, issued on July 29, 2022, for six unresolved violations; II. Background for the Complaint for Administrative Civil Penalties, issued on October 27, 2022, for three resolved violations; III. Background of the May 30 2023, public hearings for the six unresolved and the three resolved violations; and IV. Background for the two proposed, stipulated orders to be considered on November 9, 2023.

I. BACKGROUND FOR THE VIOLATION REPORT AND COMPLAINT, ISSUED ON JULY 29, 2022, FOR SIX UNRESOLVED VIOLATIONS

This matter involves Respondent's unpermitted activities on and adjacent to APN 052-247-01 (Block 164) and APN 052-247-02 (Block 167) in Sausalito, Marin County. The parcels are separated by Yolo Street, a Marin County public right-of-way, where violations are also occurring. BCDC has authorized certain activities on each parcel and the right-of-way in two separate permits.

Permit 1973.014.01, which applies to APNs 052-247-01 (Block 167) and 052-247-02 (Block 164),¹ authorized in the Bay: fill placement for landscaped public access, landscaping, berm construction around a heliport landing pad, and an eleven (11) houseboat marina; and authorized in the 100-foot shoreline band: placement of fill to raise the grade over a portion of the site, an office building renovation, and seventeen (17) parking spaces. On September 17, 1974, Marin County recorded a Notice of Restrictions to dedicate the landscaped public access areas, satisfying Special Condition II.C of Permit 1973.014.01 (VR&C Exhibits 6A and 6B and Order Exhibit 2).

Permit M1985.030.01, which applies to Marin County APN 052-247-02 (Block 164) provided after-the-fact authorization for: in the Bay, repair of a tidal flap gate; and, in the 100-foot shoreline band, placement of aggregate fill over a 640-square-foot area to protect a helicopter landing pad from flooding; installation of a fuel storage tank and fuel containment area; paving of a 1,400 square foot area; and fill of a 2,370-square-foot area with eighty-eight (88) cubic yards of fill (VR&C Exhibit 7).

The Violation Report and Complaint issued on July 29, 2022, made six essential allegations as follows:

1. Respondent is violating Permit 1973.014.01, Special Condition II.C.1.a. and II.C.1.b. and II.C.4.b. and II.C.4.c., Public Access, by failing 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 Marin County public access west of the site.
2. Respondent is violating Permit 1973.014.01, Special Condition II.C.2, Maintenance, by failing to maintain some of the provided public access improvements including the existing public shore pathways and landscaping.

3. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or its shoreline band in Yolo Street. Some of this unauthorized fill also violates Permit 1973.014.01, Special Condition II.D, Use of Solid Fill, by using filled areas designated to be used only for landscaping, landscaped public access, and pedestrian and bicycle pathways, for private use. The unauthorized fill includes:
 - a. Vehicle parking and/or equipment storage;
 - b. Seaplane storage, repair and maintenance;
 - c. Seaplane fueling tank (in place as of at least 2003); and
 - d. 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).
4. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of an unauthorized helicopter landing pad and four paved walkways on Block 164 (in place as of 2008).
5. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay consisting of 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).
6. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or 100-foot 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).

To-date, Respondent has failed to resolve any of the six allegations outlined in the Violation Report and Complaint, despite having received an initial contact letter from BCDC on February 18, 2020.

Beginning at that time and continuing through all communications, BCDC staff advised and directed Respondent to provide the absent public access, conduct maintenance of the existing public access, seek after-the-fact authorization for unauthorized fill and uses described as Violations 4 and 5. On February 28, 2022, two years after receiving BCDC's initial contact letter, Respondent submitted an incomplete application for after-the-fact authorization of the as-built conditions. BCDC staff identified inadequacies in the application in a letter to Respondent, dated March 30, 2022, but Respondent has not resolved any of the inadequacies to-date.

Further, on March 15, 2022, Respondent undertook a significant construction project in BCDC's Bay and/or 100-foot shoreline band jurisdictions without informing BCDC of its plans and without the necessary BCDC authorization. This resulted in issuance of Executive Director Cease and Desist Order ECD2022.002.00 on March 15, 2022, and its re-issuance as ECD2022.002.01 on June 14, 2022, and to-date Respondent has not complied with the ECD either. Due to expiration of

ECD2022.002.01 on September 12, 2022, ECD2022.02.02 was re-issued for a second time on September 13, 2022.

As a result of Respondent's failure to resolve the violations and Respondent's actions in March 2022 resulting in a significant new violation, staff determined that the standardized fines process was inadequate to resolve these violations and commenced the first of two formal enforcement proceedings.

On October 7, 2022, Respondent Aaron Singer, legal counsel to Respondent John Sharp and BCDC staff Adrienne Klein, Matthew Trujillo and Brent Plater met to consider a possible settlement proposal from Respondent. Respondent offered to install the absent public access improvements and pay no fine. Staff requested that Respondent prepare and submit in writing a comprehensive proposal to address the six violations outlined in the VR&C. As of the date of mailing of the Recommended Enforcement Decision and Proposed Order on October 14, 2022, Respondent had not submitted a written settlement proposal.

As of May 19, 2023, the date of mailing of the former Recommended Enforcement Decision to the Enforcement Committee, Respondent had retained the unauthorized concrete ramp it had been twice ordered to remove by BCDC's Executive Director; had not obtained staff approval of a plan to install the missing required and maintain the deteriorated required public access; had not installed the missing required nor maintained the deteriorated required public access, and had not until April 7, 2023, responded to staff's application filing letter, dated March 30, 2022.

This matter was originally scheduled to be heard by the Enforcement Committee on October 26, 2022, then rescheduled to November 16, 2022, then to December 21, 2022, and then to May 30, 2023. Following staff's initial request for an extension of the sixty (60) days to bring the matter forward to the Enforcement Committee to conduct settlement negotiations that failed, Respondent twice requested, and staff twice consented, to the two additional delays to accommodate health issues encountered by John Sharp, Respondent's initial counsel in this matter. On December 7, 2022, Respondent's current Counsel Jillian Blanchard requested another settlement conference. As of December 9, 2022, staff was willing to attempt another settlement conference prior to the December 21, 2022, hearing date for this matter. That hearing date was postponed to conduct settlement negotiations. That round of settlement negotiations failed and the matter was brought to the Committee on May 30, 2023. The outcome of that hearing is described below.

The confidential settlement negotiation that occurred between May 30, 2023, and October 26, 2023, have resulted in a stipulated order that requires the following. The required public access is severely eroded and frequently unusable due to tidal inundation and shoreline flooding, resulting in the requirements to:

1. By June 30, 2024, to comply with the Existing Permits, Respondent shall:
 - a. maintain the permit-required public access along the existing shoreline pathway within Respondent's current property ownership;

- b. On Yolo Street from the termination of the shoreline pathway located within the dedicated public access area within Respondent's property, stripe and maintain by restriping as often as necessary to maintain a clearly delineated public shoreline pathway, an 8-foot-wide accessible path of travel as shown on the Interim Shoreline Access Improvements Plan in Order Exhibit 3 within Respondent's property.
- c. Install a total of eight (8) public shore signs consisting of: five (5) Public Shore directional arrow signs on Bolinas (1), Parepa (1) and Yolo (1) Streets and back-to-back signs (2) visible from the Sausalito-Mill Valley Bike Path, and three (3) public shore signs.
- d. Permanently relocate accessible parking spaces to the west side of Bolinas Street as shown in the photographs in Order Exhibit 3;
- e. On Yolo Street, remove the approximately three-inch-high, elevated asphalt path that was constructed to allow for pedestrian access during high tides;
- f. Confirm with BCDC staff which helicopter pads and walkways are currently covered within existing Permit M1985.030.01.

The order also requires, within thirty (30) days of completion of the actions required above and no later than July 31, 2024, submit a BCDC Notice of Completion that confirms the above public access installation and maintenance work cited in Section B above has been completed pursuant to staff-approved plans (<https://bcdc.ca.gov/forms/forms.html>).

To address the unauthorized development and flooding, the order requires, within twelve (12) months of the date of issuance, that Respondent file a complete application for a Minor Permit Amendment under Permit 1973.014.04 that Includes the Following Required Components:

- a. Revised Landscaping Plan: Provide a revised landscaping plan for the areas adjacent to the permit-required public access for review by BCDC staff that includes installation and maintenance of two accessible picnic tables on hardened surface pads that provide adequate maneuvering clearances with an accessible path of travel from the shoreline trail on Yolo Street to the tables in the grassy area southeast of the office building where maximum views of San Francisco Bay are available. To the extent that any new public access areas are proposed pursuant to Section D(c)(ii) below, include those areas within the Revised Landscaping Plan.
- b. After-the-Fact Authorization Requests for:
 - i. On Block 164, any heliport pads, fuel tanks, and walkways that are not otherwise permitted by M1985.030.01, as determined through the process outlined in Section B(d) above. (See Special Condition II.A in Permit M1985.030.01);
 - ii. The three fingers within the seaplane docking system not previously authorized under Permit 1973.014.04; and

- iii. The concrete and rebar seaplane launch ramp constructed in March 2022.
- c. Additional Public Access:
 - i. Design and construct an eight-foot-wide boardwalk connection to the existing Marin County bike path on County property as contemplated in Permit 1973.014.04, if Respondent is able to receive County approval for such boardwalk connection; or
 - ii. If the County is unwilling to grant Respondent the right to construct and maintain the boardwalk connection contemplated in D(c)(i) above, then identify an alternative, equivalent-size public access area within Respondent's property site to provide for this additional public access.
- d. Prepare and submit a sea level rise and risk assessment (SLR Risk Assessment) that addresses potential sea level rise in all permit-required public access as well as the additional public access areas identified above in D(c) above, all of which may be subject to frequent shoreline flooding and tidal inundation, that is consistent with the SF Bay Plan policies including but not necessarily limited to those pertaining to Climate Change, Shoreline Protection and Public Access, and implement within the timeframes specified in the SLR Risk Assessment the adaptive measures identified in such SLR Risk Assessment, including:
 - i. Adaptive measures to maintain the required Parepa Street public access that is frequently flooded and therefore eroded; and
 - ii. Adaptive management measures to maintain public access for the life of the project or until 2050.

II. BACKGROUND FOR THE COMPLAINT FOR ADMINISTRATIVE CIVIL PENALTIES, ISSUED ON OCTOBER 27, 2022, FOR THREE RESOLVED VIOLATIONS

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

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

Violation 3 occurred between August 31, 2021, the date of expiration of Permit 1973.014.03, and January 25, 2022, the date of issuance of Permit 1973.014.04. The issuance of Permit 1973.014.04 resulted in resolution of the violation on January 25, 2022, but accrued standardized fines were not paid between August 2 and October 26, 2022.

¹ VR&C Exhibit 2 mistakenly identified Block 167, which is between Parepa and Yolo Streets, as Block 164, and mistakenly identified Block 164, which is south of Yolo Street and supports the helicopter port, as Block 167. This error has been corrected.

On November 11, 2022, Jillian Blanchard, Rudder Law Group, informed staff that her firm had been retained by Respondent to act as its counsel. Until that time, John Sharp had represented Respondent.

On December 1, 2022, Respondent's Counsel submitted its Statement of Defense. Respondent states that the SOD is responsive to the allegations in Violation Report and Complaint mailed on July 29, 2022, for six unresolved violations, and the Complaint mailed on October 27, 2022, for civil penalties for three resolved violations.

As of April 3, 2023, the second date of mailing of the Recommended Enforcement Decision to the Enforcement Committee, Respondent had not paid any administrative civil penalties for the three resolved violations. On October 26, 2022, Respondent forfeited its opportunity to resolve the penalty portion of these resolved violations with a \$12,300 standardized fine, to appeal the standardized fine amount to the Commission Chair and Executive Director, or to request a public hearing with the Enforcement Committee. Respondent did not respond to staff's communication dated August 2, 2022, a letter requesting remittance of the standardized fines within thirty days. On September 21, 2022, a letter was sent to Respondent withdrawing the opportunity to resolve the penalty portion of the violations using standardized fines within thirty-five (35) days of that date, or by October 26, 2022. Upon Respondent's failure to respond by the deadline, staff prepared and issued the Complaint for Administrative Civil Penalties dated October 27, 2022. The matter was considered by the Enforcement Committee on May 30, 2023. The Committee declined to approve the recommended enforcement decision that day.

III. BACKGROUND OF THE MAY 30 2023, PUBLIC HEARINGS FOR SIX UNRESOLVED AND THREE RESOLVED VIOLATIONS.

During the first of two public hearings scheduled on May 30, 2023, the Committee decided to continue the public hearing for the three paper violations to enable settlement discussions and directing the parties to prepare present a stipulated timeline that narrows the issues of disagreement. The Committee also decided to continue the public hearing for the six physical violations to June 21, 2023, directing the parties to prepare present a stipulated timeline that narrows the issues of disagreement and to enable the Committee to provide direction on the six unresolved violations.

IV. BACKGROUND FOR THE TWO PROPOSED, STIPULATED ORDERS TO BE CONSIDERED ON NOVEMBER 9, 2023.

Staff and Respondent have engaged in confidential settlement negotiations between June and October 2023, which have resulted in Proposed Stipulated Cease and Desist and Civil Penalty Order CCD2023.002.00 to resolve six unresolved physical violations and Proposed Stipulated Civil Penalty Order CCD2023.003.00 for three resolved paper violations, as described above in sections I and II.

This matter is being presented as a proposed stipulated cease and desist and civil penalty order and a proposed civil penalty order. Both Statements of Defense are attached for reference, but Respondent's defenses and staff's rebuttals have been omitted from this recommended enforcement decision as there are no disputed issues. The defenses and rebuttals are available for review in the two staff recommended enforcement decisions mailed to the Enforcement Committee on May 30, 2023.

Unresolved Issues

As these are stipulated Orders, there are no unresolved issues.

Previous Enforcement Actions

Enforcement Case ER2010.021.00 for the failure to maintain public access and unauthorized construction of a dock, gangway.

Recommendation

The Executive Director recommends that the Enforcement Committee adopt this Recommended Enforcement Decision and recommend that the full Commission issue proposed stipulated Cease and Desist and Civil Penalty Order CCD2023.002.00 and proposed stipulated Civil Penalty Order CCD2023.003.00.

Proposed Orders CCD2023.002.00 and CCD2023.003.00

Two proposed stipulated Orders consistent with this recommendation are attached (Exhibits A and B), along with the Violation Report and Complaint, dated July 29, 2022 (Exhibit C), Respondent's Statement of Defense, dated September 2, 2022 (Exhibit D), the Complaint for Civil penalties, mailed on October 27, 2022 (Exhibit E), and the Statement of Defense, dated December 1, 2022 (Exhibit F).

Exhibit List

Exhibit A: Proposed Stipulated Cease and Desist and Civil Penalty Order CCD2023.002.00 with three exhibits

Exhibit B: Proposed Stipulated Civil Penalty Order CCD2023.003.00

Exhibit C: Violation Report and Complaint, dated July 29, 2022, with exhibits including corrected Exhibit 2 (*to correct the reversed identification of Lots 164 and 167*) and Corrected Exhibit 21 (*i.e., without Attachments 1 and 4 and with Attachments 2 and 3*)

Exhibit D: Respondent's initial Statement of Defense (SOD), dated September 2, 2022, 9 pages, including exhibits

Exhibit E: Complaint for civil penalties for three resolved violations, dated October 27, 2022

Exhibit F: Respondent's second Statement of Defense (SOD), dated December 1, 2022, including exhibit

Enforcement Committee Recommendation to the Full Commission:

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

By a vote of __ yeses, __ noes, and __ abstentions, the Enforcement Committee adopts the Executive Director's Recommended Enforcement Decision as its recommendation to the full Commission.

By a vote of __ yeses, __ noes, and __ abstentions, the Enforcement Committee conditionally adopts the Executive Director's Recommended Enforcement Decision as its recommendation to the full Commission as specified in the attached memorandum.

By a vote of __ yeses, __ noes, and __ abstentions, the Enforcement Committee declines to adopt the Executive Director's Recommended Enforcement Decision and recommends that the full Commission decline to issue the proposed Cease and Desist and Civil Penalty Order for the reasons specified in the attached memorandum.

MARIE GILMORE, Enforcement Committee Chair
San Francisco Bay Conservation and Development Commission

Date

RED Exhibit A: Proposed Stipulated
Cease and Desist and Civil Penalty
Order CCD2023.002.00 with three
exhibits

**Commission Stipulated Cease and Desist
and Civil Penalty Order:**

CCD2023.002.00

Effective Date:

[Upon Commission action]

Respondent:

Seaplane Investment, LLC

To Seaplane Investment, LLC:

I. Commission Stipulated Cease and Desist Order

Pursuant to Cal. Gov. Code § 66638, Seaplane Investment, LLC (“Respondent”) is hereby ordered to:

- A. Cease and desist from violating Permit 1973.014.04, Permit M1985.030.01 and the McAteer-Petris Act by taking the following actions.
- B. By June 30, 2024, to comply with the Existing Permits, Respondent shall:
 - a. Maintain the permit-required public access along the existing shoreline pathway within Respondent’s current property ownership; :
 - b. On Yolo Street from the termination of the shoreline pathway located within the dedicated public access area within Respondent’s property, stripe and maintain by restriping as often as necessary to maintain a clearly delineated public shoreline pathway, an 8-foot-wide accessible path of travel as shown on the Interim Shoreline Access Improvements Plan in Order Exhibit 3 within Respondent’s property.
 - c. Install a total of eight (8) public shore signs consisting of: five (5) Public Shore directional arrow signs on Bolinas (1 sign), Parepa (1 sign) and Yolo (1 sign) Streets and back-to-back signs (2 signs) visible from the Sausalito-Mill Valley Bike Path, and three (3) public shore signs.
 - d. Permanently relocate accessible parking spaces to the west side of Bolinas Street as shown in the photographs in Order Exhibit 3;
 - e. On Yolo Street, remove the approximately three-inch-high, elevated asphalt path that was constructed to allow for pedestrian access during high tides;
 - f. Confirm with BCDC staff which helicopter pads and walkways are currently covered within existing Permit M1985.030.01.

- C. Within thirty (30) days of completion of the actions required by Section I.B.a through I.B.e and no later than July 31, 2024, submit a BCDC Notice of Completion that confirms the above public access installation and maintenance work cited in Section B above has been completed pursuant to staff-approved plans (<https://bcdc.ca.gov/forms/forms.html>).
- D. Within twelve (12) months of the date of this Order, file a complete application for a Minor Permit Amendment under Permit 1973.014.04 that includes the following Required Components:
- a. A revised landscaping plan for the areas adjacent to the permit-required public access for review by BCDC staff that includes installation and maintenance of two accessible picnic tables on hardened surface pads that provide adequate maneuvering clearances with an accessible path of travel from the shoreline trail on Yolo Street to the tables in the grassy area southeast of the office building where maximum views of San Francisco Bay are available. To the extent that any new public access areas are proposed pursuant to Section D(c)(ii) below, include those areas within the Revised Landscaping Plan.
 - b. After-the-Fact Authorization Requests for:
 - i. On Block 164, any heliport pads, fuel tanks, and walkways that are not otherwise permitted by M1985.030.01, as determined through the process outlined in Section B(d) above. (See Special Condition II.A in Permit M1985.030.01);
 - ii. The three fingers within the seaplane docking system not previously authorized under Permit 1973.014.04; and
 - iii. The concrete and rebar seaplane launch ramp constructed in March 2022.
 - c. Additional Public Access:
 - i. Design and construct an eight-foot-wide boardwalk connection to the existing Marin County bike path on County property as contemplated in Permit 1973.014.04, if Respondent is able to receive County approval for such boardwalk connection; or
 - ii. If the County is unwilling to grant Respondent the right to construct and maintain the boardwalk connection contemplated in I.D(c)(i) above, then identify an alternative, equivalent-size public access area within Respondent's property site to provide for this additional public access.
 - d. Prepare and submit a sea level rise risk assessment that addresses potential sea level rise in all permit-required public access as well as the additional public access areas identified above in I.D(c), all of which may be subject to frequent

shoreline flooding and tidal inundation, that is consistent with the San Francisco Bay Plan policies, including but not limited to those pertaining to Climate Change, Shoreline Protection and Public Access; and implement within the timeframes specified in the risk assessment the adaptive measures identified in such risk assessment, including:

- i. Adaptive measures to maintain the required Parepa Street public access that is frequently flooded and therefore eroded; and
 - ii. Adaptive management measures to maintain public access for the life of the project or until 2050.
- E. Fully comply with the Requirements of Sections II, IV, and V of this Cease and Desist and Civil Penalty Enforcement Order (“Order”).

II. Civil Penalty Order

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

- A. Pay administrative civil liability of forty-three thousand, eight hundred dollars (\$43,800) to BCDC by cashier’s check made payable to the Bay Fill Clean-up and Abatement Fund within the timeframes identified below in II.B of this Order. The administrative civil liability consists of:
1. Two-thousand, seven-hundred and sixty-dollars (\$2,760) for the failure to provide all the required public access improvements consisting of public shore pathways, landscaping, signage, and a public access connection from the site to the County public access west of the site.
 2. Two-thousand, seven-hundred and sixty-dollars (\$2,760) for the failure to maintain the required public access improvements as required by Special Condition II.C.2 of Permit 1973.014.01.
 3. Two-thousand, seven-hundred and sixty-dollars (\$2,760) for using legally filled portions of Yolo Street designated to be used only for public access as per Special Condition II.D. Use of Solid Fill, of Permit 1973.014.01, for private uses such as parking, equipment storage, Seaplane storage, repair and maintenance, fuel tank, and asphalt path across Yolo Street.
 4. Two-thousand, seven-hundred and sixty-dollars (\$2,760) for placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of a second helicopter landing pad (asphalt) and four walkways (also asphalt) on Block 164.
 5. Two-thousand, seven-hundred and sixty-dollars (\$2,760) for placing unauthorized fill in San Francisco Bay on at least three separate episodes consisting of expansion of an existing u-shaped floating dock, pilings, and relocating a fuel station.

6. Thirty-thousand dollars (\$30,000) for placing unauthorized fill in San Francisco Bay 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.
- B. Due to the financial limitations of Respondent, Respondent is entitled to pay these penalties in the following manner:
 - a. Ten-thousand (\$10,000) must be paid within sixty (60) days of the issuance of this Order;
 - b. The first half of the remaining sixteen-thousand and nine-hundred (\$16,900) must be paid within twelve (12) months of the issuance of this Order;
 - c. The final payment of sixteen-thousand and nine-hundred (\$16,900) must be paid within twenty-four (24) months of the issuance of this Order.

If administrative civil liability is not paid within the timeframes identified above, the Executive Director is authorized to refer the matter to the Attorney General pursuant to Cal. Gov. Code § 66641.7(b), Cal. Gov. Code § 66641.5, and/or Cal. Gov. Code § 66641.

III. Findings

Factual Findings

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

- A. The Seaplane Operations, which included seaplanes, a fueling tank, and other amenities to service and maintain the seaplanes, have been in place and operating continuously since 1947, prior to the passage the McAteer-Petris Act.
- B. Permit 1973.014.01, which applies to Marin County APN 052-247-01 (Block 164), was originally issued to Commodore Marina, LLC, on August 24, 1973. The originally authorized work was to have been completed by March 1, 1975. In the Bay, the amended permit authorizes fill placement for landscaped public access and landscaping to improve shoreline appearance, berm construction around the heliport landing pad, and for an existing 11 houseboat marina. In the shoreline band, the permit authorizes placement of fill to raise the grade over 0.66 acres of the site, office building renovation, and 17 parking spaces. The permit has been amended three more times to allow completion of a single houseboat reconstruction project and relocation of two houseboats, on November 21, 2017 (Amendment Two), September 2, 2020 (Corrected Amendment Two), April 16, 2021 (Amendment Three) and January 25, 2022 (Amendment Four). Violation Report Exhibit 6A.
- C. 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. Violation

Report Exhibit 6B.

- D. Permit M1985.030.01, which applies to Marin County APN 052-247-02 (Block 167), was originally issued to Commodore Helicopters, Inc., and Walter Landor on August 25, 1988, and amended once on December 28, 1989. In the Bay the permit authorizes repair of a tidal flap gate, and in the shoreline band it authorizes placement of 23 cubic yards of aggregate over a 640 square foot area to protect a helicopter landing pad from flooding, installation of a fuel storage tank and fuel containment area to meet safety standards, paving of a 1,400 square foot area and fill of a 2,370 square foot area with 88 cubic yards of fill. The authorization is entirely after-the-fact. Permit M1985.030.01 also includes authorization for the filing and paving of “the heliport pad” and “the fuel storage tank” in accordance with plans prepared by Anrig-Doyle; Civil Engineers, dated July 1, 1988, entitled Commodore Helicopter. Violation Report Exhibit 7.
- E. On or before December 2003, Respondent’s predecessor placed an unauthorized fuel tank in the Yolo Street right-of-way that does not fall within existing authorizations under Permit M1985.030.01. Violation Report Exhibits 8 and 9.
- F. On or before September 2008, Respondent’s predecessor installed a second, unauthorized helicopter landing pad and certain unauthorized walkways that do not fall within Permit M1985.030.01. Violation Report Exhibits 10 and 11.
- G. In 2011, 2017, and 2109 Respondent constructed three distinct, unauthorized finger piers to the existing seaplane docking system. Violation Report Exhibits 12, 13, 14, and 15.
- H. On December 12, 2019, BCDC received a report of possible violations at the site alleging failure to provide the required public access and installation and alleged unauthorized use of fill relating to multiple dock expansions, a fuel tank and fueling lines seaplane repair and maintenance with no containment of possible contaminants. Violation Report Exhibit 17.
- I. On January 31, 2020, BCDC staff conducted an unscheduled site visit to Commodore Marina and Seaplane Adventures. During this site visit, staff observed that the boat docks did not comply with site plan located in the permit file. Staff learned that two pilings had been replaced and that the fueling station on the dock had been relocated from a pre-existing dock section to a location on the illegally expanded dock. Staff observed the absence of required public shore signs; a dumpster located in a required public access area; and severe shoreline erosion adjacent to the required public shoreline. Staff took site visit notes and photographs. Violation Report Exhibits 18A and 18B.

- J. On February 18, 2020, BCDC issued a notice to Respondent's predecessors citing violations of BCDC Permits 1973.014.01 and M1985.030.01 and the McAteer-Petris Act. The letter requests the permittees to contact BCDC staff within 15 days. Violation Report Exhibit 19.
- K. On March 2, 2020, John Sharp, attorney from the Law Offices of John Sharp, contacted BCDC to state that he represented Seaplane Adventures, a lessee on the property and the owner and operator of the seaplane operations, docking system, and fueling tanks, and that he had only recently seen BCDC's letter. He requested that BCDC contact him to discuss a reasonable time for Seaplane Adventures to respond.
- L. Between March 2 and September 15, 2020, progress on resolving this enforcement action was delayed due to the onset of the COVID-19 pandemic. BCDC responded to Mr. Sharp, the parties (Respondent's predecessor and Seaplane Adventures – the lessee on the property) engaged in a telephone call and both parties agreed to conduct research.
- M. On September 15, 2020, BCDC issued another letter to Respondent's predecessor in interest and copied Seaplane Adventures. The letter summarized the two permits' requirements the violations of the permits and the McAteer-Petris Act identified at that time, and provided direction to correct the violations. The letter identified two violations at the site consisting of:
- a. Violation of Permit 1973.014.01, Special Condition II.C., Public Access, consisting of landscaping, pathway, and signage deficiencies; and
 - b. Violation of Permit 1973.014.01, Special Condition II.D., Solid Fill, consisting of floating fill for Seaplane access docks, a fuel tank, seaplane storage, derelict fencing and docks and a water access ramp overlay made of Trex® boards¹.

The letter requested the following additional information: A summary of other site development that may have occurred between permit issuances and the date of the letter; clarification of ownership of the Yolo Street right-of-way; preparation and submittal of a site survey to identify the location of the Bay (located at MHW 5.47 feet NAVD88) and the shoreline band; whether the flap gate was functional; and whether there were plans to pursue any fill or shoreline protection in light of the extensive erosion of the existing protective structures. The letter asked for a response within sixty days. Staff attached a copy of each amended permit to the letter. Violation Report Exhibit 20.

¹ This structure was entirely removed and reconstructed by Respondents on March 14, 2022, without BCDC authorization, and is the subject of ECD2022.01.

- N. On November 13, 2020, January 15, 2021, and June 15, 2021, counsel for Seaplane Adventures and Respondent's predecessor's counsel submitted three letters with information regarding the site history, current site uses, an airport master record, and general responses to BCDC staff's allegations; but did not resolve any of the violations. On January 19, 2021, Respondent's predecessor also submitted a surveyed metes and bounds map of the permit-required public access area described in the recorded legal instrument, responsive to one of staff's requests. Violation Report Exhibit 21, Attachment 3.
- O. On July 14, 2021, BCDC conducted a virtual meeting with Respondent's predecessor and Seaplane Adventure's counsel, John Sharp. During the meeting, BCDC staff directed Respondent's predecessor to submit a permit amendment application by August 30, 2021, so that staff could assess and potentially resolve the violations with an after-the-fact authorization of the unauthorized fill and uses that had occurred at the site. Staff also directed Respondent's predecessor to provide a public access plan for review and approval and subsequent implementation by Respondent's predecessor. Because BCDC cannot authorize fill on a third party's property without their consent, staff also directed Respondent to file a quiet title action for the Yolo Street right-of-way if it claimed title to it. Violation Report Exhibit 21, Attachment 2.
- P. On July 21, 2021, title for both parcels transferred from Commodore Marina LLC to Seaplane Investment LLC. Violation Report Exhibits 1 and 2.
- Q. On August 25, 2021, Mr. Sharp informed staff that Respondent could not meet the August 30, 2021, deadline to submit a BCDC permit amendment application.
- R. On September 3, 2021, to facilitate compliance with the public access provisions of its permit, BCDC staff provided Seaplane Adventures' counsel with a proposed public access plan created using a metes and bounds map of the dedicated public access area. Violation Report Exhibit 21, Attachment 3 (see blue line and notes in yellow).
- S. Between July 14 and October 8, 2021, Respondent did not resolve any of the violations, nor did they submit a permit amendment application, nor had they received direct communications from BCDC staff.
- T. On October 8, 2021, BCDC issued a letter to Shannon Sullivan, authorized representative for Seaplane Investment LLC, and Mr. Sharp, who was retained as legal counsel to Seaplane Investments, LLC, in addition to being Seaplane Adventures' counsel, commencing standardized fines pursuant to BCDC Regulation 11386 for five violations:
- a. Violations 1 and 2. Two permit assignments necessary because of the title transfer;
 - b. Violation 3. Failing to complete houseboat renovations and relocation by

the August 31, 2021, deadline authorized by BCDC Permit 1973.014.03;

- c. Violation 4. The unauthorized placement of fill and uses consisting of installation of extensions to the Seaplane access docks, a Seaplane fueling tank, parking vehicles, and storing planes and a ramp overlay made of Trex boards in the Yolo Street right-of-way; and
 - d. Violation 5. The failure to comply with the public access requirements of the permit consisting of the failure to install and/or maintain landscaping, pathways, signage, and a connector pathway and to allow parking in a portion of the public access area. Violation Report Exhibit 21.
- U. On January 3, 2022, Lou Vasquez, Manager, Seaplane Investments LLC, executed two permit assignment forms for BCDC Permits 1793.014.01 and M1985.030.01, respectively, resolving Violations 1 and 2 as described on October 8, 2021. Violation Report Exhibit 22.
 - V. On January 12, 2022, Mr. Sharp submitted a brief letter summarizing the site history and describing future use of the property.
 - W. On January 25, 2022, Violation 3, the houseboat project, was resolved by the issuance of an after-the-fact and third extension of completion time through October 31, 2021. Violation Report Exhibit 6A.
 - X. On February 28, 2022, Mr. Sharp submitted a an Abbreviated Regionwide Permit Application requesting after-the-fact authorization permission to cover the components that Respondent believed were in violation pursuant to the October 8, 2021, letter, including authorization to install and use existing boat docks, an existing seaplane launch ramp (composite lumber placed on grade) and an existing fuel tank, public access improvements, ADA parking and asphalt transitions along shoreline access path. The application included site plans, photographs, and proposed interim site improvements. Violation Report Exhibit 23.
 - Y. Between March 12-14, 2022, rainstorms caused further deterioration of the existing trex board seaplane ramp to such an extent that the ramp was damaging seaplanes and could not be operated by Seaplane Adventures. Seaplane Adventures completed emergency ramp repairs by replacing the trex board with concrete rebar per consultant specifications for safe seaplane operations without consulting Respondent in order to be compliant with Seaplane Adventures' Federal Aviation Administration (FAA) Permit for the operations which requires maintenance of the ramp to allow for safe ingress and egress of the seaplanes.
 - Z. On March 14, 2022, a member of the public notified BCDC that Seaplane Adventures was constructing new structures in the Bay. The report included clear, low tide images of the unauthorized excavation and fill placement work taking place in BCDC's Bay

and/or shoreline band jurisdictions. A staff photograph of the completed project, dated April 22, 2022, is also included. Violation Report Exhibits 24A-E.

- AA. On March 15, 2022, the Executive Director issued ECD2022.002.00 to Respondent to halt unauthorized work of Seaplane Adventures in BCDC's San Francisco Bay and shoreline band jurisdictions and require its removal and restoration of the site to its prior condition. Seaplane Adventures undertook this unauthorized work less than one month after Respondent applied to BCDC for related work. Violation Report Exhibit 25. In order for Respondent to remove the replacement ramp, it would have had to forcibly halt operations of an existing seaport run by its tenant, Seaplane Adventures, thereby halting all seaplane operations.
- BB. On March 30, BCDC staff responded to the application requesting the following information to enable it to be filed as complete: Confirmation of staff's summary of the project description and provision of the missing information; a survey of the BCDC jurisdiction and quantification of the fill to be placed therein; a set of project plans with details about what they should portray; an application processing fee; proof of legal interest for the private and public property, local approval from Marin County for the project including for the work in the Yolo Street ROW, other agency approvals such as from the RWQCB, a CEQA determination, a list of interested parties, a public access proposal, a flooding assessment, and information about whether and how fueling of Seaplanes is conducted to preclude adverse impacts to water quality. The letter also directed Seaplane Investment, LLC to post a public notice; that staff would not consider the recent unauthorized ramp construction project as part of this application; and that Seaplane Adventures must remove the unauthorized ramp work as required by ECD2022.011.00. Violation Report Exhibit 26.
- CC. On June 14, 2022, the Executive Director re-issued ECD2022.002.01 to Respondent. Violation Report Exhibit 27.
- DD. On July 14, 2022, Mr. Sharp submitted a letter that identified the need for Seaplane Adventures to complete the emergency repairs to comply with its FAA Permit and to avoid further damage to seaplanes. The letter also claims the property and operation is exempt from BCDC jurisdictions because it is regulated by the FAA. Violation Report Exhibit 28.
- EE. Respondent has applied for and obtained two BCDC permits for the fill and uses at the property and taken assignment of these rights and obligations. Respondent has two valid BCDC Permits that have governed its activities for decades. Neither permit has ever been challenged or held to be preempted by federal law. None of the violations alleged here address the FAA's field of regulation.
- FF. Respondent filed a Statement of Defense (SOD) on September 2, 2022.

- GG. On September 6, 2022, BCDC staff asked Respondent's counsel, John Sharp, to delay the hearing to allow for potential resolution of the violations identified on the site. John Sharp agreed on behalf of Respondent to waive the hearing to allow for potential resolution in September 2022.
- a. The required public access is severely eroded and frequently unusable due to tidal inundation and shoreline flooding, resulting in the requirements to:
 1. Maintain the Parepa Street public access pursuant to completed SLR Risk Assessment (Section DX); and
 2. Complete a SLR Risk Assessment for all public access areas (including any newly proposed public access areas in connection with the complete Permit Application Amendment Request required to be filed within twelve (12) months of the date of the issuance of this Order. (Section X).
- HH. The permit and plans dating from 1973 (Order Exhibit 1) required landscaping based on a landscaping plan that has not been provided to Respondent. The existing landscaping may or may not be consistent with the requirements of Permit 1973.010.04, but regardless, the landscaping adjacent to the public pathway needs to be maintained and improved due to the frequency of tidal inundation and flooding and the resulting erosion. Landscaping waterward of the public pathway may no longer be feasible at this time. Therefore, in lieu of requiring any absent landscaping, Section B and D require posting of new public shore signs, the installation and maintenance of two picnic tables accessible to persons with disabilities, as well as Respondent's preparation of a new landscaping plan in the Permit Amendment Request pursuant to Section D above.
- II. The SOD contains a "Photo Site Plan of 242 Redwood Highway, Mill Valley, CA 94941" that indicates that the three new finger piers coming from the existing seaplane dock has been added and repaired and, while this same plan contains no parallel note about the helicopter landing pad authorized in 1985, it has clearly also been repaired as its condition matches that of the new unauthorized pad and adjoining walkways (VR&C Exhibit 2 and Order Exhibit 3). The repairs to the u-shaped seaplane docks and to the once authorized landing pad occurred without BCDC authorization, therefore rendering both existing structures unauthorized unless and until Respondent applies for and receives retroactive approval for these unauthorized repairs. These features are currently being used as essential components to the existing seaplane operations. Therefore, Section D of the Order requires that these features be included in a Permit Amendment Application filed with BCDC no later than twelve months from the date of the issuance of this Order.
- JJ. On October 7, 2022, Seaplane Adventures' owner and silent partner to Respondent, Aaron Singer, John Sharp and BCDC staff Adrienne Klein, Matthew Trujillo and Brent

Plater met to consider a possible settlement proposal from Respondent. Lou Vasquez, the managing member of Respondent's LLC was not in attendance. John Sharp and Aaron Singer offered to install the absent public access improvements and pay no fine. Staff requested that Respondent prepare and submit in writing a comprehensive proposal to address the six violations outlined in the VR&C. As of the date of mailing of the Recommended Enforcement Decision and Proposed Order on October 14, 2022, Respondent had not submitted a written settlement proposal.

KK. On April 7, 2023, Respondent filed an updated Permit Amendment Application with a 51-page supplement that included the revised concrete ramp design and responded to the requests for information in BCDC's 30-day Incompleteness letter from March 30, 2022.

LL. As of May 19, 2023, the date of mailing of the Recommended Enforcement Decision to the Enforcement Committee², Respondent has not removed the unauthorized concrete ramp constructed by Seaplane Adventures it has been twice ordered to remove by BCDC's Executive Director because Respondent believes that doing so would violate Seaplane Adventures' property rights and FAA permit requirements; has not obtained staff approval of a plan to install the missing required public access and restore and maintain the existing, deteriorated, required public access; has not installed the missing required public access nor restored the existing, deteriorated, required public access; and on April 7, 2023, Respondent responded to staff's letter dated March 30, 2022.

Legal Findings

- A. The Commission finds that Respondent's predecessor has violated:
1. Special Condition II.C.2 of Permit 1973.014.01 for the failure to provide all the required public access improvements consisting of public shore pathways, landscaping, signage, and a public access connection from the site to the County public access west of the site;
 2. Special Condition II.C.2, Maintenance, of Permit 1973.014.01 for the failure to

² This matter was originally scheduled to be heard by the Enforcement Committee on October 26, 2022, then rescheduled to November 16, 2022, and again rescheduled to December 21, 2022. Following staff's initial request for an extension of the sixty (60) days to bring the matter forward to the Enforcement Committee to conduct settlement negotiations that failed, Respondent twice requested, and staff twice consented, to the two additional delays to accommodate health issues encountered by John Sharp, Respondent's initial counsel in this matter. On December 7, 2022, Respondent's current Counsel Jillian Blanchard requested another settlement conference. As of December 9, 2022, staff was willing to attempt another settlement conference prior to the December 21, 2022, hearing date for this matter. That hearing date was postponed to conduct settlement negotiations.

maintain the required public access improvements;

3. Special Condition II.D, Use of Solid Fill, of Permit 1973.014.01, and Section 66632(a) of the McAteer-Petris Act for using legally filled portions of Block 167 and Yolo Street designated to be used only for public access for private uses such as parking, and any equipment storage, fuel tanks Seaplane storage, repair and maintenance of seaplanes that did not exist prior to 1965, and asphalt path across Yolo Street;
 4. Section 66632(a) of the McAteer-Petris Act for placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of a second helicopter landing pad (asphalt) and four walkways (also asphalt) on Block 164; and
 5. Section 66632(a) of the McAteer-Petris Act for placing unauthorized fill in San Francisco Bay by placing three finger pier docks, pilings, and relocating a fuel station.
- B. The Commission finds that Respondent owned the property when the following violation occurred:
1. Violation of Section 66632(a) of the McAteer-Petris Act when Seaplane Adventures placed unauthorized fill in San Francisco Bay consisting of excavation and fill to complete emergency replacement the existing trex board ramp with a concrete and rebar water access ramp within the same dimensions as the existing ramp.in the Yolo Street right-of-way.
- C. The Commission finds that in this matter BCDC staff correctly identified six distinct violations.
- D. The Commission also finds that based on the factors provided by MPA Section 66641.9, and in consideration of the fact that Respondent did not directly commit any of the violations above, and is working to correct said violations, it is appropriate to reduce the total fines to \$43,800, with \$2,760 for five of the six violations and \$30,000 for the ramp replacement. is appropriate.
- E. Specifically, the Commission finds that while the nature and extent of harm caused by the legal violations are extensive, Respondent has been working diligently since the permit assignment in January 2022 to rectify the violations. The public has had access to the public access, although it has not been maintained as previously intended.
- F. The Commission finds that while some of the violations are susceptible to resolution, others have caused unknown impacts to the public for absent public access improvements and the occupation of public access areas with private improvements such as parking and equipment, and to the Bay resources for dock and ramp construction.

- G. The Commission finds the cost to the state in pursuing this case since 2019 was high, but the majority of this effort was done in connection to correspondence with the previous owners. Staff has invested time researching the permit history; reviewing the materials submitted by Respondent and its predecessor; meeting with Respondent; directing Respondent in each communication on the actions to take to resolve the violations, including preparing a draft public access plan that Respondent failed to finalize and implement, reviewing Respondent's incomplete permit application; issuing a 35-day enforcement letter, all of which failed to result in resolution of the violations; issuing a Violation Report and Complaint; and if the Commission issues an order, monitoring Respondent's actions for compliance with its terms.
- H. The Commission finds that Respondent is culpable for the violation due to the failure to resolve the public access and fill violations between October 8, 2021, the date of the first contact with Respondent and July 29, 2022, the date of issuance of the Violation Report and Complaint. Respondent failed to file as complete the permit application, between March 30, 2022, the date of issuance of staff's letter of response to Respondent's regionwide permit application, and July 29, 2022, the date of issuance of the Violation Report and Complaint. On March 15, 2022, two weeks after Respondent submitting an application to BCDC requesting permission for the placement of fill in SF Bay and shoreline band that had been the subject of Enforcement Case ER2019.063.00, Seaplane Adventures conducted new, unauthorized material extraction and fill placement that resulted in the reconstruction of - a water access ramp, an activity that requires a Commission permit pursuant to Section 66632(a) of the McAteer-Petris Act.
- I. Based on these penalty factors the Commission finds that a \$10 penalty per day for the failure to provide all of the required public access improvements (public shore pathways including a connection to the County public access to the west, landscaping and signage) is appropriate (Violation 1), a \$10 penalty per day for the failure to maintain the public access is appropriate (Violation 2), a \$10 penalty per day for using legal-filled portions of Block 167 and Yolo Street designated to be used only for public access for private uses (such as parking, equipment storage, Seaplane storage, repair and maintenance, fuel tank, and asphalt path across Yolo Street) is appropriate (Violation 3), an \$10 penalty per day for placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of a second helicopter landing pad (asphalt) and four walkways (also asphalt) on Block 164 is appropriate (Violation 4), a \$10 penalty per day for Placing unauthorized fill in San Francisco Bay on at least three separate episodes consisting of expansion of an existing u-shaped floating dock, pilings, and relocating a fuel station is appropriate (Violation 5), and a \$2,000 penalty per day for placing unauthorized fill in San Francisco Bay 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 is appropriate (Violation 6).

- J. The Commission finds that Respondents have been responsible for owning property that had: Violation 1 since learning about the violation on October 8, 2021, 276 days; Violation 2 for 276 days since the October 8, 2021 letter; Violation 3 for 276 days; Violation 4 for 276 days; Violation 5 for 276 days; and Violation 6 for 137 days since March 14, 2022. These time periods have been revised from the original Violation Report and Complaint for Administrative Civil Liability, which was mailed to Respondent on July 29, 2022 to reflect Respondent's willingness to work with BCDC to rectify all issues on the site and in consideration of the fact that Respondent did not directly cause any of the six violations.
- K. The Commission thus finds that it is appropriate that five violations are \$2,760 each for a total of \$13,800 and the sixth violation related to the boat ramp is subject to the maximum penalty allowed by the MPA: \$30,000, for a total administrative civil liability of \$43,800, to be paid out over a period of two years from the date of the issuance of this Order, as described above.

IV. Terms

- A. The Executive Director may grant an extension of time for demonstrated good cause to comply with any provision of this Order. The Executive Director shall inform the Enforcement Committee Chair and the Commissioners of any extensions that are granted under this provision, including in the event that Respondent has made a good faith reasonable attempt to file a complete application ,but has been unable to meet the deadline due to delays or requests by BCDC staff or factors outside of Respondent's control.
- B. Seaplane Investment, LLC, must strictly conform to the express terms of this Order. Under Cal. Gov. Code § 66641, any person who intentionally or negligently violates any part of an order issued by the Commission may be liable civilly in the sum of up to \$6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease-and-desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease-and-desist order.
- C. This Order does not affect any duties, rights, or obligations established under private agreements or by the laws and regulations of other public bodies.
- D. This Order does not constitute a recognition of property rights.
- E. This Order is effective upon issuance thereof.

V. Judicial Review

- A. Under Cal. Gov. Code §§ 66639 & 66641.7(a), within thirty (30) days after service of a copy of a cease-and-desist order and civil penalty order issued by the Commission, an aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

As this is a stipulated order between the parties, Respondent hereby waives any rights it may have to file a writ of mandate for review of this order.

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

LAWRENCE J. GOLDZBAND, BCDC Executive Director

Date

Executed at _____, California, on behalf of Seaplane Investments LLC on the date written.

Signature

Date

Print Name and Title

LJG/gs/mm

Order Exhibits:

- Order Exhibit 1. Plans from original permit application.
- Order Exhibit 2. Metes and bounds map of public access area.
- Order Exhibit 3. Extract from pending unfiled permit application submitted in March 2022 of Yolo Street public access proposal.

Full Commission Motion and Action:

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

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

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

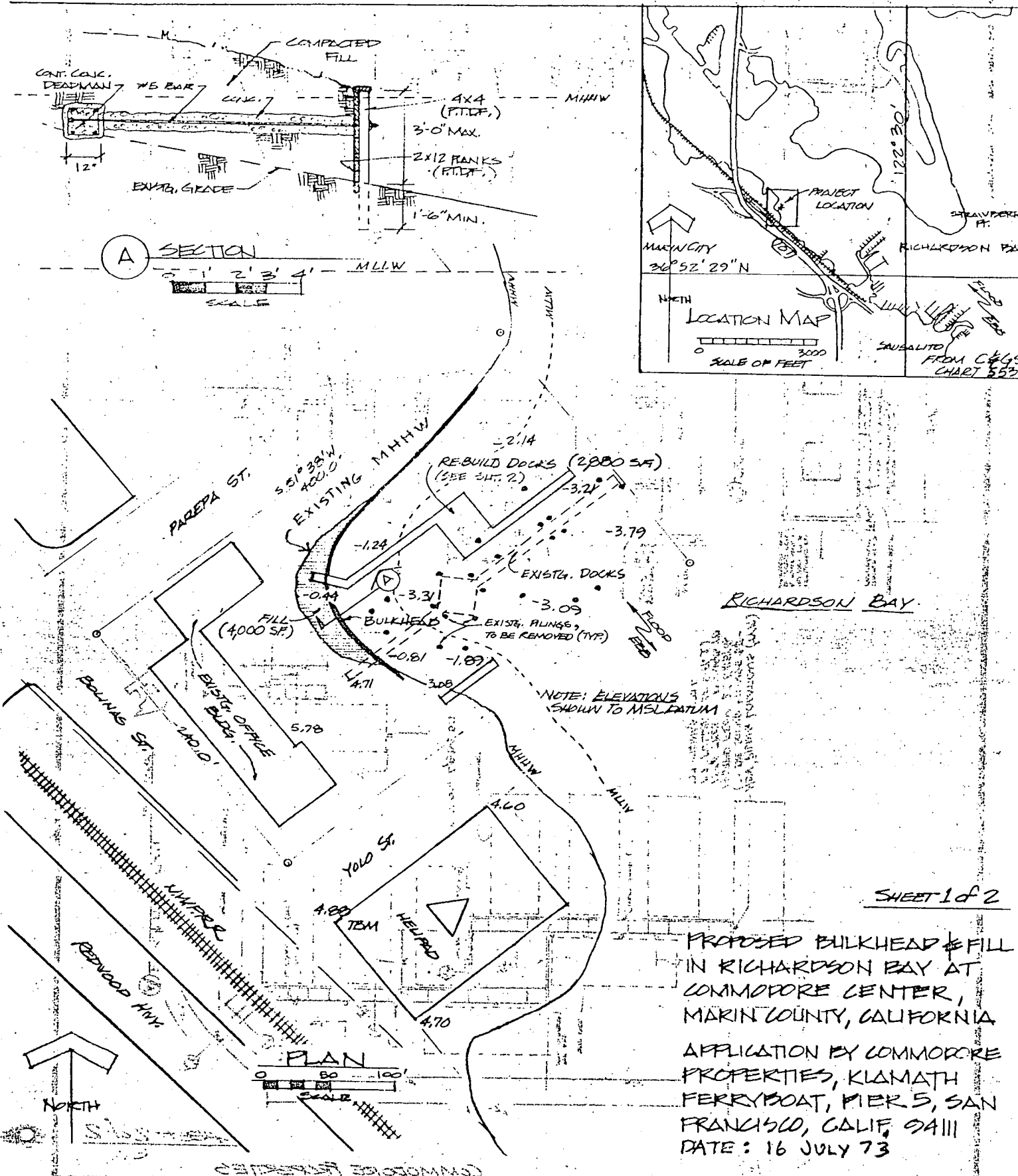
By a vote of __ yeses, __ noes, and __ abstentions, the Commission votes to remand the matter back to the Enforcement Committee for further action for the reasons specified in the attached memorandum.

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

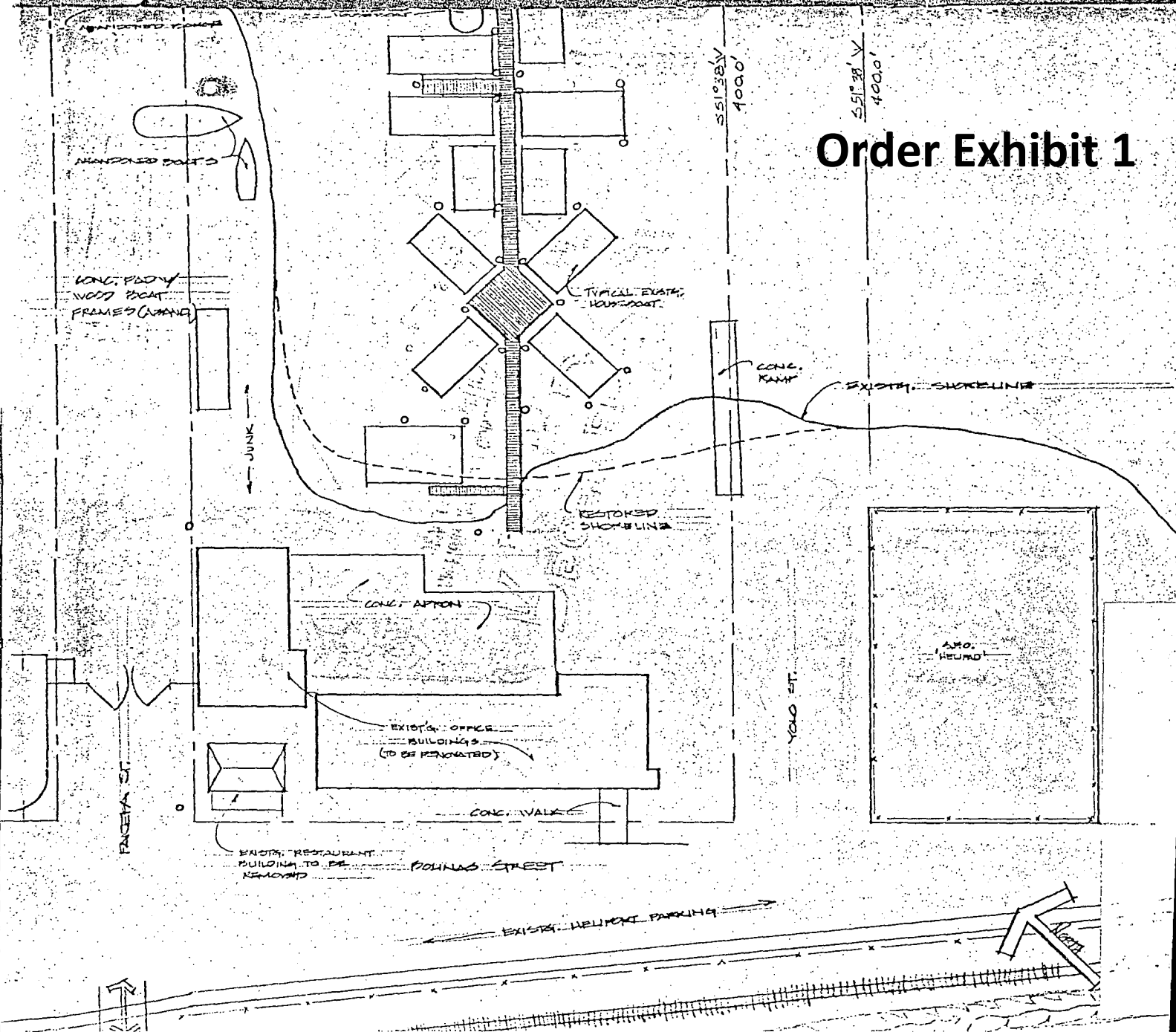
Zachary Wasserman, Commission Chair
San Francisco Bay Conservation and Development Commission

Date:

Order Exhibit 1



Order Exhibit 1



COMMODORE CENTER

Existing Conditions

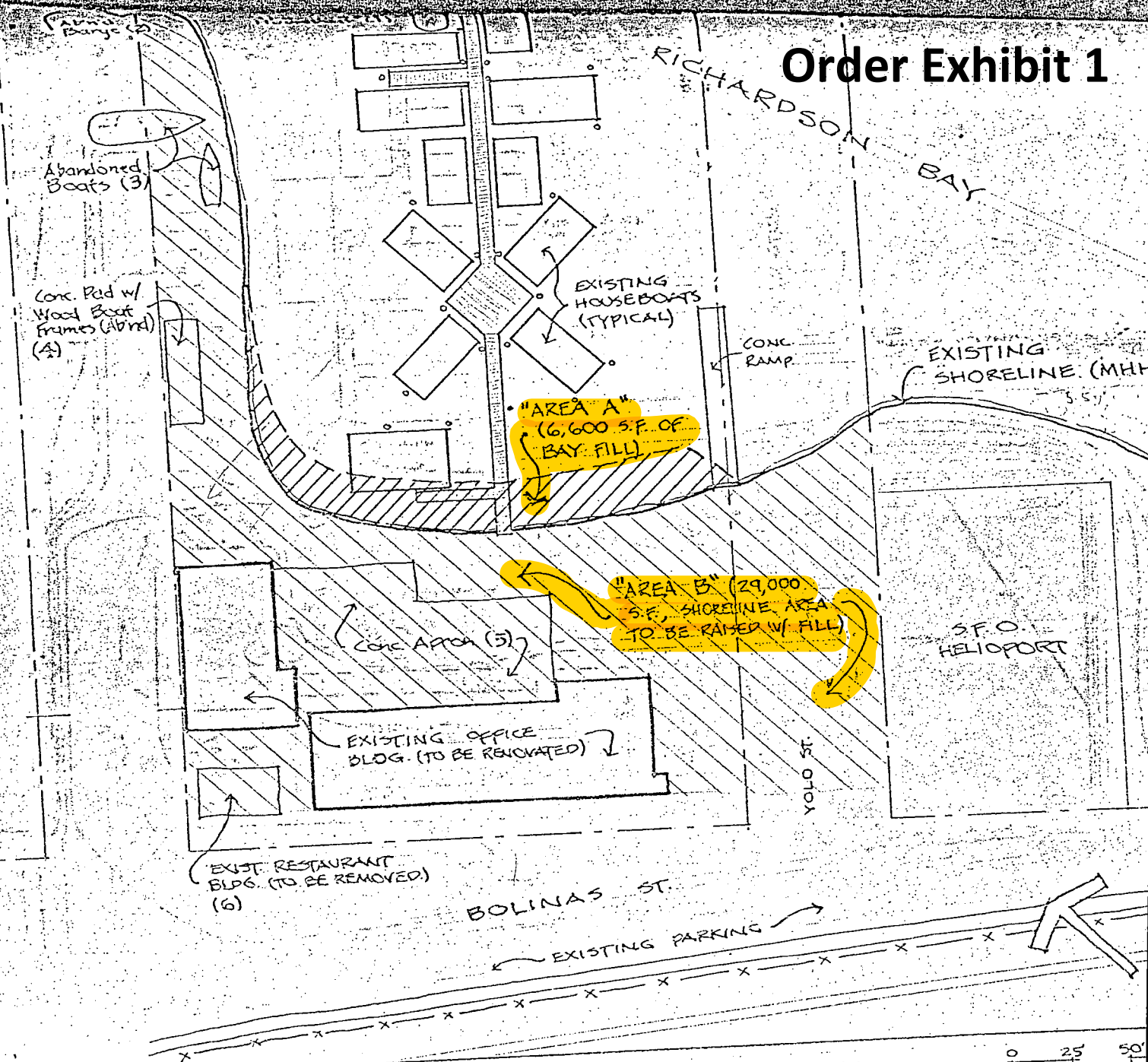
With approval of application, the following maintenance and upgrading will be performed:

1. Removal of abandoned hulks and debris
2. Removal of existing restaurant building
3. Demolition of concrete apron (now used for cars vans and boat hulks)
4. Reconstruction of marina floats

(Continued)
Page 3 of 4

William B. Harlembans
WILLIAM B. HARLEMBANS

Order Exhibit 1



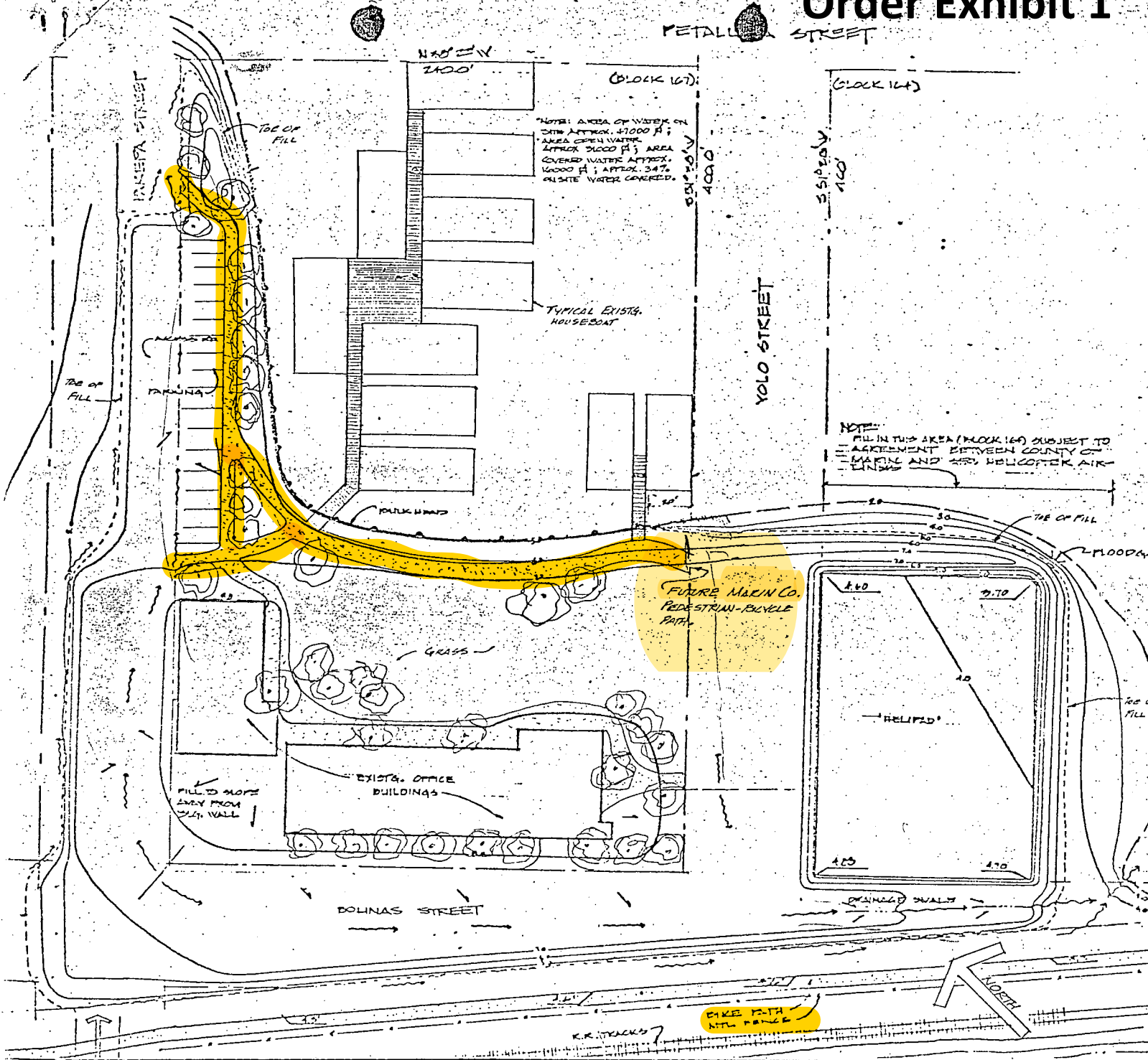
COMMODORE CENTER - Existing Conditions

With approval of application, the following improvements and upgrading will be performed.

1. Removal of abandoned hulks and debris
2. Removal of existing restaurant building
3. Demolition of concrete apron (To be used for cars vans and boat hulks)
4. Reconstruction of marina floats

EXHIBIT 2

Order Exhibit 1



COMMODORE CENTER

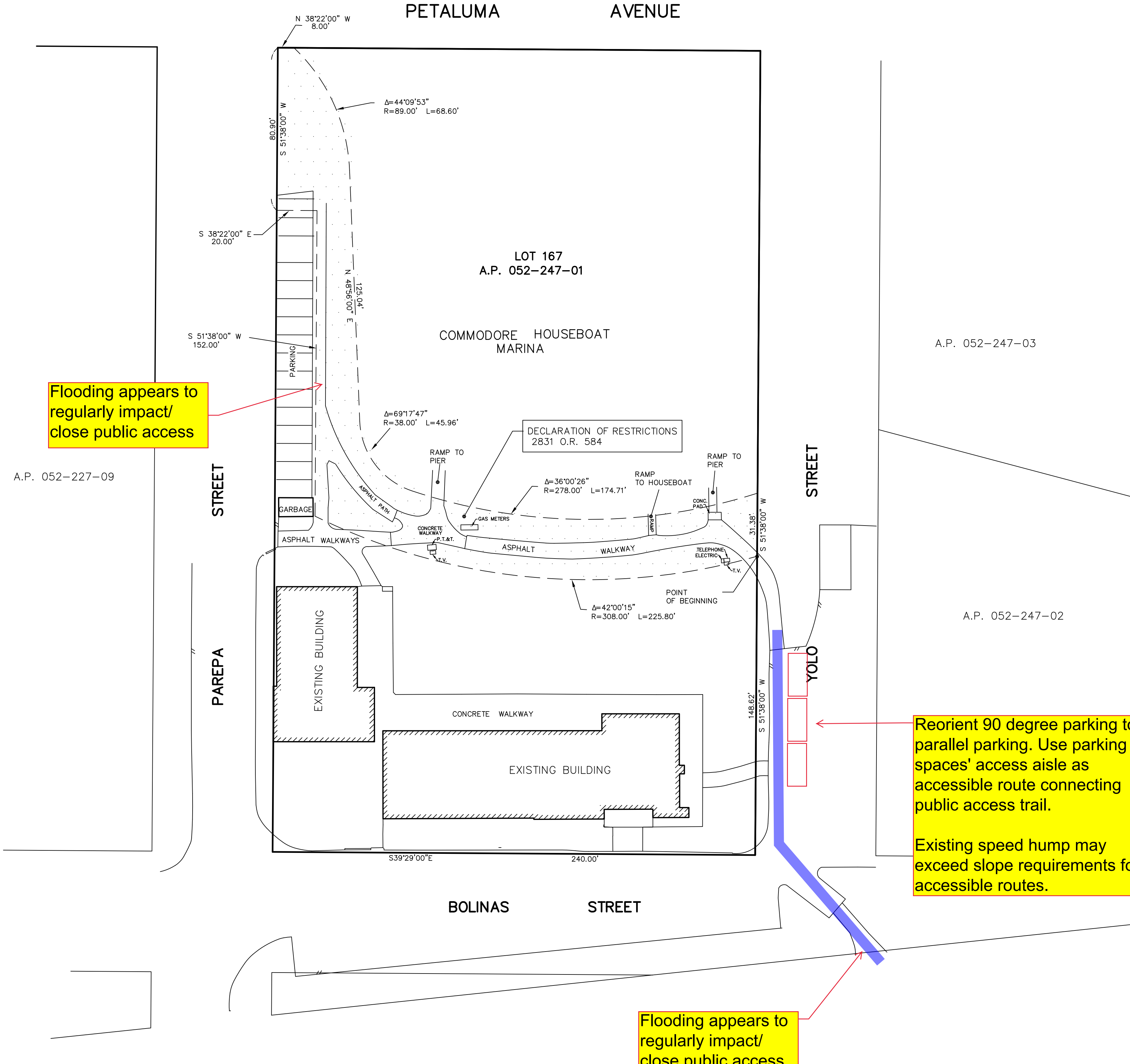
Plan after Renovation

(Cont'd)

- 5- Restoration of shoreline and original grade to eliminate flooding of land areas
6. Realignment of marina floats and improvement of utility systems (6 pilings to be eliminated).
- 7- Installation of sewerage system for houseboats
8. Renovation of office buildings
9. Installation of landscaping and pedestrian bicycle path

Order Exhibit 2

PETALUMA AVENUE



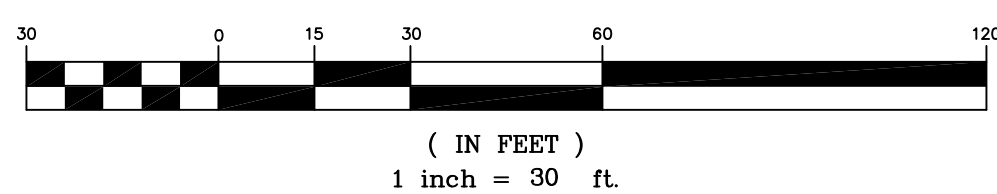
Flooding appears to regularly impact/ close public access

Reorient 90 degree parking to parallel parking. Use parking spaces' access aisle as accessible route connecting public access trail.

Existing speed hump may exceed slope requirements for accessible routes.

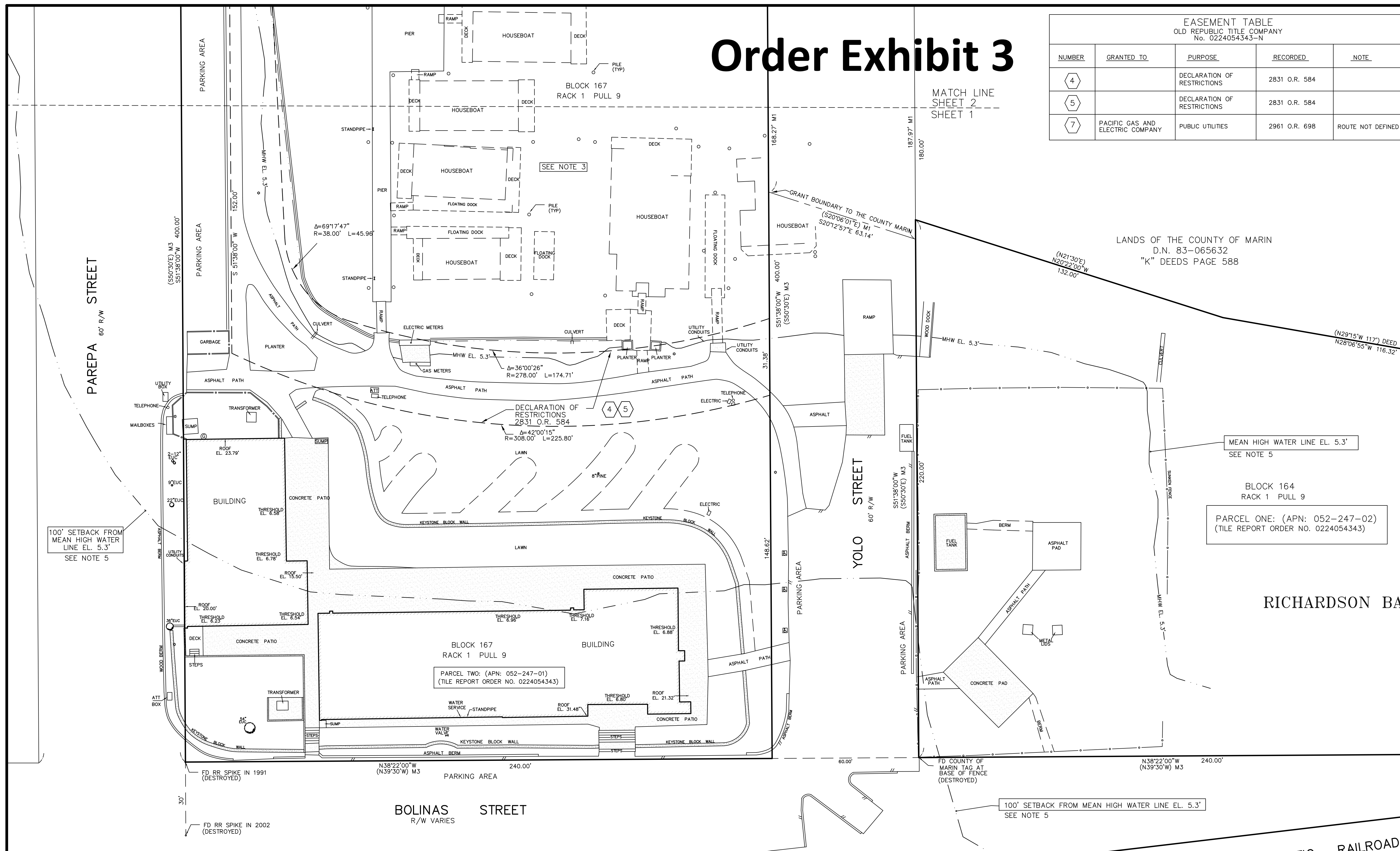
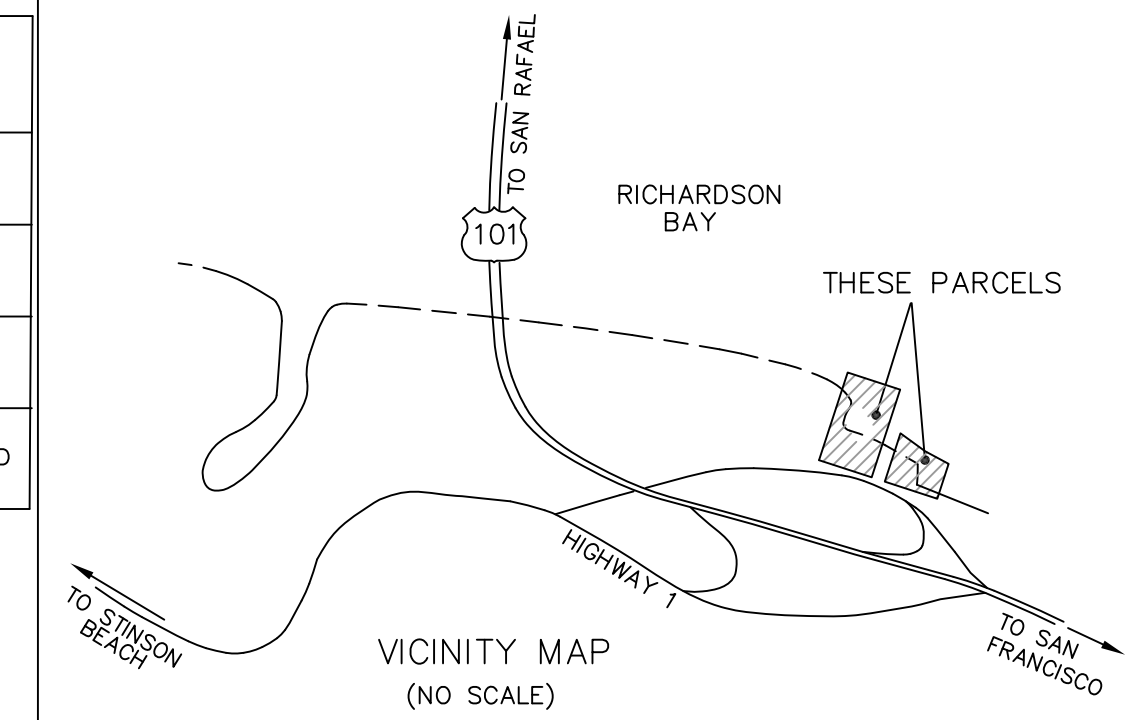
Flooding appears to regularly impact/ close public access

GRAPHIC SCALE



Order Exhibit 3

EASEMENT TABLE OLD REPUBLIC TITLE COMPANY No. 0224054343-N				
NUMBER	GRANTED TO	PURPOSE	RECORDED	NOTE
4		DECLARATION OF RESTRICTIONS	2831 O.R. 584	
5		DECLARATION OF RESTRICTIONS	2831 O.R. 584	
7	PACIFIC GAS AND ELECTRIC COMPANY	PUBLIC UTILITIES	2961 O.R. 698	ROUTE NOT DEFINED



- MAP LEGEND**
- M1 SUPPLEMENTARY PLAT OF THE GRANT TO THE COUNTY OF MARIN PARCEL "A", CHAPTER 497, STATUTES OF 1959 VICINITY OF COYOTE CANAL MARIN COUNTY, CALIFORNIA
 - M2 HOOL & LOCKETT JOB NO. 2532 1966 & REVISED 1971
 - M3 RACK 1 PULL 9

- LEGEND**
- TREE (AS INDICATED)
 - 104.8' TOP OF WALL ELEVATION
 - CONCRETE
 - GRADE BREAK
 - x WIRE FENCE
 - o WOOD FENCE
 - /// EDGE OF PAVEMENT
 - △ SURVEY CONTROL POINT
 - ⊕ JOINT POLE
 - CONCRETE WALL
 - ROCK WALL
 - ROCK BORDER
 - ⊗ ELECTRIC / GAS METER
 - OL OVERHEAD LINES
 - ☆ LIGHT
 - HANDICAP

- NOTES**
1. ONLY SIGNIFICANT TREES SHOWN
 2. DATUM IS NAVD 1988
 3. BENCH MARK E 1444 NGS ELEVATION 12.84 FEET
 4. HOUSEBOATS AND FLOATING DOCKS WERE SURVEYED TO ON 3/8/21
 5. ONLY VISIBLE UTILITIES WERE LOCATED
 6. THE MHW LINE WAS SURVEYED TO ON 3/8/21

DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF MARIN STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE: (APN: 052-247-02)

BLOCK 164, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "OFFICIAL MAP OF LANDS OF SAUSALITO LAND AND FERRY COMPANY", RECORDED APRIL 26, 1869 IN RACK 1 OF MAPS, AT PULL 9, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY BENJ. F. WASHINGTON, RODMOND GIBBONS AND L.L. BULLOCK, A BOARD OF TIDE LAND COMMISSIONERS, TO THOMAS RYAN, RECORDED MAY 26, 1871 IN BOOK "K" OF DEEDS AT PAGE 588.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF INCLUDED IN THE RIGHT OF WAY OF THE NORTHWESTERN PACIFIC RAILROAD.

PARCEL TWO: (APN: 052-247-01)

BLOCK 167, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "OFFICIAL MAP OF LANDS OF SAUSALITO LAND AND FERRY COMPANY", RECORDED APRIL 26, 1869 IN RACK 1 OF MAPS, AT PULL 9, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA.

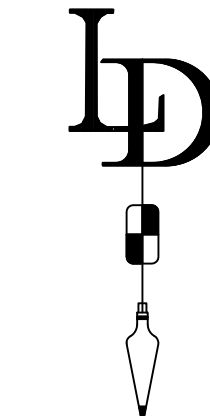
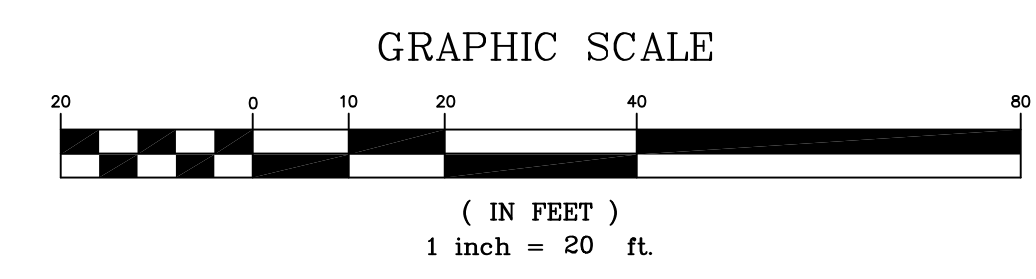
CERTIFICATION

TO: _____

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2 & 3 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON APRIL 3, 2021.

DATE OF PLAT OR MAP: MAY 3, 2021

LAWRENCE P. DOYLE, PLS 4694 DATED: _____



© 2021
THIS DRAWING IS THE PROPERTY OF LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER AND MAY NOT BE DUPLICATED OR USED WITHOUT PERMISSION

ALTA / ACSM
240-242 REDWOOD HWY / A.P. 052-247-01,02
SAUSALITO MARIN COUNTY CALIFORNIA

SCALE: 1" = 16'
DATE: 5/3/21

LAWRENCE P. DOYLE
LAND SURVEYOR/CIVIL ENGINEER
100 HELENS LANE MILL VALLEY, CA 94941 (415) 388-9585

DRAWN BY: SHEET 1 OF 2
DRAWING NO. 2916

REMOVE & RELOCATE EXISTING SIGNS & WHEEL STOPS

ASPHALT TRANSITION, 8' W X 16' L
2" EDGE GRIND, CONFORM TO EXISTING
5% MAX. SLOPE, 2% MAX CROSS SLOPE

148.62'

SHORELINE ACCESS PATH

2' WIDE ASPHALT FEATHERING STRIP, BOTH SIDES

EXISTING ELEVATED ASPHALT PATH APPX. 3" HIGH

YOLO STRE

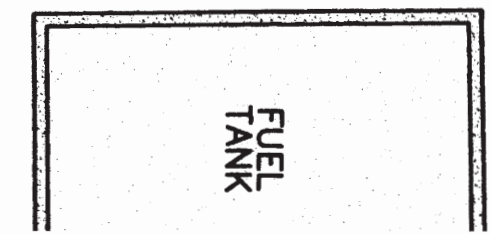
60' R/W

S51°38'00"V
(S50°30'E)

PARKING AREA

ASPHALT BERM

22



NEW PAVEMENT MARKING TO RECONFIGURE 3 PARKING SPACES TO 2 ACCESSIBLE PARKING SPACES

9' X 18'

8' X 18' ACCESS ISLE

9' X 18'

ASPHALT BERM

60.00'

BCDC SHORELINE ACCESS SIGN

ASPHALT CONFORM TO PATH

BOARDWALK

FREE FLOW UNDER BOARDWALK

ASPHALT CONFORM TO BIKE PATH

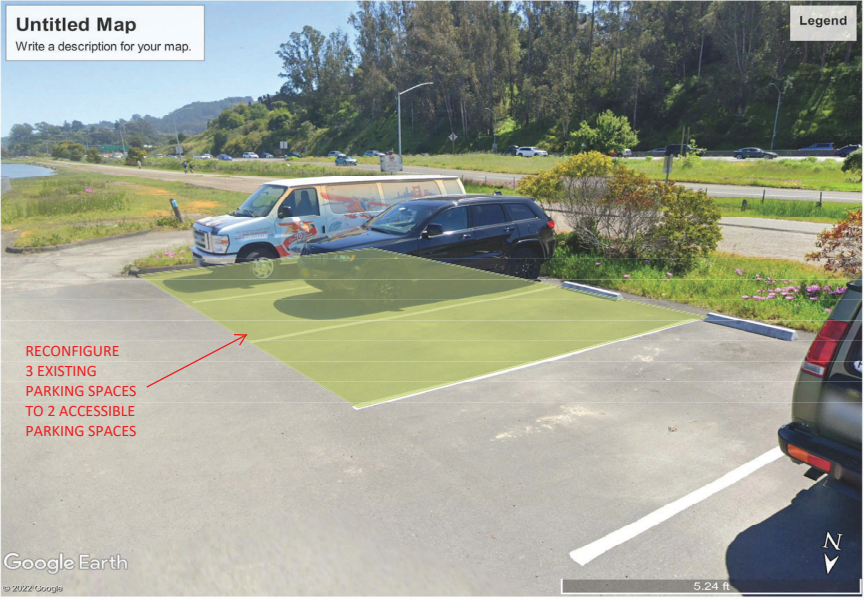
FD COUN MARIN 1 BASE OF (DESTRO

ASPHALT PATH

ASPHALT PATH

INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN

Order Exhibit 3



INTERIM BCDC ACCESS IMPROVEMENTS ANNOTATED PHOTOS



Order Exhibit 3



- ① EXISTING MULTI-USE ASPHALT PATH
- ② NEW ADA PARKING SPACES
- ③ SHORELINE ACCESS PATH
- ④ NEW BOARDWALK WITH ASPHALT TRANSITIONS TO EXISTING GRADES
- ⑤ NEW POLE-MOUNTED SHORELINE ACCESS SIGNAGE
- ⑥ NEW ASPHALT TRANSITION RAMP
- ⑦ SEE "INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN" FOR MORE DETAILS
- ⑧ REMOVE EXISTING PARKING SPACES
- ⑨ EXISTING PARKING SPACES TO REMAIN
- ⑩ EXISTING 10'-8" L x 5'-4" W x 4'-0" H ABOVE SURFACE CONCRETE FUEL TANK TO REMAIN
- ⑪ EXISTING FUEL TANK IN CONCRETE CONTAINMENT BDCD PERMIT M1985-030-01
- ⑫ THIS DOCK HAS BEEN REMOVED
- ⑬ 20' W x 35' L RAMP CONSISTING OF 2X6 "TREX" BOARDS ON GRADE
- ⑭ EXISTING BAOT DOCK ADDITIONS TO THE EXISITING SEAPLANE DOCK TO REMAIN
- ⑮ THIS HOUSEBOAT HAS BEEN MOVED TO THE POSITION INDICATED BY DOTTED LINE, 1973.014.03
- ⑯ EXISTING SEAPLANE DOCK TO REMAIN (REPAIRED)
- ⑰ SEAPLANE PARKING & REPAIR AREA

GRAPHIC SCALE 240 ft

PHOTO SITE PLAN OF 242 REDWOOD HIGHWAY, MILL VALELY, CA 94941

Google Earth

Imagery Date: 6/10/2019 37°52'47.95" N 122°30'52.60" W elev 0 ft eye alt 1038 ft

Order Exhibit 3



RED Exhibit B: Proposed
Stipulated Civil Penalty Order
CCD2023.003.00

San Francisco Bay Conservation and Development Commission

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

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

Commission

Stipulated Civil Penalty Order: CCD2023.003.00

Effective Date: [Upon Commission Approval]

Respondent: Seaplane Investment, LLC

To Seaplane Investment, LLC:

I. Stipulated Civil Penalty Order

Pursuant to Cal. Gov. Code § 66641.6, Respondent is hereby ordered to:

- A. Pay administrative civil liability of five thousand dollars (\$5,000) to BCDC by cashier's check made payable to the Bay Fill Clean-up and Abatement Fund within 30 days of issuance of this Order. The administrative civil liability consists of:
 1. Two thousand dollars (\$2,000) for the failure to provide the permit assignment form required by Standard Condition IV.C. of Permit 1973.014.04 between August 20, 2021, and January 3, 2022.
 2. Zero dollars (\$0) for the failure to provide the permit assignment form required by Standard Condition IV.E. of Permit M1985.030.01 between August 20, 2021, and January 3, 2022.
 3. Three thousand dollars (\$3,000) for the failure to complete a houseboat remodeling and relocation work prior to permit expiration and continuing to work with an expired permit between August 31, 2021, and January 25, 2022.
- B. The administrative civil liability will be paid over a twenty-four (24) month period with the first half, two thousand five hundred dollars (\$2,500) to be paid not later than twelve (12) months from the effective date of this Order and the second half, two thousand five hundred dollars (\$2,500) to be paid not later than twenty-four (24) months from the effective date of this order. If this amount is not paid in full by the deadlines above, the Executive Director is authorized to refer the matter to the Attorney General pursuant to Cal. Gov. Code § 66641.7(b), Cal. Gov. Code § 66641.5, and/or Cal. Gov. Code § 66641.



II. Findings

Factual Findings

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

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

- a. Violations 1 and 2. Two permit assignments necessary because of the title transfer; and
 - b. Violation 3. Failing to complete houseboat renovations and relocation by the August 31, 2021, deadline authorized by BCDC Permit 1973.014.03. RED Exhibit E.
- E. On October 28, 2021, John Sharp filed a Permit Assignment Request on behalf of Seaplane Investments, LLC, for both Permit 1973.014.04 and Permit M1985.030.01.
- F. Between October 28, 2021 and December 2021, BCDC requested additional information to support the Permit Assignment Request along with requests for pictures of the Houseboat relocation, all of which were provided by Respondent.
- G. On January 3, 2022, Lou Vasquez, Manager, Seaplane Investments LLC, submitted two, executed permit assignment forms for BCDC Permits 1793.014.01 and M1985.030.01, respectively, resolving Violations 1 and 2 as described in the letter dated October 8, 2021. RED Exhibit E.
- H. On December 17, 2021, Respondent submitted photographic evidence that the houseboat had been relocated to the authorized position and the two pilings and work platform had been removed from SF Bay and, on January 25, 2022, BCDC issued Permit 1973.014.04, the after-the-fact extension of completion time to complete the houseboat remodeling and relocation project, thereby resolving Violation 3 as described in the letter dated October 8, 2021. RED Exhibit E.
- I. On August 2, 2022, BCDC informed Respondent to pay \$12,300 in standardized fines for Violations 1 through 3. The letter stated that the duration of Violations 1 and 2 was from October 8, 2021, to January 3, 2022, resulting in a standardized fine of \$3,000 per assignment violation. The letter stated that the duration of Violation 3 was from October 8, 2021, to January 25, 2022, resulting in standardized fine of \$6,300 for the violation. The letter directed Respondent to submit a check for \$12,300 made payable to the SF Bay Fill Clean-up and Abatement Fund within days or by September 2, 2022. RED Exhibit E.
- J. Between August 2, 2022, and September 21, 2022, Respondent did not submit the \$12,300 dollar standardized fine.
- K. On September 6, 2022, BCDC asked Respondent's attorney at the time, Mr. John Sharp, to postpone the hearings to discuss potential resolution of violations.
- L. On September 21, 2022, staff issued a Final Notice Letter to Respondent stating that Respondent had 35 days, or until October 26, 2022, to resolve the penalty portion of the violations using standardized fines. RED Exhibit E.

- M. Between September 21, 2022, and October 26, 2022, Respondent did not submit the \$12,300 dollar standardized fine.
- N. As of the date of mailing of this Complaint, Respondent has not submitted the standardized fines accrued for two permit assignment violations that persisted between August 20, 2021 (30 days following July 21, 2021, the property purchase date), and January 3, 2022, and for working on a houseboat remodeling and relocation project with an expired permit between August 31, 2021, and January 25, 2022.
- O. On December 1, 2022, Respondent submitted a Statement of Defense.

Legal Findings

- A. The Commission finds that Respondent has violated and is violating:
 - 1. Between August 20, 2021, 30 days following the July 21, 2021, property purchase date, and January 6, 2022, Respondent violated Permit 1973.014.03, Standard Condition IV.C, Permit Assignment, by failing to submit a fully executed permit assignment form and supporting legal documentation (Violation 1);
 - 2. Between August 20, 2021, 30 days following the July 21, 2021, property purchase date, and January 6, 2022, Respondent violated Permit M1985.030.00, Standard Condition IV.E, Permit Assignment, by failing to submit a fully executed permit assignment form and supporting legal documentation (Violation 2);
 - 3. Between August 31, 2021, to January 25, 2022, Respondent violated Authorization Section I.C, Deadlines for Commencing and Completing Authorized Work, of Permit 1973.014.03 and Section 66632(a) of the McAteer-Petris Act by failing to complete houseboat remodeling and relocation work in SF Bay by August 31, 2021, the date of expiration, and continuing the work with an expired permit (Violation 3); and
 - 4. Permit M1985.030.01 Condition Section IV. creates an affirmative requirement to assign or create a timeline within which assignment is required. The Permit was assigned on January 25, 2023.
- B. The Commission also finds that based on the factors provided by MPA Section 66641.9, a five thousand dollar (\$5,000) penalty for the violations is appropriate.
- C. Since assuming ownership of the property on July 21, 2021, Respondent became responsible for the three violations, which have existed for 137 days (two permit assignments) and 146 days (failing to complete work prior to permit expiration and continuing to work with an expired permit). After considering the factors required by

McAteer-Petris Act § 66641.9, BCDC staff recommends a two thousand dollar (\$2,000) penalty for the first assignment violation and a three thousand dollar (\$3,000) penalty for working with an expired permit, totaling five thousand dollar (\$5,000) in administrative liability.

- D. The Commission finds that the nature and extent of harm caused by these violations is minor.
- E. The Commission finds that while the violations are susceptible to resolution and, in fact, physically resolved, the violations were not resolved swiftly enough to avoid the issuance of the letter, dated October 8, 2021, that commenced the standardized fines penalty clock nor, following issuance of that letter, resolved swiftly enough to avoid the accrual of standardized fines. Since Respondent failed to resolve the penalty portion of the three violations with the accrued standardized fines (or with the procedures provided pursuant to Chapter 13, Enforcement Procedures, of the Commission's Regulations), staff commenced this formal enforcement proceeding against Respondent to resolve the penalty portion of three resolved 'paper' violations. Since Respondent failed to resolve the penalty portion of the three violations with the accrued standardized fines (or with the procedures provided pursuant to Chapter 13, Enforcement Procedures, of the Commission's Regulations), staff commenced this formal enforcement proceeding against Respondent to resolve the penalty portion of three resolved 'paper' violations.
- F. The Commission finds the cost to the state in pursuing this case since 2019 was high. Staff invested time identifying the two permit assignment violations and the expired permit/unfinished project violation, advising Respondent how to resolve each of the three violations and reviewing Respondent's submittals for completeness. Because the violations were not resolved by October 8, 2021, staff drafted and issued a 35-day enforcement letter to commence a standardized fine penalty clock to incentivize speedy resolution of the violations. While the 35-day letter achieved its intended outcome and caused resolution of the violations, between August 2, 2022, and October 26, 2022, Respondent failed to pay the associated standardized fines that had accrued between October 8, 2021, and January 3, and January 25, 2022, respectively, requiring staff to draft and issue a Complaint to resolve the penalty portion of these three violations using a formal enforcement proceeding and administrative penalties pursuant to Section 66641.5(e) of the McAteer-Petris Act.
- G. The Commission finds that Respondent is culpable for the violations as it did not submit two approvable permit assignments until January 3, 2022, 166 days after it took ownership of the property on July 21, 2021, and it did not obtain after-the-fact authorization for the unauthorized completion of the houseboat remodeling and

relocation project until January 25, 2022, 147 days after the August 31, 2022, permit expiration date.

- H. The Commission finds that Respondents have been responsible for: Violations 1 for 136 days from August 20, 2021 (which is 30 days following July 21, 2021, the property purchase date), to January 3, 2022; and Violation 3 for 147 days from August 31, 2021, the date of expiration of Permit 1973.014.03, to January 25, 2022, to date of issuance of Permit 1973.014.04. These time periods were calculated for the Violation Report and Complaint for Administrative Civil Liability, which was mailed to Respondent on October 27, 2022.
- I. The Commission thus finds that it is appropriate that each of the three violations are subject to less the maximum penalty allowed by the MPA: \$2,000 for the permit assignment violation, and \$3,000 for working with an expired permit, for a total administrative civil liability of \$5,000.
- J. The Commission finds that in order to help facilitate Respondent's efforts to complete a permitting process in connection with CCD2023.002.00, that Respondent may choose to pay the total of the fines over time in two, lump-sum payments: one twelve (12) months from the date of this order of \$2,500 and the remaining \$2,500 within twenty-four (24) months of the date of this order.

III. Terms

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

IV. Judicial Review

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

As this is a stipulated order between the parties, Respondent hereby waives any rights it may have to file a writ of mandate for review of this order.

RED Exhibit B

Seaplane investment, LLC
CCD2023.003.00

Page 7

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

LAWRENCE J. GOLDZBAND, BCDC Executive Director

Date

Executed at _____, California, on behalf of Seaplane Investments LLC on the date written.

Signature

Date

Print Name and Title

LJG/gs/mm

Full Commission Motion and Action:

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

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

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

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

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

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

Date:

RED Exhibit C: Violation Report and Complaint, ER2019.063.00
with exhibits including corrected Exhibit 2 and Corrected
Exhibit 21, i.e. w/o Attachments 1 and 4 and with Attachments
2 and 3

San Francisco Bay Conservation and Development Commission

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

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

RED Exhibit C

Via Certified Mail and Email

July 29, 2022

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

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

Email: Lou Vasquez, lou@bldsf.com

SUBJECT: San Francisco Bay Conservation and Development Commission (BCDC) Enforcement Case ER2019.063.00

Dear Lou Vasquez:

This letter commences a formal enforcement proceeding for the two unresolved violations (and others) outlined in the letter issued on October 8, 2021. Your opportunity to resolve those two violations using standardized fines will terminate within 35 days of issuance of this letter.

Enclosed you will find a Violation Report/Complaint for Administrative Imposition of Civil Penalties in BCDC Enforcement Case ER2019.063.00, which alleges that you have violated and continue to violate the McAteer-Petris Act and BCDC Permits 1973.014.01 and M1985.030.01 at APN 052-247-01 and APN 052-247-02, and on the Yolo Street right-of-way. This site is also known by its address, 242 Redwood Highway, Mill Valley, Ca.

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

A hearing to address these allegations has been scheduled before BCDC's Enforcement Committee on September 21, 2022, at 9:30 am. You must submit a Statement of Defense to BCDC on or before September 2, 2022, pursuant to BCDC Regulation Section 11322(a). Please note BCDC's current office address: 375 Beale St., Suite 510, San Francisco, CA 94105.



Seaplane Adventures LLC
Enforcement Case ER2019.063.00

RED Exhibit C
July 29, 2022
Page 2

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

Sincerely,

Adrienne Klein

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

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

Enclosures: Violation Report/Complaint with Exhibits, ER2019.063.00
BCDC Enforcement Regulations with Appendix I
Statement of Defense Form

AK/mm

San Francisco Bay Conservation and Development Commission **RED Exhibit C**

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

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

Sent Via Certified and Electronic Mail

July 29, 2022

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

AND

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

Email: Lou Vasquez, Manager
<lou@bldsf.com>

SUBJECT: Notice of Violation of the McAteer-Petris Act: Unauthorized Activity in BCDC's San Francisco Bay & Shoreline Band Jurisdiction

BCDC Case Number: ER2019.063.00

Permit Numbers: 1973.014.01 and M1985.030.01

Date Mailed: July 29, 2022

35th Day after Mailing: September 2, 2022

60th Day after Mailing: September 27, 2022

Enforcement Committee Hearing Date: September 21, 2022

**VIOLATION REPORT/COMPLAINT FOR ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES
ENFORCEMENT CASE ER2019.063.00**

**Seaplane Investment, LLC
(Respondent)**

**Guidance to
Respondent**

FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND



DESIST ORDER, A PERMIT REVOCATION ORDER, AND/OR A CIVIL PENALTY ORDER WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.

The San Francisco Bay Conservation and Development Commission is issuing this Violation Report/Complaint for the administrative imposition of civil penalties and the enclosed statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of either the Commission's laws or a Commission permit. The Violation Report/Complaint contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and refers to all pertinent evidence that the staff currently relies on. All the evidence that this report refers to is available in the enforcement file for this matter located at the Commission's office. To view the enforcement file and/or to have copies made at your expense, contact Adrienne Klein of the Commission's staff at 415-352-3609 or adrienne.klein@bcdc.ca.gov or Brent Plater of the Commission's staff at 415-352-3628 or brent.plater@bcdc.ca.gov.

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

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

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

**Violation Report and
Complaint for Administrative
Imposition of Civil Penalties**

I. Person or persons believed responsible for illegal activity:

Seaplane Investment, LLC

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

- A. Violation 1. Respondent is violating Permit 1973.014.01, Special Condition II.C.1.a. and II.C.1.b. and II.C.4.b. and II.C.4.c., Public Access, by failing 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.

- B. Violation 2. Respondent is violating Permit 1973.014.01, Special Condition II.C.2, Maintenance, by failing to maintain some of the provided public access improvements including the existing public shore pathways and landscaping.
- C. Violation 3. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or its shoreline band in the Yolo Street right of way. Some of this unauthorized fill also violates Permit 1973.014.01, Special Condition II.D, Use of Solid Fill, by using areas designated to be used only for landscaping, landscaped public access, and pedestrian and bicycle pathways for private use. The unauthorized fill includes:
 - 1. Vehicle parking and/or equipment storage;
 - 2. Seaplane storage, repair and maintenance;
 - 3. Seaplane fueling tank (in place as of at least 2003); and
 - 4. 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).
- D. Violation 4. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of an unauthorized helicopter landing pad and four paved walkways on Block 164 (in place as of 2008).
- E. Violation 5. Respondent is violating McAteer-Petris Act Section 66632(a) by placing unauthorized fill in San Francisco Bay consisting of 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).
- F. Violation 6. Respondent is violating McAteer-Petris Act 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).

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

The violations are occurring at APN 052-247-01 (Block 164) and APN 052-247-02 (Block 167), which are located on either side of Yolo Street, a Marin County public right-of-way. The violations are also occurring on property owned by Marin County. Exhibits 1 and 2.

The property is at low elevation with much of it located in the Commission’s San Francisco Bay jurisdiction as defined by Section 66610(a) of the McAteer-Petris Act, including the helicopter port and much of the Yolo Street right-of-way. As a result of its low elevation, the property regularly floods. Exhibits 3, 4 and 5.



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

Seaplane Investment, LLC .

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

The violations summarized in Section II and described in further detail in Section VI have been ongoing for many years except for the water access ramp construction project that occurred in March 2022.

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

- A. Permit 1973.014.01, which applies to APN 052-247-01 (Block 164), was originally issued to Commodore Marina, LLC, on August 24, 1973. The originally authorized work was to have been completed by March 1, 1975. In the Bay, the amended permit authorizes fill placement for landscaped public access and landscaping to improve shoreline appearance, berm construction around the heliport landing pad, and for an existing 11 houseboat marina. In the shoreline band, the permit authorizes placement of fill to raise the grade over 0.66 acres of the site, office building renovation, and 17 parking spaces. The permit has been amended three more times to allow completion of a single houseboat reconstruction project and relocation of two houseboats, on November 21, 2017 (Amendment Two), September 2, 2020 (Corrected Amendment Two), April 16, 2021 (Amendment Three) and January 25, 2022 (Amendment Four). Exhibit 6A.
- B. 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. Exhibit 6B
- C. Permit M1985.030.01, which applies to APN 052-247-02 (Block 167), was originally issued to Commodore Helicopters, Inc., and Walter Landor on August 25, 1988, and amended once on December 28, 1989. In the Bay the permit authorizes repair of a tidal flap gate, and in the shoreline band it authorizes placement of 23 cubic yards of aggregate over a 640 square foot area to protect a helicopter landing pad from flooding, installation of a fuel storage tank and fuel containment area to meet safety standards, paving of a 1,400 square foot area and fill of a 2,370 square foot area with 88 cubic yards of fill. The authorization is entirely after-the-fact. Exhibit 7.
- D. On or before December 2003, Respondent or a predecessor placed an unauthorized fuel tank in the Yolo Street right-of-way. Exhibits 8 and 9.

- E. On or before September 2008, Respondent or a predecessor installed a second, unauthorized helicopter landing pad and four unauthorized walkways. Exhibits 10 and 11.
- F. In 2011, 2017, and 2109 Respondent conducted three distinct, unauthorized dock expansion and/or repair activities.¹ Exhibits 12, 13, 14, 15, and 16.
- G. On December 12, 2019, BCDC received a report of possible violations at the site consisting of failure to provide the required public access and installation and use of unauthorized fill consisting of multiple dock expansions, a fuel tank and fueling lines seaplane repair and maintenance with no containment of possible contaminants Exhibit 17.
- H. On January 31, 2020, BCDC staff conducted an unscheduled site visit to Commodore Marina and Seaplane Adventures. During this site visit, staff observed that the boat docks did not comply with site plan located in the permit file. Staff learned that two pilings had been replaced and that the fueling station on the dock had been relocated from a pre-existing dock section to a location on the illegally expanded dock. Staff observed the absence of required public shore signs; a dumpster located in a required public access area; and severe shoreline erosion adjacent to the required public shoreline. Staff took site visit notes and photographs. Exhibit 18A and 18B.
- I. On February 18, 2020, BCDC issued an initial contact notice to Respondent's predecessors in interest citing violations of Permits 1973.014.01 and M1985.030.01 and the McAteer-Petris Act. The letter requests the permittees to contact BCDC staff within 15 days. Exhibit 19.
- J. On March 2, 2020, John Sharp, Law Offices of John Sharp, contacted BCDC to state that he represents a predecessor in interest, and that they had only recently seen BCDC's letter. He requested that BCDC contact him to discuss a reasonable time for his clients to respond.
- K. Between March 2 and September 15, 2020, progress was delayed due to the onset of the COVID-19 pandemic. BCDC responded to Mr. Sharp, parties engaged in a telephone call and both entities agreed to conduct research.
- L. On September 15, 2020, BCDC issued another letter to Respondent's predecessor in interest. The letter summarized the two permits' requirements, the violations of the permits and the McAteer-Petris Act identified at that time, and provided direction to correct the violations. The letter identified two violations at the site consisting of:
 - a. Multiple violations of Permit 1973.014.01, Special Condition II.C., Public Access, consisting of landscaping, pathway, and signage deficiencies; and

¹ Respondent states that the work that occurred in 2017 was an emergency. A BCDC permit is required for emergency work. Respondent did not contact BCDC to provide pre-notification of this storm damage and their intent to conduct work in SF Bay.



- b. Multiple violations of Permit 1973.014.01, Special Condition II.D., Solid Fill, consisting of floating fill for Seaplane access docks, a fuel tank, seaplane storage, derelict fencing and docks and a water access ramp overlay made of Trex boards².

The letter requested the following additional information: A summary of other site development that may have occurred between permit issuances and the date of the letter; clarification of ownership of the Yolo Street right-of-way; Preparation and submittal of a site survey to identify the location of the Bay (located at MHW 5.47 feet NAVD88) and the shoreline band; whether the flap gate was functional; and whether there were plans to pursue any fill or shoreline protection in light of the extensive erosion of the existing protective structures. The letter asked for a response within 60 days. Staff attached a copy of each amended permit to the letter. Exhibit 20.

- M. On November 13, 2020, January 15, 2021, and June 15, 2021, Respondent's counsel submitted three letters with information regarding the site history, current site uses, an airport master record, and general responses to BCDC allegations but did not resolve any of the violations. On January 19, 2021, Respondent also submitted a surveyed metes and bounds map of the permit required public access area (stippled) described in the recorded legal instrument, responsive to one of staff's requests. Exhibit 21, Attachment 3.
- N. On July 14, 2021, the parties conducted a virtual meeting. During the meeting, BCDC staff directed Respondent to submit a permit amendment application by August 30, 2021, so that BCDC could assess and potentially resolve the violations with an after-the-fact authorization of the unauthorized fill and uses that had occurred at the site. Staff also directed Respondent to provide a public access plan for staff review and approval and subsequent implementation by Respondent. Because BCDC cannot authorize fill on a third party's property without their consent, staff also directed Respondent to file a quiet title action for the Yolo Street right-of-way if it claimed title to it. Exhibit 21, Attachment 2.
- O. On July 21, 2021, title for both parcels transferred from Commodore Marina LLC to Seaplane Investment LLC. Exhibits 1 and 2.
- P. On August 25, 2021, Mr. Sharp informed staff that Respondent could not meet the August 30, 2021, deadline to submit a permit amendment application.
- Q. On September 3, 2021, to facilitate Respondent's compliance with the public access provisions of the permit, BCDC staff provided with them with a proposed public access plan created using a metes and bounds map of the dedicated public access area. Exhibit 21, Attachment 3 (see blue line and notes in yellow).

² This structure was entirely removed and reconstructed by Respondents on March 14, 2022, without BCDC authorization, and is the subject of ECD2022.01.



- R. Between July 14 and October 8, 2021, Respondent did not resolve any of the violations nor did they submit a permit amendment application. On October 8, 2021, BCDC issued a letter to Shannon Sullivan, Authorized Representative, Seaplane Investment LLC, and Mr. Sharp, Counsel to Seaplane Adventures, LLC, commencing standardized fines pursuant to Regulation 11386 for five violations:
- a. Violations 1 and 2. Two permit assignments necessary because of the title transfer;
 - b. Violation 3. Failing to complete houseboat renovations and relocation by the August 31, 2021, deadline authorized by BCDC Permit 1973.014.03;
 - c. Violation 4. The unauthorized placement of fill and uses consisting of installation of extensions to the Seaplane access docks, a Seaplane fueling tank, parking vehicles, and storing planes and a ramp overlay made of Trex boards in the Yolo Street right-of-way; and
 - d. Violation 5. The failure to comply with the public access requirements of the permit consisting of the failure to install and/or maintain landscaping, pathways, signage, and a connector pathway and to allow parking in a portion of the public access area. Exhibit 21.
- S. On January 3, 2022, Lou Vasquez, Manager, Seaplane Investments LLC, executed two permit assignment forms for BCDC Permits 1793.014.01 and M1985.030.01, respectively, resolving Violations 1 and 2 as described on October 8, 2021. Exhibit 22.
- T. On January 12, 2022, Mr. Sharp submitted a brief letter summarizing the site history and describing future use of the property.
- U. On January 25, 2022, Violation 3, the houseboat project, was resolved by the issuance of an after-the-fact and third extension of completion time through October 31, 2021. Exhibit 6A.
- V. On February 28, 2022, Mr. Sharp submitted a letter to BCDC to which was attached an Abbreviated Regionwide Permit Application requesting permission to install and use existing boat docks, an existing seaplane launch ramp (composite lumber placed on grade) and an existing fuel tank, public access improvements, ADA parking and asphalt transitions along shoreline access path. The application included site plans and photographs. Exhibit 23.
- W. On March 14, 2022, a member of the public notified BCDC that Seaplane Adventures was constructing new structures in the Bay. The report included clear, low tide images of the unauthorized excavation and fill placement work taking place in BCDC's Bay and/or shoreline band jurisdictions. A staff photograph of the completed project, dated April 22, 2022, is also included. Exhibits 24A-E.
- X. On March 15, 2022, the Executive Director issued ECD2022.002.00 to Respondent to halt unauthorized work in BCDC's San Francisco Bay and shoreline band jurisdictions and require its removal and restoration of the site to its prior condition. Respondent



undertook this unauthorized work less than one month after applying to BCDC for related work. Exhibit 25.

- Y. On March 30, BCDC staff responded to the application requesting the following information to enable it to be filed as complete: Confirmation of staff's summary of the project description and provision of the missing information; a survey of the BCDC jurisdiction and quantification of the fill to be placed therein; a set of project plans with details about what they should portray; an application processing fee; proof of legal interest for the private and public property, local approval from Marin County for the project including for the work in the Yolo Street ROW, other agency approvals such as from the RWQCB, a CEQA determination, a list of interested parties, a public access proposal, a flooding assessment, and information about whether and how fueling of Seaplanes is conducted to preclude adverse impacts to water quality. The letter also directed Seaplane Investment, LLC to post a public notice; that staff would not consider the recent unauthorized ramp construction project as part of this application; and that Seaplane Adventures must remove the unauthorized ramp work as required by ECD2022.011.00. Exhibit 26.
- Z. On June 14, 2022, the Executive Director re-issued ECD2022.002.01 to Respondent. Exhibit 27.
- AA. On July 14, 2022, Mr. Sharp submitted a letter that claims the property and operation is exempt from BCDC jurisdictions because it is regulated by the Federal Aviation Administration (FAA). Exhibit 28.
- BB. Respondent has applied for and obtained two BCDC permits for the fill and uses at the property and taken assignment of these rights and obligations. Respondent has two valid BCDC Permits that have governed its activities for decades. Neither permit has ever been challenged or held to be preempted by federal law. None of the violations alleged here address the FAA's field of regulation.
- CC. As of the date of mailing of this Violation Report, Respondent has retained the unauthorized concrete ramp it has been twice ordered to remove by BCDC's Executive Director; has not installed the missing public access improvements and maintenance, nor even provided staff with a plan to do so; and has not responded to staff's application filing letter dated March 30, 2022.

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

McAteer-Petris Act Section 66632(a)

Permit 1973.014.01, Special Condition II.C.1.a. and II.C.1.b. and II.C.4.b. and II.C.4.c.,
Public Access

Permit 1973.014.01, Special Condition II.C.2, Maintenance

Permit 1973.014.01, Special Condition II.D, Use of Solid Fill

Permit M1985.030.01



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

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

Commission staff proposes a penalty of \$180,000 for the following two violations of the MPA. In determining the amount of administrative civil liability (penalty), staff has considered: (1) with respect to each violation, (A) the nature, circumstance, extent, and gravity of the violation, (B) whether the violation is susceptible to removal or resolution, and (C) the cost to the State of California in pursuing enforcement action; and (2) with respect to the violators, (A) the ability to pay, (B) the effect on their ability to continue in business, (C) any voluntary removal or resolution efforts and any prior history of violations, (D) the degree of culpability, (E) the economic savings, if any, resulting from the violation, and (F) such matters as justice may require.

Prohibited Activity	Permit Provision Violated	Total Days	Proposed Daily Penalty Amount	Proposed Total Penalty
Violation 1. Failing to provide all the required public access improvements consisting of public shore pathways, landscaping, signage, and a public access connection from the site to the County public access west of the site.	Permit 1973.014.01, Special Condition II.C.1.a. and II.C.1.b. and II.C.4.b. and II.C.4.c., Public Access	47 years since original permit expiration on March 1, 1975 909 days since January 31, 2020 staff site visit	\$1,500	\$30,000
Violation 2. Failing to maintain some of the required public access improvements.	Permit 1973.014.01, Special Condition II.C.2, Maintenance	909 days since January 31, 2020 staff site visit	\$1,000	\$30,000
Violation 3. Using legally filled portions of Block 167 and Yolo Street,	McAteer-Petris Act Section 66632(a)	19 years since 2003	\$2,000	\$30,000



Prohibited Activity	Permit Provision Violated	Total Days	Proposed Daily Penalty Amount	Proposed Total Penalty
designated to be used only for public access, for private uses such as parking, equipment storage, Seaplane storage, repair and maintenance, fuel tank, and asphalt path across Yolo Street.	Permit 1973.014.01, Special Condition II.D, Use of Solid Fill,			
Violations 4. Placing unauthorized fill in San Francisco Bay and/or shoreline band consisting of a second helicopter landing pad (asphalt) and four walkways (also asphalt) on Block 164.	McAteer-Petris Act Section 66632(a)	14 years since 2008	\$1,000	\$30,000
Violations 5. Placing unauthorized fill in San Francisco Bay on at least three separate episodes consisting of expansion of an existing u-shaped floating dock, pilings, and relocating a fuel station.	McAteer-Petris Act Section 66632(a)	11 years since 2011	\$1,000	\$30,000
Violations 6. Placing unauthorized fill in San Francisco Bay 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.	McAteer-Petris Act Section 66632(a)	137 days since March 14, 2022	\$2,000	\$30,000
			Total Penalty	\$180,000



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

In addition to the civil penalty order mentioned in Section VIII, above, the Commission's staff will also recommend a cease and desist order that will require Respondent to:

1. Remove all unauthorized structures and fill placed in BCDC's jurisdiction unless after-the-fact BCDC authorization is obtained by a date certain.

X. List of staff exhibits:

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

Exhibit 02: Real Quest depiction of Blocks 164, 167 and Marin County property

Exhibit 03: Undated aerial Image of property location within Marin County

Exhibit 04: Undated aerial overview of property at closer range

Exhibit 05: Undated but most recent available Google Earth aerial image of property with street labels, zoomed in close enough to identify the unauthorized fill and uses

Exhibit 06A: Permit 1973.014.01, and three time extensions (Amendment Two, Corrected Amendment Two, Amendment Three and Amendment Four)

Exhibit 06B: Recorded Legal Instrument dedicating public access area

Exhibit 07: Permit M1985.030.01

Exhibit 08: December 2003, aerial image depicting second fuel tank and single helicopter landing pad

Exhibit 09: January 31, 2020, photographs showing aircraft fueling tanks

Exhibit 10: September 2008, aerial image depicting second helicopter landing pad and four elevated asphalt walkways

Exhibit 11: January 31, 2020, photographs showing second helicopter landing pad

Exhibit 12: November 2011 aerial image of first of three episodes of fill for docks

Exhibit 13: February 2018 aerial image of second of three episodes of fill for docks

Exhibit 14: June 2019 aerial image of third of three episodes of fill for docks

Exhibit 15: January 31, 2020 staff photographs showing current fill for docks

There is no exhibit 16.

Exhibit 17: December 12, 2019 Online Enforcement Report Form.

Exhibit 18A: January 31, 2020 Staff site visit notes

Exhibit 18B: January 31, 2020 Selection of relevant staff site visit photographs

Exhibit 19: February 18, 2020 Initial Contact Notice from BCDC to Owners

Exhibit 20: September 15, 2020 Violation Notice from BCDC to Owners

Exhibit 21: October 8, 2021, 35-day standardized fines letter and Attachments 1, 2, 3

Exhibit 22: January 3, 2022 Two Assignment Forms for Permits 1973.014.01 and M1985.030.01, and Operating Agreement

Exhibit 23: February 28, 2022 Application Submittal from John Sharp



Exhibit 24A: January 31, 2020, staff photograph depicting ramp before unauthorized reconstruction

Exhibit 24B, C, E: March 14, 2022 photographs of unauthorized ramp construction project and two emails notifying staff of the violation

Exhibit 24D: April 22, 2022 staff photograph of completed concrete ramp

Exhibit 25: Executive Director Cease and Desist Order ECD2022.001.00 w/o exhibits

Exhibit 26: March 30, 2022 BCDC '30-day' application response letter

Exhibit 27: Re-issued Executive Director Cease and Desist Order ECD2022.001.01 w/o exhibits

Exhibit 28: July 14, 2022, letter from John Sharp to Brent Plater

XI. Additional Administrative Record Documents

Description
Enforcement File ER2019.063.00
Permit File 1973.014.03
Permit File M1985.030.01
Executive Director Cease & Desist Order File ECD2022.002.00 & .01
Enforcement File ER2021.021
San Francisco Bay Plan
Richardson Bay Special Area Plan

Property Detail Report

For Property Located At :

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

RealQuest

Owner Information

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

Location Information

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

Owner Transfer Information

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

Last Market Sale Information

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

Prior Sale Information

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

Property Characteristics

Year Built / Eff: 1954 / Total Rooms/Offices
 Gross Area: 14,562 Total Restrooms:
 Building Area: 14,562 Roof Type:
 Tot Adj Area: Roof Material:
 Above Grade: Construction:
 # of Stories: Foundation:
 Other Improvements: Building Permit Exterior wall:
 Basement Area:

Garage Area:
 Garage Capacity:
 Parking Spaces:
 Heat Type:
 Air Cond:
 Pool:
 Quality:
 Condition:

Site Information

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

RED Exhibit C

Tax Information

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

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

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



2021-07-26 12:16 PM
RED EXHIBIT C

RECORDING REQUESTED BY:

Old Republic Title Company

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

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

When Recorded Mail Document and Tax Statements to:

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

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

Grant Deed

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

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

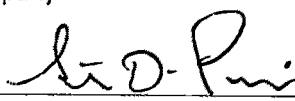
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Commodore Marina, LLC

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

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

Date: July 21, 2021

Commodore Marina, LLC, a California limited liability company

By: 
Steven D. Price, its sole member

RED Exhibit C

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

State of California
County of Sonoma

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

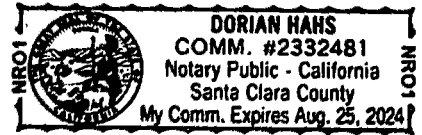
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Dorian Hahs

Name: Dorian Hahs
(Typed or Printed)

(Seal)



RED Exhibit C

ORDER NO. : 0224054343

EX. A REF. PG. 1

EXHIBIT A

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

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

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

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

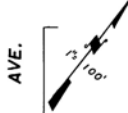
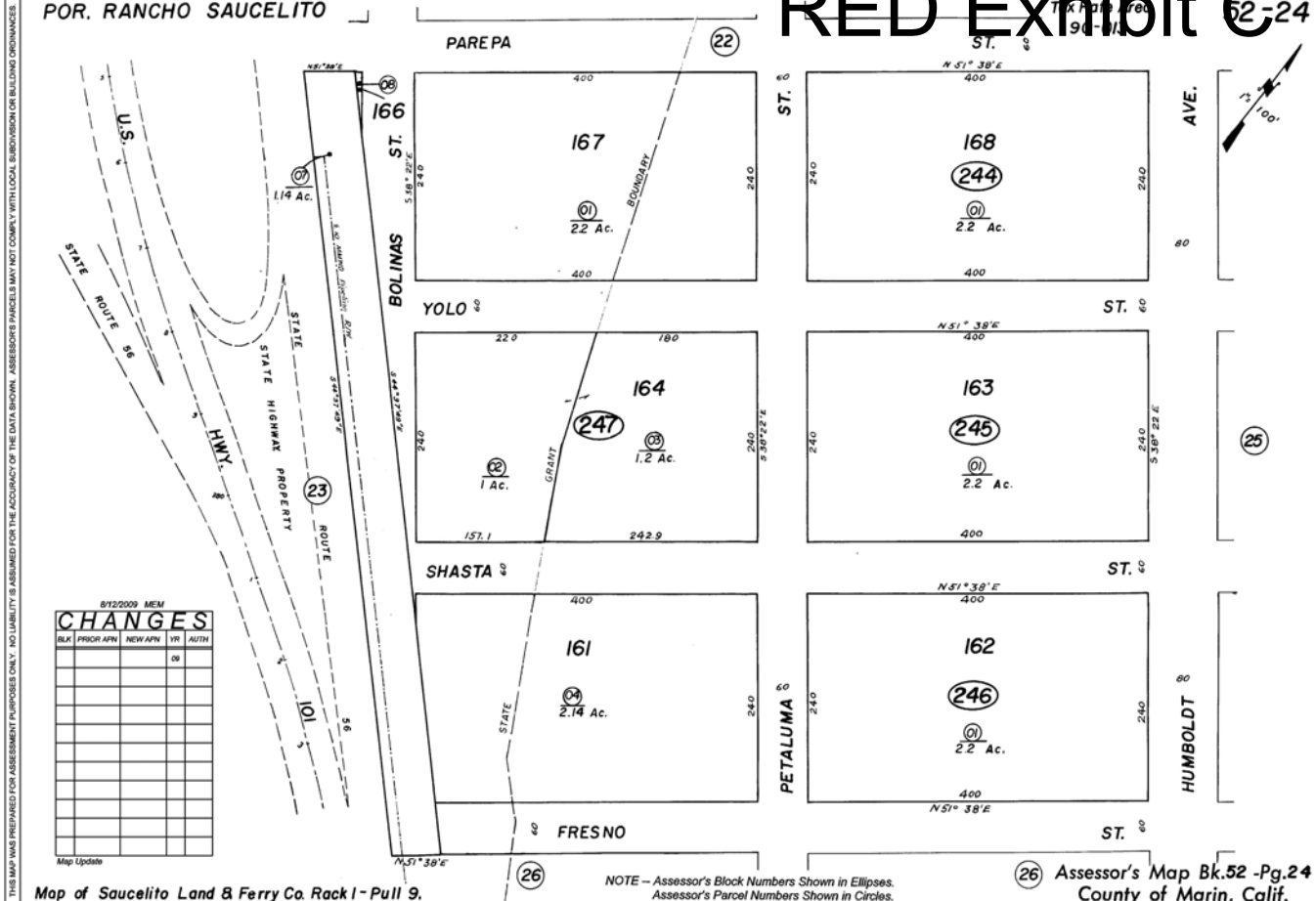
Also excepting therefrom any portion thereof included in the right of way of the Northwestern Pacific Railroad.

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

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

RED Exhibit C 52-24

POR. RANCHO SAUCELITO



07/12/2009 MEM

CHANGES

BLK.	PRIOR APN	NEW APN	YR	AUTH
			09	

Map Update

Map of Saucelito Land & Ferry Co. Rack I - Pull 9. NOTE - Assessor's Block Numbers Shown in Ellipses. Assessor's Parcel Numbers Shown in Circles. 26 Assessor's Map Bk.52 -Pg.24 County of Marin, Calif.

Property Detail Report

For Property Located At :
,, CA

RED Exhibit C



Owner Information

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

Location Information

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

Owner Transfer Information

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

Last Market Sale Information

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

Prior Sale Information

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

Property Characteristics

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

Site Information

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

RED Exhibit C

Tax Information

Total Value: \$112,841
Land Value: \$112,841
Improvement Value:
Total Taxable Value: \$112,841

Assessed Year: 2021
Improved %:
Tax Year: 2021

Property Tax: \$2,429.46
Tax Area: 90013
Tax Exemption:

Exhibit 2. Real Quest depiction of Blocks 167 (left) and 164 (right). Exhibit C portion of the docks is located on property owned by Marin County.



Exhibit 3. Location of 240-242 Redwood Highway Frontage Road, north of City of Sausalito, Marin County

RED Exhibit C

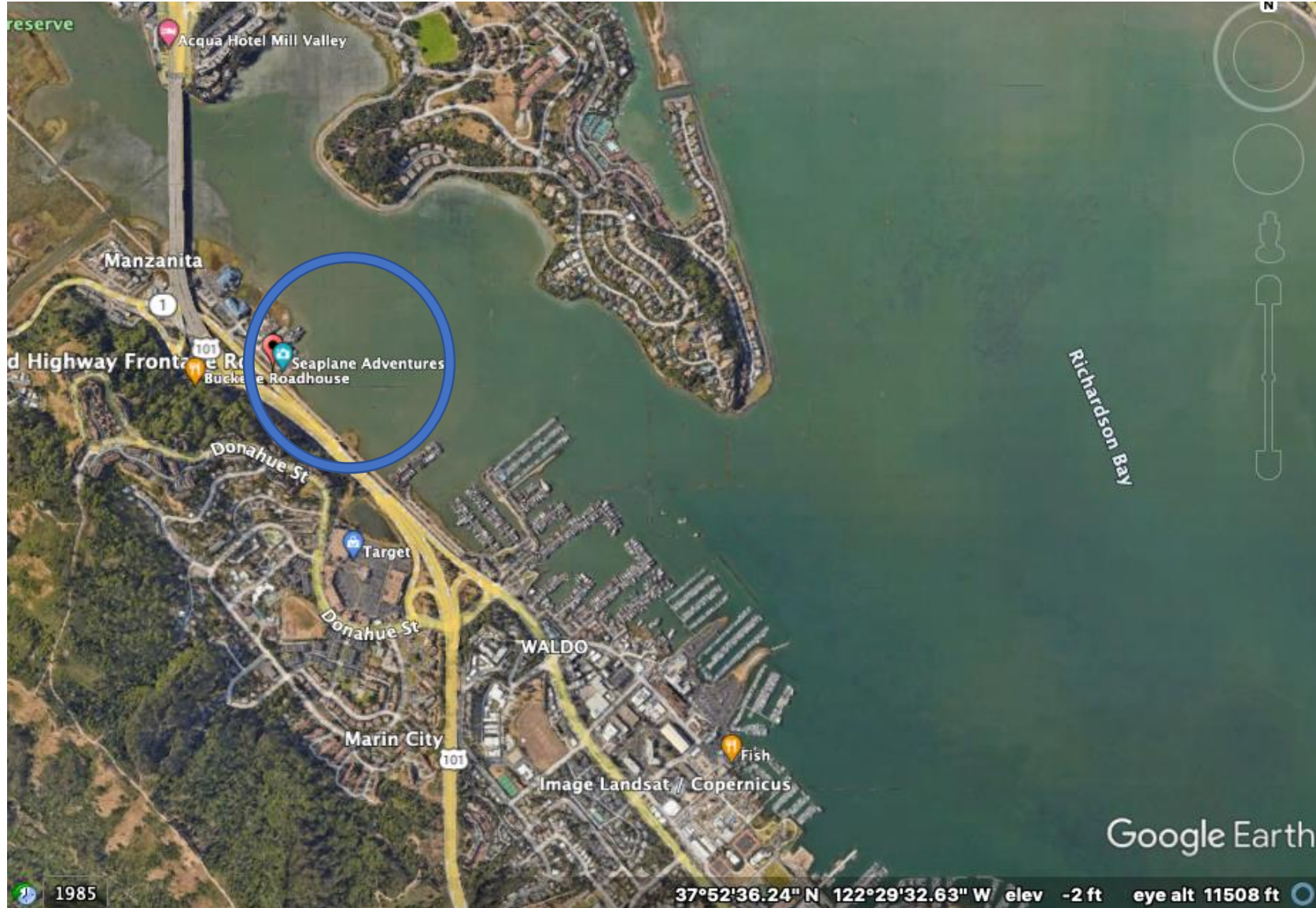


Exhibit 4. Site Overview of 240-242 Redwood Highway Frontage C Road, Marin County



RED Exhibit 5

Exhibit 5. Most recent available aerial image depicting unauthorized fill for docks, second airport pad and walkways, Seaplane storage, fuel tank, parking and absent public access



November 21, 2017

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

ATTENTION: Steve Price

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

Dear Mr. Price:

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

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

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

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

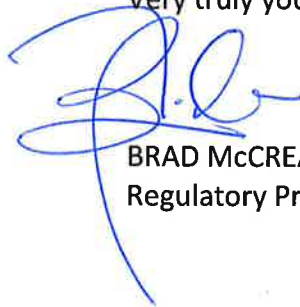
Furthermore, your permit contains special conditions which require you to take certain specific actions. Please understand that **no** work may commence on the project until the permit stamped "BCDC Original" is executed and returned to the Commission. Until the Commission receives the executed permit,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

Steve Price
Commodore Marina, LLC
November 21, 2017
Page 2

RED Exhibit C

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

Very truly yours,



BRAD McCREA
Regulatory Program Director

Enc.

BM/EB/ra

cc: Harold Hedelman

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

NOTICE OF COMPLETION AND DECLARATION OF COMPLIANCE

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

Ladies and Gentlemen:

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

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

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

Executed on this _____ day of _____, 20____,

at _____, California.

(Permittee)

Print Name and Title

PERMIT NO. 1973.014.01

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

AMENDMENT NO. ONE

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

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

I. Authorization

A. **Authorized Project.** Subject to the conditions listed below, the applicant is granted permission to do the following work and make the following uses of its property at 240 Redwood Highway, County of Marin:

1. In the Bay.

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 2

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

2. Within the 100-foot shoreline band

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

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

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 3

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

II. Special Conditions

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

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

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

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

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

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 4

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

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

A. Plan Review

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 5

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

BC. Public Access

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 6

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 7

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

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

EF. Water Quality (Original Authorization)

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

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

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 8

III. Findings and Declarations

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

A. Solid Fill (Original Authorization).

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 9

B. Houseboat and Boat Docks (Original Authorization).

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

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

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 10

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

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

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 11

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

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

IV. Standard Conditions

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 12

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 13

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 14

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

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

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

N. Best Management Practices

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

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

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

RED Exhibit C

PERMIT NO. 1973.014.01

Commodore Marina, LLC

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

AMENDMENT NO. ONE

Page 15

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

LAWRENCE J. GOLDZBAND

Executive Director

San Francisco Bay Conservation and Development Commission

By: _____

BRAD McCREA

Regulatory Program Director

BM/EB/ra

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

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____

Commodore Marina, LLC
Permittee

On _____

By: _____

Print Name and Title

San Francisco Bay Conservation and Development Commission

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

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

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

December 20, 2019

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

SUBJECT: BCDC Permit No. 1973.014.02; Time Extension

To Whom It May Concern:

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

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

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

Very truly yours,



Erik Buehmann
Coastal Program Manager

EB/ra

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



San Francisco Bay Conservation and Development Commission

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

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

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

September 2, 2020

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

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

To Whom It May Concern:

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

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

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

Very truly yours,

DocuSigned by:
Erik Buehmann
DE28A8DB779F45C...

ERIK BUEHMANN
Bay Resources Program Manager

EB/ra

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



San Francisco Bay Conservation and Development Commission

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

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April 16, 2021

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

SUBJECT: BCDC Permit No. 1973.014.003; Time Extension

Dear Mr. Harold Hedelman:

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

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

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

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

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

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

LJG/RY/ra



San Francisco Bay Conservation and Development Commission

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

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January 25, 2022

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

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

Dear Mr. Vasquez:

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

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

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

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

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

LJG/RY/ra



NOTICE OF RESTRICTIONS

The San Francisco Bay Conservation and Development Commission in administering the public trust for commerce, fisheries and navigation pursuant to Article XV of the California Constitution through the McAteer-Petris Act (Government Code Sections 66600 through 66661), and in implementing the San Francisco Bay Plan, has issued BCDC Permit No. 14-73, dated August 24, 1973, and determined that certain lands subject to tidal action in San Francisco Bay shall remain in their natural state to protect the public welfare by avoiding impairment of natural Bay functions and assuring regional values as described in the San Francisco Bay Plan.

The property which shall remain in its natural state is situated in the County of Marin, State of California, and consists of a portion of Block 167 referred to in the legal description set forth in Exhibit "A" attached hereto lying to the east of the real property described in Exhibit "A" attached hereto now subject to tidal action (which portion of Block 167 is hereinafter referred to as the "outboard property".)

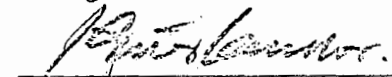
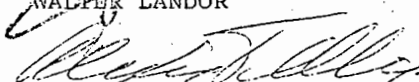
NOW THEREFORE, the undersigned hereby agree that the outboard property shall forever remain in its natural state.

This Covenant shall not inhibit the San Francisco Bay Conservation and Development Commission, or its successors, or the State of California from administering the public trust as it may pertain to the outboard property in some different

RED Exhibit C

fashion at some future date.

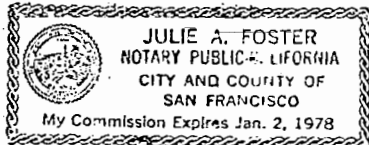
IN WITNESS WHEREOF, the undersigned have executed the within instrument the 19th day of August, 1974.

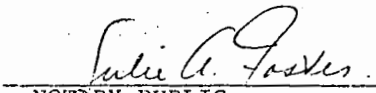

WALTER LANDOR

ALEXIS TELLIS

STATE OF CALIFORNIA)
) SS.
CITY AND COUNTY OF SAN FRANCISCO)

On this 19th day of August, 1974, before me, Julie A. Foster, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared WALTER LANDOR known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate

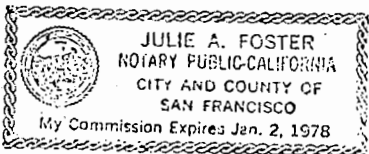


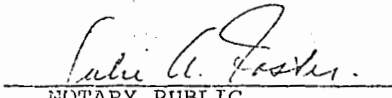

NOTARY PUBLIC

STATE OF CALIFORNIA)
) SS.
)

On this 19th day of August, 1974, before me, Julie A. Foster, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared ALEXIS TELLIS known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.




NOTARY PUBLIC

RED Exhibit C

That certain Real Property situate in the County of Marin,
State of California, described as follows to wit:

BEGINNING at a point in the southeasterly line of Block 167,
as shown on that certain map entitled "Official Map Lands of the
Sausalito Land and Ferry Company" recorded April 26th., 1969 in
Rack 1, pull 9 of Maps, Marin County Records, which point bears
North $51^{\circ} 38'$ East 148.62 ft. from the most southerly corner of
the aforesaid Block 167; running thence from said point of
beginning along said southeasterly line, North $51^{\circ} 38'$ East
31.38 ft.; thence leaving said line northwesterly on a curve to
the right of radius 278 ft., whose center bears North $33^{\circ} 37' 47''$
East through a central angle of $36^{\circ} 00' 26''$ for a distance of
174.71 ft.; thence on a compounding curve to the right of radius
38 ft., whose center bears North $69^{\circ} 33' 15''$ East through a
central angle of $69^{\circ} 17' 47''$ for a distance of 45.96 ft.; thence
North $48^{\circ} 56'$ East 125.04 ft.; thence on a curve to the left of
radius 89 ft., whose center bears North $41^{\circ} 04'$ West through a
central angle of $44^{\circ} 09' 53''$ for a distance of 68.60 ft. to a point
in the northeasterly line of the aforesaid Block 167; running
thence along said line, North $38^{\circ} 22'$ West 8.0 ft. to the most
northerly corner thereof; running thence along the northwesterly
line of said Block, South $51^{\circ} 38'$ West 80.90 ft.; thence leaving
said line, South $38^{\circ} 22'$ East 20 ft.; thence South $51^{\circ} 38'$ West
152 ft.; running thence southeasterly on a curve to the left of
radius 308 ft., whose center bears North $77^{\circ} 26' 19''$ East
through a central angle of $42^{\circ} 00' 15''$ for a distance of 225.80 ft.
to the point of beginning.

THIS STAMP CONFIRMS
RECORDING DATA ONLY

RECORDED AT REQUEST OF

Commodore Prop.

T. 55 MIN. PAST 7 M.

SEP 17 1974

Official Records of Marin County, Calif.

N. J. Liccomini

FEE \$ 5.00 RECORDER

33530

EXHIBIT "A"

RED Exhibit C

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned, WALTER LANDOR and ALEXIS TELLIS, doing business as COMMODORE PROPERTIES, are the owners of that certain real property situate in the County of Marin, State of California, described in Exhibit "A" attached hereto (which property is hereinafter referred to as the "burdened property"); and,

WHEREAS, the undersigned propose to perform certain work and make certain improvements upon the burdened property; and

WHEREAS, in order to perform said work the undersigned have obtained Permit No. 14-73, dated August 24, 1973, from the San Francisco Bay Conservation and Development Commission (hereinafter referred to as the "Commission"); and

WHEREAS, said permit contains certain conditions and the purpose of this instrument is to satisfy Special Conditions B-1 and B-2 of said permit.

NOW THEREFORE, the undersigned hereby declare as follows:

1. That the use of the burdened property shall hereafter be restricted only to viewing, fishing, walking, sitting, bicycling and related purposes by the general public.
2. That the undersigned shall maintain all improvements in the burdened property made in conformity with said permit except landscaping.
3. That nothing herein contained shall be deemed to be a gift or dedication of any portion of the burdened property to the general public or for the general public or for any public purpose whatsoever, it being the intention

RED Exhibit C

of the undersigned that this Declaration shall be strictly limited to and for the purpose herein expressed.

4. That the covenants and restrictions herein created shall be a burden upon the burdened property and shall run with the land and shall be binding upon any future owner but only during his time of ownership. At such time as the undersigned conveys the burdened property, they shall no longer be bound to perform any of the provisions hereof as to said property.

5. That this Declaration of Restrictions may be revoked or modified as to the burdened property only by recording of an instrument of revocation or modification, as the case may be, executed and acknowledged by the then owner of the applicable property and by the Commission or its statutory successor, in which event this instrument shall be revoked or modified as provided in such instrument.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed this *19th* day of *August*, 1974.


WALTER LANDOR

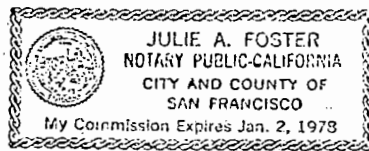

ALEXIS TELLIS

RED Exhibit C

STATE OF CALIFORNIA)
) SS.
CITY AND COUNTY OF SAN FRANCISCO)

On this *19th* day of *August*, 1974, before me the undersigned, a Notary Public, State of California, duly commissioned and sworn, personally appeared WALTER LANDOR, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco, State of California, the day and year in this certificate first above written.



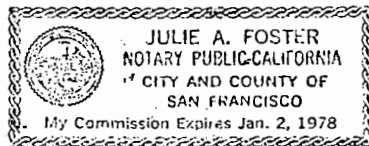
Julie Foster

NOTARY PUBLIC

STATE OF CALIFORNIA)
) SS.
CITY AND COUNTY OF SAN FRANCISCO)

On this *19th* day of *August*, 1974, before me the undersigned, a Notary Public, State of California, duly commissioned and sworn, personally appeared ALEXIS TELLIS, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco, State of California, the day and year in this certificate first above written.



Julie A. Foster

NOTARY PUBLIC

RED Exhibit C

That certain Real Property situate in the County of Marin,
State of California, described as follows to wit:

BEGINNING at a point in the southeasterly line of Block 167,
as shown on that certain map entitled "Official Map Lands of the
Sausalito Land and Ferry Company" recorded April 26th., 1869 in
Rack 1, pull 9 of Maps, Marin County Records, which point bears
North $51^{\circ} 38'$ East 148.62 ft. from the most southerly corner of
the aforesaid Block 167; running thence from said point of
beginning along said southeasterly line, North $51^{\circ} 38'$ East
31.38 ft.; thence leaving said line northwesterly on a curve to
the right of radius 278 ft., whose center bears North $33^{\circ} 37' 47''$
East through a central angle of $36^{\circ} 00' 26''$ for a distance of
174.71 ft.; thence on a compounding curve to the right of radius
38 ft., whose center bears North $69^{\circ} 38' 13''$ East through a
central angle of $69^{\circ} 17' 47''$ for a distance of 45.96 ft.; thence
North $48^{\circ} 56'$ East 125.04 ft.; thence on a curve to the left of
radius 89 ft., whose center bears North $41^{\circ} 04'$ West through a
central angle of $44^{\circ} 09' 53''$ for a distance of 68.60 ft. to a point
in the northeasterly line of the aforesaid Block 167; running
thence along said line, North $38^{\circ} 22'$ West 8.0 ft. to the most
northerly corner thereof; running thence along the northwesterly
line of said Block, South $51^{\circ} 38'$ West 80.90 ft.; thence leaving
said line, South $38^{\circ} 22'$ East 20 ft.; thence South $51^{\circ} 38'$ West
152 ft.; running thence southeasterly on a curve to the left of
radius 308 ft., whose center bears North $77^{\circ} 26' 19''$ East
through a central angle of $42^{\circ} 00' 15''$ for a distance of 225.80 ft.
to the point of beginning.

THIS STAMP CONFIRMS
RECORDING DATA ONLY.

RECORDED AT REQUEST OF

Commodore Prop.

1:55 MIN. PAST 4 P. M.

SEP 17 1974

Official Records of Marin County, Calif.

N. J. Giacomini

FEE \$ 6.00 RECORDER

33529

EXHIBIT "A"

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

THIRTY VAN NESS AVENUE, SUITE 2011

SAN FRANCISCO, CA 94102-6080

PHONE: (415) 557-3686



BCDC Original

PERMIT NO. M85-30

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

AMENDMENT NO. ONE

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

ATTENTION: Eve Geertsema
Corporate Secretary

AND

Walter Lander
1001 Front Street
San Francisco, California 94111

RECEIVED
JAN 9 1990

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Gentlemen:

I. Authorization

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

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

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

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

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

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

II. Special Conditions

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

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

III. Findings and Declarations

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

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

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

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

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

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

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

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

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

PERMIT NO. M85-30

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

AMENDMENT NO. ONE

Commodore Helicopters, Inc.,
and Walter Lander

Page 4

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

IV. Standard Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

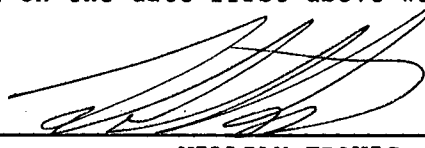
M. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended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

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

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

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



WILLIAM TRAVIS
Acting Executive Director

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

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

* * * * *

Receipt acknowledged, contents understood and agreed to:

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

* * * * *

Receipt acknowledged, contents understood and agreed to:

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

Exhibit 8. December 2003. **Orange Arrow** – Unauthorized Seaplane fuel tank
Blue Circle – Single heli-port landing pad and helicopter fuel tank, authorized by BCDC in 1985. U-shape dock, authorized by BCDC in 1973.



Exhibit 9. January 31, 2020. Staff photographs depicting authorized heliport fuel tank (round) and unauthorized Seaplane fuel tank (square)



Exhibit 10. September 2008. Unauthorized, second heliport asphalt landing pad and four walkways.



Exhibit 11. January 31, 2020. Staff photograph depicting an unauthorized helicopter landing pad and walkway



Exhibit 12. November 2011. First unauthorized dock expansion (“cross beam”).

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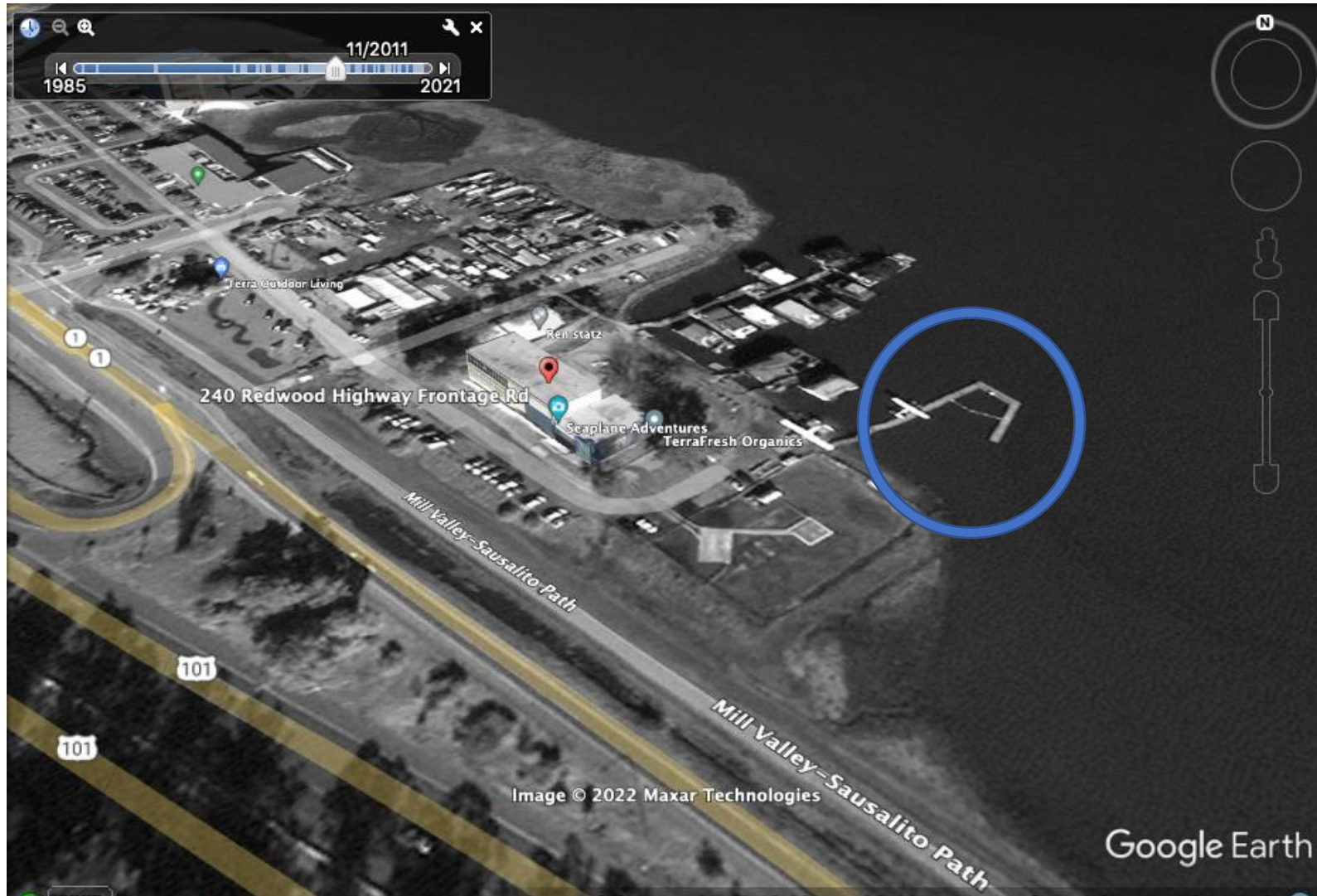


Exhibit 13. February 2018. Second unauthorized dock expansion (single, long finger and “cross beam” replacement).



Exhibit 14. June 2019. Third unauthorized dock expansion (two short fingers).

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Exhibit 15. January 31, 2020.
Staff photographs depicting
unauthorized docks (cross-beam,
three fingers), two pilings, and on
water fueling facility.



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There is no Exhibit 16

BCDC Enforcement

Submitted by: Anonymous user

Submitted time: Dec 12, 2019, 1:06:30 PM

FormIgnore

Yes

ER#

ER2019.063.00

BCDC Permit #

1973.014 and M1985.030

Score

56

Priority

No

Status

C. ER Open (Active)

Enforcement Staff Assigned

AK

Related ER Cases

ER2010.021

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Vicinity of the Alleged Violation

- In the San Francisco Bay (including Richardson's Bay, San Pablo Bay, Suisun Bay, Grizzly Bay, and all marshes and tidelands)
- Within 100 feet of the shoreline of the San Francisco Bay
- In the upland area designated with a Public Shore sign

Address of the Alleged Violation

Surface portion and submerged portion of Yolo Street, which ends at 240 Redwood Highway, Mill Valley, CA 94941 and an adjacent submerged parcel on which a seaplane floating dock is located.

Location of the Alleged Violation

Lat: 37.87881 Lon: -122.51287



County

Marin

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Description of the Alleged Violation

2020.01.28 Supplementary report regarding public access violations. Initial report: We believe Commodore Marina LLC and/or Seaplane Adventures are in violation of BCDC's permitting requirement under the McAteer-Petris Act (Gov Code Sections 66600 et seq.) which specifies "any person [who] make[s] any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission." Gov. Code Section 66632(a). Notable apparent violations of BCDC regulations by Commodore Marina LLC's and Seaplane Adventures' operations (or their predecessors) within 100 feet from the shoreline include the following: 1) installing a floating dock between approximately 1968 and 1970 in the Bay; 2) subsequently installing an additional extension to that floating dock; 3) installing a concrete launching ramp on Yolo St. into Richardson Bay; 4) storing and performing maintenance and repairs on seaplanes on Yolo Street; 5) installing a set of large concrete blocks used as tie down lines attached to seaplanes stored within 50 feet of the shoreline; 6) installing and/or maintaining an aboveground leaded aviation gasoline fuel tank sometime between 1982 and 1992, less than 50 feet from the Bay; 7) running a long hose from the aboveground aviation gas tank to seaplanes moored to the floating dock to refuel the seaplanes on the Bay. To our knowledge, no BCDC permit was ever granted for any of these activities. These activities and the installation and/or storage of above-ground structures (avgas storage tank, concrete blocks, seaplanes, etc.) hinder public access to the Bay and are inconsistent with the McAteer-Petris Act, which seeks to ensure "maximum feasible public access to the bay and its shoreline." Gov. Code Section 66602. We request that the BCDC investigate these violations and bring the necessary and appropriate action to maintain maximum public access to the Bay and to preserve and enhance the quality and diversity of the wildlife habitats within Richardson Bay.

Date Report Submitted

Dec 12, 2019

Staff Notes

No permit for tank and seaplane storage and fueling operations.

Date ER Case Opened

Dec 30, 2019

When did you first observe the Alleged Violation?

Dec 1, 2018

Suspected Duration or Frequency of Violation

Constant

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Do you know who the Responsible Party is?

Yes

Responsible Party's Name (Person and/or Organization)

Most of the violations are taking place on Yolo St. and over an adjacent submerged parcel, both owned by County of Marin. Commodore Marina LLC leases the adjacent submerged property from the County; and Seaplane Adventures operates the seaplanes.

Responsible Party's Address

Steve Price: 1083 Vine Street #244, Healdsburg, CA 95448; Aaron Singer: 242 Redwood Highway Frontage Rd., Mill Valley, California 94941

Responsible Party's Email

steve@seaplane.com ; aaron@seaplane.com

Responsible Party's Phone Number

Steve Price: 415-850-5200 ; Aaron Singer: 415-332-4843

Do you know who the Responsible Party's Representative is?

Yes

Responsible Party's Agent, Representative, or Tenant

Steve Price of Commodore Marina, LLC ; Aaron Singer of Seaplane Adventures

Responsible Party Representative's Address

Steve Price: 1083 Vine Street #244, Healdsburg, CA 95448 ; Aaron Singer: 242 Redwood Highway Frontage Rd., Mill Valley, California 94941

Responsible Party Representative's Email

steve@seaplane.com ; aaron@seaplane.com

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Responsible Party Representative's Phone Number

Steve Price: 415-850-5200 ; Aaron Singer: 415-332-4843

Can BCDC staff contact you about this report?

Yes

Reporter Name

John Edgcomb

Reporter Address

Edgcomb Law Group, LLP, One Post Street, Suite 2100, San Francisco, California 94104-5225

Reporter Email

jedgcomb@edgcomb-law.com

Reporter Phone Number

415-399-1555

Please indicate if you wish to remain anonymous.

Yes

Which other agencies, if any, have you contacted about this violation?

Marin County Counsel, County Department of Public Works, and County Community Development Agency.



Site Visit Report

Site Visit Date: January 31, 2020

Permit Number: Permit No. 1974.013, M1985.030 and possible M1980.027 and NOI1995.002

Enforcement Case Number: ER2019.063

Meeting Location: 240 Redwood Highway,

BCDC Staff: Adrienne Klein

Agenda: To view site in response to a complaint.

Notes Summary: The staff was very helpful and friendly and showed me around and explained some of the work that's occurred. I provided my business card, explained why I was there, saw a copy of their permit for the fuel tank, learned that the County had also come for a site visit and informed the staff that the owners should not panic upon hearing from us. I learned that the operation has been occurring since 1946, and that the square fuel tank is for Seaplane and the large, round tank is associated with the heliport, which is a separate business. Apparently, it is called SF Helicopter Tours. 800-400-2404. They don't store helicopters here; they just pick up and drop off patrons. My 'tour guide' concurred when I pointed out that one of the issues was that the boat docks exceed the authorization. They moved the fuel tank to the new section. My initial impression based on how the planes land and take off and tidal constraints, is that they could potentially obtain retroactive authorization for the part that converts the authorized "U" shape to a square shape but that we need more information regarding the finger piers, which she said they don't really use. I noted that none of the float material for any of the docks is contained in plastic boxes and stated that I believe this is a requirement they may have to meet. I also note that the docks appear old. I think she said they'd replaced two pilings and that they plan to remove the old docks and old fence and stored materials shown in the site photos.

See Attached Photos/Drawings for Further Information

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Subset selection of photographs from Adrienne Klein's January 31, 2020, site visit to 242 Redwood Highway that are relevant to BCDC's Violation Report allegations. Some of these photographs are used as unique exhibits and therefore appear twice.



RED Exhibit C



RED Exhibit C



RED Exhibit C



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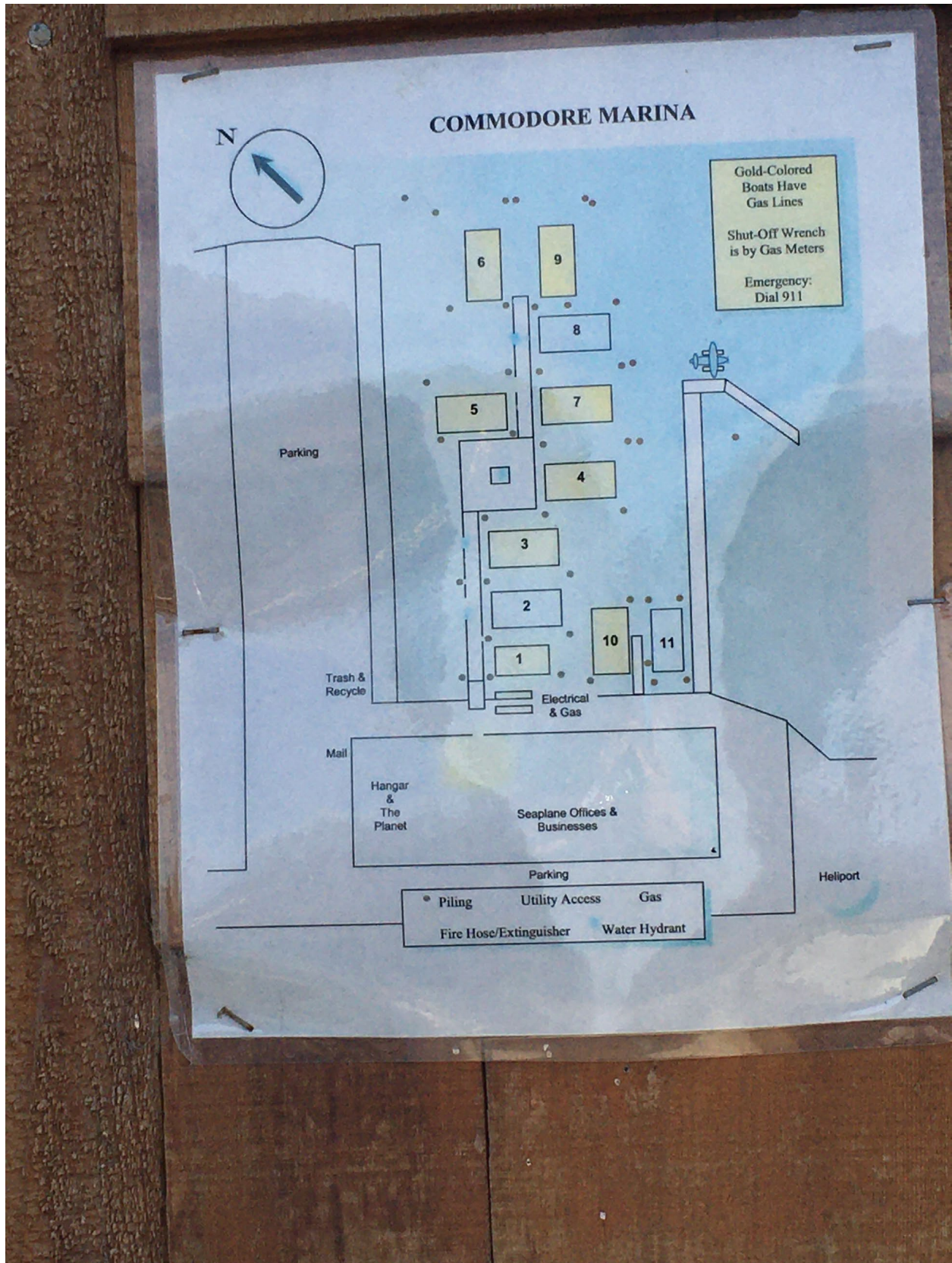
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San Francisco Bay Conservation and Development Commission

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

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RED Exhibit C

February 18, 2020

Steven D. Price
 Commodore Marina, LLC
 1083 Vine Street #244
 Healdsburg, CA 95448

Aaron and Tiffany Singer
 Seaplane Adventures
 242 Redwood Highway Frontage Road
 Mill Valley, CA 94941

SUBJECT: Violation Notice. (BCDC Permit Nos. M1974.013 and M1985.030; BCDC Enforcement File No. ER2019.063)

Dear Respondent(s):

On December 12, 2019, BCDC staff received a report regarding alleged unauthorized activities at 242 and 240 Redwood Highway Frontage Rd, Mill Valley, California 94941, as described below.

Alleged Activity/ies:	This Action Represents a Violation of the Following Statute(s) and/or Permit Condition(s):
In San Francisco Bay, expansion of docking facilities, relocation of the fuel station, and reconstruction of a ramp for Bay access	Permit No. 1974.013.02 Permit No. 1985.030 The McAteer-Petris Act
In the shoreline band on Yolo Street, dedicated as a public area, placement of fill and private uses, including a fuel tank, fencing and seaplane and vehicle storage	Permit No. 1974.013.02 including Special Condition II.B, Public Access, and II.C, Use of Solid Fill Permit No. 1985.030 The McAteer-Petris Act

After an initial review of the available information related to this matter, we have opened a BCDC enforcement case (BCDC Enforcement Case No. ER2019.063).

This letter serves as notice that BCDC believes that a violation has occurred. Unless you have received authorization from BCDC to conduct these activities, you must immediately cease and



apply for after-the-fact authority for the unauthorized fill and activities, provide any required public access benefits, and/or restore the site to its prior condition.

We request that you respond within 15 calendar days of the date of this letter and provide any additional information that you believe that we should consider, including, as appropriate, evidence that the violation has been resolved. Please submit this information to Adrienne Klein.

Pursuant to the McAteer-Petris Act and its regulations, BCDC is authorized to conduct enforcement investigations and commence administrative enforcement actions. While this letter does not commence a formal enforcement proceeding, we reserve the right to take formal action, including seeking injunctive relief and/or imposing fines or penalties. A prompt response will be considered in determining the next steps that BCDC pursues.

Thank you for your attention to this matter.

Sincerely,



Adrienne Klein
Coastal Program Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3600
Fax: 415-352-3606
Email: info@bcdc.ca.gov
Website: www.bcdc.ca.gov

cc: Jenna J. Brady, Deputy County Counsel, Office of County Counsel
County of Marin, 3501 Civic Center Drive, Suite 275, San Rafael, CA 94903
Kiana Amiri-Davani, Edgcomb Law Group, LLP
One Post Street, Suite 2100, SF CA 94104-5225
Reid Boggiano, State Lands Commission, reid.boggiano@slc.ca.gov

AK / mm



San Francisco Bay Conservation and Development Commission

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

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VIA EMAIL ONLY

September 15, 2020

Steven D. Price, Commodore Marina Harbor Master; co-owner,
Seaplanes Adventures and owner, Commodore Helicopters
Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, CA 95448
steve@seaplane.com

SUBJECT: Violation Notice to Resolve Permit and McAteer-Petris Act Violations located at 240 Redwood Highway, Mill Valley 94941 (BCDC Enforcement Case ER2019.063, Permit 1973.014.02 issued to Commodore Marina and Permit M1985.030.01 issued to Commodore Helicopters, Inc. and Walter Landor)

Dear Steve Price:

On August 24, 1973, BCDC issued Permit 1973.014.00, which has been amended twice first on November 21, 2017 and most recently on December 20, 2019. The original permit authorized the construction of a bulkhead and placement of fill landward of the bulkhead on an approximately 6,600 square foot area of the Bay on Block 167, Yolo and Parepa Streets for landscaped public access and landscaping, construction of a berm on the North East and South East edge of the Marin County Heliport landing pad and installation of a flap gate on the east corner of the berm, reconstruction of an existing 2,880 square foot houseboat mooring pier by removing 23 existing pilings, driving 17 new pilings and installing sewer lines and other service utilities, realignment of 11 existing houseboats along the new dock and connecting them to the shoreside sewer system and removal of an abandoned houseboat. Thereafter, Permit 1973.014.01 authorized the relocation of an approximately 1,528-square-foot houseboat moored at Berth #11 approximately 18 feet to the North West to remove it from the Yolo Street right-of-way, which work was required to have been completed by November 1, 2019. On December 20, 2019, BCDC issued Permit 1973.014.02 to extend the completion date for the



houseboat relocation from November 1, 2019 to October 31, 2020¹. The amended permit is subject to a number of special conditions pertaining to plan review and approval, public access, maintenance, construction timing, water quality protection and houseboat reconstruction and location.

On August 25, 1988, the Commission issued Permit M1985.030.00 to Commodore Helicopters, Inc. This permit authorized the placement of 170 cubic yards of aggregate and paving of 2,500 square feet of an existing heliport landing pad in the shoreline band to protect it from ponding and flooding. It also authorized the installation of a fuel storage tank and fuel containment area to meeting safety standards (after-the-fact). The permit contains a single special condition that requires the authorized work to be constructed in accordance with plans prepared by Anrig-Doyle, Civil Engineers, dated July 1, 1988, entitled "Commodore Helicopter." On December 28, 1989, BCDC issued Permit M1985.030.01 which authorized repairs to a tidal flap gate and in the shoreline band changes to the original authorization that reduced the allowance for aggregate placement from 170 to 23 cubic yards and reduced the paving of the heliport landing pad from 2,500 to 640 square feet and authorized paving of an unspecified 1,400 square foot area and filling of a 2,370 foot area with 88 cubic yards of fill in the Bay. The permit states that all of the work authorized by Permit M1985.030.01 was completed prior to permit issuance and pursuant to Enforcement Case ER1989.014. The permit's findings provide "Notice of Potential for Extension of BCDC Jurisdiction" pursuant to Commission Regulation 10123. As described in more detail below, BCDC provided you with notice of an extension of the Bay jurisdiction, which, as also described below, necessitates a site survey to demarcate the location/s of the mean high tide and marshlands below +5 feet mean sea level and suggests that the fill and uses occurring in the Bay must be for water-oriented purposes, public access or improving shoreline appearance.

On June 9, 2010, BCDC staff identified a possible violation alleging the failure to maintain public access and unauthorized construction of a floating dock and gangway (Enforcement File ER2010.021 has been closed and merged with Enforcement File ER2019.063). Thereafter on June 26, 2017, BCDC staff received a report from architect Bill Kirsch identifying the County requirement that the houseboat located in the Yolo Street right-of-way be located entirely out of said right-of-way and requesting that due to its longstanding location in the right-of-way and challenges of relocating it that it be allowed to stay. Staff at the time located the BCDC permit requirement described above mirroring the County requirement and added the information supplied by Mr. Kirsch to the then open enforcement case record.

On December 12, 2019, BCDC received a report of possible violations regarding a failure to

¹ The letter granting the extension of completion time contains a typographical error and states that the work was to have been completed by October 31, 2019. By copy of the letter dated September 2, 2020, this error was corrected.

provide permit required public access, installation and uses of unauthorized fill within BCDC's jurisdiction and a failure to maintain at least one of the eleven (11) authorized houseboats in a permit compliant manner (BCDC Enforcement File ER2019.063).

Based on the results of a permit file review, site visit, and conversations with you, your tenant and counsel, we believe there are a number of violations of the permit and the law. This letter is intended to accomplish the following:

1. Summarize the relevant permit requirements, the violations of the permits and of the law, and provide general direction on how to correct the identified violations.
2. Request current information regarding any work, fill placement and/or changes in use in the Bay and/or shoreline band that may have occurred without BCDC authorization including but not limited to changes in the intensity of use of the Seaplane operation, changes in intensity of use of the office buildings, dredging and/or placement of any fill anywhere within BCDC's Bay and shoreline band jurisdictions.
3. Among other information requested below, request information regarding:
 - A. Whether Commodore has a legal interest in the Yolo Street right of way occupied by a fuel tank, floating dock and ramp, seaplanes, and parking and where public access is required;
 - B. Plans to address the deteriorated bulkhead around the marina; and
 - C. Impacts caused by frequent tidal inundation to the Seaplane Adventures and Heliport businesses and the associated parking, fueling, public access among other activities not listed but occurring in any tidally inundated areas.

Violations

Violation one - Public Access: Special Condition II.C, Public Access, of Permit 1973.014.02 specifies the public access requirements, which are not currently being provided as required. The file indicates that the permittee fulfilled the permit's implementation terms in the 1970s. However, the approved and recorded legal instrument does not include a map showing the dedicated public access area. Accordingly, we request that you please submit a copy of the approved plans to us, have prepared and submit a survey of the public access area described therein.

Within the dedicated public access area, Special Condition II.C requires you to provide an 8 foot wide all weather pathway for pedestrians and cyclists leading from the existing Marin County bike path to Bolinas Street to the shoreline either paralleling Yolo Street in Block 167 or, if permission is received from Marin County, by passing within Yolo Street, along the shoreline to the northwest edge of the property. The condition also requires you to landscape the public access areas pursuant to approved landscaping plans. A letter to John Heene, Director of Operations, Commodore Helicopters, Inc., from Nancy Wakeman, Assistant Executive Director,



dated August 17, 1989, states that parking space #44 must be removed, that the public access required by the permit must be provided as required and that if the onsite conditions relating to public access are not restored to permit compliant status within 30 days of her letter, BCDC will commence enforcement (Enforcement Case ER1989.014).

While there is a pathway on Parepa Street, east and south of the office building, the connection from the termination of the path on Yolo Street to the County pathway is missing. The site contains no public shore signs. The landscaping does not meet the conditions required in the approved landscaping plans and should be restored with new plantings. Accordingly, you must extend the trail to the west from where it currently ends on Parcel 167 in the Yolo Street corridor (across the parking lot) so that it connects to the County-owned bicycle path. You must also provide information regarding the frequency of flooding in the public access areas in the Parepa and Yolo Street corridors, which appear to be frequently inundated and, as a result, subject to extensive shoreline erosion, potentially necessitating a permit amendment to authorize work to ensure the continued availability of the required public access. In addition, you must install adequate public shore signage, public parking signs and ensure that no parking or other fill or uses (such as equipment related to the houseboat renovation) impedes the required public shore access for pedestrians and cyclists. Finally, you must ensure that the landscaping meets permit requirements. Please provide the required improvements in accordance with existing approved plans or submit new plans for the public access improvements for our review and approval. For all required and absent signage, you must use the current BCDC approved signs and graphics. Given the extensive nature of tidal inundation on the site, consider proposing a salt tolerant landscape palette. Please reference the "Public Access Signage Guidelines – Shoreline Signs", "BCDC Approved Signage Graphics" and "Landscape Guide for the SF Bay - Shoreline Plants" on BCDC's website under "Information Resources/Design Guidelines".

Violation two - Unauthorized fill and uses. Special Condition II.C, Solid Fill, of Permit 1973.014.02 states that the fill approved 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. Please describe the areas where fill has been placed, whether it was placed in compliance with the requirements of your permits and advise whether you have conducted any fill placement for flood control since the issuance of this permit and Permit M1985.030.01.

Further, the McAteer-Petris Act requires that all fill and uses at the site that were not in existence as of September 17, 1965 require BCDC authorization. We are aware of the following listed and apparently unauthorized fill placement in the Bay and/or shoreline band and changes in use that require the Commission's approval:

- A. Unauthorized floating fill for boat docks by converting the u-shaped floating dock used by the seaplanes into a square shaped boat dock. We observed on the site visit that the floating docks are old and the flotation material is corroded and breaking off and

decaying into the water column of SF Bay, whereas current DBW standards for flotation foam requires it to be contained in plastic boxes;

- B. Installation of a wooden ramp for the seaplanes to enter/exit the water (the plans note a concrete ramp). When was this constructed;
- C. In the Yolo Street corridor, installation of a fuel tank and storing two to three seaplanes and possible operation of the planes beyond the approved flying hours pursuant to the terms of your approval from Marin County Community Development Agency;
- D. Provide a listing of all the uses occurring in the onsite buildings, the date of occupancy, the number of people employed onsite and visiting the site;
- E. Remove any derelict structures such as old fencing and docks and floats;
- F. Please describe when, where you have installed any fill to elevate any portions of the site, the volume and type of material used;
- G. Please describe all fill placed and uses that occur on Block 164, on Yolo Street and on Block 167, respectively, that are not explicitly authorized in Permits 1973.014.02 and M1985.030.01.

You are responsible for identifying all fill and uses that lack authorization, even if not asked about herein, and either removing said fill and uses from the Commission's jurisdiction or pursuing retroactive authorization to retain said fill and uses.

BCDC Jurisdiction. Permit M1985.030.01 provides notice that unless repaired, the area protected from tidal inundation by a flap gate will become Bay jurisdiction within one year of notice from BCDC staff, pursuant to Regulation 10123. Based on our review of the file, it appears that you did not submit a fileable application to repair this issue within one year (including a possible extension) from the date of being notified by BCDC of this condition, which first occurred on December 28, 1989, and was also discussed again in a letter dated November 19, 1990. On November 26, 1990, Landor Associates submitted a request to amend Permit 1973.014.00, to protect the site from tidal inundation, to which staff responded on December 24, 1990, by stating the additional information required to file the request as complete. It does not appear that you completed this process but if you believe this is incorrect, please let us know. On April 25, 1991, Caitlin Smith, formerly of BCDC, informed Albert Bianchi, formerly of counsel to the property owner, that "BCDC has determined that the Commodore heliport is within our "Bay" jurisdiction. This determination was based on site elevations submitted by Landor & Associates with their application for Amendment Two to Permit [1973.014], and observations of tidal inundation at the site. In addition, we have determined that BCDC regulation Section 10123 does not apply to land which may have previously been in BCDC's shoreline band jurisdiction but has now subsided to an elevation below the line of highest tidal

Steve Price, Commodore Marina
Enforcement Case No. 2019.063

RED Exhibit C
Page 6
September 15, 2020

action. Thus, any proposed fill at the helipad must be authorized under BCDC's laws and regulations pertaining to fill in the Bay.”

Erosion and Tidal Inundation. By letter dated February 24, 2004, you submitted a request to reconstruct the existing bulkhead within the houseboat marina (Block 167), to construct a new bulkhead at the heliport pad and to place fill to raise the elevation of the helipad (Block 164). By letter dated March 26, 2004, Leslie Lacko sent Scott Hochstrasser a letter outlining the additional information that staff required to file the request as complete. By letter dated June 23, 2005, Jennifer Feinberg returned this unfiled application to Mr. Hochstrasser. On April 28, 2008, William Kirsch, Architect, submitted a request on your behalf to replace a rotted wooden revetment, to which Rafael Montes, staff engineer, replied on April 29 and May 15, 2008. It also appears that you did not provide all the information required by staff to file this request as complete.

In addition and as stated above at the beginning of this letter, in light of the low lying elevation of this site and the tidal elevation that demarcates the boundary between SF Bay and the 100-foot shoreline band, which is the mean high tide line (and +5 feet above mean sea level in marshlands), it is anticipated that the site is in the Bay. Please inform us whether the tide/flap gate is operational and, if so, when and how it was repaired and whether it precludes tidal waters from inundating any portion of the authorized heliport pad. Based on site observations, if the tide gate is operational, the site experiences extensive flooding at certain tides. Please prepare a site survey that maps the location of the mean high tidal elevation where no marshlands are present, which at this location is 5.47 feet NAVD88 (data and source provided below). For those portions of the shoreline where marshlands are present, please map the plus five feet mean sea level tidal elevation, which at this location is 3.24 feet NAVD88 plus five feet equals 8.24 feet NAVD88.

In light of the fact that staff has observed the bulkhead erosion and through the record is aware of the frequent and severe tidal inundation, please advise staff if you have undertaken any maintenance at the property since submitting these two incomplete requests. Also inform us whether you have plans to pursue the Commission's authorization to reconstruct the bulkhead, seek permission to raise or otherwise protect any portion of the site from tidal inundation or for any other work.

Legal Interest. Please advise us whether you have permission to occupy and use Yolo, Bolinas and Parepa Streets. Based on 2020 conversations with representatives of Marin County, it appears that the County has advised you to pursue quiet title of the Yolo Street right-of-way. Please advise us if you plan to pursue quiet title of Yolo Street and, if so, if you have commenced that process and how long you expect it to take.

Houseboats. Special Condition No. II.D, Houseboats, of Permit 1973.014.02 requires the eleven (11) authorized houseboats to be moored within Block 167. It also states that the houseboats must float at a tidal stage of 5.0 feet Mean Lower Low Water (MLLW) datum without dredging and that any replacement houseboats must be of an equal or lesser draft than the houseboat it



Steve Price, Commodore Marina
Enforcement Case No. 2019.063

RED Exhibit C
Page 7
September 15, 2020

replaces. Each houseboat must be placed exactly as shown in an approved plan. As noted above, Permits 1973.014.01 and .02, authorized the reconstruction of the houseboat in Berth #11 and require it to be relocated out of the Yolo Street right-of-way and onto Block 167. The permit also authorizes the relocation of the houseboat in Berth #10 and replacement of the floats and associated pilings used to access these two houseboats. This work is required to be completed by October 31, 2020. Based on staff observation, the houseboat reconstruction is incomplete, and the houseboat remains moored beyond the boundary of Block 167 within the Yolo Street corridor. The BDC permit requires the work to occur in compliance with your RWQCB certification. The copy of this certification in our records designates that work may only occur between June 1 and November 30, among other conditions, and it expired on November 30, 2017. Please advise us of the status of this project and whether you will be able to meet this deadline in a permit compliant manner or whether you plan to seek another extension of completion time, in which case you should make said submittal as soon and possible to avoid expiration of this authorization.

Next Steps. Within 60 days of issuance of this letter, we expect you to restore the public access to permit compliant conditions and to submit a fileable request to amend the permit/s to authorize all unauthorized fill and uses, and to remove any unused fill from the site and to legally dispose of it. The process for amending the permits begins with submitting a letter describing the work that requires retroactive approval. Along with the letter, please provide scaled plans depicting BCDC's jurisdiction and required public access areas, discussed above, and a processing fee, which is determined based on the total project cost and is doubled for applications arising out of enforcement actions. Please proceed by seeking a non-material amendment to the existing major permit and, if necessary, a nonmaterial amendment to the administrative permit.

Sincerely,

DocuSigned by:

7A7D306B857043F...

ADRIENNE KLEIN

Principal Enforcement Analyst

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, California 94105

Tel: 415-352-3600

Fax: 415-352-3606

Email: adrienne.klein@bcdc.ca.gov

Website: www.bcdc.ca.gov



Steve Price, Commodore Marina
Enforcement Case No. 2019.063

RED Exhibit C

Page 8
September 15, 2020

cc: Neil Sorenson, Attorney representing Commodore Marina LLC, neil@sorensenlaw.com
Aaron Singer, CEO, San Francisco Seaplane Tours, aaron@seaplane.com
John Sharp, Attorney representing Seaplane Tours, john@johnsharpplaw.com
Jenna Brady, Marin County Counsel, JBrady@marincounty.org
Nicole Fairley, RWQCB, Nicole.Fairley@Waterboards.ca.gov
Amanda Culpepper, CDFW, Amanda.Culpepper@Wildlife.ca.gov
Roberta A Morganstern, USACE, Roberta.A.Morganstern@usace.army.mil

Enclosures: Permit 1973.014.01; Corrected Time Extension Letter, issued on September 2, 2020 (also known as Permit 1973.014.02); Permit M1985.030.01; Special Conditions excerpt (inserted below); Tidal Datums (inserted below).

AK /mm



San Francisco Bay Conservation and Development Commission

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

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

Via Certified Mail and Electronic Mail

October 8, 2021

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

For

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

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

Dear Seaplane Investment LLC:

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

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



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

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

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

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

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

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



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

Permit 1973.014.01 authorizes the permittees to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit C
October 8, 2021
Page 6

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

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

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

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

Sincerely,

Adrienne Klein

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



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit C
October 8, 2021
Page 7

AK/mm

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

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



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit C
September 8, 2021
Page 10

Attachment 2

Klein/Sharp Emails between July 14, 2021 and September 3, 2021

Will do.

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)

-----Original Message-----

From: Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov>
Sent: Friday, September 3, 2021 11:36 AM
To: John Sharp <john@johnsharpplaw.com>
Cc: Njuguna, Priscilla@BCDC <priscilla.njuguna@bcdc.ca.gov>
Subject: Re: Commodore/Seaplane at 240 Redwood Highway, Mill Valley 94941 (Enforcement Case ER2019.063)

Thank you, John,

Please do provide us with a date and also the status of the site survey?

Adrienne

Thank you, Adrienne,
I'm meeting with my client again today, and will provide you a new date early next week.

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)

-----Original Message-----

From: Klein, Adrienne@BCDC <adrienne.klein@bcdc.ca.gov>
Sent: Wednesday, August 25, 2021 11:33 AM
To: John Sharp <john@johnsharpplaw.com>
Cc: Njuguna, Priscilla@BCDC <priscilla.njuguna@bcdc.ca.gov>
Subject: Commodore/Seaplane at 240 Redwood Highway, Mill Valley 94941 (Enforcement Case ER2019.063)

John,

I have rec'd both of your messages indicating that you could not meet the 8/24 timeline to submit an amendment request that includes a jurisdictional determination, updated ownership information and the other information outlined below and in the attached communications from us. Please provide an alternate date when BCDC can expect your submittal.



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit C
October 8, 2021
Page 11

Below I have pasted in the email sent as part of our 7/14 meeting invitation and above I have attached the documents that I included with that email for your easy reference.

Thank you and sincerely,

Adrienne

On 8/25/21, 8:19 AM, "John Sharp" <john@johnsharp.com> wrote:

Hi Adrienne,
Don't know if you're back yet. I'm in deposition today. May we talk tomorrow or Friday?
Thanks,
John Sharp

Sent from my iPhone

(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 band and/or an intensification of use of the Yolo Street right of way for SeaPlane 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 feetNAVD88 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.



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit C
October 8, 2021
Page 12

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,

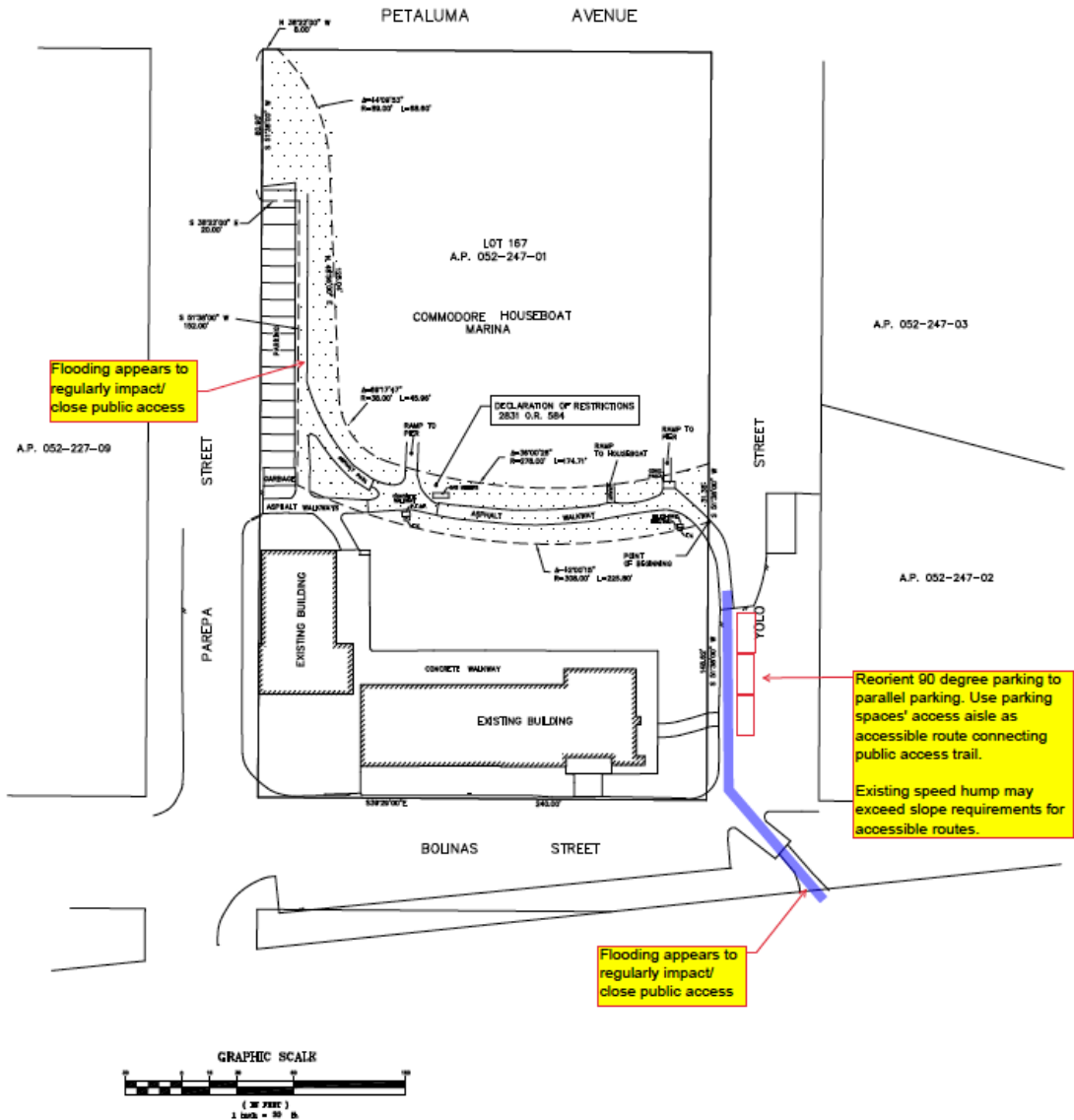
Adrienne Klein
SF BCDC
41-5252-3609

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



Attachment 3

BCDC Bay Development and Design Analyst
Public Access Recommendations, September 3, 2021



RED ^{Exhibit 11} Exhibit C

Assignment of BCDC Permit

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

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

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

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

dated August 24, 1973, as amended through Amendment

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

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

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

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

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

RED Exhibit C

-2-

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

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

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

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

DocuSigned by:
Lou Vasquez

(signature of assignee or person executing for
assignee)

Revised 2/2/00

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Assignment of BCDC Permit

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

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

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

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

dated December 28, 1985, as amended through Amendment

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

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

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

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

Sonoma, California.

DocuSigned by:

Steve Price

(signature of assignor or person executing for assignor)

RED Exhibit C

-2-

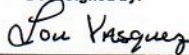
Seaplane Investments, LLC, 315 Linden Street, San Francisco, CA 94102, (415) 332-4843,
(full name, address, and telephone number of entity or person taking assignment)

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

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

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

DocuSigned by:



(signature of assignee or person executing for
assignee)

Revised 2/2/00

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OPERATING AGREEMENT OF SEAPLANE MANAGEMENT, LLC

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

RECITALS

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

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

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

AGREEMENT

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

1. FORMATION OF LIMITED LIABILITY COMPANY

1.1 Name and Principal Office.

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

1.2 Purpose.

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

1.3 Addresses of the Members.

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

1.4 Term of the Company.

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

RED Exhibit C

1.5 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2. CAPITALIZATION OF THE COMPANY

2.1 *Members; Capitalization.*

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

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

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

2.2 *Withdrawal and Return of Capital.*

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

2.3 *Limitation of Liability.*

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

3. COMPANY ACCOUNTING AND DIVISION OF PROFITS

3.1 *Fiscal Year/Accounting Method.*

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

RED Exhibit C

3.2 Distributions.

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

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

3.3 Allocation of Net Income and Net Losses.

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

3.4 Compliance with Regulatory Allocation Requirements.

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

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

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

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

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

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

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

3.5 Curative Allocations.

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

3.6 Members Not Resident in California.

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

3.7 Company Records.

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

3.8 Tax Information.

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

3.9 Tax Matters Representative

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

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

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

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

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

4. ADMINISTRATIVE PROVISIONS

4.1 *Management Vested in Manager.*

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

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

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

4.2 Member Approval for Certain Actions.

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

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

4.3 Competing Ventures.

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

4.4 Reimbursement and Compensation.

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

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

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

5. TRANSFER OF A COMPANY INTEREST

5.1 *Compliance With This Agreement.*

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

5.2 *No Lien or Encumbrance of Interest in Company.*

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

5.3 *Conditions on Transfer.*

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

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

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

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

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

5.4 Right of First Offer.

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

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

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

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

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

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

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

5.5 Transferee Not Admitted as Member.

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

5.6 Divorce of a Member; Spousal Consent.

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

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

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6. DISSOLUTION/TERMINATION OF COMPANY

6.1 *Dissolving Events.*

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

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

Act.

6.2 *Winding Up of the Company.*

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

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

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

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

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

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7. LIABILITY AND INDEMNIFICATION OF THE MANAGER AND MEMBERS

7.1 *Liability.*

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

7.2 *Indemnification.*

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

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

8. GENERAL PROVISIONS

8.1 *Entire Agreement*

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

8.2 *Amendments.*

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

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8.3 Governing Law.

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

8.4 Meetings of Members; Actions Without Meetings.

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

8.5 Severability.

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

8.6 Counterparts.

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

8.7 Captions.

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

8.8 Survival of Rights.

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

8.9 Additional Documents

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

8.10 Mediation, Arbitration and Attorneys' Fees

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

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

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

8.11 Notices

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

8.12 Gender

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

8.13 No Third Party Beneficiaries.

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

[Signature page follows.]

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

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

MANAGER:



Lou Vasquez

OTHER MEMBERS:



Signature

Aaron Singer

Print Name

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

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

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EXHIBIT B

SEAPLANE MANAGEMENT, LLC

Spousal Consent

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

Dated: _____, 20__

Signature of Spouse or Domestic Partner

Name of Spouse or Domestic Partner



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Audit Trail

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

Document History



SENT

07 / 23 / 2021
19:49:20 UTC

Sent for signature to Aaron Singer (aaron@seaplane.com) and Louis Vasquez (lou@bldsf.com) from robbie@bldsf.com
IP: 98.37.57.245



VIEWED

07 / 23 / 2021
22:55:26 UTC

Viewed by Aaron Singer (aaron@seaplane.com)
IP: 71.13.55.189



SIGNED

07 / 26 / 2021
16:19:41 UTC

Signed by Aaron Singer (aaron@seaplane.com)
IP: 166.205.124.70



VIEWED

07 / 26 / 2021
16:42:12 UTC

Viewed by Louis Vasquez (lou@bldsf.com)
IP: 73.162.17.92



SIGNED

07 / 26 / 2021
16:42:34 UTC

Signed by Louis Vasquez (lou@bldsf.com)
IP: 73.162.17.92



COMPLETED

07 / 26 / 2021
16:42:34 UTC

The document has been completed.

From: [Admin](#)
To: [ReceptionDesk@BCDC](#)
Cc: [Klein, Adrienne@BCDC](#); [Plater, Brent@BCDC](#); [John Sharp](#)
Subject: Seaplane Investment, LLC: 240-242 Redwood Highway: BCDC Enforcement Case ER2019.063, Permit 1973.014.01 (APN 052-247-01), and Permit M1985.030.01 (APN 052-247-02)
Date: Monday, February 28, 2022 3:59:55 PM
Attachments: [BCDC Abbreviated Regionwide Permit Application 2.28.22.pdf](#)
[A. Klein \(2-28-22\).pdf](#)

Dear Ms. Klein:

Attached please find a letter to BCDC and BCDC Abbreviated Regionwide Permit Application Form.

A check for the application fees of \$600 is posted as of this date.

Should you have any questions, please do not hesitate to contact Mr. Sharp.

Best regards,

Linda

Linda Soungpanya
Legal Assistant

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

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

John E. Sharp
john@johnsharpplaw.com

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

February 28, 2022

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: Seaplane Investment, LLC: 240-242 Redwood Highway: BCDC Enforcement
Case ER2019.063, Permit 1973.014.01 (APN 052-247-01), and Permit
M1985.030.01 (APN 052-247-02)

Dear Ms. Klein:

As you know, this office represents Seaplane Investment, LLC, (“Owner” or “Seaplane”), current owner of the above-referenced property. Please include this correspondence, and attached materials, in the administrative record.

Reference is made to, without limitation, your letters of September 15, 2020 and October 8, 2021, as well as various emails between you and Seaplane’s representatives between February 2020 and the present period. Attached hereto you will find Seaplane’s BCDC Abbreviated Regionalized Permit Application Form. We also include attachments, as referenced in your letter of October 8, 2021. We note that, of the matters you described in that letter, all have been completed and previously documented, with the exceptions of the application and documentation for “fill” on the parcels and documentation of public access to the shoreline. Those tasks comprise the content of this application. We believe that this submittal and attachments accomplish the remaining tasks. For reasons set forth below, with particular regard to surveying, final improvements to shoreline access path at north-east corner of the site which depends on the repair/replacement of the existing bulkhead, and right-of-way acquisition, this application is, of necessity, provisional, and subject to amendment.

With respect to the requested survey, we attach the survey of Lawrence P. Doyle, dated 5/3/21. An updated survey has been commissioned. Owner notes that, given recent Records of

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Adrienne Klein
February 28, 2022
Page 2

Survey of San Francisco Bay shoreline, the definition and location of “mean high tide line” is subject to change. Owner will supplement, as appropriate.

Seaplane refers to the following permit and entitlement history:

BCDC Permits:

Permit 1973.014.00; Permit 1973.014.01; Permit M1985.030.00; Permit M1985.030.01; Permit 1973.014.02; Permit 1973.014.03.

Marin County Permits (partial, according to most recent operative permits)

8/28/17: Resolution Number PC-17-007; a resolution recommending that the Board of Supervisors modify the Commodore Marina LLC Seaplane based Use Permit (Assessor’s Parcel: 052-247-01 and -02).

8/28/17: Staff Report to the Marin County Planning Commission.

11/30/12 Planning Information Packet, (“PIP”). County of Marin Planning Permit and Code Enforcement History: (undated, but most recent document referenced is 11/30/12 Price renewal permit).

11/30/12: Notice of Use Permit Renewal to Steven Price from Ben Berto, Principal Planner.

11/30/12: Notice of Use Permit Renewal and attachments.

6/18/2002: Staff Report to the Deputy Zoning Administrator.

5/16/2002: Notice of categorical exemption (CEQA).

7/24/85: Airport Master Record.

All documents are available at your request.

OPERATIVE ENTITLEMENTS

The County of Marin’s record reflects, under Planning permit history, that the Use Permit for the Property (both Assessor’s Parcel number 052-247-01 and -02) was renewed on November

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Adrienne Klein
February 28, 2022
Page 3

30, 2012, from the Use Permit granted on June 18, 2002. The 2002 approval, which was heard by the Deputy Zoning Administrator on May 23, 2002, describe the project as:

“... an application to consider a 5-year extension to a Use Permit approval originally granted in 1997 for the following improvements in the Commodore Center: (1) a 1,200 square foot children’s recreation center and day camp (Kid’s Headquarters -The Planet); (2) eight artist studios totaling 7,067 square feet of building area; and (3) a 1,240 square foot on-site property management office. The proposed uses occupy portions of existing buildings on a property also currently developed with a seaplane center (Commodore Seaplanes), a heliport, and a houseboat marina (Commodore Marina). Parking proposed for existing and proposed uses includes 17 on-site parking spaces, 3 on-street handicapped spaces, and 47 on-street parking spaces”.

The approval, which was granted a CEQA Categorical Exemption combined office and other uses under one Use Permit, all permitted under then extant zoning.

Under the project analysis set forth in the 2002 Staff Report supporting Use Permit approval, the County described the Seaplane base, a heliport, the 11-houseboat Marina, a daycare center, artist studios, and a property management office. Staff also noted that the seaplane base is permitted under previous Use Permits granted by the County in 1953 and 1983. (Notably, reference is also made to earlier Use Permits, having issued as early as February 6, 1950, but not included in the record of the 2002 approval).

2017 PLANNING COMMISSION REVIEW

On July 17, 2017, Marin County Code Enforcement Director Christy Stanley wrote to Seaplane Adventures and Commodore Marina, referencing a 1981 Use Permit and advising that the COMMUNITY DEVELOPMENT AGENCY had received a formal complaint regarding the number of aircraft being used for revenue producing purposes. Seaplane Adventures has reason to believe that the complaint was a politically-motivated attempt by four or five residents of Strawberry Point, which has been part of a pattern over the course of recent years. The culmination of the July 17, 2017 correspondence was a hearing before the Marin County Planning Commission on August 28, 2017, initiated for review of conditions to Seaplane’s Use Permit. The Planning Commission found no violation of any of Seaplane’s permits, or the conditions thereto, and, in fact, deleted prior conditions 1, 3 and 6 on the basis of federal preemption as briefed and argued by Mr. Singer and the undersigned at the Planning Commission hearing.

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Adrienne Klein
February 28, 2022
Page 4

The current effort among all stakeholders, including the County and BCDC is to facilitate compliance with any and all historic permits and conditions thereto, and/or updated permitting of the as-built uses at the site.

We attach Seaplane's Airport Master Record, referring to "Site Number 2281.c" and "Commodore Center", dated July 24, 1985. The Airport Master Record is the Federal Aviation Administration's expression of jurisdiction over use of the property by Seaplane Adventures. The Master Record is current and valid for Seaplane's operations. Commodore and Seaplane's leases and permits are also valid and current.

PARKING AND ACCESS

In the parking and traffic and circulation sections of the 2002 approval, County staff states that it has reviewed existing and proposed uses and finds no issue with the supply of on and off-street parking spaces in order to accommodate with the proposed project, with the exception of handicapped parking, which has been addressed. Staff also notes that "the proposed project would not change the existing level of use or exceed the capacity of roadways and freeway interchanges and the surrounding Shoreline Area as defined by the Tamalpais Area Community Plan".

Although parking and access questions regard to the Bolinas Avenue have arisen at various times, those questions appear to have been resolved by a combination of agreements between Seaplane's predecessor, Jack Krystal and the County of Marin. In March of 2019, Commodore Marina LLC, through its attorney, Neil Sorenson, recorded a NOTICE OF INTENT TO PRESERVE EASEMENT. The file is titled "Parepa Street Easement". The recordation on March 20, 2019 appears to have followed settlement of various claims, including those of Commodore's predecessors, pertaining to access for ingress and egress and utilities over Bolinas, Parepa and Yolo Street as said streets are shown on the recorded map, recorded in April 1869. The settlement was ultimately approved by the Marin County Board of Supervisors.

Seaplane is currently in communication with the County, to acquire rights to use and/or acquire the street known as Yolo Street, for shoreline access and parking purposes, as shown in the attachments to this correspondence and application. Meanwhile, you will see a proposal for shoreline access in the application materials. That acquisition is supported by the County. We are actively pursuing it, in that we are determining whether an uncontested action for quiet title, or a resolution of abandonment is the most timely and efficient way of proceeding. In the interim, please see the attached "Interim Shoreline Access Improvement Plan".

In addition to the application document submitted herewith, I am attaching my letters to you of November 13, 2020, June 15, 2021, September 24, 2021, and January 12, 2022. I am

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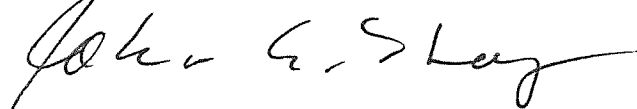
Adrienne Klein
February 28, 2022
Page 5

attaching this correspondence because, together with the application materials set forth herein, it describes the approximately 70-year history of use and permitting at the site, which we believe relates to our collaborative efforts to satisfy sometimes ancient permitting requirements throughout multiple ownerships of the property and the impacts of matters outside the control of Seaplane Investment, LLC on the long, multi-jurisdictional permitting process. Because of this long history and Seaplane's inability to control events prior to its ownership of the property, Seaplane notes that the accompanying application material is submitted without admission of liability. As you know, in earlier communications, I have stated Seaplane's reservation of appeal in reference to any potential fines or penalties. While we hope that the process of achieving conformance of conditions at the site to the permit amendments requested by the BCDC renders any appeal(s) unnecessary.

We recognize and appreciate the Commission's and your patience and cooperation in this process. We also appreciate the multiple site visits among yourself, Mr. Singer and the undersigned.

Seaplane looks forward to its continuing cooperative relationship with the Commission. Please feel free to contact me at your convenience with referenced to any question or comment.

Very truly yours,
LAW OFFICES OF JOHN E. SHARP



John E. Sharp

JES/lis

cc: Brent Plater (via email)

BCDC Abbreviated Regionwide Permit Application Form

Use this form to:

Provide Notice of Intent to
Proceed with a Project Under
an Abbreviated BCDC
Regionwide Permit

For BCDC Use Only

Application number: _____
Fee: _____
Date filed: _____
Date notice posted: _____
Receipt number and date: _____
Entered PTS: _____



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Application Checklist

Abbreviated
Regionwide
Permit



Abbreviated
Application Form:

One fully
completed
and signed
original



Large Scale
Project Site Plan

One Copy



8¹/₂"x11"
Project Site Plan

One Copy



8¹/₂"x11"
Vicinity Map

One Copy



Proof of
Legal Interest

One Copy



Permit
Processing Fee

See Summary
of Application
Fees

*Additional drawings are needed for projects that are evaluated by the Commission's Design Review Board or Engineering Criteria Review Board.

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State of California

Memorandum

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, California 94105

415-352-3600 | E-mail address: info@bcdc.ca.gov

TO: Project Applicants

FROM: Executive Director, BCDC

SUBJECT: Reassurance

Completing this abbreviated application form is not as difficult as it may look. Few applicants have to complete all parts of the form.

The easiest way to complete the application is to open the form to Box 1, refer to the instructions for Box 1, complete section (a) of Box 1 according to the instructions, and proceed section by section, box by box through the entire form.

We have tried to make the instructions clear, concise and complete. By carefully following the instructions, you will provide us with all the information we need to process your application. If you have any difficulty in completing the form or have any questions about the Commission, please call us at 415/352-3600 or visit our office at 375 Beale Street, Suite 510 in San Francisco.

We look forward to working with you on your project.

October 1996

This publication was prepared with financial assistance from the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, United States Department of Commerce under the provisions of the federal Coastal Zone Management Act of 1972, as amended.

Box 1

Applicant Information

a. PROPERTY OWNER:

- Individual Private Entity
- Government Non-profit

Name: Seaplane Investment, LLC

Address: 242 Redwood Highway

City, State, Zip: Mill Valley, CA 94941

Telephones: 415 / 748-1855; 415-479-1645 /

b. OWNER'S REPRESENTATIVE: None

Name: John E. Sharp, Esq., Law Offices of John E. Sharp


Address: 24 Professional Center Parkway, Suite 110

City, State, Zip: San Rafael, CA 94903

Telephones: 415 / 479-1645 /

Affiliation to Applicant: Attorney

I hereby authorize John E. Sharp, Esq.
to act as my representative and bind me in all matters concerning this application.


 Signature of Owner

02/28/2022
 Date (dd/mm/yyyy)

Lou Vasquez
 Printed Name of Owner

c. APPLICANT:

- Individual Private Entity
- Government Non-profit

Name: Same as above

Address: _____

City, State, Zip: _____

Telephones: _____ / _____ / _____

(Continued on Page 2)

RED Exhibit C

(Applicant Information Continued from Page 1)

d. APPLICANT'S REPRESENTATIVE: None

Name: _____

Address: _____

City, State, Zip: _____

Telephones: _____ / _____

Affiliation to Applicant: _____

*I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.*

Signature of Applicant

Date (dd/mm/yyyy)

Printed Name of Applicant

e. CO-APPLICANT: None

Individual

Private Entity

Government

Non-Profit

Name: _____

Address: _____

City, State, Zip: _____

Telephones: _____ / _____

f. CO-APPLICANT'S REPRESENTATIVE: None

Name: _____

Address: _____

City, State, Zip: _____

Telephones: _____ / _____

Affiliation to Applicant: _____

*I hereby authorize _____
to act as my representative and bind me in all matters concerning this application.*

Signature of Co-Applicant

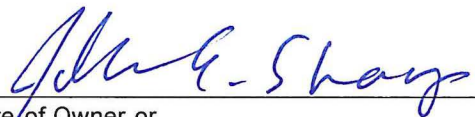
Date

Printed Name of Co-Applicant

Box 2

Certification of Accuracy of Information

I hereby certify under penalty of perjury that to the best of my knowledge the information in both Part I and Part II of this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for denying the permit, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.



Signature of Owner or
Owner's Representative



Date

Signature of Applicant or
Applicant's Representative

Date

Signature of Co-applicant or
Co-applicant's Representative

Date

Box 3

Project Information

- a. Project Name: NEW SHORELINE ACCESS IMPROVEMENTS & AFTER-THE-FACT AUTHORIZATIONS
- b. Project Description: AFTER-THE-FACT AUTHORIZATION FOR BOAT DOCKS, FUEL TANK, SEAPLANE STORAGE & REPAIR
NEW BOARDWALK & TRANSITION APRONS TO CONNECT BIKE PATH WITH SHORELINE ACCESS PATH
NEW ADA PARKING & SIGNAGE, STRIPING & ASPHALT TRANSITION RAMPS
- c. Date work is expected to begin: JUNE 1, 2022
Date work is expected to be completed: SEPTEMBER 1, 2022
- d. Does the project involve the placement of fill of any type in San Francisco Bay or within a salt pond, a managed wetland, or a certain waterway ?
 Yes No
If "Yes," complete Box 5.
- e. Does the project involve development within the shoreline band around San Francisco Bay?
 Yes No
If "Yes," complete Box 6.
- f. Total Project Cost: \$ 50,000.00

Box 4

Site Information

- a. Street Address: 242 REDWOOD HIGHWAY
- b. City, County, State, Zip: MILL VALLEY, MARIN, CA, 94941
- c. Assessor's Parcel Numbers): 052-247-01 052-247-02
 None
- d. ID number(s) of previous BCDC permit(s) issued for work on this site: 1973.014.03 M1985.030.01
 None
- e. Provide a brief description of the existing condition of the site, including the present elevations, current vegetation, existing structures and use of the site.

RED Exhibit C

Existing Conditions at 242 Redwood Highway, Mill Valley, CA 94941

The site consisting of two lots (052-247-01 & 052-247-02) is located in Mill Valley, and on Richardson Bay shoreline. The site is developed with a houseboat marina consisting of 11 houseboats and access docks, a Sea Plane launch and landing ramp & dock which includes four adjunct boat docks, two helicopter pads, two fuel tanks, a two-story building, a one-story building, and parking on grade.

The two-story building with a total area of 11,279 sq. ft., and a ground floor elevation of +/- 6.95' (NAVD88) houses the Sea Plane Adventures front office, and other office uses. The one-story building with an area of 4,119 sq. f.t, and a ground elevation of +/- 6.45' (NAVD88) houses the Sea Plane Adventures repair shop and other office uses. The site currently includes an asphalt shoreline access path which will be connected to the existing bike & pedestrian path. The site vegetation consists of lawn on the east and west side of the existing two-story building, Three small tress on the east lawn, and two Eucalyptus trees on the north side of the two-story building. There are seasonal grasses along the bike path and tidal vegetation along the shoreline.

Box 5

Bay Fill Information

(“Fill” means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks....” Cal. Gov. Code Section 66632(a))

- a. What is the basic purpose of the new fill in the Bay?

BOAT DOCKS, SEAPLANE LAUNCH RAMP & FUEL TANK (AFTER-THE -FACT)

NEW BOARDWALK W/ ASPHALT CONFORMS, SIGNAGE, ADA PARKING & ASPHALT TRANSITIONS ALONG SHORELINE ACCESS PATH

- | | | | |
|----|--|--------------|-------------|
| b. | Total volume of water, marsh, or salt pond to be filled: | <u>3.25</u> | cubic yards |
| c. | Area to be covered with solid fill: | <u>1,272</u> | square feet |
| d. | Area to be covered with floating fill: | <u>2,422</u> | square feet |
| e. | Area to be covered with pile-supported fill: | <u>544</u> | square feet |
| f. | Area to be covered with cantilevered fill: | <u>0</u> | square feet |
| g. | Area to be covered with any other type of fill.
(Specify type of fill): | | |
| | N/A | <u>0</u> | square feet |
| h. | Total area to be filled: | <u>4,238</u> | square feet |

Box 6

Shoreline Band Information

("Shoreline band" means "...all territory located between the shoreline of San Francisco Bay...and a line 100 feet landward of and parallel with that line..." Cal. Gov. Code Section 66610(b))

- a. Types of activities to be undertaken or materials to be placed along the shoreline:

**ONE 20'W x 35'L x 1.5"D SEAPLANE LAUNCH RAMP
MADE OF 2X6 COMPOSITE LUMBER PLACED ON
GRADE (AFTER-THE-FACT)**

- b. Will the project be located within a water-oriented priority use area that is designated in the San Francisco Bay Plan?

Yes No

If "No," go to section (c).

If "Yes," indicate which priority use the area is reserved for:

Will the project use be consistent with the priority use for which the site is reserved?

Yes No

If "Yes," go to section (c).

If "No," attach an explanation of how the project can be approved despite this inconsistency.

- c. Provide dimensions of portions of all structures to be built within the shoreline band, including length, width, area, height, and number of stories:

**NO BUILDINGS OR STRUCTURES OTHER THAN
ONE 20'W x 35'L x 1.5"D SEAPLANE LAUNCH RAMP**

7656L

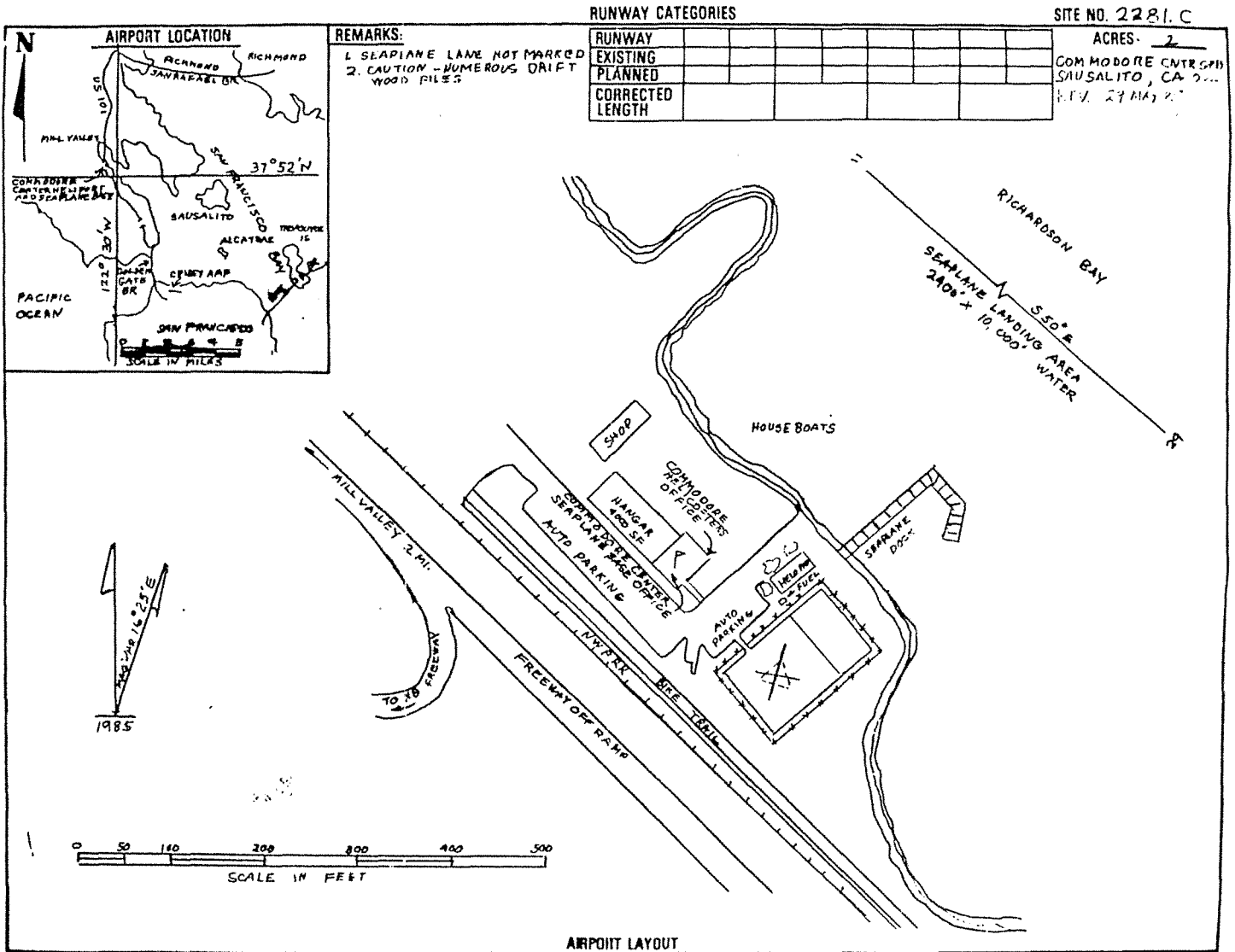
>1 ASSOC CITY: Sausalito
>2 AIRPRT NAME: COMMODORE CENTER
>3 CED TO AIRPRT(NM): P2 NW 6 REG/ADD: AMP/SFO 7 SECT AFRO,CHT: SAN FRANCISCO
4 STATE: CA 5 COUNTY: MARIN CA

GENERAL		SERVICES		BASED AIRCRAFT	
>10 OWNERSHIP: PRIVATE		>70 FUEL: 1PPLL	90 SINGLE ENG: 3		
>11 OWNER: COMMODORE PROPERTIES		>71 AIRFRAME PPRS: MINOR	91 MULTI ENG: 0		
>12 ADDRESS: FERRY BOAT KLAMATH, PIER 5 SAN FRANCISCO, CA 94111		>72 PWR PLANT PPRS: MINOR	92 JET: 0		
>13 PHONE NR:		>73 BOTTLE OXYGEN: NONE	TOTAL: 3		
>14 MANAGER: D WALLACE/P BREINIG		>74 BULK OXYGEN: NONE	93 HELICOPTERS: 0		
>15 ADDRESS: 242 REDWOOD HWY MILL VALLEY, CA 94941		75 TSNT STORAGE: NONE	94 GLIDERS: 0		
>16 PHONE NR: 415-332-4843		76 OTHER SERVICES: INSTR	95 MILITARY: 0		
>17 ATTENDANCE SCHEDULE:			96 ULTRA-LIGHT: 0		
MONTHS ALL		FACILITIES		OPERATIONS	
DAYS ALL		HOURS DAWN-CUSK		-----	
ESTIMATED		>80 ARPT BCN: N	100 AIP CARRIER: 0		
		>81 APT LGT SKED:	101 COMPUTER: 0		
		>82 UNICOM:	102 AIR TAXI: 0		
		>83 WIND INDICATOR: YES	103 G A LOCAL: 252P		
		84 SEGMENTED CIRCLE: NONE	104 G A ITNRNT: 1P		
		85 CONTROL TWR: NO	105 MILITARY: 0		
		86 FSS: CAKLAND	TOTAL: 2518		
		87 FSS CN ARPT: NO	OPERATIONS FDR 12		
		88 FSS PHONE NR: 415-273-6284	MOS ENDING 29MAY85		
		89 TOLL FREE NR: 668-1455			

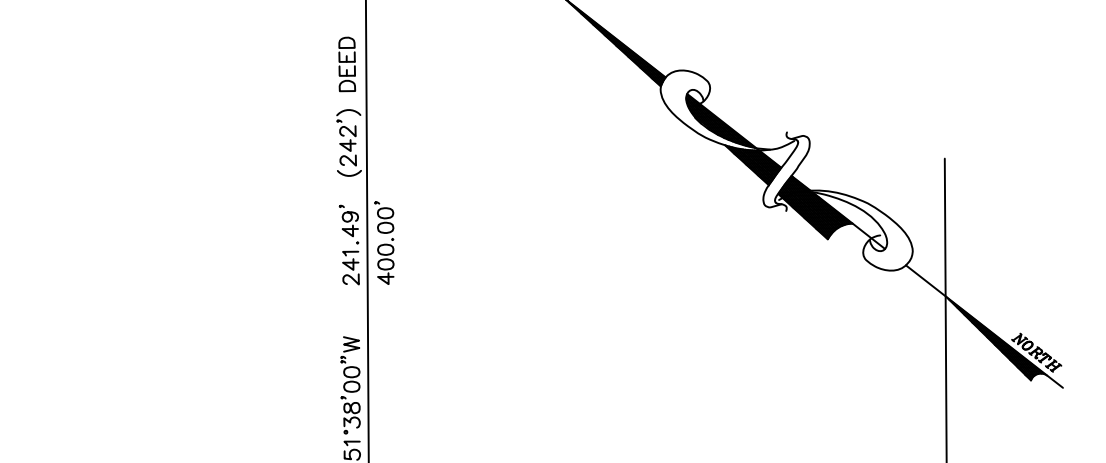
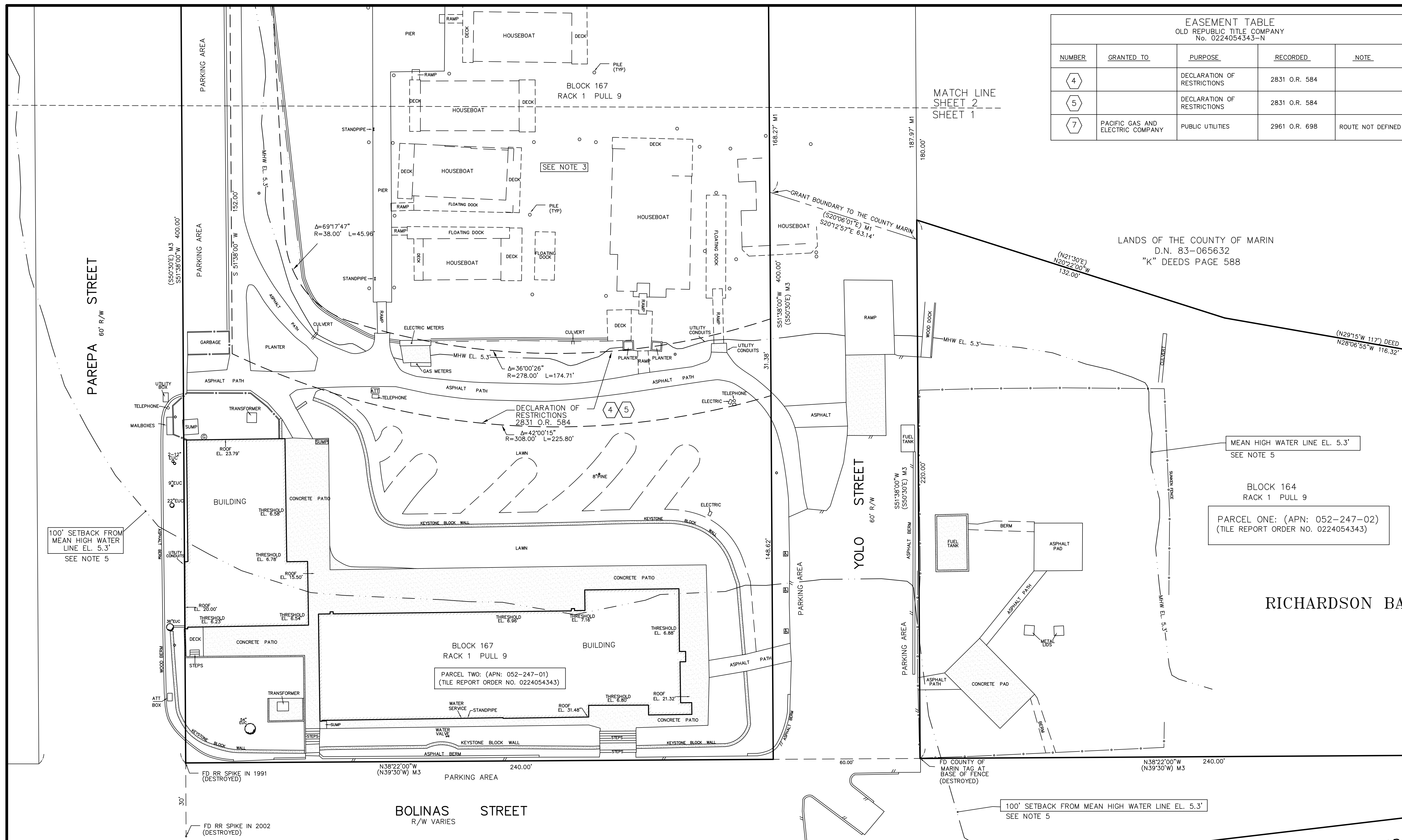
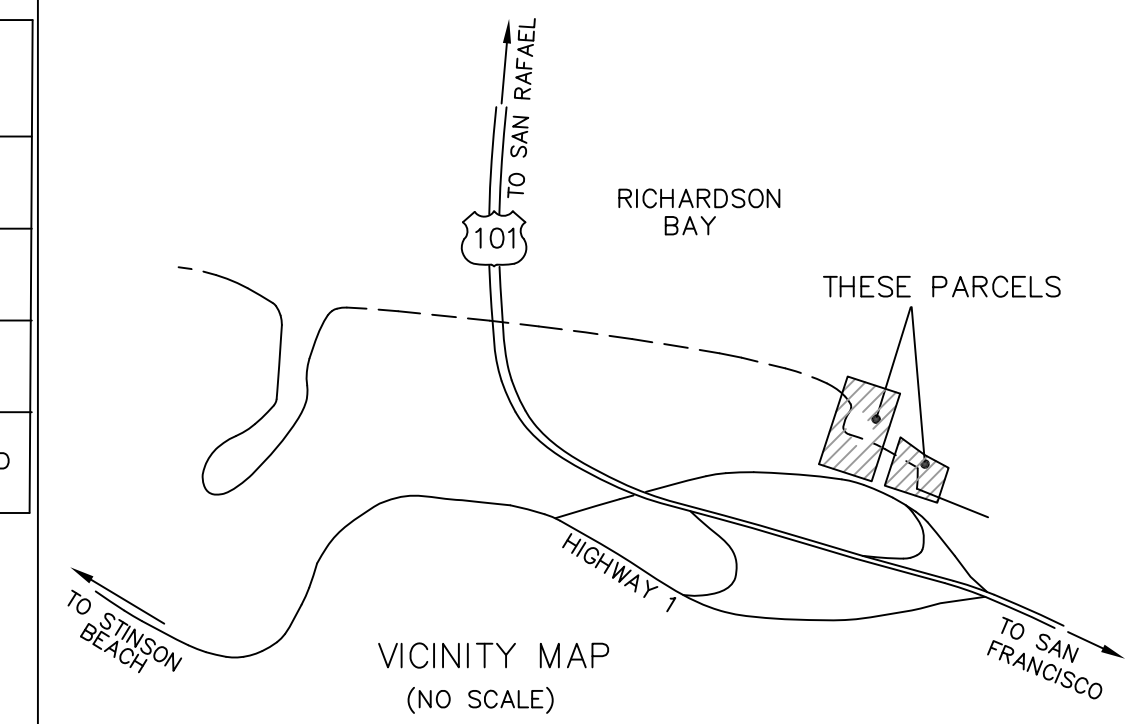
RUNWAY DATA		LIGHTING/APCH AIDS				OBSTRUCTION DATA			
>30 RUNWAY IDENT		11/29				11/29			
>31 LENGTH:	18888								
>32 WIDTH:	249R								
>33 SURF TYPE-COAC	WATER								
>34 SURF TREATMENT									
>35 GROSS WT: SL									
>36 (IN THSCS) DW									
>37	DTL								
>38	DCTL								
OBSTRUCTION DATA		11/29				11/29			
>50 FAR 77 CATEGRY	B(V) /B(V)								
>51 DISPLACED THR	/								
>52 CTLG OBSTN	BRIDGE/MILL								
>53 OBSTN MARKED/LETD	/								
>54 HGT ABOVE RVY END	58 /158								
>55 DIST FROM RVY END	1500 /3888								
>56 CNTRLN OFFSET	288R /388R								
>57 OBSTN CLNC SLOPE	28:1 /28:1								
>58 CLOSE-IN OBSTN	/								
28:1 LANDING LENGTH		11/29				11/29			
>60 LANDING RVY-LENGTH	/								
>61 CTLG OBSTACLE	/								
>62 HGT-ABOVE THR	/								
>63 DIST FROM THR	/								
>64 CNTRLN OFFSET	/								

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >
 1118 REMARKS:
 A278 FUEL SALE TO TRANSIENTS RESTRICTED TO EMERGENCY ONLY.
 A118 -B1 SEAPLANE LAKE NOT MARKED.
 A118 -B2 CAUTION: NUMEROUS DRIFT WOOD PILES.

RED Exhibit C



EASEMENT TABLE OLD REPUBLIC TITLE COMPANY No. 0224054343-N				
NUMBER	GRANTED TO	PURPOSE	RECORDED	NOTE
4		DECLARATION OF RESTRICTIONS	2831 O.R. 584	
5		DECLARATION OF RESTRICTIONS	2831 O.R. 584	
7	PACIFIC GAS AND ELECTRIC COMPANY	PUBLIC UTILITIES	2961 O.R. 698	ROUTE NOT DEFINED



NOTES

- ONLY SIGNIFICANT TREES SHOWN
- DATUM IS NAVD 1988
- BENCH MARK E 1444 NGS ELEVATION 12.84 FEET
- HOUSEBOATS AND FLOATING DOCKS WERE SURVEYED TO ON 3/8/21
- ONLY VISIBLE UTILITIES WERE LOCATED
- THE MHW LINE WAS SURVEYED TO ON 3/8/21

DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF MARIN STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE: (APN: 052-247-02)
BLOCK 164, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "OFFICIAL MAP OF LANDS OF SAUSALITO LAND AND FERRY COMPANY", RECORDED APRIL 26, 1869 IN RACK 1 OF MAPS, AT PULL 9, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY BENJ. F. WASHINGTON, RODMOND GIBBONS AND L.L. BULLOCK, A BOARD OF TIDE LAND COMMISSIONERS, TO THOMAS RYAN, RECORDED MAY 26, 1871 IN BOOK 'K' OF DEEDS AT PAGE 588.

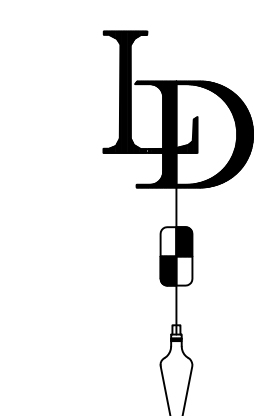
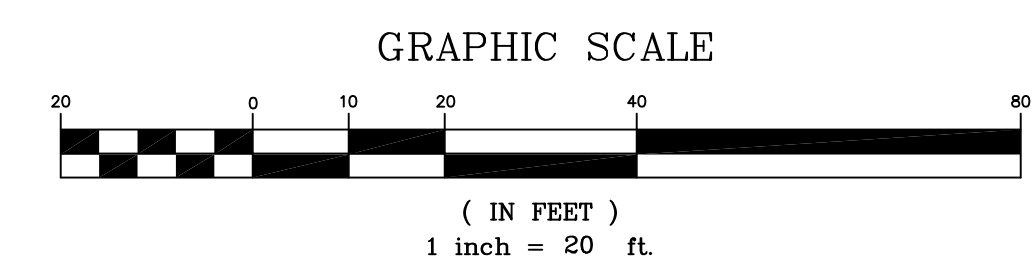
ALSO EXCEPTING THEREFROM ANY PORTION THEREOF INCLUDED IN THE RIGHT OF WAY OF THE NORTHWESTERN PACIFIC RAILROAD.

PARCEL TWO: (APN: 052-247-01)
BLOCK 167, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "OFFICIAL MAP OF LANDS OF SAUSALITO LAND AND FERRY COMPANY", RECORDED APRIL 26, 1869 IN RACK 1 OF MAPS, AT PULL 9, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA.

CERTIFICATION

TO: _____
THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2 & 3 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON APRIL 3, 2021.

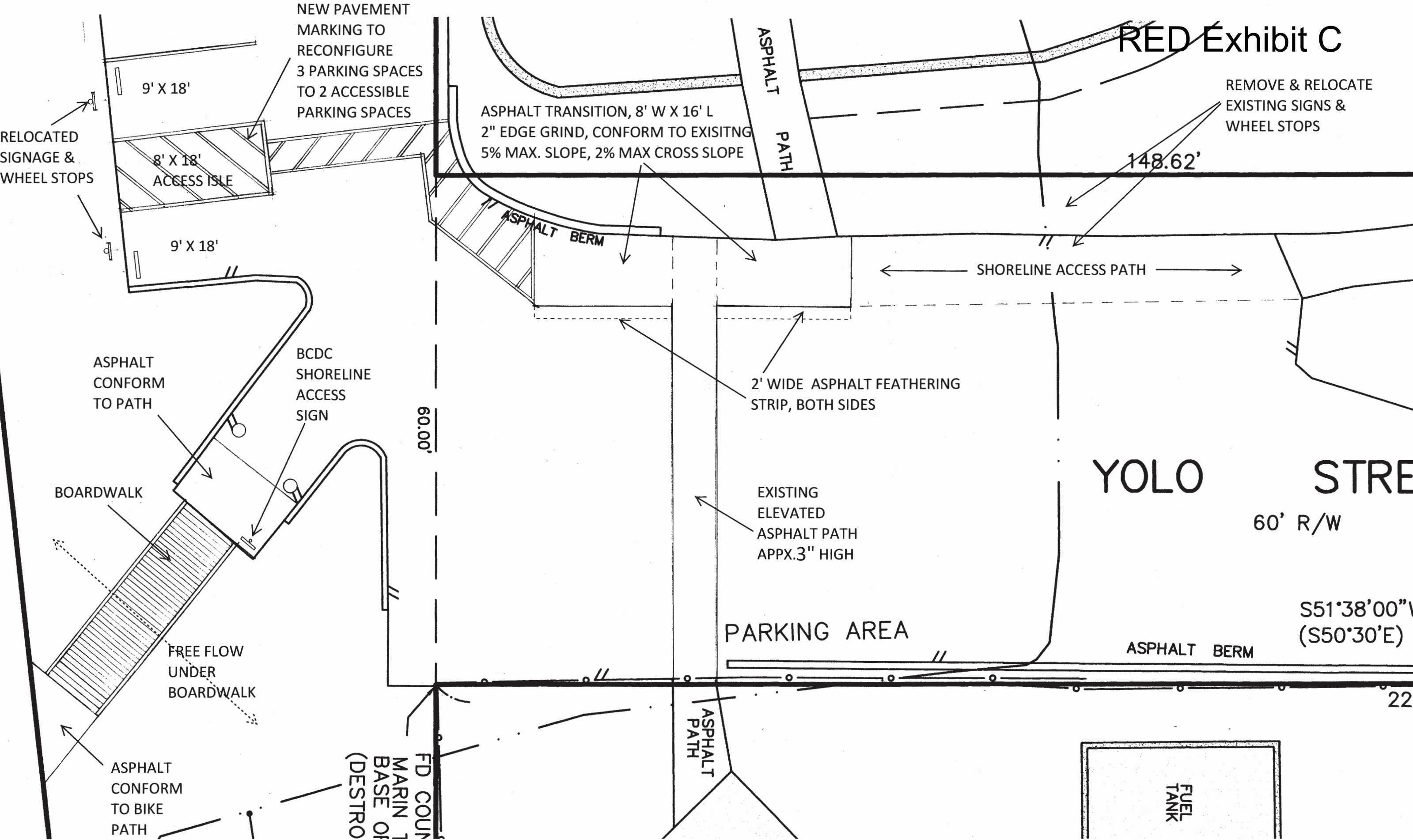
DATE OF PLAT OR MAP: MAY 3, 2021
LAWRENCE P. DOYLE, PLS 4694 DATED: _____



© 2021
THIS DRAWING IS THE PROPERTY OF LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER AND MAY NOT BE DUPLICATED OR USED WITHOUT PERMISSION

ALTA / ACSM
240-242 REDWOOD HWY / A.P. 052-247-01,02
SAUSALITO MARIN COUNTY CALIFORNIA

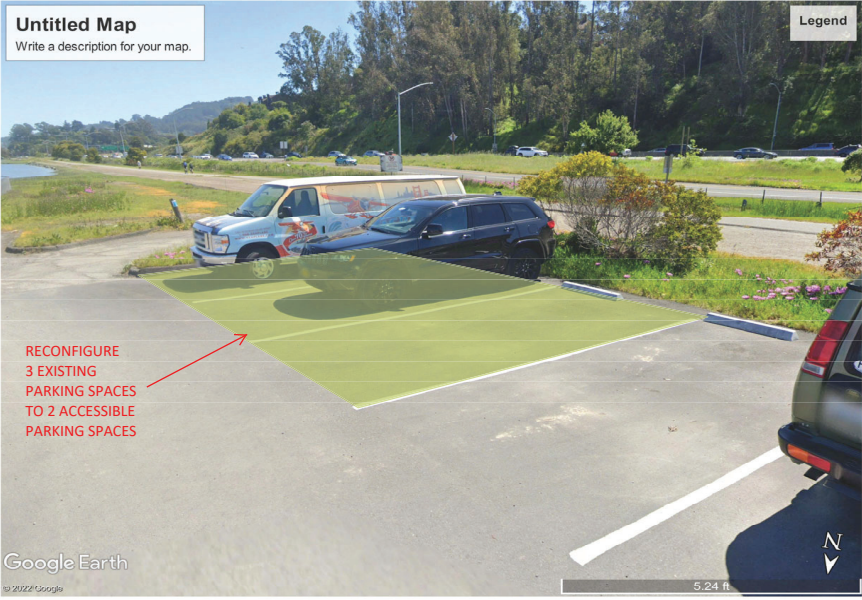
SCALE: 1" = 16'
DATE: 5/3/21
DRAWN BY: SHEET 1 OF 2
LAWRENCE P. DOYLE
LAND SURVEYOR/CIVIL ENGINEER
100 HELENS LANE MILL VALLEY, CA 94941 (415) 388-9585
DRAWING NO. 2916



INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN



RED Exhibit C



INTERIM BCDC ACCESS IMPROVEMENTS ANNOTATED PHOTOS



RED Exhibit C



- ① EXISTING MULTI-USE ASPHALT PATH
- ② NEW ADA PARKING SPACES
- ③ SHORELINE ACCESS PATH
- ④ NEW BOARDWALK WITH ASPHALT TRANSITIONS TO EXISTING GRADES
- ⑤ NEW POLE-MOUNTED SHORELINE ACCESS SIGNAGE
- ⑥ NEW ASPHALT TRANSITION RAMP
- ⑦ SEE "INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN" FOR MORE DETAILS
- ⑧ REMOVE EXISTING PARKING SPACES
- ⑨ EXISTING PARKING SPACES TO REMAIN
- ⑩ EXISTING 10'-8" L x 5'-4" W x 4'-0" H ABOVE SURFACE CONCRETE FUEL TANK TO REMAIN
- ⑪ EXISTING FUEL TANK IN CONCRETE CONTAINMENT BDCD PERMIT M1985-030-01
- ⑫ THIS DOCK HAS BEEN REMOVED
- ⑬ 20' W x 35' L RAMP CONSISTING OF 2X6 "TREX" BOARDS ON GRADE
- ⑭ EXISTING BAOT DOCK ADDITIONS TO THE EXISTING SEAPLANE DOCK TO REMAIN
- ⑮ THIS HOUSEBOAT HAS BEEN MOVED TO THE POSITION INDICATED BY DOTTED LINE, 1973.014.03
- ⑯ EXISTING SEAPLANE DOCK TO REMAIN (REPAIRED)
- ⑰ SEAPLANE PARKING & REPAIR AREA

GRAPHIC SCALE 240 ft

PHOTO SITE PLAN OF 242 REDWOOD HIGHWAY, MILL VALELY, CA 94941

Google Earth

RED Exhibit C



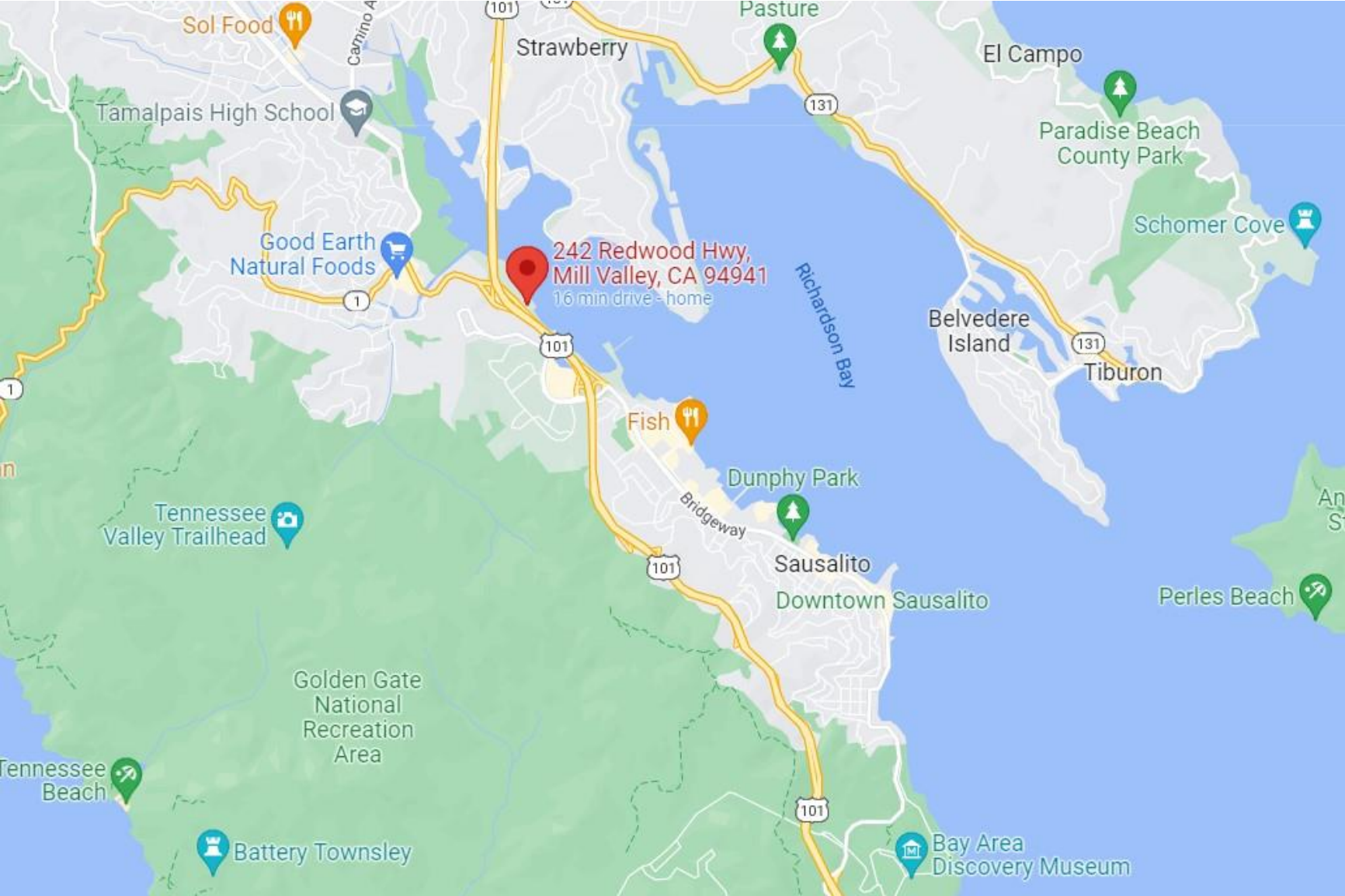
- ① EXISTING MULTI-USE ASPHALT PATH
- ② NEW ADA PARKING SPACES
- ③ SHORELINE ACCESS PATH
- ④ NEW BOARDWALK WITH ASPHALT TRANSITIONS TO EXISTING GRADES
- ⑤ NEW POLE-MOUNTED SHORELINE ACCESS SIGNAGE
- ⑥ NEW ASPHALT TRANSITION RAMP
- ⑦ SEE "INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN" FOR MORE DETAILS
- ⑧ REMOVE EXISTING PARKING SPACES
- ⑨ EXISTING PARKING SPACES TO REMAIN
- ⑩ EXISTING 10'-8"L x 5'-4"W x 4'-0"H ABOVE SURFACE CONCRETE FUEL TANK TO REMAIN
- ⑪ EXISTING FUEL TANK IN CONCRETE CONTAINMENT BCDC PERMIT M1985-030-01
- ⑫ THIS DOCK HAS BEEN REMOVED
- ⑬ 20'W X 35'L RAMP CONSISTING OF 2X6 "TREX" BOARDS ON GRADE
- ⑭ EXISTING BAOT DOCK ADDITIONS TO THE EXISTING SEAPLANE DOCK TO REMAIN
- ⑮ THIS HOUSEBOAT HAS BEEN MOVED TO THE POSITION INDICATED BY DOTTED LINE, 1973.014.03
- ⑯ EXISTING SEAPLANE DOCK TO REMAIN (REPAIRED)
- ⑰ SEAPLANE PARKING & REPAIR AREA

GRAPHIC SCALE 240 ft

PHOTO SITE PLAN OF 242 REDWOOD HIGHWAY, MILL VALELY, CA 94941

Google Earth

RED Exhibit C



VICINITY MAP

242 REDWOOD HIGHWAY, MILL VALLEY, CA 94941

NO SCALE

RED Exhibit C

FILL TYPES & QUANTITIES
 NEW SHORELINE ACCESS IMPROVEMENTS & AFTER-THE-FACT AUTHORIZATIONS
 LOCATED AT
 242 REDWOOD HIGHWAY, MILL VALLEY, CA 94941

ITEM	NO. ON SITE PLAN	LOCATION	FILL	TYPE	MATERIAL	FILL AREA IN SQ. FT.	FILL VOLUME IN C.Y.	AUTHORIZATION
CONFORM	4	PARKING LOT	YES	SOLID	ASPHALT ON GRADE	252	4.67	NEW
CONFORM	4	BIKE PATH	YES	SOLID	ASPHALT ON GRADE	135	2.50	NEW
BOARDWALK	4	TIDAL SWALE	YES	PILE SUPPORTED	WOOD ON PILES	544	0.00	NEW
SHORELINE ACCESS SIGNAGE	5	PARKING LOT	YES	SOLID	STEEL	0	0.00	NEW
ADA PARKING & SIGNAGE	2	PARKING LOT	NO	N/A	N/A	0	0.00	NEW
ASPHALT TRANSITIONS	6	PARKING LOT	YES	SOLID	ASPHALT	128	1.20	NEW
REMOVE PARKING SPACES	8	PARKING LOT	NO	N/A	N/A	0	0.00	NEW
MAINTAIN PARKING SPACES	9	PARKING LOT	NO	N/A	N/A	0	0.00	AFTER-THE-FACT
CONCRETE FUEL TANK	10	PARKING LOT	YES	SOLID	CONCRETE (HOLLOW)	57	8.43	AFTER-THE-FACT
FUEL TANK & CONTAINMENT	11	HELICOPTER PAD	N/A	N/A	N/A	0	0.00	PERMIT M1985-030-01
BOAT DOCK	12	SHORELINE	N/A	N/A	N/A	0	0.00	HAS BEEN REMOVED
SEAPLANE LAUNCH RAMP	13	SHORELINE	YES	SOLID	COMPOSITE LUMBER	700	3.25	AFTER-THE-FACT
BOAT DOCKS	14	BAY	YES	FLOATING	WOOD & FOAM	894	N/A	AFTER-THE-FACT
HOUSEBOAT	15	BAY	N/A	N/A	N/A	0	0.00	PERMIT 1973-014-03
SEAPLANE DOCK	16	BAY	YES	FLOATING	WOOD & FOAM	1,528	N/A	AFTER-THE-FACT REPAIR
SOLID FILL AREA						1,272		
FLOATING FILL AREA						2,422		
PILE SUPPORTED FILL AREA						544		
TOTAL FILL AREA						4,238		

Exhibit 24A. January 31, 2020. Staff photograph depicting water access ramp before its unauthorized reconstruction in March, 2022. RED EXHIBIT 0



Exhibit 24B. March 14, 2022. Photograph 1 depicting ~~unauthorized~~ **unauthorized** C excavation and rebar and concrete ramp construction.



Exhibit 24C. March 14, 2022. Photograph 2 depicting unauthorized excavation and rebar and concrete ramp construction.



Exhibit 24D. April 22, 2022. Staff photograph depicting completed water access ramp. RED Exhibit C



From: [REDACTED]
Sent: Monday, March 14, 2022 7:05 AM
To: Plater, Brent@BCDC; Bal, Tarisha; Brady, Jenna
Subject: URGENT: Seaplane Adventures--New Unpermitted Seaplane Ramp Construction Underway in SF Bay

Counsel:

We are bringing to your attention this large, new construction project (rebar-reinforced concrete seaplane ramp) currently being undertaken in SF Bay by, we assume, Seaplane Adventures. See the pictures below taken on Sunday 3/13 for evidence of the project currently underway. This is no mere replacement project.

We assume that BCDC has not authorized or permitted this Bay fill and therefore request that enforcement staff order this illegal construction halted immediately.

Furthermore, we understand that no County building permit has been issued for this project, and thus request that the County immediately "red tag" this work, requiring all work to halt.

If any authorization for this Bay fill was previously granted by either BCDC or the County, please advise on what basis that permitting was granted.

Regards, [REDACTED]

[REDACTED]

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.



Please consider the effects on the environment before printing this e-mail.

RED Exhibit C



RED Exhibit C



RED Exhibit C


From: [REDACTED]
Sent: Monday, March 14, 2022 3:12 PM
To: Plater, Brent@BCDC; Bal, Tarisha; Brady, Jenna
Subject: FW: Seaplane Adventures Ramp Concrete Pour

All: And here they are pouring the concrete for their new launching ramp into the Bay today. What does it say about them that they can get this done in such a hurry, without permits apparently, but they can't be bothered to address any of the work that BCDC has been requiring of them for so many months. Please let me know what action the BCDC and the County plan to take in response.

[REDACTED]

[REDACTED]

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

 Please consider the effects on the environment before printing this e-mail.

RED Exhibit C



RED Exhibit C



RED Exhibit C



San Francisco Bay Conservation and Development Commission

RED Exhibit C

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

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

March 15, 2022

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

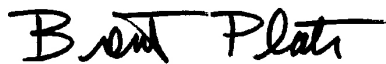
SUBJECT: Executive Director Cease and Desist Order 2022.002

Dear Seaplane Investment, LLC:

The San Francisco Bay Conservation and Development Commission's Executive Director issued the attached Cease and Desist Order today, ordering you to cease activities that violate the McAteer-Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan. The Cease and Desist Order also requires you to restore the sites where the violations occurred, and precludes you from conducting additional violations.

The violations identified in the Cease and Desist Order are also subject to formal Commission enforcement proceedings where additional injunctive relief and civil administrative liability of up to \$2,000 per day for each violation can be imposed. Within the next 90 days you will receive a Violation Report and Complaint that identifies each violation, calculates the expected civil administrative liability, and establishes a hearing date before the Commission's Enforcement Committee.

Sincerely,



Brent Plater
Lead Enforcement Attorney
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3628
Email: brent.plater@bcdc.ca.gov

cc: John E. Sharp, 24 Professional Center Parkway, Suite 110, San Rafael, CA 94903

Enclosure: Executive Director Cease and Desist Order 2022.002



San Francisco Bay Conservation and Development Commission

RED Exhibit C

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

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

Via Certified Mail

ISSUED BCDC

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

Respondent

EXECUTIVE DIRECTOR CEASE AND DESIST
NO. ECD2022.002.00

Date of Issuance: March 15, 2022

Expiration Date: June 13, 2022

To Seaplane Investment, LLC:

I. CEASE AND DESIST

Pursuant to my authority under California Government Code Section 66637, I hereby order you, Seaplane Investment, LLC (Respondent), all of your agents and employees, and any other persons or companies acting in concert with you, to cease and desist all of the following activities which you have undertaken or are threatening to undertake in violation of the McAteer-Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan.

Specifically, you are ordered to:

- A. Immediately remove all unauthorized fill placed in the San Francisco Bay Conservation and Development Commission’s (BCDC’s) San Francisco Bay and/or shoreline band jurisdiction within the Marin County public right of way located between APN 052-247-01 and APN 052-247-02. The landward portion of this right of way is called Yolo Street, and the fill is proposed, but not approved by BCDC, in Seaplane Investment, LLC’s permit amendment application submitted on February 28, 2022.
- B. Restore the location to its previous condition.



Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.00

RED Exhibit C
Page 2
March 15, 2022

- C. Cease and desist from any further development and/or changes in use on or between APN 052-247-01 and APN 052-247-02, or any other area within BCDC's jurisdiction without prior authorization from BCDC.
- D. Fully comply with the requirements of Section III of this Cease and Desist Order.

II. FINDINGS

The administrative record in support of the findings contained in this Order includes the documents cited herein and all additional documents cited in the Index of Administrative Record attached hereto. This Order is based on the following findings:

- A. Seaplane Investment, LLC owns APN 052-247-01 and APN 052-247-02, which are located on either side of Yolo Street, a Marin County public right of way. Exhibit 1. BCDC Permit 1973.014.01 applies to APN 052-247-01, and BCDC Permit 1985.030.01 applies to APN 052-247.02. Exhibits 2 & 3.
- B. BCDC has an open enforcement matter, ER2019.063, against Seaplane Investment, LLC for several violations of both permits. These violations include: failure to maintain required public access pathways; failure to provide required public access improvements; constructing unauthorized boat docks and ramps; unauthorized construction and storage of planes and other vehicles in the Yolo Street public access right of way; and failure to provide assignment forms for permits assumed by Seaplane Investment, LLC.
- C. On October 28, 2021, BCDC staff sent a 35-day letter to Seaplane Investment, LLC, initiating a penalty clock on five violations. Most of these violations are still outstanding. Exhibit 4.
- D. On February 28, 2022, Seaplane Investment, LLC submitted a permit amendment application to BCDC that proposes to address most of the violations noted in BCDC's October 28, 2021, 35-day letter. However, to date that permit has not been assigned to a permit analyst, nor has it been deemed filed by BCDC. Exhibit 5.
- E. The February 28, 2022, permit amendment application proposes to expand an existing, unauthorized seaplane ramp located at the end of Yolo Street. The application notes that it is an after-the-fact permit application for the seaplane ramp, but also proposes to expand it to a 20'W x 35'L ramp consisting of 2x6 "Trex" boards on grade. See Exhibit 5, p. 24.

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.00

RED Exhibit C
Page 3
March 15, 2022

- F. On March 14, 2022, BCDC received reports of a violation in the Yolo Street public right of way. The reports included photographs taken on March 13, 2022, and on March 14, 2022, showing that construction of the proposed expansion of the existing, unauthorized plane ramp had been initiated, introducing substantial amounts of fill into the shoreline band and into the Bay. Exhibits 6 & 7.
- G. This fill is not authorized by any BCDC Permit.
- H. Government Code Section 66632(a) requires any person wishing to place fill, extract materials, or make any substantial change in use of any water, land, or structure within BCDC's jurisdiction secure a permit from BCDC before doing so. No permit has been secured for the fill described in this Order.
- I. Government Code section 66637 and BCDC's regulation at Cal. Code Regs. tit. 14, Sec. 11341 grant the Executive Director the authority to issue a cease and desist order to any person or governmental entity that has undertaken, or has threatened or threatens to undertake, an activity that may require a Commission permit without having obtained a Commission permit, or is inconsistent with a term or condition of a Commission permit. Section 11341 of BCDC's regulations also authorizes the Executive Director to issue consecutive cease and desist orders for a persisting violation.

III. CONDITIONS

Respondent shall perform all of the following activities necessary to come into compliance with the provisions of the McAteer Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan in the timeframe and manner prescribed:

- A. Respondent must immediately remove all unauthorized fill placed in the San Francisco Bay Conservation and Development Commission's (BCDC's) San Francisco Bay and/or shoreline band jurisdiction within the Marin County public right of way located between APN 052-247-01 and APN 052-247-02, and cease from undertaking any further work on either parcel or anywhere else within BCDC's jurisdiction without first securing a permit from BCDC.
- B. Respondents must restore the site to the condition that existed before the unauthorized structure was installed on or before April 15, 2022.

IV. TERMS

- A. Pursuant to Government Code Section 66641, any person or government agency who intentionally or negligently violates any cease and desist order issued, reissued, or amended by the Executive Director may be liable civilly for up to \$6,000 per day in

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.00

RED Exhibit C
Page 4
March 15, 2022

which such violation persists. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission's Executive Director, and upon the request of the Commission, the Attorney General of the State of California may petition the Superior Court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

- B. This order does not affect any duties, rights, or obligations under private agreements or under regulations of other public bodies.
- C. This order does not constitute a recognition of property rights.
- D. Respondent must strictly comply with this Order.
- E. This order is effective upon the date of issuance thereof and shall become null and void ninety days after the date of issuance.

V. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Section 66639 within thirty days after service of a copy of a cease and desist order issued by the Executive Director, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of the order in any judicial proceeding brought to enforce the order or for civil remedies.

DATED: March 15, 2022

DocuSigned by:
Larry Goldzband
FD106E906010417...
LAWRENCE J. GOLDZBAND
Executive Director

List of Exhibits:

- Exhibit 1. Real Quest Reports for Marin County APN 052-247-01 and APN 052-247-02.
- Exhibit 2. BCDC Permit 1973.014.01
- Exhibit 3. BCDC Permit 1985.030.01
- Exhibit 4. October 8, 2021, BCDC 35-day Letter to Seaplane Investment, LLC

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.00

RED Exhibit C
Page 5
March 15, 2022

Exhibit 5. February 28, 2021 Seaplane Investment, LLC Permit Amendment

Exhibit 6. March 14, 2022, 7:05 am email report of violation

Exhibit 7. March 14, 2022, 3:12 pm email report of violation

Index of Additional Administrative Record Documents

Document #	Description	Date
1	San Francisco Bay Plan	
2	Richardson Bay Special Area Plan	

San Francisco Bay Conservation and Development Commission

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

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Via Email Only

March 30, 2022

Seaplane Investment, LLC
242 Redwood Highway
Mill Valley, CA 94941
ATTN: Lou Vasquez
Email: lou@bldsf.com

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

SUBJECT: 240-242 Redwood Highway Seaplane Improvements; (BCDC Permit Application No. 1973.014.05, Enforcement Case ER2019.063.00 and Executive Director Cease and Desist Order ECD2022.002.00)

Dear Mr. Vasquez and Mr. Sharp:

Thank you for your application dated and received in this office on February 28, 2022, for new shoreline access improvements and after-the-fact authorization of boat docks, fuel tank, and seaplane storage at 242 Redwood Highway, Mill Valley in Marin County. Our review of the application has determined that it is incomplete pending the submittal of the following items:

1. **Total Project and Site Information**

From reviewing your application, it appears that the proposed project would involve the following activities:

- a. Installing improvements to enable required shoreline access. The improvements would consist of:
 1. A [**XX-foot-long by XX-foot-wide**], 544-square-foot wooden boardwalk, supported by [**X number of XX-inch material**] piles;
 2. One [**XX-foot-long by XX-foot-wide**], 135-square-foot asphalt ramp connecting the wooden boardwalk to the Marin County bike path and one [**XX-foot-long by XX-foot-wide**] 252-square-foot asphalt ramp connecting to the seaplane parking lot and shoreline access path;



3. Modifying existing parking spaces for three vehicles to accommodate two 9-foot-wide by 18-foot-long ADA parking spaces along Bolinas Street;
 4. Removing [**X number of**] parking spaces in the seaplane parking lot and placing an 8-foot-wide by 16-foot-long asphalt transition ramp, with two-inch asphalt feathering strip on both sides along the required shoreline access path.
- b. The project additionally proposes after-the-fact authorization of the following components:
1. A 57-square-foot concrete seaplane fuel tank and fueling pumps [**first installed in XXXX year**];
 2. A 20-foot-wide by 35-foot-long composite lumber seaplane launch ramp, [**installed in XXXX year**], and proposed to be replaced. There are very few details on the ramp, and we need more information on this part of the project;
 3. Four wood and encased foam floating boat docks totaling 894 square feet added to the existing, authorized, u-shaped seaplane dock and an unauthorized fuel station;
 4. Repairs to the existing 1,528-square-foot floating seaplane dock;
 5. Storage of, and repairs to, a maximum of [**X number of**] seaplanes; and
 6. Place a berm across Yolo Street to provide elevated access to the heliport pad authorized in Permit M1985.030.00.

Please verify whether the proposed project has been described in full; if not, please provide any missing details including the information in [**brackets**]. Additionally, please provide further detail concerning the proposed work and unauthorized work completed in the Bay and shoreline band described above, including materials, dimensions, and years completed.

2. **Fill in the Bay and Shoreline Band Information**

The proposed project appears to include work in the Commission's Bay and Shoreline Band jurisdictions. Please note that given the presence of tidal marsh vegetation within your proposed project site, the Bay is defined as extending up to five feet above mean sea level for this area or to the upland extent of the marsh vegetation if it is below this elevation. The shoreline band is further defined as the area between the Bay and 100 feet landward of and parallel with that line. Please revise your provided project plans to delineate BCDC jurisdiction on the site. We recommend that we meet with you to discuss the location of our Bay jurisdiction prior to having your surveyor prepare a survey and update the project plans with the jurisdictional lines.

It is not clear from your application which portions of the project will occur within the 100-foot shoreline band versus in the Bay jurisdiction. Please complete Boxes 3 and 4 of the application form for an administrative permit and provide all project details relevant to the Commission's jurisdictions.

3. Project Plans

Please provide a site plan that includes property lines, existing and proposed structures or improvements, the shoreline [up to five feet above Mean Sea Level], any marshes, wetlands, or mudflats, the corresponding 100-foot shoreline band line, scale, north arrow, date, and the name of the person who prepared the plans.

Please also clarify the following details:

1. The Commission's jurisdictions on the project site;
2. It does not appear the boat docks were included in the project plans. Please update the plans to include these structures and specify the dimensions of the boat docks and any pilings, and indicate which ones were preexisting and those that are after-the-fact constructions you are requesting approval for;
3. Clarify the extent of area dedicated to seaplane storage, how many seaplanes may be on site, and the dimensions of the heliport access ramp and whether and how it contributes to onsite ponding following tidally induced site flooding;
4. Specify the maximum parking capacity to be provided, and if there will be spaces dedicated for public access. The existing permit authorizes 17 parking spaces for houseboat residents. Please indicate where these spaces are located – we believe it is Parepa Street - and provide an exhibit that shows all parking areas with parking spaces shown; and
5. As public access is proposed as a part of your project, please provide a public access and/or open space exhibit that clearly indicates the area to be dedicated as public access and/or open space, including width, length, elevations, and monuments, where appropriate. The exhibit must be legible when the exhibit is reduced to 8 1/2" x 11" and include a graphic scale. Please also indicate if any of the parking spaces will be dedicated public shore parking spaces that are free and open to the public.

4. Processing Fee

Your application appears to qualify for a nonmaterial amendment to a major permit. As it is the result of an enforcement action, it is subject to double the standard application processing fee. Please note that Appendix M of the Commission's Regulations define the total project cost as "*expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission's jurisdiction,*" and should include all the new and after-the-fact work that



you are requesting approval for. Your application states that the total project cost is \$50,000. Please confirm the total project cost as stated in your application as \$50,000, or provide an updated estimate. If this total project cost is accurate, a processing fee of \$600 is required for continued processing of the application. If your total project cost is different, please provide an updated estimate and we will let you know what the associated permit fee is.

5. Proof of Adequate Property Interest

Please submit documentation, such as a copy of a grant deed or lease which demonstrates that the applicant has adequate legal interest in the property, or a letter which authorizes the applicant to act on behalf of the property owner for all matters pertaining to this permit. It appears that Marin County owns Yolo Street and you will need local approval for any work in the Yolo Street right-of-way before we can file the application for this project. Please also indicate the party which holds legal interest in the bike path being connected via asphalt ramp to the proposed boardwalk.

6. Other Governmental Approvals

Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. If applicable to the proposed project, we will also need to receive project approval(s) and all "take" authorizations from the state and federal resource agencies. Our regulations prohibit us from filing an application prior to receiving this documentation.

7. Environmental Documentation

Please provide environmental documentation, as required under the California Environmental Quality Act (CEQA), in the form of a categorical or statutory exemption, negative declaration, or other certified environmental impact document.

8. Local Government Approval

Please submit all the relevant documentation which clearly indicates that all the local government discretionary approvals have been received for the project.

9. Interested Parties

It is necessary to have a complete list of interested parties prior to filing an application. Therefore, I am returning Box 9 of the application form so that you can provide a list of adjacent property owners and other parties known to be interested in your project, wherever possible, please include email addresses as all correspondence related to Commission meetings and permits is currently being sent electronically.

10. Public Access

The Commission's law and policies require that proposed development provide the maximum feasible public access consistent with the project. Your proposal appears to include some public access improvements, such as parking modifications, boardwalk construction, and signage to make the already required public access areas in the

existing permit more functional/usable as required by the San Francisco Bay Plan public access policies. Many of these improvements were recommended by staff to help resolve compliance issues for the required public access areas.

The project also includes a request to authorize other new fill, such as the dock expansion, after-the-fact. Please indicate whether any portions of the new fill would be designated for public access purposes or not. Please indicate if there is sufficient public parking along the street or not. Please clarify whether there are any proposed dedicated public access parking spaces associated with the project. For the Yolo and Bolinas Street rights of way, please clarify any proposed parking and the number of spaces. Please note that staff needs to understand the uses on the new fill and would not be able to recommend approval to the Commission for a proposal that does not provide the maximum public access consistent with the project.

Public access improvements associated with project should be sited and designed, managed and maintained to avoid impacts from future sea level rise and flooding. If the proposed public access cannot remain viable given projected sea level rise over the life of the project, alternative, equivalent access would be required. Therefore, please indicate what the estimated life of the project is and assess the effect of a mid- and end-of-century sea level rise based on the 100-year flood projected for the proposed access area. If desired, BCDC staff can provide some additional guidance on this assessment. If the assessment shows that potential flooding at the site would threaten public access viability, the access should be designed to be resilient to a mid-century sea level rise projection. If proposed project and access would remain in place beyond mid-century, an adaptive management plan to address impacts of sea level rise at end of century should be prepared or alternative, equivalent access should be proposed. Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete.

11. Water Quality

Please provide additional details on how and where the seaplanes are fueled any minimization measures that are used to help prevent spills or other impacts to water quality.

Other Issues. In addition to the issues cited above, the following matters should be considered in submitting additional materials to us as part of the application process.

12. Cease and Desist Order

Executive Director Cease and Desist Order ECD2022.002 issued to you on March 15, 2022, requires you to remove the unauthorized fill for a seaplane ramp placed in the Bay and/or Shoreline Band. Therefore, you are required to restore the ramp to the condition that existed before you undertook the recent unauthorized work and BCDC will not be able to evaluate the recently placed fill after the fact as part of this permit application. You may be able to apply for a permit amendment in the future to construct a new, concrete boat ramp, which would be subject to our staff's future evaluation. However,



Seaplane Investment, LLC
Permit Application No. 1973.014.05

RED Exhibit C
March 30, 2022
Page 6

the only boat ramp that staff will evaluate as part of this pending amendment request is a replacement, lumber surface layer.

13. Public Notice

Please find enclosed the "Notice of Application" form to be posted at or near the project site in a prominent location to notify members of the public about the pending application for the proposed project.

If you have any questions, please do not hesitate to contact me at 415-352-3665 or sam.fielding@bcdc.ca.gov.

Sincerely,

DocuSigned by:
Samuel Fielding
2AA0DD5043E4453...
SAM FIELDING

Coastal Program Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3665
Fax: 415-352-3606
Email: sam.fielding@bcdc.ca.gov
Website: www.bcdc.ca.gov

SF / mm

cc: Nicole Fairley, Regional Water Quality Control Board, Nicole.Fairley@Waterboards.ca.gov
Jenna Brady, County Counsel, Marin County, JBrady@marincounty.org
Adrienne Klein, BCDC, adrienne.klein@bcdc.ca.gov

Enclosures: Posting Notice and Permit Application



San Francisco Bay Conservation and Development Commission

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

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BCDC PERMIT APPLICATION NO. 1973.014.05

Seaplane Investment, LLC

CERTIFICATION OF POSTING OF NOTICE

Sam Fielding

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

RE:

Shoreline access improvements

(brief description of project)

I,

(name of applicant or agent)

hereby certify that on _____,

(date)

I or my agent or employee posted in a prominent location at or near the project site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date: _____

By: _____

(Signature)

Title: _____

(Title)

San Francisco Bay Conservation and Development Commission **RED Exhibit C**

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

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

DATE POSTED: _____,

NOTICE OF PERMIT APPLICATION

NOTICE is hereby given that:

Seaplane Investments, LLC has applied for a permit to the **SAN FRANCISCO BAY
CONSERVATION & DEVELOPMENT COMMISSION** to:

Install a boardwalk and asphalt transition ramps to improve shoreline access

at a **PROPERTY** known as:

242 Redwood Highway, Mill Valley in Marin County, CA, 94941.

**Comments or questions on the proposed project should be submitted immediately in writing or by contacting
the Commission,**

Attn: Sam Fielding at 415-352-3665 or sam.fielding@bcdc.ca.gov

**Permit application, any supplementary materials and notice of any hearings related to the above project, are
available for review upon request.**



San Francisco Bay Conservation and Development Commission

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

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

June 14, 2022

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

SUBJECT: Executive Director Cease and Desist Order 2022.002.01

Dear Seaplane Investment, LLC:

The San Francisco Bay Conservation and Development Commission's Executive Director reissued the attached Cease and Desist Order today, ordering you to cease activities that violate the McAteer-Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan. The Cease and Desist Order also requires you to restore the sites where the violations occurred, and precludes you from conducting additional violations.

The violations identified in the Cease and Desist Order are also subject to formal Commission enforcement proceedings where additional injunctive relief and civil administrative liability of up to \$2,000 per day for each violation can be imposed. You will receive a Violation Report and Complaint that identifies each violation, calculates the expected civil administrative liability, and establishes a hearing date before the Commission's Enforcement Committee.

Sincerely,



BRENT PLATER
Lead Enforcement Attorney
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3628
Email: brent.plater@bcdc.ca.gov

cc: John E. Sharp, 24 Professional Center Parkway, Suite 110, San Rafael, CA 94903

Enclosure: Executive Director Cease and Desist Order 2022.002.01



San Francisco Bay Conservation and Development Commission

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

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Via Certified Mail

ISSUED BCDC

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

Respondent

EXECUTIVE DIRECTOR CEASE AND DESIST
NO. ECD2022.002.01

Date of Issuance: June 14, 2022

Expiration Date: September 12, 2022

To Seaplane Investment, LLC:

I. CEASE AND DESIST

Pursuant to my authority under California Government Code Section 66637, I hereby order you, Seaplane Investment, LLC (Respondent), all of your agents and employees, and any other persons or companies acting in concert with you, to cease and desist all of the following activities which you have undertaken or are threatening to undertake in violation of the McAteer-Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan.

Specifically, you are ordered to:

- A. Immediately remove all unauthorized fill placed in the San Francisco Bay Conservation and Development Commission's (BCDC's) San Francisco Bay and/or 100-foot shoreline band jurisdiction within the Marin County public right-of-way located between APN 052-247-01 and APN 052-247-02. The landward portion of this right-of-way is called Yolo Street, and the fill is proposed to, but not approved by, BCDC in Seaplane Investment, LLC's permit amendment application submitted on February 28, 2022.



Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.01

RED Exhibit C
Page 2
June 14, 2022

- B. Restore the location to its previous condition.
- C. Cease and desist from any further development and/or substantial changes in use on or between APN 052-247-01 and APN 052-247-02, or any other area within BCDC's jurisdiction without prior authorization from BCDC.
- D. Fully comply with the requirements of Section III of this Cease and Desist Order.

II. FINDINGS

The administrative record in support of the findings contained in this Order includes the documents cited herein and all additional documents cited in the Index of Administrative Record attached hereto. This Order is based on the following findings:

- A. Seaplane Investment, LLC owns APN 052-247-01 and APN 052-247-02, which are located on either side of Yolo Street, a Marin County public right-of-way. Exhibit 1. BCDC Permit 1973.014.01 applies to APN 052-247-01, and BCDC Permit 1985.030.01 applies to APN 052-247.02. Exhibits 2 & 3.
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- E. The February 28, 2022, permit amendment application proposes to expand an existing, unauthorized seaplane ramp located at the end of Yolo Street. The application notes that it is an after-the-fact permit application for the seaplane ramp, but also proposes to expand it to a 20'W x 35'L ramp consisting of 2x6 "Trex" boards on grade. See Exhibit 5, p. 24.
- F. On March 14, 2022, BCDC received reports of a violation in the Yolo Street public right-of-way. The reports included photographs taken on March 13, 2022, and on March 14, 2022, showing that construction of the proposed expansion of the existing,

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.01

RED Exhibit C
June 14, 2022

unauthorized plane ramp had been initiated, introducing substantial amounts of fill into the 100-foot shoreline band and into the Bay. Exhibits 6 & 7.

- G. This fill is not authorized by a BCDC permit.
- H. Government Code Section 66632(a) requires any person wishing to place fill, extract materials, or make any substantial change in use of any water, land, or structure within BCDC's jurisdiction secure a permit from BCDC before doing so. No permit has been secured for the fill described in this Order.
- I. Government Code section 66637 and BCDC's regulation at Cal. Code Regs. tit. 14, Sec. 11341 grant the Executive Director the authority to issue a cease and desist order to any person or governmental entity that has undertaken, or has threatened or threatens to undertake, an activity that may require a Commission permit without having obtained a Commission permit, or is inconsistent with a term or condition of a Commission permit. Section 11341 of BCDC's regulations also authorizes the Executive Director to issue consecutive cease and desist orders for a persisting violation.
- J. On March 15, 2022, I issued ECD2022.002.00, pursuant to Government Code section 66637 and section 11300 of BCDC's regulations (14 CCR). ECD2022.002.00 required Respondents to immediately remove the unauthorized fill and restore the site to its previous condition on or before April 15, 2022.
- K. Respondents have failed to comply with the terms and conditions of this Executive Director Cease and Desist Order.
- L. The decision to issue a second consecutive order for this continuing violation is based upon my determination that this activity has resulted in significant harm to the Bay's resources and my immediate intervention is required to ensure that the harm does not continue.

III. CONDITIONS

Respondent shall perform all of the following activities necessary to come into compliance with the provisions of the McAteer Petris Act, the San Francisco Bay Plan, and the Richardson Bay Special Area Plan in the timeframe and manner prescribed:

- A. Respondent must immediately remove all unauthorized fill placed in the San Francisco Bay Conservation and Development Commission's (BCDC's) San Francisco Bay and/or shoreline band jurisdiction within the Marin County public right-of-way located between APN 052-247-01 and APN 052-247-02, and cease from undertaking any further work on either parcel or anywhere else within BCDC's jurisdiction without first securing a permit from BCDC.

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.01

RED Exhibit C
Page 4
June 14, 2022

- B. Respondents must restore the site to the condition that existed before the unauthorized structure was installed on or before April 15, 2022.

IV. TERMS

- A. Pursuant to Government Code Section 66641, any person or government agency who intentionally or negligently violates any cease and desist order issued, reissued, or amended by the Executive Director may be liable civilly for up to \$6,000 per day in which such violation persists. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission's Executive Director, and upon the request of the Commission, the Attorney General of the State of California may petition the Superior Court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.
- B. This order does not affect any duties, rights, or obligations under private agreements or under regulations of other public bodies.
- C. This order does not constitute a recognition of property rights.
- D. Respondent must strictly comply with this Order.
- E. This order is effective upon the date of issuance thereof and shall become null and void ninety days after the date of issuance.

V. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Section 66639 within thirty days after service of a copy of a cease and desist order issued by the Executive Director, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of the order in any judicial proceeding brought to enforce the order or for civil remedies.

DATED: June 14, 2022

Larry Goldzband

LAWRENCE J. GOLDZBAND
Executive Director

List of Exhibits:

- Exhibit 1. Real Quest Reports for Marin County APN 052-247-01 and APN 052-247-02.
- Exhibit 2. BCDC Permit 1973.014.01
- Exhibit 3. BCDC Permit 1985.030.01

Seaplane Investment, LLC
Executive Director Cease and Desist
Order No. ECD2022.002.01

RED Exhibit C
June 14, 2022

- Exhibit 4. October 8, 2021, BCDC 35-day Letter to Seaplane Investment, LLC
- Exhibit 5. February 28, 2021 Seaplane Investment, LLC Permit Amendment
- Exhibit 6. March 14, 2022, 7:05 am email report of violation
- Exhibit 7. March 14, 2022, 3:12 pm email report of violation

Index of Additional Administrative Record Documents

Document #	Description	Date
1	San Francisco Bay Plan	
2	Richardson Bay Special Area Plan	

RED Exhibit C
Exhibit 28

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

July 14, 2022

VIA EMAIL AND U.S. MAIL

Brent Plater
Lead Enforcement Attorney
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3628
Email: brent.plater@bcdc.ca.gov



SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Re: *Seaplane Investment, LLC*

Dear Mr. Plater:

This is in response to your letter of June 14, 2022 and the Cease and Desist Order enclosed therewith. Reference is also made to your letter of March 15, 2022 and the letter of March 30, 2022 from Mr. Fielding. Please include this letter in the administrative record.

As you know, Seaplane Investment, LLC. (hereinafter "Seaplane") is in the process of bringing current its applications/permits with BCDC and other entities. Those permits date back to 1953, and some of the improvements for the sea base, including the ramp in question, predate both BCDC and county ordinances. Nevertheless, Seaplane does intend to include the ramp in its applications. Seaplane undertook the process of updating permits on or about September 15, 2020. During that time, Seaplane, as is the case with many entities, struggled with the impacts of Covid 19, including the aftermath of having been closed during its peak revenue-producing months.

Seaplane observes that, as a matter of case law and common law, it has the right and duty to repair improvements to the property. In fact, with reference to the ramp, upon which a previous owner installed an incorrect and untenable solution in the form of installing trex decking to attempt to repair the ramp, Seaplane, according to, without limitation, Part 135 of the Federal Aviation Act must provide safe and adequate ingress and egress for the aircraft to the water.

RED Exhibit C

Brent Plater
Page 2
July 14, 2022

Without entering into an exhaustive examination of the law of preemption, Seaplane is an airline business operating in Marin County, California, as an air carrier, certified pursuant to 14 CFR Part 135 and Part 91 of the Federal Aviation Administration ("FAA") regulations. The FAA grants the authority to operate on-demand, unscheduled air service (also known as charter-type services) in the form of Part 135 certificate. Seaplane and its facilities are strictly controlled by the FAA. Attached please find Seaplane's Airport Master Record with the FAA, as one example. Also see Declarations of Lauralyn J. Remo Temprosa, Dennis M. Thorpe, included herewith.

In addition to placing Seaplane at jeopardy with its duties to the FAA, the literal effect of causing Seaplane to restore the ramp to its condition prior to your letter of March 15, 2022 would be to cause damage to the Bay, hinder public access, and damage Seaplane's aircraft, (which was occurring prior to the repair). Such an interpretation would operate contrary to the spirit and letter of the multitude of laws regulating airports. Moreover, putting back in place a broken ramp falls within the provisions of, without limitation, CA Civil Code Section 1638, which provides that documents should be interpreted to avoid an absurd result. It would, in short, put this airport out of business.

We are aware of the ongoing complaints of a few residents of the Richardson Bay area. These complaints were addressed at the Marin County Planning Commission in 2017. Despite those complaints having been rejected by the Marin County Planning Commission, Seaplane nevertheless seeks to continue to work collaboratively with BCDC, the County and its Neighbors along the Bay, to assure compliance with its permits.

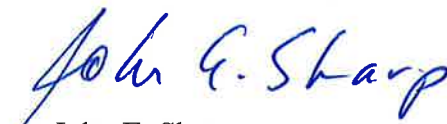
We believe the above points establish that no penalties or fines should be ordered. We understand that penalties and fines are intended to assure compliance. We further believe that, given the circumstances and conditions that have evolved during a period in excess of 70 years, compliance is, at least in part, assured by the ramp being repaired.

Seaplane is acting reasonably as a steward of the portion of the Bay where it lies, while taking care of the unique characteristics of being the only private sea base in California. We look forward to continuing to work with BCDC and will respond to the March 30 letter from Mr. Fielding as soon as reasonably possible.

If you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,

LAW OFFICES OF JOHN E SHARP



John E. Sharp

RED Exhibit C

1 BRIAN M. BOYNTON
 Acting Assistant Attorney General
 2 JACQUELINE COLEMAN SNEAD
 Assistant Branch Director
 3 MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)
 Trial Attorney
 4 United States Department of Justice
 Civil Division, Federal Programs Branch
 5 1100 L St. NW
 Washington, DC 20005
 6 Tel: (202) 514-2356
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 7 Email: Michael.J.Gaffney@usdoj.gov



8 STEPHANIE M. HINDS (CABN 154284)
 Acting United States Attorney
 9 SARA WINSLOW (DCBN 457643)
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 10 Assistant United States Attorney
 450 Golden Gate Avenue, Box 36055
 11 San Francisco, California 94102-3495
 Telephone: 415-436-6925
 12 Sara.winslow@usdoj.gov

13 Attorneys for the U.S. Department of Transportation
 and Federal Aviation Administration
 14

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION
 18

19 SEAPLANE ADVENTURES,	)	CASE NO. 20-6222 WHA
20 Plaintiff,	)	DECLARATION OF DENNIS M. THORPE
21 v.)	
22 COUNTY OF MARIN, CALIFORNIA,)	
23 Defendant.)	
24)	

25
 26 I, Dennis M. Thorpe, declare as follows:

27 1. I am employed by the Federal Aviation Administration (“FAA”) as the Manager of the
 28 Oakland Flight Standards District Office (“FSDO”) in Alameda, California. I submit this declaration,

RED Exhibit C

1 based on information available to me in connection with my position, to provide the Court with
2 information about certain safety-related certifications that the plaintiff in this action, Seaplane
3 Adventures, has received from the FAA.

4 2. In order for an entity to operate as an air carrier, it must receive an air carrier certificate
5 from the FAA. *See* 49 U.S.C. §§ 44705, 44711. The FAA grants such a certificate if it finds that the air
6 carrier “properly and adequately is equipped and able to operate safely under” aviation safety rules set
7 out by statute and by FAA regulations. *Id.* § 44705; 14 CFR Part 119. San Francisco Seaplane Tours,
8 Inc. (“SFST”) has been granted an air carrier certificate (as noted below, SFST is authorized to do
9 business as “Seaplane Adventures”). SFST’s certificate became effective in 2006. A true and accurate
10 copy of the certificate is annexed hereto as Exhibit A.

11 3. SFST has also been issued operations specifications (“OpSpecs”) describing the kinds of
12 operations it can conduct and certain applicable authorizations, limitations, and procedures. *See* 14 CFR
13 §§ 119.7, 119.33(a)(3). The OpSpecs indicate that SFST is authorized to do business as “Seaplane
14 Adventures.” The OpSpecs authorize SFST to provide on-demand operations in common carriage
15 pursuant to 14 CFR § 119.21(a)(5) and in compliance with FAA safety regulations set forth in 14 CFR
16 Part 135. SFST’s current OpSpecs were last updated in 2019 and are on file with the FAA.

17 4. SFST has also obtained a Letter of Authorization (“LOA”) that authorizes it to conduct
18 nonstop passenger-carrying flights that begin and end at the same airport, and are conducted within a 25-
19 statute mile radius of the airport, in accordance with FAA safety regulations set forth in 14 CFR Part 91.
20 *See* 14 CFR §§ 91.147, 119.1(e)(2). SFST’s current LOA was last updated in 2017 and is on file with
21 the FAA.
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RED Exhibit C

1 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and
2 correct to the best of my knowledge, information, and belief.

3 Executed on this 16th day of June 2021, in Alameda, California.
4
5

6 DENNIS M Digitally signed by
7 THORPE DENNIS M THORPE
Date: 2021.06.16
10:06:30 -07'00'

8 Dennis M. Thorpe
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RED Exhibit C

Exhibit A

RED Exhibit C



US Department
of Transportation
**Federal Aviation
Administration**

Air Carrier Certificate

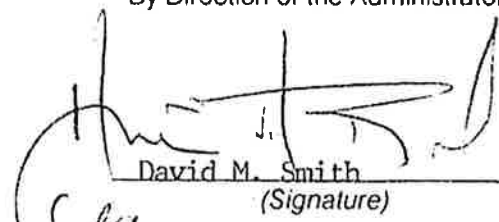
This certifies that

SAN FRANCISCO SEAPLANE TOURS, INC.
242 REDWOOD HIGHWAY
MILL VALLEY, CA 94941

has met the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate and is hereby authorized to operate as an air carrier and conduct common carriage operations in accordance with said Act and the rules, regulations, and standards prescribed thereunder and the terms, conditions, and limitations contained in the approved operations specifications.

This certificate is not transferable and, unless sooner surrendered, suspended, or revoked, shall continue in effect indefinitely.

By Direction of the Administrator.



David M. Smith
(Signature)

for

(Title)

Western Pacific/Oakland FSDO
(Region/Office)

Certificate number: O2QA052Y

Effective date: August 10, 2006

Issued at: Alameda, CA

RED Exhibit C

1 BRIAN M. BOYNTON
 Acting Assistant Attorney General
 2 JACQUELINE COLEMAN SNEAD
 Assistant Branch Director
 3 MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)
 Trial Attorney
 4 United States Department of Justice
 Civil Division, Federal Programs Branch
 5 1100 L St. NW
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13 Attorneys for the U.S. Department of Transportation
 and Federal Aviation Administration
 14

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION
 18

19 SEAPLANE ADVENTURES,	)	CASE NO. 20-6222 WHA
20 Plaintiff,	)	DECLARATION OF
21 v.	)	LAURALYN J. REMO TEMPROSA
22 COUNTY OF MARIN, CALIFORNIA,)	
23 Defendant.)	
24)	

25
 26 I, Lauralyn J. Remo Temprosa, declare as follows:

27 1. I am employed by the United States Department of Transportation, as the Associate

28 Director for Air Carrier Fitness in the Office of the Assistant Secretary for Aviation and International

RED Exhibit C

1 Affairs, a component of the Office of the Secretary of Transportation (“OST”). I submit this
2 declaration, based on information available to me in my position, to provide the Court with information
3 about the economic authority that the plaintiff in this action, Seaplane Adventures, has received from
4 OST.

5
6 2. In order for a commercial air carrier to provide “air transportation”—defined as interstate
7 air transportation, foreign air transportation, or the transportation of mail by air—it must either hold a
8 certificate of public convenience and necessity issued by OST or be exempt from that requirement.
9 *See* 49 U.S.C. §§ 41101(a) (certificate requirement); 40109(c) (exemption authority). Under 14 CFR
10 Part 298, an “air taxi operator” is exempt from the certificate requirement if it registers with OST and
11 meets certain requirements. An air taxi operator that registers under Part 298 has economic authority
12 from OST to provide air transportation consistent with applicable regulations.

13
14 3. San Francisco Seaplane Tours, Inc. (“SFST”) has registered with OST as an air taxi
15 operator under Part 298. SFST’s current registration became effective on May 14, 2021, and indicates
16 that SFST does business as “Seaplane Adventures.” SFST’s prior registration, which became effective
17 on April 23, 2019, did not reference the “Seaplane Adventures” name, but was otherwise identical. A
18 true and accurate copy of the current registration is annexed as Exhibit A. A true and accurate copy of
19 the prior registration is annexed as Exhibit B.

20
21 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and
22 correct to the best of my knowledge, information, and belief.

23 Executed on this 16th day of June 2021, in Alexandria, Virginia.

24
25
26
27
28


Lauralyn J. Remo Temprosa

RED Exhibit C


Exhibit A

RED Exhibit C

Approved by OMB
OMB No. 2105-0565
Expires: 8/31/2022

PAPER WORK REDUCTION ACT OF 1995

This information is collected to determine whether air taxi operations meet the Department's criteria for an operating authorization under 14 CFR Part 298. We estimate that it will take 30-60 minutes to complete. The use of this form is mandatory. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The OMB Control Number for this collection is 2105-0565. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to: U.S. Department of Transportation, Office of Aviation Analysis (X-56), 1200 New Jersey Avenue, SE, Washington, DC, 20590.

 <p>U.S. Department of Transportation Office of the Secretary of Transportation</p> <h2 style="text-align: center;">AIR TAXI OPERATOR REGISTRATION AND AMENDMENTS UNDER PART 298 OF THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION</h2>	<p>FOR USE BY DOT ONLY</p>
<p>Where to file: Submit this form, in duplicate, along with a Certificate of Insurance (OST Form 6410) evidencing required liability insurance coverage for the aircraft listed in Block 6 of this registration, to:</p> <p style="margin-left: 40px;">Federal Aviation Administration (FAA) Air Transportation Division, AFS-200, Room 831 800 Independence Avenue, S.W., Washington, D.C. 20591</p> <p>Exception: For air taxis located in the <u>State of Alaska</u>, submit this form and the OST Form 6410 to the Federal Aviation Administration (FAA), Alaskan Region Headquarters, AAL-231, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.</p> <p>Fees: The fee for the <u>initial</u> registration of an air taxi is \$8. There is no filing fee for amendments to registrations previously filed.</p>	<p>Effective date of registration/amendments</p> <p style="text-align: center; font-size: 1.2em;">MAY 14, 2021</p>
<p>1a. Name (and DBA, if applicable) and Mailing Address of the Registering Carrier: San Francisco Seaplane Tours, Inc. DBA Seaplane Adventures 242 Redwood Hwy Mill Valley, CA 94941</p> <p>1b. Telephone No. <u>415-332-4843</u> Fax No. _____</p> <p>1c. Email: <u>info@seaplane.com</u></p>	<p>3a. Federal Aviation Administration certificate number: O2QA052Y</p> <p>3b. Address of local FAA office:</p> <p style="text-align: right; margin-right: 20px;">5/6/2021</p>
<p>2a. Address of principal place of business (if different from above):</p> <p>_____</p> <p>2b. Telephone No. _____ Fax No. _____</p>	<p>3c. FAA Telephone No.: <u>510-748-0122</u></p> <p>3d. FAA Principal Operations Inspector: <u>David Jensen</u></p>
<p>4. This filing is the carrier's:</p> <p style="text-align: center;"> <input type="checkbox"/> Initial Registration <input checked="" type="checkbox"/> Amendment to reflect changes since previous filing (Complete item 9) </p> <p>If initial registration, give proposed date of commencement of operations: _____</p>	
<p>5. Type of service the carrier intends to perform upon commencement of operations, or, for amendments, service the carrier is currently performing (check all that apply):</p> <p> <input checked="" type="checkbox"/> Passenger <input type="checkbox"/> Seasonal <input type="checkbox"/> Air ambulance <input type="checkbox"/> Mail under a U.S. Postal Service contract </p> <p> <input type="checkbox"/> Cargo <input type="checkbox"/> Other (Please specify)** _____ </p> <p><small>** For example, if the carrier performs other services such as fire fighting operations for the U.S. Forest Service, it should be indicated here.</small></p> <p><small>Companies proposing or operating passenger services of five (5) or more round trips per week on at least one route between two or more points pursuant to published flight schedules which specify the times, days of the week, and places between which such flights are performed may not conduct such operations under this registration. Instead, such companies must be found "fit, willing, and able" to provide such services as a commuter air carrier. See 14 CFR 298, Subpart F.</small></p>	

RED Exhibit C

6. Aircraft which the carrier proposes to operate in air taxi service or, for amendments, aircraft currently operated:

	Aircraft Make and Model	FAA Registration Number	Passenger Seats Installed*
1.	DeHavilland DHC-2	N5220G	6
2.	DeHavilland DHC-2	N123JL	6
3.			
4.			
5.			

(Add additional sheets if necessary)

* This does not include seats occupied by the pilot or co-pilot unless the latter is available for passenger use.

7. Is the registering carrier a U.S. citizen?

YES NO

Note: An air taxi or commuter registered under Part 298 must be a citizen of the United States. 49 USC 40102(a)(15) defines a U.S. citizen as (a) an individual who is a U.S. citizen; (b) a partnership of which each member is a U.S. citizen; or (c) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

8. If this is an amendment, has the carrier carried passengers in foreign air transportation, that is, between any point in the United States and any point outside thereof, during the past 12 months:

YES NO

9. REPORT CHANGES OR AMENDMENTS TO INFORMATION PREVIOUSLY FILED WITHIN 30 DAYS OF THE EFFECTIVE DATE:

a. Change in Carrier's Name and/or Address (Please specify):

Former Name and Address:

Current Name and Address:

San Francisco Seaplane Tours, Inc.
242 Redwood Hwy
Mill Valley, CA 94941

San Francisco Seaplane Tours, Inc.
DBA Seaplane Adventures
242 Redwood Hwy
Mill Valley, CA 94941

b. Description of Any Other Changes or Amendments (Including additions or deletions of aircraft, change in type of operations, registration numbers, etc.):

10. Certification

I certify that the information contained in this application is complete and accurate to the best of my knowledge. The carrier subscribes to the IATA Inter-carrier Agreement; the IATA Agreement on Measures to Implement the IATA Inter-carrier Agreement, and the ATA Agreement on Provisions Implementing the IATA Inter-carrier Agreement to be Included in Conditions of Carriage and Tariffs (see OST Form 4523-A), and in accordance with those Agreements agrees under Article 22(1) of the Warsaw Convention or the Warsaw Convention as amended by the Hague Protocol that the liability limits for passenger injury or death in international transportation as defined in the Convention are waived in their entirety.

Date: May 5, 2021

Signature:  _____
(See note)

Name: Saul Aaron Singer
(Please type)

Place: Mill Valley, CA
(City and State)

Title: Owner - President

Note: This registration must be signed by a responsible officer, such as the President, Vice President, Secretary or Treasurer, or partner or owner of the carrier.

TO ENSURE PROPER PROCESSING OF THIS REGISTRATION, PLEASE COMPLETE THIS FORM IN ITS ENTIRETY.

RED Exhibit C

Exhibit B

RED Exhibit C

Approved by OMB
OMB No. 2105-0565
Expires: 6/30/2019

PAPER WORK REDUCTION ACT OF 1995

This information is collected to determine whether air taxi operations meet the Department's criteria for an operating authorization under 14 CFR Part 298. We estimate that it will take 30-60 minutes to complete. The use of this form is mandatory. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The OMB Control Number for this collection is 2105-0565. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to: U.S. Department of Transportation, Office of Aviation Analysis (X-56), 1200 New Jersey Avenue, SE, Washington, DC, 20590.

FOR USE BY DOT ONLY



U.S. Department of Transportation
Office of the Secretary of Transportation

AIR TAXI OPERATOR REGISTRATION AND AMENDMENTS UNDER PART 298 OF THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION



Effective date of registration/amendments
APR 23 2019

Where to file: Submit this form, in duplicate, along with a Certificate of Insurance (OST Form 8410) evidencing required liability insurance coverage for the aircraft listed in Block 6 of this registration, to:

Federal Aviation Administration (FAA)
Air Transportation Division, AFS-200, Room 831
800 Independence Avenue, S.W., Washington, D.C. 20591

Exception: For air taxis located in the State of Alaska, submit this form and the OST Form 8410 to the Federal Aviation Administration (FAA), Alaskan Region Headquarters, AAL-231, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.

Fees: The fee for the initial registration of an air taxi is \$8. There is no filing fee for amendments to registrations previously filed.

1a. Name (and DBA, if applicable) and Mailing Address of the Registering Carrier:

San Francisco Seaplane Tours
242 Redwood Hwy
Mill Valley, CA 94941

3a. Federal Aviation Administration certificate number:
02QA052Y

3b. Address of local FAA office:

Oakland FSDO
1420 Harbor Bay Pkwy
Alameda, CA 94502

1b. Telephone No. 415-332-4843 Fax No. 415-332-4851

1c. Email: info@seanlane.com

3c. FAA Telephone No.:
510-748-0122

3d. FAA Principal Operations Inspector:
Dave Jensen

2a. Address of principal place of business (if different from above):

2b. Telephone No. _____ Fax No. _____

4. This filing is the carrier's:

- Initial Registration Amendment to reflect changes since previous filing (Complete item 9)

If initial registration, give proposed date of commencement of operations: _____

5. Type of service the carrier intends to perform upon commencement of operations, or, for amendments, service the carrier is currently performing (check all that apply):

- Passenger Seasonal Air ambulance Mail under a U.S. Postal Service contract
 Cargo Other (Please specify)** _____

** For example, if the carrier performs other services such as fire fighting operations for the U.S. Forest Service, it should be indicated here.

Companies proposing or operating passenger services of five (5) or more round trips per week on at least one route between two or more points pursuant to published flight schedules which specify the times, days of the week, and places between which such flights are performed may not conduct such operations under this registration. Instead, such companies must be found "fit, willing, and able" to provide such services as a commuter air carrier. See 14 CFR 298, Subpart E.



RED Exhibit C

<p>6. Aircraft which the carrier proposes to operate in air taxi service or, for amendments, aircraft currently operated:</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%; text-align: left;"><i>Aircraft Make and Model</i></th> <th style="width:30%; text-align: left;"><i>FAA Registration Number</i></th> <th style="width:40%; text-align: left;"><i>Passenger Seats Installed*</i></th> </tr> </thead> <tbody> <tr> <td>1. DeHavilland DHC-2</td> <td>N5220G</td> <td>6</td> </tr> <tr> <td>2. DeHavilland DHC-2</td> <td>N123JL</td> <td>6</td> </tr> <tr> <td>3. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>4. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>5. _____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table> <p style="text-align: center;"><i>(Add additional sheets if necessary)</i></p> <p><small>* This does not include seats occupied by the pilot or co-pilot unless the latter is available for passenger use.</small></p>	<i>Aircraft Make and Model</i>	<i>FAA Registration Number</i>	<i>Passenger Seats Installed*</i>	1. DeHavilland DHC-2	N5220G	6	2. DeHavilland DHC-2	N123JL	6	3. _____	_____	_____	4. _____	_____	_____	5. _____	_____	_____	<p>7. Is the registering carrier a U.S. citizen?</p> <p style="text-align: right;"><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><small>Note: An air taxi or commuter registered under Part 298 must be a citizen of the United States. 49 USC 40102(a)(15) defines a U.S. citizen as (a) an individual who is a U.S. citizen; (b) a partnership of which each member is a U.S. citizen; or (c) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.</small></p> <p>8. If this is an amendment, has the carrier carried passengers in foreign air transportation, that is, between any point in the United States and any point outside thereof, during the past 12 months:</p> <p style="text-align: right;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>
<i>Aircraft Make and Model</i>	<i>FAA Registration Number</i>	<i>Passenger Seats Installed*</i>																	
1. DeHavilland DHC-2	N5220G	6																	
2. DeHavilland DHC-2	N123JL	6																	
3. _____	_____	_____																	
4. _____	_____	_____																	
5. _____	_____	_____																	

9. REPORT CHANGES OR AMENDMENTS TO INFORMATION PREVIOUSLY FILED WITHIN 30 DAYS OF THE EFFECTIVE DATE:

a. Change in Carrier's Name and/or Address (Please specify):

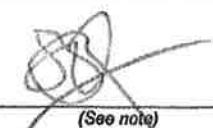
<i>Former Name and Address:</i>	<i>Current Name and Address:</i>

b. Description of Any Other Changes or Amendments (Including additions or deletions of aircraft, change in type of operations, registration numbers, etc.):

~~None~~
 Addition of N123JL to certificate

10. Certification

I certify that the information contained in this application is complete and accurate to the best of my knowledge. The carrier subscribes to the IATA Inter-carrier Agreement; the IATA Agreement on Measures to Implement the IATA Inter-carrier Agreement, and the ATA Agreement on Provisions Implementing the IATA Inter-carrier Agreement to be included in Conditions of Carriage and Tariffs (see OST Form 4523-A), and in accordance with those Agreements agrees under Article 22(1) of the Warsaw Convention or the Warsaw Convention as amended by the Hague Protocol that the liability limits for passenger injury or death in international transportation as defined in the Convention are waived in their entirety.

<p>Date: <u>March 31, 2019</u></p> <p>Place: <u>Mill Valley, CA</u> <small>(City and State)</small></p>	<p>Signature:  <small>(See note)</small></p> <p>Name: <u>Saul Aaron Singer</u> <small>(Please type)</small></p> <p>Title: <u>President/CEO</u></p>
---	---

Note: This registration must be signed by a responsible officer, such as the President, Vice President, Secretary or Treasurer, or partner or owner of the carrier.

TO ENSURE PROPER PROCESSING OF THIS REGISTRATION, PLEASE COMPLETE THIS FORM IN ITS ENTIRETY.

RED Exhibit C

1 BRIAN M. BOYNTON
 Acting Assistant Attorney General
 2 JACQUELINE COLEMAN SNEAD
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13 Attorneys for the U.S. Department of Transportation
 and Federal Aviation Administration
 14

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18 SEAPLANE ADVENTURES,	)	CASE NO. 20-6222 WHA
19 Plaintiff,)	
20 v.	)	FURTHER NOTICE IN RESPONSE TO
21 COUNTY OF MARIN, CALIFORNIA,	)	REQUEST FOR FEDERAL AVIATION
22 Defendant.	)	ADMINISTRATION TO APPEAR AS AN
	)	AMICUS CURIAE
)	
)	
)	
)	
)	
)	

25 The United States, by and through undersigned counsel, hereby gives notice that it has decided to
 26 participate in this action to respond to the Court’s request for “verification as to what types of
 27 certifications Seaplane Adventures, LLC holds.” *Seaplane Adventures v. County of Marin*, 3:20-cv-
 28 06222 (N.D. Cal. Mar. 10, 2021), ECF 35. Specifically, the Federal Government attaches hereto the

RED Exhibit C

1 Declaration of Lauralyn J. Remo Temprosa, Associate Director for Air Carrier Fitness in the Office of
2 the Assistant Secretary for Aviation and International Affairs, Office of the Secretary of Transportation,
3 and the Declaration of Dennis M. Thorpe, Manager of the Oakland Field Flight Standards District
4 Office, Federal Aviation Administration.

5 Because the March 16, 2020 and May 15, 2020 Orders of the County Health Officer of the
6 County of Marin to Shelter in Place are no longer in effect, however, the Federal Government
7 respectfully declines to address whether those orders were preempted. *See Bd. of Trustees of Glazing*
8 *Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1199 (9th Cir. 2019) (en banc) (holding that
9 plaintiffs' preemption claim became moot after challenged law was repealed); *see also Buckhannon Bd.*
10 *& Care Home, Inc. v. W. Virginia Dep't of Health & Hum. Res.*, 532 U.S. 598, 601 (2001) (noting that
11 amendment to allegedly preempted state law mooted preemption claim).

12
13 Date: June 16, 2021

Respectfully submitted,

14 BRIAN M. BOYNTON
Acting Assistant Attorney General

15 JACQUELINE COLEMAN SNEAD
Assistant Branch Director

16 MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)
Trial Attorney
17 United States Department of Justice
18 Civil Division, Federal Programs Branch

19 STEPHANIE M. HINDS
Acting United States Attorney

20 _____
21 /s/
SARA WINSLOW
Assistant United States Attorney

22
23 *Attorneys for the U.S. Department of*
Transportation and Federal Aviation
Administration
24
25
26
27
28

76561

>1 ASSOC CITY: Sausalito
>2 AIRPORT NAME: COMMODORE CENTER
>3 CED TO AIRPORT(IAM): P2 HW 6 REG/ADD: AWP/SFO 7 SECT AFR0,CHT: SAN FRANCISCO
STATE: CA COUNTY: MARIN CA
FAA SITE NR: 12261

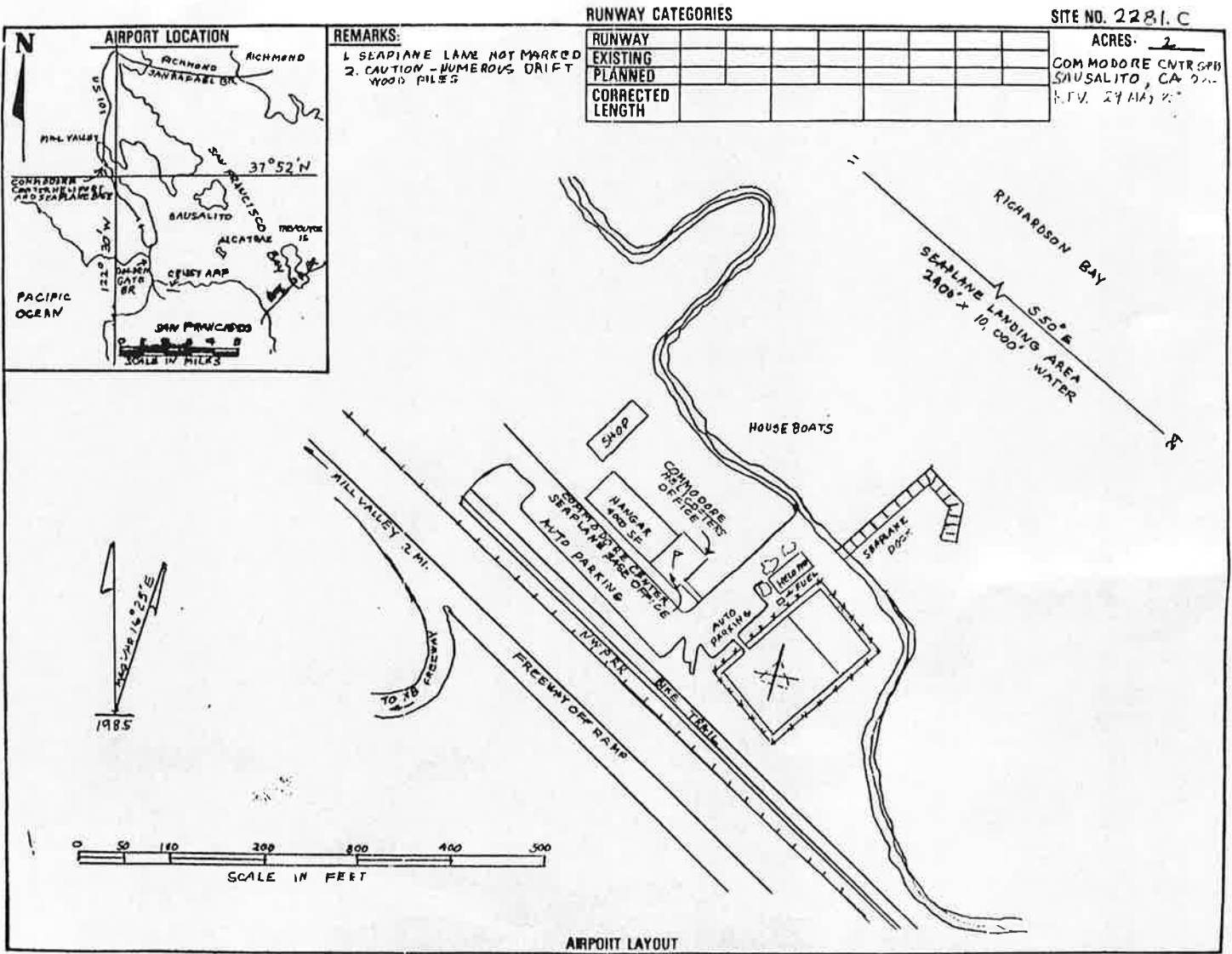
GENERAL		SERVICES	BASED AIRCRAFT
>10 OWNERSHIP: PRIVATE		>78 FUEL: 1PPL	90 SINGLE ENG: 3
>11 OWNER: COMMODORE PROPERTIES		>71 AIRFRAME PPRS: MINOR	91 MULTI ENG: 0
>12 ADDRESS: FERRY BOAT KLAMATH, PIER 5 SAN FRANCISCO, CA 94111		>72 PWR PLANT PPRS: MINOR	92 JET: 0
>13 PHONE NR:		>73 BOTTLE OXYGEN: NONE	TOTAL 3
>14 MANAGER: D WALLACE/P BREINIE		>74 BULK OXYGEN: NONE	93 HELICOPTERS: 0
>15 ADDRESS: 242 REDWOOD HWY MILL VALLEY, CA 94941		75 TSNT STORAGE: NONE	94 GLIDERS: 0
>16 PHONE NR: 415-332-4843		76 OTHER SERVICES: INSTR	95 MILITARY: 0
>17 ATTENDANCE SCHEDULE:			96 ULTRA-LIGHT: 0
MONTHS	DAYS	HOURS	
ALL	ALL	DAMA-CUSK	
>18 AIRPORT USE: PUBLIC		FACILITIES	
>19 ARPT LAT: 37-52-48N ESTIMATED		>80 ARPT BCH: N	100 AIP CARRIER: 0
>20 ARPT LONG: 122-38-45W		>81 APT LGT SKED:	101 COMMUTER: 0
>21 ARPT-ELEV: 400 ESTIMATE		>82 UNICOM:	102 AIR TAXI: 0
>22 ACRES: 2		>83 WIND INDICATOR: YES	103 G A LOCAL: 2500
>23 RIGHT TRAFFIC: NO		84 SEGMENTED CIRCLE: NONE	104 G A ITRNT: 10
>24 NON-COMP LANDING FEE: NO		85 CONTROL TWR: NO	105 MILITARY: 0
>25 NAS/FEDERAL AGREEMENT:		86 FSS: OAKLAND	TOTAL: 2510
>26 FAR 139 INDEX: N		87 FSS ON ARPT: NO	OPERATIONS FDR 12
		88 FSS PHONE NR: 415-273-6284	MOS ENDING 29MAY65
		89 TOLL FREE NR: 668-1455	

RUNWAY DATA						
>30 RUNWAY IDENT	11/29					
>31 LENGTH:	18000					
>32 WIDTH:	2400					
>33 SURF TYPE-CGR	WATER					
>34 SURF TREATMENT						
>35 GROSS WT: SL						
>36 (IN THCS) DL						
>37	DTL					
>38	DCTL					
LIGHTING/APCH AIDS		11/29				
>40 EDGE INTENSITY						
>41 NOW ELEMENT 81						
>42 RWY MARK TYPE-COND	/	/	/	/	/	
>43 VASI	/	/	/	/	/	
>44 THR CROSSING HGT	/	/	/	/	/	
>45 VISUAL GLIDE ANGLE	/	/	/	/	/	
>46 CNTRLN-TDZ	/	/	/	/	/	
>47 RVR-RVV	/	/	/	/	/	
>48 REIL	/	/	/	/	/	
>49 APCH LIGHTS	/	/	/	/	/	
OBSTRUCTION DATA		11/29				
>50 FAR 77 CATEGORY	B(V) /B(V)	/	/	/	/	
>51 DISPLACED THR		/	/	/	/	
>52 CTLG OBSTN	BRIDGE/HILL	/	/	/	/	
>53 OBSTN MARKED/LETD		/	/	/	/	
>54 HGT ABOVE RWY END	50 /150	/	/	/	/	
>55 DIST FROM RWY END	1500 /3000	/	/	/	/	
>56 CNTRLN OFFSET	200R /300R	/	/	/	/	
>57 OBSTN CLNC SLOPE	20:1 /20:1	/	/	/	/	
>58 CLOSE-IN OBSTN	/	/	/	/	/	
20:1 LANDING LENGTH		11/29				
>60 LANDING RWY-LENGTH	/	/	/	/	/	
>61 CTLG OBSTACLE	/	/	/	/	/	
>62 HGT-ABOVE THR	/	/	/	/	/	
>63 DIST FROM THR	/	/	/	/	/	
>64 CNTRLN OFFSET	/	/	/	/	/	

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

118 REMARKS:
A078 FLEL SALE TO TRANSIENTS RESTRICTED TO EMERGENCY ONLY.
A118 -01 SEAPLANE LANE NOT MARKED.
A118 -02 CAUTION: NUMEROUS DRIFT WOOD PILES.

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§ 11211. Submittal of an Amendment.

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

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

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

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

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

HISTORY

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

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

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

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

HISTORY

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

§ 11213. Definition of a Minor Amendment.

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

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

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

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

HISTORY

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

§ 11214. Designation of an Amendment as Minor.

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

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

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

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

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

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice.

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

HISTORY

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

§ 11215. Frequency of Amendments.

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

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

HISTORY

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

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

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

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

HISTORY

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

§ 11301. Grounds for Permit Revocation.

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

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

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

HISTORY

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

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

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

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

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

HISTORY

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

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

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

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

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

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

HISTORY

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

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

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

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

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

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

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

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

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

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

HISTORY

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

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

§ 11320. Staff Investigation and Discovery.

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

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

HISTORY

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

§ 11321. Commencing Commission Enforcement Proceedings.

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

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

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

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

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

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

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

HISTORY

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

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

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

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

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

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

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

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

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

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

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

HISTORY

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

§ 11323. Distribution of Notice of Enforcement Hearings.

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

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

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

HISTORY

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

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

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

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

HISTORY

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

§ 11325. Ex Parte Contacts.

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

HISTORY

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

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

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

RED Exhibit C

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

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

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

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

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

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

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

HISTORY

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

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

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

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

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

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

(e) other speakers may speak concerning the matter;

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

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

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

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

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

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

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

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

HISTORY

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

§ 11328. Acceptance of Late Evidence.

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

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

HISTORY

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

§ 11329. Admissibility of Evidence.

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

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

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

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

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

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

HISTORY

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

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

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

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

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

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

HISTORY

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

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

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

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

HISTORY

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

§ 11332. Commission Action on Recommended Enforcement Decision.

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

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

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

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

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

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

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

HISTORY

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

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

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

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

HISTORY

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

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

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

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

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

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

HISTORY

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

§ 11335. Staff Report and Recommendation.

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

HISTORY

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

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§ 11336. Distribution of Staff Report and Recommendation.

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

HISTORY

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

§ 11337. Notice of Public Hearing.

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

HISTORY

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

§ 11338. Public Hearing Procedure.

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

HISTORY

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

§ 11339. Admissibility of Evidence.

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

HISTORY

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

§ 11340. Contents of Cease and Desist Orders.

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

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

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

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

HISTORY

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

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

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

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

HISTORY

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

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

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

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

HISTORY

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

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

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

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

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

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

HISTORY

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

§ 11344. Amendments to Cease and Desist Orders.

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

HISTORY

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

§ 11350. Contents of Permit Revocation Orders.

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

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

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

(3) the effective date of the order;

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

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

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

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

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

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

HISTORY

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

§ 11351. Modification of Permit Revocation Orders.

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

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

HISTORY

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

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

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

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

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

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

HISTORY

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

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

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

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

HISTORY

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

§ 11361. Issuance.

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

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

HISTORY

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

§ 11362. Service of Copies.

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

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

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

HISTORY

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

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

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

(b) any complaint for civil penalties;

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

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

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

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

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

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

(i) any order that the Commission issues,

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

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

HISTORY

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

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

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

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

HISTORY

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

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

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

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

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

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

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

HISTORY

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

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

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

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

HISTORY

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

§ 11383. Contents of a Commission Civil Penalty Order.

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

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

- (2) the amount of the civil penalty,
- (3) the date by which the civil penalty must be paid;
- (4) written findings that (1) explain the decision to issue the civil penalty order and (2) provide the factual and legal basis for the issuance of the order, and
- (5) notice that a person to whom the Commission issues a civil penalty order may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

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

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

HISTORY

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

§ 11384. Modification of a Commission Civil Penalty Order.

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

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

HISTORY

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

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

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

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

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

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

HISTORY

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

§ 11386. Standardized Fines.

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

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

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

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

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

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

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

(e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing the work authorized by the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each document plus ONE HUNDRED DOLLARS (\$100.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (e)(1) and (e)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement, plus ONE HUNDRED DOLLARS (\$100.00) per day for each violation, from the ninety-sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and

fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS (\$2,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained, or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than 95 days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day to the date the violation is completely corrected.

(f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

(g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to

RED Exhibit C

be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS (\$100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty-five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the amount is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

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

Government Code; and Sections 29201(e) and 29610, Public Resources Code.

HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

Subchapter 1. Marsh Development Permits Issued by Local Governments

Article 1. Application

§ 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as "a marsh development authorization," by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

[The next page is 539.]

Statement of Defense Form **RED Exhibit C**
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@bcdca.gov.

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **ADRIENNE KLEIN** or **BRENT PLATER** of the Commission Enforcement Staff at telephone number **415-352-3609** or **415-352-3628**.

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

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

3. Facts or allegations contained in the violation report of reference to paragraph number in the violation report):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

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

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

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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:

RED Exhibit D - Respondent's Initial
Statement of Defense with
attachments, dated 09-02-22

RED Exhibit D

Statement of Defense

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

September 2, 2022

RED Exhibit D

Statement of Defense

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

ATTACHMENT 1, 2 and 3

1.-3. Facts or allegations contained in the violation report that you admit, deny or have no personal knowledge (with specific reference to the paragraph number in the violation report):

Seaplane Investment, LLC (“Seaplane”), admits that it is the owner of certain real property and improvements as described in staff’s letter of July 29, 2022. Seaplane admits paragraph I. With respect to paragraph II, without admitting violation, Seaplane admits “some” of required public access improvements are not currently maintained as required but is in the process of restoring said maintenance, as depicted in architectural materials submitted herewith.

Paragraph II.B. – Seaplane admits that some public access, including public shore pathways, requires additional maintenance.

Paragraph II.C. – Seaplane admits that, due to activities of multiple predecessors in interest to Seaplane, some fill has been placed in the shoreline band. Seaplane reserves the right to further present to the Commission evidence, as found in accompanying documents, that exists of parking and equipment storage, seaplane repair and maintenance, seaplane fueling tanks, and an elevated asphalt path across Yolo Street.

Paragraph II.D. – Seaplane denies installing a helicopter landing pad and paved walkways. Seaplane admits the existence of said installation and refers to the permit history contained in attachments hereto.

Paragraph II.E. – Seaplane admits reconfiguring the dock, as a matter of responding to emergency storm and flooding events of 2011, 2017 and 2019, as part of Seaplane’s ongoing duty to repair and maintain the site in accordance with permits dating back to 1953.

Paragraph II.F. – Seaplane denies constructing a new concrete and rebar water access ramp in March 2022. Rather, Seaplane admits repairing an existing ramp which, as part of Seaplane’s mandate pursuant to the Federal Aviation Act and original permitting, Seaplane believes it has a duty and right to repair.

Paragraph IV. – Seaplane admits that it controls property upon which activity occurred but does not admit to the illegality of any such activity.

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Paragraph V. – Seaplane does not have knowledge of the complete history set forth in paragraph V, insofar as the phrase “many years” is vague. Seaplane includes with this correspondence, and incorporates multiple documents dating back to 1953, setting forth the permitting history of the site, which Seaplane relied upon in taking ownership of the property in July 2021.

Paragraph VI. – Seaplane, inasmuch as it took over the site on July 21, 2022, is unable to admit or deny the allegations set forth in paragraph VI.A, B, C, D or E, but provides herewith documentation of the history of the site insofar as Seaplane is aware of it.

Paragraph VI.G. - Seaplane is aware that some neighbors of the site disapprove of Seaplane’s use and, in general, that complaints were made. Seaplane is also aware of and is addressing public access requirements and continues to investigate how to repair any fuel tank installation issues.

Paragraph VI.H. – Seaplane admits that BCDC staff visited the site. Seaplane cannot speculate on what staff observed or learned but admits that, due to emergency circumstances (storms and flooding in 2011 and 2017), the dock was reconfigured to repair damage in conjunction with Seaplane’s duty and right to repair its facility.

Paragraph VI.I. – Seaplane admits the allegations of paragraph VI.I. but was not responsible for its predecessor’s actions.

Paragraph VI.J. – The undersigned represents Seaplane Investments Inc.

Paragraph VI.K. – Admit.

Paragraph VI.L. – Without admitting the alleged violations, Seaplane admits that it received the referenced correspondence.

Paragraph VI.M. – Admit.

Paragraph VI.N. – Admit. Seaplane further avers that it is in negotiation with the County of Marin to acquire the Yolo Street right-of-way either by a quiet title action or a Resolution by the Board of Supervisors.

Paragraph VI.O. – Admit.

Paragraph VI.P. – Admit.

Paragraph VI.Q. – Admit.

Paragraph VI.R. – Without admitting the violations, Seaplane admits that the referenced correspondence was received as Seaplane was in the process of resolving the violations identified in paragraphs a, b, c and d.

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Paragraph VI.S. – Admit.

Paragraph VI.T. – Admit.

Paragraph VI.U. – Admit.

Paragraph VI.V. – Admit.

Paragraph VI.W. – Seaplane has no information sufficient to enable it to respond to “a member of the public” notifying BCDC of Seaplane’s activities but notes extensive history of antagonism from a handful of neighbors of Richardson Bay. Seaplane further admits that it repaired and maintained its ramp, as required by Seaplane’s mandates under the Federal Aviation Act and in order to protect the public, as well as Seaplane’s aircraft associated with the pre-existing, damages ramp. Seaplane submits herewith Declarations of Dennis Thorpe and Lauralyn J. Remo Temprosa. Seaplane’s representative will testify that, in compliance with requirements under, without limitation, 49 U.S.C 44705, 44711, et seq, as referenced in paragraph 2 of the Thorpe declaration. Seaplane must maintain and repair the ramp in question.

Paragraph VI.X. – Admit.

Paragraph VI.Y. – Seaplane admits that the March 30th letter was sent.

Paragraph VI.Z. – Admit.

Paragraph VI.AA. – Seaplane admits that the undersigned submitted a letter but observes that the generalization that Seaplane claims that the property and operation is exempt from BCDC jurisdiction is not entirely accurate. Seaplane is regulated by FAA.

Paragraph VI.BB. – Admit in part. Seaplane denies the allegations in paragraph VI.BB to the extent that materials contained in the letter of July 29, 2022, specifically, declarations of Dennis Thorpe and Lauralyn J. Remo Temprosa, personnel of the FAA, identify the extent to which Seaplane is regulated by FAA, as does the documentation attached to said letters.

Paragraph VI.CC. – See response to IV and V, above.

Paragraph VII. – Seaplane admits that BCDC staff alleges violations of the identified sections.

Paragraph VIII. – Seaplane admits that BCDC proposes fines but does not agree that said fines are appropriate under the circumstances.

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Statement of Defense

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

ATTACHMENT 4

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; 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):

Seaplane wishes to work cooperatively with BCDC. Seaplane believes that mitigating circumstances regarding this enormously complex set of properties, uses and historical events require granular consideration in the context of Seaplane having taken over as a steward of the property in order to preserve historic uses (including that of the only private sea base in the State of California).

Seaplane will submit said documents, by hand delivery, on an external USB drive, on September 6, 2022.

Pursuant to Civil Code Sections 831 and 1112 Seaplane Owns a Fee Interest in the Portion of the Streets Bordering Its Lots. In response to the question raised regarding right-of-way, and as noted more fully below, my clients are the owners in fee of the one-half portions of the streets that border their property. Additionally, my clients have easement rights over all of these streets for ingress, egress and any other proper use. As such, at this time we see no reason to file a quiet title action. California Code of Civil Procedure §831 provides: “An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.” California Code of Civil Procedure §1112 provides: “A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant.” Numerous California cases have held, based on these sections, that a deed conveying a piece of property by lot number includes a fee interest in one-half of the street or lane, which abuts the lot. One of the more recent cases, *Safwenberg v. Marquez* (1975) 50 Cal.App. 3rd 301, 306, held: “The fee in the half of the street along which the land abuts is part of the lot; any conveyance of the lot conveys the fee in the street as part of it... The policy behind the law is to avoid ownership in land in strips and gores by attaching the underlying fees of streets both active and abandoned to the adjoining lots.” The deed to the Commodore Marina property conveyed the property by lot number (lots 164 and 167 on the Map of the Sausalito Land and Ferry Co.) and as such it is presumed that the title includes the fee interest in the half of the street (or streets) abutting the lots. Since Seaplane owns the lots on both sides of Yolo Street, it is presumed they own a fee interest in the entire street (as it borders the lots). November 9, 2020 Page 3. It should also be noted that in 2017, the County of Marin abandoned its interest in various streets in the area, including the portions of Bolinas Street, Pohono

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Street and Parepa Street that border the property of Commodore Marina LLC. Thus, the County has no interest in the portions of these streets bordering my client's property.

Seaplane has Private Easement Rights to Use the Streets. Seaplane also has private easement rights in all the streets including Bolinas, Parepa, and Yolo. Over a hundred years ago, the California Supreme Court declared: "It is a thoroughly established provision in this state that when one lays out a tract of land into lots and streets and sells the lots by reference to a map which exhibits the lots and streets as they lie with relation to each other, the purchasers of such lots have a private easement in the streets opposite their respective lots for ingress and egress and for any use proper to a private way, and that this private easement is entirely independent of the fact of dedication to public use, and is a private appurtenance to the lots, of which the owners cannot be divested except by due process of law." *Danielson v. Sykes* (1910) 157 Cal. 686, 689. The Seaplane property is part of a subdivision created in 1869 when the "Official Map of Lands of the Sausalito Land and Ferry Company" was recorded with the Marin County Recorder. This map laid out the lots, blocks and streets that include the Commodore Marina lots and the surrounding streets. Accordingly, Seaplane has easement rights to use the streets, including Yolo Street. It should also be noted that Yolo Street is undeveloped and does not serve as access to any developed parcels. The "paper" street beyond the Seaplane property is underwater and the land around it is either owned or leased by Seaplane. Accordingly, any use of this street does not affect the easement rights of other lot owners. In sum, Seaplane owns a fee interest in the one-half portions of Bolinas and Parepa Streets along the border of its lots and owns a fee interest in all of Yolo Street as it borders its lots. Seaplane also has private easement rights to use these streets as more fully described above. At this point, my client sees no need to file a quiet title action relating to these rights but reserves the right to do so in the future; however, Seaplane is in discussions with the County of Marin to finalize Seaplane's fee title to Yolo Street.

RED Exhibit D

Statement of Defense

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

ATTACHMENT 5

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

Permits for various operations at the subject property have been in existence since at least 1953, as identified in Attachment 6.

Seaplane also believes it relevant that in June and July 2020, at the onset of COVID, Seaplane was engaged in constructive discussions with BCDC's representatives, but, as was the case with many businesses and government agencies, those discussions were variously interrupted and postponed due to the effects of COVID. Moreover, in July 2020, due to orders from the Governor's office as implemented by the County of Marin, Seaplane's business was shut down during its most revenue-intensive time of year. Accordingly, Seaplane lost over One Million Dollars (\$1,000,000) in revenue and continues to recover from said losses. Seaplane firmly intends to continue to apply as much of said revenue to remediation of the site, in conformance with BCDC direction.

Imposition of the fines identified by staff in the letter of July 29, 2022, will cripple Seaplane's ability to continue its remediation efforts. Seaplane has, in the past 60 days, hired a new architectural firm, CRKW Studio, Inc., whose latest plans and drawings accompany this submittal, and with whom Seaplane looks forward to working collaboratively, along with BCDC, to meet the permit updating requirements at issue in this matter. Seaplane proposes to use its resources to achieve compliance.

RED Exhibit D

Statement of Defense

Enforcement Case ER2019.063.00

Seaplane Investment, LLC

ATTACHMENT 6

6. Documents, exhibits, declaration 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):

1. See references to links to Dropbox as set herein. Seaplane provides, with this response, an external USB drive containing the permitting history of which it is aware with respect to the property.

2. Documents generated by the Federal Aviation Administration entitled, “Declaration of Dennis M. Thorpe” and “Declaration of Lauralyn J. Remo Temprosa”, filed in U.S. District Court, Northern District of California, San Francisco Division, *Seaplane Adventures v. County of Marin, California*, Case No. 20-6222 WHA.

3. Plans, drawings and notes generated by CRKW, Inc., the architectural firm hired by Seaplane in 2022, to assist its completion of Seaplane’s remediation plan.

4. PDF of planning records for Seaplane site, provided by Marin County Community Development Agency.

RED Exhibit D

Statement of Defense

Enforcement Case ER2019.063.000

Seaplane Investment, LLC

ATTACHMENT 7

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 unnecessary.

While Seaplane has no current plans to cross-examine anyone, in an abundance of caution, it reserves the right to cross-examine Adrienne Klein and to produce testimony of Aaron Singer, a managing member of Seaplane.

RED Exhibit D

RED SOD Exhibit C1 - CRKW drawings and plans 9.2.22

SITE INFORMATION

CODE SUMMARY:

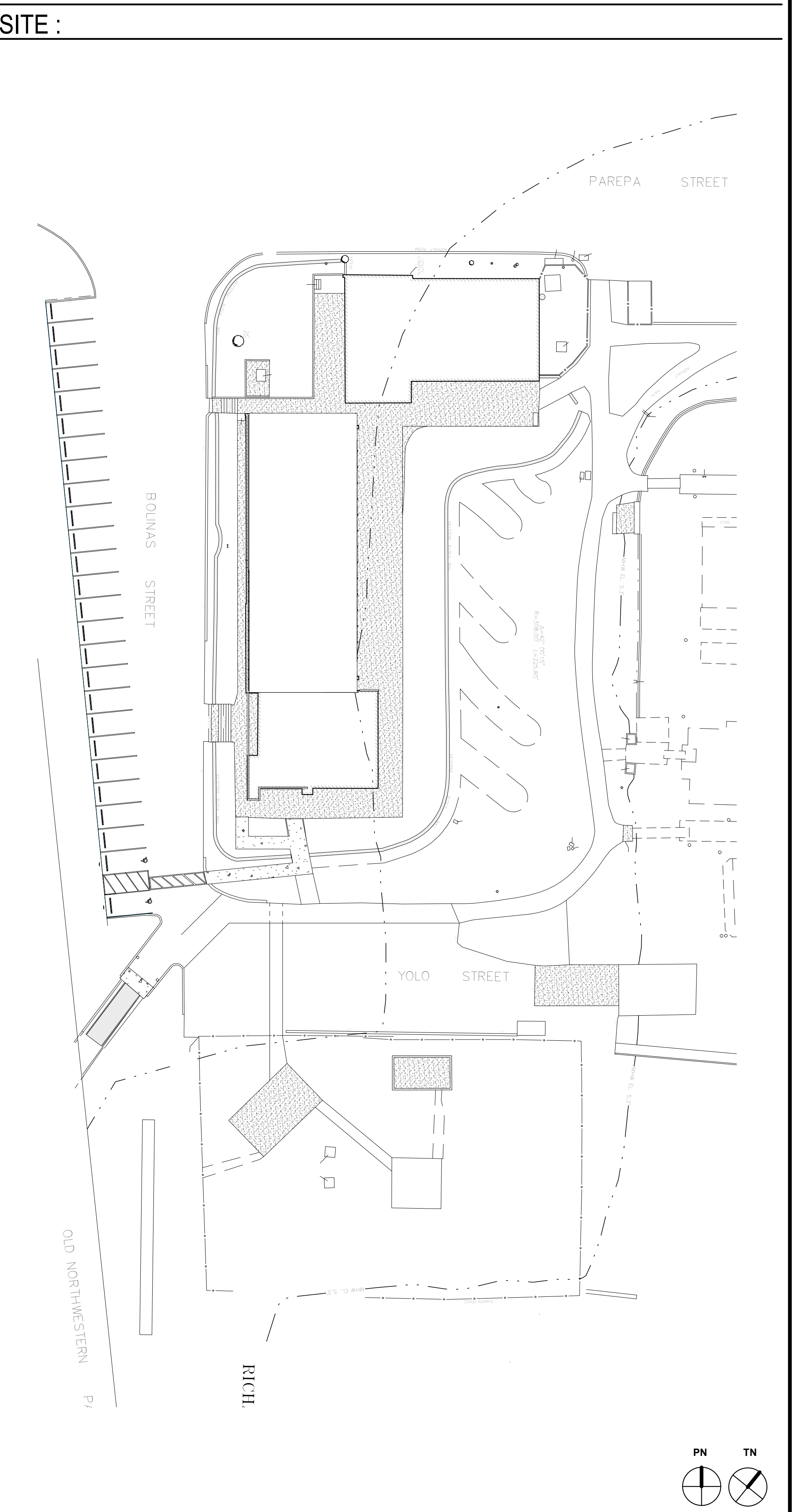
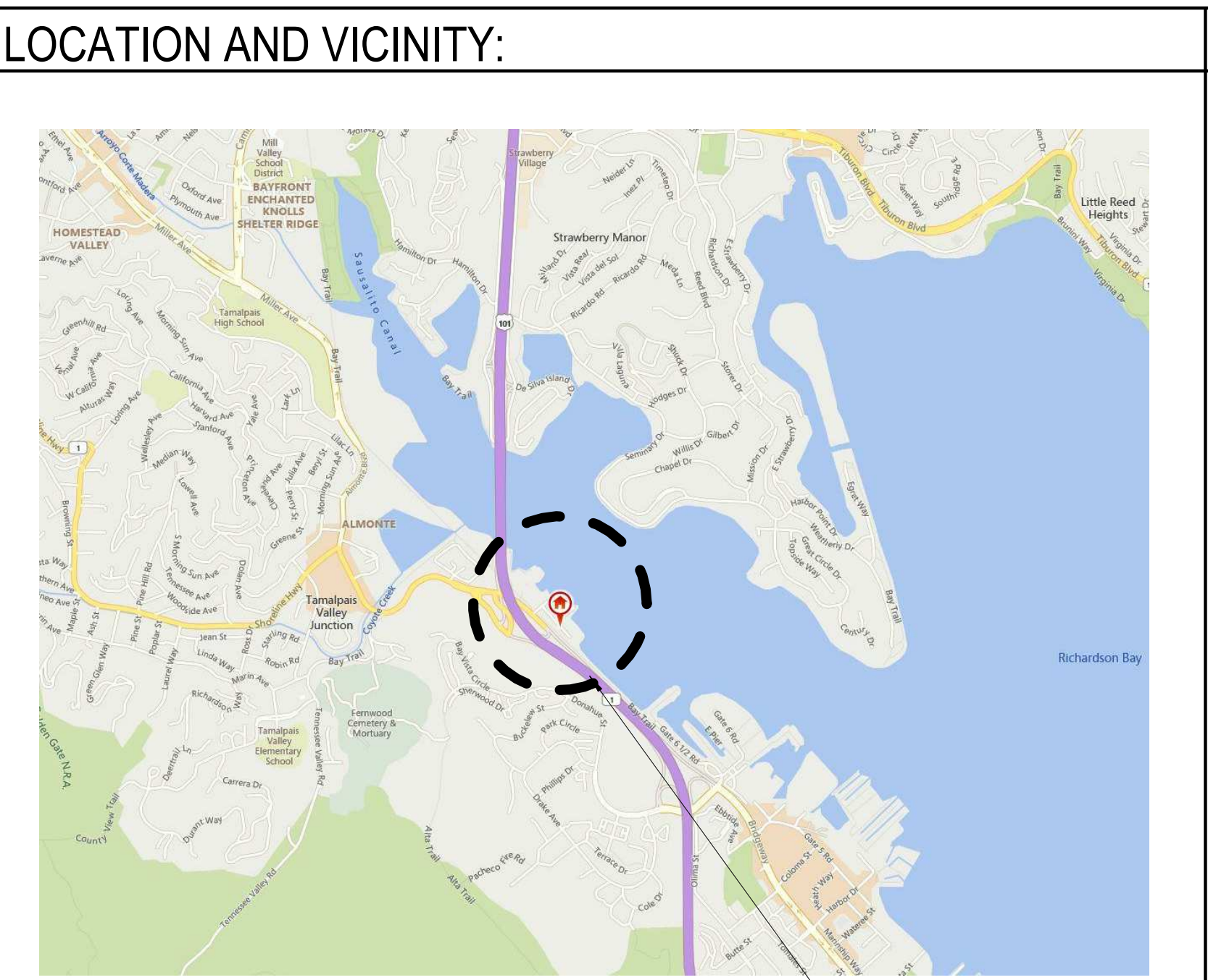
ACCESSOR PARCEL NUMBER: 052 - 247 - 01 / 052 - 247 - 02

2019 CBC CALIFORNIA BUILDING CODE
 2019 CEC CALIFORNIA ELECTRIC CODE
 2019 CMC CALIFORNIA MECHANICAL CODE
 2019 CPC CALIFORNIA PLUMBING CODE
 2019 CEnC CALIFORNIA ENERGY CODE
 2019 CFC CALIFORNIA FIRE CODE
 2019 CGC CALIFORNIA GREEN BUILDING STANDARDS

2019 CBC, CMC, CEC, CPC, CFC (based on the 2018 IBC, 2018 UMC, 2018 UPC, 2018 IFC and 2017 NEC-NFPA 70) 2019 California Green Building Standards Code (also known as the CAL Green Code) and 2019 Energy Standards, and as amended by State of California and local jurisdictional code amendments that are applicable to this project.

INDEX:

SHEET NO.	SHEET NAME
GENERAL	
G0-00	PROJECT INFORMATION
G0-01	SITE PLAN
G0-02	ACCESSIBILITY DETAILS

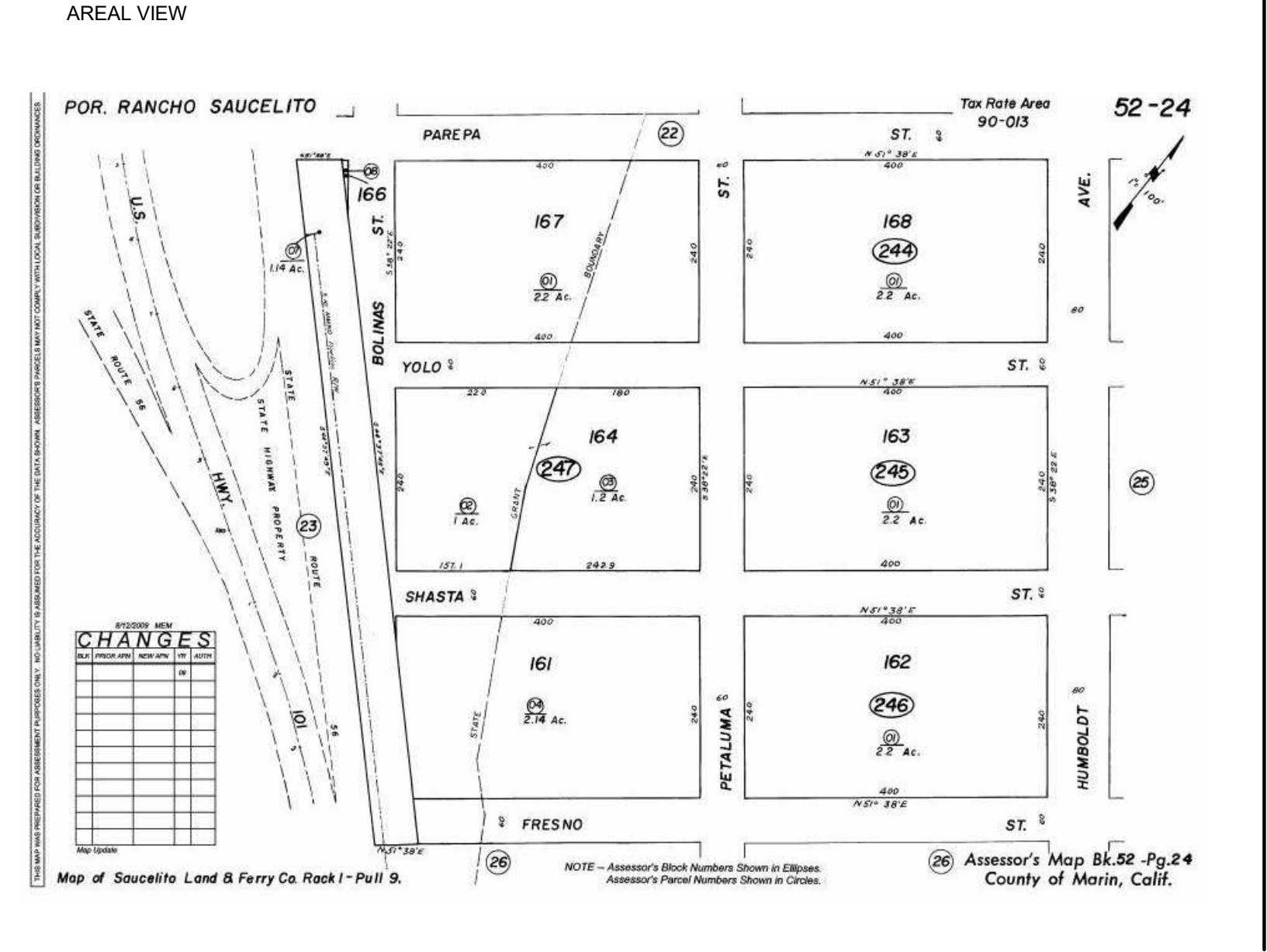


PROGRAMING

240-242 REDWOOD HIGHWAY SEAPLANE IMPROVEMENTS; (BCDC PERMIT APPLICATION NO. 1973.014.05, ENFORCEMENT CASE ER2019.063.00)



GENERAL NOTE:



PROJECT:
 242 REDWOOD HWY
 MILL VALLEY CA 94941
 APN.: 052-247-01 / 052-247-02

OWNER:
 SEAPLANE INVESTMENTS LLC
 loring@bldst.com
 415.298.5331

TENANT:
 SEAPLANE ADVENTURES
 aaron@seaplane.com
 415.272.6540

Stamp:

No.	Description	Date
		09/02/2022

Keyplan:

Title:
PROJECT INFORMATION

Checked by: Checker Scale: 1" = 30'-0"

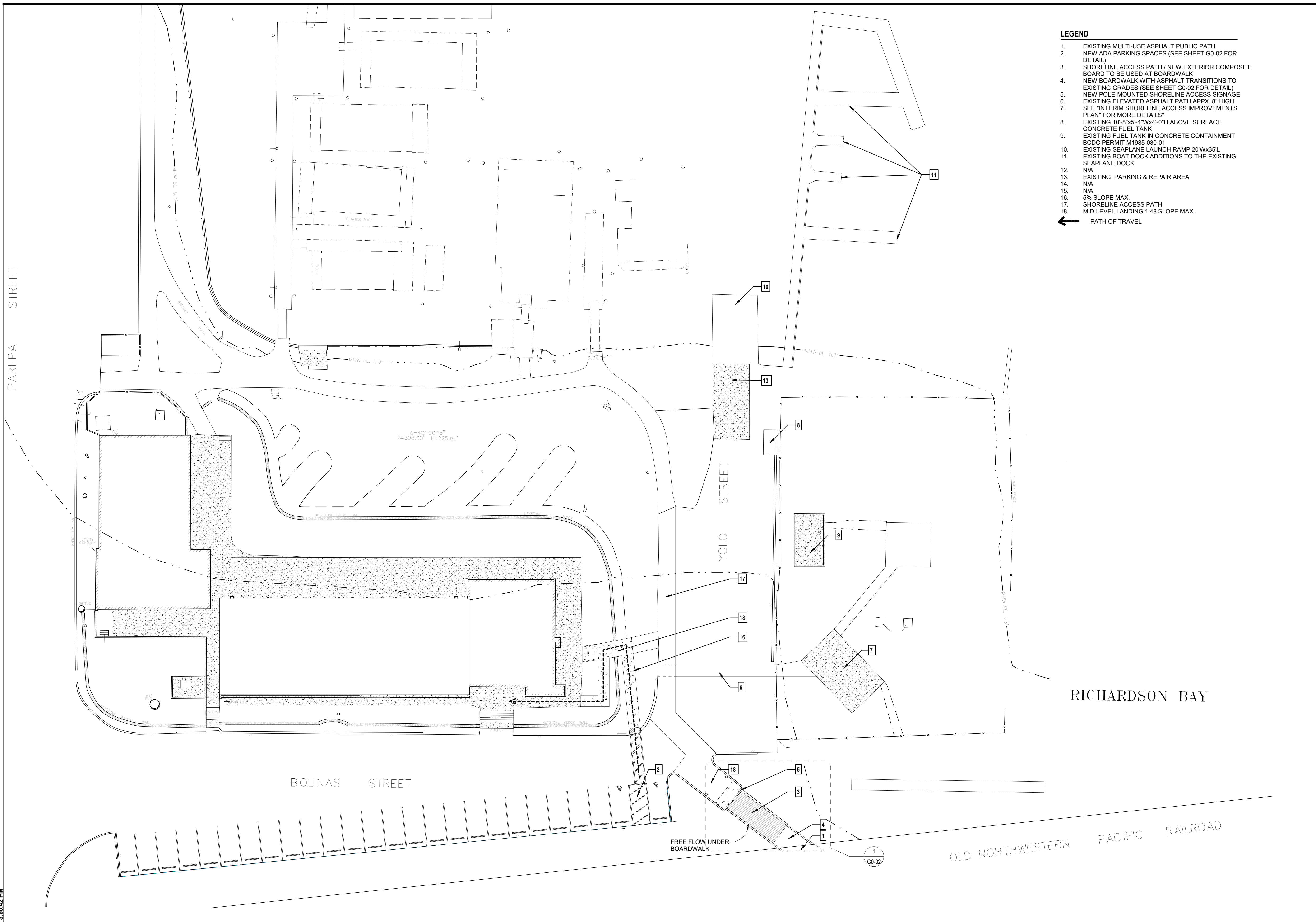
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G0-00

PROJECT:
 242 REDWOOD HWY
 MILL VALLEY CA 94941
 APN.: 052-247-01 / 052-247-02

OWNER:
 SEAPLANE INVESTMENTS LLC
 loring@bldsf.com
 415.298.5331

TENANT:
 SEAPLANE ADVENTURES
 aaron@seaplane.com
 415.272.6540

- LEGEND**
1. EXISTING MULTI-USE ASPHALT PUBLIC PATH
 2. NEW ADA PARKING SPACES (SEE SHEET G0-02 FOR DETAIL)
 3. SHORELINE ACCESS PATH / NEW EXTERIOR COMPOSITE BOARD TO BE USED AT BOARDWALK
 4. NEW BOARDWALK WITH ASPHALT TRANSITIONS TO EXISTING GRADES (SEE SHEET G0-02 FOR DETAIL)
 5. NEW POLE-MOUNTED SHORELINE ACCESS SIGNAGE
 6. EXISTING ELEVATED ASPHALT PATH APPX. 8" HIGH SEE "INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN" FOR MORE DETAILS
 7. EXISTING 10'-8"x5'-4"Wx4'-0"H ABOVE SURFACE CONCRETE FUEL TANK
 8. EXISTING FUEL TANK IN CONCRETE CONTAINMENT BDCDC PERMIT M1985-030-01
 9. EXISTING SEAPLANE LAUNCH RAMP 20'Wx35'L
 10. EXISTING BOAT DOCK ADDITIONS TO THE EXISTING SEAPLANE DOCK
 11. N/A
 12. EXISTING PARKING & REPAIR AREA
 13. N/A
 14. N/A
 15. N/A
 16. 5% SLOPE MAX.
 17. SHORELINE ACCESS PATH
 18. MID-LEVEL LANDING 1:48 SLOPE MAX.
- ← PATH OF TRAVEL



Stamp:

No.	Description	Date
		09/02/2022

Title:
SITE PLAN

Checked by: **Checker** Scale: **As indicated**

Sheet no:

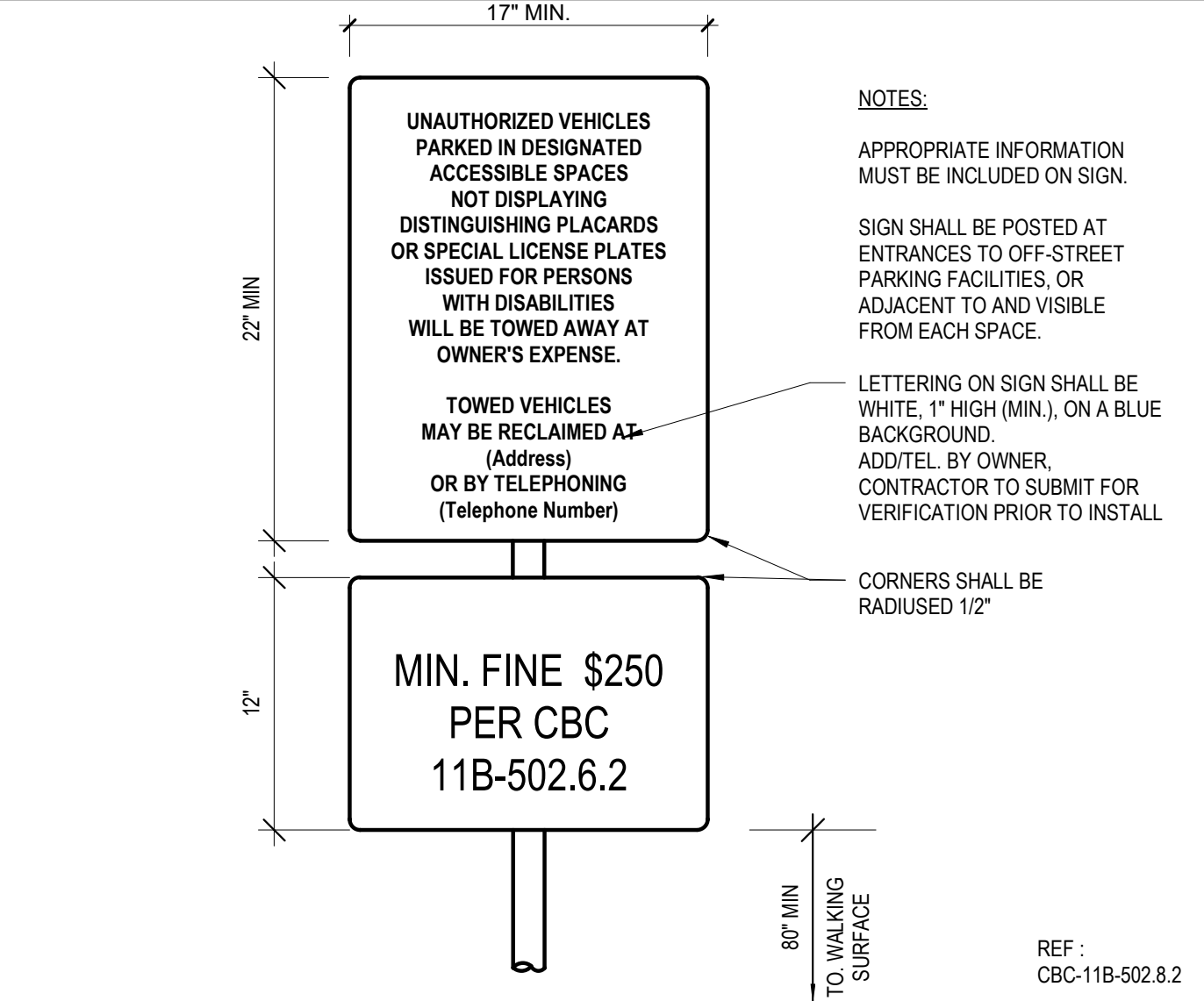
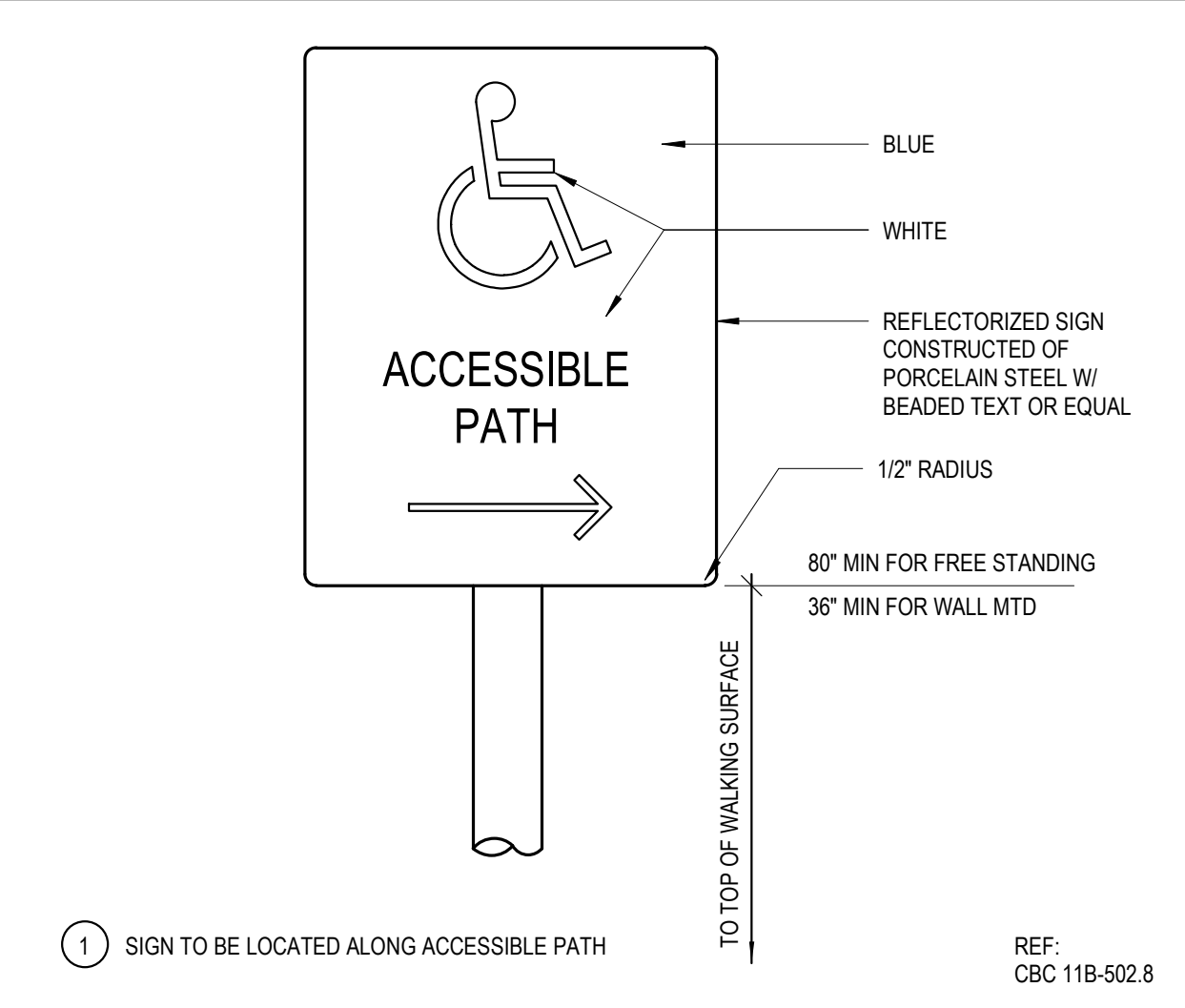
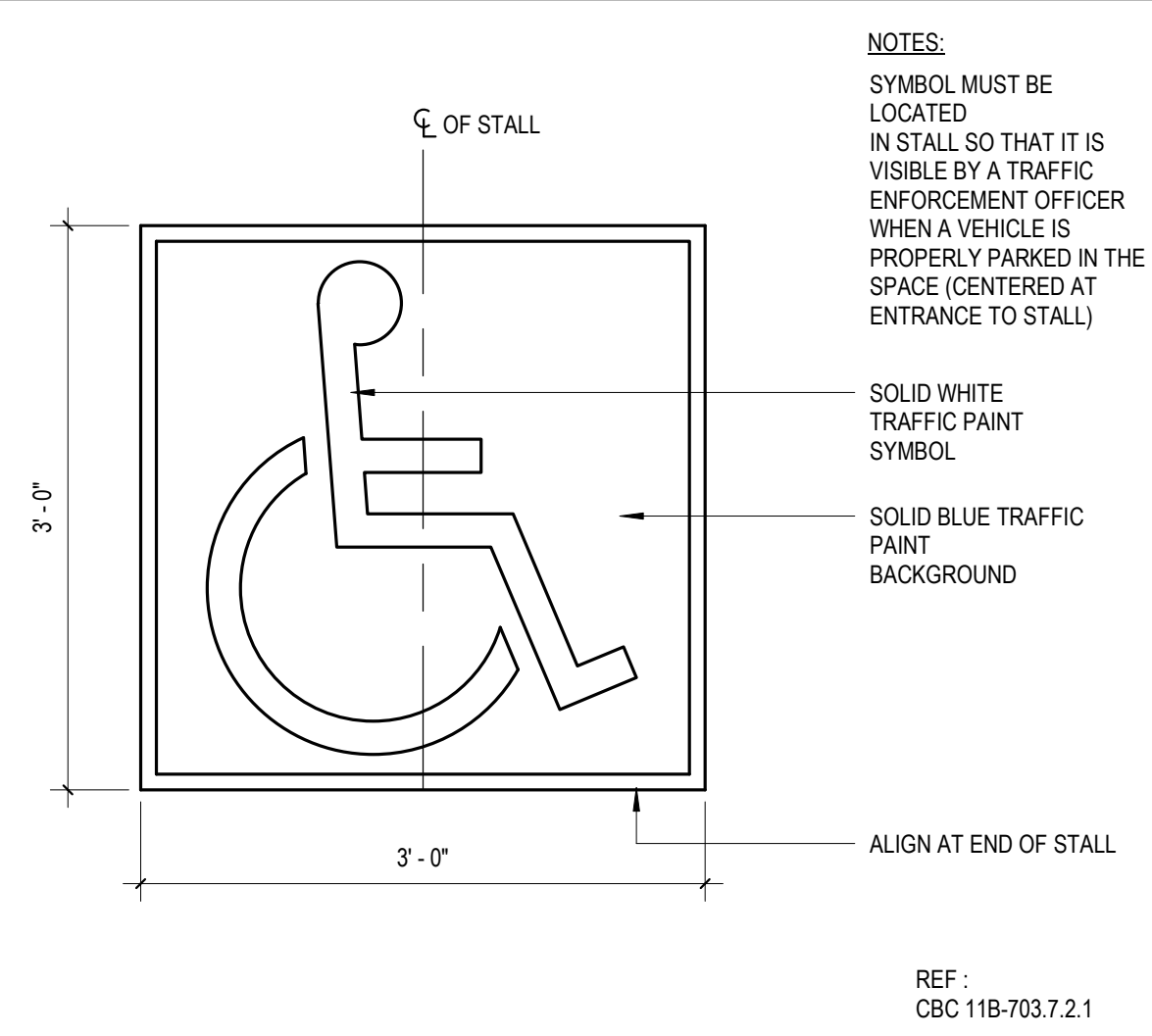
SITE PLAN 1" = 20'-0" 1/1 G0-01

G0-01

PROJECT:
242 REDWOOD HWY
MILL VALLEY CA 94941
APN.: 052-247-01 / 052-247-02

OWNER:
 SEAPLANE INVESTMENTS LLC
 loring@bldsf.com
 415.298.5331

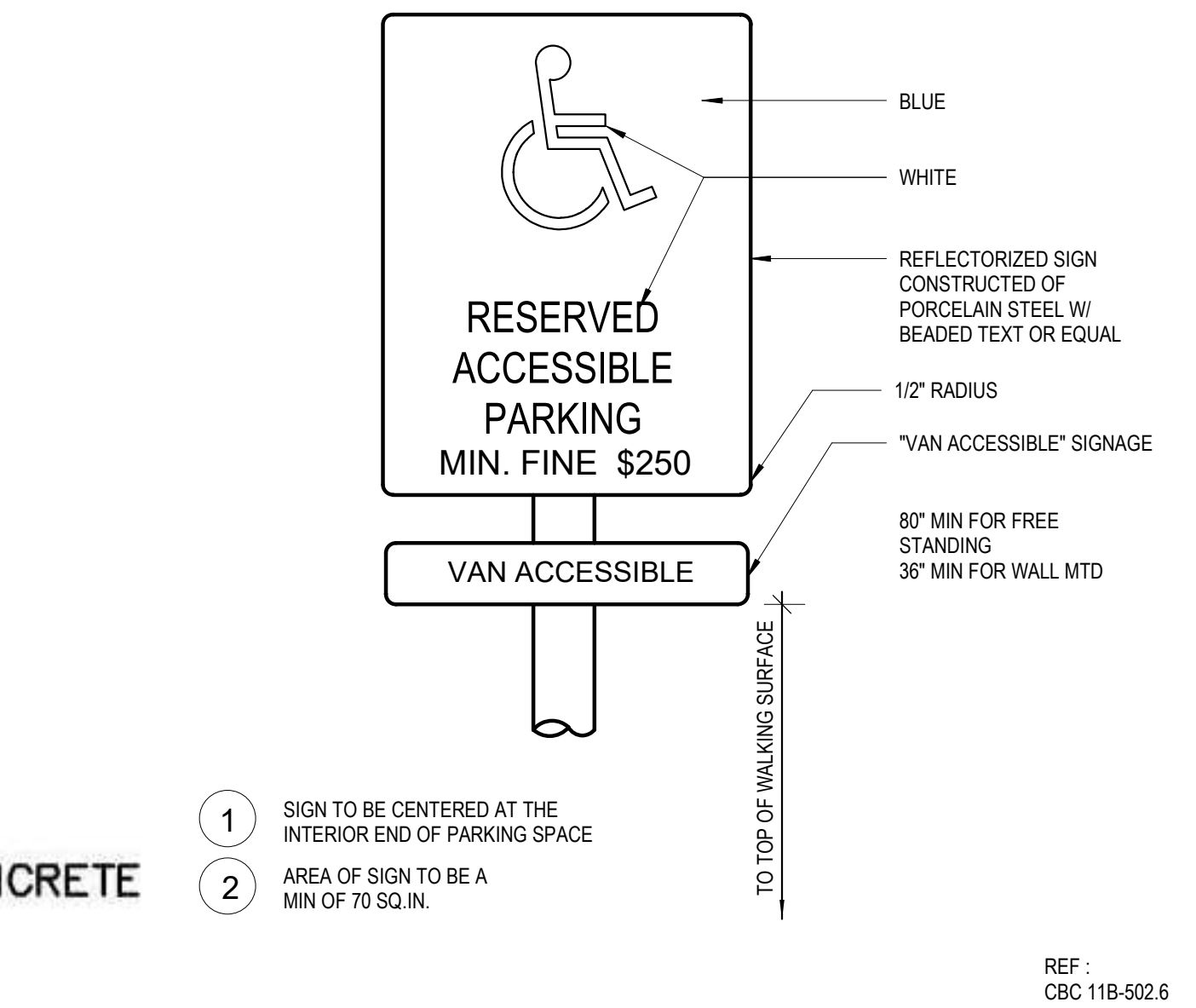
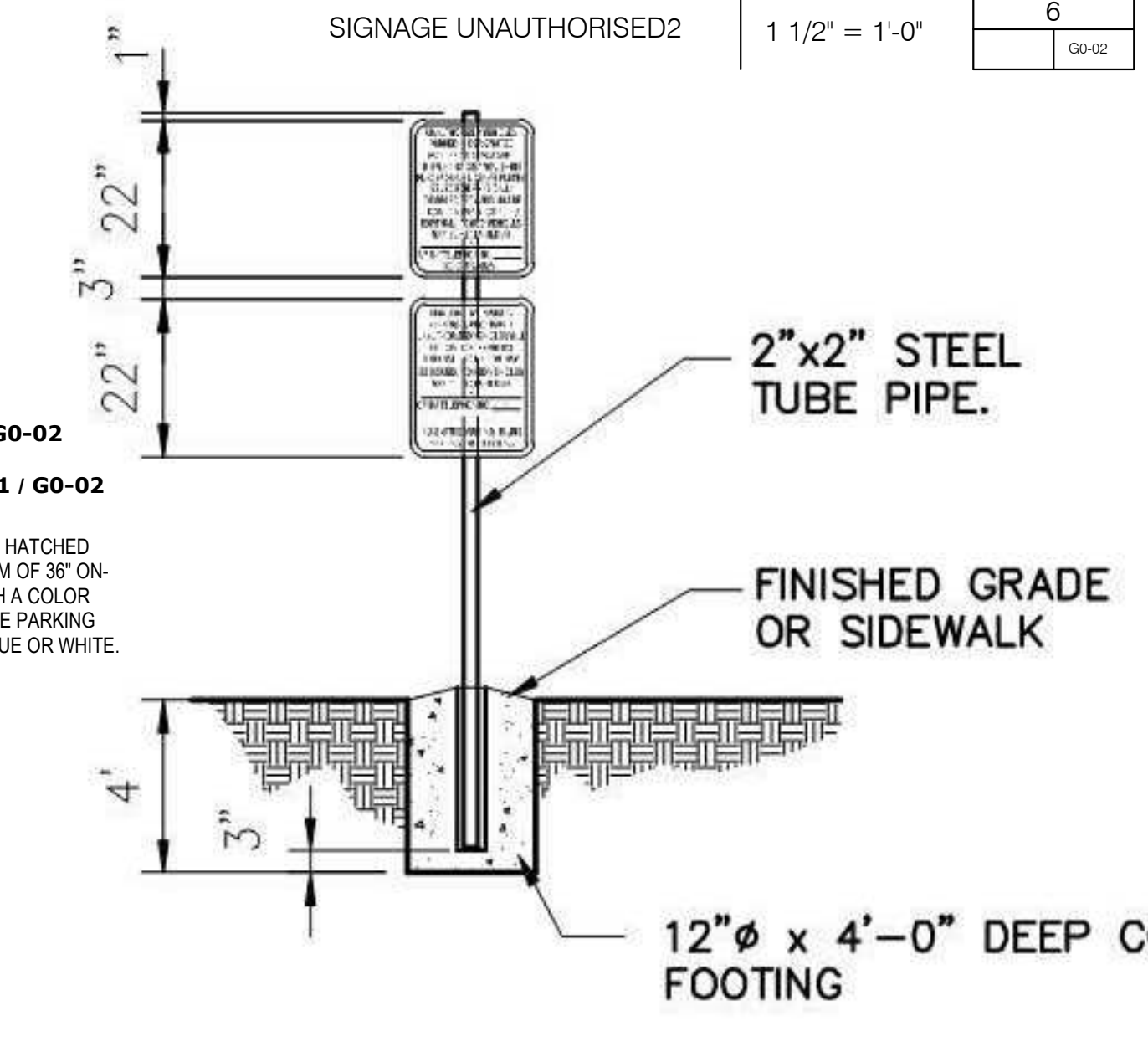
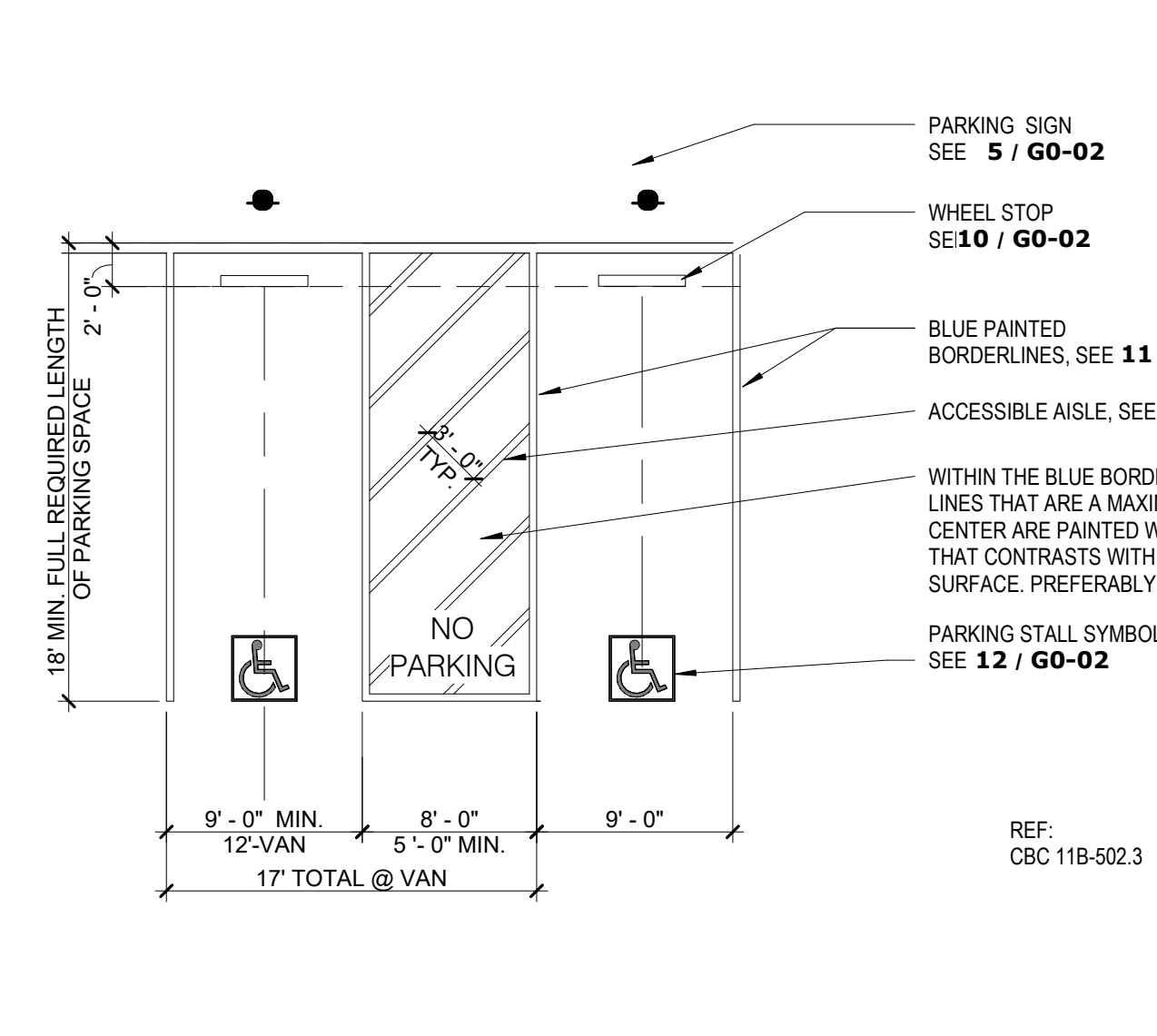
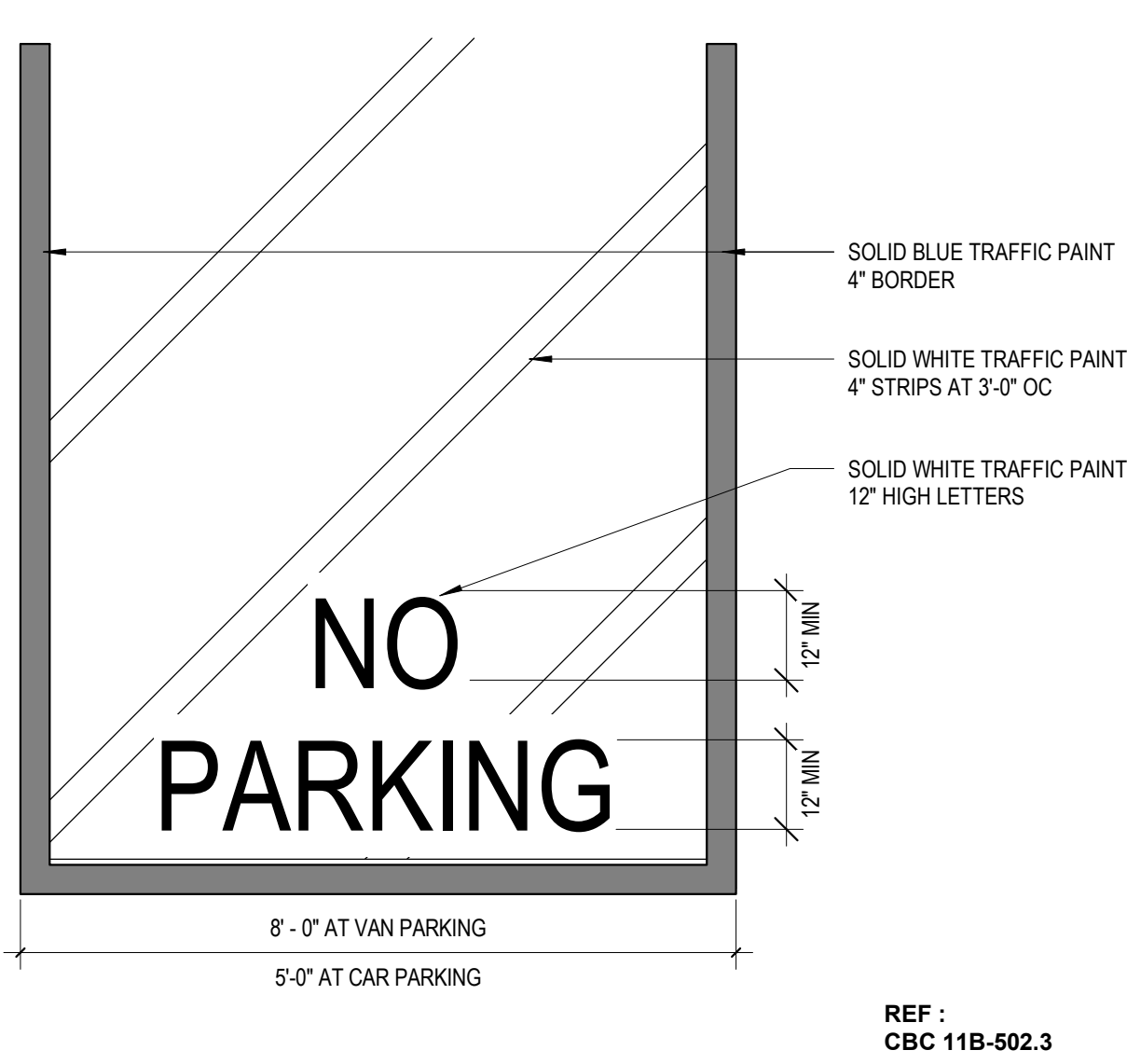
TENANT:
 SEAPLANE ADVENTURES
 aaron@seaplane.com
 415.272.6540



ACCESSIBLE SYMBOL	1" = 1'-0"	12
		G0-02

SIGNAGE ACCESSIBLE PARKING PATH1	3" = 1'-0"	9
		G0-02

SIGNAGE UNAUTHORIZED2	1 1/2" = 1'-0"	6
		G0-02

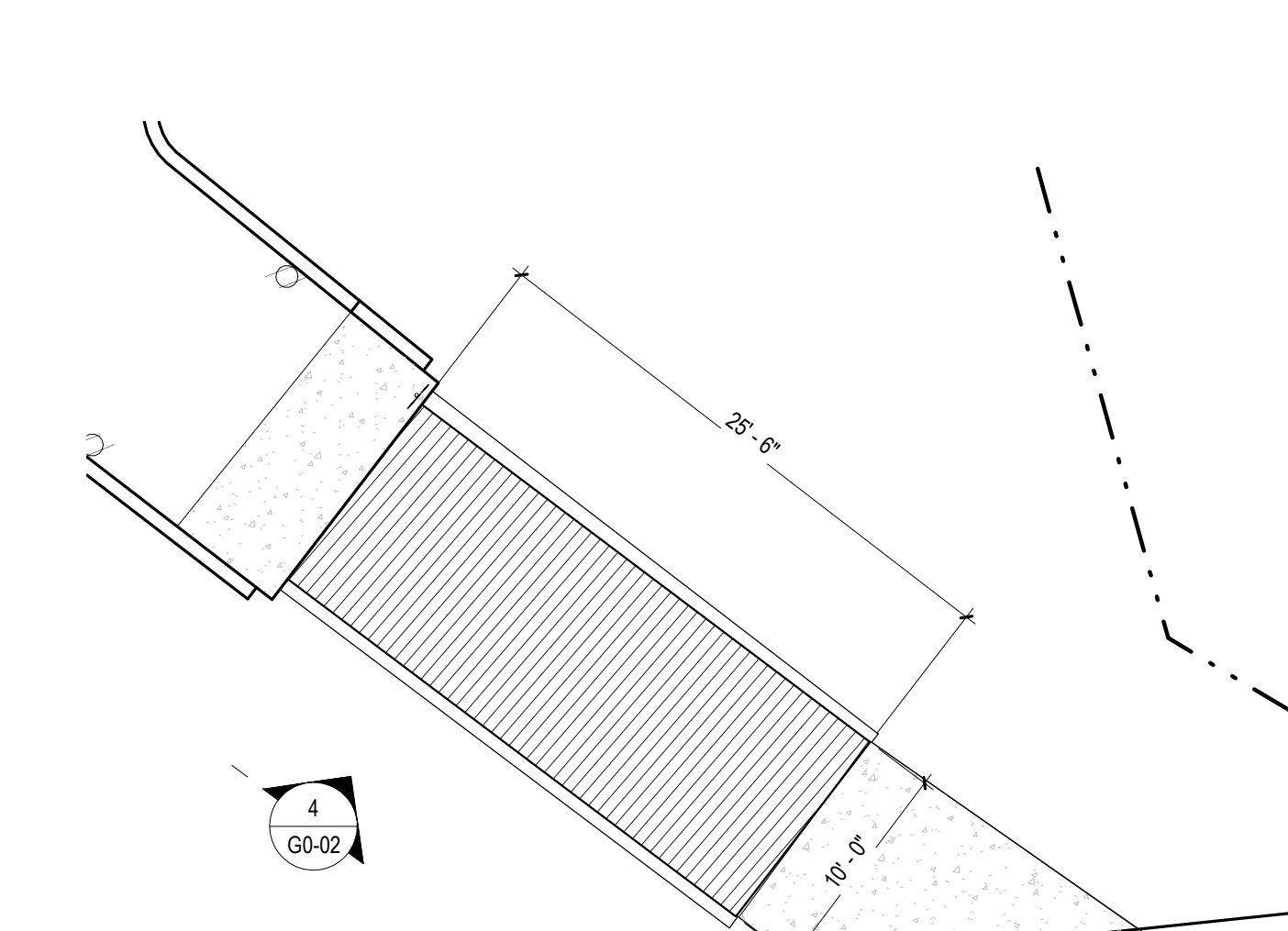
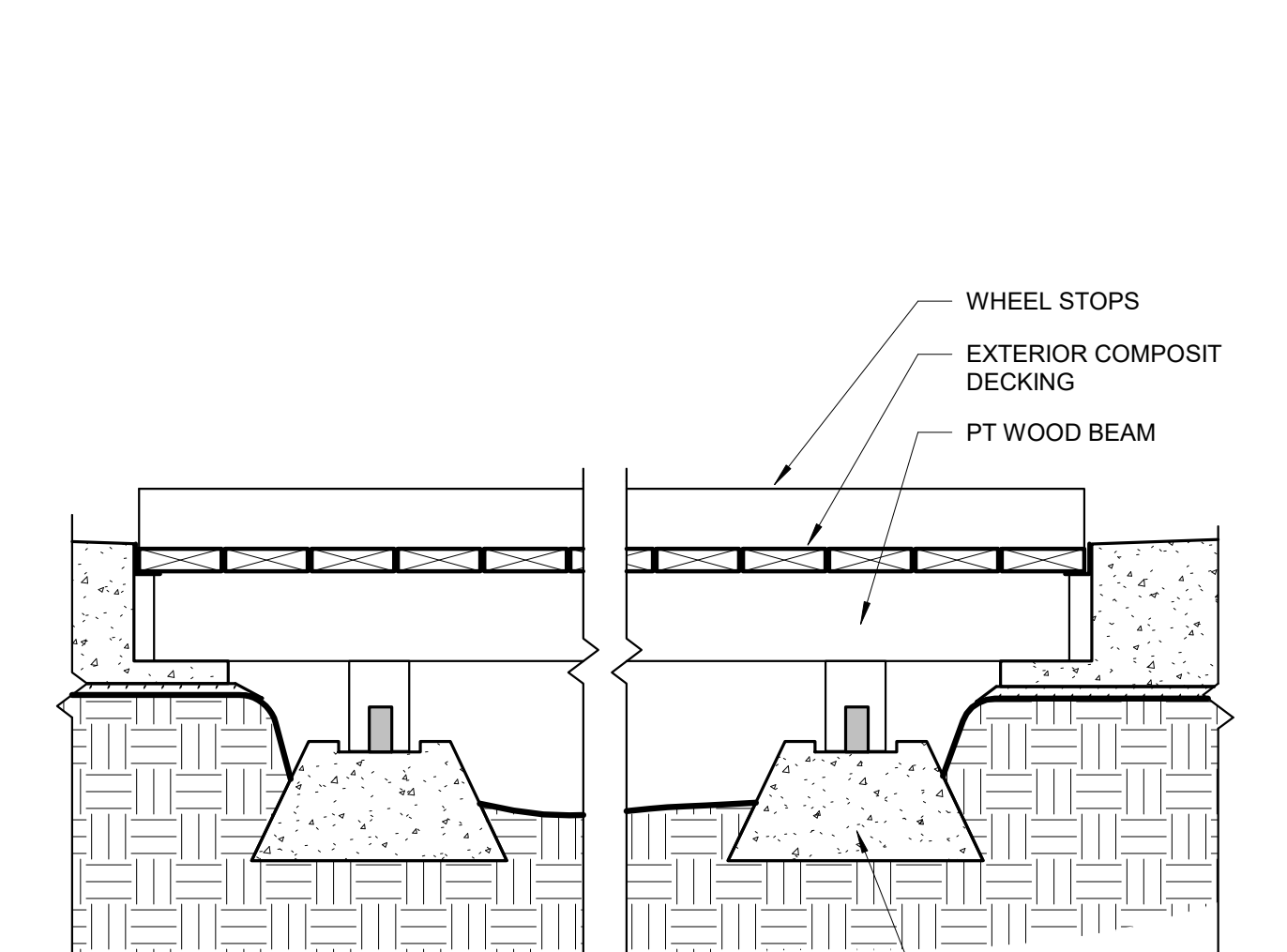
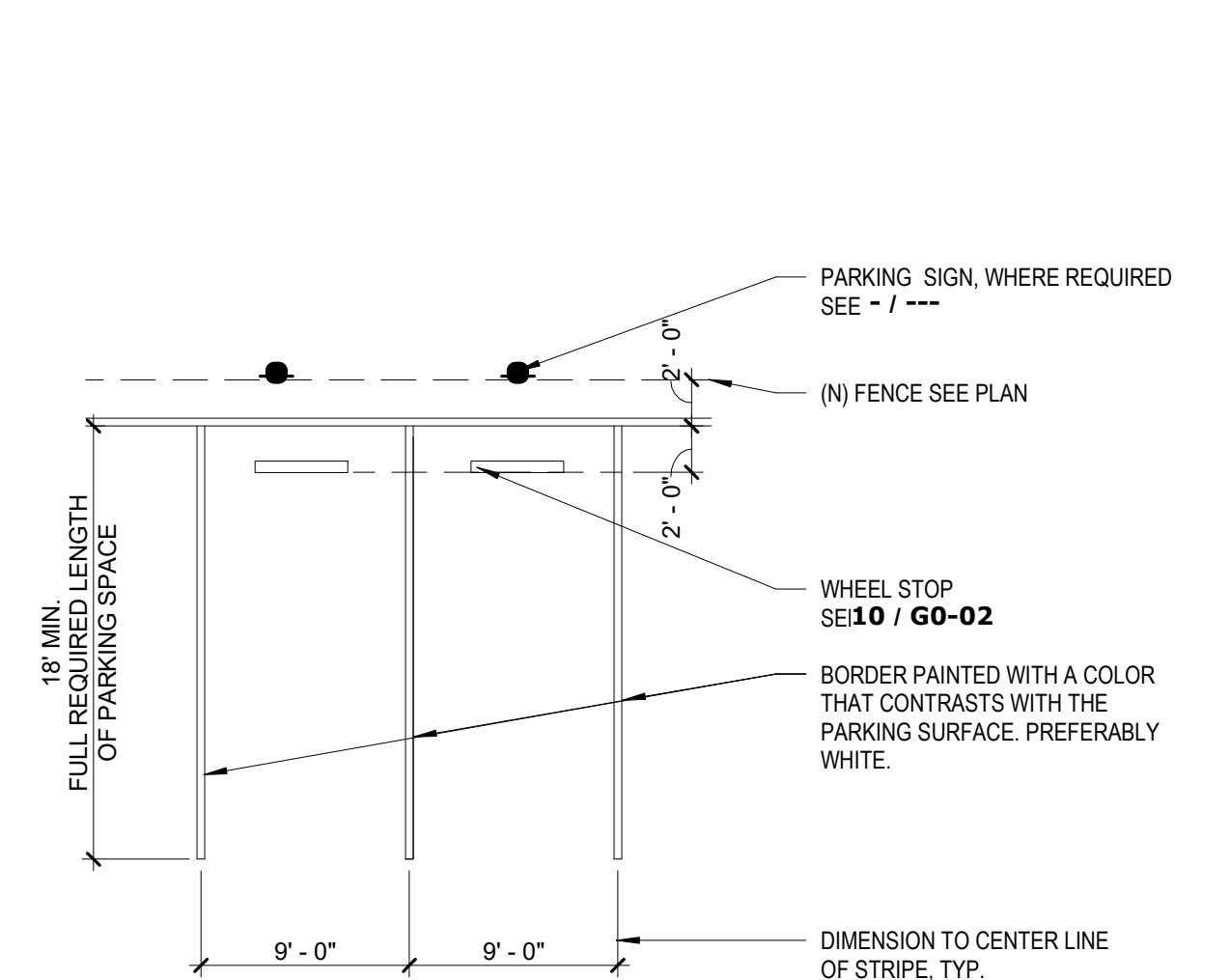
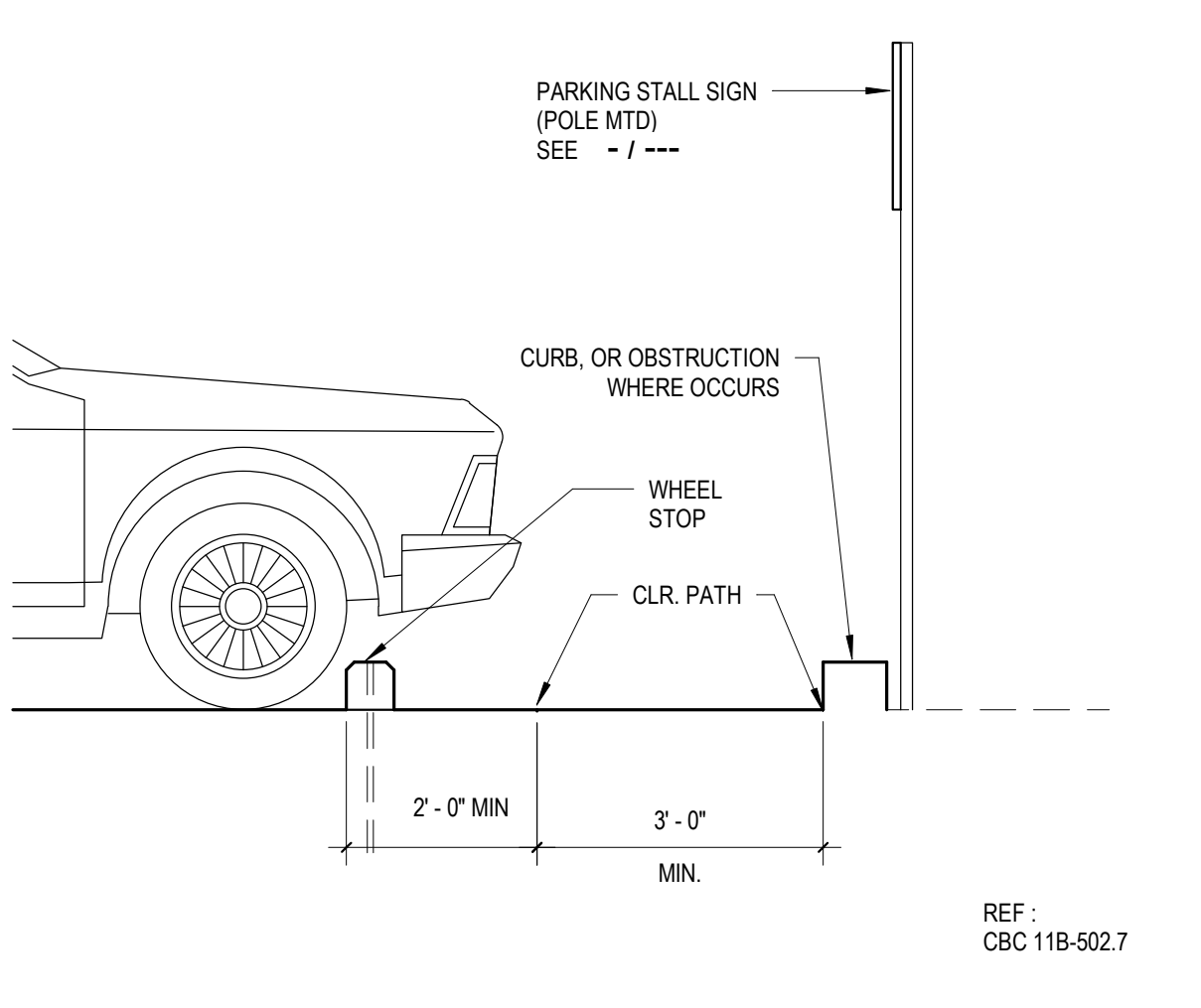


ACCESSIBLE AISLE SYMBOL2	1/2" = 1'-0"	11
		G0-02

DOUBLE STALL - STRAIGHT2	1/8" = 1'-0"	8
		G0-02

CAST IN PLACE SIGN POST2	12" = 1'-0"	5
		G0-02

VAN ACCESSIBLE PARKING SPACE2	3" = 1'-0"	2
		G0-02



SECTION AT WHEELSTOP/SIGN1	1/2" = 1'-0"	10
		G0-02

SINGLE STALL1	1/8" = 1'-0"	7
		G0-02

BOARDWALK SECTION	1" = 1'-0"	4
		G0-02

BOARDWALK	1/8" = 1'-0"	1
		G0-02

Stamp:

No.	Description	Date
		09/02/2022

Keyplan:

Title:
ACCESSIBILITY DETAILS

Checked by: **Checker** Scale: **As indicated**

Sheet no:

G0-02

1 BRIAN M. BOYNTON
 Acting Assistant Attorney General
 2 JACQUELINE COLEMAN SNEAD
 Assistant Branch Director
 3 MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)
 Trial Attorney
 4 United States Department of Justice
 Civil Division, Federal Programs Branch
 5 1100 L St. NW
 Washington, DC 20005
 6 Tel: (202) 514-2356
 Fax: (202) 616-8470
 7 Email: Michael.J.Gaffney@usdoj.gov

8 STEPHANIE M. HINDS (CABN 154284)
 Acting United States Attorney
 9 SARA WINSLOW (DCBN 457643)
 Chief, Civil Division
 10 Assistant United States Attorney
 450 Golden Gate Avenue, Box 36055
 11 San Francisco, California 94102-3495
 Telephone: 415-436-6925
 12 Sara.winslow@usdoj.gov

13 Attorneys for the U.S. Department of Transportation
 and Federal Aviation Administration
 14

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION
 18

19 SEAPLANE ADVENTURES,	)	CASE NO. 20-6222 WHA
20 Plaintiff,	)	DECLARATION OF DENNIS M. THORPE
21 v.)	
22 COUNTY OF MARIN, CALIFORNIA,)	
23 Defendant.)	
24)	

25
 26 I, Dennis M. Thorpe, declare as follows:

27 1. I am employed by the Federal Aviation Administration ("FAA") as the Manager of the
 28 Oakland Flight Standards District Office ("FSDO") in Alameda, California. I submit this declaration,

RED Exhibit D

1 based on information available to me in connection with my position, to provide the Court with
2 information about certain safety-related certifications that the plaintiff in this action, Seaplane
3 Adventures, has received from the FAA.

4 2. In order for an entity to operate as an air carrier, it must receive an air carrier certificate
5 from the FAA. *See* 49 U.S.C. §§ 44705, 44711. The FAA grants such a certificate if it finds that the air
6 carrier “properly and adequately is equipped and able to operate safely under” aviation safety rules set
7 out by statute and by FAA regulations. *Id.* § 44705; 14 CFR Part 119. San Francisco Seaplane Tours,
8 Inc. (“SFST”) has been granted an air carrier certificate (as noted below, SFST is authorized to do
9 business as “Seaplane Adventures”). SFST’s certificate became effective in 2006. A true and accurate
10 copy of the certificate is annexed hereto as Exhibit A.

11
12 3. SFST has also been issued operations specifications (“OpSpecs”) describing the kinds of
13 operations it can conduct and certain applicable authorizations, limitations, and procedures. *See* 14 CFR
14 §§ 119.7, 119.33(a)(3). The OpSpecs indicate that SFST is authorized to do business as “Seaplane
15 Adventures.” The OpSpecs authorize SFST to provide on-demand operations in common carriage
16 pursuant to 14 CFR § 119.21(a)(5) and in compliance with FAA safety regulations set forth in 14 CFR
17 Part 135. SFST’s current OpSpecs were last updated in 2019 and are on file with the FAA.

18
19 4. SFST has also obtained a Letter of Authorization (“LOA”) that authorizes it to conduct
20 nonstop passenger-carrying flights that begin and end at the same airport, and are conducted within a 25-
21 statute mile radius of the airport, in accordance with FAA safety regulations set forth in 14 CFR Part 91.
22 *See* 14 CFR §§ 91.147, 119.1(e)(2). SFST’s current LOA was last updated in 2017 and is on file with
23 the FAA.
24
25
26
27
28

RED Exhibit D

1 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and
2 correct to the best of my knowledge, information, and belief.

3 Executed on this 16th day of June 2021, in Alameda, California.
4
5

6 DENNIS M Digitally signed by
7 THORPE DENNIS M THORPE
Date: 2021.06.16
10:06:30 -07'00'

8 Dennis M. Thorpe
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RED Exhibit D

Case 3:20-cv-06222-WHA Document 43-2 Filed 06/16/21 Page 4 of 5

Exhibit A



US Department
of Transportation
Federal Aviation
Administration

Air Carrier Certificate

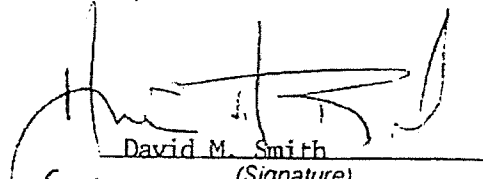
This certifies that

SAN FRANCISCO SEAPLANE TOURS, INC.
242 REDWOOD HIGHWAY
MILL VALLEY, CA 94941

has met the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate and is hereby authorized to operate as an air carrier and conduct common carriage operations in accordance with said Act and the rules, regulations, and standards prescribed thereunder and the terms, conditions, and limitations contained in the approved operations specifications.

This certificate is not transferable and, unless sooner surrendered, suspended, or revoked, shall continue in effect indefinitely.

By Direction of the Administrator.



David M. Smith
(Signature)

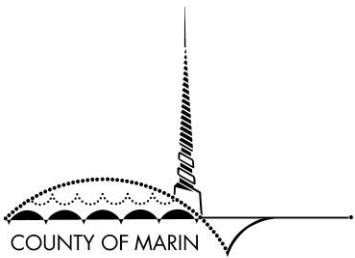
fale/ Manager
(Title)

Western Pacific/Oakland FSDO
(Region/Office)

Certificate number: 02QA052Y

Effective date: August 10, 2006

Issued at: Alameda, CA



COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

PLANNING INFORMATION PACKET (PIP)

P2981

Date: April 20, 2021

Prepared By: Joshua Bertain, Community Development Technician

Applicant: Steve Price

Property Owner: Commodore Marina LLC

Property Addresses: 220, 240, 242 Redwood Highway, Mill Valley - APN 052-247-01,
 No assigned address – APN 052-247-02 and,
 No assigned address – APN 052-247-03

Assessor's Tax Parcel Number (APN): 052-247-01, 052-247-02, 052-247-03

Zoning: Bayfront Conservation, Resort and Commercial Recreation District (BFC-RCR)

Development Standards

Front Yard Setback	Side Yard Setback	Rear Yard Setback	Floor Area Ratio	Height Limit
Determined by site constraints and implemented through discretionary review (Master Plan/Design Review)				30' (primary), 16' (accessory)

Countywide Plan Land Use Designation: Recreational Commercial

Community Plan Area: Tamalpais

Countywide Plan Corridor: Baylands

Is Property Located in the Wildland Urban Interface Zone? No

Utilities Information:

Water:	Marin Municipal Water District	(415) 945-1455
Sanitary :	Sausalito – Marin City Sanitary District	(415) 332-0244
Fire:	Southern Marin Fire Protection District	(415) 388-8182

Other Helpful Phone Numbers:

California Building Code questions:	<i>All (415) Area Code</i> 473-6550 (Building & Safety Division)
Onsite wastewater systems and water well questions:	473-6907 (Environmental Health Services)
Grading, drainage, parking, and roadway questions:	473-6528 (Department of Public Works)
Zoning and Development Standards questions:	473-6269 (Planning Division)

Current Assessor Parcel Number: 052-247-01, -02
Historic Assessor Parcel Number(s): 052-243-01, -02, 052-242-01

Planning Permit History

Please see attached

1. County Initiated Review of 1981 Use Permit P1758, August 28, 2017
2. Use Permit Renewal UP 07-24 (New Use Permit # UP 13-5), November 30, 2012, ten-year Extension of Use Permit 97-217
3. Use Permit Extension UP 97-217 (New Use Permit # UP 07-24), December 13, 2007, five-year extension of Use Permit 97-217
4. Price Design Review Clearance (DC 05-043), April 19, 2005, Design Review Clearance to repave existing heliport landing and parking areas
5. Use Permit Extension (EX 02-19), May 23, 2002, five-year extension of Use Permit 97-217
6. Use Permit Reconciliation and Extension of UP 96-003 and UP 97-217, July 25, 2000, 1-year extension to reconcile expiration dates of Use Permits 96-003 and 97-217 to expire on May 8, 2002
7. Use Permit 97-217, May 8, 1997, Use Permit (children's recreation center, 8 artist studios, property management office: 5-year term)
8. Use Permit 96-003/Design Review Exemption 96-292, February 29, 1996, Use Permit (heliport use; 5-year term) and Design Review Exemption
9. Pre-application 95-105, April 26, 1995, BOS resolution 95-105 denying heliport appeal
10. Use Permit, February 9, 1981, Modification to sea plane Use Permit
11. Use Permit and Plan Approval, April 24, 1972, Use Permit and Plan Approval for a mortuary
12. Sign Permit, March 2, 1964, Sign Permit for "Commodore Aviation"
13. Sign Permit, August 12, 1957, Sign Permit for "Commodore Aviation"
14. Use Permit, November 10, 1953, Use Permit to construct, operate, and maintain a Sea Plane Base, Flight School, Maintenance & Repair of Aircraft
15. Use Permit, February 6, 1950, 5-year Use Permit for the construction, maintenance and operation of a Sea Plane Base, Hangers, Office and Yacht Harbor and accessory buildings

Code Enforcement History

All closed, no attachments provided

1. Case # 13101, APN 052-247-01, October 30, 2016, Hours of operation (noise)
2. Case # 12322, APN 052-247-01, May 29, 2015, Commodore Marina, Slip 1
3. Case # 4866, APN 052-247-01, October 23, 2009, Dock, electrical enclosure deteriorated, unsafe piling, unprotected aviation fuel tanks
4. Case # 4521, APN 052-247-01, June 27, 2008, non-compliant w/ permit regarding number of plane/helicopter flights per day
5. Case # 3686, APN 052-247-01, August 25, 2005, non-compliant w/ permit regarding hours of operation and number of flights per day
6. Case # 5390, APN 052-247-01, December 1, 1987, Construction of Seaplane docks without Building Permits or Planning review

Building Permit History

No attachments provided

Date Approved	Date Issued	Permit Number	Permit Type
4/27/2004	N/A	868686	New single-family dwelling (teardown/rebuild)
6/20/2001	7/23/2001	88645	Retrofit damaged dock original permit never picked up
4/21/2000	4/24/2000	83216	Heater, water heater
4/21/2000	N/A	868686	Retrofit Damaged Dock
N/A	7/21/1997	71755	Drywall and electrical repair
1/8/1998	N/A	868686	Interior partitions and sheetrock ceiling
N/A	6/7/2006	110393	Re-roof
N/A	12/2/2009	125019	Replace broken conduit relocate meters
N/A	10/5/2007	116866	Re-roof commercial building
N/A	N/A	2494	Condition of Marina

Attachments

Planning Permit History (as listed above):

1. County Initiated Review of 1981 Use Permit P1758, August 28, 2017
2. Use Permit Renewal UP 07-24 (New Use Permit # UP 13-5), November 30, 2012, ten-year Extension of Use Permit 97-217
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15. Use Permit, February 6, 1950, 5-year Use Permit for the construction, maintenance and operation of a Sea Plane Base, Hangers, Office and Yacht Harbor and accessory buildings

Miscellaneous Attachments:

- 16. Aerial Photo
- 17. Zoning Map

Planning and Building permit records can also be accessed via:

<https://www.marincounty.org/depts/cd/customer-service/records-search>

Planning Permit History

1. County Initiated Review of 1981 Use Permit P1758, August 28, 2017

RED Exhibit D

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC17-007

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS MODIFY THE COMMODORE MARINA LLC SEAPLANE BASE USE PERMIT

ASSESSOR'S PARCELS: 052-247-01 and -02

SECTION I: FINDINGS

1. **WHEREAS**, the Marin County Planning Commission has reviewed the 1981 Commodore Marina Seaplane Base Use Permit in reliance on a stipulation of the original 1953 Use Permit for the seaplane base which stated the following: "The Marin County Planning Commission reserves the right to revoke or review this Use Permit, after holding a public hearing thereon, said revocation and review to be instigated by the Commission at no particular time, but only when changed conditions seem to warrant." Those changed conditions warranting the Commission's review include changes to zoning regulations since the Use Permit and subsequent amendments were issued, increased development in the area, and changes to the Federal legal framework enabling local regulation of seaplane businesses. The property is located at 242 Redwood Highway and is further identified as Assessor's Parcels 052-247-01 and -02.
2. **WHEREAS**, on August 28, 2017, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project.
3. **WHEREAS**, the project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines because it involves the continued operation of a legal seaplane base.
4. **WHEREAS**, the project would be consistent with Countywide Plan policy TR-1.7 "Direct Aviation Uses to Appropriate Locations" and program TR-1.p "Limit Aviation Uses" because it would not eliminate the ability of the seaplane base to continue operating.
5. **WHEREAS**, the project is consistent with the goals and policies of the Richardson Bay Special Area Plan and Tamalpais Area Community Plan because it would preserve natural resources and navigation channels on Richardson Bay and maintain existing access from the shoreline.
6. **WHEREAS**, the project is consistent with the mandatory findings for Use Permit revocation or modification under the express terms of the existing Use Permit.
 - A. That circumstances have changed since the grant of the Use Permit in 1953, as modified in 1981, by virtue of (1) changes to zoning regulations and increased development in the area; and (2) changes to the Federal legal framework governing local regulation of seaplane businesses; and that, therefore, the Use Permit should be modified.

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The changed circumstances that support modifying the conditions of the Use Permit are discussed below.

1. *Zoning Changes and Increased Development*

In 1981, when the current Use Permit was approved, the property was zoned RCR (Resort, Commercial, Recreational). At that time, any resort or commercial recreation use was allowable, subject to securing a Use Permit. The current Use Permit was granted by the Planning Commission under this authority. In 1983, the BFC (Bayfront Conservation) overlay zone was applied to the property. While this did not change the underlying uses allowable, it did heighten the priority of environmental protection in recognition of the natural resources and habitats that shorelines and tidelands provide.

The neighborhoods surrounding the inlet between De Silva Island and Seminary Drive have undergone substantial new development since 1981, including the De Silva Island development and homes and apartment buildings adjacent to the shoreline along Seminary drive. This area is also environmentally sensitive due to shoreline habitat. While this area may have always been sensitive, the importance of wetlands and shoreline habitats is better understood now than it was in 1981 when the Use Permit was previously modified. As a result, the BFC overlay district provides more stringent environmental protections than were in place in 1981. Seaplanes continue to use the inlet for maneuvers prior to take-off although it is outside of the airstrip established by the Federal Government in 1949.

In 2003, the Development Code was adopted, which contained land use tables specifying which uses are allowable in each zoning district. The Development Code's land use tables, still in effect today, do not list "Airparks" as an allowable use in the RCR district.

The regulatory circumstances have changed in two important respects since approval of the 1981 Use Permit: (1) applying the BFC overlay zone to better protect the bayshore environment; and (2) the zoning under the Development Code no longer allows airparks as a conditionally permitted use in RCR zones.

2. *Federal Law*

While a review of the zoning history reveals that the seaplane base would not be permitted today, the changes to the legal framework for regulation since the original 1953 Use Permit was issued are perhaps more far reaching in their effects. Presumably unknown to the Planning Commission at the time they modified the Use Permit in 1981, the US Supreme Court had in 1973 issued a ruling in the City of Burbank v. Lockheed Air Terminal case that prohibited local jurisdictions from regulating aircraft noise, viewing it as an element of aviation regulation that was left exclusively to the authority of the Federal Government. This Federal preemption calls into question the validity of the 86 decibel noise limit, which is the lynchpin of the 1981 Use Permit. Further review of the Use Permit also indicates that the other operational restrictions related to take offs and landings may be difficult to enforce because local regulation is preempted by Federal law.

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Based on the issues described above, the conditions of approval need to be modified to reflect the Federal preemption of conditions 1, 3, and 6 of the 1981 Use Permit as shown struck out below.

- ~~1. No approaches over Strawberry Point except in the judgment of the pilot when necessary for safe operation. This condition is not intended to allow repeated approaches over Strawberry Point under unsafe conditions. Strawberry Point shall be defined as the area south of the Seminary.~~
2. Richardson Bay to be used for arrivals and departures only, i.e., no touch and go operations. A school shall be allowed to operate from the base, but training maneuvers, with the exception of sailing or idling type and initial takeoff and final landing must take place in other areas.
- ~~3. No power approaches to be used except when necessary for safe operations.~~
4. Transient airplanes will not be allowed the use of base facilities by the operator.
5. Maximum of four commercial aircraft at the base, but only two may be simultaneously used for revenue producing purposes.
- ~~6. At no time should any aircraft operated by the commercial operator exceed 86 decibels.~~

Conditions 2, 4, and 5 remain valid.

B. That the public necessity, convenience, and general welfare do require the modification of the Use Permit.

In order for the seaplane base operations to continue in a manner that does not adversely affect the public welfare, it must be carefully managed and regulated. This includes reviewing changed circumstances that may need to be reflected in modified conditions and ensuring that those conditions are clear and enforceable. Changed circumstances support modifying the conditions of the Use Permit, as indicated above in Finding A.

SECTION II: ACTION

NOW THEREFORE, BE IT RESOLVED that the Planning Commission recommends that the Board of Supervisors modify the Commodore Marin Seaplane Base Use Permit to eliminate conditions 1, 3, and 6 of the 1981 Use Permit. All other conditions of the 1981 Use Permit should remain valid.

SECTION III: ADOPTION

ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 28th day of August, 2017.

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AYES: MARGOT BIEHLE, CHRISTINA L. DESSER, DON DICKENSON, DAVID PAOLI,
PETER THERAN

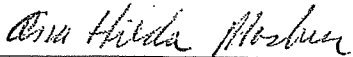
RECUSED: MARGARET CURRAN, JOHN ELLER,

NOES: NONE



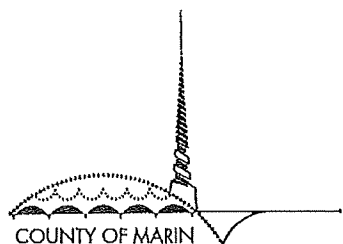
MARGOT BIEHLE, VICE CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:



Ana Hilda Mosher
Recording Secretary

2. Use Permit Renewal UP 07-24 (New Use Permit # UP 13-5), November 30, 2012, ten-year Extension of Use Permit 97-217



RED Exhibit D

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

NOTICE OF USE PERMIT RENEWAL

November 30, 2012

Steven Price
242 Redwood Highway
Mill Valley, CA 94941

RE: Renewal of Price Use Permit (UP 13-5)
242 Redwood Highway, Mill Valley
Assessor's Parcels 052-247-01,02

Dear Mr. Price::

The Community Development Agency, Planning Division, has examined your application to renew Use Permit 07-24. Your proposal is to match the existing uses approved by the previous Use Permit, therefore the project will conform to that Use Permit. The project continues to meet current standards.

Therefore, Use Permit 07-24 is hereby renewed, and the new Use Permit number is UP 13-5 (project I.D. 12-0302). Conditions of approval established in UP 07-24 are incorporated into UP 13-5. The Use Permit is valid until November 30, 2022 unless the conditions of approval are violated, in which case this Use Permit may be revoked.

If you wish to renew this Use Permit, a renewal application must be submitted at least 60 days before current Use Permit expiration.

Contact me at 415-473-3658 if you have any questions.

Sincerely,

Ben Berto
Principal Planner

CC: file

Up\Price 13-5\Ext Notice 113012.doc

3. Use Permit Extension UP 97-217 (New Use Permit # UP 07-24), December 13 2007, five-year extension of Use Permit 97-217

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Marin County Community Development Agency

Alex Hinds, Director


NOTICE OF DECISION

Applicant's Name: Steve Price
Application (type and number): Use Permit Extension (EX 07-24)
Assessor's Parcel Number: 052-247-01, -02
Project Location: 242 Redwood Highway, Mill Valley
For inquiries, please contact: Benjamin Berto, Principal Planner
Decision Date: December 13, 2007

DETERMINATION: Approved with Conditions

Minutes of the December 13, 2007, Deputy Zoning Administrator's hearing are attached specifying action and applicable conditions 1-12.

Marin County Community Development Agency



Jeremy Tejrjian
Hearing Officer

Steve Price
242 Redwood Highway
Mill Valley, CA 94941

Jack Krystal
1299 4th Street
Suite 202
San Rafael, CA 94901

Margaret Zegart
118 Highland Lane
Mill Valley, CA 94941

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C5. USE PERMIT EXTENSION (EX 07-24): STEVE PRICE

The applicant is proposing a 5-year extension of a 2002 Use Permit approval, to continue to allow the following in Commodore Center: continuation of a 1,200 square foot children's recreation center and day camp; (2) a maximum of eight artist studios totaling 7,067 square feet of building area; and (3) a 1,240 square foot on-site property management office. Parking for the uses includes 17 on-site parking spaces, 3 on-street handicapped spaces, and up to 47 on-street parking spaces (current utilization of street parking is considerably less). No changes are proposed from the previously approved use. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort Recreational Commercial). The subject property is located at **242 Redwood Highway, Mill Valley**, and is further identified as **Assessor's Parcel 052-247-01 & 02**.

In response to the Hearing Officer, staff acknowledged an additional comment letter from Margaret Zegart, and has made modifications to the resolution as noted in his supplemental memorandum dated December 13, 2007. Modifications are to Condition of Approval #8, and the vesting period is to be extended for five years.

The public testimony portion of the hearing was opened.

Margaret Zegart, Bayfront Coalition, spoke regarding the issue of the bayfront area under the BCDC Commission. She would like to see a reference to the fact that the property is along the bay trail and signage should include public shore signing and the public shore parking should be indicated.

Steve Price spoke regarding the annual event use that teaches employees wilderness activities for children. The event is held for one weekend a year in June and the parking issue has been rectified.

Jack Crystal spoke in favor of the project.

The public testimony portion of the hearing was closed.

The Hearing Officer responded to the concerns raised by stating that the signage for the trails is not consistent with the BCDC requirements, and is not within the County's authority. He further stated that Adventures Cross Country holds a training event within the week, and is not a special event and shall be regarded as grandfathered.

Eric Steger, Department of Public Works, noted that because of amended Condition of Approval #8, the County may not require an applicant to get a Building Permit, and as an alternative the third line should be changed where it says, "shall complete said work...." to "and shall provide letter of certification from the architect certifying that said work has been completed."

The Hearing Officer approved Price Use Permit Extension, based on the Findings and subject to the Conditions set forth in the Resolution as modified.

The Hearing Officer informed all parties of interest that this action may be appealed to the Marin County Planning Commission within ten (10) working days.

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MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 07-181

A RESOLUTION APPROVING RENEWAL OF THE PRICE USE PERMIT
242 REDWOOD HIGHWAY, MILL VALLEY
ASSESSOR'S PARCEL NUMBERS 052-247-01, -02

SECTION I: FINDINGS

- I. WHEREAS Steve Price submitted an application for a five-year renewal of an existing Use Permit approval to allow continuation of the following uses in the Commodore Center: (1) a 1,200 square foot children's recreation center and day camp (Kids' Headquarters - The Planet); (2) eight artist studios totaling 7,067 square feet of building area; and (3) a 1,240 square foot on-site property management office. Parking for the uses includes 17 on-site parking spaces, 3 on-street handicapped spaces, and 47 on-street parking spaces. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation). The property is located at **242 Redwood Highway, Mill Valley**, and is further identified as **Assessor's Parcel Numbers 052-247-01, -02**.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on December 13, 2007, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3 because temporarily continuing existing uses in existing buildings would not create potential significant environmental impacts.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Master Plan requirements pursuant to Section 22.47.010(3) because it involves the minor matter of a temporary continuation of existing uses that are generally compatible with the land use designations contained in the Countywide Plan and Tamalpais Area Community Plan and the purpose and intent of the governing resort and commercial recreation zoning district.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve a Use Permit (Section 22.48.040 of the Marin County Code), as specified below.
 - A. The proposed use is allowed, as a conditional use, within the subject zoning district and complies with all of the applicable provisions of this Chapter.

The proposed detached uses are allowed as a conditional use within the governing BFC-RCR zoning district because the district allows uses which are related to resort and recreational activities with a purpose to create and protect resort facilities, public access, and recreational opportunities. Residential, industrial, institutional, general commercial, mobile home parks, and floating home marinas are not permitted under this zoning district. The proposed children's recreation center and day camp is compatible with the purpose of the zoning district

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by serving as a drop-in camp and activity center for children to gain hands-on recreational and educational opportunities in woodshop, machinery and electronics, and various crafts. Similarly, the artist studios provide commercial space for local businesses with a connection to the recreation industry (for example, Adventures Cross-country, one of the businesses). The on-site property management office is consistent with the zoning to the extent that it provides office/commercial uses that are accessory and support other permitted uses on the property. The proposed uses continue to be characterized as interim in nature, to cease or be incorporated into a Master Plan for redevelopment of the entire property. Staff therefore agrees with the applicant's request that the Use Permit be authorized for a term of five years. The applicant has indicated that a five-year term would provide the Commodore Center with an interim source of revenue while transportation-related plans are developed and approved in the area, and the applicant then prepares a Master Plan for the area.

B. The proposed use is consistent with the Countywide Plan and applicable Community Plans.

The proposed uses are consistent with the Countywide Plan because (1) it would continue use of a mixed-use development that is generally compatible with the *Recreational Commercial* land use designation of the property, including recreational and educational uses relating to a children's recreation center and day camp, artist studios, and a houseboat marina (*Policy CD-14.3*); (2) the uses are located within two existing buildings totaling 13,158 square feet and representing a 17.8 percent floor area ratio which is within the 5 to 30 percent floor area ratio range that corresponds to the governing land use designation (*Policy CD-14.3*); (3) the proposed Use Permit extension would not affect shoreline or tideland resources, public access, water quality, or wildlife and plant habitat areas on or surrounding the property (*Policies EQ-2.42, EQ-2.44, EQ-2.66, EQ-2.87*); (4) the project will continue to provide employment opportunities on an infill site that is served by existing roadways and necessary public and community facilities within the City Centered Corridor (*Policy CD-8.6*); and (5) significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services do not occur with the existing project and therefore would not result from the same, proposed, continued project (*Policy CF-5.1*).

The proposed project is consistent with the Tamalpais Area Community Plan because: (1) the project would result in interim recreational and educational uses that are generally compatible with the SC (Shoreline Commercial) land use designation of this property (*Programs LU32.1a and LU32.1e*); (2) the proposed uses would be located within two existing buildings totaling 13,158 square feet and representing a 17.8 percent floor area ratio which is within the 30 percent maximum floor area ratio designated for the property (*Program LU32.1e(a)*); (3) conditions of approval continue to limit traffic impacts during the evening peak hours of use and traffic impact costs have previously been borne by the developer for the proposed uses (*Program LU32.1e(d)*); (4) no portion of the proposed improvements would encroach into submerged portions of the property below the line of highest tidal action (*Program LU32.1e(e)*); and (5) provision of public access, including limiting on-street parking spaces solely for public access purposes, is undesirable and infeasible at this time due to the interim nature of the existing, proposed uses, the absence of a long-term Master Plan to redevelop the entire project site, and the absence of an overall improvement plan for the area (*Program LU32.1e(f)*). The houseboat marina is a legal non-conforming use of the property under the governing BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation) zoning. The day care center, artist's studios, and management office were permitted under the terms of the previous five-year Use Permit granted by the County in 2002.

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- C. The approval of the Use Permit for the proposed use is in compliance with the California Environmental Quality Act (CEQA).

The proposed project is categorically exempt from the California Environmental Quality Act and involves no changes to the physical environment.

- D. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

The proposed use would be compatible with existing and future land uses in the area. The use in interim in nature, continues uses previously approved in a Use Permit Renewal in 2002, for which no complaints have been received. The Use Permit Renewal runs for a period of five (5) years.

- E. The proposed use would not impair the architectural integrity and character of the zoning district in which it is to be located.

No changes are proposed to the physical environment of the buildings or site.

- F. That granting the Use Permit will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.

The granting of the Use Permit will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located because:

1. The proposed project involves continuation of interim recreational and educational uses within existing buildings on the Commodore Center that would not impact shoreline or tideland resources, public access, water quality, or wildlife and plant habitat areas on or surrounding the property.
2. The Department of Public Works staff has reviewed the existing and proposed uses and has determined that there is an adequate number of on- and off-street parking spaces available to accommodate the proposed project. However, DPW reports that the applicant has not completed the parking upgrades required by the Use Permit Extension approved in 2002, including additional information on the handicapped parking plans and subsequent installation of improvements (see Attachment 6). Given the lack of visible striping on the site at this time, staff is recommending that the applicant be required to vest the Use Permit Renewal within 6 months by applying for, receiving approval of, and completing the parking lot restriping by that period. Prior to June 11, 2008, the applicant will have to demonstrate to the satisfaction of CDA and DPW that he has fully complied with the parking conditions.
3. The proposed project would not change the existing level of use or exceed the capacity of roadways and freeway interchanges in the surrounding Shoreline Area, as defined by the Tamalpais Area Community Plan. The Stinson Beach/Highway 101 interchange (Manzanita Interchange) which serves the subject and surrounding properties in the Shoreline Area currently experiences some traffic congestion, although the recent interchange signalization project directly west of Highway 101 has substantially reduced delays. As part of the 1997 Use Permit request, the applicant submitted a traffic report which estimated trip generation characteristics of the (then) existing and proposed uses.

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The 1997 report found that the project would increase the number of daily trips from the property from 164 trips to 254 trips, including a 23 trip increase in the number of p.m. peak trips (between 5 p.m. and 6 p.m. daily). Although the report concluded that the overall traffic impact of the uses on nearby intersections would be limited, the applicant imposed restrictions on the proposed uses, so that the number of additional peak evening trips generated would be limited to no more than one trip. These restrictions include: (1) prohibiting trip-generating activities for the artist studios during the peak evening hour as a term of the lease; (2) requiring clients of the Kids' Headquarters to pick up the children after 6 p.m. and ensuring that no more than one trip would occur within the peak evening hour; and (3) scheduling work hours for the two employees of the on-site property management office until 6 p.m. daily. Staff has received no complaints about traffic in connection with this site or any uses therein.

4. Adequate domestic water and sewage disposal services continue to be available from the Marin Municipal Water District and Sausalito - Marin City Sanitary District, respectively, to service the proposed project.
5. The grant of the proposed Use Permit on the subject property would not be detrimental to the health, safety, morals, comfort, or welfare of persons working or residing in the surrounding neighborhood.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Price Use Permit 07-24, subject to the conditions as specified below:

Marin County Community Development Agency - Planning Division

1. Pursuant to Chapter 22.88 of the Marin County Code, the Price Use Permit 07-24 is approved to continue for a six-month period (or until June 11, 2008) the following: (1) a 1,200 square foot children's recreation center and day camp (Kids' Headquarters - The Planet); (2) eight artist studios totaling 7,067 square feet of building area; and (3) a 1,240 square foot on-site property management office. The property is located at **242 Redwood Highway, Mill Valley**, and is further identified as **Assessor's Parcel Numbers 052-247-01, -02**.
2. Use and operation of the artist studios, children's recreation center and day camp, and the property management office shall be subject to the following restrictions:

<u>Use</u>	<u>Occupancy</u>	<u>Days & Hours</u>
Artist Studios	Maximum 8 artists	7 days a week 10:00 a.m. to 10:00 p.m.
Children's Center/Day Camp	Maximum 3 staff	7 days a week 8:30 a.m. to 6 p.m.
Property Management Office	Maximum 2 employees	Monday through Friday 9:00 a.m. to 7:00 p.m.

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3. In order to ensure that the interim uses of the property approved herein would not generate traffic trips during the daily peak evening traffic period between 5:00 p.m. and 6:00 p.m., the following restrictions shall apply during the week (Monday through Friday).
 - a. The artist studios shall be closed during the peak evening traffic period. This use shall not generate traffic trips during this period relating to arrival or departure of the artist, supply deliveries/pickup, or visitors.
 - b. No more than one pick-up or drop-off trip may occur between the hours of 5:00 p.m. and 6:00 p.m. in conjunction with the children's recreation center and day camp. Pick-up of children after 6:00 p.m. is encouraged and permitted.
 - c. Use of the on-site property management office shall not result in the generation of any traffic trips during the peak evening traffic period, including arrival or departure of employees, supply deliveries/pickup, or visitors.
4. Use and operation of the seaplane base (Commodore Seaplanes) is permitted subject to the terms of the Use Permit approvals of 1953 and 1981. Use and operation of the heliport is permitted subject to the terms of Use Permit 96-003 (Deputy Zoning Administrator Resolution 96-016). Use of the houseboat marina (Commodore Marina) shall be governed by the provisions contained in Chapter 22.78 (Nonconforming Uses) of the Marin County Code.
5. This approval does not authorize expansion of any of the existing buildings.
6. This Use Permit is subject to revocation procedures contained in Sections 22.88.040 and 22.88.045 of the Marin County Code in the event any of the terms of this approval area violated or if the uses are conducted or carried in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or detrimental to the public welfare or injurious to property or improvements in the neighborhood.
7. Any modification to the use or operation of the uses approved herein shall be submitted to the Community Development Director to determine whether a Use Permit Amendment or Master Plan would be required.

Marin County Department of Public Works - Land Use and Water Resources

8. The handicapped parking spaces shall be re-striped and re-signed to conform to current California Title 24, federal ADA standards and Marin County Code. Within 6 months (by June 11, 2008) the applicant shall provide letter certification by a licensed architect stating that accessible path of travel is a barrier free access POT without any abrupt level changes exceeding 1/2" beveled at 1:2 maximum slope, or vertical level changes not exceeding 1/4" maximum and at least 48" wide. Surface is slip resistant, stable, firm, and smooth. Cross slope does not exceed 2% and slope in the direction of travel is less than 5% unless otherwise indicated. Also within 6 months, the applicant shall obtain all necessary permits and approvals from the County, and shall provide a letter of certification from the architect certifying that said work has been completed. Failure to perform this work as conditioned shall result in the Use Permit being considered unvested and declared null and void.
9. Provide and show on plans all required signage and markings.

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10. Provide and show on plans standard paths of travel from the disabled parking spaces to the respective building entrances.
11. Provide and show on plans the required loading spaces per MCC 24.04.370.
12. The pavement stripings shall be maintained by the applicant as necessary to clearly demarcate on an ongoing basis the parking, including handicapped accessibility.

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid for a period of five (5) years from the date of approval, subject to the provision that Condition of Approval 8. shall be complied with in full by June 11, 2008 (the date listed in the Condition) or vesting of this Use Permit shall be deemed lapsed. An application for a Use Permit Renewal shall be submitted to the Community Development Agency at least 60 days prior to expiration of this Use Permit on **December 13, 2012**. The applicant shall be subject to payment of applicable review fees.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$600.00 filing fee must be submitted in the Community Development Agency, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on December 28, 2007**.

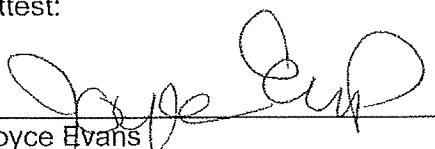
SECTION IV: DECISION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 13th day of December 2007.



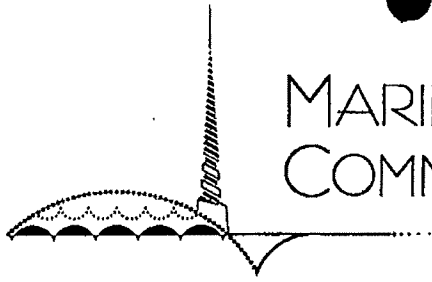
JEREMY TEJIRIAN, AICP
DEPUTY ZONING ADMINISTRATOR

Attest:



Joyce Evans
DZA Secretary

4. Price Design Review Clearance (DC 05-043), April 19, 2005, Design Review Clearance to repave existing heliport landing and parking areas



MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

DESIGN REVIEW CLEARANCE DETERMINATION

April 19, 2005

Steve Price
San Francisco Seaplane Tours
242 Redwood Highway
Mill Valley, CA 94941

RE: Price Design Review Clearance (DC 05-043)
242 Redwood Highway, Mill Valley
Assessor's Parcel 052-247-02

Dear Mr. Price:

This is to inform you that on April 18, 2005, the Community Development Director determined that the proposed project, as described below, has received Design Review Clearance in accordance with Marin County Code Section 22.42.020(B). Plans submitted for this determination are on file in the Community Development Agency - Planning Division identified as "Exhibit A," prepared by Lawrence Doyle, as marked by the applicant, received October 7, 2004.

PROJECT DESCRIPTION:

The applicant is requesting approval to repave existing paved areas on the subject property, and replace an existing fence around the heliport landing area with a new fence of the same height. The existing paved areas proposed to be repaved include the heliport landing area and the adjacent paved parking and access area. No fill is proposed to be placed on the site as part of this project.

Zoning for the subject parcel is BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation area).

FINDINGS FOR DESIGN REVIEW CLEARANCE (SECTION 22.42.020(B) OF MARIN COUNTY CODE):

The proposed work is minor and incidental to the existing use of the property as a legal nonconforming heliport and within the intent and objectives for Design Review, based on the following findings:

1. The project proposes repaving of existing paved areas and would not alter the appearance of the site or impact existing bay views from the subject or surrounding properties.
2. The proposed project would not alter existing uses on the property or expand the extent of existing paved areas.

3. The proposed replacement fencing would be the same height and in the same location as the existing fence and would not alter the appearance of the site.
4. The proposed repaving repair work would not exceed 25 percent of the value of existing improvements on the property related to the legal, nonconforming use of the site as a heliport.
5. The project is consistent with the intent 22.42.020(B) (Design Review) of the Marin County Code.

In addition, the proposed project has been determined to be exempt from the provisions of Marin County Code Chapter 22.52 (Tidelands Permit) as minor and incidental work because the proposed repaving and fence replacement would not result in the placement of additional fill on the site, increase the extent of existing paved areas on the property, or alter the appearance of the site.


Please be advised that the proposed work is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC). Accordingly, you must contact BCDC staff to determine whether any permits are required for the work.

This Clearance determination is only valid for the above-described project. The work approved herein must be substantially completed before April 19, 2006 or all rights granted in this approval shall lapse.

RIGHT TO APPEAL:

If you disagree with the decision regarding this Design Review Clearance, you may appeal it to the Planning Commission. A Petition for appeal and a \$545.00 filing fee must be submitted in the Community Development Agency, Room 308, Civic Center, San Rafael, no later than 4:00 p.m., May 2, 2005.

Sincerely,



Christine Gimmler
Senior Planner

cc: Bay Conservation and Development Commission

5. Use Permit Extension (EX 02-19), May 23, 2002, five-year extension of Use Permit 97-217

Marin County Community Development Agency

Alex Hinds, Director

NOTICE OF DECISION

Applicant's Name: Steve Price
Application (type and number): Use Permit Extension (EX 02-19),
Assessor's Parcel Number: 052-247-01, -02
Project Location: 242 Redwood Highway, Mill Valley
For inquiries, please contact: Benjamin Berto, Principal Planner
Decision Date: May 23, 2002

DETERMINATION: **Approved with Conditions**

Minutes of the May 23, 2002, Deputy Zoning Administrator's hearing are attached specifying action and applicable conditions 1-15.

Marin County Community Development Agency



Thomas K. Lai, AICP
Hearing Officer

C3. USE PERMIT EXTENSION: STEPHEN PRICE

Proposal to allow the following improvements in Commodore Center: to legalize a 1,200 square foot children's recreation center and day camp; (2) to allow interior remodeling for eight artist studios totaling 7,067 square feet of building area; and (3) to allow a 1,240 square foot on-site property management office. The proposed uses would occupy portions of existing buildings on a property currently developed with a seaplane center (Commodore Seaplanes), a heliport, and a houseboat marina (Commodore Marina). Parking proposed for existing and proposed uses includes 17 on-site parking spaces, 3 on-street handicapped spaces, and 47 on-street parking spaces. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort Recreational Commercial). The subject property is located at **242 Redwood Highway, Mill Valley** and is further identified as **Assessor's Parcel 052-247-01, -02**.

At the request of the Hearing Officer, staff summarized his supplemental memorandum regarding a letter from Margaret Zegart dated May 21, 2002, requesting a 2-year approval for the project, and annual reviews thereafter. Staff stated that the issues in Ms. Zegart's letter have been addressed in the Conditions of Approval and does not recommend any modifications to the conditions at this time.

The public testimony portion of the hearing was opened.

Steve Price, applicant, responded to Ms. Zegart's letter, explaining that the recreational vehicle is being used as a residence by one of the pilots for security reasons, and will be removed in June.

The public testimony portion of the hearing was closed.

The Hearing Officer stated for the record that Ms. Zegart may file a complaint with the Code Enforcement Division regarding the recreational vehicle that is parked in the right-of-way. The complaint will be treated as a separate action and will not affect this decision.

The Hearing Officer approved the Price Use Permit Extension, based on the Findings and subject to the Conditions set forth in the Resolution.

The Hearing Officer informed all parties of interest that this action may be appealed to the Marin County Planning Commission within five (5) working days.

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 02-134

A RESOLUTION APPROVING THE PRICE USE PERMIT
242 REDWOOD HIGHWAY, MILL VALLEY
ASSESSOR'S PARCEL NUMBERS 052-247-01, -02

SECTION I: FINDINGS

- I. WHEREAS Steve Price submitted an application for a five-year extension of an existing Use Permit approval to allow continuation of the following uses in the Commodore Center: (1) a 1,200 square foot children's recreation center and day camp (Kids' Headquarters - The Planet); (2) eight artist studios totaling 7,067 square feet of building area; and (3) a 1,240 square foot on-site property management office. Parking for the uses includes 17 on-site parking spaces, 3 on-street handicapped spaces, and 47 on-street parking spaces. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation). The property is located at **242 Redwood Highway, Mill Valley**, and is further identified as **Assessor's Parcel Numbers 052-247-01, -02**.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on May 23, 2002, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15301, Class 1 because temporarily continuing existing uses in existing buildings would not create adverse environmental impacts.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin Countywide Plan because: (1) it would continue use of a mixed-use development that is generally compatible with the *Recreational Commercial* land use designation of the property, including legalization of recreational and educational uses relating to a children's recreation center and day camp and artist studios (*Policy CD-14.3*); (2) the uses are located within two existing buildings totaling 13,158 square feet and representing a 17.8 percent floor area ratio which is within the 5 to 30 percent floor area ratio range that corresponds to the governing land use designation (*Policy CD-14.3*); (3) the proposed Use Permit extension would not affect shoreline or tideland resources, public access, water quality, or wildlife and plant habitat areas on or surrounding the property (*Policies EQ-2.42, EQ-2.44, EQ-2.66, EQ-2.87*); (4) the project will continue to provide employment opportunities on an infill site that is served by existing roadways and necessary public and community facilities within the City Centered Corridor (*Policy CD-8.6*); and (5) significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services do not occur with the existing project and therefore would not result from the same, proposed, continued project (*Policy CF-5.1*).

- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Tamalpais Area Community Plan because: (1) the project would result in interim recreational and educational uses that are generally compatible with the SC (Shoreline Commercial) land use designation of this property (*Programs LU32.1a and LU32.1e*); (2) the proposed uses would be located within two existing buildings totaling 13,158 square feet and representing a 17.8 percent floor area ratio which is within the 30 percent maximum floor area ratio designated for the property (*Program LU32.1e(a)*); (3) conditions of approval continue to limit traffic impacts during the evening peak hours of use and traffic impact costs have previously been borne by the developer for the proposed uses (*Program LU32.1e(d)*); (4) no portion of the proposed improvements would encroach into submerged portions of the property below the line of highest tidal action (*Program LU32.1e(e)*); and (5) provision of public access, including limiting on-street parking spaces solely for public access purposes, is undesirable and infeasible at this time due to the interim nature of the existing, proposed uses, the absence of a long-term Master Plan to redevelop the entire project site, and the absence of an overall improvement plan for the area (*Program LU32.1e(f)*).
- VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Master Plan requirements pursuant to Section 22.47.010(3) because it involves the minor matter of a temporary continuation of existing uses that are generally compatible with the land use designations contained in the Countywide Plan and Tamalpais Area Community Plan and the purpose and intent of the governing resort and commercial recreation zoning district.
- VII. WHEREAS the Marin County Deputy Zoning Administrator finds that any remodeling work that may be associated with the proposed project is exempt from Tidelands Permit pursuant to Section 22.77.010(3) of the Marin County Code because it would be minor and incidental in nature and involving only interior remodeling of existing buildings that are located upland of the mean high tide for Richardson Bay.
- VIII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve a Use Permit (Section 22.88.020 of the Marin County Code), as specified below.

The establishment, maintenance or conducting of the use for which a Use Permit is sought will not in this case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of this use and will not, under the circumstances of the case be detrimental to the public welfare or injurious to property or improvements in said neighborhood.

- A. The proposed project involves continuation of interim recreational and educational uses within existing buildings on the Commodore Center that would not impact shoreline or tideland resources, public access, water quality, or wildlife and plant habitat areas on or surrounding the property.
- B. The Department of Public Works staff has reviewed the proposed extension of existing uses and finds no issue with the supply of on- and off-street parking spaces available to accommodate the proposed project, with required changes to the handicapped parking (please see Attachment 6). These include 17 on-site parking spaces for the houseboat marina, and 50 on-street parking spaces (including 3 handicapped spaces) for the existing remaining uses: Commodore Seaplanes, heliport, Kid's Headquarters, artist studios and property management office. A waiver of the County's parking requirements contained in Title 24 of the Marin County Code is appropriate in conjunction with the proposed development for the following reasons: (1) use of street parking within the Bolinas Avenue and Yolo Street rights-of-way would not impact traffic on adjoining property because the rights-of-way do not serve through traffic, terminate in Richardson Bay, and function as private driveways for the Commodore Center; (2) the proposed uses are intended to represent an interim use of the property and would only utilize a portion of the right-of-way for parking until a comprehensive Master Plan is submitted for review and approval by the County; and (3) although most of the required parking spaces could be developed on site to meet County Code requirements,

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stringent imposition of such requirements in connection with the proposed interim uses would require extensive site modifications that may be inconsistent with the ultimate Master Plan objectives for the property. These modifications include removal of existing mature pine trees, site grading that would reduce the amount of open space, and relocation of two of the heliport's fuel tanks and landing/take-off pad that may affect surrounding wetland areas. Based on these factors, existing on- and off-street parking spaces, with the modified handicapped parking spaces, are adequate to support existing and currently proposed uses at the Commodore Center. The handicapped spaces are required in the Conditions of Approval to conform to current California Title 24 standards for handicapped parking within 30 days.

- C. The proposed project, because it involves no change from current use, would not change the existing level of use or exceed the capacity of roadways and freeway interchanges in the surrounding Shoreline Area, as defined by the Tamalpais Area Community Plan. The Stinson Beach/Highway 101 interchange (Manzanita Interchange) which serves the subject and surrounding properties in the Shoreline Area currently experiences some traffic congestion, although the recent interchange signalization project directly west of Highway 101 has substantially reduced delays. As part of the 1997 Use Permit request, the applicant submitted a traffic report which estimated trip generation characteristics of the existing and proposed uses at that time. The 1997 report found that the project would increase the number of daily trips from the property from 164 trips to 254 trips, including a 23 trip increase in the number of p.m. peak trips (between 5 p.m. and 6 p.m. daily). Although the report concluded that the overall traffic impact on nearby intersections would be limited, the applicant agreed to additional restrictions on the proposed uses, so that the number of additional peak evening trips generated would be limited to no more than one trip. These restrictions included: (1) prohibiting trip-generating activities for the artist studios during the peak evening hour as a term of the lease; (2) requiring clients of the Kids' Headquarters to pick up the children after 6 p.m. and ensuring that no more than one trip would occur within the peak evening hour; and (3) scheduling work hours for the two employees of the on-site property management office until 6 p.m. daily.

The Department of Public Works Traffic Division staff reviewed this application and found no issue with continuation of the proposed interim use of the Commodore Center with respect to traffic hazards or congestion on surrounding intersections.

- D. Adequate domestic water and sewage disposal services continue to be available from the Marin Municipal Water District and Sausalito - Marin City Sanitary District, respectively, to service the proposed project.
- E. The applicant has agreed to install fencing around the front yard play area, and to provide a drip irrigation system in the courtyard, enhancing the safety and aesthetics of the project.
- F. The grant of the proposed Use Permit on the subject property would not be detrimental to the health, safety, morals, comfort, or welfare of persons working or residing in the surrounding neighborhood.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Price Use Permit 02-19, subject to the conditions as specified below:

Marin County Community Development Agency - Planning Division

1. Pursuant to Chapter 22.88 of the Marin County Code, the Price Use Permit 02-19 is approved to continue for a five-year period the following: (1) a 1,200 square foot children's recreation center and day camp (Kids' Headquarters - The Planet); (2) eight artist studios totaling 7,067 square feet of building area; and (3) a 1,240 square foot on-site property management office. The property is located at **242 Redwood Highway, Mill Valley**, and is further identified as **Assessor's Parcel Numbers 052-247-01, -02**.
2. Use and operation of the artist studios, children's recreation center and day camp, and the property management office shall be subject to the following restrictions:

<u>Use</u>	<u>Occupancy</u>	<u>Days & Hours</u>
Artist Studios	Maximum 8 artists	7 days a week 10:00 a.m. to 10:00 p.m.
Children's Center/Day Camp	Maximum 3 staff	7 days a week 8:30 a.m. to 6 p.m.
Property Management Office	Maximum 2 employees	Monday through Friday 9:00 a.m. to 7:00 p.m.

3. In order to ensure that the interim uses of the property approved herein would not generate traffic trips during the daily peak evening traffic period between 5:00 p.m. and 6:00 p.m., the following restrictions shall apply during the week (Monday through Friday).
 - a. The artist studios shall be closed during the peak evening traffic period. This use shall not generate traffic trips during this period relating to arrival or departure of the artist, supply deliveries/pickup, or visitors.
 - b. No more than one pick-up or drop-off trip may occur between the hours of 5:00 p.m. and 6:00 p.m. in conjunction with the children's recreation center and day camp. Pick-up of children after 6:00 p.m. is encouraged and permitted.
 - c. Use of the on-site property management office shall not result in the generation of any traffic trips during the peak evening traffic period, including arrival or departure of employees, supply deliveries/pickup, or visitors.
4. Use and operation of the seaplane base (Commodore Seaplanes) is permitted subject to the terms of the Use Permit approvals of 1953 and 1981. Use and operation of the heliport is permitted subject to the terms of Use Permit 96-003 (Deputy Zoning Administrator Resolution 96-016). Use of the houseboat marina (Commodore Marina) shall be governed by the provisions contained in Chapter 22.78 (Nonconforming Uses) of the Marin County Code.

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5. Any plan submitted for a building permit shall conform substantially to plans identified as "Exhibit A," entitled "Commodore Center," consisting of four sheets, dated January 1997 with revisions dated March 3, 1997, prepared for Steven D. Price, and on file in the Community Development Agency.
6. Work authorized by this Use Permit approval is limited to interior remodeling within existing buildings at the Commodore Center, as depicted on "Exhibit A." This approval does not authorize expansion of any of the existing buildings.
7. The applicant shall install a 4' chainlink fence around the perimeter of the day care front lawn play area within 30 days of the effective date of application approval.
8. The applicant shall install landscaping and a permanent drip irrigation system in the courtyard area within 90 days of the effective date of application approval.
9. Prior to issuance of any building permit, the applicant shall submit to the Community Development Director a copy of a draft lease agreement to be used for the artist studios verifying that a term of the lease has been included which would require closure of the artist studios during the daily peak evening traffic period between 5:00 p.m. and 6:00 p.m. The use may not generate traffic trips during this period relating to arrival or departure of the artist, supply deliveries/pickup, or visitors. In addition, the lease shall prohibit the conduct of art shows, commercial retail galleries, or related events on the subject property.
10. Construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, 9:00 a.m. and 4:00 p.m. on Saturday. No construction activity shall be permitted on Sundays or Holidays.
11. This Use Permit is subject to revocation procedures contained in Sections 22.88.040 and 22.88.045 of the Marin County Code in the event any of the terms of this approval area violated or if the uses are conducted or carried in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or detrimental to the public welfare or injurious to property or improvements in the neighborhood.
12. Any modification to the use or operation of the uses approved herein shall be submitted to the Community Development Director to determine whether a Use Permit Amendment or Master Plan would be required.

Marin County Department of Public Works - Land Use and Water Resources

13. The handicapped parking spaces shall be re-striped and re-signed to conform to current California Title 24 standards, subject to review and approval by the Department of Public Works. All work shall be completed within 30 days of the effective approval date of this application.
14. The applicant shall maintain the interim parking plan for the duration of the Use Permit, subject to an annual compliance review. Following the five-year period, and subject to authorization of a Use Permit renewal/amendment and/or a Master Plan by the Planning Division, permanent off-street parking spaces shall be provided for this project.

Tamalpais Fire Protection District

15. PRIOR TO FINAL INSPECTION, the applicant shall demonstrate compliance with the following requirements: (1) the address shall be posted in accordance with the requirements of the Uniform Fire Code; (2) smoke detectors shall be installed in accordance with the Uniform Building Code; (3) a remotely-located, second means of egress shall be provided for each floor above the first; and (4) a fire detection system shall be installed in the building in accordance with the standards as established by the National Fire Protection Association and connected to the headquarters of the Tamalpais Fire Protection District through an approved U.L. central/monitoring station.

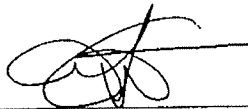
SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid for a period of five (5) years from the date of approval, subject to an annual administrative permit compliance review by the Community Development Director to determine compliance with the conditions of approval. An application for a Use Permit Renewal shall be submitted to the Community Development Agency at least 60 days prior to expiration of this Use Permit on **May 30, 2007**. The applicant shall be subject to payment of applicable review fees prior to the conduct of the annual compliance reviews.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$500.00 filing fee must be submitted in the Community Development Agency, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on May 31, 2002**.

SECTION IV: DECISION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 23rd day of May 2002.



THOMAS K. LAI, AICP
DEPUTY ZONING ADMINISTRATOR

Attest:



Joyce Eyans
DZA Secretary

6. Use Permit Reconciliation and Extension of UP 96-003 and UP 97-217, July 25, 2000, 1-year extension to reconcile expiration dates of Use Permits 96-003 and 97-217 to expire on May 8, 2002

Marin County Community Development Agency

Alex Hinds, Director

NOTICE OF USE PERMIT EXTENSION

July 25, 2000

Steven D. Price
Commodore Center
242 Redwood Highway
Mill Valley, Ca 94941

**RE: Request for Extension to Use Permit Expiration Date
Price (Heliport) Use Permit 96-003
Assessor's Parcels 052-247-01 and -02**

Dear Mr. Price:

This letter responds to your letter dated July 17, 2000, which requests an extension to the 1996 Use Permit approval for the heliport (Use Permit 96-003) to coincide with the expiration date of the 1997 Use Permit approval for The Planet, Adventures Cross Country, artist studios, and management office (Use Permit 97-217). Currently, Use Permit 96-003 is set to expire on March 1, 2001, while Use Permit 97-217 is set to expire on May 8, 2002.

The Agency Director finds that your request to reconcile the various Use Permit expiration dates is reasonable and logical and, accordingly, hereby grants an extension to the expiration date for Use Permit 96-003 to **May 8, 2002** to coincide with the expiration date of Use Permit 97-217. An application for Master Plan or Use Permit Renewal must be submitted to the Community Development Agency at least 60 days before the expiration date for the Use Permits.

If you disagree with this decision, you may appeal it to the Planning Commission. A Petition for Appeal and a \$525.00 filing fee must be submitted in the Community Development Agency, Room 308, Civic Center, San Rafael, no later than 4:00 p.m., **August 1, 2000**.

If you have any further questions, please call me at (415) 499-7521.

Sincerely,



Dean R. Powell, AICP
Principal Planner

cc: Tamalpais Design Review Board

i:/cur/drpl/letters/PriceUP96-003.doc

7. Use Permit 97-217, May 8, 1997, Use Permit (children's recreation center, 8 artist studios, property management office: 5-year term)

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Marin County Community Development Agency

Mark J. Riesenfeld, AICP, Director

NOTICE OF DECISION

Applicant's Name: Steve Price
655 Redwood Hwy., #185
Mill Valley, CA 94941

Application (type and number): Use Permit 97-217

Assessor's Parcel Number: 052-247-01, -02

Project Location: 242 Redwood Hwy., Mill Valley

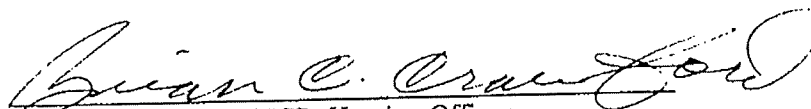
For inquiries, please contact: Tom Lai, AICP, Senior Planner

Decision Date: May 8, 1997

DETERMINATION: Approved with Conditions

Minutes of May 8, 1997, Deputy Zoning Administrator's hearing are attached specifying action and applicable conditions 1 - 15.

Marin County Community Development Agency


Brian C. Crawford, AICP, Hearing Officer

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cc Supervisor Annette Rose
Tam DRB
Dept. of Public Works - Traffic Division
Dept. of Public Works - Land Use
Margaret Zegart
Linda Rames, Almonte District Improvement Club
Dave Kersting, The Planet

2. PRICE USE PERMIT

Proposal to: (1) legalize a 1,200 square foot children's recreation center and day camp (Kid's Headquarters - The Planet); (2) allow interior remodeling for 8 artist studios totaling 7,067 square feet; and (3) allow a 1,240 square foot on-site property management office. The proposed uses would occupy existing buildings on a property currently developed as a heliport, seaplane center (Commodore Seaplanes), and houseboat marina (Commodore Marina). Parking proposed for existing and proposed uses includes 17 on-site parking spaces, 3 on-street handicapped spaces, and 47 on-street parking spaces. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort Recreational Commercial). The property is located at 242 Redwood Highway, Mill Valley, and is further identified as Assessor's Parcel Numbers 052-247-01, -02.

(Tape 1, Side A @ 4.0)

In response to a question from the hearing officer, staff stated that no correspondence had been received since the public notice and staff report were distributed. Seeing no one present to speak against this item, the hearing officer closed the public hearing.

The hearing officer approved the attached Resolution based on the findings and subject to the conditions. This decision is not necessarily final and may be appealed to the Marin County Planning Commission within five (5) working days.

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MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 97-120

A RESOLUTION APPROVING THE PRICE USE PERMIT
242 REDWOOD HIGHWAY, MILL VALLEY
ASSESSOR'S PARCEL NUMBERS 052-247-01, -02

SECTION I: FINDINGS

- I. WHEREAS Steve Price submitted an application for Use Permit approval for the following uses in the Commodore Center: (1) to legalize a 1,200 square foot children's recreation center and day camp (Kids' Headquarters - The Planet); (2) to allow interior remodeling for eight artist studios totaling 7,067 square feet of building area; and (3) to allow a 1,240 square foot on-site property management office. The proposed uses would occupy portions of existing buildings on a property currently developed as a seaplane center (Commodore Seaplanes), heliport, and houseboat marina (Commodore Marina). Parking proposed for existing and proposed uses includes 17 on-site parking spaces, 3 on-street handicapped spaces, and 47 on-street parking spaces. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation). The property is located at **242 Redwood Highway, Mill Valley**, and is further identified as **Assessor's Parcel Numbers 052-247-01, -02**.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on May 8, 1997, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3 because interior improvements to existing buildings would not create adverse environmental impacts.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin Countywide Plan because: (1) it would result in a mixed-use development that is generally compatible with the *Recreational Commercial* land use designation of the property, including legalization of recreational and educational uses relating to a children's recreation center and day camp and artist studios (*Policy CD-14.3*); (2) the proposed uses would be located within two existing buildings totaling 13,158 square feet and representing a 17.8 percent floor area ratio which is within the 5 to 30 percent floor area ratio range that corresponds to the governing land use designation (*Policy CD-14.3*); (3) the proposed project would not affect shoreline or tideland resources, public access, water quality, or wildlife and plant habitat areas on or surrounding the property (*Policies EQ-2.42, EQ-2.44, EQ-2.66, EQ-2.87*); (4) the proposed interior improvements would be built in accordance with Marin County standards for geotechnical engineering and seismic safety, as imposed through the building permit process (*Policy EH-5.1*); (5) the project would provide employment opportunities on an infill site that is served by existing roadways and necessary public and community facilities within the City Centered Corridor (*Policy CD-8.6*); and (6) significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services would not result from the proposed project (*Policy CF-5.1*).

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- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Tamalpais Area Community Plan because: (1) the project would result in interim recreational and educational uses that are generally compatible with the SC (Shoreline Commercial) land use designation of this property (*Programs LU32.1a and LU32.1e*); (2) the proposed uses would be located within two existing buildings totaling 13,158 square feet and representing a 17.8 percent floor area ratio which is within the 30 percent maximum floor area ratio designated for the property (*Program LU32.1e(a)*); (3) conditions of approval would limit the intensity of the use so that impacts to traffic circulation would be limited during the evening peak hours of use and would require the payment of appropriate traffic mitigation fees that, in combination with future redevelopment of the surrounding area, would pay for comprehensive traffic improvements in the Shoreline Area (*Program LU32.1e(d)*); (4) no portion of the proposed improvements would encroach into submerged portions of the property below the line of highest tidal action (*Program LU32.1e(e)*); and (5) provision of public access, including limiting on-street parking spaces for public access purposes in conjunction with the proposed application, is undesirable and infeasible at this time due to the interim nature of the proposed uses, the existing use of portions of the property as a heliport and seaplane center, and the absence of a long-term Master Plan to redevelop the entire project site (*Program LU32.1e(f)*).
- VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Master Plan requirements pursuant to Section 22.47.010(3) because it involves an adaptive re-use of existing buildings which have been previously utilized for more intensive commercial and utility uses and because the scope of the work is minor and limited to interior remodeling for interim uses that are generally compatible with the land use designations contained in the Countywide Plan and Tamalpais Area Community Plan and the purpose and intent of the governing resort and commercial recreation zoning district.
- VII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Tidelands Permit pursuant to Section 22.77.010(3) the Marin County Code because it entails work that is considered minor and incidental in nature and involving interior remodeling of existing buildings that are located upland of the mean high tide for Richardson Bay.
- VIII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve a Use Permit (Section 22.88.020 of the Marin County Code), as specified below.

The establishment, maintenance or conducting of the use for which a Use Permit is sought will not in this case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of this use and will not, under the circumstances of the case be detrimental to the public welfare or injurious to property or improvements in said neighborhood.

- A. The proposed project would result in interim recreational and educational uses within existing buildings on the Commodore Center that would not impact shoreline or tideland resources, public access, water quality, or wildlife and plant habitat areas on or surrounding the property.
- B. An adequate number of on- and off-street parking spaces would be available to accommodate the proposed project. These include 17 on-site parking spaces for the houseboat marina, and 50 on-street parking spaces (including 3 handicapped spaces) for the existing remaining uses (Commodore Seaplanes and heliport) and proposed uses (artist studios and Kids' Headquarters). A waiver of the

County's on-site parking requirements contained in Title 24 of the Marin County Code is appropriate due to the following reasons: (1) use of street parking within the Bolinas Avenue and Yolo Street rights-of-way would not impact traffic on adjoining property because the rights-of-way do not serve through traffic, terminate in Richardson Bay, and function as private driveways for the Commodore Center; (2) the proposed uses are intended to represent an interim use of the property and would only utilize a portion of the right-of-way for parking until a comprehensive Master Plan is submitted for review and approval by the County; and (3) although most of the required parking spaces could be developed on site to meet County Code requirements, stringent imposition of such requirements in connection with the proposed interim uses would require extensive site modifications that may be inconsistent with the ultimate Master Plan objectives for the property. These modifications include removal of existing mature pine trees, site grading that would reduce the amount of open space, and relocation of two of the heliport's fuel tanks and landing/take-off pad that may affect surrounding wetland areas. Based on these factors, adequate on- and off-street parking spaces would be available to support existing and proposed uses at the Commodore Center.

- C. The proposed project would not result in a level of use which exceeds the capacity of roadways and freeway interchanges in the surrounding Shoreline Area of the Community Plan. As part of the proposed Use Permit, the applicant submitted a traffic study, prepared by Robert L. Harrison, a qualified traffic consultant, which provides an estimate of the trip generation characteristics of the existing and proposed uses. The report indicates that the project would increase the number of daily trips from the property from 164 trips to 254 trips. According to the report, although the number of peak evening trips (between 5 p.m. and 6 p.m. daily) is projected to increase by 23 trips (from 17 to 40 trips), the overall impact of the existing and proposed uses would be limited on the existing traffic conditions at street intersections in the surrounding neighborhood.

Furthermore, the applicant has indicated that restrictions can be placed on the proposed uses so that the number of new peak evening trips generated by the proposed uses could be limited to less than one trip. These restrictions would be accomplished by reducing or avoiding trip generation activities during the peak evening hour by: (1) prohibiting trip-generating activities for the artist studios during the peak evening hour as a term of the lease; (2) requiring clients of the Kids' Headquarters to pick up the children after 6 p.m. and ensuring that no more than one trip would occur within the peak evening hour; and (3) scheduling work hours for the two employees of the on-site property management office until 6 p.m. daily. A condition requiring payment of traffic mitigation fees for the one peak evening hour trip would ensure compliance with the adopted traffic mitigation fee requirements for the Shoreline Area.

- D. Adequate domestic water and sewage disposal services are available from the Marin Municipal Water District and Sausalito - Marin City Sanitary District, respectively, to service the proposed project.
- E. The grant of the proposed Use Permit on the subject property would not be detrimental to the health, safety, morals, comfort, or welfare of persons working or residing in the surrounding neighborhood.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Price Use Permit 97-217, subject to the conditions as specified below:

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Marin County Community Development Agency - Planning Division

1. Pursuant to Chapter 22.88 of the Marin County Code, the Price Use Permit 97-217 is approved for the following: (1) to legalize a 1,200 square foot children's recreation center and day camp (Kids' Headquarters - The Planet); (2) to allow interior remodeling for eight artist studios totaling 7,067 square feet of building area; and (3) to allow a 1,240 square foot on-site property management office. The property is located at **242 Redwood Highway, Mill Valley**, and is further identified as **Assessor's Parcel Numbers 052-247-01, -02**.

2. Use and operation of the artist studios, children's recreation center and day camp, and the property management office shall be subject to the following restrictions:

<u>Use</u>	<u>Occupancy</u>	<u>Days & Hours</u>
Artist Studios	Maximum 8 artists	7 days a week 10:00 a.m. to 10:00 p.m.
Children's Center/Day Camp	Maximum 3 staff	7 days a week 8:30 a.m. to 6 p.m.
Property Management Office	Maximum 2 employees	Monday through Friday 9:00 a.m. to 7:00 p.m.

3. In order to ensure that the interim uses of the property approved herein would not generate traffic trips during the daily peak evening traffic period between 5:00 p.m. and 6:00 p.m., the following restrictions shall apply during the week (Monday through Friday).

- The artist studios shall be closed during the peak evening traffic period. This use shall not generate traffic trips during this period relating to arrival or departure of the artist, supply deliveries/pickup, or visitors.
- No more than one pick-up or drop-off trip may occur between the hours of 5:00 p.m. and 6:00 p.m. in conjunction with the children's recreation center and day camp. Pick-up of children after 6:00 p.m. is encouraged and permitted.
- Use of the on-site property management office shall not result in the generation of any traffic trips during the peak evening traffic period, including arrival or departure of employees, supply deliveries/pickup, or visitors.

4. Use and operation of the seaplane base (Commodore Seaplanes) is permitted subject to the terms of the Use Permit approvals of 1953 and 1981. Use and operation of the heliport is permitted subject to the terms of Use Permit 96-003 (Deputy Zoning Administrator Resolution 96-016). Use of the houseboat marina (Commodore Marina) shall be governed by the provisions contained in Chapter 22.78 (Nonconforming Uses) of the Marin County Code.

5. Plans submitted for a building permit shall conform substantially to plans identified as "Exhibit A," entitled "Commodore Center," consisting of four sheets, dated January 1997 with revisions dated March 3, 1997, prepared for Steven D. Price, and on file in the Community Development Agency.

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6. Work authorized by this Use Permit approval is limited to interior remodeling within existing buildings at the Commodore Center, as depicted on "Exhibit A." This approval does not authorize expansion of any of the existing buildings.
7. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit to the Community Development Director a copy of a draft lease agreement to be used for the artist studios verifying that a term of the lease has been included which would require closure of the artist studios during the daily peak evening traffic period between 5:00 p.m. and 6:00 p.m. The use may not generate traffic trips during this period relating to arrival or departure of the artist, supply deliveries/pickup, or visitors. In addition, the lease shall prohibit the conduct of art shows, commercial retail galleries, or related events on the subject property.
8. Construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, 9:00 a.m. and 4:00 p.m. on Saturday. No construction activity shall be permitted on Sundays or Holidays.
9. This Use Permit is subject to revocation procedures contained in Sections 22.88.040 and 22.88.045 of the Marin County Code in the event any of the terms of this approval area violated or if the uses are conducted or carried in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or detrimental to the public welfare or injurious to property or improvements in the neighborhood.
10. Any modification to the use or operation of the uses approved herein shall be submitted to the Community Development Director to determine whether a Use Permit Amendment or Master Plan would be required.

Marin County Department of Public Works - Land Use and Water Resources

11. The parking area shall be re-stripped and re-signed, subject to review and approval by the Department of Public Works, and based on the parking plan depicted on Sheet 4 of "Exhibit A." Sheet 4 shall be re-titled "Interim Parking Plan."
12. The applicant shall maintain the interim parking plan for the duration of the Use Permit, subject to an annual compliance review. Following the five-year period, and subject to authorization of a Use Permit renewal/amendment and/or a Master Plan by the Planning Division, permanent off-street parking spaces shall be provided for this project.

Marin County Department of Public Works - Traffic Division

13. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall pay a traffic mitigation fee of \$3,306.41 (based on March 1991 dollars) for the one additional evening peak hour trip that would be generated by this project, and as adjusted by the Saylor/ENR index to account for construction cost changes from March 1991 until the time the fee is paid.
14. As part of the annual compliance review, the applicant shall pay an annual fee of \$400 to the Traffic Division for the duration of the Use Permit in order to cover the County's costs of providing random, periodic inspections of the facility to determine compliance with the maximum of one evening peak hour trip per day. Should additional evening peak hour trips be generated by the development, the applicant shall be subject to payment of additional traffic mitigation fees that correspond to the additional trips.

Tamalpais Fire Protection District

15. PRIOR TO FINAL INSPECTION, the applicant shall demonstrate compliance with the following requirements: (1) the address shall be posted in accordance with the requirements of the Uniform Fire Code; (2) smoke detectors shall be installed in accordance with the Uniform Building Code; (3) a remotely-located, second means of egress shall be provided for each floor above the first; and (4) a fire detection system shall be installed in the building in accordance with the standards as established by the National Fire Protection Association and connected to the headquarters of the Tamalpais Fire Protection District through an approved U.L. central/monitoring station.

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

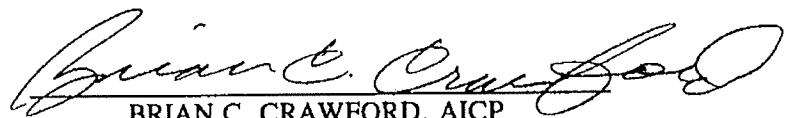
NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Use Permit by securing a Building Permit and/or other permits for all of the approved work and by substantially completing the improvements in accordance with the secured permits by **May 8, 1999**, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date above and the Zoning Administrator approves it. An extension of up to four years may be granted for cause pursuant to Section 22.88.050 of the Marin County Code.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid for a period of five (5) years from the date of approval, subject to an annual administrative permit compliance review by the Community Development Director to determine compliance with the conditions of approval. An application for a Use Permit Renewal shall be submitted to the Community Development Agency at least 60 days prior to expiration of this Use Permit on **May 8, 2002**. The applicant shall be subject to payment of applicable review fees prior to the conduct of the annual compliance reviews.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$500.00 filing fee must be submitted in the Community Development Agency, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on May 15, 1997**.

SECTION IV: DECISION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 8th day of May, 1997.



BRIAN C. CRAWFORD, AICP
DEPUTY ZONING ADMINISTRATOR

Attest:



Patrice Stancato
DZA Secretary

8. Use Permit 96-003/Design Review Exemption 96-292, February 29, 1996, Use Permit (heliport use; 5-year term) and Design Review Exemption

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Marin County Community Development Agency

Mark J. Riesenfeld, AICP, Director

NOTICE OF DECISION

Applicant's Name: Steve Price
655 Redwood Hwy., #185
Mill Valley, CA 94941

Application (type and number): Use Permit 96-003/Design Review Exemption 96-292

Assessor's Parcel Number: 052-247-01, 02

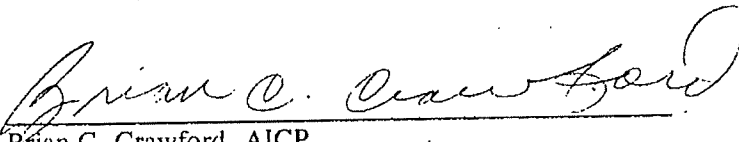
Project Location: 240 Redwood Highway
Mill Valley, CA

For inquiries, please contact: Thomas Lai

Decision Date: February 29, 1996

DETERMINATION: Approved With Conditions

Minutes of February 29, 1996, Deputy Zoning Administrator's hearing attached specifying action and applicable conditions 1-10.



Brian C. Crawford, AICP
Hearing Officer

/forms/dza-dec.doc

cc: Scott Hochstrasser, I.P.A.
Brad Sears
Linda Rames
Margaret Kett Zegart
Joyce Lynn
Marcia Simon
Clayton Mitchell
Norman Zilber
Supervisor Annette Rose

2. USE PERMIT/DESIGN REVIEW EXEMPTION: PRICE

Application to modify the hours of operation for the Marin Heliport allowing six weekday flights between 6:00 a.m. and 6:30 p.m. and six weekend flights between 9:00 a.m. and 6:00 p.m. The subject property is located at 240 Redwood Highway, Mill Valley, and is further identified as Assessor's Parcel #052-247-01 & 02.

(Tape 1, Side A @ 10.6)

After a brief recess, the hearing officer reconvened the hearing. Staff reported that no correspondence had been received subsequent to the public notice being distributed. The hearing officer opened the public hearing. Scott Hochstrasser stated that he was present to represent the property owner. He requested that Condition #6 be modified to allow the continued use of the Kid's Headquarters, an aftercare program for elementary children, for 120 days from approval or coterminous with the end of the school year which is June 15, 1996.

Mr. Hochstrasser also requested that Section III of the Resolution be changed from staff's recommendation that the Use Permit be valid for a period of two years from the date of approval to at least a period of five years. He explained that the heliport has been operating under a non-conforming use for many years and is only before the Deputy Zoning Administrator to allow modification to the hours. This time frame will give the property owner a reasonable expectation for continuing this use. He stated that Condition #9 reiterates that this Use Permit is subject to revocation procedures if any of the terms of the approval are violated and therefore gives the County a tremendous amount of authority and power to pull the permit for review at any time. The property owner does not have a problem with an annual review after the first year or two of operation. However, limiting the permit to two years, which means having to pay the fees and go through the process all over again, seems to be excessive. The property owners have made a substantial investment in improving this property, well over \$100,000 in cleaning up the site. In order to recover a reasonable return with that kind of investment, some kind of substantial continued use is necessary.

Staff did not have any objections to the modification of Condition #6 as presented by Mr. Hochstrasser. In response to extending the term of the Use Permit from two to five years, staff responded that there is a concern because this property is currently underdeveloped and Mr. Price has plans to redevelop and put new uses on this entire site. Staff is concerned that the County should have the ability, through the Master Plan review, to reconsider the heliport use. Staff further stated that should it be determined that a five-year term is appropriate, staff will recommend an annual permit compliance review plus additional language that ties the term to a Master Plan approval. The hearing officer suggested that the new language state that the Use Permit is valid for a period of five years or approval of a Master Plan, whichever occurs first. Mr. Hochstrasser asked about the process involved in an annual review. The hearing officer stated that, according to Section III, the review will be done administratively and internally to evaluate any complaints which may have been received from the time the permit is approved. The applicant will not have to submit any applications or pay any fees. This is tied into Condition #9 wherein the permit is subject to revocation if any complaints are received. Steve Price, the new owner, was present and stated that he plans to close escrow for purchase of the subject property by the end of March. He also said that he will be working with the community to come up with mutually acceptable uses for the site before submitting a Master Plan for the property's development.

The hearing officer stated that the expansion of the time frames for conducting the flights are minor and incidental with respect to historic and current operations, that the expansion of the time frames is consistent with the RCR zoning district, and that the nature of the land use is not changing. Therefore, the hearing officer approved the project based on staff's recommendations and findings, and subject to the revised conditions of approval as follows: (a) Condition #6 shall be revised to require that the Kids Headquarters educational use shall be terminated no later than June 15, 1996 and an inspection shall be conducted on or shortly after that date to verify that the property is being used for the heliport/seaplane/houseboat landing only and, (b) Section III, Vesting, Permit Duration and Appeal Rights, shall be revised to reflect that the Use Permit shall be valid for a period of five years from the date of approval or until a

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Master Plan is submitted and approved for the property, whichever occurs first. Also under this Section, the language shall be amended to read that this permit is subject to an annual administrative review by the Community Development Director. This decision is not necessarily final and may be appealed to the Marin County Planning Commission within five (5) working days.

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 96-016

A RESOLUTION APPROVING THE PRICE USE PERMIT ASSESSOR'S PARCEL NUMBERS 052-247-01, 02

SECTION I: FINDINGS

- I. WHEREAS Steve Price submitted an application to modify the hours of operation for the Marin Heliport to allow weekday flights between 6:00 a.m. and 6:30 p.m. and to allow weekend flights between 9:00 a.m. and 6:00 p.m.. The heliport currently operates between 6:30 a.m. and 5:45 p.m. on weekdays and between 9:00 a.m. and 4:00 p.m. on weekends. The proposed project would retain the existing limit of six flights per day. A total of three full-time employees would be utilized during business hours. Zoning for the 4.4 acre property is BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation). The subject property is located at 240 Redwood Highway, Mill Valley, and is further identified as Assessor's Parcel Numbers 052-247-01, 02.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on February 29, 1996, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the project is exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1 because the operation of an existing facility with negligible expansion would not create adverse environmental effects.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is generally consistent with the goals and policies contained in the Marin Countywide Plan and the Tamalpais Area Community Plan because: (1) the project would continue use of the existing heliport facility to allow the helicopter operator to provide traffic reports for public news broadcasts during the early morning and late afternoon commute periods; (2) the project would continue provision of employment opportunities on an infill site that is served by existing roadways and necessary public and community facilities within the City Centered Corridor; and (3) the project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Master Plan requirements because the project would not significantly expand or modify the operation of the heliport beyond the level of use that was acknowledged by the Board of Supervisors through adoption of Resolution Number 95-105 on May 2, 1995. The Board determined that the legal non-conforming level of use for the heliport consists of a maximum of six flights per day between the hours of 6:30 a.m. and 5:45 p.m. during weekdays and 9:00 a.m. and 4:00 p.m. during weekends. With exception to the proposed modifications to the hours of operation, the heliport would be limited to six flights per day, would retain the existing number of employees, and would occupy the existing amount of land and building area on the subject property.
- VI. WHEREAS the Marin County Deputy Zoning Administrator finds that continuation of the heliport use on the subject property is generally consistent with the intent and objectives of the governing BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation) zoning district because it provides a public service relating to the broadcast of traffic reports and the provision of emergency operations such as medical flights. Additionally, the proposed changes to the hours of operation does not significantly expand or modify the underlying nature or intensity of the heliport use and would not affect the established number of daily flights, the number of employees, or the land and building area occupied by the use.

VII. WHEREAS the Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve a Use Permit (Section 22.88.020 of the Marin County Code), as specified below.

The establishment, maintenance or conducting of the use for which a Use Permit is sought will not in this case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of this use and will not, under the circumstances of the case be detrimental to the public welfare or injurious to property or improvements in said neighborhood.

1. Continued operation of the heliport on the subject property would not adversely affect the surrounding area because the use has existed continuously since 1962, and the proposed changes in the hours of operation would not result in a significant disruption of surrounding areas beyond the level which has historically existed and which currently exists.
2. The project does not significantly expand or modify the heliport use because the present and acknowledged level of six flights per day and three full-time employees would be retained, and because the facility would not expand beyond the existing land and building area that is presently occupied by the use on the subject property.
3. The Department of Public Works has determined that existing off-street parking would not be adversely affected by the modified hours of operation because the existing number of flights and employees would remain unchanged.
4. The heliport facility would not result in adverse visual impacts to surrounding areas because conditions of approval would require the applicant to submit a landscape plan to incorporate shrubs along the perimeter foundation of a fuel storage tank to provide visual screening.
5. The grant of this Use Permit for continued use of the heliport with modifications to the hours of operation would not be detrimental to the health, safety, morals, comfort, or welfare of persons residing in the surrounding neighborhood.

VIII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from the requirements for Design Review pursuant to Marin County Code Section 22.82.030(4) because: (1) the proposed modification to the hours of operation is minor and incidental to the heliport use; and (2) the project would not result in substantial alternation of the existing buildings or heliport facilities beyond minor exterior improvements associated with routine maintenance and upkeep of the property.

IX. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Tidelands requirements pursuant to Marin County Code Section 22.77.010 because minor exterior improvements associated with routine maintenance and upkeep of the property are considered minor and incidental.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Price Use Permit subject to the conditions of approval as specified below.

Community Development Agency - Planning Division

1. Pursuant to Chapter 22.88 of the Marin County Code, the Price Use Permit 96-003 is approved for the continued use and operation of the Marin Heliport over a portion of the property located at 240 Redwood Highway, Mill Valley, and further identified as Assessor's Parcel Numbers 052-247-01, 02. This Use Permit approves the

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heliport as a conforming use on the subject property and replaces the previous non-conforming status of this use, which may now occur only with a valid use permit and which is subject to the restrictions contained herein.

2. Use and operation of the heliport shall be limited to a maximum of six flights per day and the following hours:

Monday to Friday: 6:00 a.m. to 6:30 p.m.

Saturday, Sunday: 9:00 a.m. to 6:00 p.m.

(A flight is defined as one take-off and landing operation.)
3. A maximum of three full-time employees is permitted in conjunction with the heliport. Commercial office functions beyond that associated with administrative activities for the heliport are not permitted.
4. Helicopter take-off, landing, refueling, and storage shall be restricted within the existing facilities located on Assessor's Parcel Number 052-247-02. Administrative activities shall be limited to the southerly portion of the building which fronts Bolinas Avenue and located on Assessor's Parcel Number 052-247-01. Expansion of the existing building and land area occupied by the heliport is not permitted.
5. Use and operation of the seaplane base (Commodore Seaplanes) is permitted subject to the terms of the Use Permit approvals of 1953 and 1981. Use and operation of the houseboat marina (Commodore Marina) shall be governed by the provisions contained in Chapter 22.78 (Nonconforming Uses) of the Marin County Code.
6. The Kids Headquarters educational use shall be terminated no later than June 15, 1996. The applicant shall secure an inspection from the Community Development Agency Planning Division staff to take place on or shortly after that date to confirm that the subject property is utilized only by the heliport, seaplane, and houseboat marina. The Kid's Headquarters (The Planet) is not permitted under the terms of this Use Permit approval.
7. WITHIN 60 DAYS FROM THE DATE OF THIS APPROVAL, the applicant shall submit a landscape plan for review and approval which incorporates sufficient number of shrubs along the perimeter of the fuel storage tank for visual screening. The landscaping shall consist of drought tolerant and native species that are also tolerant of salt water intrusion, wind, salt spray, and saline soils associated with a bayfront environment.
8. WITHIN SIX MONTHS FROM THE DATE OF THIS APPROVAL, the applicant shall demonstrate that all approved landscaping has been planted along with an automatic drip irrigation system.
9. This Use Permit is subject to revocation procedures contained in Sections 22.88.040 and 22.88.045 of the Marin County Code in the event any of the terms of this approval are violated or if the uses are conducted or carried in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or detrimental to the public welfare or injurious to property or improvements in the neighborhood.
10. Any modification to the use or operation of the heliport shall be submitted to the Community Development Director to determine whether a Use Permit Amendment or Master Plan would be required.

SECTION III: VESTING, PERMIT DURATION AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Use Permit approval by completing all of the required work within six months from the date of this approval, or all rights granted in this approval shall lapse. An extension of up to 30 additional days may be granted by the Community Development Director if the applicant submits a letter requesting the extension and demonstrates due diligence in meeting the required conditions.

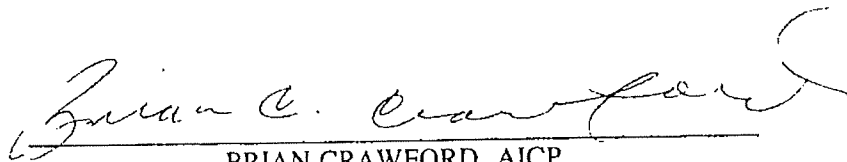
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NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid for a period of five years from the date of approval or until a Master Plan is submitted and approved for the property, whichever occurs first, subject to an annual administrative review by the Community Development Director to determine compliance with the conditions of approval. An application for a Use Permit Renewal shall be submitted to the Community Development Agency at least 60 days prior to expiration of this Use Permit.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$500.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m.** on **March 7, 1996.**

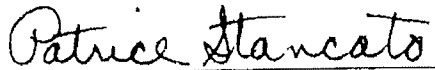
SECTION IV:

PASSED AND ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 29th day of February, 1996.



BRIAN CRAWFORD, AICP
DEPUTY ZONING ADMINISTRATOR

Attest:



Patrice Stancato
Deputy Zoning Administrator Secretary

9. Pre-application 95-105, April 26, 1995, BOS resolution 95-105 denying heliport appeal

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. 95-105

A RESOLUTION DENYING THE HELI USA APPEAL
AND SUSTAINING THE PLANNING COMMISSION'S DETERMINATION
THAT THE CURRENT LEVEL OF USE ON THE HELIPORT PROPERTY
EXCEEDS THE LEGAL NON-CONFORMING USE ESTABLISHED IN 1981 AND
REAFFIRMED 1983

ASSESSOR'S PARCEL NO. 052-247-01,02

SECTION I: FINDINGS

- I. WHEREAS, the Marin County Board of Supervisors finds that Isidor Bornstein has filed, on behalf of Heli USA, an appeal of the Planning Commission's Determination that the current level of use on the heliport property exceeds the legal non-conforming use established in 1981 and reaffirmed in 1983. The appellant contends that the legal non-conforming use is the use established by SFO Helicopters in 1966. The basis for this statement is the appellants' position that a legal non-conforming use may change from a high level of use, to a less intensive use and then re-establish to the higher intensity of use at a later date. The appellant also claims that the levels of use established in 1981 and reaffirmed in 1983 do not accurately reflect the level of use that was occurring on the property at that time.

- II. WHEREAS, the Board of Supervisors recognizes the heliport use became legal non-conforming on November 15, 1966 when the property was rezoned from M-1-H (Light Industrial District) to R-C-R (Resort, Commercial, Recreational). The legal non-conforming use was reduced for a period of more than six months in 1976 when SFO Helicopters ceased business and left the site, limiting the heliport use to the level of operation established by Commodore Helicopters.

- III. WHEREAS, the Board of Supervisors finds that Commodore Helicopters level of use was established by Lu Hurley, the operator of Commodore Helicopters in letters dated January 9, 1981 and February 20, 1981 ("the Hurley Letters"). The level of use was reaffirmed by the Planning Department in a letter to the Board of Supervisors dated August 5, 1983 ("the Board Letter"). The Board of Supervisors finds that these three letters describe the level of heliport use in 1981 as, 3.5 flights per day in the winter months and 6 flights per day in the summer months. Of these flights approximately 6 charter flights occurred lasting 1 to 1.5 hours each month between 9:00 a.m. and 4:00 p.m., two traffic report flights were flown each weekday between 6:30 a.m. and 5:45 p.m. and refueling flights for helicopters engaged in tourist flights at Pier 43 in San Francisco also occurred. The Board of Supervisors finds that the maximum intensity of the legal non-conforming use established by the County records is 6 flights per day, whether for tourist, charter or refueling purposes.

- IV. WHEREAS, the Board of Supervisors finds that the legal non-conforming level of use is also described in a February 5, 1985 site inspection memo from Debbi Poiani, in a technical report for the Noise Element of the Countywide Plan, written by Illingworth and Rodkin dated October 14, 1987, and verified in a telephone conversation with a Commodore representative on February 25, 1991 as documented in the Noise Element of the Countywide Plan. The Board of Supervisors finds that these documents establish the legal non-conforming use to be, 3.5 flights per day in the winter, 6 flights per day in the summer, with an average of 25 flights per week
- V. WHEREAS, the Board of Supervisors finds that while the pilot logs submitted by the appellant provide an overview of the daily heliport activities, the logs do not provide conclusive evidence that the levels of use documented in 1981 and 1983 the Hurley Letters and the Board Letter were inaccurate.
- VI. Whereas, the Board of Supervisors finds that refueling of helicopters engaged in tourist flights from Fisherman's Wharf no longer occurs at the Marin heliport and ceased operation in approximately 1988. However, refueling flights nevertheless, are included in the total number of flights established as legal non-conforming.
- VII. WHEREAS, the Board of Supervisors interprets Marin County Code, Title 22, Section 22.78.010 to require that once a use ceases it may not be re-established unless it is conforming to the zoning district. In 1976 the number of flights was reduced by 14 flights per day as documented in SFO Helicopters Flight Guide and Schedule dated 10-27-74. This reduction in flights dramatically changed the level of the legal non-conforming use. Documentation of Commodore's heliport use in 1976 was established by the operator of Commodore Helicopters in the Hurley Letters and reaffirmed by the Board Letter. The Board of Supervisors finds that the reduction in flights for a period of more than six months in 1976 constituted a change in use. The re-establishment of the 1966 use almost 30 years later would be considered an increase in the legal non-conforming use.
- VIII. WHEREAS, the Board of Supervisors finds that the type of flight, such as tourist, charter and refueling, does not necessarily describe the intensity of heliport use. Therefore the Board has determined that the historically documented 6 daily flights, which includes all types of flights, be a daily maximum rather than distinguishing between tourist, charter and refueling flights. A flight is defined as one take off and one landing.
- IX. WHEREAS, the Board of Supervisors conducted a public hearing on May 2, 1995, and reviewed the administrative record, and based on the record finds, that the Hurley Letters and the Board Letter clearly document that the legal non-conforming level of use (3-6 flights per day between 6:30 a.m. and 5:45 p.m. weekdays and 9:00 a.m. and 4:00 p.m. week-ends) and that the current level of use (7-20 flights per day between 5:00 a.m. and 7:30 p.m.) exceeds the legal non-conforming use.

NOW, THEREFORE, LET IT BE RESOLVED that the Marin County Board of Supervisors hereby denies the appeal of Isidor Bornstein, on behalf of Heli USA, and sustains the Planning Commission's determination that the allowable legal non-conforming use is a maximum of 6 flights per day between 6:30 a.m. - 5:45 p.m. weekdays and between 9:00 a.m. - 4:00 p.m. on the weekends. Any helicopter flights or other activities not specified above are prohibited unless a Master Plan/Use Permit is applied for and approved.

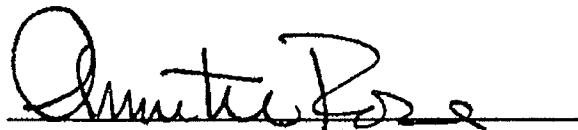
SECTION II: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on this 2nd day of May, 1995 by the following vote to wit:

AYES: SUPERVISORS Harry J. Moore, Gary Giacomini, John B. Kress, Annette Rose

NOES: None

ABSENT: SUPERVISOR Harold C. Brown, Jr.



ANNETTE ROSE

President of the Board of Supervisors

ATTEST:



Martin J. Nichols

Acting Clerk of the Board of Supervisors

RED Exhibit D

Marin County Community Development Agency

Mark J. Riesenfeld, AICP, Director

April 26, 1995

Steve Price
San Francisco Seaplane Tours, Inc.
242 Redwood Highway
Mill Valley, CA 94941

RE: Preapplication Review for Landor Property
240 Redwood Highway, Mill Valley
Assessor's Parcel Numbers 052-247-01, 02, 03

Dear Mr. Price:

Thank you for your letter of March 14, 1995 in which you requested a preapplication review to determine the feasibility of allowing various interim uses on the Landor property. These would include a refreshment stand, delicatessen, jet ski maintenance and sales, art studio, art classroom, and a small property management office. You have indicated that physical improvements would include minor repair (replacement of windows and installation of a new roof), removal of toxic contaminants, repainting the building exteriors, and new landscaping. Due to various work commitments, I have been unable to provide a timely response to your preapplication review and am appreciative of your patience in receiving this belated response.

This letter attempts to supplement the preliminary analysis and identification of issues contained in two previous preapplication reviews that have been prepared by Planning staff for the subject property. These are included as attachments for your use. Specifically, this preapplication will address the feasibility of each of the interim uses that you contemplate to conduct.

Project Feasibility

Development of the Landor property is subject to various plan policy and zoning restrictions. Without reiterating the analyses contained in the previous preapplication reviews, the primary issues associated with the conduct of the proposed interim uses include the following: (1) conformance with the Marin Countywide Plan policies which designate the property for recreational-commercial uses; (2) conformance with the Tamalpais Area Community Plan which encourages resort and resort-oriented recreational facilities that are balanced with the need for public access, shoreline recreation, open space, habitat preservation, water quality; and (3) conformance with the governing BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation) zoning district which limits uses to those that are related to water-oriented resort and recreational activities. Specifically, with respect to the zoning requirements, the BFC-RCR zoning district allows uses that are related to a resort or that are desirable or necessary for public service, utility service or for the recreation industry, but specifically prohibits residential, industrial, institutional, general commercial, mobile home parks, and floating home marinas. The existing heliport, seaplane, and houseboat uses are considered non-conforming with respect to the current zoning.

Although you have indicated that the proposed uses would only be temporary in nature and would be followed by a subsequent application for entitlements to allow long-term uses that would conform with plan policy and zoning requirements, the interim uses would nevertheless be subject to the same plan

3601 Civic Center Drive, #308, San Rafael, CA 94903-4157 - Telephone (415) 499-6269 - Fax (415) 499-7880

RED Exhibit D

policy and zoning requirements. The County is prohibited under State Law from granting entitlements that authorize non-conforming uses, which would be equivalent to the grant of use variances.

The following provides staff's preliminary assessment for each of the contemplated interim uses on the Landor property.

1. Refreshment Stand

A refreshment stand constitutes a general commercial use that is not consistent with governing policies and zoning regulations, unless it can be demonstrated that this use is incidental to a larger activity which is related to a permitted use for resort or commercial recreational purposes, including a swimming and/or picnicking park.

2. Delicatessen

Concurrent with this preapplication, staff is reviewing a proposal to operate Sally's, an arts-oriented cafe, in approximately 2,000 square feet of ground floor area in the main building on the Landor property. It is staff's opinion that the proposed delicatessen is also considered a general commercial use. Although a component of the delicatessen would provide for the display of artwork, the primary use would still constitute a general commercial food establishment. In order for this type of use to be acceptable, the scale and configuration of the delicatessen and art components would need to be modified so that the overall use is related to a recreational activity that is open to the public, such as a museum or educational center, with a food service component that is incidental to that primary use, similar to a cafe component in a book store.

3. Jet Ski

The maintenance, storage, and sales of jet ski equipment would also constitute a general commercial use that is not consistent with the governing policies and zoning regulations, unless it is subordinate to a water-oriented recreational use, such as jet ski recreation. Some issues that would need to be addressed if the primary use is proposed for jet ski recreation with incidental rental, sales, maintenance, and storage components would include impacts relating to noise, shoreline resources, personal safety, and possible opposition from the surrounding community.

4. Art Studio and Classroom

Although artists' studio and classrooms are not entirely resort or recreational commercial in nature, it is staff's opinion that these uses would be consistent with applicable policies and regulations provided it is related and incidental to a primary recreational use, such as a museum or education center that is open to the public.

5. Management Office

The use of a small office for management of the property would be a permitted use provided the scale of this use (number of employees, floor area, hours, etc.) is clearly minor and incidental to the rest of the uses in the building. General office uses are not permitted under the zoning.

Applicable Permits

Under the governing BFC-RCR zoning district, development on the subject property is subject to Master Plan and Precise Development Plan requirements contained in Chapter 22.45 and Tidelands Permit requirements contained in Chapter 22.78 of the Marin County Code.

RED Exhibit D

1. Master Plan Waiver

Provided the scale and mix of uses conform to applicable policies in the Marin Countywide Plan and the Tamalpais Area Community Plan, and an amendment to these plan documents is not required, the Community Development Director may waive Master Plan requirements in favor of a Use Permit. In order for a Use Permit to be approved, a mandatory finding contained in Section 22.88.020 of the Marin County Code would need to be made to determine that the proposed uses would not result in a detriment to the public health, safety, or general welfare. Some considerations that would be used in making this determination are discussed in the following section on development issues. Enclosed is a fact sheet which discusses the Use Permit process in greater detail.

2. Precise Development Plan Waiver

Based on the scale of the proposed improvements, the Community Development Director may waive Precise Development Plan requirements in favor of a Design Review. In order for a Design Review to be approved, mandatory findings contained in Section 22.82.040 of the Marin County Code would need to be made. Some of the issues associated with the proposed development that would be addressed through Design Review would include whether proposed roofing materials and building colors are compatible with the surrounding area, and whether proposed landscaping is suitable for a bayfront environment and would not inhibit visual or physical access toward the shoreline. Enclosed is a fact sheet which discusses the Design Review process in greater detail.

3. Tidelands Permit

Development of the property is subject to approval of a Tidelands Permit. Pursuant to requirements contained in Chapter 22.77 of the Marin County Code. The intent for this permit is to promote, preserve and enhance tidelands, shorelines, waterways, beaches, and salt marshes as vital natural resources which provide scenic views, open space, wildlife habitat, and recreational and water-oriented resources. The Community Development Director may waive Tidelands Permit requirements for minor maintenance work to existing buildings or work that is found to be minor or incidental. Enclosed is a fact sheet which discusses the Tidelands Permit process in greater detail.

4. Bayfront Conservation District

The BFC overlay zoning district requires that all development be preceded by an Environmental Assessment to evaluate the physical, policy, and environmental constraints of the property, including visual impacts, public access, traffic, water quality, and sensitive shoreline habitat areas. This requirement may be waived by the Community Development Director depending on the scale of the proposed improvements. However, the Director may require additional studies that address specific bayfront resources as part of the waiver process.

Development Issues

The scale and mix of uses would be determined by the project's ability to address the following development issues.

1. Traffic and Circulation

The proposed interim uses would be reviewed to determine if they would exceed the capacity of surrounding roadways and freeway interchanges. Based on the discussion contained in the previous preapplication reviews, intensification of uses on the Landor property could adversely affect traffic circulation and exacerbate the existing substandard traffic conditions. Therefore, staff recommends that a traffic study be prepared to determine whether there is sufficient capacity in the surrounding

RED Exhibit D

roadway network to accommodate the trips that would be generated by the proposed uses without triggering roadway and interchange improvements. In the event the proposed uses do not exceed the capacity, the project would be subject to payment of its fair share for future traffic improvements through a traffic mitigation fee.

2. Off-street Parking

The Tamaulipas Area Community Plan contains policies that require all parking for new or additional uses on the subject property to be provided onsite and not in the surrounding public rights-of-way. In addition, Mc In County Code Title 24 requires off-street parking to be provided for all uses on the property. Based on the site survey prepared by Anrig-Doyle and submitted in conjunction with your pre-application letter, the only off-street parking currently available on the subject property consists of the row of parking on the south side of Parepa Street that is used for the houseboat marina. The Department of Public Works staff has indicated that although existing on-street parking spaces could be considered in conjunction with the review of development on the subject property, off-street parking would need to be provided in general conformance with the parking guidelines contained in Title 24, which range from one space per 50 square feet of public area for a food service establishment to one space per four persons for a public exhibition hall.

Review of the site survey indicates that the property is very limited in its ability to provide additional off-street parking spaces without entailing substantial site and building alterations. It appears that the only feasible location for additional off-street parking spaces is located on the southeast corner of Parepa Street and Bolinas Avenue. Using standard perpendicular parking spaces, staff estimates that up to eight off-street parking spaces could be provided in this location. As a general measure of conformity with the parking requirements, these eight spaces could accommodate a delicatessen with 400 square feet of public area, or less than half the 1,000 square foot size that is contemplated for Sally's. Conversely, using the Uniform Building Code's standard occupancy requirements for an exhibition hall, the potential off-street parking spaces would allow for 120 square feet of exhibition space.

Conclusion

Based on the preliminary analysis above, it would be difficult to undertake interim uses on the Landor property without comprehensively addressing all of the policy and zoning constraints. Although some of the proposed uses, namely the delicatessen, jet ski, and art-related educational uses, may be modified to more closely reflect resort and recreational commercial uses, it is staff's opinion that it would be very difficult to provide a sufficient number of off-street parking spaces to meet County requirements without involving substantial modifications to the existing building and site. If that were undertaken, it is likely that the scope of the modifications (conversion of a portion of the building into a parking garage, etc.) could conflict with other governmental regulations, such as the Federal Emergency Management Administration's minimum threshold for raising the building to meet flood elevations. Staff is also concerned about the cumulative effects associated with intensification of uses on the property that may have physical ramifications to long-term development.

Environmental Review

Pursuant to the California Environmental Quality Act, the project may be exempt from environmental review if it meets applicable plan policy and zoning requirements and if it does not result in potential impacts associated with aesthetics, wildlife resources, water quality, archaeology, and traffic. However, depending on the scale and scope of the interim uses, environmental review may be required. In the event it is required, the first step in the environmental review process involves the preparation of an Initial Study to examine potential significant effects on the environment that may result from the project. Depending on the outcome of this Initial Study, which would be circulated for public comment and review, the project would either result in the adoption of a Negative Declaration of

RED Exhibit D

Environmental Impact or the requirement to prepare an Environmental impact Report. Enclosed is a fact sheet which discusses the environmental review process in greater detail.

Please note that your pre-application fees will be applied toward your application fees should you wish to proceed with an application for a Design Review and Use Permit for the proposed project and if you apply within one year from the date of this letter. I can be reached at (415) 499-6292 if you have further questions regarding this matter.

Sincerely,

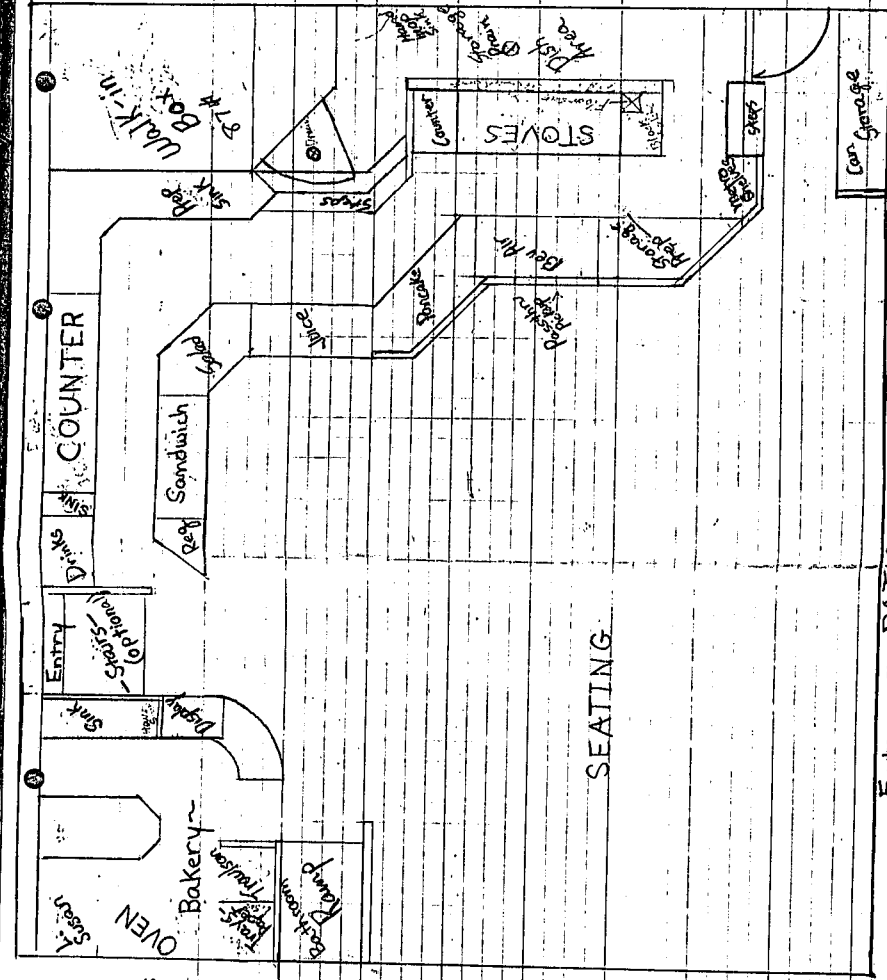


Thomas Lai, AICP
Senior Planner

Attachment: (1) Community Development Agency Letter, (8/15/94)
(2) Community Development Agency Letter, (3/23/94)
(3) Fact Sheets (Design Review, Use Permit, Tidelands Permit, Environmental Review)

cc: Sally Seymour (Sally's Cafe) (Attachments Included)
Brad Sears (Attachments Included)
Mark Riensfeld, AICP, Director
Denise Pinkston, Planning Services Coordinator
Dean Powell, AICP, Principal Planner
Supervisor Annette Rose

RED Exhibit D



Rough Drawing - Sally's
 - 1048 # Open Floor
 = 21 Pkg. spaces
 - 675 # True
 Seating Area
 for Sally

$\frac{1}{4}'' = 1'$
 3/8/95
 by B. Sears

Entry ← PATIO → Entry

10. Use Permit, February 9, 1981, Modification to sea plane Use Permit

Richardson Hill

Cont.

USE PERMIT: CONWARD SEAPLANES

The Marin County Planning Commission held a public hearing to review the existing Use Permit for the seaplane base on Richardson Bay and to consider modifying or conditionally said Use Permit. The subject property is located at 242 Redwood Highway, Mill Valley, and is further identified as Assessor's Parcel 052-243-01 and 02.

Speakers:

- Mr. Chris Hansen, representing Conward Seaplanes, objected to staff's proposed conditions #7 and #8, further requested a clarification of proposed condition #6.
- Ms. Fran Corcoran, property owner in the area, suggested more specific language with regard to condition #1.
- Mr. Robert Sanchez, Deputy County Counsel, recommended an addition to proposed condition #2 to protect the County from liability.
- Mr. Russ Char, interested property owner.
- Mr. Peter Kralnic, owner of a plane which is presently at the site, spoke to the matter of proposed conditions.
- Mr. Michael Soltes, part owner of the seaplane operation.

Action:

M/s. Friedman-Duncan: That the Planning Commission adopt a resolution modifying the existing use permit.

Resolution
No. 1026

WHEREAS: The Marin County Planning Commission held a duly noticed public hearing on February 9, 1991 to consider the modification of an existing use permit for the seaplane base on Richardson Bay, and

WHEREAS: The Commission finds that circumstances have changed since the grant of the use permit in 1951 by virtue of the increased level of development in the vicinity of the seaplane base and that, therefore, the use permit should be modified, and

WHEREAS: The Commission finds that the public health, convenience and general welfare do require this modification of the use permit.

NOW, THEREFORE, BE IT RESOLVED: That the Planning Commission modify the use permit for the seaplane base that was issued to 052-243-01 and 02 by the following conditions of approval:

- 1) No approaches to or Strawberry Point except in the support of the pier when necessary for safe operation. This condition is not intended to allow repeated approaches to Strawberry Point under unsafe conditions. Strawberry Point shall be defined as the area south of the Seminary.

(Continued)

FINISHED

February 26, 1991
(Item 7, Page 2)

RED Exhibit D

2. Richardson Bay to be used for arrivals and departures only, i.e., no touch and go operations. A school shall be allowed to operate from the base, but training maneuvers, with the exception of sailing or idling type and initial takeoff and final landing must take place in other areas.
3. No-power approaches to be used except when necessary for safe operation.
4. Transient airplanes will not be allowed the use of base facilities by the operator.
5. Maximum of four commercial aircraft at the base, but only two may be simultaneously used for revenue producing purposes.
6. At no time should any aircraft operated by the commercial operator exceed 86 decibels.

The motion carried by the following roll-call vote:

AYES: Bull, Duncan, Friedman, Sessi

NOES: Appien, Evans, Eckelhoff

ABSENT: None

At this time the Chairman advised interested parties of the right to appeal this decision within five working days of this date (no later than Tuesday, February 17, 1981, 5:00 P.M.). (Monday, February 16th is an observed holiday).

NIMTES
February 5, 1981
Item 7 Page 7

11. Use Permit and Plan Approval, April 24, 1972, Use Permit and Plan Approval for a mortuary

RED Exhibit D

Marin County
PLANNING
Department

Civic Center San Rafael California 94903 Telephone 478 1100 Werner von Gundell Director
April 25, 1972

Mr. Wendell M. Joost, Jr.
240 Redwood Highway
Mill Valley, Ca. 94941

Re: Planning Commission Action relating to the RCR Use Permit
& Plan Approval for Wendell Joost, Jr. -- April 24, 1972

Dear Mr. Joost:

This letter will confirm the Planning Commission's action of April 24, 1972 regarding your application for an RCR Use Permit & Plan Approval for the establishment of a mortuary on Assessor's Parcel #52-242-01. Said action follows:

M/s Watkin-Azevedo: That the RCR Use Permit and Plans be approved subject to the following findings and conditions:

- Findings:
- 1) That the establishment, maintenance or conducting of the use will not be detrimental to the health, safety, morals, comfort, convenience or welfare of persons residing or working in the neighborhood and will not be detrimental to the public welfare or injurious to property or improvements in said neighborhood.
 - 2) The use will not be contrary to the purpose of the District in that it is necessary for public and utility service in the District (22.59.040.4).

- Conditions:
- 1) This Permit is valid for a 6-month period; at that time the Staff will report to the Commission on the advisability of continuing this use. If continuance is approved, the Permit shall then be extended for an additional 6 months if requested.
 - 2) This Permit shall not be valid until the debris in front of the building is removed, notably the broken-down truck and the school bus.

Mr. Wendell M. Joost
April 24, 1972
Re: P.C. Act 4/24/72

RED Exhibit D

If you need additional information on this matter, please
let me know.

Sincerely,



HARVEY E. BRAGDON
Chief Current Planning

HEB:bl d

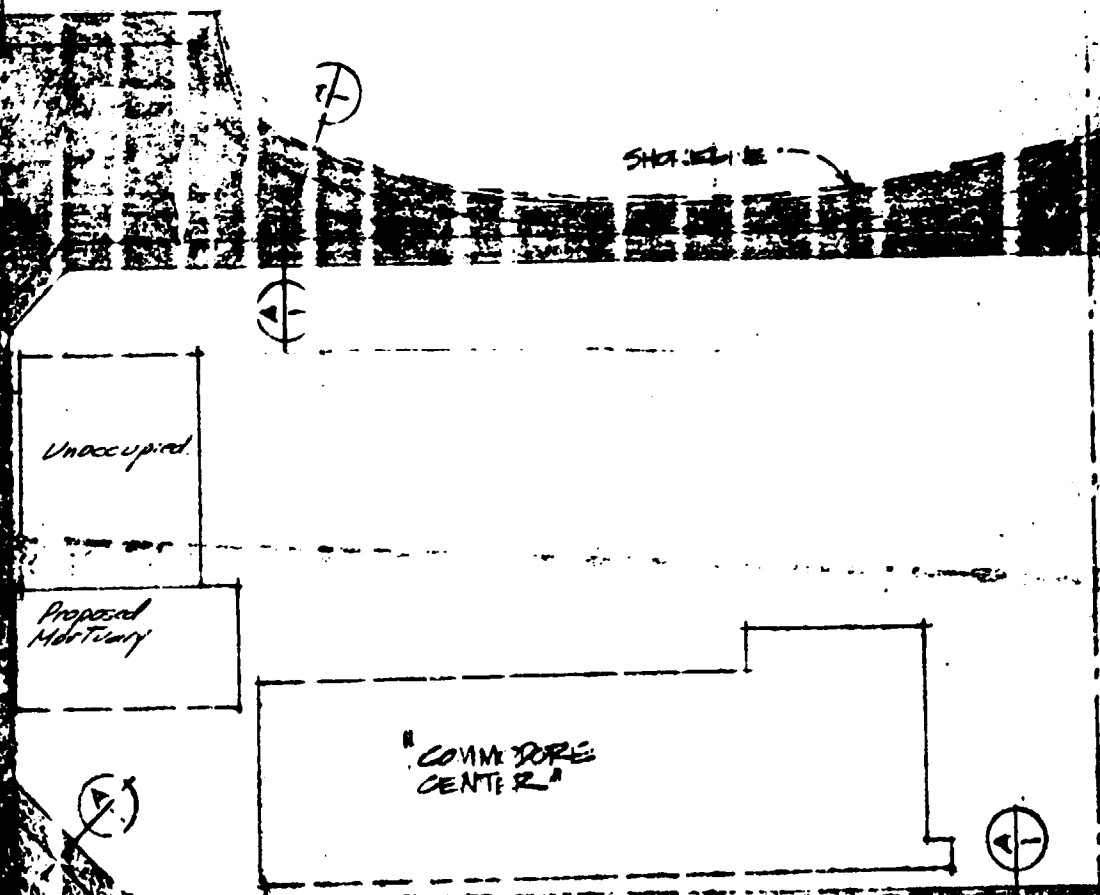
N38°22'W
240.0'

S51°38'W
400.0'

PARROT STREET

PLANNING DEPARTMENT
CITY OF YOLO
MAY 3 3 31 PM '72

YOLO CITY



Unoccupied

Proposed Addition

COMM CORE CENTER

12. Sign Permit, March 2, 1964, Sign Permit for "Commodore Aviation"

RED Exhibit D

APPLICATION FOR SIGN PERMIT
Under provisions of Ordinance No. 251 or Section 14 & 20 of
Ordinance No. 264, the Zoning Ordinance of the County of Marin

TO THE MARIN COUNTY PLANNING COMMISSION
CIVIC CENTER, SAN RAFAEL, CALIFORNIA

The undersigned hereby applies for a USE PERMIT (Sign Permit) to Erect
(erect, construct, alter, move)

^{see M-1-H}
~~improvement~~ zone district in See attached letter at _____
(locality) _____ (street address)

240 Redwood Highway, Richardson Bay
(general description of location of sign) (streets, highways, etc.)

Sign to be used for indicate location of heliport

To be placed on ground
(ground, fence, wall, tree, pole or other parts of building)

FRONTAGE: Length of building frontage _____
Length of lot frontage 300'

Area of sign 17.3 sq. ft. Height 2' 4" Length 8' 4"

Distances from sign to front property line _____

Height of sign above ground 12'

Color of sign: Background white Reflectors none
Painted Copy none Illuminations (other) inside lighting
Neon (None) Red plastic letters

Printed Copy on Sign HELIPORT
On both sides? Yes
Property now used for Not in use
Property described as _____ Assessor's Parcel No. 52-242-01
~~Operator~~ (Applicant) S. F. O. Helicopters Airlines Address S. F. Airport

The foregoing information is in all respects true and correct to the best of my knowledge and belief.

Applicant's signature Bruce Williams V.P. Ops.

Phone 761-1630 Address SFO Helicopter Airlines (owner or occupant of premises) San Francisco International Airport, San Francisco 28

PLEASE DRAW SKETCH OF PROPOSED SIGN AND ITS LOCATION ON REVERSE SIDE SEE ATTACHED LETTER

SIGN PERMIT or USE PERMIT for Sign as applied for above. Date March 2, 1964

SIGN PERMIT IS HEREBY ISSUED TO S. F. O. Helicopter Airlines
for the sign described above. There is, are _____ conditions under which this Use Permit is issued. Failure to comply with all the aforementioned provisions and conditions shall be cause for the cancellation of this sign permit by the Marin County Planning Commission.

This Sign Permit is granted subject to the following conditions:

APPROVED AND CONFIRMED BY THE
BOARD OF SUPERVISORS, COUNTY OF
MARIN, STATE OF CALIFORNIA ON
THE 10th DAY OF March, 1964

MARIN COUNTY PLANNING COMMISSION

By B. D. Bobbs

B. D. Bobbs, Planning Director

GEO. H. GROSS, Clerk

THIS FORM TO BE FILLED OUT IN QUADRUPPLICATE

• RED Exhibit D

- 7 -

APPLICATION FOR SIGN PERMIT - S. F. O. Helicopter Airlines
52-242-01

APPROVED

The Commission considered the application of S. F. O. Helicopter Airlines for a Sign Permit to permit the erection of a free-standing sign at the entrance to the Marin County Heliport, 240 Redwood Highway, Richardson Bay.

Mr. Talley reported that this sign will be installed by the County even though it belongs to S.F.O. and is being moved from the site which was abandoned on the Embarcadero in San Francisco. It will be installed near the entrance to the heliport. This is an interior lit, double-faced sign, with an area a little over 16 square feet.

Commissioner Warburg indicated there should be an investigation of a Marin County Real Estate sign and then reported back to him.

Mrs. Mary Donnelly raised the question as to whether this is a County sign and whether a permit is needed.

Mr. Talley stated that if the Department of Public Works installs and maintains the sign, it could be considered an official directional sign which designates the entrance to the County Heliport.

Commissioner Warburg brought up the point that the County and the State should be the first ones to abide by their own laws. He asked that all of the signs in that area be watched. He then moved that the Commission recommend to the Board of Supervisors the approval and confirmation of its decision to grant a Sign Permit to S. F. O. Helicopter Airlines for a 16 square foot sign as above set forth, and in accordance with plans submitted.

Commissioner Hankins seconded the motion and it carried unanimously with Commissioners Johnson and Upton absent.

The Chairman announced that this matter would be reported to the Board of Supervisors on Tuesday, March 10, 1964, at 2:00 P.M., in the Supervisors' Chambers, Civic Center, San Rafael.

MAR 2 1964

13. Sign Permit, August 12, 1957, Sign Permit for "Commodore Aviation"

RED Exhibit D

APPLICATION FOR SIGN PERMIT
Under provisions of Ordinance No. 254 of the Board of Supervisors of the County of Marin
Ordinance No. 264, the Zoning Ordinance of the County of Marin
Filed August 12, 1957

TO THE MARIN COUNTY PLANNING COMMISSION
1711 Grand Avenue, San Rafael, California

The undersigned hereby applies for a USE PERMIT, to erect
in District in at
(erect, construct, alter, move
Zone District Locality Street Address
#1. Fronting Hwy #1. #2. & #3. Fronting on Yale St
(General description of location of sign) Sts, Hwys, etc.

Sign to be used for IDENTIFICATION & ADVERTISING

To be placed on To be mounted on sign
(ground, fence, wall, tree, pole or other parts of buildings)

FRONTAGE: Length of building frontage 120'
Length of lot frontage 400'

Area of sign See attached sheet Height See attached sheet Length See attached sheet
Distances from sign to front property line #1. 26' #2. & #3. 45'
Height of sign above ground Highest point - 45'
Color of signs: Background White Reflectors None
Painted Copy Yes Illuminations (other) None
Neon All signs non illuminated with neon lights

Copy on Sign #1. COMMODORE AVIATION #2 & #3 See attached sheet
On both sides? yes on #2. no on #1 & #3

Property now used for Seaplane Base
Property described as Lot 187 - Sausalito Land and Ferry Co. Map
Owner or Proprietor Commodore Aviation Address Hwy 101 - Marin County

The foregoing information is in all respects true and correct to the best
of my knowledge and belief. Applicant's signature Robert Law

Phone ED 2-1100 Address Hwy 101 - Marin County
PLEASE DRAW SKETCH OF PROPOSED SIGN AND ITS LOCATION ON REVERSE SIDE

SIGN PERMIT or USE PERMIT for Sign as Applied for above.
Date August 20, 1957
Law

SIGN PERMIT IS HEREBY ISSUED TO Robert Law - Commodore Aviation
for the sign described above. There is, are 2 conditions under which
this Use Permit is issued. Failure to comply with all the aforementioned
provisions and conditions shall be cause for the cancellation of this sign
permit by the Marin County Planning Commission.

- This Sign Permit is granted subject to the following conditions:
1. That no red, pink, orange or any other color which might be mistaken for red lighting is permitted to be installed on any structure or any sign or in any manner in connection with the use of this property.
 2. That the overall area shall be reduced to 200 square feet, and the resulting signs are of the same general design as shown on the submitted plans.

I agree to conform to the above conditions: Applicant

APPROVED AND CONFIRMED BY THE BOARD
OF SUPERVISORS, COUNTY OF MARIN, STATE
OF CALIFORNIA, ON THE 19th
DAY OF August 1957.
Geo. S. Jones, County Clerk

COUNTY PLANNING COMMISSION
COUNTY OF MARIN, CALIFORNIA
By B. B. Bobbs
B. B. Bobbs
Title Zoning Administrator

THIS FORM TO BE FILLED OUT IN QUADRUPPLICATE

RED Exhibit D

APPLICATION FOR SIGN PERMIT - "Commodore Aviation" - Robert Law

AUG 12 1957

GRANTED

10,487

The Commission considered the application of Robert Law for a sign permit for the erection of three signs at the Commodore Aviation place of business (1) fronting on the large building to read "Commodore Aviation" (2) on the upper section of the new hanger, which would be facing the northbound traffic on U.S. Highway 101 to read "Fly Over S.F. \$2.50, (3) "Lake Tahoe Airlines - Clear Lake Airlines, Flight Training School."

Mr. Dobbs presented the plans for the signs to the Commission and described the wording and structures. He objected to the "Fly Over S.F." sign since it doesn't identify and departs from the dignified advertising appropriate to a business of this nature.

He stated that it is minimized by the distance from the Highway and the size of the building it is on, but this is the only sign which he objects to as such; the other objection being to the total of 237 square feet.

Mr. Dobbs said that this action (if to grant) would rescind any previous permits and after measuring the two buildings and not considering the five foot separation, he stated that there would be 200 feet of frontage.

Mr. Law said that they have had a lot of trouble determining how to advertise "Fly Over S.F." and that most of their business is from persons passing by who decide to take the flight on impulse. They want a sign that will make an impact on the travelling public.

Commissioner Cuzner moved that the Commission recommend to the Board of Supervisors the approval and confirmation of its decision to grant a sign permit to Robert Law provided the overall area is reduced to 200 square feet and the resulting signs are of the same general design as shown on the submitted plans.

AUG 12 1957

The motion was seconded by Commissioner Azevedo and unanimously carried.

The Chairman announced that this matter would be before the Board of Supervisors on Tuesday, August 20, 1957, at 2:00 P.M., in the Supervisors' Chambers, Court House, San Rafael.

14. Use Permit, November 10, 1953, Use Permit to construct, operate, and maintain a Sea Plane Base, Flight School, Maintenance & Repair of Aircraft

RED Exhibit D

USE PERMIT

REVOCABLE

Under the provisions of Section 20 of Ord. No. 264, the Zoning Ordinance of the County of Marin, State of California.

A USE PERMIT is hereby granted authorizing (Name of person) to construct, operate, and maintain a Sea Plane Base, Flight School, Maintenance & Repair of Aircraft (Subject to the usual and general conditions proposed to be conducted)

At (Street address or location) in (Name of locality or community) between (Street or Highway) and (Street or Highway)

on property legally described as: Lot 1-16 Block 164 Tract 167 Sausalito Lar and Ferry Co. Mc or (Here indicate any other legal description other than metes & bounds

situated in a M-1-A District.

Area of site 1.4/10 acres Dimensions of site 540 ft. by 400 ft. (Square ft. or acres)

Distance from front of structure to street line 10 ft.

Property owned by Robert Law, USA, Commodore Air Service (Name and address)

If there are special conditions under which this Use Permit is granted, a statement of such conditions is attached hereto and the permit is conditional thereon.

The use permitted hereby shall be conducted and shall conform in all particulars to the provisions of all applicable laws and ordinances. Failure to comply with all the aforementioned provisions and conditions will be cause for the cancellation of this use permit by the County Planning Commission.

APPROVED AND CONFIRMED BY BOARD OF SUPERVISORS, COUNTY OF MARIN, STATE OF CALIFORNIA, ON THE 10 DAY OF 19 1953

Geo. S. Jones, County Clerk

MARIN COUNTY PLANNING COMMISSION

By Mary R. Summers Mary R. Summers Planning Director

Date November 10, 1953

This Use Permit was located in a historic Use Permit log. It was inserted into this file 11-26-86dp.

RED Exhibit D

Under the provisions of Section 20 of the Zoning Ordinance of the County of Marin, State of California, this permit was granted subject to the following conditions:

1. That the Marin County Planning Commission reserve the right to revoke or review this Use Permit, after holding a public hearing thereon, said revocation and review to be instigated by the Commission at no particular time, but only when changed conditions seem to warrant such action.

on property legally described as MARIN COUNTY PLANNING COMMISSION or Mary R. Summers Planning Director

at a date in a November 10, 1953 Dimensions of site 157 ft. by 150 (Square ft. or acres) Distance from front of structure to street line 10 ft.

I agree to conform to the above condition. Property owned by Marin County Planning Commission

If the Applicant grants, a statement of such conditions is attached hereto and the permit is conditional thereon.

The use Address shall be conducted and shall conform in all particulars to the provisions of all applicable laws and ordinances. Failure to comply with all the aforementioned provisions and conditions will be cause for the cancellation of this permit by the Planning Commission.

APPROVED AND CONFIRMED BY BOARD OF SUPERVISORS, COUNTY OF MARIN, STATE OF CALIFORNIA, ON THE 10 DAY OF NOVEMBER, 1953. MARY R. SUMMERS PLANNING DIRECTOR Date NOVEMBER 10, 1953

See S. 3052, County Clerk
This permit was reviewed and approved. It was checked with the file and steps.

15. Use Permit, February 6, 1950, 5-year Use Permit for the construction, maintenance and operation of a Sea Plane Base, Hangers, Office and Yacht Harbor and accessory buildings

USE PERMIT FIVE YEARS **RED Exhibit D**

Under the provisions of Section 20 of Ord. No. 264
the Zoning Ordinance of the County of Marin, State of California.

A USE PERMIT is hereby granted authorizing ALICE SMITH AND ROBERT LAW
(name of person, firm or corporation)

to permit the construction, maintenance and operation of a Sea Plane Base Hangars,
(Use of land, building or structure proposed to be established and/or conducted)

Office and Yacht Harbor and accessory buildings thereto in accordance with the
attached schedule of conditions.

At Mangonita 14
(Street address or location on hwy.) (Name of locality or community)

between _____ and _____
(Street or highway) (Street or highway)

on property legally described as: Lot 1-16 Block 164 Tract Map of Sausalito Land & Ferry Company

or
(Here indicate any other legal description available other than metes & bounds,

situated in a M-I-H, Light Industrial District with Combining Highway Frontage Regulations
District

Area of site 4 8/10 acres Dimensions of site 540 ft. by 400 ft.
(Square ft. or acres)

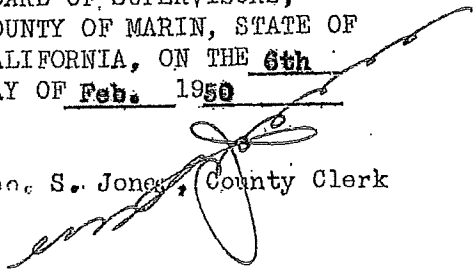
Distance from front of structure to street line Hangar 315, Office 215 ft.

Property owned by Alice P. Smith, Box 212, Sausalito
(Name and address)

If there are special conditions under which this Use Permit is granted, a statement of such conditions is attached hereto and the permit is conditional thereon.

The use permitted hereby shall be conducted and shall conform in all particulars to the provisions of all applicable laws and ordinances. Failure to comply with all the aforementioned provisions and conditions will be cause for the cancellation of this use permit by the County Planning Commission.

APPROVED AND CONFIRMED BY
BOARD OF SUPERVISORS,
COUNTY OF MARIN, STATE OF
CALIFORNIA, ON THE 6th
DAY OF Feb. 1950



Gen. S. Jones, County Clerk

MARIN COUNTY PLANNING COMMISSION

By Mary Robinson Gilkey
Mary Robinson Gilkey
Planning Technician


Date February 6, 1950

RED Exhibit D

This Use Permit is granted subject to the following conditions:

1. That the permit be valid for a period of five years only unless and until further application is made and granted by the Marin County Planning Commission and the Marin County Board of Supervisors.
2. That all building plans be submitted to the Planning Commission for approval.

MARIN COUNTY PLANNING COMMISSION


Mary Robinson Gilkey
Planning Technician

February 6, 1950

I agree to conform to the above condition.

Applicant _____

Address _____

Date _____

Miscellaneous Attachments

16. Aerial Photo



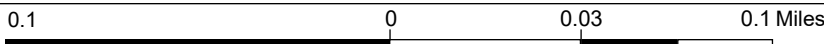
Legend

- trans_BIKEWAY
- CALTRANS Road
 - Hwy 101
 - Hwy 37
 - Hwy 580
 - Shoreline
- County Maintained Roads
 - Arterial
 - Collector
 - Interstate
 - Local
 - Other Freeway
- Condominium Common Area
- Mobile Home Pad
- City
- Marin County Legal Boundary
- Address

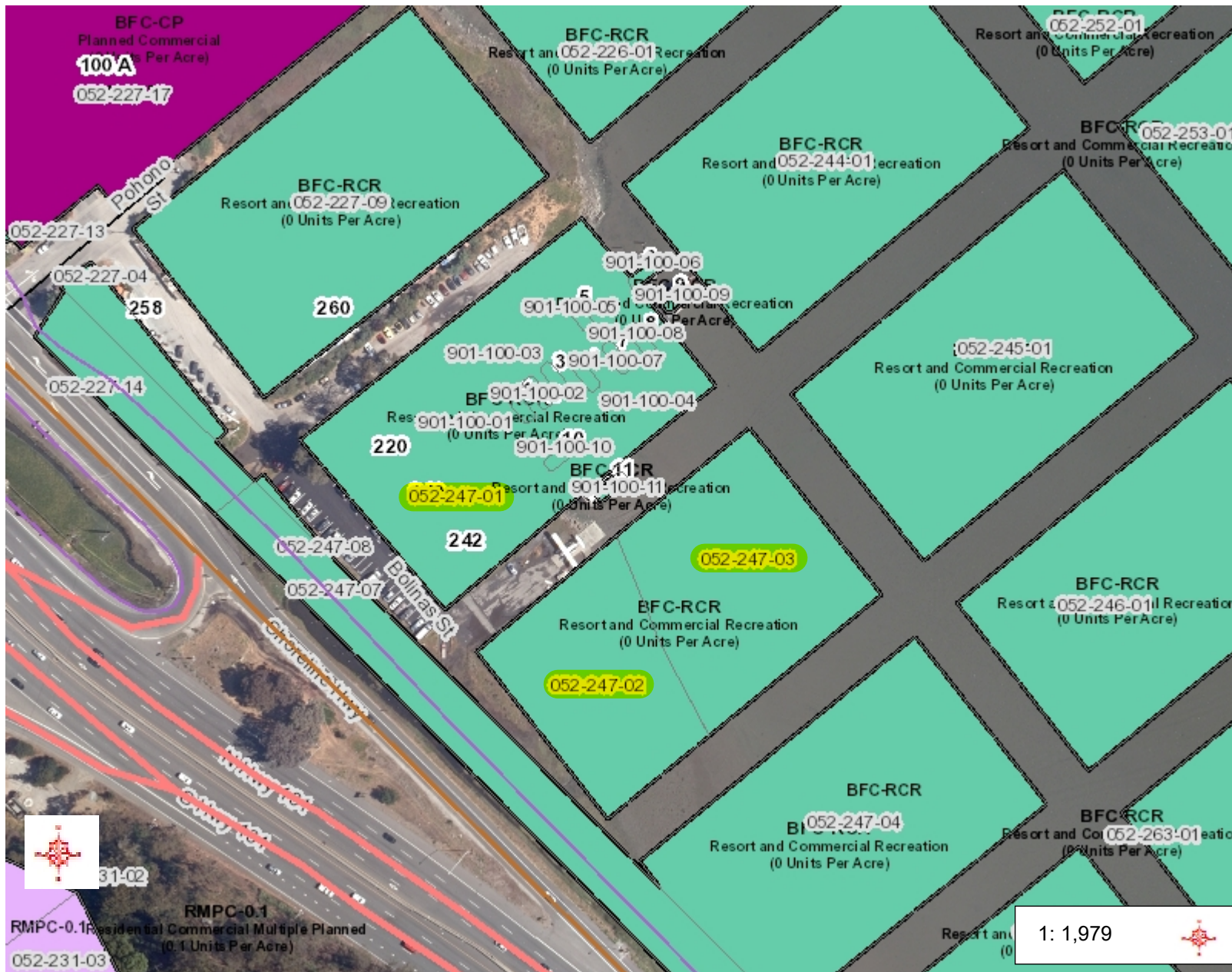
Notes



1: 1,979



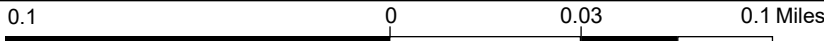
17. Zoning Map



Legend

- trans_BIKWAY
- CALTRANS Road
 - Hwy 101
 - Hwy 37
 - Hwy 580
 - Shoreline
- County Maintained Roads
 - Arterial
 - Collector
 - Interstate
 - Local
 - Other Freeway
- Condominium Common Area
- Mobile Home Pad
- City
- Marin County Legal Boundary
- Address
- County Zoning (hollow fill)
- County Zoning
 - A-Agriculture and Conservation
 - Agriculture Limited Coastal Zone
 - A2-Agriculture Limited
 - AP-Admin and Professional
 - APR-Agriculture Residential Planne
 - APZ-Agriculture Production Zone
 - C1-Retail Business
 - CP-Planned Commercial
 - H1-Limited Roadside Business

1: 1,979



Notes

1 BRIAN M. BOYNTON
 Acting Assistant Attorney General
 2 JACQUELINE COLEMAN SNEAD
 Assistant Branch Director
 3 MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)
 Trial Attorney
 4 United States Department of Justice
 Civil Division, Federal Programs Branch
 5 1100 L St. NW
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 6 Tel: (202) 514-2356
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 7 Email: Michael.J.Gaffney@usdoj.gov

8 STEPHANIE M. HINDS (CABN 154284)
 Acting United States Attorney
 9 SARA WINSLOW (DCBN 457643)
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 450 Golden Gate Avenue, Box 36055
 11 San Francisco, California 94102-3495
 Telephone: 415-436-6925
 12 Sara.winslow@usdoj.gov

13 Attorneys for the U.S. Department of Transportation
 and Federal Aviation Administration
 14

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION
 18

19 SEAPLANE ADVENTURES,	)	CASE NO. 20-6222 WHA
20 Plaintiff,)	
21 v.	)	DECLARATION OF
22 COUNTY OF MARIN, CALIFORNIA,	)	LAURALYN J. REMO TEMPROSA
23 Defendant.)	
24)	

25
 26 I, Lauralyn J. Remo Temprosa, declare as follows:

27 1. I am employed by the United States Department of Transportation, as the Associate
 28 Director for Air Carrier Fitness in the Office of the Assistant Secretary for Aviation and International

RED Exhibit D

1 Affairs, a component of the Office of the Secretary of Transportation (“OST”). I submit this
2 declaration, based on information available to me in my position, to provide the Court with information
3 about the economic authority that the plaintiff in this action, Seaplane Adventures, has received from
4 OST.

5
6 2. In order for a commercial air carrier to provide “air transportation”—defined as interstate
7 air transportation, foreign air transportation, or the transportation of mail by air—it must either hold a
8 certificate of public convenience and necessity issued by OST or be exempt from that requirement.
9 *See* 49 U.S.C. §§ 41101(a) (certificate requirement); 40109(c) (exemption authority). Under 14 CFR
10 Part 298, an “air taxi operator” is exempt from the certificate requirement if it registers with OST and
11 meets certain requirements. An air taxi operator that registers under Part 298 has economic authority
12 from OST to provide air transportation consistent with applicable regulations.

13
14 3. San Francisco Seaplane Tours, Inc. (“SFST”) has registered with OST as an air taxi
15 operator under Part 298. SFST’s current registration became effective on May 14, 2021, and indicates
16 that SFST does business as “Seaplane Adventures.” SFST’s prior registration, which became effective
17 on April 23, 2019, did not reference the “Seaplane Adventures” name, but was otherwise identical. A
18 true and accurate copy of the current registration is annexed as Exhibit A. A true and accurate copy of
19 the prior registration is annexed as Exhibit B.

20
21 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and
22 correct to the best of my knowledge, information, and belief.

23 Executed on this 16th day of June 2021, in Alexandria, Virginia.

24
25
26 

27
28 Lauralyn J. Remo Temprosa

RED Exhibit D

Case 3:20-cv-06222-WHA Document 43-1 Filed 06/16/21 Page 3 of 8

Exhibit A

Approved by OMB
OMB No. 2105-0565
Expires: 8/31/2022

PAPER WORK REDUCTION ACT OF 1995

This information is collected to determine whether air taxi operations meet the Department's criteria for an operating authorization under 14 CFR Part 298. We estimate that it will take 30-60 minutes to complete. The use of this form is mandatory. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The OMB Control Number for this collection is 2105-0565. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to: U.S. Department of Transportation, Office of Aviation Analysis (X-56), 1200 New Jersey Avenue, SE, Washington, DC, 20590.



U.S. Department of
Transportation

Office of the Secretary
of Transportation

AIR TAXI OPERATOR REGISTRATION AND AMENDMENTS UNDER PART 298 OF THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION

FOR USE BY DOT ONLY

Where to file: Submit this form, in duplicate, along with a Certificate of Insurance (OST Form 6410) evidencing required liability insurance coverage for the aircraft listed in Block 6 of this registration, to:

Federal Aviation Administration (FAA)
Air Transportation Division, AFS-200, Room 831
800 Independence Avenue, S.W., Washington, D.C. 20591

Exception: For air taxis located in the State of Alaska, submit this form and the OST Form 6410 to the Federal Aviation Administration (FAA), Alaskan Region Headquarters, AAL-231, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.

Fees: The fee for the initial registration of an air taxi is \$8. There is no filing fee for amendments to registrations previously filed.

Effective date of registration/amendment

MAY 14, 2021

1a. Name (and DBA, if applicable) and Mailing Address of the Registering Carrier:

San Francisco Seaplane Tours, Inc.
DBA Seaplane Adventures
242 Redwood Hwy
Mill Valley, CA 94941

3a. Federal Aviation Administration certificate number:

02QA052Y

3b. Address of local FAA office:

Received -
Air
Transportation
Division
5/6/2021

1b. Telephone No. 415-332-4843 Fax No. _____

1c. Email: info@seaplane.com

3c. FAA Telephone No.:

510-748-0122

3d. FAA Principal Operations Inspector:

David Jensen

2a. Address of principal place of business (if different from above):

2b. Telephone No. _____ Fax No. _____

4. This filing is the carrier's:

Initial Registration

Amendment to reflect changes since previous filing (Complete item 9)

If initial registration, give proposed date of commencement of operations: _____

5. Type of service the carrier intends to perform upon commencement of operations, or, for amendments, service the carrier is currently performing (check all that apply):

Passenger

Seasonal

Air ambulance

Mail under a U.S. Postal Service contract

Cargo

Other (Please specify)** _____

** For example, if the carrier performs other services such as fire fighting operations for the U.S. Forest Service, it should be indicated here.

Companies proposing or operating passenger services of five (5) or more round trips per week on at least one route between two or more points pursuant to published flight schedules which specify the times, days of the week, and places between which such flights are performed may not conduct such operations under this registration. Instead, such companies must be found "fit, willing, and able" to provide such services as a commuter air carrier. See 14 CFR 298, Subpart E.

RED Exhibit D

Case 3:20-cv-06222-WHA Document 43-1 Filed 06/16/21 Page 5 of 8

6. Aircraft which the carrier proposes to operate in air taxi service or, for amendments, aircraft currently operated:

	Aircraft Make and Model	FAA Registration Number	Passenger Seats Installed*
1.	DeHavilland DHC-2	N5220G	6
2.	DeHavilland DHC-2	N123JL	6
3.			
4.			
5.			

(Add additional sheets if necessary)

* This does not include seats occupied by the pilot or co-pilot unless the latter is available for passenger use.

7. Is the registering carrier a U.S. citizen?

YES NO

Note: An air taxi or commuter registered under Part 298 must be a citizen of the United States. 49 USC 40102(a)(15) defines a U.S. citizen as (a) an individual who is a U.S. citizen; (b) a partnership of which each member is a U.S. citizen; or (c) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

8. If this is an amendment, has the carrier carried passengers in foreign air transportation, that is, between any point in the United States and any point outside thereof, during the past 12 months:

YES NO

9. REPORT CHANGES OR AMENDMENTS TO INFORMATION PREVIOUSLY FILED WITHIN 30 DAYS OF THE EFFECTIVE DATE:

a. Change in Carrier's Name and/or Address (Please specify):

Former Name and Address:

San Francisco Seaplane Tours, Inc.
242 Redwood Hwy
Mill Valley, CA 94941

Current Name and Address:

San Francisco Seaplane Tours, Inc.
DBA Seaplane Adventures
242 Redwood Hwy
Mill Valley, CA 94941

b. Description of Any Other Changes or Amendments (Including additions or deletions of aircraft, change in type of operations, registration numbers, etc.):

10. Certification

I certify that the information contained in this application is complete and accurate to the best of my knowledge. The carrier subscribes to the IATA Inter-carrier Agreement; the IATA Agreement on Measures to Implement the IATA Inter-carrier Agreement, and the ATA Agreement on Provisions Implementing the IATA Inter-carrier Agreement to be Included in Conditions of Carriage and Tariffs (see OST Form 4523-A), and in accordance with those Agreements agrees under Article 22(1) of the Warsaw Convention or the Warsaw Convention as amended by the Hague Protocol that the liability limits for passenger injury or death in international transportation as defined in the Convention are waived in their entirety.

Date: May 5, 2021

Place: Mill Valley, CA
(City and State)

Signature: _____

Name: Saul Aaron Singer
(Please Print)

Title: Owner - President

Note: This registration must be signed by a responsible officer, such as the President, Vice President, Secretary or Treasurer, or partner or owner of the carrier.

TO ENSURE PROPER PROCESSING OF THIS REGISTRATION, PLEASE COMPLETE THIS FORM IN ITS ENTIRETY.

RED Exhibit D

Case 3:20-cv-06222-WHA Document 43-1 Filed 06/16/21 Page 6 of 8

Exhibit B

RED Exhibit D

Approved by OMB
OMB No. 2105-0565
Expires: 6/30/2019

PAPER WORK REDUCTION ACT OF 1995

This information is collected to determine whether air taxi operations meet the Department's criteria for an operating authorization under 14 CFR Part 298. We estimate that it will take 30-60 minutes to complete. The use of this form is mandatory. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The OMB Control Number for this collection is 2105-0565. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to: U.S. Department of Transportation, Office of Aviation Analysis (X-56), 1200 New Jersey Avenue, SE, Washington, DC, 20580.

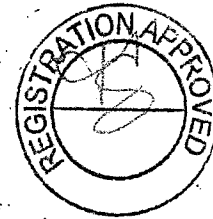


U.S. Department of
Transportation

Office of the Secretary
of Transportation

AIR TAXI OPERATOR REGISTRATION AND AMENDMENTS UNDER PART 298 OF THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION

FOR USE BY DOT ONLY



Effective date of registration/amendments

APR 23 2019

Where to file: Submit this form, in duplicate, along with a Certificate of Insurance (OST Form 6410) evidencing required liability insurance coverage for the aircraft listed in Block 6 of this registration, to:

Federal Aviation Administration (FAA)
Air Transportation Division, AFS-200, Room 831
800 Independence Avenue, S.W., Washington, D.C. 20591

Exception: For air taxis located in the State of Alaska, submit this form and the OST Form 6410 to the Federal Aviation Administration (FAA), Alaskan Region Headquarters, AAL-231, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.

Fees: The fee for the initial registration of an air taxi is \$8. There is no filing fee for amendments to registrations previously filed.

1a. Name (and DBA, if applicable) and Mailing Address of the Registering Carrier:

San Francisco Seaplane Tours
242 Redwood Hwy
Mill Valley, CA 94941

3a. Federal Aviation Administration certificate number:

02QA052Y

3b. Address of local FAA office:

Oakland FSDO
1420 Harbor Bay Fkwy
Alameda, CA 94502

1b. Telephone No. 415-332-4843 Fax No. 415-332-4851

1c. Email: info@seanlane.com

3c. FAA Telephone No.:

510-748-0122

3d. FAA Principal Operations Inspector:

Dave Jensen

2a. Address of principal place of business (if different from above):

2b. Telephone No. _____ Fax No. _____

4. This filing is the carrier's:

Initial Registration

Amendment to reflect changes since previous filing (Complete item 9)

If initial registration, give proposed date of commencement of operations: _____

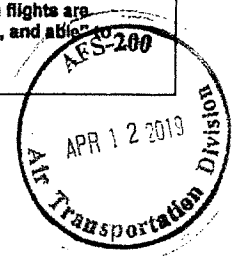
5. Type of service the carrier intends to perform upon commencement of operations, or, for amendments, service the carrier is currently performing (check all that apply):

Passenger Seasonal Air ambulance Mail under a U.S. Postal Service contract

Cargo Other (Please specify)** _____

** For example, if the carrier performs other services such as fire fighting operations for the U.S. Forest Service, it should be indicated here.

Companies proposing or operating passenger services of five (5) or more round trips per week on at least one route between two or more points pursuant to published flight schedules which specify the times, days of the week, and places between which such flights are performed may not conduct such operations under this registration. Instead, such companies must be found "fit, willing, and able" to provide such services as a commuter air carrier. See 14 CFR 298, Subpart E.



RED Exhibit D

<p>6. Aircraft which the carrier proposes to operate in air taxi service or, for amendments, aircraft currently operated:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%; text-align: left; font-size: small;">Aircraft Make and Model</th> <th style="width: 30%; text-align: left; font-size: small;">FAA Registration Number</th> <th style="width: 40%; text-align: left; font-size: small;">Passenger Seats Installed*</th> </tr> </thead> <tbody> <tr> <td>1. DeHavilland DHC-2</td> <td>N5220G</td> <td>6</td> </tr> <tr> <td>2. DeHavilland DHC-2</td> <td>N123JL</td> <td>6</td> </tr> <tr> <td>3. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>4. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>5. _____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table> <p style="text-align: center; font-size: x-small;">(Add additional sheets if necessary)</p> <p style="font-size: x-small;">* This does not include seats occupied by the pilot or co-pilot unless the latter is available for passenger use.</p>	Aircraft Make and Model	FAA Registration Number	Passenger Seats Installed*	1. DeHavilland DHC-2	N5220G	6	2. DeHavilland DHC-2	N123JL	6	3. _____	_____	_____	4. _____	_____	_____	5. _____	_____	_____	<p>7. Is the registering carrier a U.S. citizen?</p> <p style="text-align: center;"><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p style="font-size: x-small;">Note: An air taxi or commuter registered under Part 298 must be a citizen of the United States. 49 USC 40102(a)(15) defines a U.S. citizen as (a) an individual who is a U.S. citizen; (b) a partnership of which each member is a U.S. citizen; or (c) a corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.</p>
Aircraft Make and Model	FAA Registration Number	Passenger Seats Installed*																	
1. DeHavilland DHC-2	N5220G	6																	
2. DeHavilland DHC-2	N123JL	6																	
3. _____	_____	_____																	
4. _____	_____	_____																	
5. _____	_____	_____																	
<p>8. If this is an amendment, has the carrier carried passengers in foreign air transportation, that is, between any point in the United States and any point outside thereof, during the past 12 months:</p> <p style="text-align: center;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>																			
<p>9. REPORT CHANGES OR AMENDMENTS TO INFORMATION PREVIOUSLY FILED WITHIN 30 DAYS OF THE EFFECTIVE DATE:</p> <p>a. Change in Carrier's Name and/or Address (Please specify):</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center; font-size: x-small;">Former Name and Address:</td> <td style="width: 50%; text-align: center; font-size: x-small;">Current Name and Address:</td> </tr> <tr> <td style="border-bottom: 1px solid black; height: 20px;"></td> <td style="border-bottom: 1px solid black; height: 20px;"></td> </tr> </table> <p>b. Description of Any Other Changes or Amendments (Including additions or deletions of aircraft, change in type of operations, registration numbers, etc.):</p> <p>None</p> <p style="font-size: 1.2em;">Addition of N123JL to certificate</p>		Former Name and Address:	Current Name and Address:																
Former Name and Address:	Current Name and Address:																		
<p>10. Certification</p> <p>I certify that the information contained in this application is complete and accurate to the best of my knowledge. The carrier subscribes to the IATA Inter-carrier Agreement; the IATA Agreement on Measures to Implement the IATA Inter-carrier Agreement, and the ATA Agreement on Provisions Implementing the IATA Inter-carrier Agreement to be Included in Conditions of Carriage and Tariffs (see OST Form 4523-A), and in accordance with those Agreements agrees under Article 22(1) of the Warsaw Convention or the Warsaw Convention as amended by the Hague Protocol that the liability limits for passenger injury or death in international transportation as defined in the Convention are waived in their entirety.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>Date: <u>March 31, 2019</u></p> <p>Place: <u>Mill Valley, CA</u> <small>(City and State)</small></p> </div> <div style="width: 45%; text-align: right;"> <p>Signature: <small>(See note)</small></p> <p>Name: <u>Saul Aaron Singer</u> <small>(Please type)</small></p> <p>Title: <u>President/CEO</u></p> </div> </div> <p style="font-size: x-small; margin-top: 10px;">Note: This registration must be signed by a responsible officer, such as the President, Vice President, Secretary or Treasurer, or partner or owner of the carrier.</p> <p style="text-align: center; font-weight: bold; margin-top: 10px;">TO ENSURE PROPER PROCESSING OF THIS REGISTRATION, PLEASE COMPLETE THIS FORM IN ITS ENTIRETY.</p>																			

RED Exhibit D

**Marin County
Community Development Agency**

Mark J. Riesenfeld, AICP, Director

**STAFF REPORT TO THE DEPUTY ZONING ADMINISTRATOR
PRICE USE PERMIT (HELIPORT)**

Item No:	2.	Application #:	UP 96-003/DX 96-292
Applicant:	Steve Price	Owner:	Clayton Mitchell and Susan Keegin
Property Address:	240 Redwood Highway, Mill Valley	APN:	052-247-01, 02
Hearing Date:	February 29, 1996	Planner:	Thomas Lai

RECOMMENDATION:	Approval with Conditions
APPEAL PERIOD:	5 Working Days to Planning Commission
LAST DATE FOR ACTION:	April 13, 1996

PROJECT DESCRIPTION:

This is an application to modify the hours of operation for the Marin Heliport to allow weekday flights between 6:00 a.m. and 6:30 p.m. and to allow weekend flights between 9:00 a.m. and 6:00 p.m.. The heliport currently operates between 6:30 a.m. and 5:45 p.m. on weekdays and between 9:00 a.m. and 4:00 p.m. on weekends. The proposed project would retain the existing limit of six flights per day. (A flight is defined as one take-off and one landing operation.) A total of three full-time employees would be utilized during business hours.

GENERAL INFORMATION:

Countywide Plan Designation:	Dryland Portion : RT (Recreational Commercial, 5 to 30% floor area ratio) Submerged Portion : BFC-RT (Bayfront Conservation, Recreational Commercial, 5 to 30% floor area ratio)
Zoning:	BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation)
Lot size:	4.4 acres
Adjacent Land Uses:	Houseboat marina, seaplane base, office, and industrial
Vegetation:	Pine trees with understory of predominantly introduced shrubs and ornamentals adjoining wetlands
Topography and Slope:	Flat
Environmental Hazards:	None identified



ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1 because the operation of an existing facility involving negligible expansion would not create adverse environmental effects.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accord with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property.

PLAN CONSISTENCY:

The proposed project is generally consistent with the goals and policies of the Marin Countywide Plan, the Tamalpais Area Community Plan, and Title 22 (Zoning) of the Marin County Code. Please refer to the plan consistency findings contained in the attached resolution.

BACKGROUND:

The Marin Heliport was established in 1962 under the governing M-I-H (Light Industrial) zoning district at the time. The use became legal non-conforming when the County rezoned the property to a RCR (Resort, Commercial, Recreational) zoning district in 1966. On May 2, 1995, the Board of Supervisors acknowledged the legal non-conforming status of the heliport by identifying its use as six helicopter flights a day, subject to the following hours of operation: 6:30 a.m. to 5:45 p.m. weekdays and 9:00 a.m. to 4:00 p.m. weekends. The current Use Permit application seeks approval to modify the hours of operation to allow the helicopter operator to provide traffic reports for public news broadcasts during the early morning and late afternoon commute periods.

In addition to the heliport, the subject property is developed with an 11-houseboat marina (Commodore Marina) and a seaplane base (Commodore Seaplanes). The houseboat marina is legal non-conforming with respect to the current BFC-RCR zoning, and the seaplane use is permitted under the terms of previous Use Permits issued in 1953 and 1981. The property is also partially used by an education center which is comprised of Kid's Headquarters (The Planet). Since this use is not permitted by the governing BFC-RCR zoning district, staff has incorporated a recommended condition of approval to require the elimination of this use within 60 days from the date of approval.

ANALYSIS:

The governing BFC-RCR zoning district permits uses that are deemed desirable or necessary for public service, subject to Use Permit or Master Plan approval. The continued operation of the heliport would provide a public service relating to broadcast of traffic reports and emergency operations such as medical flights. In addition, the proposed change in the hours of operation does not significantly expand or modify the underlying nature or intensity of the heliport use and would not affect the established number of daily flights, the number of employees, or the land and building area occupied by the use. Based on these factors, staff is recommending that the proposed Use Permit be approved for a period of two years, subject to an administrative review by the Community Development Director at the end of one year to determine compliance with the conditions of approval. Approval of the Use Permit would eliminate the legal non-conforming status of the heliport and consequently establish use restrictions governing the number of flights, the hours of operation, the number of employees, and the general location of the heliport activities.

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a public hearing, and approve the Price Use Permit based on the findings and subject to the conditions contained in the attached resolution.

- Attachments:
1. Proposed resolution recommending approval of the Price Use Permit
 2. CEQA Categorical Exemption
 3. Board of Supervisors Resolution 95-105
 4. Location Map
 5. Assessor's Parcel Map
 6. Department of Public Works Memorandum, (2/5/96)
 7. Office of Waste Management Memorandum, (11/17/95)
 8. Tamalpais Design Review Board Memorandum, (11/15/95)

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. _____

A RESOLUTION APPROVING THE PRICE USE PERMIT
ASSESSOR'S PARCEL NUMBERS 052-247-01, 02

SECTION I: FINDINGS

- I. WHEREAS Steve Price submitted an application to modify the hours of operation for the Marin Heliport to allow weekday flights between 6:00 a.m. and 6:30 p.m. and to allow weekend flights between 9:00 a.m. and 6:00 p.m.. The heliport currently operates between 6:30 a.m. and 5:45 p.m. on weekdays and between 9:00 a.m. and 4:00 p.m. on weekends. The proposed project would retain the existing limit of six flights per day. A total of three full-time employees would be utilized during business hours. Zoning for the 4.4 acre property is BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation). The subject property is located at 240 Redwood Highway, Mill Valley, and is further identified as Assessor's Parcel Numbers 052-247-01, 02.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on February 29, 1996, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the project is exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1 because the operation of an existing facility with negligible expansion would not create adverse environmental effects.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is generally consistent with the goals and policies contained in the Marin Countywide Plan and the Tamalpais Area Community Plan because: (1) the project would continue use of the existing heliport facility to allow the helicopter operator to provide traffic reports for public news broadcasts during the early morning and late afternoon commute periods; (2) the project would continue provision of employment opportunities on an infill site that is served by existing roadways and necessary public and community facilities within the City Centered Corridor; and (3) the project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Master Plan requirements because the project would not significantly expand or modify the operation of the heliport beyond the level of use that was acknowledged by the Board of Supervisors through adoption of Resolution Number 95-105 on May 2, 1995. The Board determined that the legal non-conforming level of use for the heliport consists of a maximum of six flights per day between the hours of 6:30 a.m. and 5:45 p.m. during weekdays and 9:00 a.m. and 4:00 p.m. during weekends.. With exception to the proposed modifications to the hours of operation, the heliport would be limited to six flights per day, would retain the existing number of employees, and would occupy the existing amount of land and building area on the subject property.
- VI. WHEREAS the Marin County Deputy Zoning Administrator finds that continuation of the heliport use on the subject property is generally consistent with the intent and objectives of the governing BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation) zoning district because it provides a public

service relating to the broadcast of traffic reports and the provision of emergency operations such as medical flights. Additionally, the proposed changes to the hours of operation does not significantly expand or modify the underlying nature or intensity of the heliport use and would not affect the established number of daily flights, the number of employees, or the land and building area occupied by the use.

VII. WHEREAS the Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve a Use Permit (Section 22.88.020 of the Marin County Code), as specified below.

The establishment, maintenance or conducting of the use for which a Use Permit is sought will not in this case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of this use and will not, under the circumstances of the case be detrimental to the public welfare or injurious to property or improvements in said neighborhood.

1. Continued operation of the heliport on the subject property would not adversely affect the surrounding area because the use has existed continuously since 1962, and the proposed changes in the hours of operation would not result in a significant disruption of surrounding areas beyond the level which has historically existed and which currently exists.
2. The project does not significantly expand or modify the heliport use because the present and acknowledged level of six flights per day and three full-time employees would be retained, and because the facility would not expand beyond the existing land and building area that is presently occupied by the use on the subject property.
3. The Department of Public Works has determined that existing off-street parking would not be adversely affected by the modified hours of operation because the existing number of flights and employees would remain unchanged.
4. The heliport facility would not result in adverse visual impacts to surrounding areas because conditions of approval would require the applicant to submit a landscape plan to incorporate shrubs along the perimeter foundation of a fuel storage tank to provide visual screening.
5. The grant of this Use Permit for continued use of the heliport with modifications to the hours of operation would not be detrimental to the health, safety, morals, comfort, or welfare of persons residing in the surrounding neighborhood.

VIII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from the requirements for Design Review pursuant to Marin County Code Section 22.82.030(4) because: (1) the proposed modification to the hours of operation is minor and incidental to the heliport use; and (2) the project would not result in substantial alternation of the existing buildings or heliport facilities beyond minor exterior improvements associated with routine maintenance and upkeep of the property.

IX. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Tidelands requirements pursuant to Marin County Code Section 22.77.010 because minor exterior improvements associated with routine maintenance and upkeep of the property are considered minor and incidental.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Price Use Permit subject to the conditions of approval as specified below.

Community Development Agency - Planning Division

1. Pursuant to Chapter 22.88 of the Marin County Code, the Price Use Permit 96-003 is approved for the continued use and operation of the Marin Heliport over a portion of the property located at 240 Redwood Highway, Mill Valley, and further identified as Assessor's Parcel Numbers 052-247-01, 02. This Use Permit approves the heliport as a conforming use on the subject property and replaces the previous non-conforming status of this use, which may now occur only with a valid use permit and which is subject to the restrictions contained herein.
2. Use and operation of the heliport shall be limited to a maximum of six flights per day and the following hours:

Monday to Friday: 6:00 a.m. to 6:30 p.m.

Saturday, Sunday: 9:00 a.m. to 6:00 p.m.

(A flight is defined as one take-off and landing operation.)
3. A maximum of three full-time employees is permitted in conjunction with the heliport. Commercial office functions beyond that associated with administrative activities for the heliport are not permitted.
4. Helicopter take-off, landing, refueling, and storage shall be restricted within the existing facilities located on Assessor's Parcel Number 052-247-02. Administrative activities shall be limited to the southerly portion of the building which fronts Bolinas Avenue and located on Assessor's Parcel Number 052-247-01. Expansion of the existing building and land area occupied by the heliport is not permitted.
5. Use and operation of the seaplane base (Commodore Seaplanes) is permitted subject to the terms of the Use Permit approvals of 1953 and 1981. Use and operation of the houseboat marina (Commodore Marina) shall be governed by the provisions contained in Chapter 22.78 (Nonconforming Uses) of the Marin County Code.
6. WITHIN 60 DAYS FROM THE DATE OF APPROVAL, the applicant shall secure an inspection from the Community Development Agency Planning Division staff to confirm that the subject property is utilized only by the heliport, seaplane, and houseboat marina. The Kid's Headquarters (The Planet) is not permitted under the terms of this Use Permit approval.
7. WITHIN 60 DAYS FROM THE DATE OF THIS APPROVAL, the applicant shall submit a landscape plan for review and approval which incorporates sufficient number of shrubs along the perimeter of the fuel storage tank for visual screening. The landscaping shall consist of drought tolerant and native species that are also tolerant of salt water intrusion, wind, salt spray, and saline soils associated with a bayfront environment.
8. WITHIN SIX MONTHS FROM THE DATE OF THIS APPROVAL, the applicant shall demonstrate that all approved landscaping has been planted along with an automatic drip irrigation system.

9. This Use Permit is subject to revocation procedures contained in Sections 22.88.040 and 22.88.045 of the Marin County Code in the event any of the terms of this approval are violated or if the uses are conducted or carried in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or detrimental to the public welfare or injurious to property or improvements in the neighborhood.
10. Any modification to the use or operation of the heliport shall be submitted to the Community Development Director to determine whether a Use Permit Amendment or Master Plan would be required.

SECTION III: VESTING, PERMIT DURATION AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Use Permit approval by completing all of the required work within six months from the date of this approval, or all rights granted in this approval shall lapse. An extension of up to 30 additional days may be granted by the Community Development Director if the applicant submits a letter requesting the extension and demonstrates due diligence in meeting the required conditions.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid for a period of two years from the date of approval, subject to an administrative review by the Community Development Director at the end of one year to determine compliance with the conditions of approval. An application for a Use Permit Renewal shall be submitted to the Community Development Agency at least 60 days prior to expiration of this Use Permit.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$500.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on March 7, 1996.**

SECTION IV:

PASSED AND ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 29th day of February, 1996.

BRIAN CRAWFORD, AICP
DEPUTY ZONING ADMINISTRATOR

Attest:

Patrice Stancato, DZA Secretary

FILING REQUESTED BY AND
WHEN FILED RETURN TO:

Marin County Community Development Agency
Planning Division
3501 Civic Center Drive, #308
San Rafael, CA 94903

Attn: Tom Lai, AICP, Senior Planner

NOTICE OF EXEMPTION

Marin County
Environmental Coordination and Review

February 12, 1996

- 1. **Project Name:** Price Use Permit 96-003/Design Review Exemption 96-292
- 2. **Project Location:** 240 Redwood Hwy., Mill Valley
Assessor's Parcel #052-247-01 & 02/Marin County

3. **Project Description:**
 This is an application to modify the hours of operation for the Marin Heliport to allow weekday flights between 6:00 a.m. and 6:30 p.m. and to allow weekend flights between 9:00 a.m. and 6:00 p.m., where the existing operation is approved for weekday flights between 6:30 a.m. and 5:45 p.m. and for weekend flights between 9:00 a.m. and 4:00 p.m.. The Heliport's current limit of six flights per day would remain unchanged. The Heliport operates with a total of three employees during business hours. Zoning for the 4.4 acre property is BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation).

- 4. **Public Agency Approving Project:** Deputy Zoning Administrator
- 5. **Project Sponsor:** Steve Price
- 6. **CEQA Exemption Status:** Categorical Exemption (Section 15301, Class 1)
- 7. **Reasons for Exemption:** The operation of an existing private facility involving negligible expansion would not create adverse environmental effects.

Project Planner:

Reviewed by:



Tom Lai, AICP
Senior Planner

Tim Haddad
Environmental Coordinator

Telephone: (415) 499-6269

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. 95-105

A RESOLUTION DENYING THE HELI USA APPEAL AND SUSTAINING THE PLANNING COMMISSION'S DETERMINATION THAT THE CURRENT LEVEL OF USE ON THE HELIPORT PROPERTY EXCEEDS THE LEGAL NON-CONFORMING USE ESTABLISHED IN 1981 AND REAFFIRMED 1983

ASSESSOR'S PARCEL NO. 052-247-01,02

SECTION I: FINDINGS

- I. WHEREAS, the Marin County Board of Supervisors finds that Isidor Bornstein has filed, on behalf of Heli USA, an appeal of the Planning Commission's Determination that the current level of use on the heliport property exceeds the legal non-conforming use established in 1981 and reaffirmed in 1983. The appellant contends that the legal non-conforming use is the use established by SFO Helicopters in 1966. The basis for this statement is the appellants' position that a legal non-conforming use may change from a high level of use, to a less intensive use and then re-establish to the higher intensity of use at a later date. The appellant also claims that the levels of use established in 1981 and reaffirmed in 1983 do not accurately reflect the level of use that was occurring on the property at that time.
- II. WHEREAS, the Board of Supervisors recognizes the heliport use became legal non-conforming on November 15, 1966 when the property was rezoned from M-1-H (Light Industrial District) to R-C-R (Resort, Commercial, Recreational). The legal non-conforming use was reduced for a period of more than six months in 1976 when SFO Helicopters ceased business and left the site, limiting the heliport use to the level of operation established by Commodore Helicopters.
- III. WHEREAS, the Board of Supervisors finds that Commodore Helicopters level of use was established by Lu Hurley, the operator of Commodore Helicopters in letters dated January 9, 1981 and February 20, 1981 ("the Hurley Letters"). The level of use was reaffirmed by the Planning Department in a letter to the Board of Supervisors dated August 5, 1983 ("the Board Letter"). The Board of Supervisors finds that these three letters describe the level of heliport use in 1981 as, 3.5 flights per day in the winter months and 6 flights per day in the summer months. Of these flights approximately 6 charter flights occurred lasting 1 to 1.5 hours each month between 9:00 a.m. and 4:00 p.m., two traffic report flights were flown each weekday between 6:30 a.m. and 5:45 p.m. and refueling flights for helicopters engaged in tourist flights at Pier 43 in San Francisco also occurred. The Board of Supervisors finds that the maximum intensity of the legal non-conforming use established by the County records is 6 flights per day, whether for tourist, charter or refueling purposes.

RED Exhibit D

- IV. WHEREAS, the Board of Supervisors finds that the legal non-conforming level of use is also described in a February 5, 1985 site inspection memo from Debbi Poiani, in a technical report for the Noise Element of the Countywide Plan, written by Illingworth and Rodkin dated October 14, 1987, and verified in a telephone conversation with a Commodore representative on February 25, 1991 as documented in the Noise Element of the Countywide Plan. The Board of Supervisors finds that these documents establish the legal non-conforming use to be, 3.5 flights per day in the winter, 6 flights per day in the summer, with an average of 25 flights per week
- V. WHEREAS, the Board of Supervisors finds that while the pilot logs submitted by the appellant provide an overview of the daily heliport activities, the logs do not provide conclusive evidence that the levels of use documented in 1981 and 1983 the Hurley Letters and the Board Letter were inaccurate.
- VI. Whereas, the Board of Supervisors finds that refueling of helicopters engaged in tourist flights from Fisherman's Wharf no longer occurs at the Marin heliport and ceased operation in approximately 1988. However, refueling flights nevertheless, are included in the total number of flights established as legal non-conforming.
- VII. WHEREAS, the Board of Supervisors interprets Marin County Code, Title 22, Section 22.78.010 to require that once a use ceases it may not be re-established unless it is conforming to the zoning district. In 1976 the number of flights was reduced by 14 flights per day as documented in SFO Helicopters Flight Guide and Schedule dated 10-27-74. This reduction in flights dramatically changed the level of the legal non-conforming use. Documentation of Commodore's heliport use in 1976 was established by the operator of Commodore Helicopters in the Hurley Letters and reaffirmed by the Board Letter. The Board of Supervisors finds that the reduction in flights for a period of more than six months in 1976 constituted a change in use. The re-establishment of the 1966 use almost 30 years later would be considered an increase in the legal non-conforming use.
- VIII. WHEREAS, the Board of Supervisors finds that the type of flight, such as tourist, charter and refueling, does not necessarily describe the intensity of heliport use. Therefore the Board has determined that the historically documented 6 daily flights, which includes all types of flights, be a daily maximum rather than distinguishing between tourist, charter and refueling flights. A flight is defined as one take off and one landing.
- IX. WHEREAS, the Board of Supervisors conducted a public hearing on May 2, 1995, and reviewed the administrative record, and based on the record finds, that the Hurley Letters and the Board Letter clearly document that the legal non-conforming level of use (3-6 flights per day between 6:30 a.m. and 5:45 p.m. weekdays and 9:00 a.m. and 4:00 p.m. week-ends) and that the current level of use (7-20 flights per day between 5:00 a.m. and 7:30 p.m.) exceeds the legal non-conforming use.

NOW, THEREFORE, LET IT BE RESOLVED that the Marin County Board of Supervisors hereby denies the appeal of Isidoor Bornstein, on behalf of Heli USA, and sustains the Planning Commission's determination that the allowable legal non-conforming use is a maximum of 6 flights per day between 6:30 a.m. - 5:45 p.m. weekdays and between 9:00 a.m. - 4:00 p.m. on the weekends. Any helicopter flights or other activities not specified above are prohibited unless a Master Plan/Use Permit is applied for and approved.

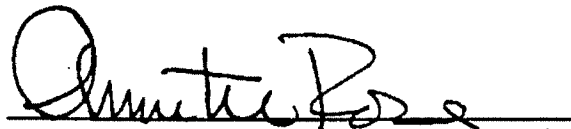
SECTION II: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on this 2nd day of May, 1995 by the following vote to wit:

AYES: . SUPERVISORS Harry J. Moore, Gary Giacomini, John B. Kress, Annette Rose

NOES: None

ABSENT: SUPERVISOR Harold C. Brown, Jr.



ANNETTE ROSE

President of the Board of Supervisors

ATTEST:

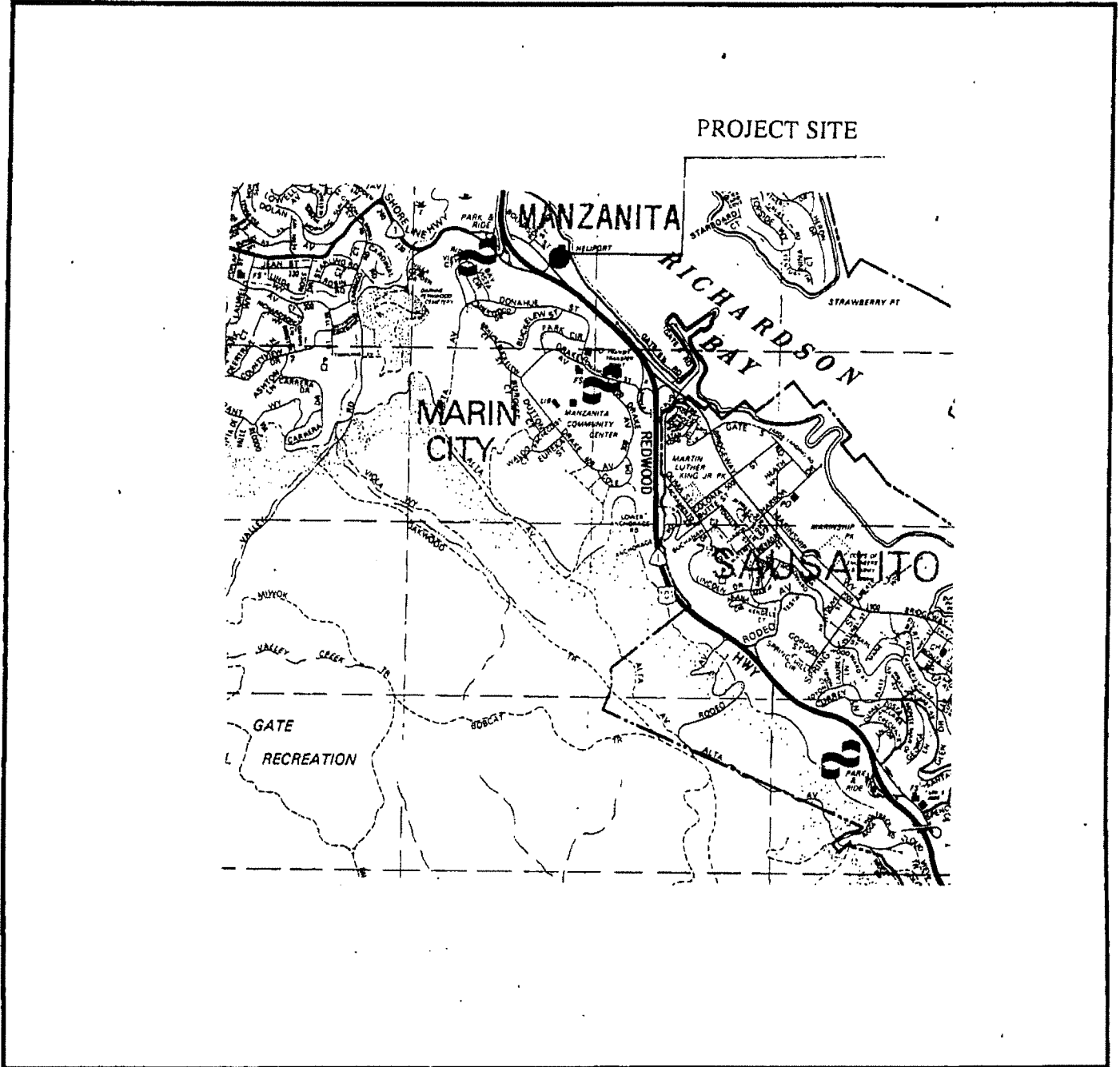


Martin J. Nichols

Acting Clerk of the Board of Supervisors

RED Exhibit D

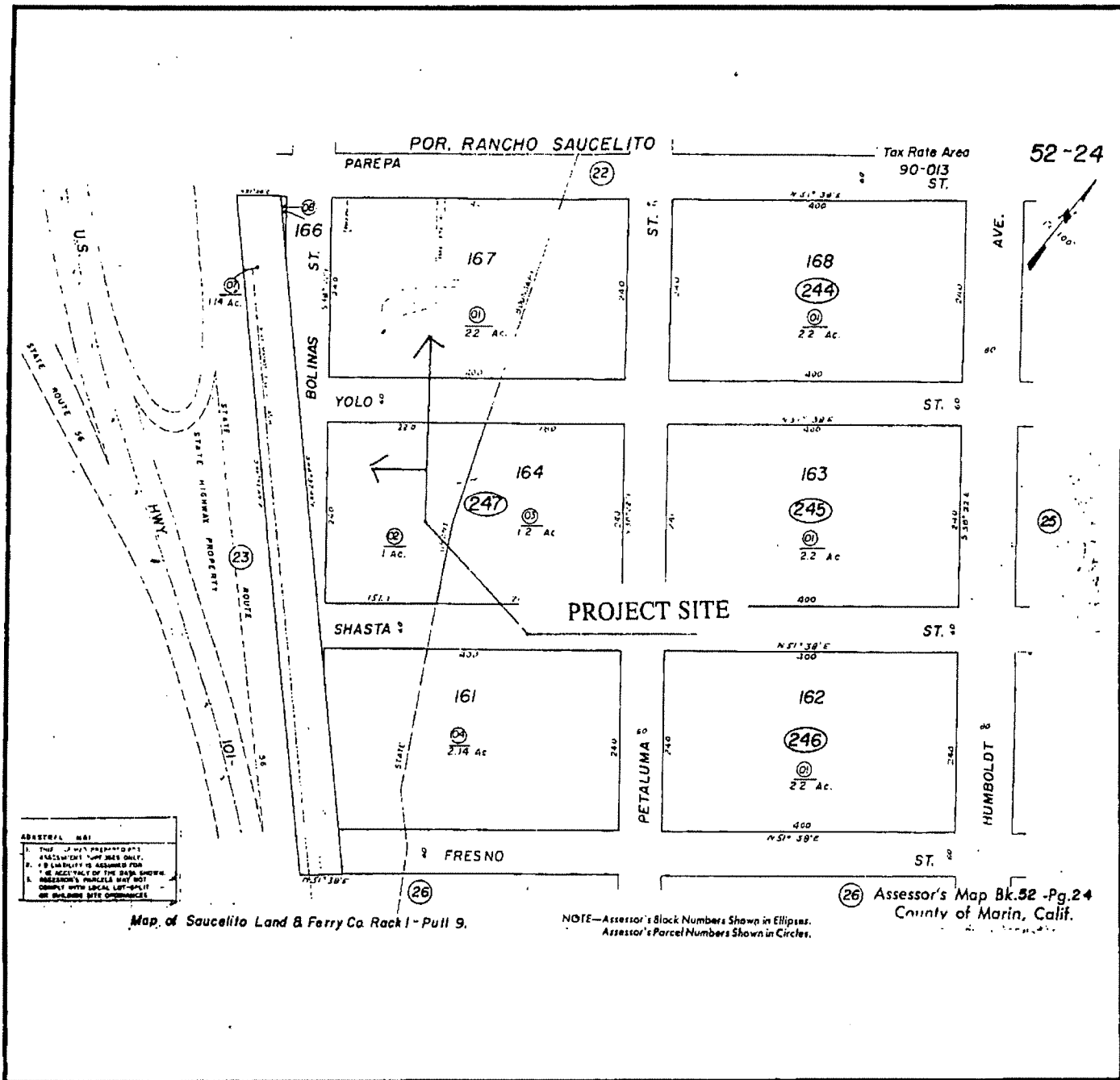
Marin County
Community Development Agency
Location Map



PRICE USE PERMIT (HELIPORT)
240 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01, 02
February 29, 1996
Not to Scale

RED Exhibit D

Marin County
Community Development Agency
Assessor's Parcel Map



PRICE USE PERMIT (HELIPORT)
240 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01, 02
February 29, 1996
Not to Scale

INTER-OFFICE MEMORANDUM

PUBLIC SERVICES AGENCY

DATE: 2/5/96

DUE: 2/12/96

RECEIVED BY

TO: Tom LAI

FEB 12 P 2:00

FROM: NAI

APPROVED: CM

PUBLIC SERVICES AGENCY
COMMUNITY DEVELOPMENT
AGENCY

RE: PRICE USE PERMIT

A.P.#: 052-247-01,02

ADDRESS: 240 REDWOOD HWY

MILL VALLEY

TYPE OF DOCUMENT

DESIGN REVIEW

LAND DIVISION

USE PERMIT

VARIANCE

LOT LINE ADJUSTMENT

ENVIRONMENTAL DOC.

COASTAL PERMIT

OTHER _____

We have reviewed this application for content and:

Find it complete

Find it incomplete. Please submit items listed below.

Recommend Denial for reasons listed below

Find it Acceptable as Presented

Recommend the conditions listed below

be completed prior to :

Issuance of Building Permit

Occupancy

Approval of _____

Other _____

FLOOD CONTROL

N.A.

No Comments

Comments Included

TRAFFIC

N.A.

No Comments

Comments Included

County of Marin

Office of Waste Management

INTERDEPARTMENTAL TRANSMITTAL

415/499-6647

TYPE OF DOCUMENT: Use Permit 96-003
DATE: 11-17-95
TO: Tom Lai
FROM: Barbara Zett
RE: Price Use Permit 96-003
A.P.#: 052-247-01 & 02
ADDRESS: 240 Redwood Highway, Mill Valley

This Application has been reviewed for the following items:

Hazardous Materials -- Chapter 7.90 of the Marin County Code **X**
Underground Tank Laws -- Chapter 7.80 of the Marin County Code

This Application is found to be:

Complete

Proposed increase in the number of flights does not impact on the current Hazardous Materials Business Plan on file with this office or the contamination at the sight due to underground storage tanks.

RECEIVED BY
1995 NOV 21 P 3:11
MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY



DESIGN REVIEW RECOMMENDATIONS

Date: Nov. 15, 1995

ADDRESS: 240 REDWOOD HWY

PLANNER: LAI

PARCEL: AP # 052-247-01 & 02

APPLICANT: PRICE

ATTENDING: STEVE PRICE

I. WE HAVE REVIEWED THIS APPLICATION FOR COMPLETENESS & FIND IT:

Complete as presented. is

Motion: POLLACK

Incomplete until all of the items listed below are submitted:

Second: CULLEN

Vote: 7 Ayes 0 Noes 0 Abstain

Abstentions/Reasons:

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

- A. _____
- B. _____
- C. _____

II. WE HAVE CONSIDERED THIS APPLICATION FOR ENVIRONMENTAL REVIEW & FIND IT:

Categorically exempt from Calif. Environ. Quality Act. Section 15303 (a), Class 3, pursuant to Planning Dept. transmittal.

Motion: _____

Second: _____

Vote: _____ Ayes _____ Noes _____ Abstain

NOT Categorically exempt from Calif. Environ. Quality Act. Section 15303 (a) for these reasons:

Motion: _____

Second: _____

Vote: _____ Ayes _____ Noes _____ Abstain

Abstentions/Reasons:

- A. _____
- B. _____
- C. _____

- A. _____
- B. _____
- C. _____

III. WE HAVE REVIEWED THIS APPLICATION FOR MANDATORY DESIGN REVIEW FINDINGS & FIND IT SATISFIES THE FOLLOWING FINDINGS:

YES NO

- The proposed structure will properly & adequately perform or satisfy its functional requirements without being unsightly or creating substantial disharmony with its locale & surroundings.
- It will not impair or interfere with the development, use, & orderly & pleasing development of the neighborhood as a whole, including public lands & rights-of-way.
- It will not directly, or in a cumulative fashion, impair, inhibit, or limit further investment of improvements in the vicinity on the same or other properties, including public lands or rights-of-way.
- It will be properly & adequately landscaped with maximum retention of native trees and other natural materials.
- It will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design, or juxtaposition. Adverse effects may include, but are not limited to: a) scale; b) drainage systems & appurtenant structures; c) cut & fill or the reforming of natural terrain & structures appurtenant thereto, such as retaining walls & bulkheads; d) areas, paths & rights-of-way for the containments, movement or general circulation of persons, animals, vehicles, conveyances & watercraft; e) other developments or improvements which may result in a diminution or elimination of sun & light exposure, views, vistas & privacy.
- It may contain roof overhangs, roofing material & siding material that are compatible both with the principles of energy conservation & with the prevailing architectural style of the neighborhood.

RED Exhibit D

TAM DESIGN REVIEW BOARD: DESIGN REVIEW RECOMMENDATIONS

Page 2

PROJECT: 240 REDWOOD HWY

DATE: Nov. 15, 1995

IV. WE HAVE REVIEWED THIS APPLICATION FOR MERITS & RECOMMEND:

Approved as submitted.

Approval with the following conditions:

A. In order to enhance fire safety, Applicant shall install four (4) hose bibs prior to issuance of Occupancy Permit. One hose bib shall be located on each primary side of the structure.

B. In order to ensure that new landscaping & ground cover plantings will be irrigated sufficiently & in a water-conserving manner, Applicant shall install a drip irrigation system prior to issuance of Occupancy Permit.

C. In order to enhance the structure's visual appeal to the neighborhood upon construction completion, to mitigate any adverse visual impact of the structure, & to prevent future soil erosion of any disturbed soil, Applicant shall install drought resistant trees, shrubs & ground cover on all disturbed soil noted on plans. These plantings shall be at least 50% native, deer-resistant species, & shall be installed prior to issuance of Occupancy Permit.

D. _____

E. _____

F. _____

Continuance with Applicant's consent until: _____

Denial for the following reasons:

A. _____

B. _____

C. _____

Motion: DECONA

Vote: 7 Ayes 0 Noes 0 Abstain

Second: CULLEN

Abstentions/Reasons:

A. _____

B. _____

C. _____

V. ADDITIONAL MERITS & COMMENTS REGARDING THIS PROJECT & ITS DESIGN:

RED Exhibit D

RED SOD Exhibit C6 - Pre-App 1995

COMMUNITY DEVELOPMENT AGENCY

COUNTY OF MARIN

PLANNING DIVISION

PROJECT TYPE & YEAR:

PR 1995

A.P.N.

052-247-0102,
03

NAME

LANDOR, WALTER

RED Exhibit D

Marin County Community Development Agency

Mark J. Riesenfeld, AICP, Director

April 26, 1995

Steve Price
San Francisco Seaplane Tours, Inc.
242 Redwood Highway
Mill Valley, CA 94941

RE: Preapplication Review for Landor Property
240 Redwood Highway, Mill Valley
Assessor's Parcel Numbers 052-247-01, 02, 03

Dear Mr. Price:

Thank you for your letter of March 14, 1995 in which you requested a preapplication review to determine the feasibility of allowing various interim uses on the Landor property. These would include a refreshment stand, delicatessen, jet ski maintenance and sales, art studio, art classroom, and a small property management office. You have indicated that physical improvements would include minor repair (replacement of windows and installation of a new roof), removal of toxic contaminants, repainting the building exteriors, and new landscaping. Due to various work commitments, I have been unable to provide a timely response to your preapplication review and am appreciative of your patience in receiving this belated response.

This letter attempts to supplement the preliminary analysis and identification of issues contained in two previous preapplication reviews that have been prepared by Planning staff for the subject property. These are included as attachments for your use. Specifically, this preapplication will address the feasibility of each of the interim uses that you contemplate to conduct.

Project Feasibility

Development of the Landor property is subject to various plan policy and zoning restrictions. Without reiterating the analyses contained in the previous preapplication reviews, the primary issues associated with the conduct of the proposed interim uses include the following: (1) conformance with the Marin Countywide Plan policies which designate the property for recreational-commercial uses; (2) conformance with the Tamalpais Area Community Plan which encourages resort and resort-oriented recreational facilities that are balanced with the need for public access, shoreline recreation, open space, habitat preservation, water quality; and (3) conformance with the governing BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation) zoning district which limits uses to those that are related to water-oriented resort and recreational activities. Specifically, with respect to the zoning requirements, the BFC-RCR zoning district allows uses that are related to a resort or that are desirable or necessary for public service, utility service or for the recreation industry, but specifically prohibits residential, industrial, institutional, general commercial, mobile home parks, and floating home marinas. The existing heliport, seaplane, and houseboat uses are considered non-conforming with respect to the current zoning.

Although you have indicated that the proposed uses would only be temporary in nature and would be followed by a subsequent application for entitlements to allow long-term uses that would conform with plan policy and zoning requirements, the interim uses would nevertheless be subject to the same plan

3601 Civic Center Drive, #308, San Rafael, CA 94903-4157 - Telephone (415) 499-6269 - Fax (415) 499-7880

RED Exhibit D

policy and zoning requirements. The County is prohibited under State Law from granting entitlements that authorize non-conforming uses, which would be equivalent to the grant of use variances.

The following provides staff's preliminary assessment for each of the contemplated interim uses on the Landor property.

1. Refreshment Stand

A refreshment stand constitutes a general commercial use that is not consistent with governing policies and zoning regulations, unless it can be demonstrated that this use is incidental to a larger activity which is related to a permitted use for resort or commercial recreational purposes, including a swimming and/or picnicking park.

2. Delicatessen

Concurrent with this preapplication, staff is reviewing a proposal to operate Sally's, an arts-oriented cafe, in approximately 2,000 square feet of ground floor area in the main building on the Landor property. It is staff's opinion that the proposed delicatessen is also considered a general commercial use. Although a component of the delicatessen would provide for the display of artwork, the primary use would still constitute a general commercial food establishment. In order for this type of use to be acceptable, the scale and configuration of the delicatessen and art components would need to be modified so that the overall use is related to a recreational activity that is open to the public, such as a museum or educational center, with a food service component that is incidental to that primary use, similar to a cafe component in a book store.

3. Jet Ski

The maintenance, storage, and sales of jet ski equipment would also constitute a general commercial use that is not consistent with the governing policies and zoning regulations, unless it is subordinate to a water-oriented recreational use, such as jet ski recreation. Some issues that would need to be addressed if the primary use is proposed for jet ski recreation with incidental rental, sales, maintenance, and storage components would include impacts relating to noise, shoreline resources, personal safety, and possible opposition from the surrounding community.

4. Art Studio and Classroom

Although artists' studio and classrooms are not entirely resort or recreational commercial in nature, it is staff's opinion that these uses would be consistent with applicable policies and regulations provided it is related and incidental to a primary recreational use, such as a museum or education center that is open to the public.

5. Management Office

The use of a small office for management of the property would be a permitted use provided the scale of this use (number of employees, floor area, hours, etc.) is clearly minor and incidental to the rest of the uses in the building. General office uses are not permitted under the zoning.

Applicable Permits

Under the governing BFC-RCR zoning district, development on the subject property is subject to Master Plan and Precise Development Plan requirements contained in Chapter 22.45 and Tidelands Permit requirements contained in Chapter 22.78 of the Marin County Code.

RED Exhibit D

1. Master Plan Waiver

Provided the scale and mix of uses conform to applicable policies in the Marin Countywide Plan and the Tamalpais Area Community Plan, and an amendment to these plan documents is not required, the Community Development Director may waive Master Plan requirements in favor of a Use Permit. In order for a Use Permit to be approved, a mandatory finding contained in Section 22.88.020 of the Marin County Code would need to be made to determine that the proposed uses would not result in a detriment to the public health, safety, or general welfare. Some considerations that would be used in making this determination are discussed in the following section on development issues. Enclosed is a fact sheet which discusses the Use Permit process in greater detail.

2. Precise Development Plan Waiver

Based on the scale of the proposed improvements, the Community Development Director may waive Precise Development Plan requirements in favor of a Design Review. In order for a Design Review to be approved, mandatory findings contained in Section 22.82.040 of the Marin County Code would need to be made. Some of the issues associated with the proposed development that would be addressed through Design Review would include whether proposed roofing materials and building colors are compatible with the surrounding area, and whether proposed landscaping is suitable for a bayfront environment and would not inhibit visual or physical access toward the shoreline. Enclosed is a fact sheet which discusses the Design Review process in greater detail.

3. Tidelands Permit

Development of the property is subject to approval of a Tidelands Permit. Pursuant to requirements contained in Chapter 22.77 of the Marin County Code. The intent for this permit is to promote, preserve and enhance tidelands, shorelines, waterways, beaches, and salt marshes as vital natural resources which provide scenic views, open space, wildlife habitat, and recreational and water-oriented resources. The Community Development Director may waive Tidelands Permit requirements for minor maintenance work to existing buildings or work that is found to be minor or incidental. Enclosed is a fact sheet which discusses the Tidelands Permit process in greater detail.

4. Bayfront Conservation District

The BFC overlay zoning district requires that all development be preceded by an Environmental Assessment to evaluate the physical, policy, and environmental constraints of the property, including visual impacts, public access, traffic, water quality, and sensitive shoreline habitat areas. This requirement may be waived by the Community Development Director depending on the scale of the proposed improvements. However, the Director may require additional studies that address specific bayfront resources as part of the waiver process.

Development Issues

The scale and mix of uses would be determined by the project's ability to address the following development issues.

1. Traffic and Circulation

The proposed interim uses would be reviewed to determine if they would exceed the capacity of surrounding roadways and freeway interchanges. Based on the discussion contained in the previous preapplication reviews, intensification of uses on the Landor property could adversely affect traffic circulation and exacerbate the existing substandard traffic conditions. Therefore, staff recommends that a traffic study be prepared to determine whether there is sufficient capacity in the surrounding

RED Exhibit D

roadway network to accommodate the trips that would be generated by the proposed uses without triggering roadway and interchange improvements. In the event the proposed uses do not exceed the capacity, the project would be subject to payment of its fair share for future traffic improvements through a traffic mitigation fee.

2. Off-street Parking

The Tamalpais Area Community Plan contains policies that require all parking for new or additional uses on the subject property to be provided onsite and not in the surrounding public rights-of-way. In addition, Mc In County Code Title 24 requires off-street parking to be provided for all uses on the property. Based on the site survey prepared by Anrig-Doyle and submitted in conjunction with your pre-application letter, the only off-street parking currently available on the subject property consists of the row of parking on the south side of Parepa Street that is used for the houseboat marina. The Department of Public Works staff has indicated that although existing on-street parking spaces could be considered in conjunction with the review of development on the subject property, off-street parking would need to be provided in general conformance with the parking guidelines contained in Title 24, which range from one space per 50 square feet of public area for a food service establishment to one space per four persons for a public exhibition hall.

Review of the site survey indicates that the property is very limited in its ability to provide additional off-street parking spaces without entailing substantial site and building alterations. It appears that the only feasible location for additional off-street parking spaces is located on the southeast corner of Parepa Street and Bolinas Avenue. Using standard perpendicular parking spaces, staff estimates that up to eight off-street parking spaces could be provided in this location. As a general measure of conformity with the parking requirements, these eight spaces could accommodate a delicatessen with 400 square feet of public area, or less than half the 1,000 square foot size that is contemplated for Sally's. Conversely, using the Uniform Building Code's standard occupancy requirements for an exhibition hall, the potential off-street parking spaces would allow for 120 square feet of exhibition space.

Conclusion

Based on the preliminary analysis above, it would be difficult to undertake interim uses on the Landor property without comprehensively addressing all of the policy and zoning constraints. Although some of the proposed uses, namely the delicatessen, jet ski, and art-related educational uses, may be modified to more closely reflect resort and recreational commercial uses, it is staff's opinion that it would be very difficult to provide a sufficient number of off-street parking spaces to meet County requirements without involving substantial modifications to the existing building and site. If that were undertaken, it is likely that the scope of the modifications (conversion of a portion of the building into a parking garage, etc.) could conflict with other governmental regulations, such as the Federal Emergency Management Administration's minimum threshold for raising the building to meet flood elevations. Staff is also concerned about the cumulative effects associated with intensification of uses on the property that may have physical ramifications to long-term development.

Environmental Review

Pursuant to the California Environmental Quality Act, the project may be exempt from environmental review if it meets applicable plan policy and zoning requirements and if it does not result in potential impacts associated with aesthetics, wildlife resources, water quality, archaeology, and traffic. However, depending on the scale and scope of the interim uses, environmental review may be required. In the event it is required, the first step in the environmental review process involves the preparation of an Initial Study to examine potential significant effects on the environment that may result from the project. Depending on the outcome of this Initial Study, which would be circulated for public comment and review, the project would either result in the adoption of a Negative Declaration of

RED Exhibit D

Environmental Impact or the requirement to prepare an Environmental impact Report. Enclosed is a fact sheet which discusses the environmental review process in greater detail.

Please note that your pre-application fees will be applied toward your application fees should you wish to proceed with an application for a Design Review and Use Permit for the proposed project and if you apply within one year from the date of this letter. I can be reached at (415) 499-6292 if you have further questions regarding this matter.

Sincerely,



Thomas Lai, AICP
Senior Planner

Attachment: (1) Community Development Agency Letter, (8/15/94)
(2) Community Development Agency Letter, (3/23/94)
(3) Fact Sheets (Design Review, Use Permit, Tidelands Permit, Environmental Review)

cc: Sally Seymour (Sally's Cafe) (Attachments included)
Brad Sears (Attachments Included)
Mark Riensfeld, AICP, Director
Denise Pinkston, Planning Services Coordinator
Dean Powell, AICP, Principal Planner
Supervisor Annette Rose

RED Exhibit D

SAN FRANCISCO SEAPLANES TOURS INC



RECEIVED BY
1995 MAR 17 A 9:07

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

March 14, 1995

MARIN COUNTY COMMUNITY
DEVELOPMENT AGENCY
3501 Civic Center Drive #308
San Rafael, California 94903-4157

Attn: Denise Pinkston and Debbi Poiani

Re: 240 Redwood Highway

Dear Ms. Pinkston and Ms. Poiani:

Thank you for your help on this. As we discussed, this should be considered a pre-application prior to the Use Permit. Enclosed is a check for the amount of \$300.00 for this application.

I indicated previously I would keep you both, as well as Supervisor Rose apprised of our progress on the repairs of the building and the progress with the Use Permit.

As we discussed, my intent is to apply for a permit on a temporary basis (two years) to place various tenants (whom we believe to be within the RCR Zoning) in the property on a short term basis. This will enable me to make the necessary repairs, toxic cleanup, roof, windows, paint, and landscaping of the property while we evaluate long term leases. The overall goal being to repair and restore the building, and secure a Use Permit with tenants agreeable to yourself, the other governmental agencies and the community.

On January 31, 1995 shortly after our last meeting, I followed through personally with telephone conversations you suggested I make with John Wooley, Steve Jensen and Timothy Underwood. Subsequently I met with each of these gentleman in person and discussed various issues.

As you know the building is badly in need of repair, and there are pre-existing Toxic problems, specifically two underground tanks. My first priority is to:

CLEAN UP THE PROPERTY

- 1.) Remove both underground tanks
- 2.) Check for any toxic contamination, and if any, remediate
- 3.) Secure a closure regarding the tanks/property

242 REDWOOD HWY • HILL VALLEY • CALIFORNIA 94941 USA • 800-732-0220 (CA) • 415-332-4843 TEL • 415-332-4851 FAX

ESTABLISHED IN 1945

380-8400 Steve Price.

\$300 Receipt # 24784
Commodore Centers 3/17/95

RED Exhibit D

Denise Pinkston
Debbi Poiani
March 14, 1995
Page Two

On February 17, 1995 I met with Tim Underwood and we viewed the site. At that time I showed him the two underground tanks of which he was unaware of the second larger 10,000 gallon tank. He suggested I narrow my bids to one contractor and set up another discussion.

After receiving all my bids for the removal of the tanks, I decided on the Industrial and Environmental Contracting Firm of W.A. Craig, Inc. While they were not the least expensive, they are a local firm and extremely familiar with all the governmental agencies.

Bill Craig who will be handling this personally, spoke with Tim Underwood and they are in the process of developing a "Work Plan". In addition Mr. Underwood thought it would be best to contact the BCDC, which they have done. There appears to be a 30 day permit process with the BCDC which we are trying to expedite.

I estimate that once BCDC permits are secured, and we do not find any remediation necessary, I can have this completed within one month.

REPAIR/REPLACE EXISTING WINDOWS AND PAINTING

My next priority is to keep the water out by replacing the old roof with a new one, replace or repair the windows and paint the entire structure. I would also like to initially do some minor landscaping.

Depending on income from tenants, I would be able to complete this phase of the project simultaneously with the Toxic Cleanup.

FLOOD ZONE: FEMA REQUIREMENTS

At 1:00 p.m. on February 17, 1995, I met with John Wooley who informed me that a new floor would not be needed during the first phase of the repairs on the building. He explained that a formula in rough numbers to be \$58.00 per square foot times the number of square feet would give us the estimated building value. Half this amount cumulatively, would require FEMA upgrades. He agreed the repairs would be only a small fraction of that amount, therefore until we reached that amount no new floors were required.

CONTRACTOR PERMITS

After that meeting I met with Steve Jensen to whom I explained my intentions. They were to, during the first phase, initially keep the water out by putting on a new roof, repairing and or replacing broken or missing glass, repairing the plywood floor, and painting. He furnished me with two permit applications, one for the roof and one for windows along the east side of the second story.

RED Exhibit D

Denise Pinkston
Debbi Poiani
March 14, 1995
Page Three

COMPLETION OF PHASE ONE

During the completion of the above repairs, I would like to submit my application for a Use Permit. The objective of this would be to find long term tenant/tenants acceptable to Marin County and the community.

INTERIM TENANTS

The RCR Zoning, BCDC Requirements, Tam Valley Plan, etc. make it somewhat difficult for me to find a tenant who will eventually be acceptable to all parties. As you know, long term tenants such as the Marin Arts Council are somewhat slow in their process. During this approximate period of time (two years) we will attempt to rent to a variety of tenants we believe to be within the RCR Zoning and agreeable to Marin County and the Community.

Currently we are leasing to Kids' Headquarters (The Planet), HELI USA, and Commodore Seaplanes. We are looking into temporary leases with a refreshment stand/deli, jet ski operator for maintenance, storage and sales, art studio space, an art classroom, and a small office for managing the property.

These repairs, while costly, can be expedited by some of the income generated by the tenants while we await the outcome of the use permit. Again only short term leases during this phase will be granted to small businesses which we (and they) feel are within the RCR Zoning.

LONG TERM TENANTS

Over this two year process, we will attempt to secure long term leases with the current or future tenant/tenants agreeable to the agencies above.

USE PERMIT

Marc Cavagnero and myself are continuing with the Use Permit Application and hope to submit it to you after receiving the BCDC permit.

We have already completed the preliminary Site Plan and have enclosed a copy of it for your review.

RED Exhibit D

Denise Pinkston
Debbi Poiani
March 14, 1995
Page Four

HELII USA

As you know I attended the meeting at Civic Center last Monday and was appalled at Heli USA's presentation. Unfamiliar with these type of proceedings personally, I had raised my hand during the process to voice my opposition to many of the statements which were made by Heli USA's president Capt. Nigel Turner. One of the board members motioned me to take a sign in sheet which I did, however I never did get to address the Commission.

Should you or other members of the Planning Commission have any suggestions to resolve this issue, I would welcome the opportunity to discuss the future of the Heliport.

FURTHER ACTIVITY/COMMENTS.

Commodore Seaplanes was established in 1945 and has been in continuous operation since that time. My objective is to offer my customers a kind of "Wilderness Experience" by giving people tours of the Bay Area, and soon, trips (fishing, camping, kyaking, etc.) to remote areas of California and the Northwest. It is my opinion, this image fits in well with the kind of local residents who presently take our tours and refer friends and family to us as well.

Commodore Center is a Landmark to the entrance of Marin County and while historically the building has been terribly neglected, I would like the opportunity to restore the building and continue the history of Commodore Seaplanes.

Thank you for your cooperation and efforts thus far in helping me sort through this complex process. I will continue to keep you apprised of our progress. Also, I would like you to know that if you have any questions whatsoever, please call me. I can be reached at any time and welcome and comments, suggestions, or questions you may have.

If all goes well I hope to have the entire property cleaned up and the above first phase completed well before our 50th Anniversary on November 11, 1995!

Very truly yours,
COMMODORE SEAPLANES

Steven D. Price
Steven D. Price
SDP/lv

cc: Supervisor Rose

RED Exhibit D

Sally's
breakfast - lunch - espresso

desserts

Sally Seymour
320 De Haro at 16th Street
San Francisco

626-6006

message & home 324-3307

^{Paul}
^{Seans}
351-566 (1014)
456-1870*

March 9, 1995

Dear Mr. Rose,

My meeting with you today is to explore your thoughts on the possibility of a Sally's cafe at the Heliport.

My son & daughter-in-law would be my partners. They are long time residents of Sausalito. He built my present restaurant (he is a contractor/carpenter) and she has been my manager at Sally's for over eight years.

I am in the process of selling Sally's in the City (which I own with my daughter, Katarina Cross) so would be giving the Heliport my full time energy.

Thank you in advance for your thoughts on this. Sally Seymour

RED Exhibit D

MEMO TO: Annette Rose
Board of Supervisors
County of Marin

VIA FAX: 626-4040

FROM: SALLY'S
Sally Seymour
300 Deharo Street
San Francisco, California

DATE: March 6, 1995

RE: Letter of Intent

This is a Letter of Intent to run a small "arts" oriented cafe in the glass hangar space at the Heliport.

"Sally's" has served a "cafeteria style" breakfast and lunch for 17 years in San Francisco. Enclosed is a Sally's menu.

Also enclosed is a copy of a preliminary plan review for the same property, written last summer. Perhaps you have seen the letter? Denise Pinkson, Planning Services Coordinator for the County, responded to the applicant, Mr. Klein's, plan for 8-10K sq. ft. of restaurant related use.

Sally's plan is for 2K sq. ft., 1K sq. ft. of that being actual seating, considerably smaller, by about 80%, in the hope that this small cafe plan would mitigate parking and traffic problems. We would be willing to close the business during the evening commute to reduce traffic pressure on the Manzanita intersection if the County felt it was necessary for such a small cafe.

As you know, this area of the property has remained in a state of inertia for decades. It was built to serve the first wave of the "airport culture" in the 50's in an era that lacked codes and commissions. In fact under the current zoning practically everything on the property is existing, non-conforming.

Sally's agrees with the zoning with its current constraints and its "will" for a publicly accessible and hopefully marine-oriented use. Given the location, a low tidal mud flat, most water activities are limited.

RED Exhibit D

Letter of Intent
March 6, 1995
Page 2

Perhaps the most important question is whether our plan is an appropriate use under the RCR zoning. Will it serve the public? We believe that our track record as a comfortable, "arts" oriented meeting place comes about as close as anything viable within the zoning (short of a mud wrestling arena).

Sally's plan, we feel, preserves the spirit of the RCR zoning in that Sally's has offered a rich, diverse cultural setting as well as well-priced nutritious food.

Sally's has provided a venue for the largest art colony on the West Coast, known as the "Point" for the last ten years. The Point is home to some of the Bay Area's most creative and prolific professionals, located at Hunters Point Ship Yard and operated by her curator and close friend Mr. Jacques Terzian. It is our hope to promote the art of North Bay artists as well in our new setting. We will provide a place where artistic activity is encouraged; perhaps a performing arts venue in addition to the plastic arts. There has been some talk of the Marin Arts Council taking the adjoining space. Hopefully this will happen.

Sally's has become popular with active people, i.e. body builders, bicyclists, and runners. Sally's takes great pride in providing the "high octane organic food" athletes seek. Fortunately these people use the bike path and shouldn't impact the traffic situation.

Other "nearly pedestrian" clients are the people who now wait in mini-vans during the weekend for seaplane excursions. Mr. Price, the master lease holder of the property and future owner, needs a convivial place for these people to wait. This is an ancillary use and is appropriate, we feel.

Also, we plan to use the services of Colleen Mahoney Associates in Tiburon. She could give you an idea of what we offer at Sally's.

I have an appointment with you on Thursday, March 9th at 2:30 PM to talk with you about the possibilities of making such a cafe a reality. Thanks for your time.

Sally Seymour

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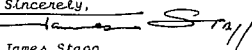
March 3, 1995

To whom it may concern,

I'm an artist that lives and works in Sausalito, and also have a studio in San Francisco. I often stop at Sally's Deli at 16th and DeHaro streets and have for many years. I've always been impressed with the quality of the food--it's always fresh, interesting, delicious and very reasonably priced. Sally and all the friendly people she chooses to work for her have created a relaxing, convivial atmosphere where artists, business people, designers and people from all walks of life come to have great food as well as a comfortable place to relax and exchange ideas. You're always surrounded by works of local artists and Sally has always been very involved in helping to promote the arts. I've personally been included in several exhibitions there.

I personally hope that you will invite Sally to open up a similar establishment in Sausalito. I think that it would be a terrific addition to our own area, would create one of the very few places in Sausalito outside of the galleries where local artists would have an opportunity to show their work and I'm sure that you yourself would be seen regularly relaxing there and enjoying some of Sally's great food.

Sincerely,


James Stagg
272 Bay Vista Circle
Sausalito, CA 94965
(415) 332-7856

RED Exhibit D

Carol Jessen
932 Stanyan St. #4
San Francisco, CA 94117

March 7, 1995

Ms. Annette Rose
County Board of Supervisors
Marin County

Dear Ms. Rose:

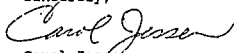
I'm writing on behalf of Sally Seymour. I am a San Francisco artist who has had the pleasure of knowing Sally for 10 years as a result of her involvement and support of the local art community. I've had a Studio at Hunters Point Shipyard for many years, have exhibited my work at numerous galleries, participated in Open Studio and local art festivals including the Sausalito Arts Festival. In 1994 I was chosen to do the artwork for the successful Festival Poster.

Since first opening her restaurant, Sally has warmly welcomed local artists (even those who may have never shown their work in a gallery) to exhibit in her establishment. It's such a pleasure to see the new and diverse shows every month or two. She not only shows the public new and diverse artwork, but takes no commission from sales and to top it off generously feeds the participating artist/artists. She has sponsored many artists projects by providing space and food for meetings, etc. She also gave a group show entitled "10 years at the Point" to promote the artists from the shipyard. I'm sure Sausalito artists would benefit from such events if she were to open a restaurant there.

Setting aside her support for artists, the restaurant has a wonderful casual atmosphere and a wide variety of healthy tasty food. The prices are very reasonable. I tell my friends it's a gourmet cafeteria where you can drink a cappucino and read your book without feeling rushed.

I think a place like "Sally's" would definitely spice up that no-mans land between Sausalito and Mill Valley. The locals would benefit even more than tourists because it's the type of cafe they would want to frequent again and again, as I do.

Sincerely,



Carol Jessen

RED Exhibit D

Potrero Hill Neighborhood House MULTI ETHNIC THEATRE

953 DeHaro Street • San Francisco, CA 94107 • (415) 550-8161

March 6, 1995

TO WHOM IT MAY CONCERN:

This is to express my appreciation, admiration, and gratitude to Sally Seymour of Sally's Deli and Restaurant for her support of Multi Ethnic Theatre and of the arts in general.

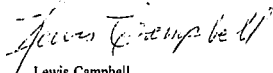
Sally's Deli and Restaurant has long been recognized for the gallery style art displays on its walls. Each year this venue introduces our community to the work of many visual artists.

But Sally's support of the arts goes well beyond displays in her place-of-business. Each year she actively sponsors interest in the annual artists' Open Workshops in our area.

Sally's support of Multi Ethnic Theatre has been manifold and of great impact. She has encouraged large group attendance to MET productions by her patrons. She has spearheaded a movement to rally community businesses in support of our theatre. As a result fifteen area shops and services are now official MET sponsors. Our growth in audience over the past two years has been largely due to her help.

Sally Seymour sets an example of how small business leaders can support art in America.

Sincerely,



Lewis Campbell
Artistic Director
Potrero Hill Neighborhood House
MULTI ETHNIC THEATRE

RED Exhibit D

~Sally's Box Lunches~

Phone 626-6006, or fax us at 626-4040

Served in Bioboxes, a biodegradable ink-free container.

Labeled with contents and sealed

Prices includes eating utensils, napkins, and condiments.

Kansas St.- Roast Beef on sourdough, red potato salad, chocolate chip cookie.....	\$6.95
Tennessee St.-Turkey Breast on multigrain wheat, fresh fruit cup, and orange oatmeal raisin cookie.....	\$7.50
Produce Market- Veggie Sandwich (avocado, carrots, cucumber, tomato, sprouts)on multigrain wheat, fresh fruit cup, and triple chocolate cookie.....	\$7.75
Rhode Island- Monroe Chicken Salad on sourdough, with fresh fruit cup, and chocolate chip walnut cookie....	\$7.75
Henry Adams Place- Onar (turkey breast, chopped nuts, bacon, pineapple with a curry-lemon dressing) on wheat, potato chips, chocolate chip oatmeal cookie.....	\$7.95
Townsend- Crosby (avocado, turkey, and sprouts) on multigrain wheat with fresh fruit cup and orange oatmeal raisin cookie.....	\$7.95
Sixteenth St- Albacore Tuna Salad on rye, with pasta vegetable salad and a fudge walnut brownie	\$7.50
Potrero Hill- Roasted Half Chicken , dipped in Dijon and breaded with home-made bread crumbs, parmesan, and herbs. Served with green salad, roasted red potatoes, and focaccia bread, and a lemon bar(24 hours notice please)...	\$8.95

As you can see we offer a number of choices to fit your budget. Beverages are not included in the price of the box lunches. We can provide a selection of sodas and mineral waters ranging from \$.80 to \$1.25. If you would like a different combination, in your box lunch, we would be happy to customize a menu for you.

RED Exhibit D



300 DE HARO STREET @ 16th STREET
SAN FRANCISCO, CA 94103
PHONE 626-6006
FAX: 626-4040
100% NON-SMOKING

LUNCH
Served from
11:00 am - 3:00 pm

COLD SANDWICHES

Choice of 9-grain, sourdough, corn rye, focaccia or onion roll.
Cheese, add 35¢

***1/2 SANDWICH** with soup, mini-salad,
potato salad or coleslaw
..... same price as whole sandwich

*CHEESE-swiss, provolone, jack or cheddar	3.75
*HAM-black forest	4.50
BLT	4.50 with guacamole 5.25
*ALBACORE TUNA	4.95
ROAST BEEF (Niman Schell)	4.95
CORNED BEEF-very lean Vienna	4.95
VEGGIE-carrots, cucumber, guacamole, sprouts	4.95
*TURKEY BREAST-we roast our own	5.25
*MONROE-chicken salad w/sunflower seeds	5.25
BOGART-roast beef, dill pickle, sprouts & sour cream-horseradish dressing	5.50
BARRYMORE-avocado, jack, sprouts	5.50
CROSBY-avocado, turkey, sprouts	5.50
OMAR-turkey, bacon, chopped nuts, pineapple slices & curry lemon dressing	5.75
CALHOUN-shrimp & avocado, sprouts	6.50
CLUB-turkey breast, bacon, provolone	6.50

SALADS

CHEFS-with turkey, swiss & ham	6.95
CAESAR (no egg or anchovies)	4.50
with grilled chicken breast	6.95
CHINESE CHICKEN	6.50
SHRIMP & AVOCADO	7.50
LARGE VEGETABLE	5.95
PASTA PRIMAVERA-w/chardonnay vinaigrette on garden salad	4.75
*ALBACORE TUNA SALAD	5.95
*CHICKEN MONROE SALAD	6.25
*scoops only-\$2.00 less	
GARDEN SALAD	2.95
MINI-SALAD	1.50
RED POTATO SALAD	1.50
COLESLAW	0.95
FRESH FRUIT SALAD	
SMALL	1.95 with nonfat yogurt & granola 2.95
LARGE-plain or with nonfat yogurt & granola	5.75

FRESH PASTA

FETTUCCINE-fresh, w/choice of light herb cream, basil
pesto or low-cal marinara sauce, focaccia bread 7.75
-SEE OUR DAILY PASTA SPECIAL-

HOT SANDWICHES

CHICKEN BREAST-DIJON, TERIYAKI or PESTO on a dry sesame bun with fresh fruit cup	6.50
R.B.S.-hot roast beef on a grilled french roll au jus	4.95
NEW R.B.S.-above with mushrooms & herb jack	5.95
NEW TERZIAN-grilled eggplant, red onion, lettuce & tomato in a pita with cucumber-yogurt & herb sauce	4.95
REUBEN-corned beef, swiss & sauerkraut on rye	5.75
GRILLED CHEESE-swiss, jack, cheddar or provolone	4.25
GRILLED SMOKED TURKEY-w/provolone & roasted red peppers on focaccia or sourdough roll	6.25
TUNA MELT-albacore tuna & cheese	5.75

BURGERS

*1/2 pound Niman-Schell natural, lean beef on a sesame seed
bun, mayo, mustard, tomato, lettuce, onion & pickle.
Served with potato salad, coleslaw or chips.*

UNADORNED	5.95
CHEESE	6.25
AVOCADO	6.75
BACON & CHEESE	6.95
DE HARO DELUXE-1/2 pound Niman-Schell beef with herb jack cheese	6.95
TURKEY BURGERS - 25¢ less than beef	

HOMEMADE SOUP & BREAD

CUP	2.25
CUP, when with sandwich or entrée	1.95
CUP, with SMALL GARDEN SALAD	4.95
BOWL	3.95

BEVERAGES

MILK	low-fat or regular 0.85
ICED TEA	0.90 / pot of tea 0.90
COFFEE & ESPRESSO DRINKS	0.90 & up
FRUIT JUICES	1.25 & up
WATERS & SODAS	0.85-1.25
BEERS & WINES	2.25 & 2.50

Upstairs Café

weekdays • featuring veggieburgers, burritos & salads • enter through lobby

FOR TAKEOUT CALL 626-6006 or FAX 626-4040

OUR OWN BAKERY 626-0838

Sally's is OPEN Monday-Friday 7:30 am to 3:00 pm, Saturday & Sunday - all-day breakfast 8:30 am to 2:30 pm
Not responsible for lost or stolen items.

RED Exhibit D



300 DE HARO STREET @ 16th STREET
SAN FRANCISCO, CA 94103
PHONE 626-6006
FAX 626-4040
100% NON-SMOKING

TWO EGGS (any style)-served with potatoes & toast	3.50
above with HAM, BACON or SAUSAGE	5.25
TWO EGGS (any style)-served with CHICKEN-APPLE SAUSAGE, potatoes & toast	5.75
OMELETTES -three eggs, served with potatoes & toast	
• Denver-ham, sautéed green & red peppers & onions	5.95
• Mexican-avocado, jack cheese, sour cream & homemade salsa	6.25
• Spinach, mushrooms & swiss cheese	6.25
• Avocado, bacon & cheddar	6.50
• Ham, jack & mushrooms	5.95
• Greek-spinach, feta, tomato	6.25
CORNED BEEF HASH (homemade)-served with two eggs, potatoes & toast	6.25
POTRERO POCKET-2 eggs scrambled with cheddar, tomato & bacon in pita bread	3.50
BIG DEAL-2 eggs, 2 pancakes & coffee	4.25
MICKEY MOUSE PANCAKE-for kids twelve and under	2.50

BREAKFAST SIDES

ONE EGG	0.75	HOME POTATOES	1.75
TWO EGGS	1.25	TOAST	0.95
HAM	2.25	MUFFINS	1.35 & up
BACON	2.25	BAGEL-toasted	1.25
SAUSAGE-pork	2.25	BAGEL & CREAM CHEESE	1.95
-chicken-apple	2.50	CORNED BEEF HASH	3.50
		TURKEY HASH	3.50

LOW FAT

PANCAKES-whole grain cakes with syrup (blueberries, add \$1.50)	3 cakes...3.25 / 4 cakes...3.95
OATMEAL-walnuts, raisins, brown sugar	..... bowl...2.50 / cup...1.75
with blueberries add	..... bowl...0.50 / cup...0.25
FRESH FRUIT SALAD	SMALL.....1.95 with nonfat yogurt & granola.....2.95
	LARGE-p'ln or with nonfat yogurt & granola.....5.75

GOOD 'N LEAN

SIDE OF 4 EGG WHITES-scrambled	1.95
SILVER POCKET-4 egg whites, turkey, tomato, green onion & mushrooms in pita bread	4.50
BASIC BODY BUILDERS-4 egg whites scrambled & 3 pancakes	4.95
CHUCK'S STIRFRY-egg whites scrambled with steamed carrots, celery & mushrooms, with toast	4.95
TURKEY HASH-ground turkey with potatoes, peppers & onion. Served with 4 scrambled egg whites & toast	6.50
SAM'S OMELETTE-steamed spinach & mushrooms in a silver omelette with toast	6.25

ESPRESSO

Espresso	0.90
Cappuccino	1.60
Latte	1.75
Mocha	1.85
Double/décéf, add 25¢ each	

BEVERAGES

Odwalla Juices	small...1.25 / large...2.25
Odwalla Specialties	2.50
Milk	low-fat or regular...0.85
Coffee	0.90 to go... small...0.70 / large...0.90
Hot Chocolate	1.25

Sally's is OPEN Monday-Friday 7:30 am to 3:00 pm,
Saturday & Sunday - all-day breakfast 8:30 am to 2:30 pm
Not responsible for lost or stolen items.

RED Exhibit D

Sally's

300 DE HAVO STREET @ 16th STREET
 SAN FRANCISCO, CA 94103
 PHONE 626-6006
 FAX 626-4910
 100% NON-SMOKING

SATURDAY & SUNDAY BREAKFAST

Served from
 8:30 am - 2:30 pm

WEEKEND SPECIALS

CRJ A-JUILFS—roasted tomato & peppers sauce in eggs and tortillas w/jack. Served w/black beans.....	6.25
PESTO EGGS—scrambled with pesto sauce, served with potatoes & toast.....	4.95
HUEVOS RANCHEROS—2 eggs, salsa, black beans & guacamole.....	5.95
- ALSO, SEE MENU BOARD -	
TWO EGGS (any style)—served with potatoes & toast.....	3.50
above with HAM, BACON or SAUSAGE.....	5.25
TWO EGGS (any style)—served with CHICKEN-APPLE SAUSAGE, potatoes & toast.....	5.75
OMELETTES—three eggs, served with potatoes & toast.....	5.95
• Denver—ham, sautéed green & red peppers & onions.....	5.95
• Mexican—avocado, jack cheese, sour cream & homemade salsa.....	6.25
• Spinach, mushrooms & swiss cheese.....	6.25
• Avocado, bacon & cheddar.....	6.50
• Ham, jack & mushrooms.....	5.95
• Greek—spinach, feta, tomato.....	6.25
CORNED BEEF HASH (homemade)—served with two eggs, potatoes & toast.....	6.25
POTRERO POCKET—2 eggs scrambled with cheddar, tomato & bacon in pita bread.....	3.50
MICKY MOUSE PANCAKE—for kids twelve and under.....	2.50

BREAKFAST SIDES

ONE EGG.....	0.75	HOME POTATOES.....	1.75
TWO EGGS.....	1.25	TOAST.....	0.95
HAM.....	2.25	OUR BAKERY MUFFIN.....	1.35
BACON.....	2.25	BAGEL—toasted.....	1.25
SAUSAGE—perk.....	2.25	BAGEL & CREAM CHEESE.....	1.95
—chicken-apple.....	2.50	CORNED BEEF HASH.....	3.50
		TURKEY HASH.....	3.50

LOW FAT

PANCAKES—whole grain cakes with syrup (blueberries, add \$1.50).....	3 cakes...3.25 / 4 cakes...3.95
FRESH FRUIT SALAD SMALL.....	1.95.....with nonfat yogurt & granola.....2.95
LARGE—plain or with nonfat yogurt & granola.....	5.75

GOOD 'N LEAN

SIDE OF 4 EGG WHITES—scrambled.....	1.95
SILVER POCKET—4 egg whites, turkey, tomato, green onion & mushrooms in pita bread.....	4.50
BASIC BODY BUILDERS—4 egg whites scrambled & 3 pancakes.....	4.95
CHUCK'S STIRFRY—egg whites scrambled with steamed carrots, celery & mushrooms, with toast.....	4.95
TURKEY HASH—ground turkey with potatoes, peppers & onion. Served with 4 scrambled egg whites & toast.....	6.50
SAM'S OMELETTE—steamed spinach & mushrooms in a silver omelette with toast.....	6.25

ESPRESSO

Espresso.....	0.90
Cappuccino.....	1.60
Latté.....	1.75
Mocha.....	1.85

Doubles/decaf, add 25¢ each

BEVERAGES

Odwalla Juices.....	small...1.25 / large...2.25
Odwalla Specialties.....	2.50
Milk.....	low-fat or regular...0.85
Coffee.....	0.90 to go...small...0.70 / large...0.90
Hot Chocolate.....	1.25

Sally's is OPEN Monday-Friday 7:30 am to 3:00 pm, Saturday & Sunday - all-day breakfast 8:30 am to 2:30 pm
 7/94 Not responsible for lost or stolen items.

RED Exhibit D

Sally's
300 Debaro
San Francisco, CA 94103
(415) 824-3307

March 16, 1994

Annette Rose
Board of Supervisors
County of Marin
Civic Center
San Rafael, CA 94901

I am writing on behalf of my mother, Sally Seymour, whom you met with on Thursday, March 9th regarding the Heliport.

Sally's respectfully requests a waiver of a master plan regarding the glass hanger space at the Heliport.

Thank you.

Brad Sears

Brad Sears
427 Sherwood Drive #206
Marin City, CA 94965
3315661

Susselito

RED Exhibit D

Marin County Community Development Agency

Merk J. Riesenfeld, AICP, Director

August 15, 1994

Martin Swig
2300 Sixteenth Street
San Francisco, CA 94103

Dear Mr. Swig,

Thank you for your recent inquiry regarding the allowable uses of the Landor property in Southern Marin (Assessor's Parcel No. 052-247-01). This letter is to provide you with information regarding the allowable uses of the site under the Marin Countywide Plan, the Tamalpais Community Plan, and the Marin County Code. Following a review of the codes and policies governing land use at this property, this letter outlines the process and permits that would be required for the your prospective use of the site.

You should be aware that to occupy the structures on the property, you may need to make significant improvements to the buildings. You may contact Steve Jensen, County Building Inspection Division, regarding building requirements (415) 499-6550. You may also need approvals from the Bay Conservation and Development Commission and should contact their office in San Francisco regarding your plans should you decide to proceed regarding their requirements, if any.

1. Marin Countywide Plan

The Marin Countywide Plan designates this property for recreational commercial uses and indicates that the property lies within the Bayfront Conservation Zone. The recreational commercial designation allows resorts and recreational facilities such as golf courses or recreational boat marinas. The Countywide Plan allows recreational commercial uses, a building floor area not to exceed a range of 5% to 30% of the parcel area, and requires special consideration of shoreline preservation, access, and Richardson Bay water quality issues in any proposed new development of the site.

2. Tamalpais Community Plan

The Tamalpais Community Plan indicates that the highest priority uses of the area where this parcel is located are a shoreline park and a nature observation and study center. The Plan requires a master plan for any new development in this area, indicates that resort and resort-oriented recreation facilities are allowable uses provided that building heights and lot coverage are minimized and public access to the shoreline recreation resources in the area is enhanced (LU 32.1a and 1b).

The Tamalpais Community Plan also includes specific information regarding the Landor parcel. The priority recommendation for the site is public acquisition, which was under negotiation at the time of the Plan adoption between the land owner and the County (Program LU32.1e). The Plan also states that partial dedication to open space should be required if development of the site is approved. The Plan specifies policies for the development of the Landor property as follows:

- a) Floor area ratio of 0.30 (maximum) of the dry land area, or 21,000 square feet of development, whichever is less;
- b) Building Height - maximum of 33 feet from Mean Sea Level;
- c) Landscaping - 30 percent of the dry site;

RED Exhibit D

- d) Traffic impact costs shall be mitigated by developers;
- e) The BCDC line of highest tidal action should be respected;
- f) Parking within public streets is to be exclusively used for the public access, therefore all parking for new or intensified uses of the property must be provided on-site not in the public rights of way;
- g) If underground parking is provided and the area which would have been dedicated to surface parking is retained in an open space type use, deviations from the height limit may be considered in order to accommodate parking.

In addition to these site specific policies, the Tamalpais Plan includes broad policies that would be applied to development including requirements for the provision of habitat buffer zones to protect wetlands and bay waters, preservation of lands within the 100 foot shoreline band, and guidelines for the enhancement and improvement of public access along the shoreline (LU33.1a).

The Tamalpais Community Plan also includes considerable information regarding traffic capacity which might be available to serve any intensification of use or new development of the Landor property. The interchange serving the Landor property, the Stinson Beach/Highway 101 or Manzanita Interchange exit operates poorly for certain turning movements and at certain times of the day causing excessive congestion. As a result, the Plan requires that improvements to the Manzanita Interchange and surrounding roadways be completed before any new development can occur that exceeds the currently available roadway capacity (which is very limited).

The Plan also requires that all new developments or intensification of activity at existing developed sites which trigger a discretionary review (such as a use permit or design review) shall pay a traffic mitigation fee for their fair share of these improvements. The Plan policies indicate that if proposals cannot be accommodated within the proposed transportation improvements, the project must be modified to reduce peak hour traffic trips or it will not be approved.

As part of any use permit, design review or other permit process a traffic study would be required to determine the number of peak hour traffic trips which could be generated before the interchange would have to be upgraded. The planning process would also determine the amount of the traffic mitigation fee.

3. Marin County Code

The Landor property is zoned under the Marin County Code BFC-RCR or Bayfront Conservation Resort and Commercial Recreation. A copy of the BFC and RCR sections of the zoning ordinance are attached.

The RCR zone (Marin County Code Section 22.47.050) allows activities which are related to resort and recreational activities subject to securing a use permit and either a master plan, development plan, or design review approval under the planned district regulations of the Marin County Code (Section 22.45). New or expanded residential, industrial, institutional, general commercial, mobile homes, and floating home marinas are not permitted (the existing marina, houseboats, seaplane, and heliport operations are existing legal non-conforming uses which may continue to operate provided they do so continuously and do not increase in intensity).

Examples of uses which could be found consistent with this zoning district might be hotels or conference facilities open to the public, recreational activities open to the public such as museums, classrooms, educational or interpretive centers, picnic areas, and small service facilities such as shops or restaurants which are incidental to such principally permitted uses. To the extent that the primary activity of the property is office space or retail area to sell goods and/or services and related activities, it would be classified as a general commercial use which would be prohibited in this zoning district. In each case, a proposed use would be subject to a obtaining either a master plan, a

RED Exhibit D

development plan or a design review and a use permit. The distinction between master plan, development plan, and design review is one of time and level of detail considered. The attached fact sheets illustrate the distinction among these different levels of review.

The BFC zoning overlay requires the protection of bay front resources with particular attention to providing public access to the shoreline, mitigating any impacts on bay front habitat or water resources, and encouraging recreational activities that promote the use and enjoyment of the bay. Such activities include fishing, boating, hunting, picnicking, hiking and nature study. Combined, the BFC and RCR zoning for this property indicate that water-oriented recreational activities are the preferred use for this property under current zoning.

The Marin County Code Title 24 includes parking standards for new and expanding uses subject to any discretionary permits from the County. This section of the County Code requires on-site parking for residential and non-residential land uses. Each space must be 8 1/2 by 18 feet in size.

DISCUSSION OF PROPOSED AUTOMOTIVE GALLERY

The permit process required to locate a gallery on the Landor property would include the approval of a use permit to allow the gallery activity and a development plan approval for the proposed improvements to the buildings and site including facade treatments, signage, landscaping and parking. The development plan/use permit process could take at a minimum six months to complete. The use permit, development plan, and environmental review processes are discussed more fully below.

Use Permit

A use permit would only be granted under current plans and codes if the County can find that the proposed use is consistent with relevant policy documents and would not pose a detriment to public health, safety, or welfare.

If findings of consistency with applicable plans and codes cannot be made, then amendments to the relevant policy documents would be necessary. Such amendments are not governed by State Permit Streamlining Act, so there is no mandated time frame to limit the processing time for plan amendments. On other sites in the vicinity of the Landor property, it has taken several years to process plan amendments.

The decision as to whether or not your proposed gallery would be a permitted use under the Countywide Plan, Tamalpais Community Plan and County Code would depend on whether or not the use of the space was primarily retail in nature or primarily recreational in nature, and whether the gallery has some particular link to the water. A gallery where the primary activity is to sell art to the public or to certain patrons would be considered a retail activity. A gallery where the primary activity is to display works of art for public viewing could be viewed as primarily recreational. Sales, storage, office and support areas if smaller in square footage than the principal use could be considered incidental and not themselves the subject of separate use restrictions.

From your material, it would appear that the primary purpose of the gallery is to display and sell automotive art and artifacts, similar to the gallery that closed in San Francisco and not primarily to function as a museum established for recreational purposes. In addition, the use you propose has no particular link to the waterfront location.

Since the descriptions of your use do not appear consistent with Marin County Code zoning designations or plan designations, your proposal would require rezoning, a Tamalpais Community Plan amendment, a Countywide Plan amendment, and possibly an EIR before a use permit to operate as a gallery could be granted (in practice, these permits are processed concurrently). The use permit process with plan amendments could require as long as a year or more to complete. These processes

RED Exhibit D

are described in the attached materials.

If your use is primarily a recreational gallery space for viewing of art and was related to the waterfront location, perhaps a use permit could be granted in six months if there were little controversy and if the use were further refined so that staff could find it consistent with existing policies and codes.

Development Plan

A development plan is required for your proposed activity under BFC RCR zoning and under the Community Plan. The development plan could be granted if the site improvements were sufficient to accommodate the proposed activity in an environmentally responsible fashion consistent with adopted plans and codes. As with the use permit, if consistency findings cannot be made, plan and zoning amendments may be necessary. If the helicopter and sea plane operations intend to expand their use of the property to include additional office space, this would also be subject to the use permit and development plan process. The expansion of these activities would be subject to the same standards as the proposed gallery.

Before applying to the County, you would have to prepare site plans, and a traffic and parking study to demonstrate the following: there is sufficient capacity at the Manzanita Interchange and nearby roads to accommodate the trips and parked cars for your proposed use, environmental shoreline access and wetland concerns can be addressed, and toxics on the site will be cleaned up. If all major site issues can be resolved easily in your proposed application (such as parking, traffic, access to the shoreline, hydrocarbons) than the County could consider waiving the development plan and requiring only a design review approval to address site issues.

If the traffic study you prepare shows that you would have to rebuild the interchange before you could occupy the space, then it could be several years before you could begin your proposed use unless an assessment district or other mechanism were established to fund the interchange improvements. It appears that there may be sufficient traffic capacity during the evening weekday peak period. Capacity on weekends may be more of a problem and would have to be explored by your traffic consultant.

The traffic study would be the basis for calculating a traffic impact fee. Currently, the amount of the traffic impact fee is approximately \$3,000 per peak hour automobile trip. If your gallery is considered a "specialty retail" use, then it could generate approximately 4.9 evening peak hour trips per 1000 square feet.

The following is a rough estimate of the evening peak hour trips your use would generate. THESE NUMBERS ARE APPROXIMATIONS AND MUST BE REFINED THROUGH A SITE-SPECIFIC TRAFFIC STUDY.

RED Exhibit D

Use	Trip Rate	Square Footage	Peak Trips	Fee
Gallery/ Storage	4.9	4,400	21.56	\$64,680
Office	2.0	1,000	2	\$6,000

Any intensification of use at the Landor property would have to provide sufficient off-street parking to accommodate the proposed use. If 5,000 square feet of area is devoted to gallery related use, 27 on-site parking spaces could be required which would be available for gallery use only. The precise number of parking spaces would be determined through the County environmental review process and the traffic and parking study that you submit. This could entail paving a larger area of the site for parking that is currently allocated for this parking. Any extensive site paving to accommodate parking could run up against policies that require shoreline access and the enhancement of the natural wetlands on the property. A permit application to the County would have to include parking studies that demonstrate that on-site parking could accommodate patrons while protecting site open space, vegetation, and wetlands.

Environmental Review

Both the use permit and development plan approvals will be subject to environmental review, which would probably be limited to an initial study and negative declaration if no significant impacts on the environment are uncovered or if impacts can be mitigated to a level of insignificance. Hydrocarbon contamination, wetlands protection, public access, parking, traffic and required plan amendments could trigger the requirement for an EIR if they cannot be fully mitigated.

I hope that you find this information of assistance. I have enclosed applications for the County's Use Permit, Design Review, Development Plan/Master Plan and Environmental Review processes as well as fact sheets describing each of these for your information as well as our fee schedule. If you have any additional questions, please feel free to call me at (415) 499-6269.

Sincerely,



Denise Pinkston
Planning Services Coordinator

Attachments

cc Mark Riesenfeld, Director
Annette Rose, Supervisor

RED Exhibit D

Marin County Community Development Agency

Mark J. Riesenfeld, AICP, Director

August 15, 1994

Michael S. Klein
100 Shoreline Highway
Mill Valley, CA 94941-3644

Dear Mr. Klein,

Thank you for your recent inquiry regarding the allowable uses of the Landor property in Southern Marin (Assessor's Parcel No. 052-247-01). This letter is to provide you with information regarding the allowable uses of the site under the Marin Countywide Plan, the Tamalpais Community Plan, and the Marin County Code. Following a review of the codes and policies governing land use at this property, this letter outlines the process and permits that would be required for your prospective use of the site.

You should be aware that to occupy the structures on the property, you may need to make significant improvements to the buildings. You may contact Steve Jensen, County Building Inspection Division, regarding building requirements (415) 499-6550. You may also need approvals from the Bay Conservation and Development Commission and should contact their office in San Francisco regarding your plans should you decide to proceed regarding their requirements, if any.

1. Marin Countywide Plan

The Marin Countywide Plan designates this property for recreational commercial uses and indicates that the property lies within the Bayfront Conservation Zone. The recreational commercial designation allows resorts and recreational facilities such as golf courses or recreational boat marinas. The Countywide Plan allows recreational commercial uses, a building floor area not to exceed a range of 5% to 30% of the parcel area, and requires special consideration of shoreline preservation, access, and Richardson Bay water quality issues in any proposed new development of the site.

2. Tamalpais Community Plan

The Tamalpais Community Plan indicates that the highest priority uses of the area where this parcel is located are a shoreline park and a nature observation and study center. The Plan requires a master plan for any new development in this area, indicates that resort and resort-oriented recreation facilities are allowable uses provided that building heights and lot coverage are minimized and public access to the shoreline recreation resources in the area is enhanced (LU 32.1a and 1b).

The Tamalpais Community Plan also includes specific information regarding the Landor parcel. The priority recommendation for the site is public acquisition, which was under negotiation at the time of the Plan adoption between the land owner and the County (Program LU32.1c). The Plan also states that partial dedication to open space should be required if development of the site is approved. The Plan specifies policies for the development of the Landor property as follows:

- a) Floor area ratio of 0.30 (maximum) of the dry land area, or 21,000 square feet of development, whichever ever is less;

RED Exhibit D

- b) Building Height - maximum of 33 feet from Mean Sea Level;
- c) Landscaping - 30 percent of the dry site;
- d) Traffic impact costs shall be mitigated by developers;
- e) The BCDC line of highest tidal action should be respected;
- f) Parking within public streets is to be exclusively used for the public access, therefore, all parking for new or intensified uses of the property must be provided on-site not in the public right of way;
- g) If underground parking is provided and the area which would have been dedicated to surface parking is retained in an open space type use, deviations from the height limit may be considered in order to accommodate parking.

In addition to these site specific policies, the Tamalpais Plan includes broad policies that would be applied to development including requirements for the provision of habitat buffer zones to protect wetlands and bay waters, preservation of lands within the 100 foot shoreline band, and guidelines for the enhancement and improvement of public access along the shoreline (LU33.1a).

The Tamalpais Community Plan also includes considerable information regarding traffic capacity which might be available to serve any intensification of use or new development of the Lander property. In particular, the interchange serving the Lander property, the Stinson Beach/Highway 101 or Manzanita Interchange exit operates poorly for certain turning movements and at certain times of the day causing excessive congestion.

The Plan requires that improvements to the Manzanita Interchange and surrounding roadways be completed before any new development can occur that exceeds the currently available roadway capacity (which is very limited). In addition, the Plan requires that all new developments or intensification of activity at existing developed sites which trigger a discretionary review (such as a use permit or design review) pay a traffic mitigation fee to pay for their fair share of these improvements. The Plan states that if proposals cannot be accommodated within the proposed transportation improvements, the project must be modified to reduce peak hour traffic trips or it will not be approved.

As part of any use permit, design review or other permit process a traffic study would be required to determine the number of peak hour traffic trips which could be generated before the interchange would have to be upgraded. The planning process would also determine the amount of the traffic mitigation fee.

3. Marin County Code

The Lander property is zoned under the Marin County Code BFC-RCR or Bayfront Conservation Resort and Commercial Recreation. A copy of the RCR and BFC sections of the zoning ordinance are attached.

The RCR zone (Marin County Code Section 22.47.050) allows activities which are related to resort and recreational activities subject to securing a use permit and either a master plan, development plan, or design review approval under the planned district regulations of the Marin County Code (Chapter 22.45). New or expanded residential, industrial, institutional, general commercial, mobile homes, and floating home marinas are not permitted (the existing marina, houseboats, seaplane, and heliport operations are existing legal non-conforming uses which may continue to operate provided they do so continuously and do not increase in intensity).

Examples of uses which could be found consistent with this zoning district might be hotels or conference facilities open to the public, recreational activities open to the public such as museums, classrooms, educational or interpretive centers, picnic areas, and small service facilities such as shops or restaurants which are incidental to such principally permitted uses. To the extent that the primary activity of the property is restaurant, office space or retail area to sell goods and/or services

RED Exhibit D

and related activities, it would be classified as a general commercial use which would be prohibited in this zoning district. In each case, a proposed use would be subject to a obtaining either a master plan, a development plan or a design review and a use permit. The distinction between master plan, development plan, and design review is one of time and level of detail considered. The attached fact sheets illustrate the distinction among these different levels of review.

The BFC zoning overlay requires the protection of bay front resources with particular attention to providing public access to the shoreline, mitigating any impacts on bay front habitat or water resources, and encouraging recreational activities that promote the use and enjoyment of the bay. Such activities include fishing, boating, hunting, picnicking, hiking and nature study. Combined, the BFC and RCR zoning for this property indicate that water-oriented recreational activities are the preferred use for this property under current zoning.

The Marin County Code Title 24 includes parking standards for new and expanding uses subject to any discretionary permits from the County. This section of the County Code requires on-site parking for residential and non-residential land uses. Each space must be 8 1/2 by 18 feet in size.

DISCUSSION OF PROPOSED RESTAURANT USE

The permit process required to locate a restaurant on the Landor property would include the approval of a use permit to allow the restaurant activity. A development plan would be required for the proposed improvements to the buildings and site including facade treatments, signage, landscaping and parking. The development plan/use permit process could take six months or more to complete. The use permit, development plan, and environmental review processes are discussed more fully below.

Use Permit

A use permit would only be granted under current plans and codes if the County can find that the proposed use is consistent with these policy documents and would not pose a detriment to the public health, safety or welfare. If findings of consistency with applicable plans and codes cannot be made, then amendments to the relevant policy documents would be necessary. Such amendments are not governed by State Permit Streamlining Act, so there is no mandated time frame to limit the processing time for plan amendments. On other sites in the vicinity of the Landor property, it has taken several years to process plan amendments.

Based on your letter, your proposed restaurant would not be a permitted use under the Countywide Plan, Tamalpais Community Plan and County Code. Restaurants are considered general commercial enterprises which are not allowed by the County Zoning Code or the Community Plan at this location. Such uses are not primarily recreational in nature and rarely have any particular link to the water. (If the restaurant is ancillary to a recreational use of the site, as you suggest for arts or environmental purposes, the plan amendments would perhaps not be required). Since a restaurant has no particular link to the water, your proposal should consider how to link the use to the site through improvements such as the environmental activities you described in your letter. In order to receive a use permit of a restaurant, you would have to also apply for a rezoning, a Tamalpais Community Plan amendment, and a Countywide Plan amendment which would be processed concurrently with the use permit. An EIR would probably be required due to the required plan amendments. These processes are described in the attached materials.

Development Plan

A development plan is required under the BFC RCR zoning and under the Community Plan. The development plan would be granted if the site improvements were sufficient to accommodate the proposed activity in an environmentally responsible fashion consistent with adopted plans and codes.

RED Exhibit D

As with the use permit, if consistency findings cannot be made, plan and zoning amendments may be necessary.

Before applying to the County, you would have to prepare site plans, and a traffic and parking study to demonstrate the following: that there is sufficient capacity at the Manzanita Interchange to accommodate the trips from your proposed use, environmental shoreline access and wetland concerns can be addressed, and toxics on the site will be cleaned up. Without triggering the improvement of the interchange. If major site issues (such as parking, traffic, shoreline access, hydrocarbon contamination) are addressed by your application, then the County could consider waiving the development plan and requiring a design review instead.

If the traffic study shows that you would have to rebuild the interchange before you could occupy the space, then it could be several years before you could begin your proposed use unless the County were able to establish an assessment district or other mechanism for funding the interchange improvements. It appears that there may be sufficient traffic capacity during the evening weekday period. Capacity on weekends may be more of a problem and would have to be explored by your traffic consultant.

The traffic study would be the basis for calculating a traffic impact fee. Currently, the amount of the traffic impact fee is approximately \$3,000 per peak hour automobile trip. Using standard trip generation rates for restaurants, your use would generate approximately 7.7 evening peak hour trips per 1000 square feet. These peak trips could perhaps be reduced if your hours of operation were established to avoid opening for meals until after the peak evening commute has ended.

The following is a rough estimate of the evening peak hour trips your use would generate. THESE NUMBERS ARE APPROXIMATIONS AND MUST BE REFINED THROUGH A SITE-SPECIFIC TRAFFIC STUDY.

Use	Trip Rate	Square Footage	Peak Trips	Estimated Fee
Restaurant	7.7	10,000	77	\$231,000

Any intensification of use at the Landor property would have to provide sufficient off-street parking to accommodate the proposed use. If 8,000 to 10,000 square feet of area is devoted to restaurant-related use, 50 or more on-site parking spaces could be required which would be available for restaurant patrons and employees only. This could entail paving a larger area of the site for parking that is currently allocated for parking. Any extensive site paving to accommodate parking could run up against policies that require shoreline access and the enhancement of the natural wetlands on the property. A permit application to the County would have to include parking studies that demonstrate that on-site parking could accommodate patrons while protecting site open space, vegetation, and wetlands.

The Tanilpais Community Plan indicated that underground parking could be necessary to accommodate expanded use of the property and includes policies that allow for underground parking provided that surface area that would have otherwise been used for parking be devoted to open space. The precise number of required parking spaces would be determined by the County through the environmental review process and based on the parking and traffic study you submit.

If the helicopter and sea plane operations intend to expand their use of the property to include additional office space, this would be subject to a new use permit or use permit amendment for these activities. The expansion of these activities would be subject to the same standards as the proposed restaurant.

RED Exhibit D

Environmental Review

Both the use permit and design review approvals will be subject to environmental review which would be limited to an initial study and negative declaration if no significant impacts on the environment are uncovered or if impacts can be mitigated to a level of insignificance. If policy documents have to be amended to accommodate the proposed activities, then an environmental impact report (EIR) might be required. Given the usual intensity of restaurants and their high parking requirement, an EIR would most likely be required to address parking and traffic impacts for a restaurant on this site. In addition, the Landor site apparently has some hydrocarbon contamination which would be examined at during the environmental process and might require an EIR level of review.

I hope that you find this information of assistance. I have enclosed applications for the County's Use Permit, Design Review, Development Plan/Master Plan and Environmental Review processes as well as fact sheets describing each of these for your information as well as our fee schedule. If you have any additional questions, please feel free to call me at (415) 499-6269.

Sincerely,



Denise Pinkston
Planning Services Coordinator

Attachments

cc. Mark Riesenfeld, Director
Annette Rose, Supervisor

RED EXHIBIT D

**Marin County
Community Development Agency**

Mark J. Riesenfeld, AICP, Director

March 23, 1994

Price & Price
Attn: Steven Price
655 Redwood Highway, Suite 185
Mill Valley, CA 94941

RE: Seaplane and Office Use
240 Redwood Highway, Mill Valley
A.P.# 052-242-01

Dear Mr. Price:

As we discussed, I have researched the zoning and land use designations for this property, as well as the permit history in an effort let you know what issues you may be faced with in continuing the existing seaplane operation and expanding use of this property should you purchase this site. Due to the location of this parcel within San Francisco Bay, and the existence of hazardous materials on this site, any development or use of this site is subject to regulation by a variety of agencies including the Marin County Community Development Agency, the Bay Conservation and Development Commission, and potentially, the State Lands Commission, the California Department of Fish and Game, the Regional Water Quality Control Board, and the Army Corps of Engineers.

Countywide and Tamalpais Community Plans:

The Marin Countywide Plan designates this property Recreational Commercial (RC), and establishes a maximum floor area ratio of between 5 and 30%. The priority recommendation for this property suggested by Tamalpais Community Plan is that the site be acquired by a public agency, and recommends partial dedication of the site for open space should the property be redeveloped. The Community Plan also establishes guidelines which are to govern all development within the shoreline area. These guidelines restrict potential uses, seek public access, require circulation improvements, and restrict the types of signs and lighting which may be located on these properties (refer to attachments 3 & 4). Specifically, Community Plan Land Use Policy 32.1e establishes the maximum floor area for this property to be 30% of the dry land area of the lot or 12,000 square feet, whichever is less, and the maximum building height to be 33 feet above Mean Sea Level (approximately 25 feet above finished grade).

Zoning Information:

Bay Front Conservation Zone, Resort and Commercial Recreation District

The subject property is zoned BFC-RCR (Bay Front Conservation Zone, Resort and Commercial Recreation District). The purpose of this district is to create and protect resort facilities. This zoning district requires that all development be subject to Master Plan, and allows, subject to securing a use permit, all uses and normal accessory uses appropriate for a resort area or which are desirable or necessary for public service, utility service or for setting the recreation industry, and prohibits residential, industrial, general commercial

RED Exhibit D

uses, mobile home parks, and floating home marinas. Consequently, the existing floating home marina is legal non-conforming use. Office and retail uses would not be permitted on the subject property unless they were incidental and accessory to the primary use of this property for resort and commercial recreation uses.

Environmental Assessment

The BFC zoning district requires that any physical improvements to this property be preceded by an Environmental Assessment to evaluate the physical and environmental constraints of this site, including visual impacts, public access, water quality, traffic, and sensitive habitats. Depending on the scope of work, the Community Development Agency Director may waive this requirement. This determination, and any necessary environmental assessment would have to be prepared prior to submitting a development proposal, and should be used to direct the design of improvements.

Development Issues:

Federal Emergency Management Administration - FEMA

The subject property is situated within a flood zone and has experienced flooding in the recent past. County records indicate that the finished floor of the existing structure was at 4.6 feet NGVD 1990, while it was 5.6 feet NGVD in 1974, indicating that the site has settled approximately one foot in 15 years. The highest estimated tide is 7.0 feet which is 2 1/2 feet higher than existing floor. Consequently, this structure does not comply with the FEMA requirements for flood protection.

The Federal Government requires that structures which do not meet FEMA requirements be brought into compliance at the time that total value of all work performed on the structure, for the life of the structure, exceeds 50% of the structures appraised value. Consequently, the County will keep track of repair and maintenance activities and structural improvements at this property. At the time that the total value of these improvements exceeds 50% of the structures value, you would be required to elevate the structure to the minimum finished floor elevation to protect against flooding. This physical change would be subject to review and approval by the County, BCDC, and other public agencies.

Toxic Clean-up

As we have discussed, this site may have hazardous materials within the soils. Whoever owns the property is responsible for clean-up of this hazardous material. Such remediation would have to be coordinated with the Regional Water Quality Control Board.

Traffic

The intersection of the Southbound off-ramp from Highway 101 and Highway 1 presently fails. Any proposal to expand use at this property which would increase traffic through this intersection is going to require that you accommodate your fair share of the necessary improvements to accommodate this additional traffic.

Proposed Changes:

You indicated that you understood that the seaplane operation was allowed to have 5 airplanes with up to three operating simultaneously. You also indicated that you were interested in relocating your investigations office to this property. The attached Use Permit Approval from 1981 established a maximum of four commercial aircraft at the base, but allowed that only two may be simultaneously used for revenue producing purposes. As discussed above, office uses are only permitted when they are incidental to resort and commercial recreation uses. Consequently, your investigation office could not be located at this site. I have attached a summary of the property history which indicates that the heliport, seaplane operation, and houseboats are the only uses

RED Exhibit D

permitted at this property. Please be aware that these uses may not exceed the restrictions which were established for these historic uses without first getting approval.

I hope that this information answers your questions regarding this property. Please contact me at (415)499-6269 if you have additional questions or would like this information clarified.

-Sincerely,

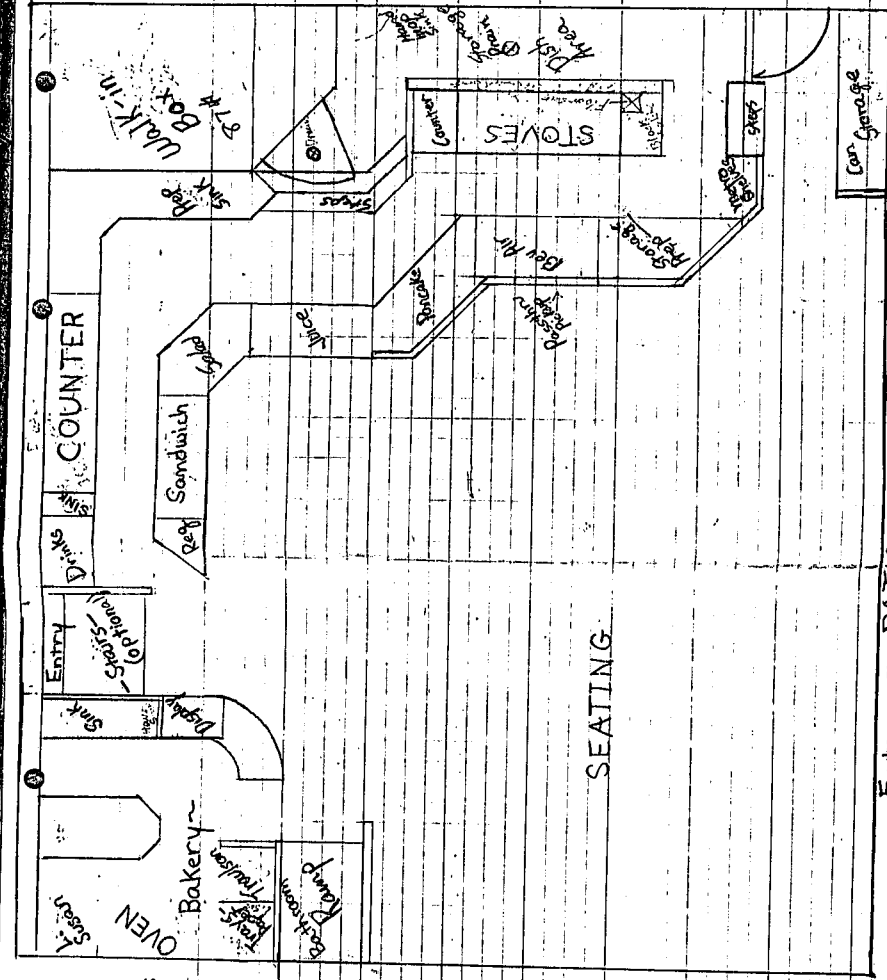

Scott Davidson
Principal Planner

cur/sd/letters/price.doc

cc: Hugh Lawrence, Attorney at Law
Walter and Josephine Lander
Mark J. Riesenfeld, CDA Director

Attachments: 1. Property History
2. 1982 Use Permit Approval
3. Tamalpais Community Plan Appendix D
4. Tamalpais Community Plan Excerpts (P. III-70 through III-77)

RED Exhibit D



W
 S
 ↑ Freeway E
 N
 Rough Drawing - Sally's
 - 1048 # Open Floor
 = 21 Pkg. spaces
 - 675 # True
 Seating Area
 for Seating

$\frac{1}{4} = 1'$
 3/8/95
 by B. Sears

Entry ← PATIO → Entry

COMMUNITY DEVELOPMENT AGENCY

COUNTY OF MARIN

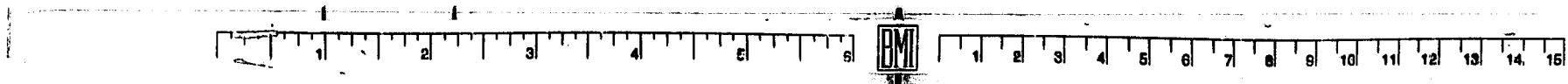
PLANNING DIVISION

PROJECT TYPE & YEAR: PR 1995

A.P.N. 052-247-0102,
03

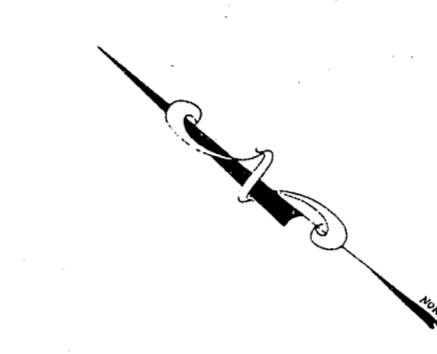
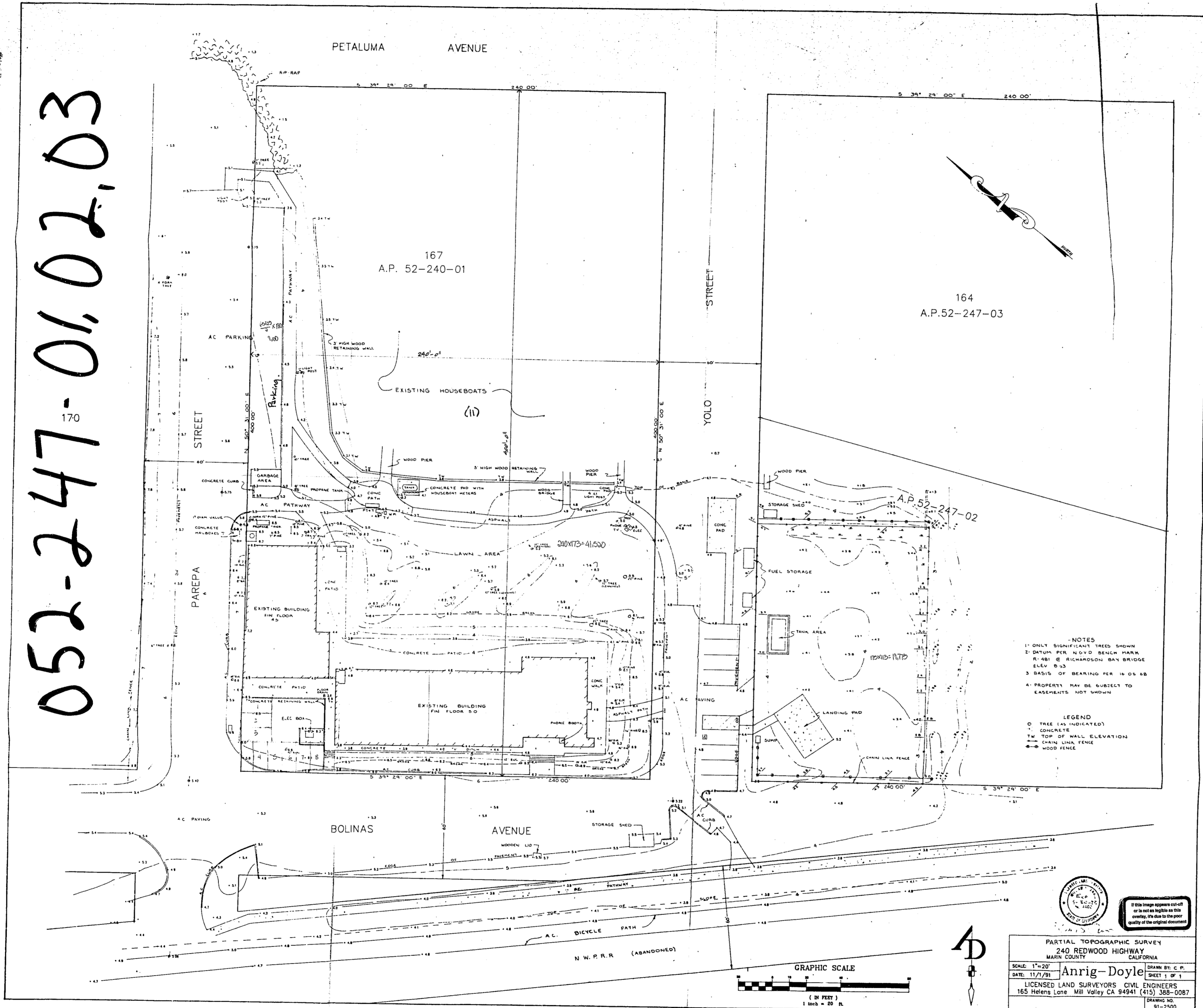
NAME

LANDOR, WALTER



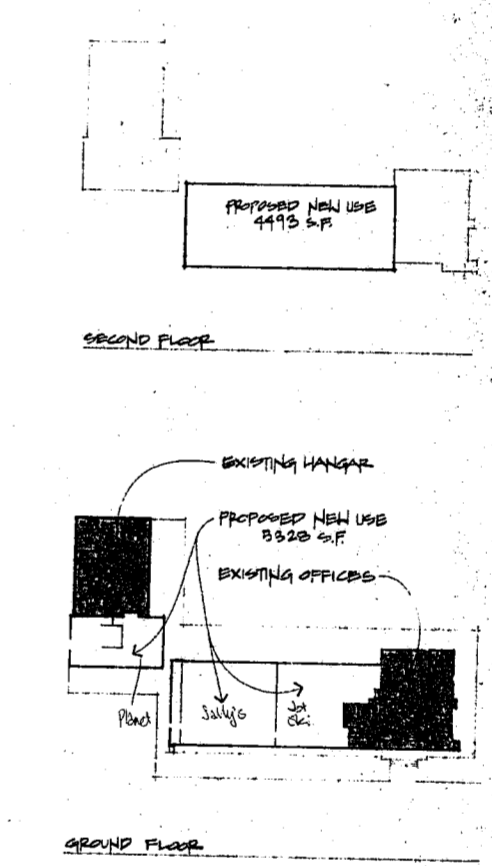
24X

052-247-01, 02, 03



- NOTES**
1. ONLY SIGNIFICANT TREES SHOWN
 2. DATUM PER NGVD BENCH MARK R. 481 @ RICHARDSON SAN BRIDGE ELEV. 9.23
 3. BASIS OF BEARING PER 16 05 AB
 4. PROPERTY MAY BE SUBJECT TO EASEMENTS NOT SHOWN

- LEGEND**
- TREE (AS INDICATED)
 - CONCRETE
 - TOP OF WALL ELEVATION
 - DRAIN LINE FENCE
 - WOOD FENCE



Heard High Water - 25'
 Dryland 200' - 41.515' ± 16.5cm
 75' WOOD = 1/2" HAUD

RECEIVED
 MAR 17 1955
 COUNTY OF MARIN
 PLANNING DEPARTMENT

Redo

Owner of Record: **Willard Linder**
 2375 Linden Street
 San Francisco, CA 94133
 415.398.1218

Applicant: **Silvia Price**
 Trust and Mortgage
 616 Redwood Highway, Suite 105
 Sausalito, CA 94965
 415.326.5222

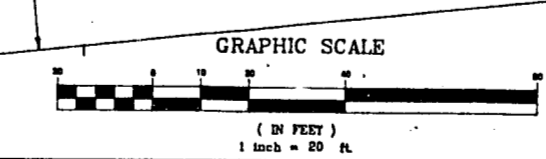
Engineer: **None**

Architect: **Wain Construction Associates**
 1048 Golden Gate Blvd #20
 San Francisco, CA 94111
 415.398.8944

PARTIAL TOPOGRAPHIC SURVEY
 240 REDWOOD HIGHWAY
 MARIN COUNTY
 CALIFORNIA

SCALE: 1"=20'
 DATE: 11/17/54
 LICENSED LAND SURVEYORS CIVIL ENGINEERS
 165 Helens Lane Mill Valley CA 94941 (415) 388-0087

DRAWING NO. 91-2300



30 X

Community Development Agency

Mark J. Riesenfeld, AICP, Director

**STAFF REPORT TO THE DEPUTY ZONING ADMINISTRATOR
PRICE USE PERMIT (HELIPORT)**

Item No:	2.	Application #:	UP 96-003/DX 96-292
Applicant:	Steve Price	Owner:	Clayton Mitchell and Susan Keegin
Property Address:	240 Redwood Highway, Mill Valley	APN:	052-247-01, 02
Hearing Date:	February 29, 1996	Planner:	Thomas Lai

RECOMMENDATION:	Approval with Conditions
APPEAL PERIOD:	5 Working Days to Planning Commission
LAST DATE FOR ACTION:	April 13, 1996

PROJECT DESCRIPTION:

This is an application to modify the hours of operation for the Marin Heliport to allow weekday flights between 6:00 a.m. and 6:30 p.m. and to allow weekend flights between 9:00 a.m. and 6:00 p.m.. The heliport currently operates between 6:30 a.m. and 5:45 p.m. on weekdays and between 9:00 a.m. and 4:00 p.m. on weekends. The proposed project would retain the existing limit of six flights per day. (A flight is defined as one take-off and one landing operation.) A total of three full-time employees would be utilized during business hours.

GENERAL INFORMATION:

Countywide Plan Designation:	Dryland Portion : RT (Recreational Commercial, 5 to 30% floor area ratio) Submerged Portion : BFC-RT (Bayfront Conservation, Recreational Commercial, 5 to 30% floor area ratio)
Zoning:	BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation)
Lot size:	4.4 acres
Adjacent Land Uses:	Houseboat marina, seaplane base, office, and industrial
Vegetation:	Pine trees with understory of predominantly introduced shrubs and ornamentals adjoining wetlands
Topography and Slope:	Flat
Environmental Hazards:	None identified

The Environmental Coordinator has determined that this project is exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1 because the operation of an existing facility involving negligible expansion would not create adverse environmental effects.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accord with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property.

PLAN CONSISTENCY:

The proposed project is generally consistent with the goals and policies of the Marin Countywide Plan, the Tamalpais Area Community Plan, and Title 22 (Zoning) of the Marin County Code. Please refer to the plan consistency findings contained in the attached resolution.

BACKGROUND:

The Marin Heliport was established in 1962 under the governing M-1-H (Light Industrial) zoning district at the time. The use became legal non-conforming when the County rezoned the property to a RCR (Resort, Commercial, Recreational) zoning district in 1966. On May 2, 1995, the Board of Supervisors acknowledged the legal non-conforming status of the heliport by identifying its use as six helicopter flights a day, subject to the following hours of operation: 6:30 a.m. to 5:45 p.m. weekdays and 9:00 a.m. to 4:00 p.m. weekends. The current Use Permit application seeks approval to modify the hours of operation to allow the helicopter operator to provide traffic reports for public news broadcasts during the early morning and late afternoon commute periods.

In addition to the heliport, the subject property is developed with an 11-houseboat marina (Commodore Marina) and a seaplane base (Commodore Seaplanes). The houseboat marina is legal non-conforming with respect to the current BFC-RCR zoning, and the seaplane use is permitted under the terms of previous Use Permits issued in 1953 and 1981. The property is also partially used by an education center which is comprised of Kid's Headquarters (The Planet). Since this use is not permitted by the governing BFC-RCR zoning district, staff has incorporated a recommended condition of approval to require the elimination of this use within 60 days from the date of approval.

ANALYSIS:

The governing BFC-RCR zoning district permits uses that are deemed desirable or necessary for public service, subject to Use Permit or Master Plan approval. The continued operation of the heliport would provide a public service relating to broadcast of traffic reports and emergency operations such as medical flights. In addition, the proposed change in the hours of operation does not significantly expand or modify the underlying nature or intensity of the heliport use and would not affect the established number of daily flights, the number of employees, or the land and building area occupied by the use. Based on these factors, staff is recommending that the proposed Use Permit be approved for a period of two years, subject to an administrative review by the Community Development Director at the end of one year to determine compliance with the conditions of approval. Approval of the Use Permit would eliminate the legal non-conforming status of the heliport and consequently establish use restrictions governing the number of flights, the hours of operation, the number of employees, and the general location of the heliport activities.

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a public hearing, and approve the Price Use Permit based on the findings and subject to the conditions contained in the attached resolution.

- Attachments:
1. Proposed resolution recommending approval of the Price Use Permit
 2. CEQA Categorical Exemption
 3. Board of Supervisors Resolution 95-105
 4. Location Map
 5. Assessor's Parcel Map
 6. Department of Public Works Memorandum, (2/5/96)
 7. Office of Waste Management Memorandum, (11/17/95)
 8. Tamalpais Design Review Board Memorandum, (11/15/95)

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. _____

A RESOLUTION APPROVING THE PRICE USE PERMIT
ASSESSOR'S PARCEL NUMBERS 052-247-01, 02

SECTION I: FINDINGS

- I. WHEREAS Steve Price submitted an application to modify the hours of operation for the Marin Heliport to allow weekday flights between 6:00 a.m. and 6:30 p.m. and to allow weekend flights between 9:00 a.m. and 6:00 p.m.. The heliport currently operates between 6:30 a.m. and 5:45 p.m. on weekdays and between 9:00 a.m. and 4:00 p.m. on weekends. The proposed project would retain the existing limit of six flights per day. A total of three full-time employees would be utilized during business hours. Zoning for the 4.4 acre property is BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation). The subject property is located at 240 Redwood Highway, Mill Valley, and is further identified as Assessor's Parcel Numbers 052-247-01, 02.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on February 29, 1996, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the project is exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1 because the operation of an existing facility with negligible expansion would not create adverse environmental effects.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is generally consistent with the goals and policies contained in the Marin Countywide Plan and the Tamalpais Area Community Plan because: (1) the project would continue use of the existing heliport facility to allow the helicopter operator to provide traffic reports for public news broadcasts during the early morning and late afternoon commute periods; (2) the project would continue provision of employment opportunities on an infill site that is served by existing roadways and necessary public and community facilities within the City Centered Corridor; and (3) the project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Master Plan requirements because the project would not significantly expand or modify the operation of the heliport beyond the level of use that was acknowledged by the Board of Supervisors through adoption of Resolution Number 95-105 on May 2, 1995. The Board determined that the legal non-conforming level of use for the heliport consists of a maximum of six flights per day between the hours of 6:30 a.m. and 5:45 p.m. during weekdays and 9:00 a.m. and 4:00 p.m. during weekends. With exception to the proposed modifications to the hours of operation, the heliport would be limited to six flights per day, would retain the existing number of employees, and would occupy the existing amount of land and building area on the subject property.
- VI. WHEREAS the Marin County Deputy Zoning Administrator finds that continuation of the heliport use on the subject property is generally consistent with the intent and objectives of the governing BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation) zoning district because it provides a public

service relating to the broadcast of traffic reports and the provision of emergency operations such as medical flights. Additionally, the proposed changes to the hours of operation does not significantly expand or modify the underlying nature or intensity of the heliport use and would not affect the established number of daily flights, the number of employees, or the land and building area occupied by the use.

VII. WHEREAS the Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve a Use Permit (Section 22.88.020 of the Marin County Code), as specified below.

The establishment, maintenance or conducting of the use for which a Use Permit is sought will not in this case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of this use and will not, under the circumstances of the case be detrimental to the public welfare or injurious to property or improvements in said neighborhood.

1. Continued operation of the heliport on the subject property would not adversely affect the surrounding area because the use has existed continuously since 1962, and the proposed changes in the hours of operation would not result in a significant disruption of surrounding areas beyond the level which has historically existed and which currently exists.
2. The project does not significantly expand or modify the heliport use because the present and acknowledged level of six flights per day and three full-time employees would be retained, and because the facility would not expand beyond the existing land and building area that is presently occupied by the use on the subject property.
3. The Department of Public Works has determined that existing off-street parking would not be adversely affected by the modified hours of operation because the existing number of flights and employees would remain unchanged.
4. The heliport facility would not result in adverse visual impacts to surrounding areas because conditions of approval would require the applicant to submit a landscape plan to incorporate shrubs along the perimeter foundation of a fuel storage tank to provide visual screening.
5. The grant of this Use Permit for continued use of the heliport with modifications to the hours of operation would not be detrimental to the health, safety, morals, comfort, or welfare of persons residing in the surrounding neighborhood.

VIII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from the requirements for Design Review pursuant to Marin County Code Section 22.82.030(4) because: (1) the proposed modification to the hours of operation is minor and incidental to the heliport use; and (2) the project would not result in substantial alternation of the existing buildings or heliport facilities beyond minor exterior improvements associated with routine maintenance and upkeep of the property.

IX. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from Tidelands requirements pursuant to Marin County Code Section 22.77.010 because minor exterior improvements associated with routine maintenance and upkeep of the property are considered minor and incidental.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Price Use Permit subject to the conditions of approval as specified below.

Community Development Agency - Planning Division

1. Pursuant to Chapter 22.88 of the Marin County Code, the Price Use Permit 96-003 is approved for the continued use and operation of the Marin Heliport over a portion of the property located at 240 Redwood Highway, Mill Valley, and further identified as Assessor's Parcel Numbers 052-247-01, 02. This Use Permit approves the heliport as a conforming use on the subject property and replaces the previous non-conforming status of this use, which may now occur only with a valid use permit and which is subject to the restrictions contained herein.
2. Use and operation of the heliport shall be limited to a maximum of six flights per day and the following hours:

Monday to Friday: 6:00 a.m. to 6:30 p.m.

Saturday, Sunday: 9:00 a.m. to 6:00 p.m.

(A flight is defined as one take-off and landing operation.)
3. A maximum of three full-time employees is permitted in conjunction with the heliport. Commercial office functions beyond that associated with administrative activities for the heliport are not permitted.
4. Helicopter take-off, landing, refueling, and storage shall be restricted within the existing facilities located on Assessor's Parcel Number 052-247-02. Administrative activities shall be limited to the southerly portion of the building which fronts Bolinas Avenue and located on Assessor's Parcel Number 052-247-01. Expansion of the existing building and land area occupied by the heliport is not permitted.
5. Use and operation of the seaplane base (Commodore Seaplanes) is permitted subject to the terms of the Use Permit approvals of 1953 and 1981. Use and operation of the houseboat marina (Commodore Marina) shall be governed by the provisions contained in Chapter 22.78 (Nonconforming Uses) of the Marin County Code.
6. WITHIN 60 DAYS FROM THE DATE OF APPROVAL, the applicant shall secure an inspection from the Community Development Agency Planning Division staff to confirm that the subject property is utilized only by the heliport, seaplane, and houseboat marina. The Kid's Headquarters (The Planet) is not permitted under the terms of this Use Permit approval.
7. WITHIN 60 DAYS FROM THE DATE OF THIS APPROVAL, the applicant shall submit a landscape plan for review and approval which incorporates sufficient number of shrubs along the perimeter of the fuel storage tank for visual screening. The landscaping shall consist of drought tolerant and native species that are also tolerant of salt water intrusion, wind, salt spray, and saline soils associated with a bayfront environment.
8. WITHIN SIX MONTHS FROM THE DATE OF THIS APPROVAL, the applicant shall demonstrate that all approved landscaping has been planted along with an automatic drip irrigation system.

9. This Use Permit is subject to revocation procedures contained in Sections 22.88.040 and 22.88.045 of the Marin County Code in the event any of the terms of this approval are violated or if the uses are conducted or carried in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or detrimental to the public welfare or injurious to property or improvements in the neighborhood.
10. Any modification to the use or operation of the heliport shall be submitted to the Community Development Director to determine whether a Use Permit Amendment or Master Plan would be required.

SECTION III: VESTING, PERMIT DURATION AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Use Permit approval by completing all of the required work within six months from the date of this approval, or all rights granted in this approval shall lapse. An extension of up to 30 additional days may be granted by the Community Development Director if the applicant submits a letter requesting the extension and demonstrates due diligence in meeting the required conditions.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid for a period of two years from the date of approval, subject to an administrative review by the Community Development Director at the end of one year to determine compliance with the conditions of approval. An application for a Use Permit Renewal shall be submitted to the Community Development Agency at least 60 days prior to expiration of this Use Permit.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$500.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on March 7, 1996.**

SECTION IV:

PASSED AND ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 29th day of February, 1996.

BRIAN CRAWFORD, AICP
DEPUTY ZONING ADMINISTRATOR

Attest:

Patrice Stancato, DZA Secretary

FILING REQUESTED BY AND
WHEN FILED RETURN TO:

Marin County Community Development Agency
Planning Division
3501 Civic Center Drive, #308
San Rafael, CA 94903

Attn: Tom Lai, AICP, Senior Planner

NOTICE OF EXEMPTION

Marin County
Environmental Coordination and Review

February 12, 1996

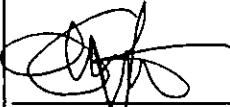
1. **Project Name:** Price Use Permit 96-003/Design Review Exemption 96-292
2. **Project Location:** 240 Redwood Hwy., Mill Valley
Assessor's Parcel #052-247-01 & 02/Marin County

3. **Project Description:**
This is an application to modify the hours of operation for the Marin Heliport to allow weekday flights between 6:00 a.m. and 6:30 p.m. and to allow weekend flights between 9:00 a.m. and 6:00 p.m., where the existing operation is approved for weekday flights between 6:30 a.m. and 5:45 p.m. and for weekend flights between 9:00 a.m. and 4:00 p.m.. The Heliport's current limit of six flights per day would remain unchanged. The Heliport operates with a total of three employees during business hours. Zoning for the 4.4 acre property is BFC-RCR (Bayfront Conservation, Resort and Commercial Recreation).

4. **Public Agency Approving Project:** Deputy Zoning Administrator
5. **Project Sponsor:** Steve Price
6. **CEQA Exemption Status:** Categorical Exemption (Section 15301, Class 1)
7. **Reasons for Exemption:** **The operation of an existing private facility involving negligible expansion would not create adverse environmental effects.**

Project Planner:

Reviewed by:


Tom Lai, AICP
Senior Planner

Tim Haddad
Environmental Coordinator

Telephone: (415) 499-6269

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. 95-105

A RESOLUTION DENYING THE HELI USA APPEAL
AND SUSTAINING THE PLANNING COMMISSION'S DETERMINATION
THAT THE CURRENT LEVEL OF USE ON THE HELIPORT PROPERTY
EXCEEDS THE LEGAL NON-CONFORMING USE ESTABLISHED IN 1981 AND
REAFFIRMED 1983

ASSESSOR'S PARCEL NO. 052-247-01,02

SECTION I: FINDINGS

- I. WHEREAS, the Marin County Board of Supervisors finds that Isidoor Bornstein has filed, on behalf of Heli USA, an appeal of the Planning Commission's Determination that the current level of use on the heliport property exceeds the legal non-conforming use established in 1981 and reaffirmed in 1983. The appellant contends that the legal non-conforming use is the use established by SFO Helicopters in 1966. The basis for this statement is the appellants' position that a legal non-conforming use may change from a high level of use, to a less intensive use and then re-establish to the higher intensity of use at a later date. The appellant also claims that the levels of use established in 1981 and reaffirmed in 1983 do not accurately reflect the level of use that was occurring on the property at that time.

- II. WHEREAS, the Board of Supervisors recognizes the heliport use became legal non-conforming on November 15, 1966 when the property was rezoned from M-1-H (Light Industrial District) to R-C-R (Resort, Commercial, Recreational). The legal non-conforming use was reduced for a period of more than six months in 1976 when SFO Helicopters ceased business and left the site, limiting the heliport use to the level of operation established by Commodore Helicopters.

- III. WHEREAS, the Board of Supervisors finds that Commodore Helicopters level of use was established by Lu Hurley, the operator of Commodore Helicopters in letters dated January 9, 1981 and February 20, 1981 ("the Hurley Letters"). The level of use was reaffirmed by the Planning Department in a letter to the Board of Supervisors dated August 5, 1983 ("the Board Letter"). The Board of Supervisors finds that these three letters describe the level of heliport use in 1981 as, 3.5 flights per day in the winter months and 6 flights per day in the summer months. Of these flights approximately 6 charter flights occurred lasting 1 to 1.5 hours each month between 9:00 a.m. and 4:00 p.m., two traffic report flights were flown each weekday between 6:30 a.m. and 5:45 p.m. and refueling flights for helicopters engaged in tourist flights at Pier 43 in San Francisco also occurred. The Board of Supervisors finds that the maximum intensity of the legal non-conforming use established by the County records is 6 flights per day, whether for tourist, charter or refueling purposes.

- IV. WHEREAS, the Board of Supervisors finds that the legal non-conforming level of use is also described in a February 5, 1985 site inspection memo from Debbi Poiani, in a technical report for the Noise Element of the Countywide Plan, written by Illingworth and Rodkin dated October 14, 1987, and verified in a telephone conversation with a Commodore representative on February 25, 1991 as documented in the Noise Element of the Countywide Plan. The Board of Supervisors finds that these documents establish the legal non-conforming use to be, 3.5 flights per day in the winter, 6 flights per day in the summer, with an average of 25 flights per week
- V. WHEREAS, the Board of Supervisors finds that while the pilot logs submitted by the appellant provide an overview of the daily heliport activities, the logs do not provide conclusive evidence that the levels of use documented in 1981 and 1983 the Hurley Letters and the Board Letter were inaccurate.
- VI. Whereas, the Board of Supervisors finds that refueling of helicopters engaged in tourist flights from Fisherman's Wharf no longer occurs at the Marin heliport and ceased operation in approximately 1988. However, refueling flights nevertheless, are included in the total number of flights established as legal non-conforming.
- VII. WHEREAS, the Board of Supervisors interprets Marin County Code, Title 22, Section 22.78.010 to require that once a use ceases it may not be re-established unless it is conforming to the zoning district. In 1976 the number of flights was reduced by 14 flights per day as documented in SFO Helicopters Flight Guide and Schedule dated 10-27-74. This reduction in flights dramatically changed the level of the legal non-conforming use. Documentation of Commodore's heliport use in 1976 was established by the operator of Commodore Helicopters in the Hurley Letters and reaffirmed by the Board Letter. The Board of Supervisors finds that the reduction in flights for a period of more than six months in 1976 constituted a change in use. The re-establishment of the 1966 use almost 30 years later would be considered an increase in the legal non-conforming use.
- VIII. WHEREAS, the Board of Supervisors finds that the type of flight, such as tourist, charter and refueling, does not necessarily describe the intensity of heliport use. Therefore the Board has determined that the historically documented 6 daily flights, which includes all types of flights, be a daily maximum rather than distinguishing between tourist, charter and refueling flights. A flight is defined as one take off and one landing.
- IX. WHEREAS, the Board of Supervisors conducted a public hearing on May 2, 1995, and reviewed the administrative record, and based on the record finds, that the Hurley Letters and the Board Letter clearly document that the legal non-conforming level of use (3-6 flights per day between 6:30 a.m. and 5:45 p.m. weekdays and 9:00 a.m. and 4:00 p.m. week-ends) and that the current level of use (7-20 flights per day between 5:00 a.m. and 7:30 p.m.) exceeds the legal non-conforming use.

NOW, THEREFORE, LET IT BE RESOLVED that the Marin County Board of Supervisors hereby denies the appeal of Isidoor Bornstein, on behalf of Heli USA, and sustains the Planning Commission's determination that the allowable legal non-conforming use is a maximum of 6 flights per day between 6:30 a.m. - 5:45 p.m. weekdays and between 9:00 a.m. - 4:00 p.m. on the weekends. Any helicopter flights or other activities not specified above are prohibited unless a Master Plan/Use Permit is applied for and approved.

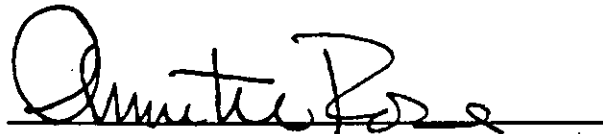
SECTION II: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on this 2nd day of May, 1995 by the following vote to wit:

AYES: . SUPERVISORS Harry J. Moore, Gary Giacomini, John B. Kress, Annette Rose

NOES: None

ABSENT: SUPERVISOR Harold C. Brown, Jr.



ANNETTE ROSE

President of the Board of Supervisors

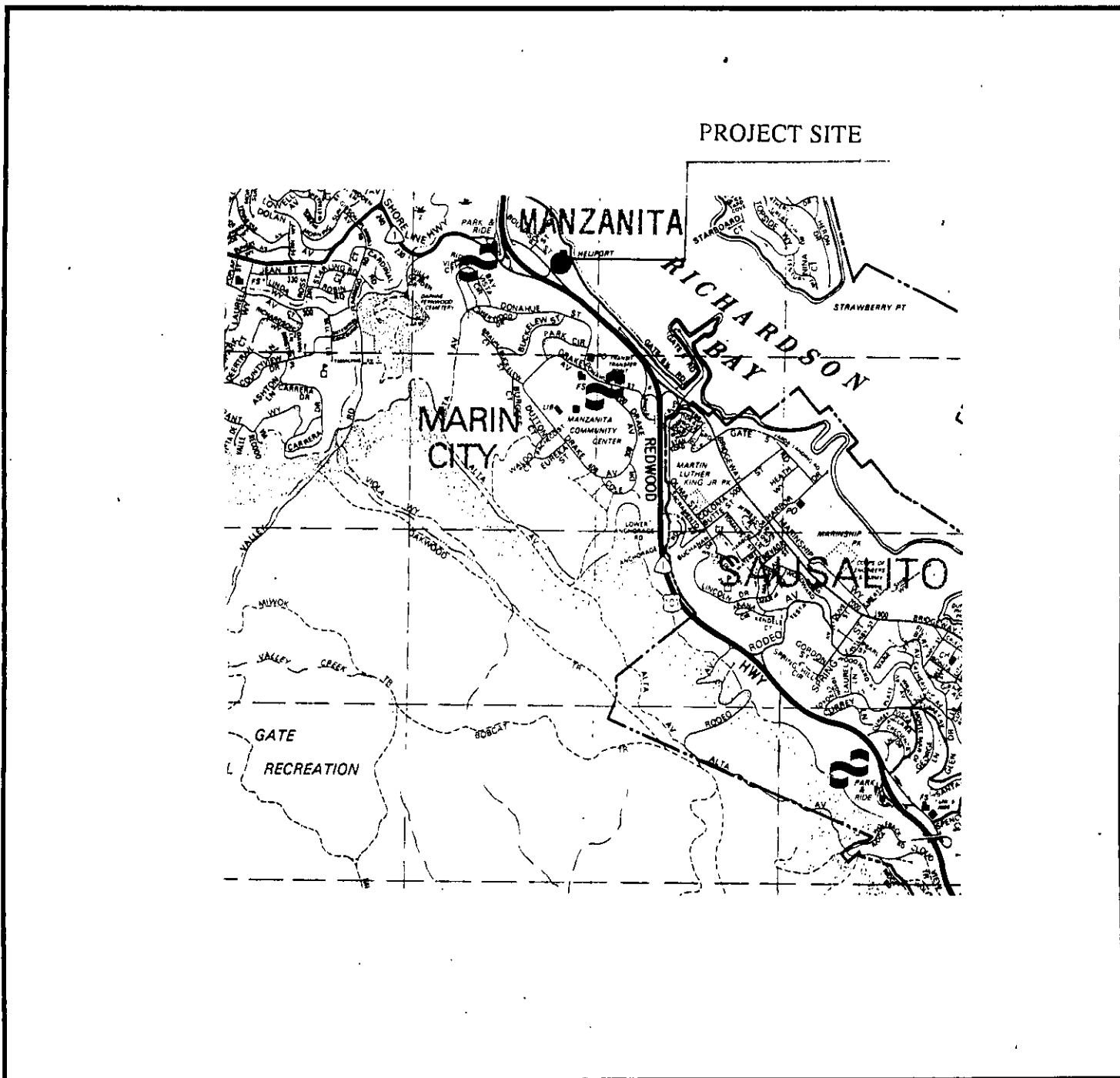
ATTEST:



Martin J. Nichols
Acting Clerk of the Board of Supervisors

RED Exhibit D

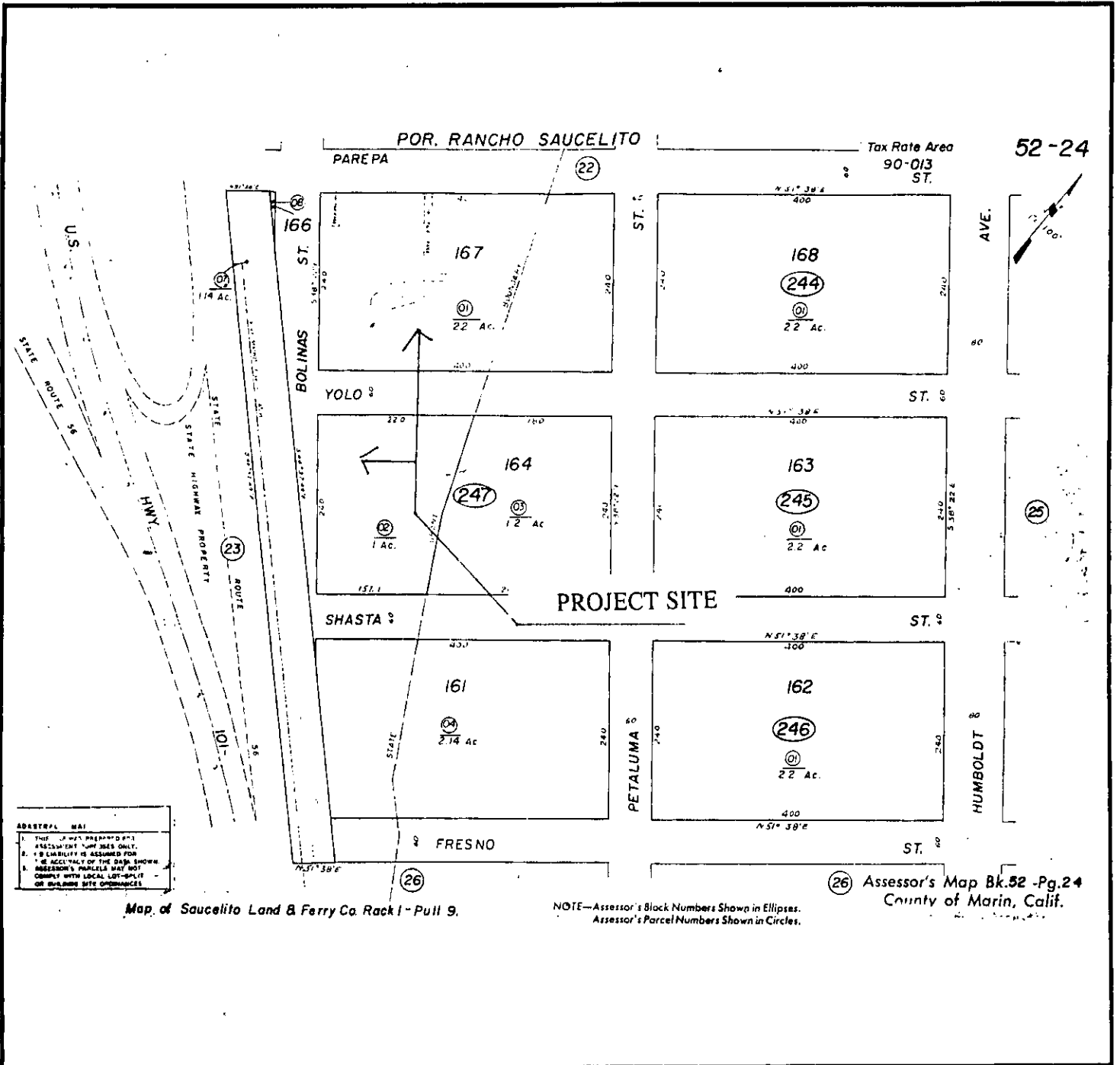
Marin County
Community Development Agency
Location Map



PRICE USE PERMIT (HELIPORT)
240 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01, 02
February 29, 1996
Not to Scale

RED Exhibit D

Marin County
Community Development Agency
Assessor's Parcel Map



ADVERTISED MAP
 1. THIS MAP WAS PREPARED FOR THE ASSessor's OFFICE ONLY.
 2. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN.
 3. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR SUBDIVISION SITE ORDINANCES.

Map of Saucelito Land & Ferry Co. Rack 1 - Pull 9.

NOTE—Assessor's Block Numbers Shown in Ellipses.
 Assessor's Parcel Numbers Shown in Circles.

Assessor's Map Bk. 52 - Pg. 24
 County of Marin, Calif.

PRICE USE PERMIT (HELIPORT)
 240 Redwood Highway, Mill Valley
 Assessor's Parcel #052-247-01, 02
 February 29, 1996
 Not to Scale

INTER-OFFICE MEMORANDUM

RED Exhibit D

PUBLIC SERVICES AGENCY

DATE: 2/5/96

DUE: 2/12/96

RECEIVED BY

TO: TOM LAI

FROM: NAI

APPROVED: CM

RE: PRICE USE PERMIT

A.P. #: 052-247-01,02

ADDRESS: 240 REDWOOD HWY
MILL VALLEY

FEB 12 1996
PUBLIC SERVICES AGENCY
COMMUNITY DEVELOPMENT

- TYPE OF DOCUMENT
- DESIGN REVIEW
 - LAND DIVISION
 - USE PERMIT
 - VARIANCE
 - LOT LINE ADJUSTMENT
 - ENVIRONMENTAL DOC.
 - COASTAL PERMIT
 - OTHER _____

We have reviewed this application for content and:

- Find it complete
 - Find it incomplete. Please submit items listed below.
 - Recommend Denial for reasons listed below
 - Find it Acceptable as Presented
 - Recommend the conditions listed below
- be completed prior to :
- Issuance of Building Permit
 - Occupancy
 - Approval of _____
 - Other _____

FLOOD CONTROL

- N.A.
- No Comments
- Comments Included

TRAFFIC

- N.A.
- No Comments
- Comments Included

RED Exhibit D

County of Marin

Office of Waste Management

INTERDEPARTMENTAL TRANSMITTAL

415/499-6647

TYPE OF DOCUMENT: Use Permit 96-003
DATE: 11-17-95
TO: Tom Lai
FROM: Barbara Zett
RE: Price Use Permit 96-003
A.P.#: 052-247-01 & 02
ADDRESS: 240 Redwood Highway, Mill Valley

This Application has been reviewed for the following items:

Hazardous Materials -- Chapter 7.90 of the Marin County Code X
Underground Tank Laws -- Chapter 7.80 of the Marin County Code

This Application is found to be:

Complete

Proposed increase in the number of flights does not impact on the current Hazardous Materials Business Plan on file with this office or the contamination at the sight due to underground storage tanks.

RECEIVED BY
1995 NOV 21 P 3:11
MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

ATTACHMENT 7

DESIGN REVIEW RECOMMENDATIONS

Date: Nov. 15, 1995

ADDRESS: 240 REDWOOD HWY

PLANNER: LAI

PARCEL: AP # 052-247-01#02

APPLICANT: PRICE

ATTENDING: STEVE PRICE

I. WE HAVE REVIEWED THIS APPLICATION FOR COMPLETENESS & FIND IT:

Complete as presented. is

Motion: POLLACK

Incomplete until all of the items listed below are submitted:

Second: CULLEN

Vote: 7 Ayes 0 Noes 0 Abstain

Abstentions/Reasons:

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

- A. _____
- B. _____
- C. _____

II. WE HAVE CONSIDERED THIS APPLICATION FOR ENVIRONMENTAL REVIEW & FIND IT:

Categorically exempt from Calif. Environ. Quality Act. Section 15303 (a), Class 3, pursuant to Planning Dept. transmittal.

Motion: _____

Second: _____

Vote: _____ Ayes _____ Noes _____ Abstain

NOT Categorically exempt from Calif. Environ. Quality Act. Section 15303 (a) for these reasons:

Motion: _____

Second: _____

Vote: _____ Ayes _____ Noes _____ Abstain

Abstentions/Reasons:

- A. _____
- B. _____
- C. _____

- A. _____
- B. _____
- C. _____

III. WE HAVE REVIEWED THIS APPLICATION FOR MANDATORY DESIGN REVIEW FINDINGS & FIND IT SATISFIES THE FOLLOWING FINDINGS:

YES NO

- ___ ___ The proposed structure will properly & adequately perform or satisfy its functional requirements without being unsightly or creating substantial disharmony with its locale & surroundings.
- ___ ___ It will not impair or interfere with the development, use, & orderly & pleasing development of the neighborhood as a whole, including public lands & rights-of-way.
- ___ ___ It will not directly, or in a cumulative fashion, impair, inhibit, or limit further investment of improvements in the vicinity on the same or other properties, including public lands or rights-of-way.
- ___ ___ It will be properly & adequately landscaped with maximum retention of native trees and other natural materials.
- ___ ___ It will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design, or juxtaposition. Adverse effects may include, but are not limited to: a) scale; b) drainage systems & appurtenant structures; c) cut & fill or the regrading of natural terrain & structures appurtenant thereto, such as retaining walls & bulkheads; d) areas, paths & rights-of-way for the containments, movement or general circulation of persons, animals, vehicles, conveyances & watercraft; e) other developments or improvements which may result in a diminution or elimination of sun & light exposure, views, vistas & privacy.
- ___ ___ It may contain roof overhangs, roofing material & siding material that are compatible both with the principles of energy conservation & with the prevailing architectural style of the neighborhood.

PROJECT: 240 REDWOOD HWY

DATE: NOV. 15, 1995

IV. WE HAVE REVIEWED THIS APPLICATION FOR MERITS & RECOMMEND:

Approved as submitted.

Approval with the following conditions:

- A. In order to enhance fire safety, Applicant shall install four (4) hose bibs prior to issuance of Occupancy Permit. One hose bib shall be located on each primary side of the structure.
- B. In order to ensure that new landscaping & ground cover plantings will be irrigated sufficiently & in a water-conserving manner, Applicant shall install a drip irrigation system prior to issuance of Occupancy Permit.
- C. In order to enhance the structure's visual appeal to the neighborhood upon construction completion, to mitigate any adverse visual impact of the structure, & to prevent future soil erosion of any disturbed soil, Applicant shall install drought resistant trees, shrubs & ground cover on all disturbed soil noted on plans. These plantings shall be at least 50% native, deer-resistant species, & shall be installed prior to issuance of Occupancy Permit.

- D. _____
- E. _____
- F. _____

Continuance with Applicant's consent until: _____

Denial for the following reasons:

- A. _____
- B. _____
- C. _____

Motion: DEONNA

Vote: 7 Ayes 0 Noes 0 Abstain

Second: CULLEN

Abstentions/Reasons:

- A. _____
- B. _____
- C. _____

V. ADDITIONAL MERITS & COMMENTS REGARDING THIS PROJECT & ITS DESIGN:

RED Exhibit

RED SOD Exhibit C8 - UP Renwal (wireless)

COMMUNITY DEVELOPMENT AGENCY

COUNTY OF MARIN

PLANNING DIVISION

PROJECT TYPE & YEAR: DX/UP1996

A.P.N.: 052-247-01

NAME

PRICE, STEVE / PAC BELL

C-11. Public Works:

- a. Approve findings of Real Estate Section pursuant to Government Code Section 50569.
- b. Authorization to dispose of surplus County furniture and vehicles.
- c. Award of bids to Gregory Truck Body Co. for two Type 3 Fire Engines in the amount of \$265,403.00. Isi International, Inc. for two Navistar 4800 Cab & Chassis in the amount of \$153,742.88, and GCS Western Power & Equipment for a used Case 580 SL Diesel Tractor in the amount of \$59,952.75.
- d. Authorization of Chairman to execute amended agreements with CSW/Stuber-Stroeh Engineering, Inc. in the amount of \$30,000.00 for design of a multi-purpose path on Atherton Avenue, Novato area; CSI Telecommunications in the amount of \$28,800.00 for communications measurement; Chec Engineering Consultants in the amount of \$5,000.00 for design and inspection of various pavement sections of County roads; and, John Roberto Associates in the amount of \$12,000.00 for preparation of a negative declaration for Marin County's emergency telecommunications system.
- e. Authorization of Chairman to execute Right of Way Contract with Marien Doolittle for an easement, and Certificate of Acceptance of Grant of Interest in Real Property

C-12. Local Agency Formation Commission: Resolution No. 96-164 approving reorganization with waiver of notice, hearing and election to the Town of Tiburon and to Sanitary District No. 2.

AYES: ALL

#25 OPEN TIME FOR PUBLIC EXPRESSION

Immigration

A resident of San Rafael read a letter into the record outlining his opposition to the Board's allocation of \$25,000 to facilitate increased citizenship opportunities for immigrants residing in Marin County. Six other County residents, and representatives of Marin United Taxpayers Association and Alliance of California Taxpayers also expressed opposition to the Board's allocation and urged improvement in identifying the immigrant's sponsors as a source of financial assistance.

Three residents of San Rafael, two residents of Mill Valley, a resident of Corte Madera, representatives of the Asian Advocacy Project, the Latino Services Project and the Welfare and Immigration Network expressed support for County efforts to promote citizenship training, commented on the portrayal of immigrants and the divisive nature of the debate, and addressed the impact of federal welfare reform on the County.

A resident of Mill Valley read a letter from a man stating his opposition to the \$25,000 allocation because of medical and financial needs of his family and others.

Thereafter, members of the Board responded to comments presented during open time discussion.

County General Plan

The Co-Chair of the North San Rafael Steering Committee apprised the Board of the Committee's efforts to gain community input on possible amendments to the General Plan.

The Board recessed at 11:44 a.m. to meet in closed session to discuss: (1) Combs v. C.O.M. pursuant to Government Code Section 54956(a), (2) Coalition for Economic Equity et al v. Pete Wilson et al. (Case No. C-96-4024 VRW) pursuant to Government Code Section 54956(a), (3) instructions to labor negotiator pursuant to Government Code Section 54957(a), (4) appointed Department Head evaluations pursuant to Government Code Section 54956.9 and reconvened in open session at 2:37 p.m. at which time were

PRESENT: SUPERVISORS Harry J. Moore, Gary Giacomini (at 2:44 p.m.), Annette Rose, John B. Kress, Harold C. Brown, Jr., Chairman

#28 (CONTINUED) PRICE/PACIFIC BELL DESIGN REVIEW EXEMPTION AND USE PERMIT APPEAL, MILL VALLEY AREA

Pursuant to the recommendation of the Planner in letter dated December 3, 1996, M/s Kress-Moore, to remove the above-captioned item from today's agenda.

AYES: ALL

ABSENT: SUPERVISOR Giacomini

C-5. Assessor-Recorder:

- a. Authorization of Chairman to execute land conservation contract for James R. Yurcheno and Amy Lauterbach.
- b. Authorization of Chairman to execute land conservation contract for James H. and Grace D. Kleiser.
- c. Authorization of Chairman to execute land conservation contract for James H. Kleiser.

C-6. County Counsel: Resolution No. 96-163 amending Resolution No. 93-218.

C-7. Health & Human Services:

- a. Authorization of Chairman to execute agreement with Canal Community Alliance in the amount of \$1,217.60 for health screening, diagnosis and treatment to sexually active youth.
- b. Authorization of Chairman to execute memorandum of understanding with the California Department of Health Services in the amount of \$12,000.00 to provide community-based services to reduce the incidence of chlamydia and other sexually transmitted diseases in youth.
- c. Authorization of Chairman to execute agreement with Mary McGovern Gebhardt in the amount of \$21,600.00 to provide consultation and facilitation services.
- d. Authorization of Chairman to execute agreement with Mary Ellen Guroy, M.D. in the amount of \$60,000.00 to provide on-call support for the Specialty Clinic.
- e. Authorization of Chairman to execute agreement with John C. Rodgers in the amount of \$36,500.00 to act as Project Manager for the EMS Disaster Medical Preparedness Grant.
- f. Authorization of Chairman to execute agreement with St. Luke's Hospital to provide medically necessary hospital inpatient psychiatric care for Marin Medi-Cal beneficiaries on a fee-for-service basis.
- g. Authorization of Chairman to execute agreements with Marin AIDS Interfaith Network in the amount of \$65,000.00 for alternative therapies, Community Action Marin in the amount of \$201,650.00 for emergency services, Marin General Hospital in the amount of \$38,998.00 for case management, Marin AIDS Project in the amount of \$264,826.00 for psychosocial support, Marin Treatment Center in the amount of \$105,992.00 for substance abuse treatment, and Marin Treatment Center in the amount of \$121,010.00 for case management.
- h. Authorization of Chairman to execute agreements with Marin AIDS Project in the amount of \$39,600.00 to provide administrative support, and Hospice of Marin in the amount of \$12,646.00 to provide attendant care.
- i. Authorization of Chairman to execute agreements with Marin AIDS Project in the amount of \$120,996.00, Marin Treatment Center in the amount of \$52,900.00, and Youth Advocates in the amount of \$22,500.00 for the provision of HIV prevention and education services.
- j. Authorization of Chairman to execute agreement with College of Marin in the amount of \$6,500.00 for foster parent training.

C-8. Library:

- a. Authorization of Chairman to execute agreement with Stephen Moss in the amount of \$17,250.00 to plan and administer the Webstar program
- b. Authorization of Chairman to execute lease agreement with Larry Marks for the Point Reyes Library.
- c. Authorization of Chairman to execute second amendment to lease with the Inverness Foundation for the Inverness Library.

C-9. Parks, Open Space & Cultural Services:

- a. Authorization of Chairman to send thank you letter to Aaron Green and a note to County staff on behalf of the Board complimenting the entryway stairwell landscaping improvement.
- b. Authorization of Chairman to execute first amendment to agreement to permit the Marin Motorcycle Association to utilize \$20,400.00 of Off Highway Vehicle Funds

C-10. Probation: Acceptance of computer equipment from the Mediation Services Advisory Board to the Civil Mediation Unit.

**Marin County
Community Development Agency**

Mark J. Riesenfeld, AICP, Director

December 3, 1996

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

RE: Price/Pac Bell Design Review Exemption and Use Permit Appeal
242 Redwood Highway, Mill Valley
Assessor's Parcel Number 052-247-01

Dear Board Members:

Pursuant to the attached letter dated November 8, 1996, James R. Calkins has requested, on behalf of the appellant Pacific Bell Mobile Services, that the appeal to the Board of Supervisors of the Planning Commission's decision be withdrawn. Notice of withdrawal of the appeal has been sent to interested parties and surrounding neighbors. Staff is therefore requesting that consideration of the above referenced appeal be deleted from the hearing of December 3, 1996.

Recommended Action:

Staff recommends that your Board remove this item from the meeting of December 3, 1996.

Respectfully submitted,



Christine Gimmner
Planner

/cur/cg/:os/price2.doc

RM DeSales Avenue
South San Francisco, California 94080
Area (415) 737-7800
Fax (415) 737-6530

PACIFIC BELL
Mobile Services

November 08, 1996

Mark J. Riesenfeld
Agency Director
Community Development Agency
Marin County
350 Civic Center Drive, #308
San Rafael, CA 94903

Post-Net Fax Note	7971	Case	11/8/96 1
To	Christine Gimmler	From	James Calkins
On/Dept.		Co.	PlanCom
Phone #		Phone #	
Fax #	499-7880	Fax #	

RE: Appeal to Board of Supervisors for Proposed Pacific Bell Mobile Services Site located at 242 Redwood Highway, Mill Valley, APN #052-247-01

Dear Mr. Riesenfeld:

I am writing regarding the Pacific Bell Mobile Services Personal Communications Services site proposed for 242 Redwood Highway, Mill Valley, APN #052-247-01, Use Permit number 96-406.

I would like to request that the appeal to the Board of Supervisors of the Planning Commission decision be withdrawn.

If you have any questions or need more information, please call me directly at (415) 737-5407. Thank you for your assistance.

Sincerely,


James R. Calkins
Land Use Planner, PlanCom, Inc.

cc: Christine Gimmler
Brian Crawford

RECEIVED BY
1996 NOV 12 P 2 33
MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

Marin County
Community Development Agency

Mark J. Riesenfeld, AICP, Director

NOTICE OF CANCELLED PUBLIC HEARING
PRICE/PAC BELL DESIGN REVIEW EXEMPTION AND USE PERMIT APPEAL

(This appeal item previously noticed and rescheduled to the hearing of November 19, 1996, and further continued by the Board of Supervisors to December 3, 1996, has been withdrawn.)

NOTICE IS HEREBY GIVEN that the Marin County Board of Supervisors public hearing to consider the Price/Pac Bell Appeal of the Planning Commission's actions to deny a Categorical Exemption, pursuant to the California Environmental Quality Act, deny a Design Review Exemption application, and withhold a decision to approve or disapprove a Use Permit application for the installation and operation of a personal communications system designed to transmit cellular telephone transmissions has been cancelled. The Appellant Pac Bell has withdrawn the appeal. The subject property is located at 242 Redwood Highway, Mill Valley, and is further identified as Assessor's Parcel #052-247-01.

If you challenge the decision of this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Community Development Agency - Planning Division at, or prior to, the public hearing. (Government Code Section 65009(b)(2).)

If you have any questions or concerns regarding the proposed project or withdrawn appeal, please contact me at (415) 499-6269.

MARK J. RIESENFELD
Agency Director

Christine Gimmler, AICP
Planner

cg/bt:bos/notices/price3.doc
11/12/96



American sign language interpreters and assistive listening devices may be requested by calling (415) 499-6172 (TDD) or (415) 499-6269 (voice) at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

RED Exhibit D

After additional discussion, the Board members agreed to direct staff:

(a) To continue with all deliberate speed with respect to updating the Marin County Telecommunications Plan and coordinate with the cities and the Countywide Planning Agency.

(b) To address the following issues with respect to existing and new applications as processed:

- (i) Include appropriate conditions of approval to enable the implementation of future policies adopted as part of the Plan.
- (ii) To be cognizant of approving facilities in close proximity to residential uses.
- (iii) To the extent feasible, to require different service providers to locate at the same site.
- (iv) To address the concept of future abandonment of a site once technology becomes obsolete.

Supervisor Giacomini noted that the public had not been given an opportunity to comment on this action and requested that the matter be placed on the October 22 agenda for formal approval by the Board.

(Supervisor Giacomini absent at 12:47 p.m.)

#18 HEARING: REPRESENTATIVES OF THE FULL EMPLOYMENT COALITION ON "JOBS FOR ALL WEEK"

This item was continued to October 22, 1996.

→ #19 HEARING: PRICE/PAC BELL DESIGN REVIEW EXEMPTION AND USE PERMIT APPEAL, 242 REDWOOD HIGHWAY, MILL VALLEY, A.P. #052-247-01

By letter dated October 15, 1996, Planner Christine Gimmier, with the appellant's consent, requested continuance of the above-captioned item. M/s Rose-Moore, to continue this item to December 3, 1996, at 2:30 p.m.

AYES: ALL

ABSENT: SUPERVISOR Giacomini

The Chairman announced that the clerk would be present at 2:30 p.m. should any members of the public appear for the hearing.

The Board met in closed session at 12:50 p.m. to consider appointed department head evaluations pursuant to Government Code Section 54956.9 and adjourned at 3:00 p.m.

SINE DIE

CHAIRMAN

ATTEST:

CLERK

RED EXT

**Marin County
Community Development Agency**

Mark J. Riesenfeld, AICP, Director

October 15, 1996

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

RE: Price/Pac Bell Design Review Exemption and Use Permit Appeal
242 Redwood Highway, Mill Valley
Assessor's Parcel Number 052-247-01

Dear Board Members:

On October 10, 1996, staff sent a letter to your Board requesting that this item be continued from October 15 to November 19, 1996. Subsequent to the submittal of the continuance request, staff has been informed that the meeting of November 19th has been cancelled. With the appellant's consent, staff is therefore requesting that consideration of the above referenced matter be further continued to the December 3rd hearing.

Recommended Action:

Staff recommends that your Board further continue this item until the meeting of December 3, 1996.

Respectfully submitted,



Christine Gimpler
Planner

laur/cg/bos/priccont.doc

**Marin County
Community Development Agency**

Mark J. Riesenfeld, AICP, Director

October 10, 1996

Board of Supervisors
County of Marin
Civic Center
San Rafael, California 94903

RE: Price/Pac Bell Design Review Exemption and Use Permit Appeal
242 Redwood Highway, Mill Valley
Assessor's Parcel Number 052-247-01


Dear Board Members:

Pursuant to the attached letter dated October 8, 1996, James R. Calkins, on behalf of the applicant, Pacific Bell Mobile Services, has requested a 30 day continuance of the hearing to consider the above-referenced matter.

Recommended Action:

Staff recommends that your Board continue this item until the meeting of November 19, 1996.

Respectfully submitted,



Christi Ginzler
Planner

Attachments: James R. Calkins Letter, October 8, 1996

/cur/cg/bc+priccont.doc

844 Outgoing Address:
South San Francisco, California 94080
Area # (415) 737-5310
Fax # (415) 737-5320

PACIFIC BELL
Mobile Services

Post-Net Fax Note	7871	Case	10/8	Page	1
To	Christine Gimmler	From	James R. Calkins		
Co./Dept.	Marin Co.	Co.	PlanCom		
Phone #	499-6269	Phone #	737-5407		
Fax #	499-7830	Fax #	737-5301		

October 8, 1996

Mark J. Riesenfeld
Agency Director
Community Development Agency
Marin County
3501 Civic Center Drive, #308
San Rafael, CA 94903

RE: Proposed Pacific Bell Mobile Services Site Located at 242 Redwood Highway,
Mill Valley, APN # 052-247-01

Dear Mr. Riesenfeld:

I am writing regarding the Pacific Bell Mobile Services Personal Communications Services site proposed for 242 Redwood Highway, Mill Valley, APN #052-247-01, Use Permit number 96-406. The Planning Commission acted to deny a categorical exemption and design review for this project. Pacific Bell Mobile Services has appealed this decision and a public hearing has been scheduled for October 15, 1996 to consider the appeal.

I would like to request that this hearing be continued for a minimum of 30 days. This delay will allow Pacific Bell Mobile Services time to explore both alternative designs for this facility and alternative locations for the project.

If you have any questions or need more information, please call me directly at (415) 737-5407. Thank you for your assistance.

Sincerely,

James R. Calkins
Land Use Planner, PlanCom, Inc.

cc: Christine Gimmler
Brian Crawford

RED Exhibit D

844 Dubuque Avenue
South San Francisco, California 94080
Mar: (415) 737-5310
Fax: (415) 737-5320

RECEIVED

PACIFIC BELL
Mobile Services

1996 OCT -9 A 11:00

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

October 8, 1996

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cc: Christine Gimmler
Brian Crawford

844 DeLongue Avenue
South San Francisco, California 94080
Main (415) 737-5300
Fax (415) 737-5320

PACIFIC BELL.
Mobile Services

Post-Net Fax Note	7871	Date	10/8/96
To	Christine Gimmler	From	James R. Calkins
Co. Dept.	Marin Co.	Co.	PlanCom
Phone #	499-6269	Phone #	737-5407
Fax #	499-7430	Fax #	737-5301

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Land Use Planner, PlanCom, Inc.

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Brian Crawford

Marin County
Community Development Agency

Mark J. Riesenfeld, AICP, Director

NOTICE OF RESCHEDULED PUBLIC HEARING
PRICE/PAC BELL DESIGN REVIEW EXEMPTION AND USE PERMIT APPEAL

(This item had been previously scheduled for the Board of Supervisor's hearing of OCTOBER 15, 1996, and is now being rescheduled to the hearing of NOVEMBER 19, 1996)

NOTICE IS HEREBY GIVEN that the Marin County Board of Supervisors will hold a public hearing to consider the Price/Pac Bell Appeal of the Planning Commission's actions to deny a Categorical Exemption, pursuant to the California Environmental Quality Act, deny a Design Review Exemption application, and withhold a decision to approve or disapprove a Use Permit application for the installation and operation of a personal communications system designed to transmit cellular telephone transmissions. The subject property is currently developed with a heliport landing pad and several commercial buildings, and is located adjacent to a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels is proposed at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort, Commercial, Recreation district). The subject property is located at 242 Redwood Highway, Mill Valley, and is further identified as Assessor's Parcel #052-247-01.

NOTICE IS HEREBY FURTHER GIVEN that said public hearing will be held at the regular meeting of the Marin County Board of Supervisors on Tuesday, November 19, 1996, in the Board of Supervisors Chambers (Room #322 - Administration Building), Civic Center, San Rafael, California, at the hour of 2:30 p.m. Any interested party may appear and be heard at this time.

If you challenge the decision of this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Community Development Agency - Planning Division at, or prior to, the public hearing. (Government Code Section 65009(b)(2).)

If you have any questions or concerns regarding the proposed project, or want to be notified of the decision, please contact me at (415) 499-6269.

MARK J. RIESENFELD
Agency Director

Christine Gimmler, AICP
Planner

cg/am:boa/notices/price2.doc
10/06/96



American sign language interpreters and audio recording devices may be requested by calling (415) 499-6172 (TDD) or (415) 499-6269 (voice) at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

Marin County Community Development Agency

Mark J. Riesenfeld, AICP, Director

NOTICE OF PUBLIC HEARING

PRICE/PAC BELL DESIGN REVIEW EXEMPTION AND USE PERMIT APPEAL

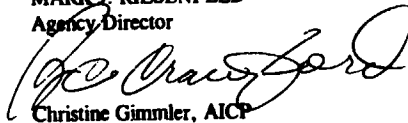
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MARK J. RIESENFELD
Agency Director



Christine Gimmler, AICP
Planner

cg/am:bos/notices/price.doc
10/03/96



American sign language interpreters and assistive listening devices may be requested by calling (415) 499-6172 (TDD) or (415) 499-8289 (voice) at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

PETITION FOR APPEAL

Fee: Planning Commission- \$500.00
Board of Supervisors - \$650.00

TO: THE MARIN COUNTY Board of Supervisors
3901 Civic Center Drive (Planning Commission or Board of Supervisors)
San Rafael, CA 94903-4157

1. The undersigned, Petitioner, being the aggrieved party, hereby files an appeal
(Appellant/Petitioner)
from the decision of the Planning Commission
(Planning Director or Zoning Administrator or Planning Commission)
which denied and took no action for a
(granted, denied, established conditions)

- (X) Use Permit
- () Design Review
- () Coastal Permit
- () Variance
- () Master Plan
- () Rezoning
- () Tentative Map
- () Development Plan
- (X) Other

relating to property described and located as follows:

- a) Assessor's Parcel Number 052-247-01
- b) Street Address 242 Redwood Hwy, Mill Valley
- c) File Name of Applicant Price/Pac Bell

2. The basis of this appeal is: The findings made by the Planning Commission to deny the Catagorical Exemption and Design Review Exemption and take no action on the Conditional Use Permit are contradictory to existing Marin County Code, Staff recommendations, and Federal Law.

(If more space is needed, continue on reverse side)

FROM: Pacific Bell Mobile Services (Print Name) [Signature] (Signature)
844 Dubuque Avenue (Address) (415)737-4407 (Business Telephone)
South San Francisco, CA 94080 (City/State/Zip Code) _____ (Residence Telephone)

(For Office Use Only)

Received by: [Signature]
Receipt No: 26197
Tentative Hearing Date: 9/15/96

RECEIVED BY
1996 SEP 19 4 43
MARIN COUNTY
COMMUNITY DEVELOPMENT

RED EXT

PACIFIC BELL

Mobile Services
San Francisco
844 Dubuque Ave.
South San Francisco, Ca 94080

2042

16-211220

September 12th 1996

Pay to the Order of Marin County \$ 650.00

six hundred fifty and xx/100

Dollars

 First Interstate Bank
22 California Street
San Francisco, CA 94111

F. Kevin Elder

3. SF-706

⑆00 204 2⑆ ⑆12 2000 218⑆ 368 508 148⑆

Mobile phone antennas opposed

IJ 7/2/96

Health effects concern critics

By Martin McLeamy

Independent Journal reporter

When Marin planning commissioners delayed proposed mobile communications antennas at the Sausalito heliport on Richardson Bay earlier this week, they tossed a curve to about 50 similar projects in the county.

Opponents of the proposed Pacific Bell antennas contend not enough information is available on the health effects of antennas and they are a visual blight.

"What we're hoping the county will do is look at a moratorium and look at things more fully," said Enid Goldstein, who lives near the proposed antennas. "Why not err on the side of caution?"

Goldstein, a San Francisco radio talk show host, believes further research is needed into the potential for adverse health effects from electromagnetic waves produced by the antennas.

The fight over the antennas will likely intensify as telecommunications companies look for more locations. The antennas, however, don't look like "Martian-like disks," as some opponents of the Sausalito project claimed in a letter. The antennas are rectangular panels about 6 feet tall, 4 inches wide and perhaps 3 inches deep.

Sprint plans 35 antenna sites across Marin in cities and on county land, while Pacific Bell plans call for 12 now and eight more later.

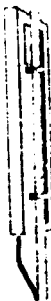
Sprint has 10 antenna applications pending with the county, while at least three Pacific Bell antennas have already been approved by a county zoning ad-

See Antenna, page A8

Antennas planned throughout Marin

Flat-panel directional antenna

Generally 4- to 6-foot tall, but height depends on where it is placed, such as on a building or pole (shown at left), 6- to 8-inches wide, 3 inches deep and weighs 27.5 pounds



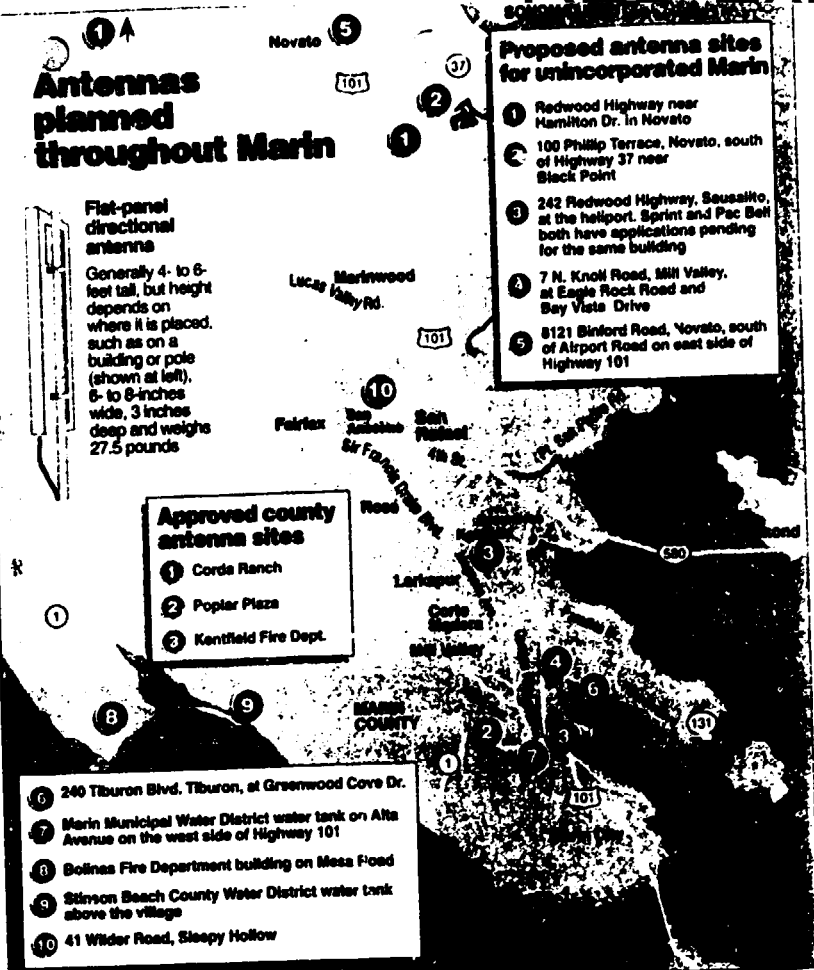
Approved county antenna sites

- 1 Cordes Ranch
- 2 Poplar Plaza
- 3 Kentfield Fire Dept.

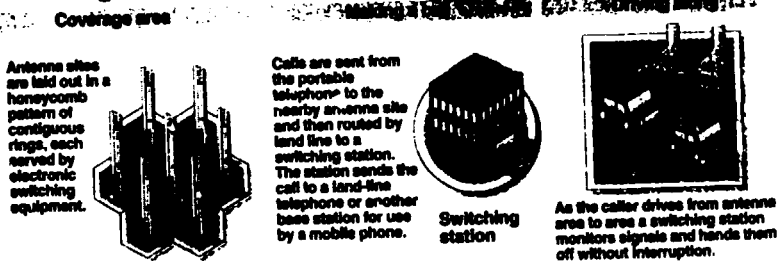
- 4 240 Tiburon Blvd. Tiburon, at Greenwood Cove Dr.
- 5 Marin Municipal Water District water tank on Alta Avenue on the west side of Highway 101
- 6 Bolinas Fire Department building on Mesa Road
- 7 Sausalito Beach County Water District water tank above the village
- 8 41 Wilder Road, Sleepy Hollow

Proposed antenna sites for unincorporated Marin

- 1 Redwood Highway near Hamilton Dr. in Novato
- 2 100 Philip Terrace, Novato, south of Highway 37 near Black Point
- 3 242 Redwood Highway, Sausalito, at the heliport. Sprint and Pac Bell both have applications pending for the same building
- 4 7 N. Knoll Road, Mill Valley, at Eagle Rock Road and Bay Vista Drive
- 5 8121 Binford Road, Novato, south of Airport Road on east side of Highway 101



How digital mobile phones work



Sources: Sprint, Electronic Industries Association, Gannett News Service

IJ graph

Novato parents angry about busing student

Overcrowding blamed for change

loa Middle School. "My teacher, Miss (Mary) Pritchard, is really nice. I am really

paren... their children were going to be bused across town to San Jose Middle School as of Monday. Par...

ton Field. Scott's parents and those of the other students being sh...

Antenna

From page A1

administrator without reaching the Planning Commission.

The antennas are not the same as the cellular phone antennas placed on Mount Barnabe in San Geronimo Valley last year after years of debate, including a legal settlement that included a study of health effects that found no measurable effects.

"There's a lot of hysteria and a ton of misinformation out there," said Sprint area director of engineering and operations Scott Akris. "What's very, very frustrating is the people who get out there who don't have the facts and create hysteria."

The applications are part of a coming wave of digitally driven portable communications devices approved by Congress several years ago and now being installed nationwide.

The digital systems use a higher frequency and have more capacity than analog. Unlike cellular phones, calls on the new system cannot be easily overheard or intercepted. The wireless form of communication uses telephones that can function as pagers and eventually as a facsimile machine and computer modem.

Christine Craft, a Sacramento lawyer and San Francisco radio talk show host, represents some of the houseboat residents living near the heliport. She contends that there are enough scientists who are uncertain of the health effects of the antennas that there should be no placement near houses.

"Since we don't know, why don't we amend the plan and don't place them next to where people live?" Craft said. She also challenged the antennas on aesthetic grounds and that they would lower the value of the nearby houseboats.

"We would really love to see the county of Marin set aside an amendment that deals with cellular towers," she said. "All we're asking the county to do is proceed with caution and set a standard for how far they should be that won't allow them to be set near residences."

Pacific Bell's spokesman Lou Saviano disputed Craft's contention. "All the evidence out there is that this technology is not a health hazard or threat," Saviano said, adding that federal law prohibits local communities from banning the antennas for health reasons.

Craft said a federal court judge's ruling in Washington state earlier this year challenges the law's reach, but acknowledged the ruling is non-binding.

"When you get to the political level, there seems to be a greater sensitivity to any questions raised by the public," Saviano said.

Planning commissioners agreed with opponents that the antennas should be more closely reviewed, but the county planning staff didn't and neither does Pacific Bell, which plans to appeal the decision to the Board of Supervisors.

County planners said the antennas and accompanying equipment did not require an environmental impact report and were "insignificant" enough to be exempt from design review scrutiny.

Commissioners balked at those recommendations and ordered a preliminary environmental report and design review report. Also, with almost a dozen applications pending, the commissioners asked the Board of Supervisors if it wants to review the county's telecommunications policy to see if it adequately handles new antennas for mobile telephones.

"If we're going to see a proliferation of this type of structure, we're going to need some guidelines," commissioner Jan Alff Wiegel said.

"We want them to update it to look at new telecommunications equipment," Alff Wiegel said, noting that much of the technology didn't exist when the county policy was formulated about a decade ago.

"The decision discriminates against this technology unfairly," Saviano said.

Both Pacific Bell and Sprint want to place antennas on buildings, water tanks or near existing telecommunications equipment throughout the county.

"We were initially concerned about the health effects and visual impacts," Alff Wiegel said, noting there is a day care center near the heliport.

"It is definitely cause for alarm when it comes to children," Goldstein said.

Saviano said the electromagnetic waves from the antennas are about 1,000 times less than national standards approved by Congress and adhered to by the Federal Communications Commission.

The commissioners on Monday declined to follow the county planning department's recommendation that the antennas at the Sausalito heliport are exempt from the state's environmental quality laws. The antennas would extend 6.5 feet above the Commodore Center building roof and equipment and would cover 50 square feet of roof.

Sprint recently filed an application with the county planning department for a similar array of antennas on the building.



By photo/Robert Tong

alyn and Mark, don't want her bused across town.

ng to accept respon-

ing up." The district knew in sixth grade probably crowded this year, officials "were more warning us when Klein and his wife, fight the legal action urryce.

er also refuses to go has been staying at

erintendent Joel ded the transfers. et when they think re going to be in one that changes. We that, but we can't it is not there. wish that all of our come to us in groups is not the way they perced."

sklin, the district's mmunity relations, rict is not charging l students for their tion.

t will provide free on as of today to

Scott Dumont and Rachel Klein until Tuesday's meeting, Conklin said.

The district transfers 25 to 50 students a year within the first week or two of school to balance classes, Conklin said. Enrollment is difficult to predict, she noted. The district has 14 schools and 7,398 students.

Amanda Metcalf, the Kleins' attorney, said Tuesday's meeting between parents and district officials would not be confrontational. "We want them to consider other reasonable alternatives" so the children can go to their neighborhood schools, she said.

The district cautioned parents last February about possible overcrowding this year, but the Kleins did not get the notice because Rachel was not enrolled in the district. If Sinaloa officials had advised the Kleins in August that there may be an overcrowding problem, the Kleins "would not have released her place at Marin Primary School," where she previously attended, Metcalf said.

MARIN COUNTY PLANNING COMMISSION MINUTES
SEPTEMBER 9, 1996
Marin County Civic Center, Room #319 - San Rafael, California

RED Exhibit D

Commissioners Present: Jan Alf Wiegel
Arlene Evan
Patty Garbarino
Deborah Rowland
Ross Herbertson
Morrow Cater

Commissioners Absent: Ray Buddie

Staff Present: Mark J. Riesenfeld, Planning Director
Tom Lai, Senior Planner
Brian C. Crawford, Principal Planner
Christine Gimmler, Planner
Dean R. Powell, Principal Planner
Tim Haddad, Environmental Coordinator
Alexandra Morales, Planning Commission Secretary

David Saltzman, County Counsel
Bob Beaumont, DPW

Minutes Approved on: September 25, 1996

Convened at 1:00 p.m.
Adjourned at 7:25 p.m.

7. USE PERMIT/DESIGN REVIEW EXEMPTION: PRICE/PAC BELL

Application proposing to construct a Personal Communication Services (PCS) facility on a property which is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels is proposed at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is located at 242 Redwood Hwy., Mill Valley, and is further identified as Assessor's Parcel #052-247-01.

[Tape 2A, 17.3]

Christine Gimmler, project planner, presented the merits of the proposed project as set forth in the staff report, highlighting the following issues: 1) public health and safety with respect to radio frequency electromagnetic fields; 2) the effect of the federal Telecommunication Act of 1996 on local permitting authority and the future liability of the County; 3) visual impacts; and 4) staff's determination that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act. Additionally, staff summarized the supplemental memorandum dated September 5, 1996, responding to comments received subsequent to the preparation of the staff report regarding: 1) property takings; 2) adverse health effects from exposure to EMF; 3) California Environmental Quality Act Exemption; and 4) postponement of decision on the project.

Commissioner Alff Wiegel informed the public that although she is a minor stockholder at Pacific Bell (less than 25 shares), she had no conflict of interest because neither approval or denial of the proposal would have an impact on the value of her property.

Commissioner Evans noted that the staff report does not contain an adequate analysis of the proposal's consistency with the Tamalpais Valley Community Plan.

Commissioner Alff Wiegel asked that the correct address for the project be provided. Additionally, noting the Pacific Sun newspaper article dated December of 1994 (Attachment #4 to the staff report), Commissioner Alff Wiegel requested an update on the status of the development of a countywide EMF policy which exceeds federal and industry standards and the survey of all county transmitter sites as mandated by the Board of Supervisors. Staff responded that the Administrator's Office has been working with County Counsel on this matter.

In response to Commissioner Alff Wiegel, staff responded that the proposed antennas will be approximately 25 feet from the child care facility. However, neither the County's Telecommunications Plan or the ANSI standards make a distinction on the type of person (i.e., children v. adults) exposed to EMF emissions.

Hearing was opened to public testimony.

James Calkins, representing Pacific Bell, stated that the fact that there are 14 other PCS facilities currently operating throughout the County demonstrates that property values have not, and will not be impacted. Additionally, he noted that the proposal had been presented to the Tam Design Review Board (TDRB), however no one from the public was present. The project presented to the Commission is as approved by the

Board. Mr. Calkins concluded by asking the Commission to approve the proposed facilities if they comply with the County Telecommunications Policy Plan, the Zoning Ordinance, and the County Work Plan. In response to Commissioner Alf Wiegel, Mr. Calkins stated that some of Pacific Bell's other PCS sites are located at 25 Throckmorton and 817 Redwood Highway in Mill Valley, and 324 Sir Francis Drake and 1509 Sir Francis Drake in San Anselmo.

Dr. Bushberg, consultant for Pacific Bell, stated that the proposed antennas would generate RF levels that are less than 1% of the most restrictive limit for human exposure set by current ANSI standards (more than 1,600 times below current standards). Additionally, Dr. Bushberg responded to Commissioners' questions in the following manner:

- **Duration - Standards** allow higher levels of exposure for shorter periods of duration, provided that the time average is less than specified in the standards. Additionally, areas immediately around the antennas (4-5 feet), which are typically on roof tops, are excluded by making them inaccessible to people.
- **Full Power Peaks** - The analysis conducted for this project assumed that the site will be fully loaded at all times indefinitely. Therefore, the calculations reflect full power peaks at all times.
- **Effects on Wildlife** - The vast majority of the studies conducted for ANSI standards come from animal experimentation. Therefore, standards are designed to protect the environment, including birds.

Christine Craft, attorney for adjacent property owners and residents, submitted a Microwave News article from the California PUC advising against cellular antennas near schools and hospitals, dated November 1995. Additionally, reading an excerpt from the Marin County Telecommunications Plan, she stated that a moratorium on any further sitings of cellular towers would be appropriate. Although staff has indicated that a moratorium would be contrary to the 1996 Federal Telecommunications Act, there has been one federal case in Washington which states that local jurisdictions do have the authority to impose a moratorium while considering health effects, property values, and aesthetics. As noted in Dr. Becker's report, Ms. Craft stated that the most prudent approach would be to set a standard restricting location of facilities within 2,500 feet of any residences. Since ANSI standards only address thermal effects and not biological effects on cells, the National Cancer Institute (NCI) is studying incidents of childhood cancer, particularly brain tumors and leukemia.

In response to Commissioner Rowland, Ms. Craft stated that she did not know what the outcome or duration of the moratorium in Washington was, but that some of the issues considered were consolidation of sites and adequate distance from residences. However, in Ms. Craft's opinion, a six month moratorium would provide adequate time to obtain answers to the issues raised.

Steve Price, property owner, stated that operation of the proposed antennas would require approximately 200 watts of energy each, 24 hours a day, seven days a week; this equals \$250.00 per month in electricity bills. Additionally, Mr. Price stated that at an August 20th meeting with the houseboat owners, the vast majority of owners favored the project based on the fact the antennas will be immediately removed if long-term use is found to be harmful.

Enid Goldstein, concerned resident, expressed concern that potential health hazards from these facilities are unknown. She clarified that contrary to Mr. Price's statement, houseboat owners do not support the proposed project. Ms. Goldstein proceeded to state that Marin County has the highest rate of breast cancer in the world, and that the rates of prostate cancer are enormous. In her opinion, antennas should not be located within 2,500 feet of residences, schools, or hospitals. She concluded by supporting a moratorium until the cumulative impacts of these facilities are adequately reviewed.

Sylvia Siegel, Consumers Cable Corp. expressed concern regarding potential health risks and aesthetics resulting from the proposed project. However, having had breast cancer, her main concern was the health of immediate residents. She concluded that action be delayed until more information is provided.

Noel Keys, concerned homeowner, stated that after contacting surrounding residents, 11 out of the 13 residents support the proposal. Additionally, after conducting research on these facilities, he was convinced that the proposal did not pose a health threat.

Margaret Zegart, concerned resident, expressed concern regarding the potential effects on children, adults, and wildlife. She concluded by supporting a moratorium until further information is obtained.

Robert Weller, Registered Engineer for Pac Bell, clarified that the California PUC's recommendation against cellular antennas near schools and hospitals was intended to avoid public opposition. However, there is no scientific justification for such advice. Regarding fears related to cancer, Mr. Weller noted the September 19, 1996, issue of the Scientific American Magazine which includes an article regarding radio frequency electromagnetic fields not being identified as a hazard. Additionally, he noted the American Cancer Society Facts and Figures publication. Mr. Weller concluded by stating that recent studies have been conducted by the City of San Francisco, County of Napa, and County of Sonoma, and in each of those cases, moratoria lasted from six months to one year. The outcome of these studies confirmed that the prevailing standards are entirely valid.

Hearing was closed to public testimony.

In response to Commissioner Evans, staff stated that the Telecommunication Plan addresses telecommunication facilities in general, but does not specifically address PCSs because they had not evolved yet.

After taking into consideration the information presented, the Commission made the following comments:

1. Since there may be a proliferation of these facilities, they should not be exempted from Design Review. *(Evans)*
2. The proposed antennas have not been evaluated for consistency with the Tamalpais Community Plan in terms of height limits, particularly for this specific site. *(Evans)*
3. The proposed antennas could be considered a commercial use, and therefore would be inconsistent with the existing zoning. *(Evans)*
4. There are many unanswered questions regarding health risks, particularly potential effects on children vs. adults. *(Alff/Wiegell)*
5. The cumulative impacts of these type of facilities along the highway and throughout the county have not been evaluated. Therefore, a categorical exemption from environmental review would be inappropriate, and an Initial Study should be conducted. *(Evans/Herbertson/Alff Wiegell)*
6. It would be appropriate to coordinate with the cities when establishing new guidelines. *(Rowland)*
7. An amendment to the Telecommunications Plan is necessary to better reflect current technology. *(Rowland/Evans)*

M/s Evans/Alff Wiegell, to deny the Design Review Exemption without prejudice based on reasons stated above and to require an Initial Study which addresses visual impacts and health hazards, as well as any potential cumulative impacts. No action was taken on the Use Permit pending the outcome of the Initial Study.

AYES: Alff Wiegell, Cater, Evans, Herbertson, Rowland
 NOES:
 ABSENT: Buddie

RED Exhibit D

ABSTAIN: Garbarino

Commissioner Alf Wiegel asked staff to obtain background information on the California PUC's advise against siting cellular antennas near schools and hospitals.

M/s Evans/Alf Wiegel, to write a letter to the Board of Supervisors recommending an amendment to the Telecommunications Plan in order to better reflect current technology.

AYES: Alf Wiegel, Cater, Evans, Herbertson, Rowland

NOES:

ABSENT: Buddie

ABSTAIN: Garbarino

Commissioner Garbarino abstained since she was out for staff's presentation and part of the public testimony.

RED Exhibit D

Marin County Community Development Agency

Mark J. Ressefeld, AICP, Director

STAFF REPORT TO THE PLANNING COMMISSION Price/Pacific Bell Use Permit and Design Review Exemption

Item No:	7.	Application No:	UP 96-406/DX 96-405
Applicant:	Pacific Bell Mobile Services	Owner:	Steve Price
Property Address:	242 Redwood Hwy., Mill Valley	Assessor's Parcel:	052-247-01
Hearing Date:	September 9, 1996	Planner:	Christine Gimmler, AICP

RECOMMENDATION:	Approval with Conditions
APPEAL PERIOD:	Five working days to the Board of Supervisors
LAST DATE FOR ACTION:	September 9, 1996.

PROJECT DESCRIPTION:

The applicant is requesting Use Permit approval and a Design Review Exemption to construct a Personal Communication Services (PCS) facility at 242 Redwood Highway, Mill Valley. The project site is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that occupied by the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend 8 feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels is proposed at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof at the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area.

GENERAL INFORMATION:

Countywide Plan	
Land Use Designation:	RC (Recreational Commercial, maximum floor area ratio range of 30%)
Zoning:	BFC-RCR (Bayfront Conservation District, Resort and Commercial Recreation District)
Lot size:	±4.4 acres
Adjacent Land Uses:	Residential, office, heliport
Vegetation:	Various mature trees (including pine and eucalyptus) and ornamental shrubs
Topography and Slope:	Level
Environmental Hazards:	None identified

PC Staff Report
SEPTEMBER 9, 1996
Item No. 7., Page #1

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ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the 1992 CEQA Guidelines because it proposes the installation and operation of a minor telecommunications facility on the roof of an existing structure on a commercial property with no physical alterations to land, air, water, vegetation, wildlife, archaeological, or historic resources. The project would not generate significant amounts of traffic because the proposed unstaffed facility is electronically operated. The operation of the proposed facility would not generate significant noise that would exceed ambient noise levels which are substantially affected by the vehicle traffic on nearby U.S. Highway 101 and the operation of a heliport on the project site. The visual change resulting from the project would be insignificant because the proposed facility would not be sited in a ridge and upland greenbelt area or other visually prominent location that has important or intrinsic visual qualities. In addition, the size of the proposed equipment is small in relation to the commercial building on which it would be mounted and would add incrementally to the overall height, bulk, and massing of the building. Additionally, a report prepared by Hammett & Edison, Inc. dated March 22, 1996, and supplemented by a letter report dated July 24, 1996, concludes that the proposed project would not result in any significant public health risks with respect to human exposure to radio frequency electromagnetic fields. The project has also been found to be consistent with the County's environmental goals and policies which pertain to the project.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accordance with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property and published in a newspaper of general circulation.

PLAN CONSISTENCY:

The proposed project is consistent with the goals and policies of *The Marin Countywide Plan*, the *Tamalpais Area Community Plan 1992*, and the *County of Marin Telecommunications Facilities Policy Plan* because the project consists of the installation and operation of a telecommunications facility that is compatible with surrounding commercial uses and has been designed to reduce visual impacts and minimize health risks. Please refer to the recommended resolution for detailed findings.

BACKGROUND:

On July 11, 1996, the Deputy Zoning Administrator (DZA) conducted a duly noticed public hearing to consider a recommendation from staff to approve the project applications based in part upon a categorical exemption from the requirements of CEQA. A copy of staff's report to the DZA has been incorporated as Attachment 5 to provide background information and analysis. Prior to the DZA hearing, the Tamalpais Design Review Board reviewed the project and recommended its approval with a modification to align the position of the two proposed antenna arrays at the southerly and northerly end of the roof to minimize their visibility from ground level.

At the July 11th DZA hearing, a number of persons who reside in the houseboat marina located adjacent to the project site expressed concerns about the project, including but not limited to: (1) potential adverse health effects from human exposure to radio frequency (RF) radiation emitted by the proposed telecommunications facility; (2) adverse visual changes resulting from the proposed antennas; (3) the County's liability for future unforeseen adverse health effects resulting from human exposure to RF radiation emitted by the proposed PCS facility; (4) the ANSI standard being dated and not reflecting ongoing research on public health effects from RF radiation; and (5) potential cumulative effects from RF radiation exposure at and around the project site. The adjoining residents further requested that the project be considered before the Planning Commission. After consideration of the issues raised at the hearing, the DZA decided to refer the project to the Planning Commission for consideration and directed staff to respond to the substantive issues analyzed below.

PROJECT ANALYSIS:

Public Health and Safety with Respect to Radio Frequency Electromagnetic Fields

One of the principal objectives of the Marin County Telecommunications Facilities Policy Plan (TFPP) is to ensure that new or modified telecommunications facilities are sited, designed and built in a manner which minimizes potential health risks from electromagnetic fields (EMF), including radio frequency (RF) fields which are emitted by the proposed PCS facility (Objective NEIR 1). This objective is carried out by policies and programs which establish an administrative process for evaluating and determining potential adverse health effects from human exposure to EMF. In summary, the TFPP states that the County will apply the American National Standards Institute (ANSI) standards for human exposure to establish permissible levels of human exposure to EMF radiation. The TFPP also recommends that development applications for new or modified telecommunications sites include technical information on proposed EMF power densities and frequencies to permit an adequate assessment and regulation of EMF emissions (Policy NEIR 1.2).

At the direction of staff, the applicant has submitted a report (RF report) which evaluates the RF exposure conditions resulting from the operation of the proposed PCS facility. The evaluation results indicate that, except for the roof top of the building upon which the antennas will be attached, the RF levels (i.e., power density) will be less than 1% of the most restrictive limit for human exposure set by the current ANSI standard. The current standard (ANSI/IEEE C95.1-1992) has been promulgated jointly by the American National Standards Institute and Institute of Electronics and Electrical Engineers (IEEE) and has been established based on research information relating to both thermal and non-thermal effects of EMF exposure. The RF report further points out that the highest calculated power level of RF emissions near ground level is only 0.062% of the most restrictive ANSI standard (i.e., more than 1,600 times below the ANSI standard). The predicted RF levels are based on the worst case assumption of having the proposed PCS facility operating at full power. However, during actual operation, the transmitted power levels are often reduced below their maximum capability to allow other PCS base stations to re-use the same frequencies. It should be noted that, according to the submitted report, the current ANSI standard for PCS facilities used to evaluate the proposed project was adopted by the FCC in 1992. Regarding cumulative effects, the RF report states that no other significant ambient sources of radio frequency energy were identified in the vicinity of the project site.

At the DZA hearing, neighboring residents expressed concerns about whether operation of the proposed antennas would expose occupants of the underlying building to unsafe levels of RF emissions, especially children attending the preschool on the lower floor of an adjacent building. In response to these

concerns, the RF report has been supplemented to specifically address the RF exposure conditions for interior portions of the underlying building (Attachment 8). The supplement clarifies the findings of the RF report by pointing out that the calculations predicting maximum RF exposure include the area between the antenna locations and the adjacent edge of the roof. The report further explains that due to extenuating effects of the roof and walls, as well as the distance between the antennas and underlying floor levels, the RF levels on the second floor will be reduced to a factor of at least 10 times. The supplement concludes that the maximum RF power density on the second floor will be well below the most restrictive ANSI standard for human exposure of unlimited duration.

The report notes that the ANSI standard may be exceeded by most transmit antennas if a person(s) is close enough to the antennas for an extended period of time. The RF report recommends that approaches no closer than 4 feet be made to the proposed antennas to ensure that exposure conditions do not exceed the ANSI standard. Because there are no activity areas (such as roof decks or observatories) on the roof of the subject building, or means of public access, the building is not normally used or occupied in a manner that would expose persons to unsafe RF levels from being in close proximity to the proposed antennas for an extended period of time. As a precautionary measure, however, staff has recommended a condition of approval that requires restricted access to the roof area of the subject building by posting warning signs and providing locked anti-climbing devices on any ladders which may be installed in the future. In addition, the applicant would be further required to turn off the antenna transmitters in the event that roof maintenance activities (painting, re-roofing, etc.) are required for extended periods of time. These conditions are consistent with the recommendations of the RF report.

1996 Telecommunications Act - Preemption of Local Permitting Authority and Future Liability of the County

Since the July 11th DZA hearing, staff has consulted County Counsel regarding: (1) the County's authority to approve or disapprove the proposed project on the basis of the environmental effects related to human exposure to RF emissions; and (2) the effect of the Federal Telecommunications Act on the County's future liability for any yet unknown adverse health effects resulting from RF emissions generated by the proposed PCS facility.

County Counsel has advised staff that Section 704(a) of the Telecommunications Act of 1996 specifically prohibits local governments from regulating the placement, construction or modification of personal wireless communications facilities, such as the proposed project, solely on the basis of environmental effects of RF emissions if the proposed facility is shown to comply with existing Federal Communications Commission regulations regarding maximum allowable levels of such emissions (see Summary of Section 704 of the Telecommunications Act, Attachment 11). As described above, the applicant has demonstrated that the proposed facility would operate well within the most restrictive applicable ANSI standard for human exposure to RF emissions. County Counsel has also indicated that, under California state law, the County could not be held liable for any future injury or damages resulting from a facility that required discretionary County approval.

In order to verify that the actual radio frequency emissions resulting from the proposed project after construction correspond to the projected levels identified in the above-referenced report, staff is recommending a condition of approval which requires the applicant to submit a post-construction RF report which evaluates actual RF levels from the facility operating at full power for compliance with the current ANSI standards. In addition, staff has recommended conditions of approval which require the project to comply with subsequent EMF standards adopted by the County so that the approved PCS

facility must comply or be removed if future research shows that the levels of EMF existing at the project site at some future date exceed the levels permitted by subsequently adopted County standards.

Visual Impact

The proposed facility would be located on the roof of an existing commercial building which is partially screened from the north, south, and east by existing mature pine and eucalyptus trees. The Base Transceiver Stations would be mounted on the lowest portion of the roof on the southeastern end of the building and would be screened from off-site locations to the north and west by the adjacent two-story portion of the building. The two pairs of proposed panel antennas would be located on the taller northwestern portion of the structure and their support posts would extend eight feet above the existing roof parapet. The antennas would be visible from U.S. Highway 101 to the west and south, but would be partially screened by existing trees to north and east where the existing houseboat marina is located. In addition, the antennas and support posts would be painted a gray color to blend with the sky background as viewed from ground-level vantage points and the base transceiver stations would be painted to match adjacent walls. In response to comments from the Tam Design Review Board, the applicant has agreed to resite the northwestern pair of antennas 20 feet back from the front (west) elevation of the building to align with the southern pair and reduce the visibility of the antennas as viewed from below.

At the July 11th hearing, the DZA directed staff to investigate the possibility of re-siting the southernmost antenna array in a northerly direction towards the interior of the building so that the antennas would be better screened from the southern end of the houseboat marina by existing mature trees located east of the structure. In response to the hearing officer's directive, the applicant has submitted an evaluation prepared by the project engineer which indicates that the southern antenna array could be relocated as suggested. However, in order to prevent shadowing effects by the roof, the height of the antenna would have to be increased approximately one inch for every foot that the array is moved away from the roof edge.

Additional analysis of views of the project site from the adjacent houseboat marina indicates that relocation of the antenna array to the central portion of the roof, which is more completely screened from the southern end of the marina by existing tree cover, would result in a corresponding antenna height increase of four feet (or 12 feet total height) or more. Such a height modification would increase the visibility of the antennas from other portions of the houseboat marina as well as from public view points along the Highway 101 corridor. In other words, any additional visual screening enjoyed by the southern end of the houseboat marina as a result of resiting the antenna would be outweighed by its increased visibility from other vantage points in the project area. Therefore, staff recommends that the southern antenna array remain where originally proposed.

In general, because both pairs of proposed antennas would be located on the top of an existing building which is located landward of the existing houseboat marina, they would not obstruct or impair views of Richardson Bay or the bay shoreline which are available from the houseboat marina, the adjacent public access path, and other public vantage points. In addition, the size of the antennas is small in relation to that of the commercial building and, therefore, would not contribute appreciably to the building's height, bulk and massing.

The project complies with the visual impact policies of the TFPP because the proposed PCS facility would be sited below ridgelines or other prominent natural features and has been integrated with an existing commercial building to eliminate the need to erect free-standing towers or other support

structures. In addition, the antennas would be treated with non-reflective colors and/or materials to minimize their visibility and contrast with the visual setting and the siting of the facility uses existing landscaping to minimize the visibility of the proposed antennas from off-site vantage points.

For the reasons discussed above, staff finds that the project would not have a significant effect on visual resources or the character of the community. Therefore, staff finds the proposed PCS facility to be a minor and incidental modification to the existing commercial building which is consistent with the standards and criteria for Design Review.

CEQA Exemption

The State CEQA Guidelines contain a list of certain classes of projects which have been determined to not have a significant effect on the environment and which are, therefore, categorically exempt from the provisions of CEQA requiring preparation of environmental documents. The proposed project falls into an exempt class for the construction and location of new small facilities and structures (Class 15303) because the proposed PCS facility includes two relatively small antenna arrays and transceivers stations that would be mounted on the roof of an existing building. As explained in the Environmental Review section of this report, the project can be constructed and operated without making physical alterations to land, air, water, vegetation, wildlife, or historic resources. For the reasons noted in the Visual Impact discussion above, the project would have an incremental change on the existing visual resources and environment of the project area, but the extent of visual change would not be significant.

In addition, the RF report submitted in connection with the project adequately demonstrates that the level of RF emissions generated by the operation of the PCS facility would amount to less than 1% of the County's standard for allowable maximum levels of RF emissions at locations accessible to the general public. With respect to the project's compliance with CEQA, this standard is effectively a threshold for determining the significance of environmental effects associated with human exposure to RF emissions. Because the predicted RF levels from the project are calculated at less than 1% of the County's adopted standard, the project would not approach the threshold for significance insofar as potential health hazards from human exposure to RF emissions is concerned.

The categorical exemption should not be negated because of the following additional factors as established in the administrative record: (1) the project would be constructed and operated on the roof of an existing commercial building, which is not an environmentally sensitive environment; (2) the project would not result in cumulative impacts, and successive projects of the same type in the same place will not result in cumulative impacts because the County implements mandatory procedures for reviewing such projects to ensure that cumulative levels of RF emission do not exceed the ANSI standard; and (3) there are no unusual circumstances creating a reasonable possibility of significant effects from the project.

Lastly, there is no factual information in the administrative record which supports a fair argument that the construction and operation of the proposed PCS facility would result in one or more potentially significant effects. CEQA mandates that projects be exempt if there is no substantial evidence that the project would result in any significant effects. Therefore, based on the foregoing, a categorical exemption clearly applies to the proposed project.

CONCLUSION:

The proposed PCS facility complies with all pertinent policies and programs of the TFPP. The predicted level of RF emissions from the facility have been evaluated by a qualified professional and found to be less than 1% of the County's adopted standard setting maximum allowable levels of RF radiation. The visual effects resulting from the project would not be significant given the amount and size of the proposed equipment in relation to the existing commercial building on which such equipment would be installed. Therefore, staff is recommending that the Planning Commission approve a Categorical Exemption, pursuant to CEQA, and approve the project applications with conditions of approval which ensure that the project will comply with future public health standards that may be adopted by the County.

RECOMMENDATION:

Staff recommends that the Planning Commission take the following actions:

1. Review the administrative record;
2. Conduct a public hearing; and
3. Adopt the attached Resolution approving the Price/Pacific Bell Use Permit and Design Review Exemption based on the findings contained in the proposed resolution.

ATTACHMENTS:

1. Proposed Resolution recommending approval of the Price/Pacific Bell Use Permit/Design Review Exemption
2. Location Map
3. Site Plan
4. Elevations
5. DZA Staff Report, dated 6/20/96, and minutes of the 7/11/96 DZA hearing
6. Letter of opposition to proposed project (11 signatures), dated 7/8/96, submitted 7/11/96
7. Pacific Sun articles, submitted 7/11/96
8. Letter from William Hammett, Hammett & Edison, dated 7/24/96
9. Letter from James Caulkins, Pacific Bell Mobile Services, dated 8/8/96
10. Letter from Dave Kersting, President, Kids Headquarters, received 8/14/96
11. Letter of support for proposed project (19 signatures), submitted 8/14/96 through 8/23/96
12. Summary of Section 704 of the Telecommunications Act of 1996
13. Hammett & Edison Evaluation of Radio Frequency Exposure Conditions, dated 3/22/96

RESOLUTION NO. _____

A RESOLUTION APPROVING THE PRICE/PACIFIC BELL USE PERMIT/DESIGN REVIEW EXEMPTION APPLICATION

**ASSESSOR'S PARCEL NUMBER 052-247-01
242 REDWOOD HIGHWAY, MILL VALLEY**

SECTION I: FINDINGS

- I. WHEREAS the applicant has submitted a Use Permit and Design Review Exemption application proposing installation of a minor, rooftop telecommunications facility that would enhance wireless communication services to residents and businesses in Mill Valley and Sausalito. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is located at 242 Redwood Highway, Mill Valley and is further identified as Assessor's Parcel #052-247-01.
- II. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on September 9, 1996, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Planning Commission finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 of the 1992 CEQA Guidelines because it entails installation and operation of new, small equipment and facilities mounted on the roof of an existing structure on a commercial property with no potentially significant impacts on the environment. Additionally, a report prepared by Hammett & Edison, Inc. dated March 22, 1996, as supplemented by letter a report dated July 24, 1996, concludes that the proposed project would not result in any significant, public health risks with respect to human exposure to RF electromagnetic fields.
- IV. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the goals and policies of *The Marin Countywide Plan* because:
 - A. The proposed project is consistent with the Recreational Commercial land use designation for the project site. The site is located within the City-centered Corridor which is designated for urban development where infrastructure and facilities are available for such development. The Recreational Commercial land use designation is generally intended for resort uses and privately-owned recreational facilities. However, Policy CD-8.13 of the Countywide Plan recognizes that certain facilities and uses, such as the proposed telecommunications project, may be found to be consistent with recreational uses, subject to Use Permit approval.

- B. The mandatory Use Permit finding can be made pursuant to Section 22.88.020(3) of Marin County Code to allow public utility and service uses necessary for public safety, convenience and welfare.
- C. Pursuant to Community Facilities Objective CF-8, the proposed project, as explained more fully in Finding VI below, is consistent with goals and policies of the *County of Marin Telecommunications Facilities Policy Plan* which ensure that the siting and design of the proposed facility is compatible with other land uses, provides protection from vandalism and fire hazards, minimizes visual impacts, and minimizes potential health risks to people.
- D. The proposed project would not impact water supply, fire protection, waste disposal, schools, traffic and circulation, or other services.
- V. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the goals and policies of the *Tamalpais Area Community Plan 1992* because:
- A. The proposed project would not adversely impact the commercial character and scale of the project site or the quality of the natural environment.
- B. Pursuant to Policy LU1.3, the proposed project would be compatible with the scale (bulk, mass and height) and appearance (colors, materials and design) of the existing commercial structures on the subject property.
- C. The proposed project would be consistent with the Shoreline Commercial land use designation for the project site. The Shoreline Commercial land use designation allows a mixture of open space and commercial development including office, restaurant, recreation and limited retail uses. The proposed facility would be mounted on the roof of an existing commercial structure and would provide a service to local residents without disrupting the existing commercial use of the property or resulting in adverse traffic, noise, odor, light, glare, or aesthetic impacts on properties in the vicinity.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the goals and policies of the *County of Marin Telecommunications Facilities Policy Plan* because:
- A. The project proposes a small-scale telecommunications facility which is not located in a ridge and upland greenbelt area or parcel which is restricted by an agricultural, open space, scenic or other easement or restriction. Because the facility is proposed to be located on the roof of an existing commercial building, its development and operation would not affect bayfront resources protected under the governing Bayfront Conservation Zone land use designation and zoning district, it would not cause the loss of important natural resources including plant or animal species, nor would it adversely affect the use and enjoyment of the public pathway to the west of the project site.
- B. The proposed project would not result in any significant visual impacts because: (1) the proposed facility is not located in a ridge and upland greenbelt area or other visually prominent area with intrinsic visual or scenic qualities; (2) the project would not result in a significant visual change in the surrounding area because the location of the facility utilizes

an existing commercial building to avoid the need for free-standing towers or other similar support structures; (3) the proposed facility is limited to four small-scale antennas that would extend eight feet above the roof of the existing building and two base transceiver stations that would be substantially screened by the existing roof parapet; (4) the proposed antennas, support posts, and base transceiver stations would be painted appropriate, nonreflective colors that blend with the predominant viewshed background; and (5) existing trees on the project site would partially screen the proposed facility from off-site views.

- C. The proposed project would be sited, designed and built in a manner which minimizes potential health risks from RF electromagnetic fields. A report prepared and submitted by a qualified professional with expertise in the field of RF radiation health risk assessment concludes that the project would not result in any significant public health risks with respect to human exposure to RF radiation because the facility would operate well below the exposure limits of the American National Standards Institute and the Institute of Electrical and Electronic Engineers. In addition, conditions of project approval require that access to the roof area on which the antennas are located be restricted to prevent anyone from approaching within four feet of transmit antennas, consistent with the recommendations of the submitted report.
 - D. The proposed project would not adversely impact public safety with respect to siting because the antenna array would be located on a roof which would not be accessible to the public. Conditions of project approval would require that access to the roof area be restricted by the posting of a warning sign at each point of access or by installation of suitable access controls, such as locked, anti-climb shields on ladders. In addition, the structural integrity of the facility would be ensured through the County building permit and review process.
 - E. Operation and maintenance of the proposed unstaffed facility would not result in significant noise or traffic impacts on the project site and surrounding area.
 - F. Conditions of approval require the operator to dismantle and remove the PCS facility if it has been inoperative or abandoned for a two-year period.
 - G. The proposed project has been regulated using uniform processing procedures and standards through the review of Use Permit and Design Review applications.
 - H. In order to periodically evaluate compliance with conditions of project approval and policies of the Telecommunications Plan, conditions of approval require renewal of this Use Permit every 10 years.
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the mandatory finding to approve a Use Permit pursuant to Section 22.88.020(3) of Marin County Code as specified below.

The establishment, maintenance or conducting of the use for which a Use Permit is sought will not under this particular case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in said neighborhood because:

- A. Public utility and service uses may be approved in the governing BFC-RCR zoning district by Use Permit pursuant to Section 22.88.010(2) of Marin County Code when it is found to be necessary for public health, safety, convenience or welfare. The proposed project is part of Pacific Bell Mobile Services system which provides wireless communications service to residents and businesses in Southern Marin and would contribute to public safety, convenience and welfare.
- B. The proposed project would not result in any significant, public health risks with respect to human exposure to RF radiation because the facility would operate well below the exposure limits of the American National Standards Institute and the Institute of Electrical and Electronic Engineers. As described above, conditions of project approval require that access to the roof area on which the antennas are located be restricted to prevent anyone from approaching within four feet of transmit antennas, consistent with the recommendations of the submitted report.
- C. The proposed facility would be located on an existing commercial structure and would provide a service to local residents without disrupting the existing character of the subject property. In addition, the project would not result in adverse traffic, noise, odor, light, glare, or aesthetic impacts that conflict with the quality of the community.
- D. The proposed project would be incidental to the existing commercial and residential use of the subject property. Pursuant to Marin County Code Section 22.88.010, public utility and service uses, such as the proposed project, are permitted in BFC-RCR zoning district subject to Use Permit approval.

VIII. WHEREAS the Marin County Planning Commission finds that the proposed project is exempt from the requirements of Design Review pursuant to Section 22.82.030(4) of Marin County Code because:

The project proposes a minor telecommunications facility which is incidental to the primary commercial uses on the project site. The facility would be partially screened from off-site locations and would not result in grading, tree removal, grading, or other adverse physical effects on the environment. The facility would be situated entirely on the project site, would maintain large setbacks to all surrounding properties, and would not interfere with the existing commercial and residential uses in the project area. The project conforms to the governing zoning district as a conditionally permitted public service use that will provide a public benefit by improving telecommunications in the project area. The proposed antennas and support posts would be painted an appropriate, nonreflective color that blends with the predominant viewshed background. In addition, the antenna arrays would be located centrally at the southerly and northerly ends of the roof to reduce the visibility of the structures as viewed from ground level vantage points.

SECTION II: DECISION

NOW, THEREFORE, LET IT BE RESOLVED that the Marin County Planning Commission hereby approves the Price/Pacific Bell Use Permit/Design Review Exemption subject to the following conditions:

Marin County Community Development Agency -- Planning Division

1. Pursuant to Marin County Code Section 22.88.010, this approval permits the installation and operation of an unmanned rooftop telecommunications facility on the property located at 242 Redwood Highway, Mill Valley. The approved Personal Communication Services (PCS) facility includes the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office on the subject property. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet to a total height of 33 feet above grade. One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area.
2. Except as modified by conditions of approval, plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A": Pacific Bell Mobile Services, SF-306, 260 Redwood Highway, Mill Valley, consisting of four sheets received April 9, 1996, and on file in the Marin County Community Development Agency -- Planning Division.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit revised plans for review and approval of the Community Development Director that show a minimum setback of 20 feet between the proposed antennas and the front (west) elevation of the building.
4. Access to the roof area of the subject building shall be restricted. Access area may be restricted by the posting of a warning sign at each point of access or by installation of suitable access controls, such as locked, anti-climb shields on ladders. In the event that roofing, painting, or other activities are required for extended periods on the roof, the transmit antennas should be turned off, unless measurements, more detailed calculations, or other measures ensure that the prevailing exposure limits of the American National Standards Institute and the Institute of Electrical and Electronic Engineers are not exceeded.
5. The approved facility must be dismantled and removed from the premises if it has been inoperative or abandoned for a two-year period. PRIOR TO ISSUANCE OF A BUILDING PERMIT, the applicant shall enter into a standard Performance Agreement with the County and post a bond or other suitable security in order to guarantee removal of an abandoned facility. Upon expiration of the Use Permit, all equipment, structures, and antennas shall be removed and the site returned to its preexisting conditions.
6. If nationally accepted research establishes a significantly more stringent standard for human exposure to radio frequency radiation or other electromagnetic field radiation which is determined by the County to be applicable to the project, the project sponsor shall be required to, upon consultation with the Community Development Agency--Planning Division, file for renewal of the

Use Permit application and evaluate the existing cumulative levels of radio frequency radiation emanating from the project site in accordance with the new standard. Any exceedance of the applicable standard on the project site, as demonstrated in radio frequency evaluations required herein, shall provide grounds for the County to revoke this Use Permit as provided for by Section 22.88.040 of the Marin County Code or require submittal of a Use Permit renewal application for the purpose of requiring modifications to the approved facility designed to meet the applicable standard.

7. **WITHIN 60 DAYS OF FINAL INSPECTION**, the applicant shall submit an evaluation of the actual radio frequency radiation measured at the project site for conformance with the current ANSI/IEEE standard. The evaluation shall be based on measurements of the approved facility operating at full power. The measurements shall be taken at representative locations, including but not limited to the interior floors of the building on which the approved antennas are located and the easterly border of the project site adjacent to the entrance to the existing houseboat marina. The evaluation shall be prepared by a qualified professional selected by the County and paid for by the applicant. The Community Development Agency--Planning Division shall provide notice of the availability of the evaluation for public inspection to persons who request such notice.
8. No exterior lights on the panel antennas and the Base Transceiver Stations are permitted.
9. The antennas and support posts shall be painted a light gray color to blend with the sky background as viewed from ground-level vantage points. The base transceiver stations shall be painted to match the adjacent walls.
10. The applicant shall be responsible for ensuring that the number of construction vehicles is limited to the minimum number necessary to complete the project.
11. Any changes or additions to the project shall be submitted to the Community Development Agency, Planning Division for review and approval before the contemplated modifications may be initiated.
12. This Use Permit shall remain valid for a 10-year term and will expire on June 20, 2006. The Use Permit may be renewed if the applicant submits a Use Permit renewal application before this date, with the appropriate fees, to the Community Development Agency-- Planning Division. The applicant or their successors shall submit an updated radio frequency evaluation, as specified in Condition 7 above, with the Use Permit renewal application.

Tamalpais Fire Protection District

13. **BEFORE FINAL INSPECTION**, the Fire Marshal shall verify to the Community Development Agency -- Planning Division that an approved fire detection system has been installed in accordance with National Fire Protection Association standards in the Base Transceiver Stations. The system must be connected to the fire alarm headquarters of the Tamalpais Fire Protection District through an approved central monitoring system.

San Francisco Bay Conservation and Development Commission

14. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit verification that the San Francisco Bay Conservation and Development Commission has reviewed and approved the proposed project.

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE, LET IT BE FURTHER RESOLVED that the applicant must vest this Use Permit and Design Review Exemption approval by September 9, 1996, or all rights granted in this approval shall expire, unless the applicant applies for an extension at least 30 days before the expiration date above and the Agency Director approves it. An extension of up to four years may be granted for cause pursuant to Sections 22.88.050 and 22.82.130 of Marin County Code. Vesting this Use Permit and Design Review Exemption approval entails securing a valid building permit and substantially completing the improvements in accordance with the secured building permit.

This Use Permit shall be valid upon timely vesting of the approval and will remain valid until June 20, 2006, unless the conditions of approval are violated, in which case the Use Permit may be revoked, or the Use Permit is required to be renewed prior to June 20, 2006 pursuant to Condition 6 above.

This decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$650.00 filing fee must be submitted in the Community Development Agency, Room 308, Civic Center, San Rafael, no later than 4:00 p.m. on September 16, 1996.

SECTION IV: ADOPTION

ADOPTED at a regular meeting of the Marin County Planning Commission of the County of Marin, State of California, on the 9th day of September, 1996.

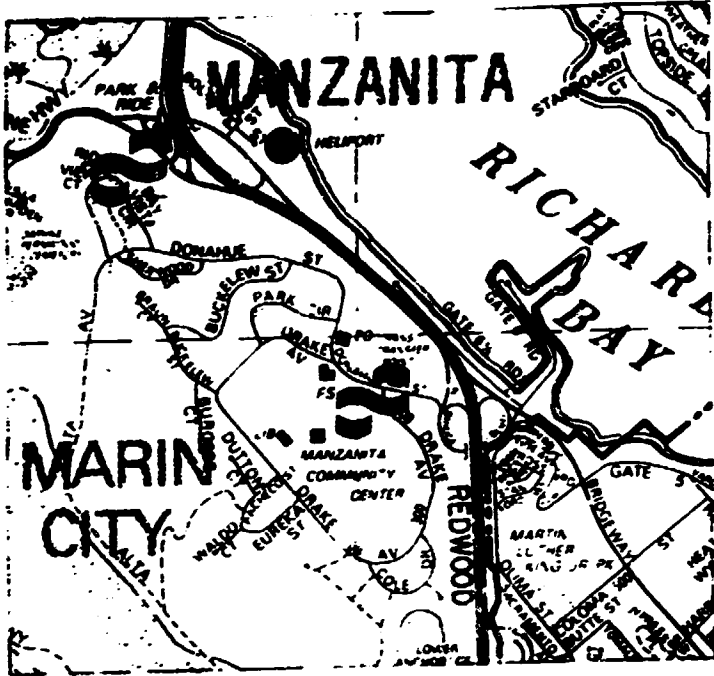
MORROW CATER, CHAIRPERSON
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary

RED EXHIBIT

Marin County
Community Development Agency
Location Map

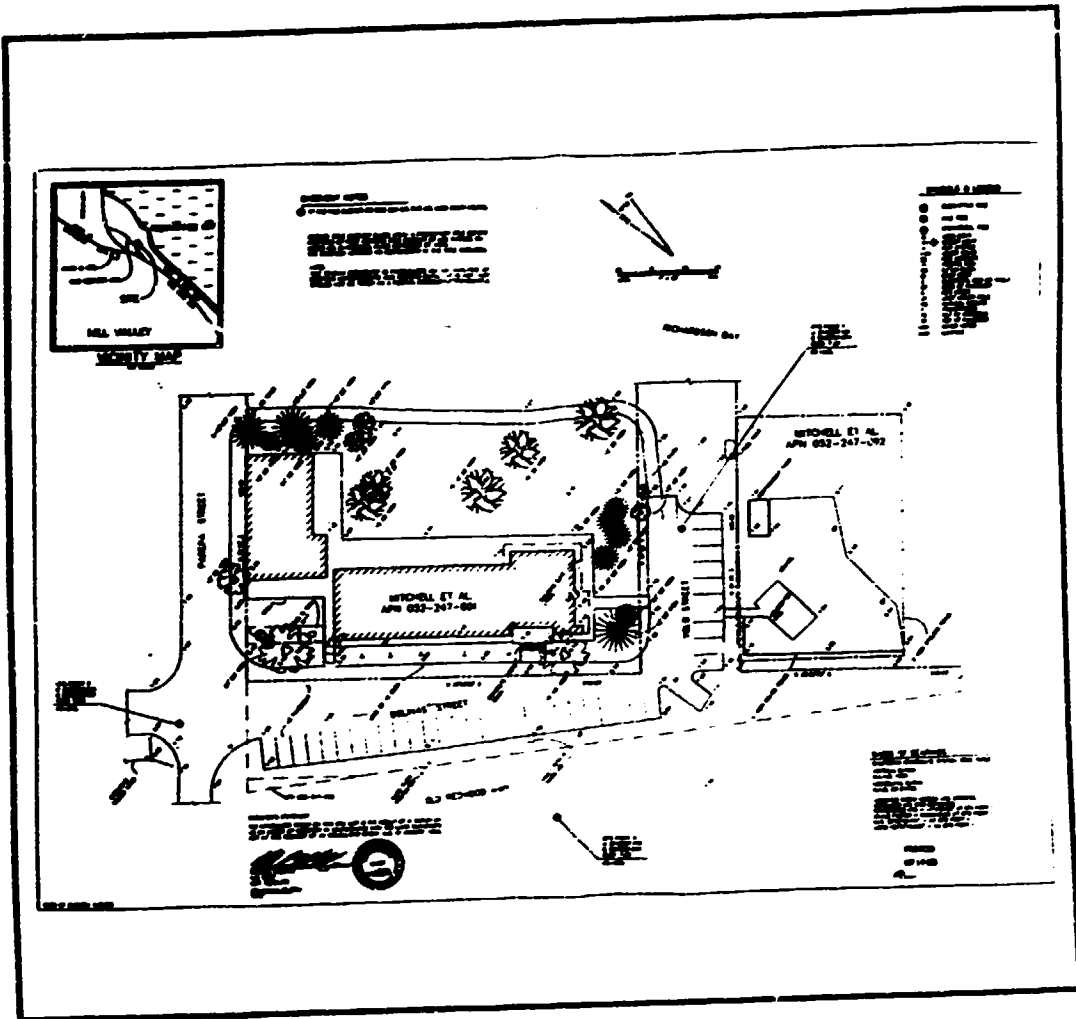


PRICE/PACIFIC BELL USE PERMIT & DESIGN REVIEW EXEMPTION
242 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01

Not to Scale

PC ATTACHMENT #2

Marin County Community Development Agency Site Plan

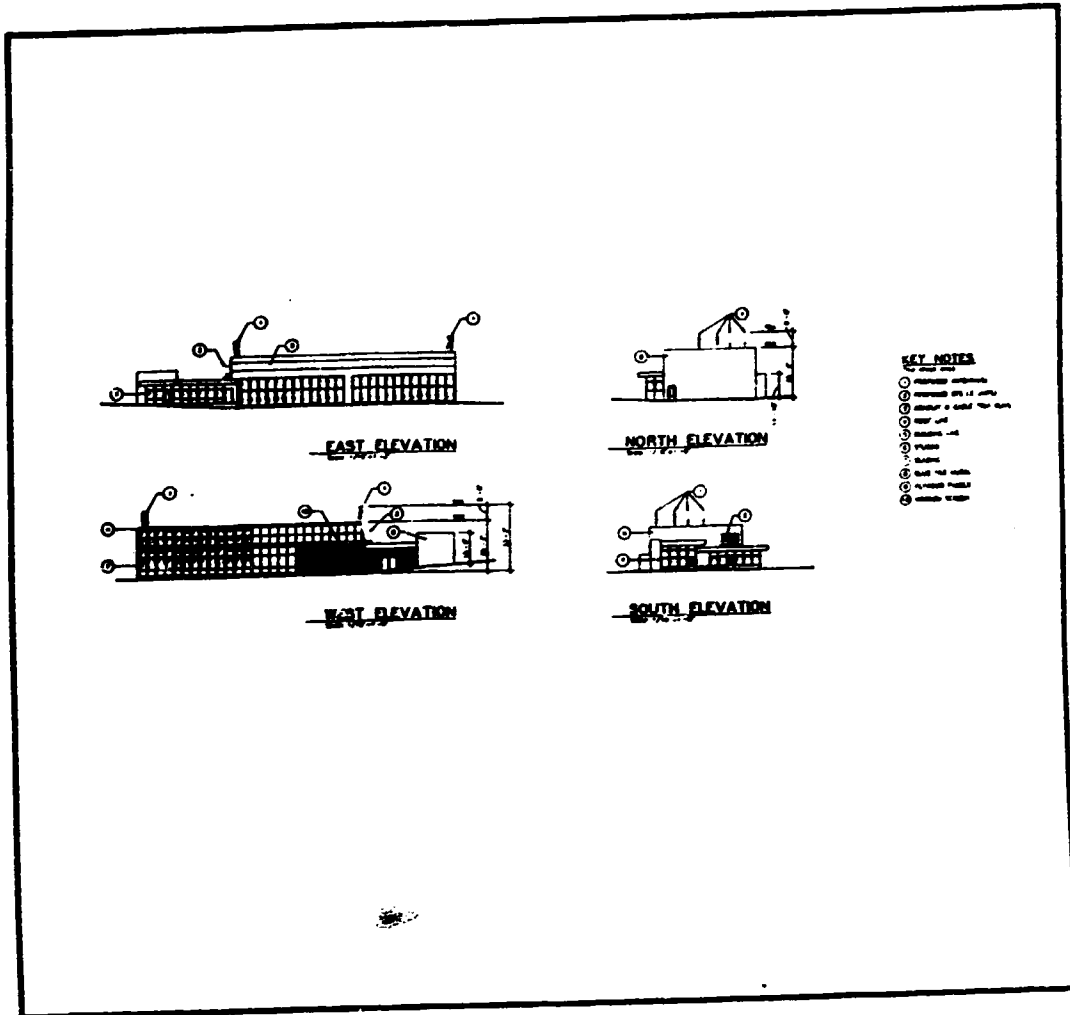


PRICE/PACIFIC BELL USE PERMIT & DESIGN REVIEW EXEMPTION
242 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01

Not to Scale

PC ATTACHMENT #3

Marin County Community Development Agency Elevations



PRICE/PACIFIC BELL USE PERMIT & DESIGN REVIEW EXEMPTION
242 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01

Not to Scale

PC ATTACHMENT #4

Marin County Community Development Agency

Mark J. Rosenfeld, AICP, Director

STAFF REPORT TO THE DEPUTY ZONING ADMINISTRATOR Price/Pacific Bell Use Permit and Design Review Exemption

Item No: C5. Application No: UP 96-406/DX 96-405
Applicant: Pacific Bell Mobile Services Owner: Steve Price
Property Address: 242 Redwood Hwy., Mill Valley Assessor's Parcel: 052-247-01
Hearing Date: June 20, 1996 Planner: Christine Gimmler, AICP

RECOMMENDATION: Approval with Conditions
APPEAL PERIOD: Five working days to the Planning Commission
LAST DATE FOR ACTION: July 16, 1996

PROJECT DESCRIPTION:

The applicant is requesting Use Permit approval and a Design Review Exemption to construct a Personal Communication Services (PCS) facility at 242 Redwood Highway, Mill Valley. The subject property is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend 8 feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof at the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 sq. ft. of roof area.

GENERAL INFORMATION:

Countywide Plan
Land Use Designation: RC (Recreational Commercial, maximum floor area ratio range of 30%)
Zoning: BFC-PCR (Bayfront Conservation District, Resort and Commercial Recreation District)
Lot size: ±4.4 acres
Adjacent Land Uses: Residential, office, heliport
Vegetation: Various mature trees (including pine and eucalyptus) and ornamental shrubs
Topography and Slope: Level
Environmental Hazards: None identified

DZA Staff Report
JUNE 20, 1996
Item No. C5., Page #1

PC ATTACHMENT #5

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is categorically exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 of the 1992 CEQA Guidelines because it entails installation and operation of new, small equipment and facilities mounted on the roof of an existing structure on a commercial property with no potentially significant impacts on the environment. Additionally, a report prepared by Hammett & Edison, Inc. dated Mar. 22, 1996, concludes that the proposed project would not result in any significant public health risks with respect to human exposure to radio frequency electromagnetic fields.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accordance with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property. No adverse comments regarding this project have been received by Community Development Agency staff.

PLAN CONSISTENCY:

The proposed project is consistent with the goals and policies of *The Marin Countywide Plan*, the *Tamalpais Area Community Plan 1992*, and the *County of Marin Telecommunications Facilities Policy Plan* because the project consists of the installation and operation of a telecommunications facility that is compatible with surrounding commercial uses and has been designed to reduce visual impacts and minimize health risks. Please refer to the recommended resolution for detailed findings.

PROJECT ANALYSIS:**Background**

As a subsidiary of Pacific Telesis, Pacific Bell Mobile Services is a public utility licensed by the Federal Communications Commission to operate wireless communication facilities in California. The proposed project would involve installation of a Personal Communication Services ("PCS") facility on the rooftop of an existing commercial building in Mill Valley. This unstaffed facility is intended to enhance wireless communication services to local residents and businesses.

Land Use Compatibility

Currently, the project site is developed with a heliport landing pad, several commercial buildings, and a houseboat marina. The governing BFC-RCR zoning allows resort and visitor serving facilities. However, a public utility or service use may be approved in this zoning district by Use Permit pursuant to Section 22.88.010(2) of Marin County Code when it is found to be necessary for public health, safety, convenience or welfare. The proposed facility would be installed on the roof of the existing building on the property that houses the heliport office, and would not interfere with the existing commercial and residential use of the site. In addition, the project conforms with the design standards of the Bayfront Conservation District (Marin County Code Section 22.50.050) because the proposed roof-mounted facility would be sited on an existing structure and would not decrease public access to bayfront lands, result in additional habitat loss, or decrease visual access to shoreline areas.

DZA Staff Report
JUNE 20, 1996
Item No. C5., Page #2

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Public Health and Safety with Respect to Radio Frequency Electromagnetic Fields

The applicant has submitted a project-specific report prepared by Hammett & Edison, Inc., dated March 22, 1996, that evaluates the project for compliance with standards of the American National Standards Institute and the Institute of Electrical and Electronic Engineers ("ANSI/IEEE") for limiting human exposure to radio frequency electromagnetic fields. The report concludes that the project would not result in any significant public health risks with respect to human exposure to radio frequency radiation because the facility will operate well below the exposure limits of ANSI/IEEE. Exposure levels at all locations near the site are calculated to be less than 1% of the most restrictive ANSI/IEEE limit, and exposure levels in building interiors would be reduced even further by the shielding effect of building walls and roofs.

The report also concludes that it would not be possible for exposure conditions to approach ANSI/IEEE limits without being within approximately four feet of the transmit antennas. Since the antennas are proposed to be mounted on a roof of a building, it may be possible for a person to closely approach these antennas. Accordingly, the report recommends that access to the roof area be restricted. Access to the roof area may be restricted by the posting of a warning sign at each point of access or by installation of suitable access controls, such as locked, anti-climb shields on ladders. In the event that roofing, painting, or other activities are required for extended periods on the roof, the transmit antennas should be turned off, unless measurements, more detailed calculations, or other measures ensure that the prevailing ANSI/IEEE limits are not exceeded. These recommendations have been included as a recommended condition of approval in the attached resolution.

Visual Impact

The proposed facility would be located on the roof of an existing commercial building which is partially screened from the north, south, and east by existing mature pine and eucalyptus trees. The Base Transceiver Stations would be mounted on the lowest portion of the roof on the southeastern end of the building and would be screened from off-site locations to the north and west by the adjacent wall. The two pairs of proposed panel antennas would be located on the taller northwestern portion of the structure and their support posts would extend eight feet above the existing roof parapet. However, the antennas and support posts would be painted a gray color to blend with the sky background as viewed from ground-level vantage points and the base transceiver stations would be painted to match adjacent walls. As described above, existing mature trees on the site would provide visual screening for the antennas from off-site locations to the north, south, and from the houseboat marina to the east. Finally, in response to comments from the Tam Design Review Board, the applicant has agreed to resite the northwestern pair of antennas 20 feet back from the front elevation of the building to align with the southeastern pair and reduce the visibility of the antennas as viewed from below. The proposed project would not result in any significant visual impacts because: (1) the number of antennas would be limited to four; (2) the height of the antennas would be limited to 8 feet above the roof ridge; (3) the antenna arrays would be located centrally on the roof behind parapet walls; and (4) the proposed antennas, support posts, and base transceiver stations would be painted appropriate, nonreflective colors that blend with the predominant viewshed background (see Attachment 6: Photosimulation).

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator take the following actions:

1. Review the administrative record;
2. Conduct a public hearing; and
3. Adopt the attached Resolution approving the Price/Pacific Bell Use Permit and Design Review Exemption based on the findings contained in the proposed resolution.

ATTACHMENTS:

1. Proposed Resolution recommending approval of the Price/Pacific Bell Use Permit/Design Review Exemption
2. Location Map
3. Assessor's Parcel Map
4. Site Plan
5. Elevation
6. Photosimulation of proposed facility
7. Tamalpais Design Review Board minutes, 5/1/96
8. Tamalpais Fire Protection District letter, 5/8/96
9. Marin County Department of Public Works, Land Use and Water Resources memo, 5/9/96
10. San Francisco Bay Conservation and Development Commission letter, 6/3/96
11. CEQA Notice of Exemption

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. _____

A RESOLUTION APPROVING THE PRICE/PACIFIC BELL USE PERMIT/DESIGN REVIEW EXEMPTION APPLICATION

ASSESSOR'S PARCEL NUMBER 052-247-01
242 REDWOOD HIGHWAY, MILL VALLEY

SECTION I: FINDINGS

- I. WHEREAS the applicant has submitted a Use Permit and Design Review Exemption application proposing installation of a minor, rooftop telecommunications facility that would enhance wireless communication services to residents and businesses in Mill Valley and Sausalito. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is located at 242 Redwood Highway, Mill Valley and is further identified as Assessor's Parcel #052-247-01.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on June 20, 1996, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 of the 1992 CEQA Guidelines because it entails installation and operation of new, small equipment and facilities mounted on the roof of an existing structure on a commercial property with no potentially significant impacts on the environment. Additionally, a report prepared by Hammett & Edison, Inc. dated March 22, 1996, concludes that the proposed project would not result in any significant, public health risks with respect to human exposure to radio frequency electromagnetic fields.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the goals and policies of *The Marin Countywide Plan* because:
 - A. The proposed project is consistent with the Recreational Commercial land use designation for the project site. The site is located within the City-centered Corridor which is designated for urban development where infrastructure and facilities are available for such development. The Recreational Commercial land use designation is generally intended for resort uses and privately-owned recreational facilities. However, Policy CD-8.13 of the

Countywide Plan recognizes that certain facilities and uses, such as the proposed telecommunications project, may be found to be consistent with recreational uses, subject to Use Permit approval.

- B. The mandatory Use Permit finding can be made pursuant to Section 22.88.020(3) of Marin County Code to allow public utility and service uses necessary for public safety, convenience and welfare.
- C. Pursuant to Community Facilities Objective CF-8, the proposed project is consistent with goals and policies of the *County of Marin Telecommunications Facilities Policy Plan* which ensure that the siting and design of the proposed facility is compatible with other land uses, provides protection from vandalism and fire hazards, minimizes visual impacts, and minimizes potential health risks to people.
- D. The proposed project would not impact water supply, fire protection, waste disposal, schools, traffic and circulation, or other services.

V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the goals and policies of the *Tamalpais Area Community Plan 1992* because:

- A. The proposed project would not adversely impact the commercial character and scale of the project site or the quality of the natural environment.
- B. Pursuant to Policy LU1.3, the proposed project would be compatible with the scale (bulk, mass and height) and appearance (colors, materials and design) of the existing commercial structures on the subject property.
- C. The proposed project would be consistent with the Shoreline Commercial land use designation for the project site. The Shoreline Commercial land use designation allows a mixture of open space and commercial development including office, restaurant, recreation and limited retail uses. The proposed facility would be mounted on the roof of an existing commercial structure and would provide a service to local residents without disrupting the existing commercial use of the property or resulting in adverse traffic, noise, odor, light glare, or aesthetic impacts on properties in the vicinity.

VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the goals and policies of the *County of Marin Telecommunications Facilities Policy Plan* because:

- A. The proposed project is characterized as a minor telecommunications facility. A minor facility does not create potential health hazards, is not significant in terms of size or height, and is accessory to a residential and/or commercial development.
- B. The proposed project would not result in any significant visual impacts because: (1) the number of antennas would be limited to four; (2) the height of the antennas would be limited to 8 feet above the roof ridge; (3) the antenna array would be located centrally on the roof behind parapet walls; and (4) the proposed antennas, support posts, and base transceiver stations would be painted appropriate, nonreflective colors that blend with the predominant viewshed background.

- C. The proposed project would be sited, designed and built in a manner which minimizes potential health risks from radio frequency electromagnetic fields. A report prepared and submitted by a qualified professional with expertise in the field of radio frequency radiation health risk assessment concludes that the project would not result in any significant public health risks with respect to human exposure to radio frequency radiation because the facility would operate well below the exposure limits of the American National Standards Institute and the Institute of Electrical and Electronic Engineers. In addition, conditions of project approval require that access to the roof area on which the antennas are located be restricted to prevent anyone from approaching within four feet of transmit antennas, consistent with the recommendations of the submitted report.
- D. The proposed project would not adversely impact public safety with respect to siting because the antenna array would be located on a roof which would not be accessible to the public. Conditions of project approval would require that access to the roof area be restricted by the posting of a warning sign at each point of access or by installation of suitable access controls, such as locked, anti-climb shields on ladders.
- E. Conditions of approval require the operator to dismantle and remove the PCS facility if it has been inoperative or abandoned for a two-year period.
- F. In order to periodically evaluate compliance with conditions of project approval and policies of the Telecommunications Plan, conditions of approval require renewal of this Use Permit every 10 years.
- VII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory finding to approve a Use Permit pursuant to Section 22.88.020(3) of Marin County Code as specified below.

The establishment, maintenance or conducting of the use for which a Use Permit is sought will not under this particular case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in said neighborhood because:

- A. Public utility and service uses may be approved in the governing BFC-RCR zoning district by Use Permit pursuant to Section 22.88.010(2) of Marin County Code when it is found to be necessary for public health, safety, convenience or welfare. The proposed project is part of Pacific Bell Mobile Services system which provides wireless communications service to residents and businesses in Southern Marin and would contribute to public safety, convenience and welfare.
- B. The proposed project would not result in any significant, public health risks with respect to human exposure to radio frequency radiation because the facility would operate well below the exposure limits of the American National Standards Institute and the Institute of Electrical and Electronic Engineers. As described above, conditions of project approval require that access to the roof area on which the antennas are located be restricted to prevent anyone from approaching within four feet of transmit antennas, consistent with the recommendations of the submitted report.

- C. The proposed facility would be located on an existing commercial structure and would provide a service to local residents without disrupting the existing character of the subject property. In addition, the project would not result in adverse traffic, noise, odor, light, glare, or aesthetic impacts that conflict with the quality of the community.
- D. The proposed project would be incidental to the existing commercial and residential use of the subject property. Pursuant to Marin County Code Section 22.88.010, public utility and service uses, such as the proposed project, are permitted in BFC-RCR zoning district subject to Use Permit approval.

VIII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is exempt from the requirements of Design Review pursuant to Section 22.82.030(4) . Marin County Code because:

The proposed telecommunications facility would be partially screened from off-site locations and would not result in grading, tree removal or other adverse physical effects on the environment. The facility would maintain large setbacks to all surrounding properties and would not interfere with the existing commercial and residential use of the property. Construction of the project would conform to a conditionally permitted use in the governing zoning district as a public service use with public benefit, and would be situated solely on the subject property. The proposed antennas and support posts would be painted an appropriate, nonreflective color that blends with the predominant viewshed background. In addition, the antenna arrays would be located centrally on the roof behind parapet walls to reduce the visibility of the structures as viewed from ground level vantage points.

SECTION II: DECISION

NOW, THEREFORE, LET IT BE RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the Price/Pacific Bell Use Permit/Design Review Exemption subject to the following conditions:

Marin County Community Development Agency -- Planning Division

- Pursuant to Marin County Code Section 22.88.010, this approval permits the installation and operation of an unmanned rooftop telecommunications facility on the property located at 242 Redwood Highway, Mill Valley. The approved Personal Communication Services (PCS) facility includes the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office on the subject property. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet to a total height of 33 feet above grade. One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area.

2. Except as modified by conditions of approval, plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A": Pacific Bell Mobile Services, SF-306, 260 Redwood Highway, Mill Valley, consisting of four sheets received April 9, 1996, and on file in the Marin County Community Development Agency -- Planning Division.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit revised plans for review and approval of the Community Development Director that show a minimum setback of 20 feet between the proposed antennas and the front (southwest) elevation of the building.
4. Access to the roof area of the subject building shall be restricted. Access area may be restricted by the posting of a warning sign at each point of access or by installation of suitable access controls, such as locked, anti-climb shields on ladders. In the event that roofing, painting, or other activities are required for extended periods on the roof, the transmit antennas should be turned off, unless measurements, more detailed calculations, or other measures ensure that the prevailing exposure limits of the American National Standards Institute and the Institute of Electrical and Electronic Engineers are not exceeded.
5. The approved facility must be dismantled and removed from the premises if it has been inoperative or abandoned for a two-year period. PRIOR TO ISSUANCE OF A BUILDING PERMIT, the applicant shall enter into a standard Performance Agreement with the County and post a bond or other suitable security in order to guarantee removal of an abandoned facility. Upon expiration of the Use Permit, all equipment, structures, and antennas shall be removed and the site returned to its preexisting conditions.
6. No exterior lights on the panel antennas and the Base Transceiver Stations are permitted.
7. The antennas and support posts shall be painted a light gray color to blend with the sky background as viewed from ground-level vantage points. The base transceiver stations shall be painted to match the adjacent walls.
8. The applicant shall be responsible for ensuring that the number of construction vehicles is limited to the minimum number necessary to complete the project.
9. Any changes or additions to the project shall be submitted to the Community Development Agency -- Planning Division for review and approval before the contemplated modifications may be initiated.
10. This Use Permit shall remain valid for a 10-year term and will expire on June 20, 2006. The Use Permit may be renewed if the applicant submits a Use Permit renewal application before this date, with the appropriate fees, to the Community Development Agency -- Planning Division.

Tamalpais Fire Protection District

11. PRIOR TO FINAL INSPECTION, the Fire Marshal shall verify to the Community Development Agency -- Planning Division that an approved fire detection system has been installed in accordance with National Fire Protection Association standards in the Base Transceiver Stations. The system must be connected to the fire alarm headquarters of the Tamalpais Fire Protection District through an approved central monitoring system.

San Francisco Bay Conservation and Development Commission

12. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit verification that the San Francisco Bay Conservation and Development Commission has reviewed and approved the proposed project.

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE, LET IT BE FURTHER RESOLVED that the applicant must vest this Use Permit and Design Review Exemption approval by June 20, 1996, or all rights granted in this approval shall expire, unless the applicant applies for an extension at least 30 days before the expiration date above and the Agent / Director approves it. An extension of up to four years may be granted for cause pursuant to Sections 22.88.050 and 22.82.130 of Marin County Code. Vesting this Use Permit and Design Review Exemption approval entails securing a valid building permit and substantially completing the improvements in accordance with the secured building permit.

This Use Permit shall be valid upon timely vesting of the approval and will remain valid until June 20, 2006, unless the conditions of approval are violated, in which case the Use Permit may be revoked.

This decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$500.00 filing fee must be submitted in the Community Development Agency, Room 308, Civic Center, San Rafael, no later than 4:00 p.m. on June 27, 1996.

SECTION IV: ADOPTION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 20th day of June, 1996.

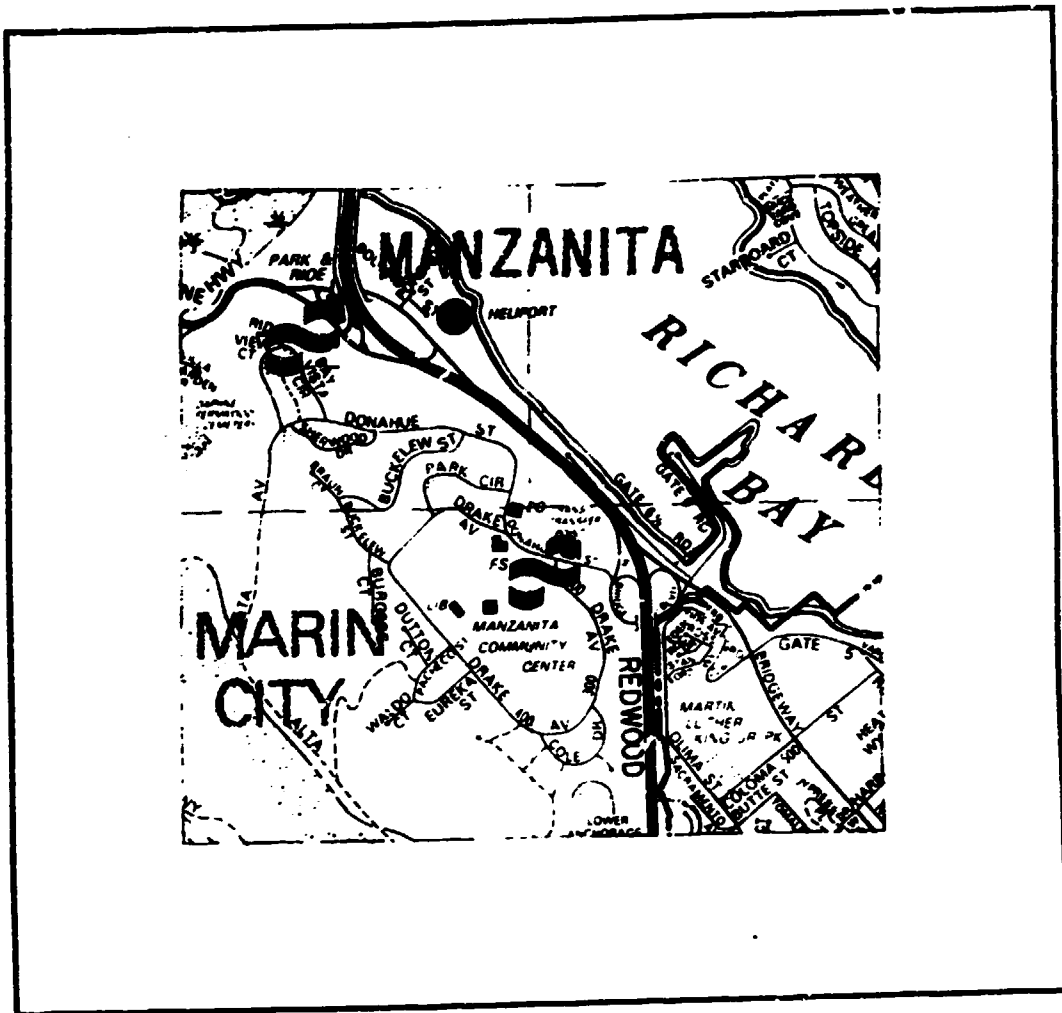
BRIAN C. CRAWFORD, AICP
DEPUTY ZONING ADMINISTRATOR

Attest:

Patrice Stancato
DZA Secretary

RED Exhibit

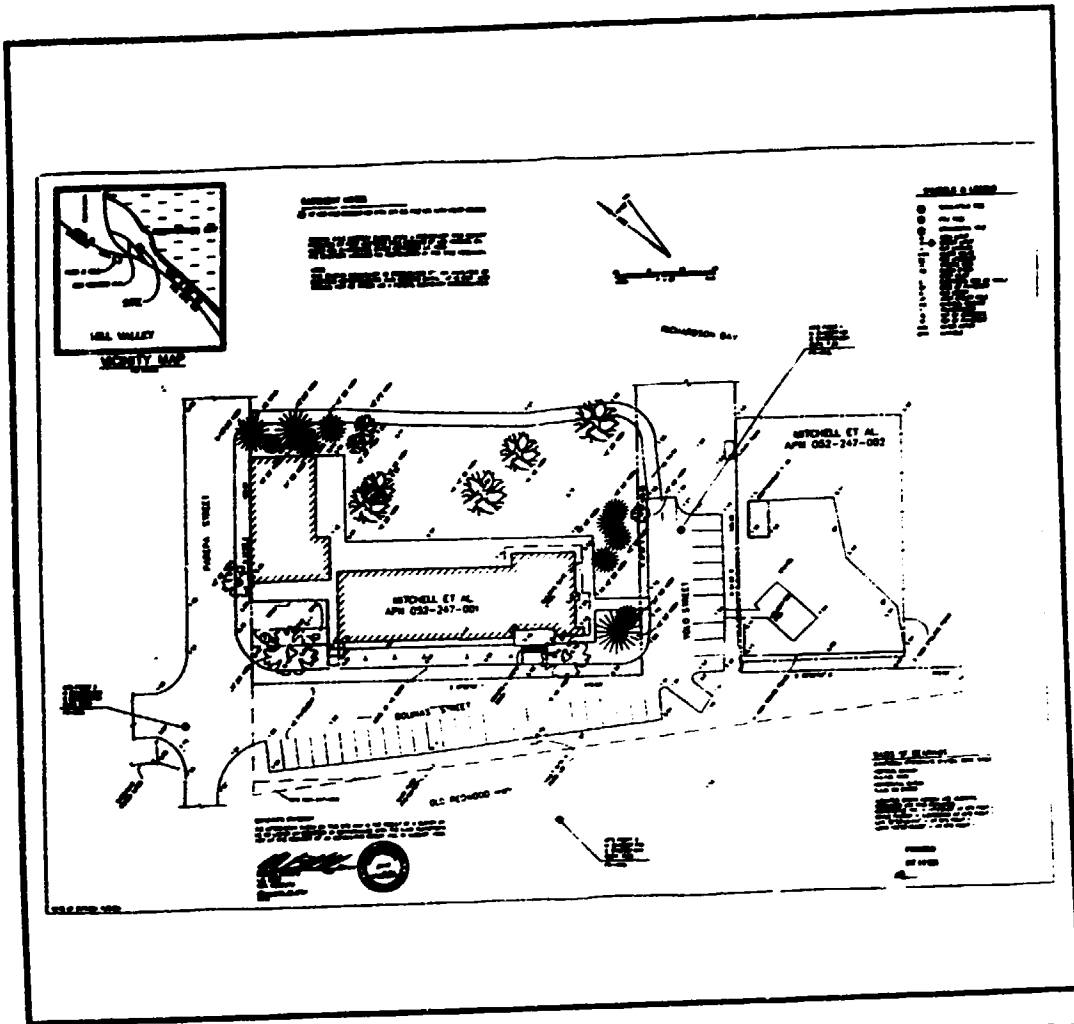
Marin County
Community Development Agency
Location Map



PRICE/PACIFIC BELL USE PERMIT & DESIGN REVIEW EXEMPTION
242 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01
June 20, 1996
Not to Scale

ATTACHMENT 2

Marin County Community Development Agency Site Plan



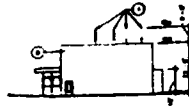
PRICE/PACIFIC BELL USE PERMIT & DESIGN REVIEW EXEMPTION
242 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01
June 20, 1996
Not to Scale

ATTACHMENT 4

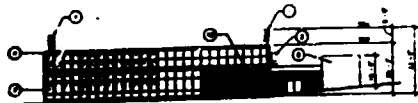
Marin County Community Development Agency Elevations



EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION

KEY NOTES

- 1. APPROVED ARCHITECTURE
- 2. APPROVED USE OF LAND
- 3. CONFORMS TO LOCAL ORDINANCES
- 4. SEE PLAN
- 5. SEE PLAN
- 6. SEE PLAN
- 7. SEE PLAN
- 8. SEE PLAN
- 9. SEE PLAN
- 10. SEE PLAN

PRICE/PACIFIC BELL USE PERMIT & DESIGN REVIEW EXEMPTION
242 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01
June 20, 1996
Not to Scale

ATTACHMENT 5

RED Exhibit D



Photograph simulation of proposed antennas. View looking north from parking lot.

DZA ATTACHMENT #6

JM
Consulting Group, Inc.
11111 AMERICAN BLVD.
SUITE 100
DALLAS, TEXAS 75241

TAM DESIGN REVIEW BOARD: DESIGN REVIEW RECOMMENDATIONS

PROJECT: 242 PENWOOD HWY DATE: MAY 6 1996

IV. WE HAVE REVIEWED THIS APPLICATION FOR MERITS & RECOMMEND:

Approved as submitted.

Approval with the following conditions:

- A. In order to enhance fire safety, Applicant shall install four (4) hose bibs prior to issuance of Occupancy Permit. One hose bib shall be located on each primary side of the structure.
- B. In order to ensure that new landscaping & ground cover plantings will be irrigated sufficiently & in a water-conserving manner, Applicant shall install a drip irrigation system prior to issuance of Occupancy Permit.
- C. In order to enhance the structure's visual appeal to the neighborhood upon construction completion, to mitigate any adverse visual impact of the structure, & to prevent future soil erosion of any disturbed soil, Applicant shall install drought resistant trees, shrubs & ground cover on all disturbed soil noted on plans. These plantings shall be at least 50% native, deer-resistant species & shall be installed prior to issuance of Occupancy Permit.
- D. add landscaping to north side of building
- E. to north side of building at building to shield view from freeway
- F. paint exterior buff/taupe gray.
- F. paint "R.T.S." cabinets color of adjacent walls.

Continuance with Applicant's consent until: _____

Denial for the following reasons:

- A. _____
- B. _____
- C. _____

Motion: PASSAGE

Vote: 5 Ayes 0 Noes 0 Abstain

Second: CURSON

Abstentions/Reasons:

- A. _____
- B. _____
- C. _____

V. ADDITIONAL MERITS & COMMENTS REGARDING THIS PROJECT & ITS DESIGN:



TAMALPAIS FIRE PROTECTION DISTRICT
309 POPLAR STREET
MILL VALLEY, CA 94941

Darryl Anderson
Fire Chief
(415) 380-1100
FAX: (415) 380-1102

Date: *MAY 8, 1996*

Marin County Planning Department
Civic Center
San Rafael, CA 94903

Re: *042 Redwood Hwy APN 052-247-01*

Dear *CHRISTINE*

The proposed plans for the above-listed project have been reviewed. Based on the plans as submitted, the items checked below shall indicate the requirements that will be imposed by the Tamalpais Fire Protection District in accordance with Tamalpais Fire Protection District Ordinance 92/93-1:

I. ACCESS:

- 1 All access roads serving a dwelling(s) shall be a minimum of _____ feet in width and be paved.
- 2 Driveways off access roads serving dwelling units shall meet Marin County Standards related to dimensions, surfacing and slope (slope not to exceed 21 percent).
- 3 All new driveways shall be designed so that emergency vehicles can negotiate turns without having to make backing maneuvers (no switch-backs).
- 4 All access roads or driveways in excess of 150 feet in length shall be provided with an approved turn-around.
- 5 In addition to the turn-around described above, drive-ways or access roads shall have turn-outs every _____ feet or as required by the fire department. A turn-out shall be described as a shoulder or wide portion of the driving surface which has enough usable surface for vehicles to pass.
- 6 Provide a U.L. listed key box as required by the Tamalpais Fire Protection District.

DZA ATTACHMENT #8

II. FIRE FLOW:

___ 7. PRIOR TO FRAMING, provide _____ Jones Model 3760 fire hydrant(s) to be spaced at 350 feet intervals and capable of providing a flow at the site of 1000 gallons per minute. Hydrant placement (including water main extension) shall be reviewed and approved by T.F.P.D. and M.M.W.D.

✓ 8. Fire sprinkler system required:

a. All new construction;

ⓑ To additions in excess of 500 square feet of gross floor area;

c. Existing structure shall be retrofitted with a fire sprinkler system when the cost of repairs or remodels to existing structure exceed 50 percent of the replacement value of that structure.

Plans for fire sprinkler system design shall be reviewed and approved by the T.F.P.D. prior to installation.

III. ADDITIONAL:

___ 9. The address shall be posted in accordance with requirements of the Uniform Fire Code.

✓ 10. Smoke detectors shall be installed in accordance with the Uniform Building Code.

___ 11. A remotely located, second means of egress shall be provided for each floor above the first.

___ 12. Non-combustible roofing required:

a. All new construction;

b. To additions in excess of 500 square feet;

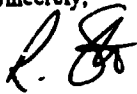
c. Existing roofs shall be replaced with non-combustible roof material when alterations or repairs to existing roofs involve more than 50 percent of the total roof area.

- ___ 13. Provide for compliance with Public Resource Code 4291 relating to brush and weed clearance.
- ___ 14. Prior to occupancy, a spark arrestor shall be installed on the chimney(s) (1/4" mesh minimum).
- ✓ 15. OTHER: THE Building shall have installed therein an approved fire detection (products of combustion) system in accordance with the standards as established by the National Fire Protection Assn. SMD system shall be connected to the fire alarm headquarters of the SEE BELOW

All on-site improvements, such as water main extensions, hydrants and access roads, must be serviceable prior to framing the structure.

Final occupancy approval shall not be granted/released until authorization to the Planning Department has been received from the fire department.

Sincerely,



Robert L. "Mike" Stone
Deputy Chief

RLS:kj

TAMALPAIS FIRE PROTECTION DISTRICT THROUGH AN
APPROVED U. L. CENTRAL MONITORING STATION.

INTER-OFFICE MEMORANDUM
DEPARTMENT OF PUBLIC WORKS

DATE: 5-9-96

DUE: 5-10-96

TO: CHRISTINE GIMMLER
FROM: NATHAN CHAMBERS
APPROVED: GR
RE: Rec'd Per Bill DR. EXHIBITION & U.P.
A.P. #: 052-247-01
ADDRESS: 242 REDWOOD HUN
MILL VALLEY

TYPE OF DOCUMENT

- DESIGN REVIEW
- LAND DIVISION
- USE PERMIT
- VARIANCE
- LOT LINE ADJUSTMENT
- COASTAL PERMIT
- OTHER

We have reviewed this application for content and:

- Find it COMPLETE
- Find it INCOMPLETE
- Recommend DENIAL for reasons stated
- Find it ACCEPTABLE AS PRESENTED
- Recommend the conditions listed below be completed prior to:
 - Issuance of Building Permit
 - Occupancy
 - Approval of _____
 - Other _____

TRAFFIC

- N.A.
- NO COMMENTS
- COMMENTS INCLUDED

STATE OF CALIFORNIA

PETE WILSON, Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
 THIRTY VAN NESS AVENUE, SUITE 2011
 SAN FRANCISCO, CALIFORNIA 94102-0000
 PHONE: (415) 557-3689

June 3, 1996

JM Consulting Group, Inc.
 884 Dubuque Avenue
 South San Francisco, California 94080

ATTENTION: James Calkins

SUBJECT: Proposed Personal Communication Services Facilities
 242 Redwood Highway, Near Mill Valley, Marin County
 (BCDC Inquiry File No. MR.MV.6618.1)

Ladies and Gentlemen:

Thank you for your Notice of Transmittal and attached plan showing the "Normal" High Tide Line, dated May 23, 1996 and received in this office on the same day, regarding proposed antennas and other personal communication service facilities at 242 Redwood Highway in Marin County. Based on the line identified as the "Normal" High Tide Line, the proposed project is within the Commission's "shoreline band" jurisdiction because the existing building is within 100 feet of the northerly shoreline of Richardson. Therefore, the proposed project would need a permit from our agency.

For your convenience, I am enclosing a copy of our permit application form and its accompanying instructions. Based on the information reviewed to date, the proposed project can likely be processed administratively as a "minor repair or improvement" in a relatively short period of time without a public hearing. Also, please remember that all plans submitted for a BCDC permit must indicate the Commission's "bay" and "shoreline band" jurisdiction by the 5-foot contour line above Mean Sea Level in locations where tidal marshes are present, or where no tidal marshes are present, the Mean High Tide line, which is approximately 2.4 feet National Geodetic Vertical Datum, and the line 100 feet inland and parallel to the "bay" jurisdiction line. While the "normal" high tide line gives us some understanding of the location of the Bay in the project vicinity, it does not accurately portray the Commission's jurisdiction.

If you have any questions regarding this matter or any of the items mentioned above, please feel free to call me at (415) 557-3689.

Very truly yours


 NICHOLAS SALCEDO
 Coastal Analyst

NS/mm

cc: Marin County Community Development Agency, Attn. Christine Gimmler, Planner

Dedicated to making San Francisco Bay better

DZA ATTACHMENT #10

FILING REQUESTED BY AND
WHEN FILED RETURN TO:

Marin County Community Development Agency
Planning Division
3801 Civic Center Drive, #308
San Rafael, CA 94803

Attn: Christine Gimmler, Planner


NOTICE OF EXEMPTION

Marin County
Environmental Coordination and Review

April 22, 1996

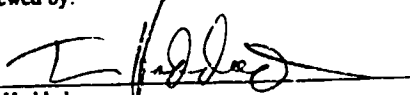
- 1. **Project Name:** Price/Pac Bell Use Permit 96-406/Design Review Ex. 96-405
- 2. **Project Location:** 242 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01/Marin County
- 3. **Project Description:** Application to install and operate an unmanned telecommunications facility consisting of two pairs of roof-mounted panel antennas and two modular base transceiver stations located on the roof of an existing structure on the subject property.
- 4. **Public Agency Approving Project:** Deputy Zoning Administrator
- 5. **Project Sponsor:** J.M. Consulting Group for Pac Bell Mobile Services
- 6. **CEQA Exemption Status:** Categorical Exemption 15303, Class 5
- 7. **Reasons for Exemption:** The proposed project entails the installation and operation of new, small equipment and facilities mounted on the roof of an existing structure on a commercial property and would not result in potentially significant impacts on the environment. Additionally, a report prepared by Hammett and Edison, Inc. dated March 22, 1996 concludes that the proposed project would not result in any significant risks with respect to human exposure to radio frequency electro magnetic fields.

Project Planner:



Christine Gimmler
Planner

Reviewed by:



Tim Haddad
Environmental Coordinator

Telephone: (415) 499-6269

DZA ATTACHMENT #11

3.

PRICE/PACBELL DESIGN REVIEW EXEMPTION/USE PERMIT

Proposal to construct a Personal Communication Services (PCS) facility. The subject property is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort, Commercial, Recreation district). The subject property is located at 242 Redwood Hwy., Mill Valley, and is further identified as Assessor's Parcel #052-247-01.

(Tape 1, Side A @ 7.3)

In response to a request by the hearing officer, staff gave a brief description of the project and stated that, while no written correspondence had been received since the staff report was prepared, several residents of the houseboat marina had expressed concern regarding the proposed project.

Joyce Lynn, a resident of Commodore Landing, stated that she is a journalist who has written articles for the Pacific Sun about potential health effects related to radio frequency (RF) emissions and would like these articles entered into the record. She also presented letters from other concerned residents which address issues regarding health and safety, as well as visual and aesthetic impacts of the project which could affect property values at the marina. She stated that a children's educational facility is currently located on the premises and she presented a letter from the Director expressing his concerns about the projects. Ms. Lynn stated that it is also her understanding that Steve Price is proposing to put some artist studios in the structure directly under the antenna. The residents have questions about the potential health effects on both the children and the people who will work in the studios. She requested that this project be given a hearing before the full Planning Commission.

Terry Adams, Elaine Alyson, and Richard Kuski were present and stated that they were being represented by their legal counsel, Christine Craft.

Christine Craft stated that she is an attorney representing a consortium of marina residents. She stated that she is aware of the section in the Telecommunications Bill which says that a government entity cannot deny a permit for a telecommunications facility based solely on an environmental concern if the proposed facility meets ANSI standards. She stated for the record, however, that nothing in the Telecommunications Bill exempts the County of Marin from liability at some point in the future because the County is aware, or should be aware, that Pacific Bell cannot guarantee the safety of these facilities. She stated that the ANSI standards are over ten years old and the health issues are just beginning to be investigated. Clearly the County would be within its rights to consider potential liability. The marina's residents want to know what the cumulative effects will be from RF fields. They are also concerned about the preschool facility and what effects there will be on the children playing directly under these antennas. They are concerned about the monitoring because there is nothing in the staff report which mentions the specific type of monitoring required. There is a brief mention of monitoring twice a year, but residents are not comfortable that this will be sufficient to determine the actual emissions from the facility. She stated that the staff report determines that this facility does not fall within CEQA simply because

staff says it does not. In addition, staff refers to a study which was written by Hammett & Edison, Inc., a firm hired by Pacific Bell. The person who conducted these studies has only a B.S. degree in engineering but no further educational expertise on the issues of environmental impacts and safety of these towers. Ms. Craft stated that the people whom she represents would like to see this project go before the full Planning Commission to determine whether the County is rushing to judgment and actually speeding up the approval process for Pacific Bell by granting a Design Review Exemption.

James Calkins, a land use planner with JM Consulting Group, which is representing Pacific Bell Mobile Services, stated that several misconceptions had been voiced about the project. Concerns were raised regarding the design review process. However, this project was brought before the Tamalpais Design Review Board, at which time the design was discussed. There is also a misconception that the project will be an EMF emitter. This facility will be an RF emitter, or radio frequency emitter, and will not be in the 60 Mhz range of power lines. The articles from the New Yorker which have been quoted are about power lines and power line facilities. The Hammett & Edison report states that the equipment meets current safety standards. In fact, the transmitter would be only 1/1200th of the existing adopted ANSI standard. Even with the revised ANSI standard which has been proposed, this transmitter would still only be at 1/500th of the emissions set forth as a safe level. Mr. Calkins stated that he does not believe that a risk to children has been substantiated. The World Health Organization has done studies on RF emissions, the majority of which were fetal studies. These systems have been used in England for 10 years so there are real life and real time studies on the health effects of these facilities. There are facilities which are sited at day care centers and schools. These types of projects have been brought before the Board of Supervisors in San Francisco and the County of San Mateo. The studies required by the Telecommunications Plan of Marin County have been done, the facility has been sited in accordance with zoning guidelines, and the project is in compliance with the design review sections of County code. Therefore, the applicant asks that the Deputy Zoning Administrator endorse the staff report, support the Tamalpais Design Review Board, and approve the project.

The hearing officer stated that he had visited the site and had concerns regarding the visual impact of the towers, although he did not find the visual effects of the project to be significant inasmuch as the project towers would not block any bay views or views of the shoreline. Nonetheless, it appears that there may be an opportunity to further minimize the visibility of the project by re-siting the southernmost antenna array towards the interior of the building to make use of the existing trees in the rear yard to screen the views of the antennas from the southern end of the marina. James Calkins responded that he did not feel this would pose an RF problem, but the re-siting would need to be evaluated by the project engineer.

Enid Goldstein stated that she is a KGO radio talkshow host and a resident at the marina. She said that broadcasting people have one of the highest rates of cancer and she is concerned about health effects of the transmitters. She also stated that she does not feel there is adequate monitoring of the project. She said that no one knows the effects, for example, of power surges. She stated that, whatever the reality is, the perception of the proposed facility is one that negatively impacts property values. She would like to see this matter considered before the full Planning Commission.

Seeing no one else present to speak for or against this project, the hearing officer closed the public hearing. The hearing officer stated that, given the number of people who have raised issues and concerns about this project, he will grant the request to refer this matter to the Planning Commission and will tentatively schedule this item for the next available Planning Commission agenda on August 5, 1996. A separate public notice will be sent out in advance of that hearing. During the interim, the hearing officer directed staff to proceed with the following: (1)

examine the re-siting of the southernmost antenna array towards the interior of the building so that existing trees in the rear yard area of the site can be used to screen the views of the antennas from the southern end of the marina; (2) respond to the cumulative RF effects issue; (3) respond to the RF monitoring issue; (4) respond to the question about the CEQA exemption status of the project; (5) investigate the current status of the ANSI standard; (6) consult with County Counsel regarding the County's authority to approve or disapprove this project solely on the basis of environmental effect, namely adverse health effects from RF radiation; and, (7) determine the status of the school located on the subject property, since this use was only allowed to remain in the building until the end of the current school year as part of a previous Use Permit which was approved by the County three or four months ago. Staff should include this information in their report to the Planning Commission.

Submitted 7/11/96 DZA

CITIZENS FOR A BEAUTIFUL AND HEALTHY COUNTY

July 8, 1996

TO: MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

RE: Price/PacBell Design Review Exception 96-405 Use Permit 96-406

We strongly urge you to deny this request for a design review exemption for the following reasons:

1. Health and Safety

Both the short and long term effects of radio-frequency radiation are unknown. Even Pacific Bell's own contractor who studied this issue cannot be certain of the health and risks (page 4 of the Hammett & Edison March 1995 report). A special concern is the averaging of emissions to make it appear the antennas comply with guidelines when in fact surges of use could zap citizens or tourists at any particular time. Most health experts agree cell site technology is too new to know its effects. As a result, erecting these antennae without further study puts the community at risk and makes guinea pigs of its residents.

These health concerns extend to the owners/residents of the Marina who live less than 300 yards from the proposed site, the employees of the helipad who work in the building of the proposed site, the several dozen young children who play in the Planet, an art and educational space in the building and who play outside directly under the proposed site, the artists who would be working in the studios now under construction in the Helipad directly under the proposed antennae, the tourists and visitors who frequent the marina for seaplane rides and often stand around for long periods of time enjoying the views or have lunch on the park-like setting directly to the east of the building and the hikers and bikers who frequent the bike path directly to the west.

2 Visual impact

This is a request to erect two pairs - that is four - Martian-like disks in what is a park like setting. The more than 24 owners/residents of Commodore Landing moved there because of its tranquility and serenity with panoramic Bay views on one side and lovely trees on the other. In addition, the view from the bike path which borders the proposed site on the west side is one of the most stunning views in Mill Valley of the valley and Mt. Tam.

As a result, the property values of the Marina houseboat owners would be negatively impacted as well as the aesthetic loveliness of their homes.

Because of the far-reaching consequences of the proposed plan, we urge you to deny this exemption.

~~_____~~

Susan Lavan 240 Redwood Hwy #9, Mill Valley
& Paul Wray
Ernie Forester 240 Redwood Hwy, Mill Valley
Terry Adams 240 Redwood Hwy #3 Mill Valley
Glenn Adams 240 Redwood Hwy #6

PC ATTACHMENT #6

Submitted 7/11/96 DCA

CITIZENS FOR A BEAUTIFUL AND HEALTHY COUNTY

July 8, 1996

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As a result, the property values of the Marina houseboat owners would be negatively impacted as well as the aesthetic loveliness of their homes.

Because of the far-reaching consequences of the proposed plan, we urge you to deny this exception.

_____ Price Lynn 240 Redwood Hwy Mill Valley CA 94040 #11-2
 _____ [Signature] 240 Redwood Hwy Mill Valley CA 94040 #11C
 _____ [Signature] 240 Redwood Hwy Mill Valley CA 94040 #11A

Marin Simon - 240 Redwood Hwy Mill Valley, 94040
 John Simon - 240 Redwood Hwy Mill Valley

7/11/96 52A

CITIZENS FOR A BEAUTIFUL AND HEALTHY COUNTY

July 8, 1996

TO: MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

RE: Price/PacBell Design Review Exception 96-405 Use Permit 96-406

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As a result, the property values of the Marina houseboat owners would be negatively impacted as well as the aesthetic level of their homes.

Because of the far-reaching consequences of the proposed plan, we urge you to deny this exemption.

[Handwritten signature]
RESIDENT OF COMMODORE LANDING

I strongly feel it is time we look out for the health and welfare of citizens, especially the children on the planet. Will they grow up with cancer because big business did not want to investigate (over) long term effects. I sincerely hope not.

As a 40 year old woman growing up in Southern California at a time when cars, pollution were just beginning. Now 20 years later I am faced with chronic lung problems. Please lets not repeat history especially when we now have facts

*Sincerely
A Hill*

UpFront

Public Sun E December 7 - December 13, 1994

Making waves

Is phoning home creating unsafe radio frequencies?

BY JOYCE LYNN

Phone calls from your car phone to your office or your baby-sitter, which many Marin residents consider ordinary and necessary, have become a hot-button issue.

An agreement between the county and Cellular One to put a transmission site on Mt. Barnabe in San Geronimo Valley to facilitate cellular phone communication has precipitated a hailstorm of controversy over legal aspects of the county's action and the health effects of radio frequencies.

The Bay Area Cellular One phone company is considering other transmission sites in Marin, notably in Mill Valley, Corte Madera and Tiburon. The firm operates existing facilities on Mt. Tamalpais, at San Quentin and in Sausalito.

Industry representatives, scientific experts, community residents and the county government each claim the right side of the table. The dispute is strikingly similar to the controversy over electromagnetic fields (EMFs) which erupted a couple of years ago when PG&E power lines, which emit EMFs, were found to be dangerously near some playgrounds and classrooms in Marin. PG&E agreed to move the power lines to a distance which studies show reduce health hazards.

Now the debate has moved to another part of the EMF spectrum—to radio frequencies emitted from microwave equipment involved in cellular phone communication. Radio waves emitted by cellular phones are weak, while those from microwave antennas are much stronger. Such radio frequencies have a host of current-day usages, from microwave ovens to magnetic imaging in medical tests.

In 1986, the Federal Communications Commission adopted the radio frequency protection guide of the American National Standards Institute (ANSI), called "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300kHz to 100GHz." Based on research studies, the most restrictive limit within this range applies at frequencies between 30 and 300MHz, where public safety two-way FM broadcast and VHF television stations operate. The limit is higher at UHF and cellular frequencies. In 1992, the standards institute published more restrictive standards, although some industry watchers question whether even these are restrictive enough.

The county entered into an agreement in 1993 with Cellular One to install and operate a temporary facility of three omnidirectional antennas and one 4-foot microwave antenna on Mt. Barnabe and subsequently to make the facility permanent. A fire department lookout tower and other communications facilities already existed on the 1,466-foot-high mountain. One residence is located on the mountain, and the popular Samuel P. Taylor State Park borders on the west side. Sir Francis Drake Boulevard curves past on the south.

A group of San Geronimo residents, disturbed over potential health hazards and angered that they were not notified of the agreement, petitioned in August 1993 to overturn the board of supervisors' approval of the project. Thereafter, the supes held three public hearings to gather community and industry positions. In October 1993, the board of supervisors commissioned an independent engineering study to measure levels of existing and predicted radio frequencies emitted from equipment on the lookout.

Hammett & Edison, Inc., a Bay Area-based consulting engineering company, concluded in June 1994 that "it is possible persons in the lookout for extended periods would be exposed to RF fields in excess of the most restrictive ANSI," but that "both the residence and Sir Francis Drake Boulevard are so distant that it is not possible for the fields to approach even one percent of the ANSI limit."

The report recommended relocating the antenna, either by increasing the height of the lookout structure or constructing antenna support poles nearby to reduce the radio frequencies in and around the lookout.

At a fourth public hearing on August 2, 1994, a long list of community residents from Mill Valley, Woodacre and San Geronimo continued to oppose the plan. Ellen Sugarman, who now lives in Marin and is the author of a respected book on EMFs, suggested that raising the antenna tower 32 feet over the existing fire tower would preclude hazardous radiation from affecting the community.

The board of supervisors adopted Sugarman's recommendation and also exempted the project from meeting the California Environmental Quality Act (CEQA). In addition, the supes adopted a resolution which mandates the county to develop a countywide EMF policy that exceeds federal and industry standards and to conduct a survey of all county transmitter sites, particularly those located near children's facilities and heavily populated areas.

San Geronimo residents involved in appealing the board's approval of the Cellular One use permit have now taken their case to court. According to San Geronimo Valley resident Diane Matthew, the case, now in county superior court, challenges the county to show why the facility is exempt from the CEQA. Matthew maintains that the county failed to follow the countywide plan and contends the action violates a 1932 deed of Mt. Barnabe to the fire department for fire protection management.

As the Hammett & Edison study recommended, the antennas with the highest power density have been moved so they are now located away from the lookout tower and are higher than their original location on the tower. Robert D. Weller, author of the report, told the *Public Sun* that he has remeasured the RF levels and they are "lower, in some cases much lower" than before the antennas were moved.

Martin Graham, a former professor of engineering at the University of California at Berkeley, had urged the supervisors at the August 2 meeting to remeasure RF levels after the equipment is moved and operative. Still, the ANSI standards themselves continue to raise questions for Graham.

PC ATTACHMENT #7

UpFront

Except for medical treatment, he told the *Pacific Star*, we do not know how much radiation humans can take. "Are the standards safe? We do not really know," he said. "A number of times the government and industry have said confidently that levels are safe, and then it turns out thirty years later they are not. People are not sure what the government says is safe is safe. Certainly people nearby have reason to be concerned. If [that concern] is really warranted, we don't know for sure."

Matthew, a registered nurse who lives on Mt. Barnabe, contends the Hammett & Edison report addresses "only the thermal effect of tissue cooking, and does not talk about ultra high frequency fields bouncing off the hills. Nobody knows how much effect over how many years at what level" has what effect.

"People moved to the valley to get away from urban pollution. Now I'm within direct line of sight of the antenna. I used to feel safe here; not anymore."

Professor Graham perhaps summed up the current and impending dispute when he said, "There are a lot of studies. They do not all agree. We need to sort it out. Right now, it's a mess."

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 707-429-1733

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share channels and funding...
 nels will go away."
 But there is a deep distrust of Viacom among its subscribers. Some suspect that the company is just using customers' anger to bolster its case against industry regulation. Suki Sennett, who staffs the country Cable TV Oversight Committee, has been

If Viacom doesn't win its injunction, it will probably face a storm of protest from KTEH fans. They're committed, they're organized and they're legion. Says Gillespie, "There are a lot more people who are concerned about this than Viacom ever believed would be."

Sparks over EMFs

Mill Valley schools will pay tab but they want PG&E to guarantee results

BY JOYCE LYNN

Bright flowers adorned the board's table at the Mill Valley School District meeting Monday night, but

when the topic turned to electromagnetic fields, angry board members were throwing bricks, not bouquets. The targets were six PG&E representatives who came, guns a-swing in hand so to speak, to offer good-faith assurances on their plan to correct potentially hazardous EMF levels at Tam Valley Elementary School.

PG&E's high-tension wires are located over the playing field at Tam Valley Elementary School, about 112 feet from the nearest classroom. Studies during the past decade, especially a recent Swedish study, have found strong correlation between continual exposure to EMF at levels between 2 to 3 milligauss and an increased risk of cancer. The correlation is especially pronounced for childhood leukemia. While levels of 1.2 milligauss are considered safe, EMF levels at Tam Valley's playing field reach as high as 6 milligauss.

Last December, the Mill Valley School District contacted PG&E about correcting

the situation, but were told PG&E would not pay for changes in its facilities solely to reduce EMF levels. PG&E cited the inconclusive nature of research results while acknowledging that "EMFs affect on public health cannot be dismissed."

PG&E's district manager, however, after lengthy negotiations, decided to pay the estimated \$106,000 cost of the modifications, but it wants PG&E to guarantee that the EMF levels would be reduced to the safe 1.2 milligauss level and the work completed by September 1.

Monday's bone of contention was a two-page draft contract PG&E's legal department faxed to school district counsel

Sandra Weller that day. According to the draft, PG&E would install high steel poles on the school's playing field to raise and reconfigure existing lines into a triangular alignment to reduce current EMF levels found at 6 milligauss at peak school time use to approximately 1.2 milligauss. However, PG&E would not actually guarantee this EMF level.

PG&E acknowledged that EMF levels could vary with line loads. The line over Tam Valley

School serves Sausalito, and if the load doubles, PG&E projected a mid-peak EMF level of approximately 2 milligauss.

The draft contract contained these "good-faith estimates," but also a blanket disclaimer: "Notwithstanding the foregoing, PG&E makes no warranty, guaranty or representation, express or implied with respect to the work or its quality, reliability, accuracy, usefulness or results obtained therefrom, including, but not limited to,

"This disclaimer means if you do a crummy job and the poles fall down, you are not responsible."

UpFront

the mitigation of health effects."

This evoked a chorus of outrage from Board members:

- Susan Marks: "The disclaimer means if you do a crummy job and the poles fall down, you are not responsible."
- James Mitchell: "You as parents would not send your child to a school district that would write this kind of contract."
- Tom Ashley: "This is like building a roof to last for 20 years, but you guarantee it for one day — providing it doesn't rain that day."

Stacey Case, PG&E division manager, who had returned that day from her honeymoon to face this sour chorus, defended PG&E's good intentions. "Our goal is to support what you want to achieve," she said. "We are committed to moving by September 1 at the cost price specified here." Although exorbitant Sausalito growth is remote, Case said PG&E "tried to give a range based on load growth which is beyond PG&E's control." What if, she speculated, a new shipyard is built or every customer wanted to install five hot tubs?

Case said PG&E sent the school board a standard contract to expedite negotiations and that since this type of agreement is new, no model contracts exist with EMF levels. She acknowledged that the contract was "unacceptable." But she maintained, "It's not an excuse for delay."

Earlier that day, PG&E named attorney Lathan Annand to handle the contract negotiations. Annand said she hoped she and school counsel Woliver "can get language mutually acceptable to people."

Chair Cathie Katcher wanted assurances that the contract will be signed by June 1 so that equipment can be ordered and

work completed by September 1 for the start of school in the fall.

"Absolutely," responded Annand.

(After the meeting, school district business manager Mike Patrick told the *Pacific Sun*, "We have been asking since January 26 who Sandra Woliver should contact regarding a contract. We found out today.") Debate concluded around 10 p.m. with Tam Valley school copresident Kaue

Hamilton telling the PG&E delegation, "It's disheartening at this point in time to be at this stage. I thought it was very clear what PG&E said they were going to do. We sent information to parents, this is what will be done. I'm disappointed PG&E is not paying for this. I feel strongly it is not our responsibility but, hey, we're worried about our kids."

As the handful of disgruntled Tam

Valley school parents left the meeting, one advocated a futile gesture of retaliation, "Let's turn off all our lights."

At press time, Woliver told the *Sun* that she had continued lengthy discussions with Annand, but "PG&E is still unwilling to commit to any range of EMFs."

With a June 1 deadline looming, looks like the EMF issue is going down to the wire.



Great Bay Mortgage Co.

Scuba Dive?

JUL 24 '96 09:41 HAMMETT & EDISON, INC.



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
RADIO AND TELEVISION

WILLIAM F. HAMMETT, P.E.
DANE E. BRICKEN, P.E.
GERHARD T. STRAUB, P.E.
STANLEY SALIK, P.E.
ROBERT D. WELER, P.E.
DEVINDRA BELLIMORIA
DANIEL G.P. MANERGH
Consultants to the Firm
ROBERT L. HAMMETT, P.E.
EDWARD EDSON, P.E.

BY FACSIMILE 415/499-7888

July 24, 1996

Mr. Brian C. Crawford
Planning Director
Marin County Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, California 94903-4157

Dear Brian:

We have been asked to supplement with this letter our March 22, 1996, report concerning the radio frequency (RF) exposure conditions at the Personal Communications Service base station proposed by Pacific Bell Mobile Services to be located at 260 Shoreline Highway in Mill Valley. Of concern is apparently the RF levels *inside* the two-story building on which the base stations antennas are to be located.

You will recall that we had calculated RF exposure conditions on the roof possibly exceeding the ANSI Standard C95.1-1992 guidelines for those narrow areas between the antennas and the nearest roof edge. Due to the attenuating effects of the building roof and walls, however, as well as the increased distance from the antenna, RF power density levels on the second floor of the building directly below the antennas will be reduced by a factor of at least 10 times. This will reduce maximum RF power density on the second floor to levels well below that permitted by the Standard for exposures of unlimited duration.

This result can certainly be confirmed by measurements after construction. In fact, numerous field tests of actual RF exposure conditions inside buildings on which antennas of this type had been mounted indicate that it is more likely the power reductions will be 100 or more times.

Please let us know if further questions arise on this or any related matter.

Sincerely yours,

William F. Hammett, P.E.

aj

cc: Mr. Jim Calkins - BY FACSIMILE 415/737-5301



e-mail: hammett@ha-e.com
US Mail: Box 280000 • San Francisco, California 94128
Delivery: 18006 Sonoma Highway (temporary) • Sonoma, California 95476
Telephone: 707/794-8280 San Francisco • 707/794-8280 Facsimile • 202/394-3200 D.C.

PC ATTACHMENT #8

RED EXHIBIT



Consulting Group, Inc.
TELECOMMUNICATIONS

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1996 AUG -9 A 11:50

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

FAX TRANSMITTAL

DATE: August 8, 1996 **FAX NUMBER:** 415-499-7880
TO: Mr. Brian C. Crawford **NUMBER OF PAGES:** 1 + cover
Deputy Zoning Administrator
County of Marin
FROM: James R. Calkins *JRC* **ORIG. TO FOLLOW:** Y
RE: Change in antenna location at 242 Redwood Highway

THE FOLLOWING DOCUMENTS ARE ENCLOSED:

One (1) Letter addressing your recommendation

PURPOSE/COMMENTS:

The antennas on the southern elevation of the building cannot be moved to the western elevation of the building for additional screening from the houseboat tenants, as suggested by the Zoning Administrator after inspection, without raising the antenna to a significant height. Please see the following letter from our RF engineer, Ed Gutierrez. I have assumed that raising the height is unacceptable and so I have left it remaining at its original location. Should you wish to change it or have any question regarding this matter please contact me.

.....

Pacific Bell Mobile Services

August 2, 1996

Deputy Zoning Administration
County of Marin Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903-4157

Re: Antenna Site on Heliport

Dear Mr. Brian Williams:

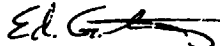
I am writing in response to your request that we change the location of our antennas from its current design, which situates our antennas along the sides of the roof, to your recommended location in the middle of the roof. In order to place the antennas in the middle of the roof we would need to raise the antenna height to prevent any shadowing effects by the roof. Our rule of thumb when determining the necessary height needed to clear the roof is for every foot away from the side of the roof a corresponding increase of 1 inch is required in antenna height. From structural drawings I have seen of the building, it looks as though the middle of the building is approximately 110 ft. away from the side of the roof. This would translate to an antenna height of 9.5 ft. from the bottom of the antenna to the roof. The antenna itself is approximately 5 ft. tall. This would place the top of the antenna around 14.5 ft. above the roof. I must add that if a parapet runs along side the roof then the reference plane is the height of the parapet and not the roof.

If this works better for you I have no problem in raising the antenna. If antenna height is an issue and lower is better then placing the antenna near the side of the roof is best.

If you have any further question please do not hesitate to contact me.



Sincerely,



Ed Gutierrez
RF Engineer

.....

Kids' Headquarters, Inc.

220 Redwood Hwy.
Mill Valley, CA 94941
(415) 331-8373

*To Whom It May Concern

July 25, 1996

Re: Price/Pac Bell Design Review Exemption 96-405/Use Permit 96/406

Steve Price has provided Planet staff with a package of information pertaining to the type of PCS transceiver facility proposed for installation at 242 Redwood Highway. It is our understanding that this information has also been provided to others who have expressed concern about that proposal.

The provided information coincides with what little information we have managed to find from other sources, with the effect that we could not feel justified in opposing the project in question.

We feel that children are endangered and hurt by quite an array of new influences in our rapidly changing world. We believe that the degree of consideration given to new environmental influences is greater than the caution given to many other factors, such as the social factors that lead to juvenile drug-abuse, crime, unwanted pregnancy, and even suicide. The Planet, a project of Kids' Headquarters, Inc., has for many years been deeply involved in efforts to reduce those dangers and to strengthen kids against them. The consensus, among those who comment on such issues, consistently upholds the importance of efforts like ours and the need for more work of this kind, but we have found, in more than fifteen years of success, that this general understanding does not "reach the ground" in sufficient strength to facilitate our work. The familiar problems are, in effect, sustained by subtle factors: unexamined and unintended priorities—failures, among those most responsible, to realize that this particular decision, or that particular decision, is in fact one of the critical moments in the evolution of effective or destructive child-socialization. In other words, despite our well-recognized success, The Planet tends to be tossed around somewhat like a cork on a stormy sea.

As we once again find ourselves clinging to our continued existence at this particular site, amid the apparent procedural technicalities of County zoning and planning requirements, any remaining uncertainty regarding the PCS transceivers must appear to us among the least of the dangers to local children. While maintaining genuine understanding and friendship with our neighbors and our community is among our very highest wishes, we ask all concerned to appreciate the realities we must deal with every day and every year.

Sincerely,

Dave Kersting

Dave Kersting
President
Kids' Headquarters, Inc.
dba: The Planet

RECEIVED

AUG 1 1996

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

PC ATTACHMENT #10

Attachment 11

Letter of Support for Price/Pac Bell Use Permit and Design Review Exemption

The following individuals have submitted a signed letter of support for the proposed Price/PacBell Use Permit/Design Review Exemption application. Attached to this list is a sample of the form letter used. Copies of this correspondence are available for public review at the Marin County Community Development Agency, Planning Division.

Name	Address	Comment
Je. L. Guthrie	240 Redwood Hwy., Berth 2	
Jane Chamberlin	P.O. Box 252, Sausalito, 94966	
Richard Charles	240 Redwood Hwy., #5, Mill Valley, 94941	
Geordie Stephens	240 Redwood Hwy., #11c, Mill Valley, 94941	
Susan Hans	240 Redwood Hwy., #1, Mill Valley, 94941	
Sue Brickneridge	240 Redwood Hwy., #1, Mill Valley, 94941	
Elaine Alyson	240 Redwood Hwy., #7, Mill Valley, 94941	
Peter Breinig	242 Redwood Hwy., #2, Mill Valley, 94941	
Mr. McDonald	240 Redwood Hwy., #7, Mill Valley, 94941	
Phil Hith	240 Redwood Hwy., #7, Mill Valley, 94941	
Tom Manuel	110 Palm Ave., Corte Madera, 94925	works at Commodore Center
Jaine Stortie	501 Alameda Del Prado, #313, Novato	employee of Briles Helicopter
S. Roehler	242 Redwood Hwy., Mill Valley, 94941	pilot of Briles Helicopter
John Kerbymiller	175 Upland Rd., Kentfield, 94904	pilot at Sausalito Heliport
Stephen Consideine	Kappas Marina East #4, Sausalito, 94965	works at Commodore Center
Katy O'Leary	65 Longfellow Rd., Mill Valley, 94941	
W. Weste	22 Boardwalk #1, Larkspur, 94939	works at Commodore Center
Bill Donnelly		works next door
John Consideine	100 Shoreline, Mill Valley, 94941	

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RED EXT

SAMPLE FORM LETTER

August 1996

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1996 AUG 23 P 2:51

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

Dear Mr. Crawford:

I am in support of the proposed Pacific Bell Mobile Services PCS wireless telecommunications roof-mounted facility at 242 Redwood Highway, Mill Valley. I appreciate the digital technology which dramatically improves security and clarity during my calls, the capability of offering a variety of voice and data features, and the ability to keep in touch with my family, friends, and resources at any moment I need to. PCS offers these things without interfering with other transmissions, and keeps our community progressing toward the future. As a resident of the area surrounding the proposed site, I ask that you endorse this facility at the September 9th hearing so that we may enjoy access to its benefits as quickly as possible.

Respectfully,

Name:

Jean Guthrie

Address:

240 REDWOOD HWY. BERTH 2

SUMMARY OF SECTION 704 OF THE TELECOMMUNICATIONS ACT OF 1996

The following is a summary of key provisions. The text of Section 704 is reproduced in its entirety as an attachment to this summary.

1. Local Zoning Authority Preserved

Section 704(a) of the 1996 Act amends Section 332(c) of the Communications Act ("Mobile Services") by adding a new paragraph (7). It preserves the authority of state and local governments over decisions regarding the placement, construction, and modification of personal wireless service facilities, except as provided in the new paragraph (7).

2. Exemptions**a. States and Localities May Not Take Discriminatory or Prohibiting Actions**

Section 704(a) of the 1996 Act states that the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. §332(e)(7)(B)(i).

Review: Any person that is adversely affected by a state or local government's action or failure to act that is inconsistent with Section 332(e)(7) may seek expedited review in the courts. 47 U.S.C. §332(e)(7)(B)(v).

b. Procedures for Acting on Requests to Place, Construct or Modify Personal Wireless Service Facilities

Section 704(a) also requires a State or local government to act upon a request for authorization to place, construct, or modify personal wireless service facilities within a reasonable time. Any decision to deny a request must be made in writing and be supported by substantial evidence contained in a written record. 47 U.S.C. §332(e)(7)(B)(ii), (iii).

c. Regulations Based On Environmental Effects of RF Emissions Preserved

Section 704(a) of the 1996 Act expressly preempts state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions. 47 U.S.C. §332(e)(7)(B)(iv).

Review: Parties may seek relief from the FCC if they are adversely affected by a state or local government's final action or failure to act that is inconsistent with this provision. 47 U.S.C. § 332(e)(7)(B)(v).

3. Federal Guidelines Concerning RF Emissions

Section 704(b) requires the FCC to prescribe and make effective new rules regarding the environmental effects of radio frequency emissions, which are under consideration in ET Docket 93-62, within 180 days of enactment of the 1996 Act.

NOTE: The pendency of this proceeding before the FCC does not affect the rules which currently are in effect governing the environmental effects of radio frequency emissions. Section 704(b) gives preemptive effect to those existing rules. See related attachments to the Fact Sheet.

4. Use of Federal or State Government Property

a. Federal Property

Section 704(e) of the 1996 Act requires the President (or his designee) to prescribe procedures by which the federal government may make available on a fair, reasonable and nondiscriminatory basis, property, rights-of-way and easements under their control, for the placement of new spectrum-based telecommunications services.

b. State Property

With respect to facilities sited on state property, Section 704(e) of the 1996 Act requires the FCC to provide technical support to States to encourage them to make property, rights-of-way and easements under their jurisdiction available for the placement of new spectrum-based telecommunications services.

NOTE: Information concerning technical support for tower siting which the FCC is making available to states and local governments is attached to the Fact Sheet.

5. Definitions

"Personal wireless services" include commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. §332(e)(7)(C)(i).

"Commercial mobile services" are defined in Section 332 of the Communications Act and the FCC's rules, and include cellular telephone services regulated under Part 22 of the FCC's rules, SMR services regulated under Part 90 of the FCC's rules, and PCS regulated under Part 24 of the FCC's rules. 47 C.F.R. §20.9.

"Unlicensed wireless services" are defined as the offering of telecommunications services using duly authorized devices which do not require individual licenses; direct-to-home satellite services are excluded from this definition. 47 U.S.C. §332(c)(7)(C)(iii).

RED EXT

Pacific Bell Mobile Services
Proposed PCS Base Station (#SF-306)
260 Shoreline Highway
Mill Valley, California

Evaluation of
Radio Frequency
Exposure Conditions

March 22, 1996

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 **HAMMETT & EDISON, INC.**
CONSULTING ENGINEERS
SAN FRANCISCO

PC ATTACHMENT #13

Pacific Bell Mobile Services
Proposed PCS Base Station (#SF-306) • Mill Valley, California

Statement of Stanley Salek, Consulting Engineer

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Pacific Bell Mobile Services ("PBMS") to evaluate the new PCS base station proposed to be located at 260 Shoreline Highway, Mill Valley, California, for compliance with appropriate guidelines for limiting human exposure to radio frequency electromagnetic fields.

Prevailing Exposure Standards

In General Docket 79-144, the Federal Communications Commission adopted the radio frequency protection guide of the American National Standards Institute ("ANSI") Standard C95.1-1982, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz." The effective date for applying this standard to FCC licensees was January 1, 1986. The most restrictive limit applies at frequencies between 30 and 300 MHz, where FM and VHF television stations operate; the limit is higher at UHF, cellular, and PCS frequencies. The exposures are to be averaged over some interval of time (six minutes in C95.1-1982), as it is the rate of absorption of radio frequency ("RF") energy that ANSI is limiting, rather than the peak exposure at any one moment.

In 1992, the American National Standards Institute published ANSI/IEEE Standard C95.1-1992, a summary of which is shown in Figure 1. This revision of C95.1-1982 defines "controlled" and "uncontrolled" environments, setting for the latter more restrictive exposure limits but longer periods for time averaging. Although there are a number of changes from the 1982 Standard, the controlled (*i.e.*, occupational) limits are approximately the same, while uncontrolled (*i.e.*, public) limits are generally five times more restrictive.

For Personal Communications Services ("PCS"), the FCC has adopted on an interim basis the revised standard, and the most restrictive criteria of that standard are used in this report to evaluate the exposure conditions at the proposed cellular site. The limit for continuous exposure to RF energy at 1,850 MHz, the lowest base station frequency assigned PCS use, is 6.16 mW/cm² (milliwatts per square centimeter) for occupational exposure situations and 1.23 mW/cm² for public exposure situations.

Non-Thermal Effects of RF Energy

Statements are often made that the prevailing standards are "thermally based"; this is usually followed by a description that the standards merely serve to limit the cooking of human tissue, as might occur inside a microwave oven. Such statements are not correct. One of the criteria for "biological effect" used in establishing the ANSI/IEEE limits was behavioral modification in animal subjects. For instance, if a trained rat could not negotiate a familiar maze during exposure to RF energy, that would be a biological effect.

Fourteen subgroups constituted the Biological Validation Working Group that developed the ANSI/IEEE Standard, composed of scientists and experts in the following disciplines: 1) behavior, 2) biorhythms, 3) cardiovascular, 4) central nervous system, 5) teratology, 6) endocrinology, 7) visual systems, 8) genetics, 9) modulation (RF), 10) hematology-immunology, 11) metabolism-thermoregulation, 12) oncology, 13) combined effects, and 14) psychology. While we do not propose to duplicate the literature review conducted by the ANSI Standards Committee (similar independent reviews have already been conducted by the National Council on Radiation Protection and Measurement, and the American Conference of Governmental Industrial Hygienists), many of the titles listed in the bibliography and list of papers reviewed in establishing the Standard include words such as "Auditory Perception," "Behavior," "Hormones," etc., which are not likely to be associated with thermal effects.

Since the ANSI/IEEE Standard undergoes periodic review and, when necessary, revision, to reflect the latest scientific findings, it is appropriate to require compliance with the current revision of this standard. Additionally, alternative standards may be adopted by the FCC in the future, and it would be both appropriate and necessary to review compliance of facilities with those standards, as well.

Computer Modeling Method

The FCC has provided direction to the telecommunications industry on determining compliance with ANSI in the Office of Science and Technology Bulletin No. 65, "Evaluating Compliance With FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," dated October 1985. We have developed computerized techniques for applying the formulas given in that Bulletin to calculate both ground level and on-tower power densities at radio transmitting sites. The attached Figure 2 describes the ground level calculation methodology in detail. This method of evaluating expected exposure conditions is accepted by the FCC, and its accuracy has been verified by field tests.

Site and Facility Description

It is proposed to install a new PCS base station atop a two-story building, located at 260 Shoreline Highway in Mill Valley. The proposed antenna support poles would be located such that the antennas are completely above the level of the existing roof, so that they would have an unobstructed view of the surrounding area. The only nearby residences appear to be houseboats northeast of the proposed facility. The grounds surrounding the building are all publicly-accessible. Data for the proposed antenna height, antenna type and orientation, and effective radiated power have been supplied by PBMS and are summarized in Figure 3A.

It is proposed to install four 4.5-foot-high "panel" antennas above the highest point of the building. The antennas will operate directionally, with two pairs of antennas oriented in two different directions to provide optimum service to the surrounding geographical area. A transmitter would be connected to each antenna, resulting in an effective radiated power (ERP) of 200 watts per antenna, or a total of 800 watts from a pair of transmit antennas. This power level is less than that in use at typical cellular telephone base station sites.

Base Station Requirements

Because of the short wavelength of the frequencies assigned for the proposed PCS use, the antennas require line-of-sight paths for their signals to propagate. Therefore, they will necessarily be mounted above nearby buildings, terrain, and vegetation; the energy directed toward any accessible location nearby will be limited by the narrow beamwidth of the elevation pattern, as shown by the top pattern of Figure 3B.

As new base stations are added to an existing communications network, the operating powers of the surrounding base stations are reduced and the power of all PCS base stations are themselves low, in order to allow re-use of the same frequencies. Because of the low power alone, it generally is not possible for exposure conditions to approach the ANSI limits without being physically very near the antennas.

Study Results

For the specific parameters of the proposed 260 Shoreline Highway site, I have calculated the highest possible power densities resulting from the operation, assuming as a worst case that the facility is operating at full power. In actual operation, the transmitted power levels are often reduced below their maximum capability to allow other PCS base stations to re-use the same frequencies.

As shown on Figure 4, except on the roof of the building on which the antennas are located, the calculated RF power density is everywhere less than 1% of the most restrictive applicable ANSI limit at all locations near the site. In fact, the highest calculated power density near ground level under the worst case assumptions is $0.76 \mu\text{W}/\text{cm}^2$, only 0.062% of the most restrictive limit specified in ANSI Standard C95.1-1992 (i.e., over 1,600 times below the Standard).

Access Restrictions on Rooftop

Because they are proposed to be mounted low above the roof of the building, it would be possible for a person to approach closely the transmit antennas. The energy emitted by almost any transmit antenna can exceed the ANSI limits if one can get close to the antenna for an extended period of time. Measurements taken by the firm of the near-field radiation characteristics of the proposed

Pacific Bell Mobile Services
Proposed PCS Base Station (#SF-306) • Mill Valley, California

antennas have indicated that approaches no closer than about 4 feet should be made to the antennas while they are operating. In order to ensure that exposure conditions for persons who might have access to the antennas do not exceed the applicable exposure guidelines. I therefore recommend either that access to the roof area be suitably restricted to persons who are aware of the potential for exposure as a concomitant of employment and by other cognizant persons, who have been instructed in the mitigation of RF fields, or that an area of the roof extending 4 feet from all of the antennas be appropriately marked and barricaded.

Access to the roof area may be restricted by the posting of a standard RF warning sign at each point of access, or by the installation of suitable access controls, such as locked anti-climb shields on ladders. In the event that roofing, painting, or other activities are required for extended periods on the roof, the transmitters at the site should be turned off, unless measurements, more detailed calculations, or other measures will also ensure that the limits specified in the prevailing standards are not exceeded.

Cumulative Effects with Existing Facilities

There is no evidence that there are cumulative effects to low-levels of RF exposure. While there exists the possibility that chronic exposure to RF energy may cause as yet unknown adverse effects at levels below those specified in the prevailing standards, there have been no definitive findings and no standards have been proposed for such low exposure conditions. Due to public concerns of such effects, there is ongoing research in this area. Because it is not possible to demonstrate conclusively that low levels of RF do not have adverse biological effects (*i.e.*, to prove the negative), scientists typically will not state that such effects do not exist.

As previously stated, the proposed 260 Shoreline Highway facility is located on a rooftop that has controlled access and that is well above the surrounding terrain and buildings. Power density levels at the nearest properties are calculated to be much less than 1% of the most restrictive applicable limit; levels on building interiors would be further reduced by the shielding effect of building walls and roofs. There appear to be no other significant sources of RF energy nearby.

Conclusion

Based on the information and analysis above, it is my professional opinion that the PCS base station facility proposed by PBMS to be located at 260 Shoreline Highway, Mill Valley, will comply with the prevailing standards for limiting human exposure to radio frequency energy and, therefore, the RF exposure conditions will not cause a significant impact on the environment. Calculations indicate that human exposure conditions in all publicly accessible areas meet the ANSI exposure guidelines by an additional safety factor of over 1,600 times. This finding is consistent with

Pacific Bell Mobile Services
Proposed PCS Base Station (#SF-306) • Mill Valley, California

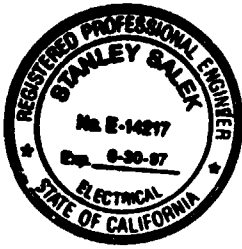
measurements of actual exposure conditions taken by the firm at similar, operating cellular sites, where power density levels are typically much less than 1% of the prevailing standards.

List of Figures

In carrying out these engineering studies, the following attached figures were prepared under my direct supervision:

1. Summary of ANSI C95.1 Standard
2. RFR.GROUND™ calculation methodology
3. Technical specifications of proposed operation
4. Map showing calculated RF power densities.

March 22, 1996



Stanley Salek
Stanley Salek, P.E.

SON, INC.

Affidavit

State of California |
County of Sonoma | ss:

Stanley Salek, being first duly sworn upon oath, deposes and says:

1. That he is a qualified Registered Professional Engineer, holds California Registration No. E-14217 which expires on June 30, 1997, and is employed by the firm of Hammett & Edison, Inc., Consulting Engineers, with offices located near the city of San Francisco, California,
2. That he graduated from Florida Institute of Technology with a Bachelor of Science degree in Electrical Engineering in 1981, was employed from 1981 to 1991 in the field of radio engineering at companies including Motorola, Inc., Broadcast Electronics, Inc., Circuit Research Labs, Inc., and the National Association of Broadcasters, and has been associated with the firm of Hammett & Edison, Inc., since July 1991,
3. That the firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Pacific Bell Mobile Services to evaluate the new PCS base station proposed to be located at 260 Shoreline Highway, Mill Valley, California, for compliance with appropriate guidelines for limiting human exposure to radio frequency electromagnetic fields,
4. That such engineering work has been carried out by him or under his direction and that the results thereof are attached hereto and form a part of this affidavit, and
5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements made therein on information and belief and, as to such statements, he believes them to be true.

Stanley Salek, P.E.

Subscribed and sworn to before me this 22nd day of March, 1996

ORIGINAL COPY NOTARIZED

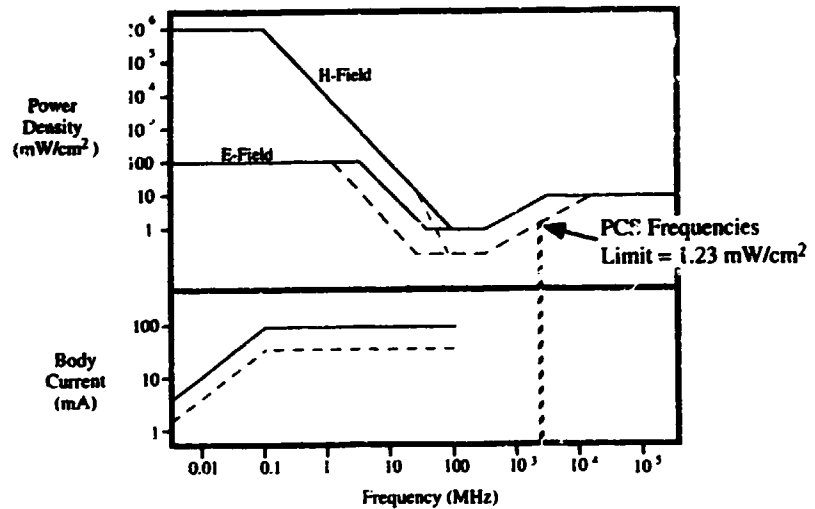
Pacific Bell Mobile Services
 Proposed PCS Base Station (45F-306) • Mill Valley, California

ANSI/IEEE C95.1-1992 Radio Frequency Protection Guide

Controlled Environments ———
 Uncontrolled Environments - - - -

Frequency Applicable Range (MHz)	Electromagnetic Fields				Body Currents	
	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Induced (Ankle) or Contact (Wrist) (mA)	
0.003 - 0.1	614	614	163	163	1,000f	450f
0.1 - 1.34	614	614	16.3f	16.3f	100	45
1.34 - 3.0	614	823.8/f	16.3f	16.3f	100	45
3.0 - 30	1,842f	823.8/f	16.3f	17.3f	100	45
30 - 100	61.4	27.5	16.3f	158.3f ^{1.668}	100	45
100 - 300	61.4	27.5	0.163	0.0729		no limit
300 - 3,000				1.0	0.2	no limit
3,000 - 15,000				f/300	f/1500	no limit
15,000 - 300,000				10	10	no limit

Note: f is frequency of emission, in MHz.



RFR.GROUND™ Calculation Methodology
Determination by Computer
of ANSI Compliance Conditions

The U.S. Congress has required of the FCC that it evaluate its actions for possible significant impact on the environment. In General Docket 79-144, the FCC adopted the American National Standards Institute Standard C95.1-1982, "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz." The guidelines in this Standard are now applicable to all FCC-licensed broadcast stations. The most restrictive guideline is 1 mW/cm², applying at FM and VHF television frequencies; at UHF television and cellular telephone frequencies, the guideline increases with increasing frequency, up to 5 mW/cm², applying at microwave frequencies and above. The exposure guideline at AM frequencies is 100 mW/cm². Exposures are to be averaged over a six-minute period, allowing, for example, a two-minute exposure to fields three times the limit if the remainder of the six-minute period does not include any significant exposure.

The FCC Office of Science and Technology Bulletin No. 65 (October 1985) gives the formula for calculating power density from an individual radiation source:

$$\text{power density / } S = \frac{2.56 \times 1.64 \times 100 \times \text{RFF}^2 \times [0.4 \times \text{VERP} + \text{AERP}]}{4\pi D^2}, \text{ in } \mu\text{W/cm}^2,$$

- where VERP = total peak visual ERP (all polarizations), in kilowatts,
- AERP = total aural ERP (all polarizations), in kilowatts,
- RFF = relative field factor at the direction to the actual point of calculation, and
- D = distance from the center of radiation to the point of calculation, in meters.

The factor of 2.56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 (1.6 × 1.6 = 2.56). The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 0.4 converts peak visual ERP to an average RMS value; for FM and cellular stations, of course, the value of VERP is zero. The factor of 100 in the numerator converts to the desired units of power density.

This formula has been built into a computer program by Hammett & Edison that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radiation sources. The program also allows for the description of the actual terrain at the site to obtain more accurate projections. The calculated results are shown on a plot of the calculation grid as a percentage of the appropriate ANSI limit. A solid black dot appearing on the plot indicates an RF field calculated to be in excess of 1% of the appropriate limit. The dots increase in size proportionally with the magnitude of the calculated field up to 100% of the appropriate limit. At calculated fields above 100% of the limit, the dots become open circles, again increasing in size proportionally with the magnitude of the calculated field.

RED Exhibit D

Pacific Bell Mobile Services
Proposed PCS Base Station (#SF-306) • Mill Valley, California

Engineering Specifications of Proposed Operation

A. Site

Geographical Coordinates
(NAD27)

37° 52' 43" N
122° 30' 47" W

260 Shoreline Highway, Mill Valley, California

B. Equipment

Support structure	Building, overall height	25 ft
Antennas	DAPA Communications, Inc., Model 58210 (92° panel)	four

C. Height

Elevation of site above mean sea level	7 ft
Effective height of antenna above site	30 ft
Effective height of antennas above mean sea level	37 ft
Overall height of antennas above mean sea level	40 ft

D. Operation

Antenna power gain	14.9 dBd
Antenna electrical beam tilt, downward	2°
Antenna orientation	130°T, 310°T
Maximum effective radiated power, per antenna	200 W
Antennas per sector	two
Maximum effective radiated power, per sector (maximum)	400 W

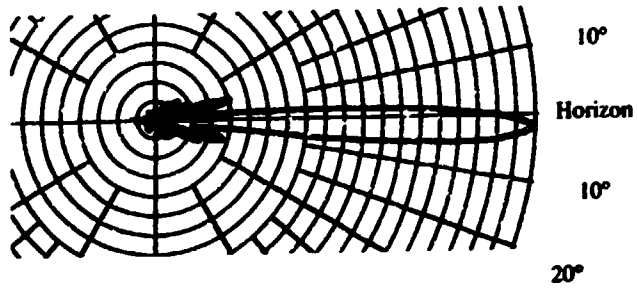


HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

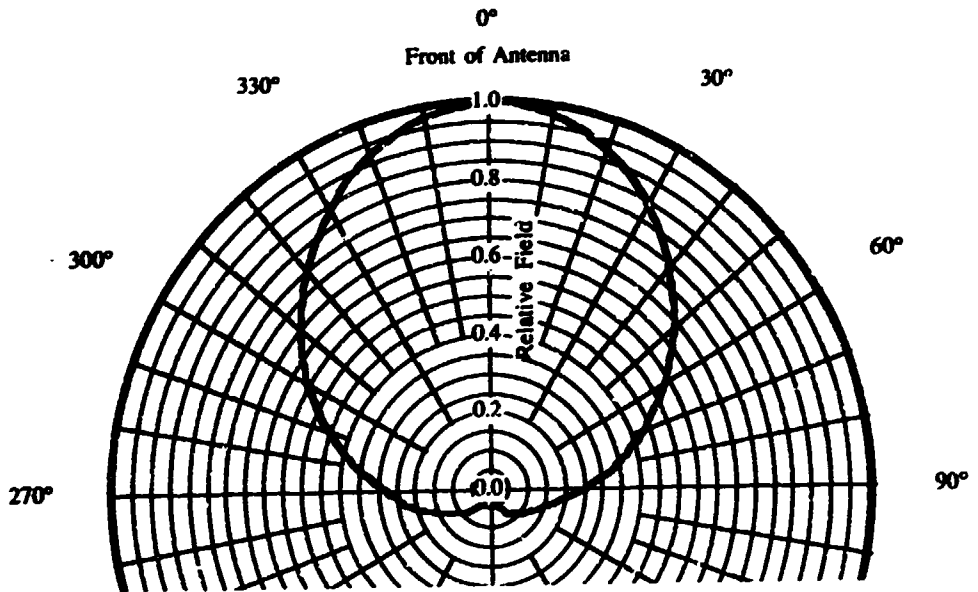
960320
Figure 3A

RED Exhibit D

Antenna Radiation Patterns
Dapa Communications, Inc., Model 58210



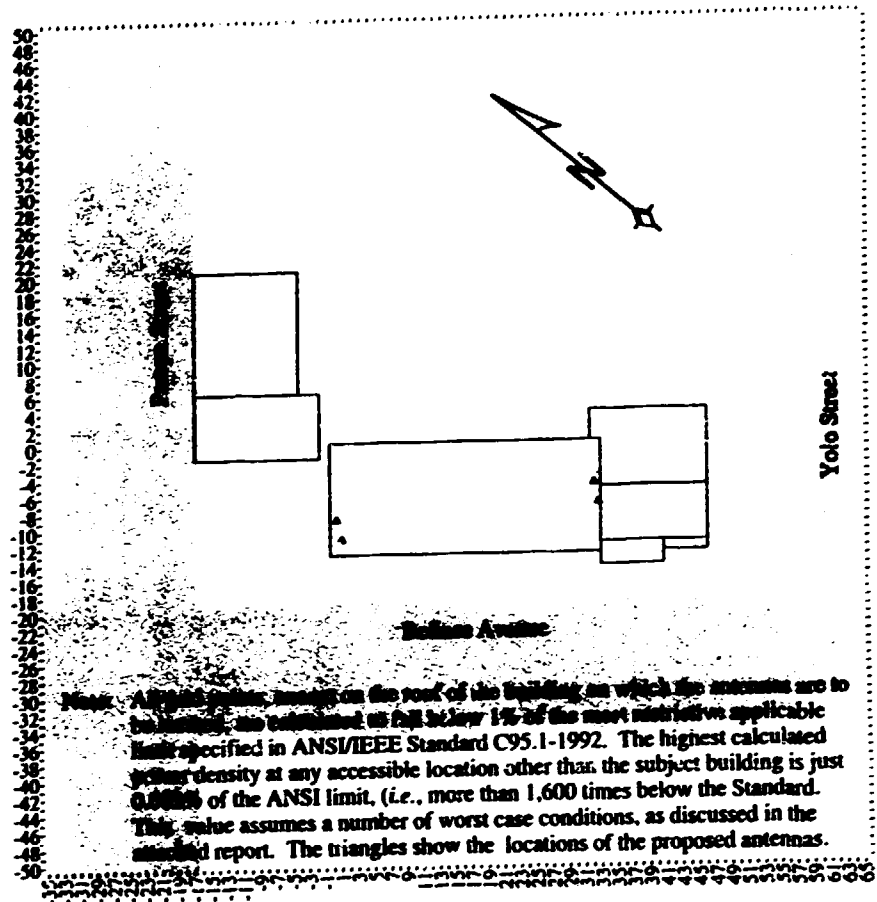
Elevation Plane Pattern (view from side)



Azimuth Plane Pattern (view from above)

Pattern from manufacturer's published data.

RED Exhibit D



Note: All field measurements on the roof of the building on which the antennas are to be located, are calculated to fall below 1% of the most restrictive applicable limit specified in ANSI/IEEE Standard C95.1-1992. The highest calculated field density at any accessible location other than the subject building is just 0.0003% of the ANSI limit, (i.e., more than 1,600 times below the Standard. This value assumes a number of worst case conditions, as discussed in the attached report. The triangles show the locations of the proposed antennas.



Calculations performed according to OST Bulletin No. 65, October 1985.
 Symbol size proportional to percent of ANSI C95.1-1992 Standard.

(black) < 1.0% • 10.0% • 30.0% • 100.0% • 300.0%



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
RADIO AND TELEVISION

WILLIAM F. HAMMETT, P.E.
DANE E. ERICKSON, P.E.
GERRARD J. STRAUS, P.E.
STANLEY SALIK, P.E.
ROBERT T. WELLS, P.E.
DEVINERA WELLMER
DANIEL G.P. MAJUREN
Consultants to the Firm
ROBERT L. HAMMETT, P.E.
EDWARD EDISON, P.E.

BY FACSIMILE 415/499-7880

September 9, 1996

Mr. Brian C. Crawford
Planning Director
Marin County Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, California 94903-4157

Dear Brian:

We have been asked to supplement with this letter our March 22, 1996, report concerning the radio frequency (RF) exposure conditions at the Personal Communications Service base station proposed by Pacific Bell Mobile Services to be located at 242 Shoreline Highway in Mill Valley. Of concern is apparently the RF levels inside the two-story building on which the base stations antennas are to be located.

You will recall that we had calculated RF exposure conditions on the roof possibly exceeding the ANSI Standard C95.1-1992 guidelines for those narrow areas between the antennas and the nearest roof edge. Due to the attenuating effects of the building roof and walls, however, as well as the increased distance from the antenna, RF power density levels on the second floor of the building directly below the antennas will be reduced by a factor of at least 10 times. This will reduce maximum RF power density in rooms on the second floor to levels on the order of 0.005 mW/cm², i.e., well below that permitted by the Standard for exposures of unlimited duration.

This result can certainly be confirmed by measurements after construction. In fact, numerous field tests of actual RF exposure conditions inside buildings on which antennas of this type had been mounted indicate that it is more likely the power reductions will be 100 or more times.

Please let us know if further questions arise on this or any related matter.

Sincerely yours,

William F. Hammett, P.E.

ej

cc: Mr. Jim Collins - BY FACSIMILE 415/737-5301



3-mail: 415/499-7880
US Mail: Box 20000 • San Francisco, California 94128
Delivery: 2826 Sausalito Highway (temporary) • Sausalito, California 94965
Telephone: 707/499-8280 San Francisco • 707/499-8280 Fairfield • 202/295-8280 D.C.

RED EXHIBIT D

FLOATING HOMES ASSOCIATION, INC.

P.O. BOX 3064 • SAUSALITO, CA 94966

September 8, 1996

Marin County Planning Commission
3501 Civic Center Drive
San Rafael CA 94903

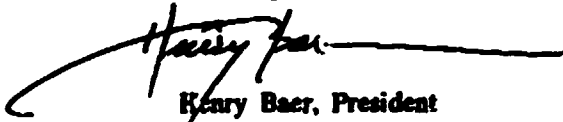
RE: PRICE/PAC BELL DESIGN REVIEW EXEMPTION 96/405

Dear Sirs/Madams:

A number of residents of Commodore Marina have expressed their concerns to us in regard to the installation of the Price/PacBel antennas.

The Floating Homes Association strongly encourages the Planning Commission to carefully consider all aspects of the issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry Baer", with a long horizontal line extending to the right.

Henry Baer, President

Way ummer



RODEO PHOTO BY NIK KORNBLITH

sun in front of the YoYo on the fair's midway. Below, painting their little hooves.



slams into taxi, 2 die

Police checking if cops were actually in chase with ex-felon who is in jail ward of hospital

By Marsha Ginsburg
and Ray Delgado
OF THE EXAMINER STAFF

Two young men who had just moved to San Francisco were killed and four other people were injured early Saturday when a car going 85 mph to evade police collided with a taxi.

The victims were identified by the coroner's office as Christopher Cook, 21, of DeQuincy, La., and his friend, Scott Joseph Regules, 20, of Salt Lake City.

The two were passengers in the taxi. They were riding in the back seat with Jaron Taylor, 22, of San Francisco, who was in fair condition at San Francisco General Hospital with cuts and bruises.

The Yellow Taxi Co. driver, Hardlitagh Ghora, 41, of San Francisco, was also in fair condition at S.F. General on Saturday night.

The suspect, Reuben Johnson, 24, was in serious but stable condition in the jail ward of the hospital with a liver laceration, a nursing supervisor said.

Johnson, who has served time in state prison, was booked on charges of failing to respond to a police vehicle, speeding, vehicular manslaughter, shooting a firearm, drunken driving and violating parole.

His only passenger was his wife, Amelia Johnson, 26. She was in fair condition with a leg fracture and facial scrapes, hospital officials said.

"It's awful," Deputy Coroner Graham Cowley said. "Three kids having a good time ... they get a cab home and ... they get killed and maimed."

Police Chief Fred Lau, calling it

BED Exhibit D

SF CHRON

9/2/96

Cell phone battle reaches Sausalito

Pac Bell has plan
for Richardson Bay

By Seth Rosenfeld
OF THE EXAMINER STAFF

When radio talk show host Endi Goldstein came to California, she decided she'd one day live on a houseboat because it seemed to be "free and pristine ... a place where you can breathe deeply."

Now she's embroiled in a battle to block Pacific Bell from erecting four digital cell phone antennae near her houseboat that she fears will mar the view and threaten the health of neighbors.

The protest over the plan to put antennae atop a building at Commodore Center on Richardson Bay just north of Sausalito is part of a national controversy over cell phones that is spreading as fast as the booming technology.

Pacific Bell — which insists its new Personal Communications

[See MARIN, B-11]

Embezzle

Adverse Health Effects from Exposure to EMF

The issue of adverse health effects from exposure to EMF emitted by the proposed PCS facility is addressed in staff's report to the Planning Commission (see staff report dated September 9, 1996, Public Health and Safety with Respect to Radio Frequency Electromagnetic Fields, p. 3). In summary, a technical analysis of the proposal indicates that the predicated levels of RF emissions will be far below the national standard for maximum exposure to EMF. The County has incorporated this standard in the adopted Telecommunications Facilities Policy Plan to determine permissible levels of EMF exposure from new or expanded telecommunications sites.

The commentator asserts in her letter that scientific research supports the argument that cellular facilities can have significant negative health effects. The assertion relies upon reports prepared for other telecommunications projects in New York which are attached to the commentator's letter. The principal opinions made in the attached reports are that certain EMF studies are not adequate to conclude that RF radiation is not hazardous to human health, and that the ANSI standard does not provide assurance that no hazard to human health will occur from exposure to EMF radiation, especially nonthermal effects.

The information provided in the commentator's letter does not substantiate a decision to deny or postpone approval of the proposed PCS facility. The supporting opinions contained in the reports are based in part upon information which pertains to other telecommunications projects. In addition, while the letter and attached reports generally question the adequacy of research and the ANSI standard to protect human health against adverse nonthermal effects, they do not contain enough factual information which is relevant to the proposed project to conclude that the operation of the proposed PCS facility will adversely affect persons in the vicinity of the project.

Moreover, as explained in staff's report, the Federal Telecommunications Act of 1996 preempts local regulatory agencies from disapproving or requiring the relocation of a proposed PCS facility solely on the basis of environmental effects of RF emissions when the proposed facility meets existing Federal Communications Commission regulations. The FCC has adopted a rule requiring RF facilities to comply with the ANSI standard at on-site and off-site locations. In consideration of the preemption doctrine, the County should not deny the proposed PCS facility on the basis of environmental effects of RF emissions because it complies with the current ANSI standard by a considerable margin.

CEQA Exemption

The categorical exemption recommended for the project should not be negated, as the commentator contends, because the information provided in the commentator's letter is not relevant enough to the proposed project to support a fair argument that the project may result in significant environmental effects. This information explains that there is a correlation between EMF radiation and health effects including nonthermal effects. This correlation does not, however, constitute substantial evidence from which it can be fairly argued that RF emissions at the power levels and frequency predicted for the proposed project will cause significant health effects. The recommendation to categorically exempt the proposal is rightly based upon a project-specific study which indicates that the predicted levels of RF emissions from the project will amount to less than 1% of the ANSI standard at ground level locations which are accessible to the public. The categorical exemption is further justified inasmuch as the ANSI standard is an appropriate threshold for determining significant health effects pursuant to CEQA.

The conclusions are similar to those recently made in an extensive report prepared for the Board of Supervisors to consider another cellular facility project. A copy of the report has been attached to this memorandum to provide the Planning Commission with background information regarding the legal and scientific principles which generally pertain to the issue of CEQA compliance. The conclusions of the report demonstrate that there is not substantial evidence of a correlation between EMF radiation and significant adverse health effects, including non-thermal effects, to support a conclusion that a specific project which meets ANSI standards, including the subject project, may result in significant health effects requiring environmental review pursuant to CEQA.

Postponement of Decision on The Project

The commentor has requested that the County enact a moratorium on new cellular sites and postpone a decision on the proposal until the Telecommunications Facilities Policy Plan is amended. The stated purpose of the plan amendment is to assure that future cellular sites are approved in an orderly fashion which limits human exposure to EMF, the County's liability in approving such sites, adverse aesthetic impacts, and impair property values

For the reasons explained in staff's September 9 report and this memorandum, the County's liability pertaining to the approval of cellular sites and the impairment of property values are not the proper subjects of the County's land use regulations for telecommunications facilities. In addition the current Telecommunications Facilities Policy Plan contains standards that have been adopted for the specific purpose of ensuring that new or expanded telecommunications facilities are carefully reviewed and sited, design, and operated in a manner which minimizes or avoids adverse visual, health and other effects (see staff report dated September 9, 1996, Public Health and Safety with Respect to Radio Frequency Electromagnetic Fields, pp. 3 and 4, and Visual Impact, pp. 5 and 6). The proposal has been processed in accordance with the adopted policies and procedures of the Telecommunications Facilities Policy Plan and zoning code, and should, therefore, be acted on without further delay. A moratorium on cellular sites and/or establishment of EMF standards, which would be more stringent than the ANSI standard set by the FCC pursuant to the Federal Telecommunications Act of 1996, is preempted by federal law and may not be legally permissible.

In conclusion, staff maintains the previous recommendation to approve the Price/Pacific Bell permit applications based upon a categorical exemption from CEQA.

Attachments:

1. Letter from Christine Craft, submitted 9/4/96
2. A Report to the Board of Supervisors of Marin County, California Regarding Potential Non-Thermal Effects From a Cellular Telephone Facility on Mount Barnabe Operated By Bay Area Cellular Telephone Company.

i:\bcc\pcreport\pacmemo.doc

**PROOF OF PUBLICATION
(2015.5 C.C.P.)**

This space is for the County Clerk's
Filing Stamp

MARIN COUNTY PLANNING COMMISSION

STATE OF CALIFORNIA
County of Marin

ss

Proof of Publication of

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25568; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

August 29, 1996

at this year 19__

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Fran Cooper
.....
Fran Cooper Signature

Dated this 29th day of August 1996

NOTICE OF PUBLIC HEARING
PROCE/PAC BILL, REVENUE AND FINANCE
NO. 2015.5 FEBRUARY 19, 1996

NOTICE IS HEREBY GIVEN that the Marin County Planning Commission will hold a public hearing on the above entitled Bill on August 29, 1996, at 10:00 a.m. in the County of Marin, State of California, at the County Administration Center, 1000 S. De Anza Blvd., San Rafael, California 94901. The purpose of the hearing is to receive public comments on the proposed Bill. The Commission will consider the Bill and make a recommendation thereon to the Board of Supervisors on or before September 12, 1996. The Bill is intended to amend the County Code to provide for the establishment of a new revenue source for the County. The Bill is intended to amend the County Code to provide for the establishment of a new revenue source for the County. The Bill is intended to amend the County Code to provide for the establishment of a new revenue source for the County.

If you have any questions or comments regarding the proposed Bill, please contact the County Clerk at (415) 456-1000.

FRAN COOPER
 COUNTY CLERK

19, 1996 Aug. 29, 1996

PROOF OF PUBLICATION

**Marin County
Community Development Agency**

Mark J. Riesenfeld, AICP, Director

NOTICE OF PUBLIC HEARING

PRICE/PAC BELL DESIGN REVIEW EXEMPTION 96-405/USE PERMIT 96-406

NOTICE IS HEREBY GIVEN that the Marin County Planning Commission will hold a public hearing to consider the Price/Pac Bell applications proposing to construct a Personal Communication Services (PCS) facility. The subject property is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels is proposed at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort, Commercial, Recreation district). The subject property is located at 242 Redwood Hwy., Mill Valley, and is further identified as Assessor's Parcel #052-247-01.

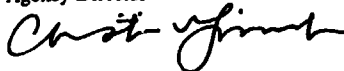
The Planning Commission will also consider a recommendation that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1.

Said public hearing will be held at the regular meeting of the Marin County Planning Commission on Monday, September 9, 1996, in the Planning Commission Chambers (Room #319 - Administration Building), Civic Center, San Rafael, California, at which time any and all persons interested in this matter may appear and be heard. Please call the Community Development Agency - Planning Division at (415) 499-6269 on or after Wednesday, September 4, 1996, in order to be informed of the place on the agenda and the approximate time of the hearing. A staff report will be available for your review at the Community Development Agency - Planning Division as of Tuesday, September 3, 1996.

If you challenge the decision of this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Community Development Agency - Planning Division at, or prior to, the public hearing. (Government Code Section 65009(b)(2).)

If you have any questions or concerns regarding the proposed project, or want to be notified of the decision, please contact me at (415) 499-6269.

MARK J. RIESENFELD
Agency Director



Christine Gimmler, AICP
Planner

cg/ps:pc/notices/price.doc
08/27/96



American sign language interpreters and assistive listening devices may be requested by calling (415) 499-6172 (TDD) or (415) 499-6269 (voice) at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

3501 Civic Center Drive, #308 - San Rafael, California 94903 - Telephone (415) 499-6269 - Fax (415) 499-7860

RED Exh

August 1996

RECEIVED BY
1996 AUG 23 P 2:51

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

Dear Mr. Crawford:

I am in support of the proposed Pacific Bell Mobile Services PCS wireless telecommunications roof-mounted facility at 242 Redwood Highway, Mill Valley. I appreciate the digital technology which dramatically improves security and clarity during my calls, the capability of offering a variety of voice and data features, and the ability to keep in touch with my family, friends, and resources at any moment I need to. PCS offers these things without interfering with other transmissions, and keeps our community progressing toward the future. As a resident of the area surrounding the proposed site, I ask that you endorse this facility at the September 9th hearing so that we may enjoy access to its benefits as quickly as possible.

Respectfully,

Name:

Jean Guthrie

Address:

240 REDWOOD HWY. BERTH 2

RED EX

August 1996

RECEIVED BY

1996 AUG 23 P 2:51

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

Dear Mr. Crawford:

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Respectfully,

Name:

Jane Chamberlin

Address:

JANE CHAMBERLIN
P.O. Box 252
Sausalito, CA 94966

RECEIVED BY
KTB AUG 16 A 10:58

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

August 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

Dear Mr. Crawford:

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Respectfully,



Name: Richard Charles

Address: 240 Redwood Hwy #5
Mill Valley, CA 94941

RED EXT III

RECEIVED BY

1996 AUG 16 A 10:58

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

August 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

Dear Mr. Crawford:

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Respectfully,

Name: *GEORPIE STEPHENS*

Address: *240 REDWOOD HWY. #11C.
MILL VALLEY, CA.
9494.*

RED EXT

August 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

Dear Mr. Crawford:

I am in support of the proposed Pacific Bell Mobile Services PCS wireless telecommunications roof-mounted facility at 242 Redwood Highway, Mill Valley. I appreciate the digital technology which dramatically improves security and clarity during my calls, the capability of offering a variety of voice and data features, and the ability to keep in touch with my family, friends, and resources at any moment I need to. PCS offers these things without interfering with other transmissions, and keeps our community progressing toward the future. As a resident of the area surrounding the proposed site, I ask that you endorse this facility at the September 9th hearing so that we may enjoy access to its benefits as quickly as possible.

Respectfully,

Name:

Susan 1-4-96

Address:

*240 Redwood Hwy Slip #1
Mill Valley, CA 94941*

only 50 yards from Amtrak Site

RECEIVED

AUG 14 1996

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

RED EXT

August 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

Dear Mr. Crawford:

I am in support of the proposed Pacific Bell Mobile Services PCS wireless telecommunications roof-mounted facility at 242 Redwood Highway, Mill Valley. I appreciate the digital technology which dramatically improves security and clarity during my calls, the capability of offering a variety of voice and data features, and the ability to keep in touch with my family, friends, and resources at any moment I need to. PCS offers these things without interfering with other transmissions, and keeps our community progressing toward the future. As a resident of the area surrounding the proposed site, I ask that you endorse this facility at the September 9th hearing so that we may enjoy access to its benefits as quickly as possible.

Respectfully,

Name: *Julie Buscarridge*
Address: *240 Redwood Hwy.
Mill Valley, CA 94941*

RECEIVED

AUG 14 1996

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

RED EXT

RECEIVED

August 1996

AUG 14 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

Dear Mr. Crawford:

I am in support of the proposed Pacific Bell Mobile Services PCS wireless telecommunications roof-mounted facility at 240 Redwood Highway, Mill Valley. I appreciate the digital technology which dramatically improves security and clarity during my calls, the capability of offering a variety of voice and data features, and the ability to keep in touch with my family, friends, and resources at any moment I need to. PCS offers these things without interfering with other transmissions, and keeps our community progressing toward the future. As a resident of the area surrounding the proposed site, I ask that you endorse this facility at the September 9th hearing so that we may enjoy access to its benefits as quickly as possible.

Respectfully,

Elaine Alyson

Name: Elaine Alyson

Address: 240 Redwood Hwy # 7
Mill Valley, CA 94941

Resident

RED EXH

August 1996

RECEIVED BY

1996 AUG 14 A 11:18

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

Dear Mr. Crawford:

I am in support of the proposed Pacific Bell Mobile Services PCS wireless telecommunications roof-mounted facility at 242 Redwood Highway, Mill Valley. I appreciate the digital technology which dramatically improves security and clarity during my calls, the capability of offering a variety of voice and data features, and the ability to keep in touch with my family, friends, and resources at any moment I need to. PCS offers these things without interfering with other transmissions, and keeps our community progressing toward the future. As a resident of the area surrounding the proposed site, I ask that you endorse this facility at the September 9th hearing so that we may enjoy access to its benefits as quickly as possible.

Respectfully,

Name: *Peter Breinig* (Peter Breinig)

Address: *242 Redwood Hwy - Houseboat #2, 2nd nearest to
proposed antenna site*

Resident

RED EXT

August 1996

RECEIVED

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

AUG 14 1996

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

Dear Mr. Crawford:

I am in support of the proposed Pacific Bell Mobile Services PCS wireless telecommunications roof-mounted facility at 242 Redwood Highway, Mill Valley. I appreciate the digital technology which dramatically improves security and clarity during my calls, the capability of offering a variety of voice and data features, and the ability to keep in touch with my family, friends, and resources at any moment I need to. PCS offers these things without interfering with other transmissions, and keeps our community progressing toward the future. As a resident of the area surrounding the proposed site, I ask that you endorse this facility at the September 9th hearing so that we may enjoy access to its benefits as quickly as possible.

Respectfully,

Name:

John M. Donald

Address:

*240 Redwood Hwy APT 7
Mill Valley 94941*

COMMODORE MARINA Resident

RED Ex

August 1996

RECEIVED BY
1996 AUG 14 A 11:18

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

Dear Mr. Crawford:

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Respectfully,

Name: *Phil R. Holt*
Address: *240 Redwood Hwy*
Mill Valley
Owner of houseboat #7.

RED Exhibit
RECEIVED

August 1996

AUG 14 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

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Respectfully,

Name: *Tom Manuel*
Address: *100 Palm Ave.
Corte Madera, Ca.
94925*
works at Commodore Center

RED-Exn

RECEIVED

August 1996

AUG 14 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

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Respectfully,

Name:

MAINE STORTIE

Address:

*501 BLANIE DA DEL PRADO
APT 313 NOVATO CA*

EMPLOYEE OF BRILES HELICOPTER

RED EXT

RECEIVED BY

1996 AUG 14 A 11:20

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

August 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

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Respectfully,

Name: *J. August Machler*

Address: *242 REDWOOD HWY
MILL VALLEY, CA*

PILOT FOR BRILES HELICOPTER

RED Exn

RECEIVED BY

1996 AUG 14 A 11:08

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

August 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

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Respectfully,

Name:

~~John G. KERRY-MILVER~~
Address:

50 PLANS RD
KENTFIELD, CALIF
94904
415 461-1616

John Kerry
PILOT FLYING AT
SAUSALITO HELIPORT 100-
FT. FROM ANTENNA.

PCS IN AN IMPORTANT
SERVICE TO MARIN.

RED EXT

August 1996

RECEIVED BY

1996 AUG 14 A 11:07

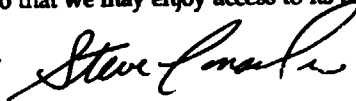
MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

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Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

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Respectfully,



Name: STEPHEN P. CONSIDINE

Address: KAPPAS MARINA EAST #4
SAUSALITO, CA 94965

Works at Commodore Center

RED Exh

RECEIVED BY

1996 AUG 14 A 11:07

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

August 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

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Respectfully,

Katy O'Leary

Name: *KATY O'LEARY*

Address: *65 Longfellow Rd
Mill Valley, Ca. 94941*

RED EXIT

RECEIVED

August 1996

AUG 14 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

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Respectfully,

Name:



Address:

22 BEARDWALK #1
LARKSPUR 94939

works at Commodore Center

RED EXT

August 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

RECEIVED

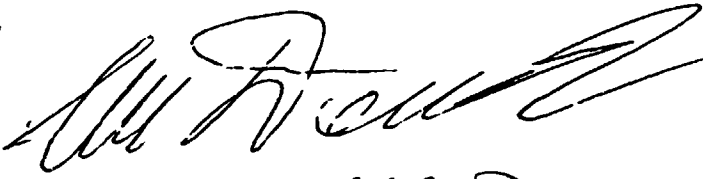
AUG 14 1996

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

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Respectfully,



Name:

Address:

CONST WARD
NEXT TO SAN RAFAEL
Rd 100 YARDS.

Bill Donnelly
works next door
(w/in 100 yds)

RED EX

August 1996

RECEIVED

AUG 14 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
San Rafael, CA 94903

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

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Respectfully,

Name: *John H. Housh*

Address:

*100 S. HOCO LANE
MILL VALLEY, CA 94041
100 yd. from ARTS CENTER*

Consulting Group, Inc.
TELECOMMUNICATIONS

August 8, 1996

Mr. Brian C. Crawford, AICP
Deputy Zoning Administrator
Marin County Civic Center, Room #319
3501 Civic Center Drive
San Rafael, CA 94903

Dear Mr. Crawford:

This letter is to confirm the change in the Planning Commission hearing date for the proposed PCS site at 242 Redwood Highway (SF306) from August 5, 1996 to September 9, 1996.

If you have any questions or comments please call me at (415) 737-5407. Thank you for your time.

Sincerely,



James R. Calkins
Land Use Planner

RECEIVED BY

MMB AUG 13 A 10 49

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY -
PLANNING DIVISION

MEMORANDUM

TO: David Zaltsman, Deputy County Counsel

FROM: Brian C. Crawford, AICP, Principal Planner
Christine Gimmler, AICP, Planner

RE: Price/Pac Bell Use Permit and Design Review Exemption
242 Redwood Highway, Mill Valley
Assessor's Parcel Number 052-247-01

DATE: July 19, 1996

Background

As we discussed last week, the County is currently processing an application by Pacific Bell Mobile Services to install a telecommunications facility consisting of two pairs of roof-mounted panel antennas and two base transceiver stations on the roof of an existing commercial building located on the above-referenced property (please see attached staff report). As part of their application, the applicant submitted a report prepared by Hammett & Edison, Inc., which concludes that the proposed facility complies with prevailing ANSI/IEEE standards for limiting human exposure to radio frequency emissions.

During the public hearing for this item at the Deputy Zoning Administrator meeting of July 11th, a number of residents of an existing houseboat marina on the subject property expressed concerns regarding the potential health effects of the proposed facility and requested that the hearing officer refer the application to the Planning Commission. The proposed project is tentatively scheduled to be heard by the Commission on August 5, 1996.

Issue

Staff understands that Section 704(a) of the Telecommunications Act of 1996 specifically prohibits local governments from regulating the placement, construction or modification of personal wireless service facilities (such as the proposed project) on the basis of the environmental effects of radio frequency emissions if the proposed facility is shown to comply with existing Federal Communications Commission regulations regarding such emissions (please see attached Summary of Section 704 of the Telecommunication Act). Staff would appreciate it if you could confirm this understanding with respect to the proposed project and indicate how the Telecommunications Act would effect the County's potential liability in the future for any yet unknown adverse health effects resulting from radio frequency emissions generated by telecommunications facilities approved by the County.

Thank you for your assistance on this item. If you have any questions or need additional information, please call Brian (x6402) or Christine (x6285).

Attachments: 1. Price/Pacific Bell Use Permit/Design Review Exemption staff report
2. Summary of Section 704 of the Telecommunications Act of 1996

cur/cg/dza/memo/cocopacb.doc

SUMMARY OF SECTION 704 OF THE TELECOMMUNICATIONS ACT OF 1996

The following is a summary of key provisions. The text of Section 704 is reproduced in its entirety as an attachment to this summary.

1. Local Zoning Authority Preserved

Section 704(a) of the 1996 Act amends Section 332(c) of the Communications Act ("Mobile Services") by adding a new paragraph (7). It preserves the authority of state and local governments over decisions regarding the placement, construction, and modification of personal wireless service facilities, except as provided in the new paragraph (7).

2. Exceptions**a. States and Localities May Not Take Discriminatory or Prohibiting Actions**

Section 704(a) of the 1996 Act states that the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. §332(e)(7)(B)(i).

Review. Any person that is adversely affected by a state or local government's action or failure to act that is inconsistent with Section 332(c)(7) may seek expedited review in the courts. 47 U.S.C. §332(e)(7)(B)(v).

b. Procedures for Rules on Requests to Place, Construct or Modify Personal Wireless Service Facilities

Section 704(a) also requires a State or local government to act upon a request for authorization to place, construct, or modify personal wireless service facilities within a reasonable time. Any decision to deny a request must be made in writing and be supported by substantial evidence contained in a written record. 47 U.S.C. §332(e)(7)(B)(ii), (iii).

c. Regulations Based On Environmental Effects of RF Emissions Prohibited

Section 704(a) of the 1996 Act expressly prohibits state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions. 47 U.S.C. §332(e)(7)(iv).

Review. Parties may seek relief from the FCC if they are adversely affected by a state or local government's final action or failure to act that is inconsistent with this provision. 47 U.S.C. §332(e)(7)(B)(v).

3. Federal Guidelines Concerning RF Emissions

Section 704(b) requires the FCC to prescribe and make effective new rules regarding the environmental effects of radio frequency emissions, which are under consideration in ET Docket 93-62, within 180 days of enactment of the 1996 Act.

NOTE: The pendency of this proceeding before the FCC does not affect the rules which currently are in effect governing the environmental effects of radio frequency emissions. Section 704(b) gives presumptive effect to these existing rules. See related attachments to the Fact Sheet.

4. Use of Federal or State Government Property

a. Federal Property

Section 704(e) of the 1996 Act requires the President (or his designee) to prescribe procedures by which the federal government may make available on a fair, reasonable and nondiscriminatory basis, property, rights-of-way and easements under their control, for the placement of new spectrum-based telecommunications services.

b. State Property

With respect to facilities siting on state property, Section 704(c) of the 1996 Act requires the FCC to provide technical support to States to encourage them to make property, rights-of-way and easements under their jurisdiction available for the placement of new spectrum-based telecommunications services.

NOTE: Information concerning technical support for tower siting which the FCC is making available to state and local governments is attached to the Fact Sheet.

5. Definitions

"Personal wireless services" include commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. §332(e)(7)(C)(i).

"Commercial mobile services" are defined in Section 332 of the Communications Act and the FCC's rules, and include cellular telephone services regulated under Part 22 of the FCC's rules, SMR services regulated under Part 90 of the FCC's rules, and PCS regulated under Part 24 of the FCC's rules. 47 C.F.R. §20.9.

"Unlicensed wireless services" are defined as the offering of telecommunications services using duly authorized devices which do not require individual licenses; direct-to-home satellite services are excluded from this definition. 47 U.S.C. §332(c)(7)(C)(iii).

RECEIVED BY

1996 JUL 17 P 1:17

NOTICE OF TRANSMITTAL

MARIN COUNTY
COMMUNITY DEVELOPMENT
AGENCY

DATE: July 16, 1996

DELIVERED BY:

TO: Christine Gimmler, AICP
Planner
Marin County Community Development Agency
3501 Civic Center Drive #308
San Rafael, CA 94903

HAND
MAIL X
PICK-UP
OVERNIGHT

FROM: James R. Calkins *JRC*

RE: Telecommunications Act of 1996

THE FOLLOWING DOCUMENTS ARE ENCLOSED:

One (1) Section 704 from the Telecommunications Act of 1996
regarding wireless telecommunications.

PURPOSE/COMMENTS:

Here is the information you requested. Should you wish further
documentation from the Telecommunications Act please contact me
at (415) 437-5407.

TELECOMMUNICATIONS ACT OF 1996

JANUARY 31, 1996. Ordered to be printed

Mr. BLILEY, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 652]

RECEIVED BY
MARIAN COUNTY
COMMUNITY DEVELOPMENT
AGENCY
R96 JUL 17 P 1:17

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 652), to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) **SHORT TITLE.**—This Act may be cited as the "Telecommunications Act of 1996".

(b) **REFERENCES.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title; references.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.

the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

(i) An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way)."

SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY.—Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

"(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

"(B) LIMITATIONS.—

"(1) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

"(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

"(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

"(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

"(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

"(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

"C, DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'personal wireless services' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

"(ii) the term 'personal wireless service facilities' means facilities for the provision of personal wireless services; and

"(iii) the term 'unlicensed wireless service' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v))."

(b) **RADIO FREQUENCY EMISSIONS.**—Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

(c) **AVAILABILITY OF PROPERTY.**—Within 180 days of the enactment of this Act, the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

SEC. 705. MOBILE SERVICES DIRECT ACCESS TO LONG DISTANCE CARRIERS.

Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(8) **MOBILE SERVICES ACCESS.**—A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If

CITIZENS FOR A BEAUTIFUL AND HEALTHY COUNTY

July 8, 1996

TO: MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY**RE: Price/PacBell Design Review Exception 96-405 Use Permit 96-406**

We strongly urge you to deny this request for a design review exemption for the following reasons:

1. Health and Safety

Both the short and long term effects of radio-frequency radiation are unknown. Even Pacific Bell's own contractor who studied this issue cannot be certain of the health and risks (page 4 of the Hanmett & Edison March 1995 report). A special concern is the averaging of emissions to make it appear the antennas comply with guidelines when in fact surges of use could zap citizens or tourists at any particular time. Most health experts agree cell site technology is too new to know its effects. As a result, erecting these antennae without further study puts the community at risk and makes guinea pigs of its residents.

These health concerns extend to the owners/residents of the Marina who live less than 300 yards from the proposed site, the employees of the helipad who work in the building of the proposed site, the several dozen young children who play in the Planet, an art and educational space in the building and who play outside directly under the proposed site, the artists who would be working in the studios now under construction in the Helipad directly under the proposed antennae, the tourists and visitors who frequent the marina for seaplane rides and often stand around for long periods of time enjoying the views or have lunch on the park-like setting directly to the east of the building and the hikers and bikers who frequent the bike path directly to the west.

2 Visual impact

This is a request to erect two pairs -- that is four -- Martian-like disks in what is a park like setting. The more than 24 owners/residents of Commodore Landing moved there because of its tranquillity and serenity with panoramic Bay views on one side and lovely trees on the other. In addition, the view from the bike path which borders the proposed site on the west side is one of the most stunning views in Mill Valley of the valley and Mt. Tam.

As a result, the property values of the Marina houseboat owners would be negatively impacted as well as the aesthetic loveliness of their homes.

Because of the far-reaching consequences of the proposed plan, we urge you to deny this exemption.

Jan Key
 Resident of Commodore Landing

I strongly feel it is time we look out for the health and welfare of citizens, especially the children of the planet. Will they grow up with cancer because big business did not want to investigate long term effects. I sincerely hope not. (over)

RED EXH

AS A 40 year old woman growing up in Southern California at a time when
cars, pollution were just beginning. Now 20 years later I am faced
with chronic lung problems. Please lets not repeat history especially
when we now have facts

Sincerely



RED Exh

CITIZENS FOR A BEAUTIFUL AND HEALTHY COUNTY

July 8, 1996

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RE: Price/PacBell Design Review Exception 96-405 Use Permit 96-406

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These health concerns extend to the owners/residents of the Marina who live less than 300 yards from the proposed site, the employees of the helipad who work in the building of the proposed site, the several dozen young children who play in the Planet, an art and educational space in the building and who play outside directly under the proposed site, the artists who would be working in the studios now under construction in the Helipad directly under the proposed antennae, the tourists and visitors who frequent the marina for seaplane rides and often stand around for long periods of time enjoying the views or have lunch on the park-like setting directly to the east of the building and the hikers and bikers who frequent the bike path directly to the west.

2 Visual impact

This is a request to erect two pairs -- that is four -- Martian-like disks in what is a park like setting. The more than 24 owners/residents of Commodore Landing moved there because of its tranquility and serenity with panoramic Bay views on one side and lovely trees on the other. In addition, the view from the bike path which borders the proposed site on the west side is one of the most stunning views in Mill Valley of the valley and Mt. Tam.

As a result, the property values of the Marina houseboat owners would be negatively impacted as well as the aesthetic loveliness of their homes.

Because of the far-reaching consequences of the proposed plan, we urge you to deny this exemption.

_____	<i>Joyce Lynn</i> 240 Redwood Highway Mill-29
_____	<i>MICHAEL</i> 240 REDWOOD HWY. # 11 C
_____	<i>MICHAEL</i> MILL VALLEY
_____	<i>Michael</i> 210 Redwood Hwy #1A
_____	<i>Mill Valley</i>
_____	_____
_____	_____
_____	_____

RED EXN

CITIZENS FOR A BEAUTIFUL AND HEALTHY COUNTY

July 8, 1996

TO: MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

RE: Price/PacBell Design Review Exception 96-405 Use Permit 96-406

We strongly urge you to deny this request for a design review exemption for the following reasons:

1. Health and Safety

Both the short and long term effects of radio-frequency radiation are unknown. Even Pacific Bell's own contractor who studied this issue cannot be certain of the health and risks (page 4 of the Hammett & Edison March 1995 report). A special concern is the averaging of emissions to make it appear the antennas comply with guidelines when in fact surges of use could zap citizens or tourists at any particular time. Most health experts agree cell site technology is too new to know its effects. As a result, erecting these antennae without further study puts the community at risk and makes guinea pigs of its residents.

These health concerns extend to the owners/residents of the Marina who live less than 300 yards from the proposed site, the employees of the helipad who work in the building of the proposed site, the several dozen young children who play in the Planet, an art and educational space in the building and who play outside directly under the proposed site, the artists who would be working in the studios now under construction in the Helipad directly under the proposed antennae, the tourists and visitors who frequent the marina for seaplane rides and often stand around for long periods of time enjoying the views or have lunch on the park-like setting directly to the east of the building and the hikers and bikers who frequent the bike path directly to the west.

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As a result, the property values of the Marina houseboat owners would be negatively impacted as well as the aesthetic loveliness of their homes.

Because of the far-reaching consequences of the proposed plan, we urge you to deny this exemption.

*Marina Simon - 740 Redwood Hwy. Mill Valley, 94948
John Simon 2116 Redwood Hwy. Mill Valley*

REDEX
Submitted 7/11/96

CITIZENS FOR A BEAUTIFUL AND HEALTHY COUNTY

July 8, 1996

TO: MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

RE: Price/PacBell Design Review Exception 96-405 Use Permit 96-406

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1. Health and Safety

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As a result, the property values of the Marina houseboat owners would be negatively impacted as well as the aesthetic loveliness of their homes.

Because of the far-reaching consequences of the proposed plan, we urge you to deny this exemption.

~~_____~~
Susan Faxon 240 Redwood Hwy #9, Mill Valley 94941
& Paul Wong

Ernie Greenstein 240 Redwood Hwy, Mill Valley 94941

Terry Adams 240 Redwood Hwy #3 Mill Valley 94941

Elaine Ahyon 240 Redwood Hwy #3 Mill Valley 94941

RED EXEMPT

Marin County Community Development Agency

Mark J. Riesenfeld, AICP, Director

REVISED NOTICE OF PUBLIC HEARING

PRICE/PAC BELL DESIGN REVIEW EXEMPTION 96-405/USE PERMIT 96-406

NOTICE IS HEREBY GIVEN that the Marin County Deputy Zoning Administrator's hearing for this project, which was originally noticed and scheduled for June 20, 1996, has been continued to July 11, 1996. The public hearing will be held to consider the Price/Pac Bell applications proposing to construct a Personal Communication Services (PCS) facility. The subject property is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort, Commercial, Recreation district). The subject property is located at 242 Redwood Hwy., Mill Valley, and is further identified as Assessor's Parcel #052-247-01.

The proposed project has been determined to be Categorically Exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1.

The public hearing will be held at the regular meeting of the Marin County Deputy Zoning Administrator on Thursday, July 11, 1996, in the Planning Commission Chambers (Room 319, Admin. Building) Civic Center, San Rafael, California, at which time any and all persons interested in this matter may appear and be heard. Please call the Community Development Agency - Planning Division at (415) 499-6269 on or after Friday, July 5, 1996, if you want to know the approximate time of the hearing. A staff report will be available for your review at the Community Development Agency - Planning Division as of Monday, July 8, 1996.

If you challenge the decision of this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Community Development Agency - Planning Division at, or prior to, the public hearing. (Government Code Section 65009(b)(2).)

If you have any questions or concerns regarding the proposed project, or want to be notified of the decision, please contact me at (415) 499-6269.

MARK J. RIESENFELD
Agency Director

Christine Gimmler, AICP
Planner

cg:ps\idza\notices\price.doc
07/01/96



Persons who language interpreters and auxiliary hearing devices may be requested by calling 415 499-6177 (TDD) or 415 499-6269 (voice) at least 72 hours in advance. Copies of documents are available in accessible format upon request.

RED EXHIBIT

Marin County Community Development Agency
3501 Civic Center Drive, #308
San Rafael, CA 94903-4157

3

0

C5.

PRICE/PACBELL USE PERMIT/DESIGN REVIEW EXEMPTION

Proposal to construct a Personal Communication Services (PCS) facility. The subject property is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is zoned BFC-RCR (Bayfront Conservation, Resort, Commercial, Recreation district). The subject property is located at 242 Redwood Hwy., Mill Valley, and is further identified as Assessor's Parcel #052-247-01.

(Page 1, Side A @ 4.0)

Staff recommended that this item be continued to a future hearing due to a problem with the public noticing. Seeing no one in the audience who wished to speak for or against this item, the hearing officer granted a continuance to the Deputy Zoning Administrator hearing of July 11, 1996. The hearing officer also directed staff to re-notice the project and provide a supplementary memorandum with any comments or correspondence received as a result thereof.

RED

MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY
M E M O R A N D U M

TO: Brian Crawford, Deputy Zoning Administrator
FROM: Christine Gimmler, Planner *CAJ*
RE: June 20, 1996 DZA Hearing Item C5: Price/Pac Bell Use Permit/Design Review Exemption
DATE: June 19, 1996

It has come to staff's attention that, due to a mapping error, property owners within the houseboat marina located on the subject property did not receive public notices regarding the above reference application. In order to provide adequate public noticing in accordance with California Government Code requirements, staff recommends that this item be continued to the hearing of July 11, 1996.

cc: J.T. Wick, Principal Planner
James Calkins, JM Consulting Group for Pacific Bell Mobile Services
Steve Price, property owner

Marin County
Community Development Agency

Mark J. Riesenfeld, AICP, Director

NOTICE OF PUBLIC HEARING

PRICE/PAC BELL DESIGN REVIEW EXEMPTION 96-405/USE PERMIT 96-406

NOTICE IS HEREBY GIVEN that the Marin County Deputy Zoning Administrator will hold a public hearing to consider the Price/Pac Bell applications proposing to construct a Personal Communication Services (PCS) facility. The subject property is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. The subject property is zoned BFC-RUR (Bayfront Conservation, Resort, Commercial, Recreation district). The subject property is located at 242 Redwood Hwy., Mill Valley, and is further identified as Assessor's Parcel #052-247-01.

The proposed project has been determined to be Categorically Exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15301, Class 1.

The public hearing will be held at the regular meeting of the Marin County Deputy Zoning Administrator on Thursday, June 20, 1996, in the Planning Commission Chambers (Room 319, Admin. Building) Civic Center, San Rafael, California, at which time any and all persons interested in this matter may appear and be heard. Please call the Community Development Agency - Planning Division at (415) 499-6269 on or after Friday, June 14, 1996, if you want to know the approximate time of the hearing. A staff report will be available for your review at the Community Development Agency - Planning Division as of Monday, June 17, 1996.

If you challenge the decision of this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Community Development Agency - Planning Division at, or prior to, the public hearing. (Government Code Section 55009(b)(2).)

If you have any questions or concerns regarding the proposed project, or want to be notified of the decision, please contact me at (415) 499-6269.

MARK J. RIESENFELD
Agency Director

Christine Gimmler, AICP
Assistant

cg:pe/ldz/notices/price.doc
06/05/96



American sign language interpreters and assistive listening devices may be requested by calling (415) 499-6172 (TDD) or (415) 499-6269 (voice) at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

THIRTY VAN NESS AVENUE, SUITE 2011
SAN FRANCISCO, CALIFORNIA 94102-6080
PHONE: (415) 557-3688

May 15, 1996

RECEIVED

MAY 15 1996

Marin County
Community Development Agency
3501 Civic Center Drive, #308
San Rafael, California 94903-4157

ATTENTION: Christine Gimmler, Planner

SUBJECT: Proposed Personal Communication Service Facilities
242 Redwood Highway, Near Mill Valley, Marin County
(BCDC Inquiry File No. MR.MV.6618.1)

Ladies and Gentlemen:

Thank you for your letter and enclosures, dated April 23, 1996, and received in this office on April 24, 1996, regarding proposed antennas and other personal communication service facilities at 242 Redwood Highway in Marin County. Based on the information submitted it is unclear whether the proposed project is within the Commission's "shoreline band" jurisdiction. The Site Plan, Sheet C-2, should indicate the 5-foot contour line above Mean Sea Level in the locations where tidal marshes are present. In areas where no tidal marshes are present, the Mean High Tide line, which is approximately 5.2 feet Mean Lower Low Water datum, should be shown instead. These lines determine the Commission's "bay" jurisdiction. In addition, a line 100 feet inland and parallel to the "bay" jurisdiction line should be shown, as this line indicates the limits of the Commission's "shoreline band" jurisdiction. If the existing building to which the modifications are proposed is within the Commission's "shoreline band" jurisdiction, the project would require a permit from BCDC prior to any work associated with the project.

Again, thank you for the opportunity to comment on the proposed project. If you have any questions regarding this matter or any of the items mentioned above, please feel free to call me at (415) 557-3689.

Very truly yours



NICHOLAS SALCEDO
Coastal Analyst

NS/mm

cc: JM Consulting Group, Attn. James Calkins

RED EXIT

**Marin County
Community Development Agency**

Mark J. Friesenfeld, AICP, Director

NOTICE OF PROJECT STATUS

May 16, 1996

JM Consulting Group
James Calkins
844 Dubuque Ave.
So. San Francisco, CA 94080

RE: Price/Pac Bell DX 96-405 & UP 96-406
242 Redwood Hwy., Mill Valley
Assessor's Parcel #052-247-01

Dear Mr. Calkins:

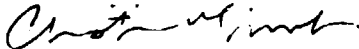
The Community Development Agency - Planning Division and reviewing agencies have examined your application and have determined that it is complete. Now we will evaluate the potential environmental impacts and merits of the project and schedule it for a decision. This notification is in accordance with State law which requires that we inform you in writing of the status of your application within 30 days of its acceptance for filing.

Your application has been tentatively scheduled for hearing before the Deputy Zoning Administrator on June 20, 1996. I will send you a copy of the staff report several days before the scheduled hearing date above. My report will include a recommendation on the merits of the application.

If you disagree with this decision regarding completeness of your application, you may appeal it to the Planning Commission. A Petition for Appeal and a \$500.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than 4:00 P.M., May 23, 1996.

Please call me at (415) 499-6269 if you have any questions about the status of your application. If I cannot take your call for some reason, please leave a message on my voicemail.

Sincerely,



Christine Gimmler, AICP
Planner

CG/mpr:amp/forms/cgpricps.doc

cc: Steve Price

**Marin County
Community Development Agency**

Mark J. Riesenfeld, AICP, Director

TRANSMITTAL MEMORANDUM

TO: Department of Public Works (DPW), Land Use & Water Resources
DPW, Radio Shop, Attn: Ron Kiesel
Sausalito-Marín City Sanitary District
Marin Municipal Water District
✓ Mill Valley-Tan Fire Department
Tan DRB
San Francisco Bay Conservation and Development Commission

FROM: Christine Gimmler, AICP, Planner *CG*

DATE: April 23, 1996

SUBJECT: Price/Pac Bell Design Review Exemption 96-405 & Use Permit 96-406
Assessor's Parcel #052-247-01
242 Redwood Hwy., Mill Valley

APPLICANT: JM Consulting Group for Pac Bell Mobile Services
James Calkins
844 Dubuque Ave.
So. San Francisco, CA 94080
(415) 737-5407

DECISIONMAKER FOR THIS APPLICATION: Deputy Zoning Administrator

PROJECT DESCRIPTION: The applicant is requesting Use Permit approval and a Design Review Exemption to construct a Personal Communication Services (PCS) facility at 242 Redwood Highway, Mill Valley. The subject property is currently developed with a heliport landing pad, several buildings, and a houseboat marina. The proposal involves the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area.

The subject property is zoned BFC-RCR (Bayfront Conservation, Resort, Commercial, Recreation district).

COMPLETENESS OF THE APPLICATION:

Please inform staff in writing whether this application contains the information you need to make a recommendation on this proposal. If it does not contain sufficient information, please specify the information you need. You may not be able to request additional information later in the process. Your comments on the completeness of this application must be received in this office by May 10, 1996.

ENVIRONMENTAL REVIEW:

Staff has made a preliminary determination that this project is Categorical Exempt from the requirements of the California Environmental Quality Act according to Section 15301, Class 1 of the 1992 CEQA Guidelines.

MERITS OF THE PROJECT:

If the application is complete, and no Environmental Impact Report is to be prepared for the project, please tell us your comments on the merits of the proposal. Please indicate whether the project conforms to the laws and policies you use to evaluate the project and recommend changes or conditions that you deem necessary based on your evaluation. These comments must be received in this office by May 10, 1996.

cc: Merin County Fire Dept.
Steve Price

CG:\mp\forma\temp\csp\prctr.doc

FILING REQUESTED BY AND
WHEN FILED RETURN TO:

Marin County Community Development Agency
Planning Division
3801 Civic Center Drive, #308
San Rafael, CA 94903

Attn: Christine Gimmler, Planner

NOTICE OF EXEMPTION

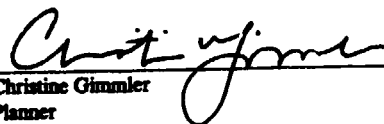
Marin County
Environmental Coordination and Review

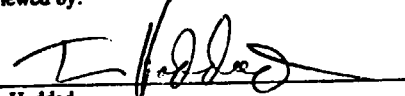
April 22, 1996

- 1. **Project Name:** Price/Pac Bell Use Permit 96-406/Design Review Ex. 96-405
- 2. **Project Location:** 242 Redwood Highway, Mill Valley
Assessor's Parcel #052-247-01/Marin County
- 3. **Project Description:** Application to install and operate an unmanned telecommunications facility consisting of two pairs of roof-mounted panel antennas and two modular base transceiver stations located on the roof of an existing structure on the subject property.
- 4. **Public Agency Approving Project:** Deputy Zoning Administrator
- 5. **Project Sponsor:** J.M. Consulting Group for Pac Bell Mobile Services
- 6. **CEQA Exemption Status:** Categorical Exemption 15303, Class 3
- 7. **Reasons for Exemption:** The proposed project entails the installation and operation of new, small equipment and facilities mounted on the roof of an existing structure on a commercial property and would not result in potentially significant impacts on the environment. Additionally, a report prepared by Hammett and Edison, Inc. dated March 22, 1996 concludes that the proposed project would not result in any significant risks with respect to human exposure to radio frequency electro magnetic fields.

Project Planner:

Reviewed by:


Christine Gimmler
Planner


Tim Haddad
Environmental Coordinator

Telephone: (415) 499-6269

*Project denial by P.C. 9/9/96
CE prepared/7/96 filed at*

RED Exhibit D

Joyce Lynn

2/10/96

For the record
re: price/Pac Bell
exemption
for PCS site
at Redwood
Highway

Lynn
PO Box 930
New Valley, CA 94542

UpFront

Pacific Sun ■ December 7 - December 13, 1994

Making waves

Is phoning home creating unsafe radio frequencies?

BY JOYCE LYNN

Phone calls from your car phone to your office or your baby-sitter, which many Marin residents consider ordinary and necessary, have become a hot-button issue.

An agreement between the county and Cellular One to put a transmission site on Mt. Barnabe in San Geronimo Valley to facilitate cellular phone communication has precipitated a hailstorm of controversy over legal aspects of the county's action and the health effects of radio frequencies.

The Bay Area Cellular One phone company is considering other transmission sites in Marin, notably in Mill Valley, Corte Madera and Tiburon. The firm operates existing facilities on Mt. Tamalpais, at San Quentin and in Sausalito.

Industry representatives, scientific experts, community residents and the county government each claim the right side of the table. The dispute is strikingly similar to the controversy over electromagnetic fields (EMFs) which erupted a couple of years ago when PG&E power lines, which emit EMFs, were found to be dangerously near some playgrounds and classrooms in Marin. PG&E agreed to move the power lines to a distance which studies show reduce health hazards.

Now the debate has moved to another part of the EMF spectrum—to radio frequencies emitted from microwave equipment involved in cellular phone communication. Radio waves emitted by cellular phones are weak, while those from microwave antennas are much stronger. Such radio frequencies have a host of current-day usages, from microwave ovens to magnetic imaging in medical tests.

In 1986, the Federal Communications Commission adopted the radio frequency protection guide of the American National Standards Institute (ANSI), called "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300kHz to 100GHz." Based on research studies, the most restrictive limit within this range applies at frequencies between 30 and 300MHz, where public safety two-way FM broadcast and VHF television stations operate. The limit is higher at UHF and cellular frequencies. In 1992, the standards institute published more restrictive standards, although some industry watchers question whether even these are restrictive enough.

The county entered into an agreement in 1993 with Cellular One to install and operate a temporary facility of three omnidirectional antennas and one 4-foot microwave antenna on Mt. Barnabe and subsequently to make the facility permanent. A fire department lookout tower and other communications facilities already existed on the 1,466-foot-high mountain. One residence is located on the mountain, and the popular Samuel P. Taylor State Park borders on the west side. Sir Francis Drake Boulevard curves past on the south.

A group of San Geronimo residents, disturbed over potential health hazards and angered that they were not notified of the agreement, petitioned in August 1993 to overturn the board of supervisors' approval of the project. Thereafter, the supes held three public hearings to gather community and industry positions. In October 1993, the board of supervisors commissioned an independent engineering study to measure levels of existing and predicted radio frequencies emitted from equipment on the lookout.

Hammitt & Edison, Inc., a Bay Area-based consulting engineering company, concluded in June 1994 that "it is possible persons in the lookout for extended periods would be exposed to RF fields in excess of the most restrictive ANSI," but that "both the residence and Sir Francis Drake Boulevard are so distant that it is not possible for the fields to approach even one percent of the ANSI limit."

The report recommended relocating the antenna, either by increasing the height of the lookout structure or constructing antenna support poles nearby to reduce the radio frequencies in and around the lookout.

At a fourth public hearing on August 2, 1994, a long list of community residents from Mill Valley, Woodacre and San Geronimo continued to oppose the plan. Ellen Sugarman, who now lives in Marin and is the author of a respected book on EMFs, suggested that raising the antenna tower 32 feet over the existing fire tower would preclude hazardous radiation from affecting the community.

The board of supervisors adopted Sugarman's recommendation and also exempted the project from meeting the California Environmental Quality Act (CEQA). In addition, the supes adopted a resolution which mandates the county to develop a countywide EMF policy that exceeds federal and industry standards and to conduct a survey of all county transmitter sites, particularly those located near children's facilities and heavily populated areas.

San Geronimo residents involved in appealing the board's approval of the Cellular One use permit have now taken their case to court. According to San Geronimo Valley resident Diane Matthew, the case, now in county superior court, challenges the county to show why the facility is exempt from the CEQA, maintains that the county failed to follow the countywide plan and contends the action violates a 1932 deed of Mt. Barnabe to the fire department for fire protection management.

As the Hammitt & Edison study recommended, the antennas with the highest power density have been moved so they are now located away from the lookout tower and are higher than their original location on the tower. Robert D. Weller, author of the report, told the *Pacific Sun* that he has remeasured the RF levels and they are "lower, in some cases much lower" than before the antennas were moved.

Martin Graham, a former professor of engineering at the University of California at Berkeley, had urged the supervisors at the August 2 meeting to remeasure RF levels after the equipment is moved and operative. Still, the ANSI standards themselves continue to raise questions for Graham.

UREDO Exhibit D

Except for medical treatment, he told the *Pacific Star*, we do not know how much radiation humans can take. "Are the standards safe? We do not really know," he said. "A number of times the government and industry have said confidently that levels are safe, and then it turns out thirty years later they are not. People are not sure what the government says is safe is safe. Certainly people nearby have reason to be concerned. If [that concern] is really warranted, we don't know for sure."

Matthew, a registered nurse who lives on Mt. Barnabe, contends the Hammett & Edison report addresses "only the thermal effect of tissue cooking, and does not talk about ultra high frequency fields bouncing off the hills. Nobody knows how much effect over how many years at what level" has what effect.

"People moved to the valley to get away from urban pollution. Now I'm within direct line of sight of the antenna. I used to feel safe here; not anymore."

Professor Graham perhaps summed up the current and impending dispute when he said, "There are a lot of studies. They do not all agree. We need to sort it out. Right now, it's a mess."

Antique Row

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Sausalito, CA 94967
707-829-1733

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by the middle of 1995, we will have a
channel system or higher," says P.ca. "So
some of these problems with having to
share channels and finding room for chan-
nels will go away."

But there is a deep distrust of Viacom
among its subscribers. Some suspect that
the company is just using customers' anger
to bolster its case against industry regula-
tion. Suki Sennett, who staffs the county
Cable TV Oversight Committee, has been

anger. "Everybody has a voice," says
Gillespie, "because they're a monopoly
yet they're answerable to no one. As
far as I'm concerned, it's un-American."

If Viacom doesn't win its injunction, it
will probably face a storm of protest from
KTEH fans. They're committed, they're
organized and they're legion. Says
Gillespie, "There are a lot more people
who are concerned about this than Viacom
ever believed would be."

Sparks over EMF's

Mill Valley schools
will pay tab but
they want PG&E
to guarantee results

BY JOYCE LYNN

Bright flowers adorned the board's
table at the Mill Valley School
District meeting Monday night, but
when the topic

turned to electromag-
netic fields, angry
board members were
throwing bricks, not
borequets. The tar-
gets were six PG&E
representatives who
came, guns meters
in hand so to speak,
to offer good-faith
assurances on their
plan to correct poten-
tially hazardous EMF
levels at Tam Valley
Elementary School.

PG&E's high-ten-
sion wires are located
over the playing field
at Tam Valley
Elementary School,
about 112 feet from
the nearest class-
room. Studies during the past decade,
especially a recent Swedish study, have
found strong correlation between continual
exposure to EMF at levels between 2 to 3
milligauss and an increased risk of cancer.
The correlation is especially pronounced
for childhood leukemia. While levels of 1.2
milligauss are considered safe, EMF levels
at Tam Valley's playing field reach as high
as 6 milligauss.

Last December, the Mill Valley School
District contacted PG&E about correcting

the situation, but were told PG&E would
not pay for changes in its facilities solely to
reduce EMF levels. PG&E cited the
inconclusive nature of research results
while acknowledging that "EMF's effect
on public health cannot be dismissed."
The school board, through a long and
costly process, decided to pay the esti-
mated \$105,000 cost of the modifications,
but it wants PG&E to guarantee that the
EMF levels would be reduced to the safe
1.2 milligauss level and the work complet-
ed by September 1.

Monday's bone of contention was a two-
page draft contract PG&E's legal depart-
ment fixed to school district counsel

**"This disclaimer
means if you do
a crummy job
and the poles fall
down, you are not
responsible."**

Sandra Woliver that
day. According to the
draft, PG&E would
install high steel poles
on the school's play-
ing field to raise and
reconfigure existing
lines into a triangular
alignment to reduce
current EMF levels
found at 6 milligauss
at peak school time
use to approximately
1.2 milligauss.
However, PG&E
would not actually
guarantee this EMF
level.

PG&E acknowl-
edged that EMF lev-
els could vary with
line loads. The line
over Tam Valley
School serves Sausalito, and if the load
doubles, PG&E projected a mid-span
EMF level of approximately 2 milligauss.

The draft contract contained these
"good-faith estimates," but also a blanket
disclaimer: "Notwithstanding the forego-
ing, PG&E makes no warranty, guaranty,
or representation, express or implied with
respect to the work or its quality, reliability,
accuracy, usefulness or results obtained
therefrom, including, but not limited to,

UpFront

the mitigation of health effects."

This evoked a chorus of outrage from Board members:

• Susan Marks: "The disclaimer means if you do a crummy job and the poles fall down, you are not responsible."

• James Mitchell: "You as parents would not send your child to a school district that would write this kind of contract."

• Tom Ashley: "This is like building a roof to last for 20 years, but you guarantee it for one day — providing it doesn't rain that day."

Stacey Case, PG&E division manager, who had returned that day from her honeymoon to face this sour chorus, defended PG&E's good intentions. "Our goal is to support what you want to achieve," she said. "We are committed to moving by September 1 at the cost price specified here." Although exorbitant Southeast growth is remote, Case said PG&E "tried to give a range based on load growth which is beyond PG&E's control." What if, she speculated, a new shipyard is built or every customer wanted to install five hot tubs?

Case said PG&E sent the school board a standard contract to expedite negotiations and that since this type of agreement is new, no model contracts exist with EMP levels. She acknowledged that the contract was "unacceptable." But she maintained, "It's not an excuse for delay."

Earlier that day, PG&E named attorney Iathan Annand to handle the contract negotiations. Annand said she hoped she and school counsel Woliver "can get language mutually acceptable to people."

Chair Cathie Kacher wanted assurances that the contract will be signed by June 1 so that equipment can be ordered and

work completed by September 1 for the start of school in the fall.

"Absolutely," responded Annand. (After the meeting, school district business manager Mike Patrick told the *Pacific Sun*, "We have been asking since January 26 who Sandra Woliver should contact regarding a contract. We found out today.")

Debate concluded around 10 p.m. with Tam Valley school copresident Kate

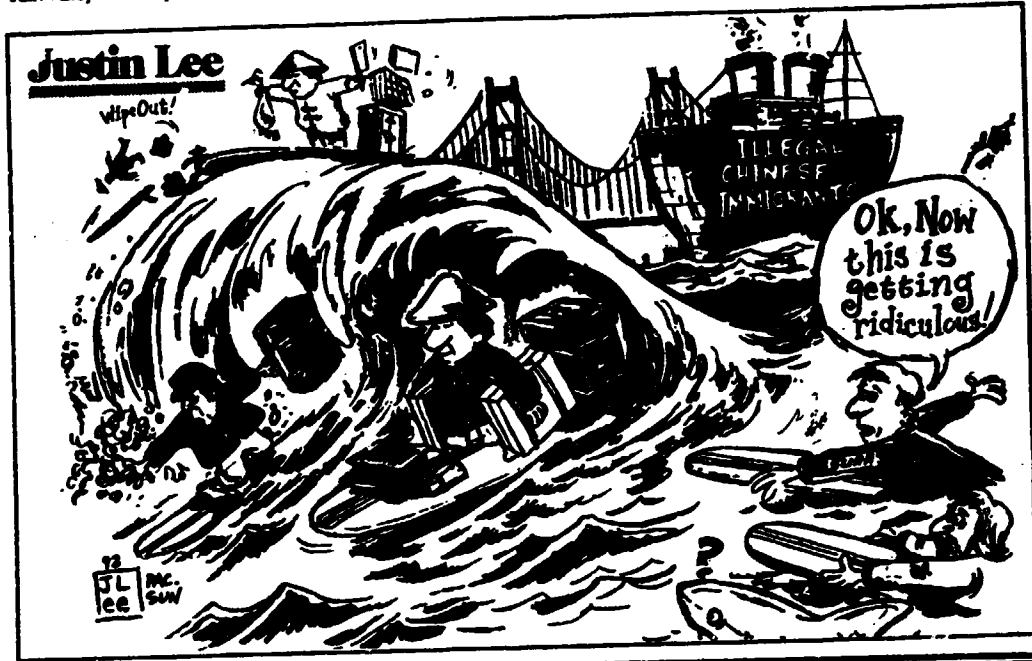
Hamilton telling the PG&E delegation, "It's disheartening at this point in time to be at this stage. I thought it was very clear what PG&E said they were going to do. We sent information to parents, this is what will be done. I'm disappointed PG&E is not paying for this. I feel strongly it is not our responsibility but, hey, we're worried about our kids."

As the handful of disgruntled Tam

Valley school parents left the meeting, one advocated a futile gesture of retaliation, "Let's turn off all our lights."

At press time, Woliver told the *Sun* that she had continued lengthy discussions with Annand, but "PG&E is still unwilling to commit to any range of EMFs."

With a June 1 deadline looming, looks like the EMF issue is going down to the wire.



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**Marin County
Community Development Agency**

Mark J. Rosenfeld, AICP, Director

February 2, 1996

John R. Berg, Land Use Planner
JM Consulting Group, Inc.
844 Dubuque Avenue
South San Francisco, CA 94080

RE: Pre-application Review - Pacific Bell Mobile Services Personal Communication Services Facility
242 Redwood Highway, Mill Valley PRICE
Assessor's Parcel Number 052-247-01
PBMS Project Number: SF-306

Dear Mr. Berg:

This letter is in response to your request on behalf of Pacific Bell Mobile Services for a pre-application review of a proposed Personal Communication Services (PCS) facility at 242 Redwood Highway, Mill Valley. The proposed project site is located on the eastern side of Highway 101, north of Sausalito and is currently developed with a heliport landing pad, several buildings, an eleven berth houseboat marina, and associated parking areas.

As a subsidiary of Pacific Telesis, Pacific Bell Mobile Services is a public utility licensed and mandated by the Federal Communication Commission to operate wireless communication facilities in California. This facility would provide wireless communication service to residents and businesses in Southern Marin County. Based on the submitted materials, the proposal appears to involve the installation of two modular Base Transceiver Stations, an antenna array, and associated cables on the roof of the existing building that houses the heliport office on the project site. The antenna array would consist of two pairs of roof-mounted panel antennas that would extend eight feet above the existing roof parapet (to a total height of 33 feet above grade). One pair of panels would be located at each end (north and south) of the structure. The Base Transceiver Stations are self-contained, all-weather cabinets designed to house all of the radio equipment. Both cabinets would be installed on the roof of the lowest portion of the structure on the south side of the building, would extend a total height of approximately 6.5 feet above the existing roof, and would cover approximately 50 square feet of roof area. This unstaffed facility would operate 24 hours a day and would not require sewer, water, or solid waste removal services. Land line telephone and electrical power would be the only services required.

This letter preliminarily summarizes some issues, applicable policies and procedures as they may pertain to the proposal and regulations of the zoning ordinance and policies of *The Marin Countywide Plan*, the *Tamalpais Area Community Plan*, and the *County of Marin Telecommunications Facilities Policy Plan*.

Zoning Regulations

The project site is governed by Bayfront Conservation, Resort and Commercial Recreation District (BFC-RCR) zoning, which allows a variety of resort and recreational uses as well certain associated service uses subject to the securing of a Use Permit. Pursuant to Section 22.88.010(2) of Marin County Code, public utility and service uses may be approved by Use Permit in a BFC-RCR zoning district when it is found to be necessary for public health, safety, convenience or welfare. Pursuant to Section 22.88.020(3) of the code, in order to grant the Use Permit, it must be found that the establishment, maintenance or conducting of the use for which a Use Permit is sought will not be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of such use and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood. A Use Permit application and current fee schedule are attached for your records.

Pursuant to Section 22.82.020 of the code, the proposed project also requires Design Review approval. The intent and objectives of Design Review include, but are not limited to: (1) preservation and enhancement of the natural beauty of the land and of the manmade environment; (2) maintenance and improvement of the qualities of, and relationships between, individual buildings and physical improvements which best contribute to the amenities and attractiveness of an area; (3) stimulation of creative design solutions; and (4) integration of the function, appearance and location of improvements so as to best achieve a balance between private rights and the public interest and welfare. A Design Review application and current fee schedule are attached for your records.

Due to the visibility of the proposed facility from Highway 101 and the San Francisco Bay Trail, staff has concerns regarding the potential visual impacts of the project. Based on the visual sensitivity of the bayfront property, the location of a telecommunications facility on the proposed site must be justified from a technological standpoint. In addition, visual simulations may be required from selected locations to properly assess visual impacts. The potential visual impacts of the facility could be reduced by resiting the panel antennas to a lower portion of the roof, minimizing the height and number of antennas, and utilizing appropriate, nonreflective exterior colors that blend with the dominant viewshed background. Visual impacts may also be reduced by utilizing an alternative site in the vicinity where the antenna array could be screened by existing buildings or landscaping.

The Marin Countywide Plan

The Marin Countywide Plan (Countywide Plan) is a comprehensive, long-range general plan for the unincorporated areas of the County that contains goals, objectives, policies and programs to guide existing and future development. For purposes of environmental planning, the Countywide Plan divides the County into three environmental corridors based on the predominant natural features and land uses of each corridor. The proposed project site is located within the City-Centered Corridor which is generally designated for urban development where infrastructure and facilities are available for such development.

The Countywide Plan assigns specific land use designations to all properties it governs in order to define a predominant land use type for a particular site. The underlying land use designation identified in the Countywide Plan for the project site is "RC" -- Recreational Commercial. This land use designation is generally intended for resorts and privately-owned recreational facilities. However, Policy CD-8.13 of the Countywide Plan recognizes that certain facilities and uses, such as the proposed

telecommunications project, may be found to be consistent with recreational uses, subject to Use Permit approval.

The subject property is also subject to the Bayfront Conservation Zone Overlay, which encourages uses that protect and enhance bayfront lands and promote the use and enjoyment of the bay without resulting in adverse impacts on bayfront habitat or water resources. In addition, Countywide Plan policies require the County to protect the aesthetic and scenic qualities of bayfront lands and specifies that existing and proposed built elements which could detract from the visual quality of shoreline or marsh areas should be eliminated or blended into the environment to the maximum extent feasible.

Objective CF-8 of the Countywide Plan incorporates by reference the policies of the *County of Marin Telecommunications Facilities Policy Plan* (Telecommunications Plan) into the Community Facilities Element of the Countywide Plan in order to ensure that the siting and design of telecommunications facilities is compatible with other land uses, provides protection from vandalism and fire hazards, and minimizes visual impacts, potential health risks and impacts on adjacent uses. The Telecommunications Plan policies are discussed in more detail below.

Tamalpais Area Community Plan 1992

The primary goal of the Community Plan is to conserve the semi-rural, small-town residential and commercial character and scale of the community and preserve the quality of the natural environment. In this regard, the most relevant policy of the Community Plan, Policy LU1.3, requires new development to be compatible with the scale (bulk, mass, height) and appearance (colors, materials, and design) of the surrounding neighborhood and to be integrated with and subordinate to the natural setting of the area.

The Community Plan also contains land use diagrams (Figures 17-20) with land use designations that are intended to show the planned distribution of expected land uses within the planning area, including a description of the type, density and intensity of the uses. The Community Plan land use designation for the project site is Shoreline Commercial, which allows a mixture of open space and commercial development. Appropriate commercial uses could include office, restaurant, recreation and limited retail uses. The proposed project would not be subject to the commercial building density and intensity standards of this land use designation.

As part of the Use Permit/Design Review process, the Community Development Agency will contact the Tamalpais Design Review Board for comments on the proposal. The Design Review Board functions as an advisory group regarding Community Plan design and character issues. A determination of project consistency with Community Plan Policy LU1.3 and the Shoreline Commercial land use designation must be made.

County of Marin Telecommunications Facilities Policy Plan

The Telecommunications Plan recommends numerous policies and standards that are intended to guide applicants in their selection of sites and design of facilities so that potential adverse impacts of a telecommunications project are minimized. According to the Telecommunications Plan, it appears that the proposal could be characterized as a minor facility. A minor facility does not create potential health hazards, is not significant in terms of size or height, and is accessory to a primary use of property. However, as described above, staff has concerns regarding the visibility of the facility given the bayfront location of the subject property. Minor facilities are generally considered to be

appropriate in terms of scale and character, but they must be reviewed for compliance with the development standards and policies of the Telecommunications Plan to ensure that potential impacts are mitigated by the specific design and siting of the facility. The following policies and issues of the Telecommunications Plan are of particular importance: (1) land use compatibility, (2) visual impacts, (3) public health and safety with respect to electromagnetic energy, (4) public safety with respect to design, (5) operational impacts, and (6) the review process.

Land Use Compatibility. In order to ensure that new facilities are compatible with other land uses in the vicinity, it could be determined that proposed telecommunications projects are consistent with applicable land use policies and are designed to reduce conflicts with open space and recreational resources and minimize the consumption of land and natural resources. Sites that are close to residential areas, needed for other kinds of development, or in the vicinity of existing or proposed recreational trails or open space areas should be avoided. New telecommunications facilities should only be permitted in ridge and upland greenbelt areas where no other technically feasible and available sites exist. Finally, development of facilities in identified creekside, bayfront, ridge and upland greenbelt, and coastal areas, must conform to the development policies of the Environmental Quality Element of the Countywide Plan. (Policies LU 1.1, LU 1.2, LU 1.3, LU 1.4, LU 1.5; Programs LU 1.1.1, LU 1.1.2, LU 1.1.3, LU 1.3.2, LU 1.4.1, LU 1.4.2, and LU 1.5.2)

Visual Impacts. In order to ensure that new facilities are sited, designed and built in a manner which minimizes visual impacts to surrounding areas, it should be determined that the site selected minimizes potential visual impacts to the greatest extent feasible, particularly from any adjacent development and public areas. The Base Transceiver Stations should be screened, the support tower and antenna array should be set at the minimum height required to permit the proposed services, and utilities extended to service the site must be undergrounded. In addition, the exterior colors should be appropriate, nonreflective colors that blend with the landscape against which they will be seen. Lastly, if necessary, landscaping may be required to further mitigate any visual impacts. (Policies VIS 2.1, VIS 2.2, VIS 2.3 and VIS 2.4; Programs VIS 2.2.3, VIS 2.2.5, VIS 2.2.8, VIS 2.3.1, VIS 2.3.2, VIS 2.3.3, VIS 2.3.4 and VIS 2.4.2)

Public Health and Safety with Respect to Electromagnetic Energy. In order to ensure that new facilities are sited, designed and built in a manner which minimizes potential health risks from Non-Ionizing Electromagnetic Radiation ("NIER"), applications for new facilities should include information on the existing and proposed power levels and frequencies in order to permit an adequate assessment and regulation of NIER emission potential. As part of the application submittal, a report must be prepared and submitted by a qualified professional with expertise in the field of radio frequency radiation health risk assessment. The report shall evaluate the health risks of the project and include a cumulative analysis of the radio frequency radiation effects to people from the proposed facility, especially those residents within close proximity to the project site. The report shall include power density calculations for the site and a review of the scientific literature on the health risks of similar facilities to document the projected thermal and non-thermal biological effects from the project. (Policy NIER 1.2; Programs NIER 1.2.1 and NIER 1.2.2)

Public Safety with Respect to Design. In order to ensure that new facilities provide for adequate structural integrity and public safety with respect to design, applicants are required to submit a report from a professional engineer that describes the design of the proposed antenna support tower, including the number and type of antennas that it is designed to accommodate, and provides information that demonstrates compliance with applicable building code structural standards. In order to protect against vandalism and unauthorized access, the site should have a security program including physical features,

such as fencing , anti-climbing devices or elevating ladders on the tower and/or monitoring by staff or electronic devices. In the event of failure, the tower should be designed so that it would fall within the fenced portion of the site and/or away from adjacent development. Lastly, operators are required to dismantle and remove the facility if it has been inoperative or abandoned for a two-year period. Operators may be required to post a bond or other suitable security as a condition of the Use Permit in order to guarantee removal of an abandoned facility. (Policies PS 1.1, PS 1.2, PS 1.3, PS 1.4 and PS 1.6; Programs PS 1.1.1, PS 1.4.1 and PS 1.6.3)

Operational Impacts. In order to ensure that potential noise impacts from the operation of any backup generator equipment or air conditioning equipment for the Base Transceiver Stations are minimized, such noise-producing equipment should be properly sited and/or insulated. (Policy OI 1.1 and Program OI 1.1.2)

Review Process. In order to evaluate compliance with conditions of project approval and policies of the Telecommunications Plan, Use Permits are subject to periodic review and renewal and are typically granted for a maximum period of 10 years. (Policy RP 2.1)

Environmental Review

Pursuant to the California Environmental Quality Act, the project may be exempt from environmental review if it meets applicable plan policy and zoning requirements and if it does not result in potential significant impacts, especially those associated with visual aesthetics and public health and safety. However, if any impact is determined to be significant, environmental review may be required. In the event environmental review is required, the planner handling your application would notify you as soon as the determination is rendered. If the project is not exempt from environmental review, the first step in the environmental review process involves the preparation of an Initial Study to examine potential significant effects on the environment that may result from the project. Depending on the outcome of this Initial Study, which would be circulated for public comment and review, the project would most likely result in the adoption of a Mitigated Negative Declaration of Environmental Impact. An Environmental Review fact sheet and application form are attached for your records.

Please note that your pre-application fees will be applied toward your application fees should you wish to proceed with an application for a Use Permit and Design Review for the proposed project and if you apply within one year from the date of this letter. If you have any questions or need additional information, please contact me at 499-6285.

Sincerely,

Christine Gimpler, AICP
Planner

Attachments: Use Permit Fact Sheet
Design Review Fact Sheet
Environmental Review Fact Sheet
Zoning/Development Application
Environmental Review Submission
Design Review Supplemental Checklist
Fee Schedule

RED Exhibit D

cc: J.T. Wick, AICP, Principal Planner

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Christine Craft
Attorney at Law

(916) 331-2157

Fax (916) 338-9557

Morrow Cater
Planning Commissioner
Community Development Agency
Marin County Civic Center
3501 Civic Center Drive
San Rafael, California
94903-4157

Dear Mr. Cater;

I am writing on behalf of my clients, a consortium of individuals with property interests both residential and commercial who would be affected by the approval of the Price/Pac Bell PCS facility at 242 Redwood Highway in Mill Valley.

As in many communities all across the United States, their concerns are focused on three areas: property values, aesthetics, and health.

A recent front page article in the San Francisco Chronicle Business section pointed out that residential property can lose as much as 30 or 40% of its value when cell towers and antennas are sited nearby. Renters are affected as well as owners. Subletting or assigning a property interest can become much more difficult.

We believe that approval of these cell sites can amount to a clear and unconstitutional "taking" without compensation.

People who choose to live along a waterfront or for that matter anywhere in Marin County are particularly concerned about the aesthetics of cellular towers and antennae. Even when the applicant "disguises" towers with shrubs, trees, or camouflage paint, surely no one can successfully argue that the installation of cellular equipment improves the view.

Additionally, we have done extensive research on the safety questions surrounding cellular towers and have discovered that most of the science has been bought and paid for by the very industry which stands to make huge financial gain if they can pepper the landscape with these cellular projects. Even that research cannot guarantee that such projects don't cause cellular changes, leukemias and other negative health effects.

In fact there is a respectable body of science which bolsters the argument that cellular towers can cause significant, negative health effects. I have enclosed in this packet an article by Dr. Robert Becker which was used in a challenge of a similar project in New York state. Additionally, I've enclosed a letter to successful challengers in San Francisco from Dr. David Carpenter who is the Dean of the School of Public Health at the University of Albany in New York. We have also contacted Dr. Andrew Marino at the University of Louisiana Medical School whose work regarding the negative effects of cell towers you have already encountered in the Mt. Barnabe litigation.

Let me assure you that my clients would be eager to challenge any approval of the Price/Pac Bell project on the ground that it is exempt from the California Environmental Quality Act ("CEQA") and its guidelines. As you well know, this important state law requires environmental review for projects which may have a significant impact on the environment.

Under CEQA (Pub. Res. Code §§ 21000, et seq.) and its regulations (Cal. Code Regs., title 14, §§ 15000 et seq.) a jurisdiction's governing body is subject to the law when it ascertains and approves any project with a potential impact on the environment.

Finally I'd like to bring to your attention recent litigation in the state of Washington which says in essence that county governments can still make zoning decisions or declare moratoriums on the siting of cell towers. This case about which I include a brief article was the first test in federal court of the 1996 Telecommunications Act which despite its language does not preempt local zoning and planning decisions.

We realize that we cannot stop the proliferation of cellular towers and antennae, but we urge the Planning Commission to support a moratorium on new sites until the Marin County Telecommunications Plan itself can be amended to assure that future sitings will be approved in an ordered fashion that limits human exposure, county liability, botched aesthetics and impaired property values.

Thank you for your consideration and for taking the time to read the enclosures. We look forward to the Planning Commission Hearing on September 9th, 1996.

Sincerely,

Christine Craft
Christine Craft

Office of the Dean
School of Public Health

A joint venture with the
New York State Department of Health
in affiliation with Albany Medical College



Executive Park South
Albany, New York 12203-3727

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UNIVERSITY AT ALBANY
STATE UNIVERSITY OF NEW YORK

December 18, 1995

Ms. Mary Irene Zemanek

Dear Ms. Zemanek:

Recently I had a conversation with Mr. Richard Lee of the Department of Health concerning my previous letter to you about cellular phone towers, and I am writing to clarify and emphasize a few points that appear to me to be critical in this debate.

Mr. Lee appears to place great emphasis upon the ANSI standards for radio frequency exposure. It is essential to understand that "the IEEE, ANSI, and NCRP exposure limits for RF radiation are based on acute exposures that cause thermal effects in laboratory animals" (J.A. Elder, *Thermal, cumulative and life span effects of cancer in mammals exposed to radio frequency radiation*, In *Biological Effects of Electric and Magnetic Fields*, Volume 2, D.O. Carpenter and S. Ayrapetyan, Eds., Academic Press, 1994, pp 277-295). None of these standards have even considered the issue of human health effects, specifically cancer, and all are based upon the very questionable assumption that there are no effects of importance than those related to acute heating. On this basis, these standards, in my judgment, have no relevance to the question of human health. They only are designed to prevent people from being cooked by RF fields.

Mr. Lee also quotes the recommendations of the NCRP Report No. 88 (Biological effects and exposure criteria for radio frequency electromagnetic fields) as supporting the conclusion of there being adequate data from human studies to allow one to dismiss any question of concern. This is, in fact, an excellent summary of human studies done to date, but I draw a very different conclusion from reading the report. The report mentions four epidemiologic studies of human populations. Robinette et al. (1980) investigated morbidity and mortality of US navy personnel exposed to radar, and Lilienfeld et al. (1978) looked at similar indicators of occupants of the US embassy building in Moscow, which was exposed to RF radiation. Neither reported any change in morbidity or mortality. However, the observations of Milham (1982) and Coleman et al. (1983) are also quoted, where elevations in leukemia were noted in ham radio operators and electricians.

Page 2
December 18, 1995

There are other studies which also report positive associations between RF exposure and cancer (Millham, 1985; 1988a and b; Szmigielski et al., 1988, all referenced in Elder, 1994). All of these studies lack good dosimetry with regard to levels of exposure. Copies of the relevant pages from Elder (1994) and NCRP Report No. 88 are attached.

In my view these studies of human exposure to RF fields and cancer are grossly inadequate evidence to conclude that RF radiation is not hazardous to humans. In fact, I would be inclined to draw the opposite conclusions, although it must be recognized that ham radio operators and electricians are exposed to both 60 Hz and RF fields, and it is not possible in these studies to distinguish which is correlated with the elevated incidence of leukemia. I hope these comments explain the basis of my previous statement that there is at present neither adequate evidence to conclude that human exposure to RF radiation is "safe", or is hazardous. I emphasize that I do not believe evidence to date allows one to conclude that RF exposure is definitely hazardous to human health, but there is certainly reason to be cautious since, if anything, the majority of the studies are suggestive of an association between exposure and cancer.

I have reviewed the comments made by Dr. Jerry Bushberg at a recent hearing. I agree with his conclusions that there have been no human studies at the specific frequencies involved in the proposed cellular phone towers. However, such studies are clearly possible given the widespread presence of cellular phone towers. In my judgement, such studies should be done before any conclusion that these specific electromagnetic fields are safe is made.

I hope these comments help explain my concern on this issue.

Sincerely,



David O. Carpenter, M.D.
Dean

DOC:daf
Enclosure

« Cellular Phone Notes »

The CTIA has taken its case for the ANSI/IEEE RF/MW radiation standard to the EPA. On May 21, CTIA President Thomas Wheeler met with EPA Administrator Carol Browner in an effort to convince her that her staff should back off from its objections to the ANSI standard. The EPA wants the FCC to adopt the limits recommended by the NCRP (see *MWN*, 1/1/94). Along with many others in the industry, the CTIA had lobbied the FCC directly, but the commission has long maintained that it has no expertise in health issues and will take its cues from the federal health agencies, notably the EPA (see *MWN*, 11/1/96). In a May 17 letter, Wheeler warned Browner that "It would be a serious mistake for the FCC to adopt either the older 1986 NCRP standard or a 'hybrid' standard," adding that "departing from the widely accepted ANSI/IEEE guidelines will create confusion and delay in deployment of new cellular and PCS technologies." For technical support at the meeting, Wheeler brought along Dr. Eleanor Adair of the John Pierce Laboratory in New Haven, CT. Sources said that Browner held her ground and continues to support the policies of her staff at EPA's Office of Radiation and Indoor Air (ORIA). "I found her insistence on the EPA position interesting," Adair told *Microwave News*. "It left little room for discussion." Browner's office had no comment on the meeting, but Mary Smith, the director of ORIA's Indoor Environments Division, said that the EPA was expecting more information from the CTIA and that there would probably be another meeting at the EPA—although not with Browner.

« « » »

The headline on the front page of the April 14 *London Sunday Times* was certainly provocative: DANGER: MOBILE PHONES CAN "COOK" YOUR BRAIN. The *Sunday Times* was reporting on a draft proposal by a committee of CENELEC, the European standards organization, to exempt from compliance testing any hand-held phone with a power output of less than 20 mW. Jonathan Leake of the *Sunday Times* interpreted this to mean that 20 mW is the "safe limit," and, therefore, that any higher level is risky. From this perspective, the headline might make some sense—since phones in the U.S. and the U.K. routinely emit up to 30 times more than 20 mW. To bolster his claim, Leake cited confirmation from Dr. Camella Gabriel of Microwave Consultants Ltd. in London. The story was picked up by other newspapers all over the world—sometimes with additional embellishment. At the *Advertiser* in Australia, an editor took the *Sunday Times'* logic one step further, telling his readers that the paper had "claimed most mobile phones on the market exceeded safe radiation levels." In a letter sent to, but not published by, the *Sunday Times*, Gabriel expressed her strong objections. "Had I been able to check the article before publication, I would have deleted or amended most of what was written," she wrote. Undeterred, Leake followed up with another story on April 21: SHIELD BLOCKS RAYS OF MOBILE PHONES. This story included a prediction by Dr. Narendra Singh of the University of Washington, Seattle: "It seems far-fetched but the mobile phone of the future may have to come with a supply

of antioxidants" for protection against microwave exposure. Singh was as dismayed as Gabriel. "I deny that I made such a statement" to Leake. Singh wrote to the editor of the *Sunday Times*. Singh's disclaimer also never made it into print.

In the first legal test of the Telecommunications Act of 1996, a federal judge in Seattle has refused to overturn a small town's moratorium on new wireless communications towers. Under the law, state and local governments retain their authority to regulate wireless facilities—except on the basis of RF/MW safety levels (see *MWN*, 11/1/96). On February 13, 1996, five days after President Clinton signed the telecom act, the City Council of Medina, WA, adopted Resolution No. 236, putting a hold on all new permits for six months in order to provide "a reasonable period of time" to study the "potential health risks associated with cell sites." Medina, a small town near Seattle with a population of 3,000, had received applications for antenna construction from five different companies. Sprint Spectrum, which wants to build a 100-foot tower, took the town to court. In a May 3 ruling, U.S. District Judge William Dwyer ruled that the Medina moratorium is a legitimate exercise of zoning power. Dwyer wrote:

There is nothing to suggest that Congress, by requiring action "within a reasonable period of time," intended to force local government procedures onto a rigid timetable where the circumstances call for study, deliberation and decision-making among competing applicants. The city [of Medina] is seeking to determine, among other things, whether tall antenna towers are still necessary for the purpose at hand. It is entitled to find that out.

The moratorium will expire on August 12.

Dr. Henry Lai and Narendra Singh of the University of Washington, Seattle, have extended their study on the effects of 2450 MHz microwave radiation on the DNA in rat brains. They had previously reported an increase in single-strand DNA breaks (see *MWN*, 11/1/94) and have now found an increase in double-strand breaks. Writing in the April 1996 issue of the *International Journal of Radiation Biology* (69, pp.513-521), Lai and Singh noted that DNA breaks could lead both to cancer and to accelerated aging. "It is imperative that the effects of [RF/MW radiation] on DNA in brain cells be further studied and understood," they argued. Meanwhile, Dr. Gary Williams of the American Health Foundation in New York City has taken issue with the Lai-Singh paper on single-strand breaks. In a comment—with a reply from Lai and Singh—published in the most recent issue of *Bioelectromagnetics* (17, p.165), he charged that their data "are difficult to reconcile with current knowledge of physical or chemical damage to DNA." Williams, who was selected by the members of WTR to serve on their peer-review board, concluded that "Considerably more research is required to establish whether microwave[s] interact with DNA in rat brain cells."

DR. BECKER'S REPORT

PLEASE
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POTENTIAL HEALTH HAZARDS ASSOCIATED WITH THE NYNEX ANTENNA INSTALLATION AT THE BINGED FOOT COUNTRY CLUB WATER TOWER, MAMARONECK NEW YORK

NYNEX proposes to install nine transmitting antennas on the water tower to operate in the 900 MHz region for cellular telephone service. In regard to possible health effects in the human population that would be exposed to the radiation field, NYNEX relies exclusively on the emission levels from this installation being within the recommended standards set forth in the ANSI C 95.1-1982, and C95.1-1991 specifications. The assurance of no deleterious effects upon the health of the human population exposed rests entirely upon the integrity of this standard.

THE VALIDITY OF THE STANDARD

It must be initially stated that despite the apparent scientific accuracy of the ANSI standard, it has neither a basis in scientific fact nor a validation by appropriate laboratory studies or epidemiological investigations on human populations.

The attempt to set a standard for safe exposure to microwave radiation has been an ongoing process since the early 1950's. At that time, technology was producing radar equipment with far greater power than that used in World War II and it had become known that heat was produced in the human body when exposed to microwave radiation. At the same time, a physician, Dr. J.T. McLaughlin, at Hughes Aircraft (which had an extensive R&D program in radar) reported more than 100 cases of health effects in humans chronically exposed to microwaves (1). These ranged from internal bleeding, and cataract formation to leukemias and brain tumors. As a result, the military services recognized the need for some standard of exposure for their personnel and a committee of all three services was set up. The controversy that ensued took several years to

resolve.

The controversy revolved about two opposing views. Based upon the concept that all important functions in living organisms were solely chemical in nature, it was then the prevailing opinion of the scientific establishment that non-ionizing electromagnetic radiation (in contradistinction to ionizing radiation such as X-rays and atomic radiation) could not possibly have any biological effects whatsoever except for microwave radiation which was of sufficient strength to cause heating of the body. Supporters of this view believed that all clinical reports of harm were associated with heating and that a standard that simply prevented body heating was sufficient. However, this view, known as *thermal effects*, was hardly universally accepted. The opposing view that bioeffects could occur from microwave exposure below the level causing heating was known as *athermal effects*. This view was held by many in that part of the scientific community that was knowledgeable in radar and radiation medicine. Proponents of the athermal view held that while we did not know the mechanism involved, this did not mean that such a mechanism did not exist and since its existence was shown by such clinical cases as collected by Dr. McLaughlin, a much lower level of exposure was required. The final standard accepted by the military in 1960 was 10 mW/cm^2 , a level based solely on *mathematical calculations* of the microwave energy required to produce heating of a fluid filled sphere approximating the size of the human body. This thermal level was accepted primarily because of the lack of a suitable mechanism to explain the athermal effects, clinical and laboratory evidence for athermal effects were rejected on these theoretical grounds. I should explain that 10 mW/cm^2 is simply a measure of the *power* of the radiation, expressed in milliwatts per square centimeter of body surface.

As the military finished setting their standard, the American National Standards Institute (ANSI) became involved in proposing a standard for industrial and civilian exposure. The ANSI Subcommittee on radio-frequency hazards (C95) was given the task

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3

and because of the growing controversy the initial ANSI standard was not adopted until six years later. This standard (C95.1-1966) also accepted the thermal effects position and adopted the same 10 mW/cm² standard as the safe level for exposure for the civilian population.

As soon as these standards were set, more controversy erupted and has continued until today. As a result, the ANSI standard has been changed several times from a uniform 10 mW/cm² independent of frequency to a complex set of levels ranging from well above the original 10 mW/cm² (for frequencies below 10 MHz) to below 1 mW/cm² (for a range of frequencies centered at 100 MHz) and depending upon controlled vs uncontrolled exposures. Each change that was made was again based solely on thermal theoretical grounds. The present ANSI standard still does not take into consideration athermal effects.

While the exact mechanism by which microwaves, or any other portion of the electromagnetic spectrum, produces biological effects below the level of heating is still not clear, there is now no doubt that such effects do occur. Furthermore, research at both the laboratory and epidemiological levels has clearly indicated that the potential for harm does exist. Unfortunately, powerful forces within the government and industry have so far prevented the kind of research programs that would clearly indicate the safe level of microwave exposure for humans and permit the establishment of a truly safe standard.

The present ANSI standard is simply a theoretical construct of a committee whose membership is dominated by representatives from the military, government and industry. The standard has little, if any, basis in fact and its application in any given situation serves only to convey a false sense of security. I wish to emphasize that, at this point in time, no one knows the actual level of exposure that is safe for the general population.

**EVIDENCE FOR HARM RESULTING FROM EXPOSURE TO
MICROWAVE RADIATION**

Before I enumerate some of the evidences that indicate the potential for harm from exposure to microwave radiation, a few simple basic principles of electromagnetic radiation have to be introduced. This radiation is theoretically composed of photons that travel through space with a wave motion at the speed of light. We organize this radiation on the basis of its frequency (number of times it oscillates per second, designated as Hertz or Hz per second) into the Electromagnetic Spectrum, starting at the lowest frequencies and going to the highest. Certain portions of this continuous spectrum are arbitrarily given names. For example, the radiation from the standard 60 Hz (60 cycles per second) AC, electric power lines falls into the Extra Low Frequency range. The radiation from the proposed NYNEX antenna, 800 Mhz (800 million oscillations per second) falls into the Microwave range. Radio waves, AM, FM and short wave, fall into the Radio Frequency range located between Low Frequency and Microwave. All of this is quite arbitrary, the spectrum is continuous from 0.001 Hz to many trillions of oscillations per second.

All electromagnetic radiation contains energy which is proportional to the frequency with the lowest energy in the lowest frequency and the highest energy in the highest frequency. Microwave radiation contains sufficient inherent energy to cause obvious body heating. Just above microwaves on the spectrum is light, both visible and infra red, which produces an obvious biological effect - vision. Above light are even higher frequencies which contain energy sufficient to ionize chemical structures. This ionizing portion of the spectrum includes, X-Rays, atomic radiation and cosmic rays. Light therefore is the dividing line between the ionizing portion and the non-ionizing portions of the spectrum. While there is no question of the bioeffects of ionizing radiation, *it is important to understand*

that all of the radiation on the Electromagnetic Spectrum from the highest frequency ionizing to the lowest frequency non-ionizing is basically the same thing, oscillating photons.

If the ANSI standard is useless, are there evidences for harm from exposure to any portion of the electromagnetic spectrum and second evidences for harmful effects specifically in the microwave region? It must be noted that scientific work in both of these areas has been ongoing for the past three decades and that a large, confusing data base has been built up. It is impossible in a report of this nature to completely review all of this material. I have discussed a few specific, reliable studies, other reports and certain events that I believe reveal the evidences for harm at athermal levels of exposure and the limits of our knowledge concerning safe levels. Most of the reliable reports cast serious doubt on the safety of chronic exposure to even low levels of radiation in any portion of the entire electromagnetic spectrum. There is much more information available and a reference list of items discussed herein as well as recommendations for additional sources is appended. It should be noted that while the data base is now very large, many studies and reports resulted from either poorly funded research programs or from programs whose funding support was suspect. It has been literally impossible to obtain funding to perform truly independent research in this area. My personal opinions, as expressed in the recommendations section, are based upon the totality of this data base and my own experiences working in the field for more than 35 years.

When questions concerning the safety of exposure to microwaves first surfaced, the thermal concept alone was considered and led to the original military and ANSI standards. The athermal concept was initially based on the possibility that the wave length of microwave radiation was so short that it might couple with portions of the body much in the nature of an receiving antenna. However, this concept limited the possible bioeffects to a narrow band of frequencies. More recently, another concept has gained credence-

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6

that some important functions in living organisms were performed by physical processes rather than chemical. This concept made possible biological effects from any portion of the non-ionizing spectrum and if bioeffects were shown to occur and have hazardous connotations, there would be a compelling reason for such effects and connotations to be transferred to other portions of the spectrum.

Dr. Becker
N.B.

• On the basis of energy content, radiation from 60 Hz power frequency sources would be an extremely unlikely source of bioeffects let alone hazards. Conversely, if biohazards were shown to be produced by 60 Hz radiation, it would not only negate the thermal (power) concept but also it would call into question the safety of all portions of the non-ionizing spectrum. Consequently, when the question of radiation hazards from high power electric transmission lines was raised in 1973 very great pressure was exerted to discredit and stop the process, (2). Because of a number of extremely fortuitous circumstances these efforts did not succeed. This is not the place to present all of the pertinent data that subsequently developed on this question. A short review of the status as of 1990 has been published (3), and ongoing data on this subject is available in a respected, authoritative publication, (4). Suffice it to say that many research projects reported over the past decade have confirmed that this Extra Low Frequency Radiation, despite its negligible power content and extremely long wavelength, is hazardous to human health. A recent large scale epidemiological study involving more than 200,000 workers in three large electrical utilities has indicated significant risks of leukemia (5). This, and other epidemiological research has provided us with firm knowledge of the exposure level that is safe although this has yet to be codified as a national standard. This level could not have been determined theoretically. The major question remaining is one of the methodology of revising our electric power system to meet this safety level. This evidence for a real hazard of considerable extent from the theoretically least likely portion of the non-ionizing spectrum calls into question the entire thermal theoretical construct and raises

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serious questions of potential hazards from other portions of the spectrum including microwaves.

If the question of the safety of high voltage power lines has been dealt with in this responsible fashion, why has not the question of the safety of microwaves, which was raised some 20 years earlier, been similarly resolved? The answer to this lies not in science or medicine but in political, military and economic considerations. Since the explosion of electronic technology that occurred during World War II, the military and intelligence services have relied ever more heavily on this modality until the entire defense strategy rested on unlimited use of electromagnetic radiation. Until recently, raising the question of safety of any portion of the spectrum was viewed as a risk to national security. Industry, involved in the development of electromagnetic radiation for communication and consumer product purposes, has held similar views. Unfortunately, science, which is historically reluctant to accept or even consider new concepts that challenge the present dogma, initially lent its prestige to the endeavor to suppress adequate evaluation of these hazards. The sole reason why the hazards of electric power radiation have been adequately evaluated is because the question was introduced in the public area. This has only begun to occur in regard to the potential hazards of microwave radiation.

While we lack knowledge in the microwave area sufficient to arrive at a valid standard for human exposure, adequate evidence has been obtained for the existence of hazards at extremely low, athermal levels of exposure. A few examples of the most pertinent studies and actions taken by other governmental agencies follow.

• Beginning in 1953, the US Embassy in Moscow was irradiated with microwave radiation at a power density of between 0.1 and 24 $\mu\text{W}/\text{cm}^2$ by some agency of the Soviet Union. Note, 20 $\mu\text{W}/\text{cm}^2$ equals 0.002 mW/cm^2 . Over the next 15 years this circumstance was studied in secret by the United States Government.

Personnel exposed at the Embassy were neither notified of the circumstance, nor informed as to the reasons for various tests done on them. It is reasonable to conclude that part of the secrecy resulted from the exceedingly low level of the radiation used by the Russian agency as compared to the safety level established by the US military. At this date, major details of this incident are still classified. During the course of this event it became known that the Russian standard for civilian microwave exposure was approximately one thousand times lower than the then extant US standard of 10 mW/cm². While there has been much speculation concerning the motives of the Russians and of the US agencies involved, little firm information has been made available and what has been provided is suspect in many quarters. Serious doubts still exist concerning harm caused to US personnel in the Embassy despite disclaimers by governmental agencies. Such doubts will remain until full and complete disclosure is made.

- In the early 1980's, Drs. William Morton and David Phillips of the Environmental Medicine Division and Department of Public Health & Preventive Medicine, Oregon Health Sciences University received a grant (#R-805832) from the EPA to investigate the relationship, if any, between radiowave density levels in the VHF band and incidence or mortality rates of several types of cancer in the Portland-Vancouver metropolitan area. The EPA conducted an extensive program of actual measurement of the field densities in each census tract in Portland, Oregon. Morton and Phillips collected data on all cases of all types of cancer in each census tract over a period of more than 10 years.

The study was prompted by an apparent local cluster of uterine cancer cases in a Portland neighborhood with an unusual concentration of broadcast towers during 1968 - 1972. The study involved determining the incidence of a number of different types of cancer in each census tract in the area over years ranging from 1963-1977 (exact ranges differed for various types of cancer). These

determinations were then evaluated for confounding factors such as socio-economic class, occupation, etc. They were then related to measurements of the radiation density in each census tract for; the low UHF (54-88 MHz), FM Broadcast UHF (88 - 108 MHz) and high UHF (176-216 MHz) made by the EPA.

The incidence of non-lymphatic leukemia showed a significant positive correlation with all three radiowave bands but most consistently with the FM Broadcast UHF band (88-108 MHz) and the summary rate for radiation-related leukemia was significantly correlated with the high UHF band (176-216 MHz). Of considerable interest was the fact that the major type of leukemia between 1963 and 1967 was lymphatic leukemia which demonstrated a positive correlation but between 1973 and 1977 the major type was non-lymphatic leukemia which nevertheless demonstrated a similar correlation.

The measured power densities of the radiation ranged from a mean of 2.1 nW/cm² in the low UHF range, to a mean of 39.2 nW/cm² in the FM broadcast UHF range and a mean of 4.9 nW/cm² in the High UHF range. The highest individual measurement recorded was 5889.1 nW/cm² in the FM Broadcast range and the next highest in the same range was 702.8 nW/cm². It must be emphasized that these measurements are in nW (nanoWatts) and that it takes one million nanoWatts to equal 1mW. Therefore, all measurements of power density in this study were far below the present ANSI standard of 1 mW/cm² with the means of power density in all UHF ranges all being far below 0.1 mW/cm².

The project report was completed in 1983, the EPA response was negative, funds to continue the project were not made available and there has been no replication of this study. I have been kindly supplied by Dr. Morton with a copy of the full study and report made to the EPA. In my opinion, the study was completely and carefully done and the results are valid. A small, poorly supported

study of a similar nature was done in Hawaii shortly after Morton completed his study. It reached the same conclusions but the data base was insufficient to validate them or Morton's. Despite the vanishingly low levels of radiation measured, it is my opinion (shared by other workers) that the study is valid and that an adequate replication of Morton's study is urgently needed in view of the very large population group presently exposed and the increase in usage in the VHF and related microwave bands.

The levels of radiation in the VHF ranges that correlated with an increased risk for both lymphatic and non-lymphatic leukemia in Morton's study were far below the present ANSI standard. While the frequencies involved in the study differed from the 900 MHz range used in cellular communications, the difference is slight and there is no compelling reason to exclude Morton's results from consideration in the circumstance being addressed.

• During Morton's study, the Air Force began a very extensive study on the bioeffects of chronic exposure to microwave radiation. This was under the direction of Dr. Arthur W. Guy of the University of Washington School of Medicine and involved exposing rats to 0.48 mW/cm^2 of microwave radiation at 2450 MHz for 21 hours per day for periods of time up to 24 months. The most significant finding was that 18 cancers developed in the 100 rats in the exposed group compared to only 4 cancers in the 100 rats in the control group. Additional significant findings were that the size of the adrenal glands in the exposed group were twice that of the glands in the control group and that this was accompanied by significant increases in the blood tests for stress response hormones in the exposed group. There were, in addition, seven benign tumors of the adrenal cortex in the experimental group and none in the controls. When the types of cancers were analysed, it was found that seven of the 18 tumors in the exposed group were in the endocrine glands; pituitary, adrenal and thyroid with the remainder in various other tissues. The conclusion reached by most scientists was that the exposed animals had suffered severe chronic stress and that the

concerns of the endocrine system were possibly the result of this. However, there were 11 malignant tumors of other tissues in the exposed group compared with only four in the control group, indicating a strongly possible carcinogenic or cancer promoting effect of the microwave exposure. Such a conclusion is supported by laboratory work done by Dr. Stephen Cleary of Virginia Commonwealth University. He has reported that human brain tumor cells significantly increase their growth rate when exposed to microwave radiation below the thermal level (7).

For microwave hazard evaluation purposes it is important to note that power density of the microwave in Guy's study was below the present ANSI standard and it is impossible to escape the conclusion that chronic exposure to microwave radiation at this level is both carcinogenic and productive of major stress. Further, when Morian's and Guy's studies are considered concurrently, we find evidence of carcinogenic effect from radiation both above and below the 800 MHz band. It is reasonable to conclude therefore, that this frequency range is also carcinogenic.

There were a number of technical peculiarities in this project which are reviewed in (3). It should be noted that considerable effort was spent attempting to minimize and obfuscate the actual results in the scientific and public press subsequent to the actual release of the information from Guy's study.

• In the late 1970's, the EPA began a program to determine the hazards of all electromagnetic radiation. Very little actual information was forthcoming and no specific recommendations for standards except for a request for public comment on a number of proposals for radiofrequency/microwave standards ranging from doing nothing to a level of 0.1 mW/cm² was issued in July of 1986. By September of 1986, the EPA closed its active research program on electromagnetic radiation. However, apparently in response to increasing scientific reports indicating hazards associated with both Extra Low Frequency and Microwave exposure, the EPA issued a Draft

Report, "Evaluation of the Potential Carcinogenicity of Electromagnetic Fields" (EPA/600/6-90/005A) in June of 1990. It is a requirement that all EPA Draft Reports pass through the White House for approval. This report was immediately suppressed. However, it was leaked to Microwave News in its entirety and shortly thereafter became public. Since then the report has been continuously subjected to a number of committee evaluations and revisions and has yet to be released by the White House. Few copies of the original report are extant.

The report was a lengthy and complete review of all the scientific data then available on the carcinogenic effects of all portions of the electromagnetic spectrum. On the basis of this data evaluation, two conclusions were reached.

The EPA proposed to classify Extra Low Frequency fields (including primarily the electric power frequency of 60 Hz) as probable carcinogens. A classification that would permit the EPA to begin evaluating tentative exposure standards. The Radiofrequency and Microwave fields were proposed to be classified as possible carcinogens, a classification that mandated further study of the potential hazards.

Probably on the basis of its analysis the EPA, in a statement to the FCC in January 1994, indicated that it felt there were serious flaws in the ANSI C95.1 guideline.

Following the Draft Report, the EPA program on non-ionizing electromagnetic radiation suffered continuous funding declines and was to have been all but eliminated from the budget for the forthcoming Fiscal Year. Only recently has there been a change in the overall picture when President Clinton requested the EPA to re-activate the entire program and complete work on a final version of the 1990 Draft Report for release. It may be that an adequate assessment of safe exposure levels is finally at hand.

The studies and events cited constitute only a small portion of the data presently available and are intended to provide the reviewer with the most pertinent information and with examples of the type of studies that urgently need to be done.

CONCLUSIONS AND RECOMMENDATIONS IN REGARD TO THE PROPOSED NYNEX CELLULAR ANTENNA SYSTEM AT THE WINGED FOOT COUNTRY CLUB, MAMARONECK, NEW YORK

From the foregoing, one can draw a number of conclusions pertinent to the question of potential human health hazards resulting from the presently proposed installation.

- Reliance upon the present ANSI C95.1-1991 standard for assurance that no hazard to human health will occur from the radiation emitted by the proposed installation is not possible. The standard has been shown to be simply a theoretical construct based upon a now discredited theory and lacking a factual basis.

- Human epidemiological and animal laboratory studies have shown that exposure to such radiation is cancer producing and/or cancer promoting at chronic exposure levels well below the present ANSI standard and at frequencies both above and below the 900 MHz band.

- The actual safe level for human chronic exposure to radiation in any portion of the radiofrequency-microwave range, including the 900 MHz band, is completely unknown.

With these conclusions in mind and from materials furnished, several pertinent observations may be made concerning this specific installation.

- There are at least five residences within a radius of 400 feet from the base of the water tower that are constantly occupied. The level of radiation in all of them will be above that reported by

Marton as being significantly associated with the incidence of leukemia. Of specific concern is the probable occupancy of these residences by pregnant women, young children and individuals with pre-existing malignancies of any type. The EPA has considered this group as probably being at greater risk.

- The closest structures to the base of the water tower are repair, maintenance and office buildings occupied by employees of the Winged Foot Country Club. It is assumed that these are occupied on the average for eight hours per day, constituting a chronic exposure to fields greater than those in the residences noted. While these will be, for the most part, adults, the level of hazard is correspondingly greater considering the stronger field intensity to which these employees would be exposed.

In siting installations that emit electromagnetic radiation for communication purposes, it has been the practice to choose the exact site based only upon engineering considerations of maximizing the effective communication range. Given the possible harmful effects upon humans so exposed and the uncertainty of the safe level of exposure it has become prudent to consider the impact of exposure to the radiation upon the human population and to choose installation sites that minimize this impact. The marked increase in litigation in this area over the past decade, particularly in situations where hazards have been ignored, should also be taken into consideration in site selection.

I, therefore, recommend that the antenna (and in fact all installations of similar nature) be located at least 250 feet from any area occupied by humans for eight hours per day or longer. I expect that the extensive grounds of this golf course would have several locations that would comply. While neither I, nor anyone else, can guarantee that this restriction will provide complete safety it is my opinion that this is a more prudent solution to this problem than reliance upon the questionable ANSI C95.1-1991 standard.

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Curriculum Vitae

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1979

Honorary Member, American Academy of
Orthopedic Surgery, 1979

Listings American Men & Women of Science
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New York Academy of the Sciences
Bioelectromagnetics Society
International Society of Bioelectricity

Public Service

Committee on Bioeffects, Joint Technical
Advisory Committee, IEEE, 1963

Bioeffects Committee, Project Sanguine
US Navy, 1973

Initiator, first public hearing on health
effects high voltage electrical power lines
New York State Public Service Commission,
1976

Originator, New York State Power Lines
Project, New York State Department of
Health, 1988-1995

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**A REPORT TO THE BOARD OF SUPERVISORS
OF MARIN COUNTY, CALIFORNIA
REGARDING POTENTIAL NON-THERMAL EFFECTS
OF ELECTROMAGNETIC RADIATION
FROM A CELLULAR TELEPHONE FACILITY
ON MOUNT BARNABE OPERATED BY
BAY AREA CELLULAR TELEPHONE COMPANY**

Prepared by

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March 22, 1996

CONTENTS

	Page
Nature and Origin of the EMF Report.....	1
Statement of the Issue.....	4
Approach to the Issue.....	4
Summary of the Conclusions.....	5
Basic Facts About the Mount Barnabe Site.....	6
Summary of the Relevant Law.....	9
Potential Health Effects of EMF Exposure.....	12
1. Epidemiological studies.....	14
2. Macrocellular and cellular effects.....	15
3. Chromosomal and mutagenic effects.....	17
4. Carcinogenesis.....	18
5. Effects on reproduction, growth and development.....	22
6. Effects on hematopoietic and immune systems.....	23
7. Effects on endocrine system.....	25
8. Effects on cardiovascular function.....	26
9. Effects on the blood-brain barrier.....	27
10. Effects on the nervous system.....	28
11. Effects on behavior.....	30
12. Cataractogenesis.....	31
Conclusions.....	31
A Recommended EMF Exposure Standard.....	32
List of Cases Involving the "Fair Argument" Standard.....	Appendix A
References Used to Prepare the EMF Report.....	Appendix B
Basic Facts About EMF and Its Interaction With Biological Systems.....	Appendix C
Models of Biological Interaction With EMFs.....	Appendix D
Distinctions Between ELF and RF Fields.....	Appendix E

NATURE AND ORIGINS OF THE EMF REPORT

This report, which is referred to as the "EMF Report", was prepared to partially fulfill the terms of an agreement (the "Settlement Agreement") by the Mount Barnabe Homeowners Association ("MBHA"), the Bay Area Cellular Telephone Company ("BACTC") and Marin County to settle a lawsuit (*Mount Barnabe Homeowners Association v. County of Marin*, (Marin County Superior Court Case No. 161428)).

The principal issue in the lawsuit is whether the County should require BACTC to prepare an environmental impact report ("EIR") under the California Environmental Quality Act ("CEQA"), because nonthermal effects of electromagnetic fields ("EMF") from a cellular facility proposed by BACTC may significantly affect people in the vicinity of the facility. The County concluded the cellular facility BACTC proposed to install on Mount Barnabe would not have a significant effect on the environment and issued a CEQA determination of non-significance. It did not require BACTC to prepare an EIR. MBHA appealed the County's CEQA determination to Superior Court.

Rather than continue to litigate the matter for now, the parties to the lawsuit agreed to select a consultant to reconsider the issue of whether BACTC should be required to prepare an EIR based on a relatively narrow scope of inquiry. Paragraph 2 of the Settlement Agreement provides in relevant part as follows:

g. After consultation with the TAC [Technical Advisory Committee], the consultant retained to prepare the EMF Report shall survey existing peer-reviewed studies and summaries/studies prepared by governmental and quasi-governmental agencies (e.g., American National Standards Institute or National Council for [sic] Radiation Protection), as well as other published scientific reports relating to non-thermal effects associated with emissions of electromagnetic frequency radiation. The consultant shall use these studies and/or summaries to determine whether there is a fair argument (as described in 14 Calif. Code Regs. § 15064(g)) that emissions from BACTC's Mount Barnabe cell site may have a significant adverse impact on people in the vicinity of the Mount Barnabe Fire Lookout Station. In preparing the EMF Report and determining whether there is a fair argument that emissions from BACTC's Mount Barnabe cell site may have a significant adverse impact on people in the vicinity of the Mount Barnabe Fire Lookout Station, the consultant shall also consider:

- i. The frequency and power density of emissions from BACTC's Mount Barnabe cell site;
- ii. The proximity of people to the Mount Barnabe Fire Lookout Station;

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- iii. The reports and testimony included in the Administrative Record, including, without limitation, the Wang Report, the Polson Report, the Hammett & Edison Report, and the two declarations of Dr. Andrew Marino;
 - iv. Any Additional Evidence submitted by the parties pursuant to paragraph 3 below;¹
 - v. The potential cumulative effects, if any, of the BACTC facility in conjunction with existing facilities located at the Mount Barnabe Fire Lookout Station; and
 - vi. Any other factor(s) or information the consultant deems appropriate.
 - h. Upon review of the scientific literature, the consultant shall stipulate, for continuous public exposure (including exposure to children, embryos/fetuses, populations that may be sensitive to electromagnetic frequency exposure, the infirm, and people who are immunologically compromised) at the Mount Barnabe Fire Lookout Station, the exposure power density and associated specific absorption rate at cellular frequencies below which, in his/her opinion, one could reasonably be assured that there would not be any deleterious human or environmental effects.

23
24 The Settlement Agreement directs the consultant to submit the EMF Report to the County
25 within 60 days after the date the consultant was retained. By agreement of the parties and
26 under the terms of the contract between the consultant and Marin County, that date was
27 later extended by 15 days to a total of 75 days from the date of retention. The consultant
28 was retained January 9, 1996. Therefore the EMF Report is due by March 25, 1996.

29
30 The Settlement Agreement further provides that County staff will prepare a report about
31 non-thermal effects of electromagnetic frequency radiation emitted from the BACTC Mt.
32 Barnabe cell site summarizing the EMF Report and recommending further action by the
33 Board of Supervisors consistent therewith. The Board of Supervisors will hold a public
34 hearing to consider the staff report and other relevant testimony and evidence and to
35 consider taking further actions within its jurisdiction. A party may petition the court to
36 restart the litigation following the final action of the Board of Supervisors in this matter.

¹ Paragraph 3 of the Settlement Agreement provides as follows:

Any party to this Settlement Agreement shall file with the County, the TAC, and/or the consultant preparing the EMF Report any additional documents, studies or other evidence relating to non-thermal effects from electromagnetic frequency radiation ("Additional Evidence") the party believes should be included in the administrative record no later than 20 days after the Retention Date by facsimile or overnight mail.

1 Until the Board of Supervisors holds a public hearing and rescinds or modifies its earlier
2 actions authorizing the BACTC facility or until a court requires otherwise, the Settlement
3 Agreement authorizes BACTC to install, operate and maintain the cellular facility that is the
4 main subject of this report. BACTC does so at its own risk.

5 This Report has been prepared consistent with the terms of the Settlement Agreement as
6 amended by subsequent agreement of the parties. The parties submitted to the consultant
7 citations to cases in which the "fair argument" rule is addressed. See Appendix A. The
8 consultant reviewed those cases and summarizes his understanding of the law later in this
9 Report. The parties also submitted to the consultant citations to or copies of documents
10 relevant to the issue of whether there is a fair argument that EMF from the proposed
11 BACTC facility may have a significant adverse impact on people in the vicinity of the
12 Mount Barnabe Fire Lookout Station. The cited documents are listed in Appendix B and
13 form the basis for the consultant's conclusions in the main body of this Report.

14 The consultant who prepared the EMF Report is a lawyer (in Oregon) and a land use
15 planner, not a scientist or medical professional. The consultant is familiar with the
16 concepts and issues addressed in the Report from literature-based research the consultant
17 has done since 1979 to advise local governments, including Marin County, about
18 regulating siting of facilities that generate radiofrequency EMFs. The EMF Report is the
19 professional opinion of the consultant after many hours spent reading and considering the
20 cases in Appendix A and the literature in Appendix B.

STATEMENT OF THE ISSUE

The issue addressed in the EMF Report is whether there is substantial evidence in the record on which the EMF Report is based that a fair argument can be made that the EMF emissions of the proposed BACTC facility, alone or in combination with other existing sources of EMF emissions, may have a significant impact on the environment.

APPROACH TO THE ISSUE

The consultant read the cases cited by the parties to gain an understanding of the law relevant to the report. See Appendix A and pages 9 - 11 of the Report for a summary.

The consultant then read the administrative record prepared by the County in this matter and all of the literature cited or provided by the parties. See Appendix B.

From the record, the consultant identified the basic facts relevant to the case, i.e., relevant to the BACTC application and the site of the proposed cellular facility. See pages 6 - 8 of the Report for a summary.

From the literature, the consultant distinguished between evidence that was apparently "substantial" on its face, and evidence that was not apparently "substantial" on its face. Much of the administrative record before the County was not relevant or was not probative; therefore it was not "substantial" on its face. Evidence that was not "substantial" on its face was not considered further.

From the evidence that was "substantial" on its face, the consultant distinguished between evidence that purported to show *directly* that radiofrequency EMF radiation may cause significant effects and evidence that purported to show *by inference* that EMF radiation may cause such effects.

The consultant then evaluated the reasonableness of the inferences that would have to be drawn from the indirect evidence to show radiofrequency EMF radiation may cause such effects, given the whole record on which the EMF Report is based.

Based on the consultant's conclusions after reviewing the foregoing information, the consultant recommends maximum permissible exposure levels for EMFs.

SUMMARY OF THE CONCLUSIONS

The consultant concludes, based on the whole record, that EMF radiation can have certain observable effects on biological systems or parts that cannot be explained solely on the basis of heating. Therefore, under certain conditions involving combinations of frequency, mode, power, duration, ambient temperature, relative location or geometry, species, predisposition of the subject and other factors, EMF radiation appears to contribute to or to cause nonthermal effects. But the existence of nonthermal effects from EMF radiation does not constitute substantial evidence that such effects are significant or adverse.

There is no direct evidence that EMF radiation at the power levels and frequency relevant in the BACTC case causes significant effects.

There is indirect evidence, including expert testimony, that EMF radiation causes nonthermal effects and that those effects may be significant. However the consultant finds that inferences that need to be drawn from such evidence and testimony to show the EMF radiation in this case is significant are not reasonable. Such inferences are not supported by facts and/or do not show that such effects may be significant. Therefore such evidence is not "substantial evidence" as that term is used in CEQA.

Therefore, based on the whole record, the consultant concludes there is not substantial evidence that a fair argument can be made that EMF radiation from the BACTC facility on Mount Barnabe, alone or in combination with other existing sources of EMF emissions, may have a significant adverse effect on people in the vicinity of that facility or on the environment generally.

The consultant further concludes and recommends that Marin County allow EMF emissions that do not exceed the standards articulated in IEEE C95.1-1991. The record as a whole substantiates that continuous public exposure to emissions consistent with those standards, which allow a whole-body averaged specific absorption rate ("SAR")² of 0.08 watts per kilogram ("W/kg"), does not result in any deleterious human or environmental effects.

² Specific Absorption Rate ("SAR") is the time rate at which radiofrequency EMF (from approximately 3 Mhz to 6 GHz) is imparted to a unit of mass of a biological body. Reference 3, p. 24. Basic facts about EMF radiation are summarized in Appendix C

BASIC FACTS ABOUT THE MOUNT BARNABE SITE

The relevant basic facts about the Mount Barnabe site are in studies prepared by Hammett and Edison, Inc. in June, 1994 (Reference 27, pp. 125-143) and in July and September, 1995 (References 29 and 30, respectively), a report by H.L. Wang (Reference 27, pp. 2-10), and a report by P. Polson (Reference 27, pp. 938-946).

The Mount Barnabe site is developed with a Fire Lookout that is 31 feet tall. A balcony surrounds the Lookout. Public access is permitted to the Lookout balcony.

The Lookout supports 17 antennas, most of which are mounted above the roof. Public access is not permitted to the roof. Four "dish" microwave antennas are mounted to the side of the building. Three of the microwave antennas are operated by the County and one by BACTC. One UHF yagi antenna on the east wall of the building is used by an amateur radio group. Four of the antennas do not transmit.

Pursuant to the Settlement Agreement and prior approval by Marin County, BACTC recently installed three omni-directional antennas on the building, one of which is a transmitting antenna that is the subject of the lawsuit and the focus of this EMF Report.

About 10 feet east of the Lookout is a steel tower on which five antennas recently were relocated from the Lookout. The Board of Supervisors ordered this relocation based on the results of the 1994 Hammett and Edison study. By increasing the distance between the antennas and the Lookout balcony, the tower resulted in reduced EMF exposure levels for the general public on and in the vicinity of the Lookout.

Members of the general public are most exposed to EMF from the BACTC site when situated on the Lookout balcony. Their exposure in that location would be for a relatively short period of time. That is, tourists typically climb the Lookout to observe the view. Once they have done so, they return to ground level. The location closest to the Lookout where members of the general public would be exposed for longer periods of time (i.e., up to 24 hours a day) is a dwelling situated about 738 feet northeast of the Lookout.

Ground level fields from antennas on the Lookout and the adjoining tower are always lower than those on the Lookout balcony, because the ground is farther from the antennas, and the antennas radiate most power in a horizontal plane to maximize their coverage. Downward-directed energy generally serves no purpose and is minimized.

The BACTC antenna that is the main subject of this EMF Report radiates omnidirectionally in the horizontal plane and has eight channels. It transmits at a frequency of 869 megahertz ("MHz"). It is mounted about 35 feet above the ground. Each channel has an effective radiated power ("ERP") of 50 watts (relative to the dipole) resulting in a maximum possible output power of 400 watts. Based on the Polson report, the BACTC antenna has a vertical 3-dB beam width of about 7 degrees.

The Hammett and Edison reports include actual field measurements of electric fields and equivalent plane wave power densities from each of the transmitters on the Mount Barnabe site. The field measurements were made using instruments and protocols consistent with broadly accepted engineering practices.

The Hammett and Edison measurements are based on worst case conditions (e.g., assuming all transmitters are operated concurrently at maximum power and result in maxima at the same location). In actual use, the total power radiated by antennas will be less. For instance, a given land mobile (two-way) antenna will transmit only part of the time, and the cellular transmitters will be operated only at 40 percent of their maximum possible power level. Also the point at which maximum fields occur will vary with the location and propagation characteristics of the antenna.

The results of Hammett and Edison's latest field measurements are the most useful for purposes of the EMF Report, because they were made after installation of the BACTC facility that is the main subject of this report, and they include fields emitted by all of the other transmitting antennas on the Mount Barnabe site. Results of those measurements appear in Table 1. The BACTC facility is transmitter no. 1.

³ Once removed about a wavelength from a transmitting antenna, power density associated with that antenna dissipates at a rate equal to the inverse square of the distance from the antenna. That is, if the power density is "x" at a given distance from the antenna, then the power density would be "x/4" at a point twice as far from the antenna.

TABLE 1
EMF EMISSION LEVELS ON MOUNT BARNABE⁴

Transmitter	Frequency (MHz)	Electric field (V/m)	Power Density ($\mu\text{W}/\text{cm}^2$)	IEEE limit ⁵ ($\mu\text{W}/\text{cm}^2$)	Fraction of limit
1	869.0000	13.0	45	569	0.077
2	155.1000	6.1	10	200	0.049
3	463.0000	2.8	2	300	0.007
4	170.1000	6.0	10	200	0.048
5	439.8750	4.7	6	293	0.020
6	856.7375	1.1	0	571	0.001
7	46.2800	2.8	2	200	0.010
8	39.2400	12.0	38	200	0.191
9	39.5800	16.5	72	200	0.361
10	156.2400	5.5	8	200	0.040
11	857.9375	1.1	0	572	0.001
12	151.4150	4.5	5	200	0.027
15	860.9375	1.1	0	574	0.001
16	451.9375	0.6	0	301	0.000
Total					0.833

⁴ Dr. Marino opined that "the radiation characteristics of the antennas presented mounted have not been adequately characterized... The radiation characteristics of the antennas that constitute the proposed expanded use of the site have also not been characterized." Reference 27, p. 860. Based on the information in Table 1 and References 29 and 30, the consultant finds the record shows clearly that the radiation characteristics of the existing and proposed antennas have been characterized sufficient to evaluate their potential for causing significant effects. Dr. Marino's opinion in this matter is not supported by facts.

⁵ IEEE is the acronym for the Institute of Electronic and Electrical Engineers. IEEE has promulgated standards and guides for the safe use and measurement of electromagnetic energy up to 300 Gigahertz ("GHz"). The limit identified in the table is referred to as "IEEE C95.1-1991." See Reference 3.

SUMMARY OF THE RELEVANT LAW

The law that is relevant to the EMF Report is the California Environmental Quality Act ("CEQA"). CEQA lays out a three-stage process. (*No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 74, 118 Cal.Rptr. 34, 529 P2d 66 (1974); Guidelines, § 15002, subd. (k))

First, the agency must determine whether the particular activity is covered by CEQA. (Guidelines, § 15002, subd. (k)(1)) CEQA applies to any activity which is a "project" and which is not exempt. Generally speaking, any activity a public agency has discretion to carry on or to approve which has the potential for resulting in a physical change in the environment is a "project". (*Gentry v. Murrieta City*, 35 Cal.App.4th 1359, 43 Cal.Rptr.2d 170 (1995))

Marin County is a public agency. It had discretion whether to approve a permit for the BACTC facility. Therefore the BACTC facility is subject to compliance with CEQA.

Having decided whether an activity is a project subject to CEQA, the agency next must determine whether the project may have significant environmental effects. (Guidelines, § 15063, subd. (k)(2)) Except when the project clearly will have such effects, the agency must conduct an initial study to assist it in making this determination. (Guidelines, §§ 15063, subds. (a), (c)(1), 15365 (emphasis in original))

Based on the initial study, the agency may find no substantial evidence that the project may have a significant effect on the environment. In that case, in lieu of an environmental impact report ("EIR"), it may adopt a statement that the project will have no significant environmental effect. Such a statement is called a negative declaration. (Cal. Pub. Resources Code §§ 21064, 21080, subd. (c); Guidelines, §§ 15063, subd. (h)(2), 15064, subd. (g)(2), 15070, subd. (a), 15371)

If the record contains substantial evidence that a fair argument exists that the project may have a significant effect on the environment, the agency cannot adopt a negative declaration; it must go on to the third stage of the CEQA process: preparation and certification of an EIR. (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas*, 29 Cal.App.4th 1597 at pp. 1601-1602, 35 Cal.Rptr.2d 470 (1994); §§ 21100, 21151; Guidelines, §§ 15002, subd. (k)(3), 15063, subd. (b)(1), 15064, subds. (a)(1), (g)(1), 15362)

Whether there is substantial evidence that a fair argument exists that a project may have a significant effect on the environment is largely a legal issue rather than factual. The agency does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument. (*Sundstrom v. County of Mendocino*, 202 Cal. App.3d 296, 311, 248 Cal.Rptr 352 (1988))

If such evidence is found, it cannot be overcome by evidence to the contrary. (*Leonoff v. Monterey County Bd. of Supervisors*, 222 Cal.App.3d at p. 1348, 272 Cal.Rptr 372 (1994); *Citizen Action to Serve Ail Students v. Thornley*, 222 Cal.App.3d at p. 754, 272 Cal.Rptr. 83 (1990); *City of Carmel-By-The-Sea v. Board of Supervisors*, 183 Cal.App.3d 229 at 244-245, 227 Cal.Rptr. 899 (1986); *Friends of "B" Street v. City of Hayward*, 106 Cal.App.3d at p.1002, 165 Cal.Rptr. 514 (1980))

The lead agency, however, has some discretion to determine whether particular evidence is "substantial." (*Gentry v. Murrieta City*, 35 Cal.App.4th 1359, 43 Cal.Rptr.2d 170 (1995), at 198-199; *Newberry Springs Water Assn v. County of San Bernadino*, 150 Cal.App.3d 740, 750, 198 Cal.Rptr. 100 (1984); *Brentwood Assn for No. Drilling, Inc. v. City of Los Angeles*, 134 Cal.App.3d 491, 504, 184 Cal.Rptr. 664 (1982))

The determination of whether or not evidence is "substantial" is in itself a weighing process. An agency is not supposed to look only to some evidence to the exclusion of all contrary evidence. Evidence which rebuts, contradicts or diminishes the reliability or credibility of evidence is properly considered. The absence of supporting evidence also is properly considered. The agency must assess both the evidence in favor of the significant environmental impact and the evidence to the contrary --- only then can it properly decide if there is a fair argument supported by substantial evidence in light of the whole record. (*Citizens' Committee to Save Our Village v. City of Claremont*, 37 Cal.App.4th 1157, 1168, 44 Cal.Rptr.2d 288 (1995); *Lucas Valley Homeowners Assn. v. County of Marin*, 233 Cal.App.3d 130, 142, 284 Cal.Rptr. 427 (1991); *City of Antioch v. City Council of the City of Pittsburg*, 187 Cal.App.3d 1325, 1331, 232 Cal.Rptr. 507 (1987); Cal. Pub. Resources Code § 21080(d))

The operative words in the so-called fair argument standard are "substantial evidence." Argument, speculation, unsubstantiated opinion or narrative and evidence which is clearly inaccurate or erroneous is not substantial evidence. "Substantial evidence shall include facts, reasonable assumptions predicated upon facts and expert opinion supported by

facts." (Pub. Resources Code § 21081(e) (emphasis added); *Citizens Committee v. City of Claremont*, 44 Cal.Rptr.2d at 494-495)

Substantial evidence does not mean overwhelming or overpowering evidence. Substantial evidence is simply evidence which is of "ponderable legal significance ... reasonable in nature, credible and of solid value." (*Lucas Valley Homeowners Assn. v. County of Marin*, 233 Cal.App.3d at p. 142, 284 Cal.Rptr. 427 (1991)) CEQA Guidelines state that "Substantial evidence" is "enough relevant information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Cal. Code Regs., tit. 14, § 15384, subd. (a))

If there is a serious public controversy over the environmental effects of a project, such that both sides of the controversy present conflicting evidence or conflicting expert testimony, the general guide is that an EIR shall be required. But the general guide applies only "in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment." (Cal. Code Regs., tit. 14, § 15064 (h))

Presumably if the local agency can decide that the case is not marginal, or that evidence on one side substantially outweighs or detracts from the probative value of evidence on the other side, the general guide does not control. This appears to have been the result in one case where the court rejected one expert's opinion that a one percent increase in traffic at an intersection was significant, noting "conflicting assertions do not *ipso facto* give rise to substantial 'fair argument' evidence." (*Citizen Action to Serve All Students v. Thornley*, 222 Cal.App.3d 748 at p. 755-756, 272 Cal.Rptr. 83 (1990))

If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences. But an absence of evidence in the record on a particular issue does not automatically invalidate a negative declaration. The lack of study is not evidence that there will be a significant impact. (*Leonoff v. Monterey County Bd. of Supervisors*, 222 Cal.App.3d at p. 1354, 272 Cal.Rptr. 372 (1990))

POTENTIAL HEALTH EFFECTS OF EMF EXPOSURE

Potential health effects of EMF have been studied for about thirty years. By 1993, there were more than 12,000 such studies and the number of studies grows several hundred per year. Reference 27, pp. 942-6

Energy from radiofrequency (RF) EMFs can be absorbed by people causing molecules to move rapidly and creating heat. For people and most other mammals, this added heat may amount to 70 percent or more of the metabolic heat production (1 to 3 W/kg) before a significant rise in tissue temperature occurs ($>0.1^{\circ}\text{C}$), because the body has an efficient thermoregulatory system that endeavors to maintain homeostasis. Secondary effects of RF EMFs attributable to elevated temperature have been well categorized and in general differ little from effects of hyperthermia induced by other means. These effects are not the subject of the EMF Report.

Some tissue interactions with RF EMFs produce temperature increments orders of magnitude less than 0.1°C . These interactions cause physiological and perhaps other changes that cannot be attributed to elevated temperature *per se*. Reference 10, p. 145. But there is a dispute about whether and at what levels such effects may occur and whether they are significant to human health. That dispute is the focus of this Report.

The controversy regarding the existence and significance of nonthermal effects is ongoing. As stated by the National Council on Radiation Protection and Measurements (NCRP):

The lack of quantitative data on the biological effects of RFEM fields has resulted in widespread concern that such exposure poses the risk of injury to health regardless of intensity. Although there are several thousands of reports --- scientific papers, books, articles, and newspaper accounts --- of widely varying scientific quality that present data or opinion on the biological response to RFEM radiations, no consensus has emerged regarding thresholds and mechanisms of injury at specific absorption rates (SARs) below a few watts per kilogram (W/kg). The wide variation in RFEM-radiation exposure criteria around the world reflects this absence of consensus...

⁶ That was part of the rationale advanced by the attorney for the MBHA for requiring an EIR in this case, i.e. that "considerably more research has been performed in the five years since the county issued its [telecommunications facility] Policy Plan." Reference 27, p. 2160. Nevertheless none of the references provided by the MBHA were published after adoption of the County Policy Plan. That plan was based on an analysis of potential significant effects of RF facilities and specifically assessed nonthermal effects noting that they are not proven. The lack of more recent evidence to support the position advocated by Dr. Marino on behalf of the MBHA detracts from the probative value of the testimony that research performed in the last five years supports the position advocated by witnesses for MBHA.

RED Exhibit

1
2 The complexity of the interaction of [RFEM] fields with biological systems
3 makes it difficult to interpret the large volume of literature on the subject,
4 because a substantial fraction of the research reported in the literature lacks
5 the essential quantitation discussed in NCRP report No. 67.⁷ The
6 biological effects of exposure to RFEM fields depend on many factors that
7 complicate the interpretation of the literature ...

8 Unlike ionizing radiation, RFEM radiation must be specified in terms of
9 carrier frequency, modulation, electric and magnetic field strengths (or
10 power density when applicable), and zone of irradiation (near or far field).
11 Also complicating the task of recommending exposure guides is the fact that
12 unrestricted exposure of the body to a plane-wave or a multipath field at a
13 given intensity can have results far different from those of partial-body
14 exposure at the same intensity... [T]he spatially averaged field strength,
15 depending on the volume of space over which the fields are averaged, may
16 vary for a given body from practically zero to levels far exceeding any
17 proposed limit on exposure....

18
19 There is an inherent difficulty in distinguishing and discriminating between
20 thermal and athermal effects, a difficulty borne both of a methodological
21 problem and of faulty inference. When, for example, a complex organism
22 exhibits a behavioral or physiological response to irradiation by an RFEM
23 field, the phenomenological character of the response provides no definitive
24 leverage on which mechanism of three possible classes is operative:
25 thermal, athermal (field-specific) or the two in combination... The issue of
26 faulty inference is exemplified by the widely held view in the
27 bioelectromagnetics community that biological responses to weak fields are
28 *a priori* evidence of athermal causation.... [T]he strength of the incident
29 field has no *a priori* bearing on the question of mechanisms." Reference 5,
30 pp. 1-3, 6-7.
31

32
33 Following a format used by the many of the authors whose work forms the record for the
34 EMF Report, the consultant will discuss possible nonthermal effects as follows:
35

7 NCRP states that the following factors are "critical" to the performance and reporting of experiments for
assessing the effects of RFEM fields:

1. Power density (or E and H field strengths) and specific absorption rates.
2. Duration of exposure and exposure schedule.
3. Wavelength or frequency of the radiation.
4. Mass and dimensions of the biological target.
5. Thermoregulatory capabilities of the organism.
6. Tissue thickness and composition.
7. Orientation of the subject with respect to field vectors.
8. Waveform (continuous or pulsed and modulation factors).
9. Electrical and biological shielding and shadowing.
10. Environmental factors (e.g., ambient temperature, relative humidity, light and air velocity).
11. Physiological and psychological status of the subject (anesthesia, restraint, handling, nutritional state, feeding and watering schedule).
12. Experimental design and instrumentation (RFEM source, monitoring equipment, etc.).
13. Sample size and statistical analyses. (Reference 10, p. 38)

1. Epidemiological studies
2. Macrocellular and cellular effects
3. Chromosomal and mutagenic effects
4. Carcinogenesis
5. Effects on reproduction, growth and development
6. Effects on hematopoietic and immune systems
7. Effects on endocrine system
8. Effects on cardiovascular function
9. Effects on the blood-brain barrier
10. Effects on the central nervous system
11. Effects on behavior
12. Cataractogenesis

1. Epidemiological studies

Epidemiological studies could provide the best evidence of nonthermal effects, because such studies involve human subjects in real world settings. However epidemiological studies of exposure to radiofrequency EMF are few in number and are generally limited in scope. Most such studies have been of people in military service or in industrial settings. Many such studies are unable to reconstruct exposure data from available records or the recall of study subjects. Most such studies have not been able to calculate cumulative or averaged SARs or average field strengths. Most of the studies that have been done involve EMFs at extra low frequency (ELF) rather than at radiofrequencies (RF). See Appendix E for a brief discussion of why ELF and RF EMFs have different effects.

One study of more than 40,000 members of the military exposed to RF EMFs from 1955 to 1976 (mortality by specific cause of death, hospitalization during military service, later hospitalization during military service, and VA disability compensation), including a large group exposed to EMFs at SARs of less than 1 mW/cm², showed no adverse effects attributable to EMF exposure. (Reference 10, pp. 207-211).

Long-term, low-level RF EMF exposure of American Embassy personnel in Moscow (maximum power densities of $\leq 5 \mu\text{W}/\text{cm}^2$ for 9 hr/day and of < 1 to $15 \mu\text{W}/\text{cm}^2$ for 18 hr/day) showed no difference in health status when compared to foreign service personnel or their dependents in other stations or to scientists at Johns Hopkins. (Reference 10, pp. 213-214, Reference 15, pp. 537-538)

Other epidemiological studies of specific health effects are described in the sections of the report related to those effects. The consultant concludes these studies do not show exposure to nonthermalizing levels of RF EMFs, like the BACTC facility, cause significant effects, if any. Studies do not -- and probably cannot -- show low levels of RF EMFs do not cause any effects. But the weight of the evidence is such that most researchers would agree with the conclusion of a recent study that:

"The lack of converging epidemiological and biological support for the occasionally reported adverse health effects [from ELF EMFs] is consistent with calculation of quantities based on fundamental laws of physics for describing electric or magnetic fields. These calculations show that the electric and magnetic fields induced in the human body from external ELF-EMF sources are very weak and generally much weaker than intrinsic fields created by the normal, natural thermal movement of ions within the body. Given this lack of conclusive evidence, any assessment of health risk associated with fields emitted by these sources would be speculative and seemingly unjustified." Reference 12, p. 17.

Although ELF EMFs interact differently with the body than RF EMFs (see Appendix E), the conclusion reached in the foregoing study applies equally to RF EMFs.

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects based on epidemiological studies are not supported by facts; therefore such inferences are not reasonable.

2. Macrocellular and cellular effects

After reviewing more than 30 recent experiments reviewing macrocellular and cellular effects, the NCRP concluded "irradiation of the enzyme solutions in the experiments reported above had few effects not attributable to elevated temperature." (Reference 10, p. 23) "Over a wide range of frequencies and power densities there appear to be no effects of RFEM radiation on mitochondrial structure and function not attributable to changes of temperature." (Reference 10, p. 27) "In the studies of microorganisms discussed here, irradiation did not result in genetic, cell-replication, colony-forming, molecular-structural or survival effects, with the possible exception of stimulation of photosynthesis in algae." (Reference 10, p. 30; Reference 26, pp. 22-23) "The weight of the evidence is that, with the exception of calcium efflux experiments, ... athermal effects of microwave power on

cellular function are difficult to demonstrate." (Reference 10, p. 34) NCRP failed to find any effect on cell transformation and tumor cells that cannot be explained by temperature changes, noting that "even small temperature changes (≥ 0.2 C) can significantly increase growth." (Reference 10, pp. 35-37)

Regarding calcium ion efflux, a recent review of more than 40 studies involving mostly *in vitro* exposures at ELF's (see Appendix E) concludes "under specific combinations of conditions, electric and magnetic fields can influence biological processes as monitored by calcium ion release from tissues... Taken together, the evidence overwhelmingly indicates that electric and magnetic fields can alter normal calcium homeostasis and lead to changes in the response to biological systems to their environment. It remains to be clearly demonstrated that these field-induced perturbations force the biological systems beyond the normal physiological range to a level at which the pre-exposure equilibrium cannot be restored and permanent changes occur that could result in an unhealthy biological response." Reference 23, pp. 204-205.

Studies of cells *in vitro* show "definite evidence of direct, frequency dependent and field strength dependent alterations of various types of mammalian cells that cannot be attributed to heating per se." The outer surface of the cell membrane is the primary locus for EMF-induced cellular effects. Reference 4, chapter 14. It may be concluded that EMF-induced cellular alterations in *in vitro* systems occur at approximately the same levels as encountered in occupational settings, which are at higher power levels and at different frequencies than occur at the BACTC site. There are major impediments to use of *in vitro* data for predicting effects *in vivo*, including the lack of an apparent dose/response relationship, dosimetric and power density uncertainties, and the lack of an adequate theory to explain the extremely low interaction energies, intensities and modulation windows and apparently complex temporal dependency at which effects have been observed *in vitro*. Reference 26, p. 35.

It is not shown directly and cannot be reasonably inferred from the record that RF EMFs at power levels and frequencies relevant in this case cause changes in calcium ion efflux or other cellular parameters. Even if they do, based on the ELF experiments, they have not been shown to cause effects that are significant, (i.e., they have not been shown to cause effects that are permanent or exceed the capacity of the body to accommodate them safely).

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on cells are not supported by facts; therefore such inferences are not reasonable.

3. Chromosomal and mutagenic effects

One of the studies cited by MBHA includes the following conclusions about potential effects of nucleic acids, genes and chromosomes (Reference 23, chapter 5):

- DNA in aqueous solutions have been shown to absorb microwaves. Absorption increased with increasing DNA chain-length and with frequency. It remains to be seen whether this resonant absorption is relevant to any biological effect *in vivo*.
- With few exceptions, attempts to induce gene mutations and sister chromatid exchanges⁸ by exposure to EM fields have been unsuccessful.
- RF EMFs have been shown to induce chromosomal aberrations in a number of test systems; however, it is difficult to state unequivocally that these effects are nonthermal. Also the results are not consistent, and most studies failed to show any effect.
- In the absence of thermal effects, nonionizing EM fields do not cause DNA damage measurable by DNA breaks, DNA repair, or differential killing of repair defective organisms.

The NCRP concluded "RFEM fields under certain conditions of exposure has been shown to induce various types of chromosomal aberrations... Highly thermalizing fields induce chromosomal stickiness and breakage as contrasted to lower levels of exposure where this phenomenon has not been reported... A threshold power density or field strength for the induction of chromosomal aberrations cannot be specified, but such effects do not appear to be induced at power densities below 1 mW/cm² or at field strengths ≤ 200 V/m... There are at present no known mechanisms for the induction of mutations or chromosomal aberrations by RFEM radiation at nonthermagenic intensities." Reference 10, p. 43.

References 1, 2 and 6 through 9 also support the conclusions listed above. Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on chromosomes are not supported by facts; therefore such inferences are not reasonable.

⁸ Sister chromatid exchanges (SCEs) are the most sensitive index of chemical interaction with the DNA of the cell. Reference 1.

4. Carcinogenesis

Carcinogenesis is the process of inducing cancer or malignant neoplasia. Neoplasia is uncontrolled growth or cell division in tissue. A malignant neoplasm or cancer is a group of cells that replicate uncontrollably and has the capacity to shed cells which enter the blood stream and travel to other parts of the body to colonize and form new tumors.

In recent years carcinogenesis has been viewed as a multi-stage process that, at its simplest level, consists of (1) the induction of malignant transformation by genetic damage, (2) promotion or the enhanced growth or survival of malignantly transformed cells, and (3) progression of malignant cells through the blood stream to other parts of the body.

One of the two principle arguments made by MBHA to show nonthermal EMFs from the BACTC facility may be significant is that cancer development is influenced by EMFs. Dr. Marino cited 33 studies from 1979 to 1991 to support his testimony. See Reference 27, pp. 864-870. But the consultant concludes those studies do not support the inferences urged by Dr. Marino, because they are not reasonably related to the exposure conditions in the BACTC case, they lack details necessary to evaluate their probative value, and/or they are so at odds with the substantial weight of scientific studies that they are not reliable.

- At least 9 of the studies cited in Dr. Marino's testimony involve power lines, which emit EMFs at a frequency of 50-60 Hz, commonly referred to as extra low frequencies (ELF). ELF and RF fields interact differently with the body. See Appendix E. Based on the differences between ELF and RF EMFs and their interaction with biological systems, inferences about the effect of RF EMFs based on evidence about ELF EMFs are not reasonable when not supported by a plausible model or laboratory evidence linking them.

- The other studies cited in Dr. Marino's testimony generally do not specify the source of the EMFs. Therefore it cannot be determined whether the frequencies in question are ELF, RF or something else.

- None of the studies reported in Dr. Marino's testimony include information about power densities or SARs. Other references in which these studies are discussed in more detail more completely summarize those studies. Many of the studies cited by Dr. Marino involve ELF and microwave frequencies, rather than RF frequencies relevant to the BACTC site. Most involve power densities and SARs several orders of magnitude higher

1 than the power densities and SARs relevant to the BACTC facility. Many do not include
2 sufficient controls to be replicated reliably. Many report the existence of numerous
3 confounding factors, such as working conditions that are adverse for reasons wholly
4 unrelated to EMF exposure.⁹

5 The foregoing factors substantially undermine the probative value of the studies cited as the
6 basis of Dr. Marino's inferences. Other evidence in the record does so too.

7
8
9 An independent biostatistical study of 32 recent publications on effects of EMFs, including
10 some of those studies cited by Dr. Marino, found that there was "no conclusive evidence of
11 harmful effects except for laboratory studies where RFEM radiation produced substantial
12 heating." Reference 15, p. 536.

13
14 A review of epidemiological studies of ELF EMF exposure and cancer, including
15 residential exposure, concluded "it is extremely difficult to interpret the results of recent
16 epidemiological studies that have found an apparent correlation between exposure to ELF
17 fields and cancer incidence. The levels of current density in tissue by occupational or
18 residential exposure are, in nearly all circumstances, significantly lower than the levels
19 found in laboratory studies to produce measurable perturbations in biological functions.
20 Reference 23, p. 309.

21
22 Another recent review of 8 epidemiological studies of exposure to ELF fields, including
23 studies cited by Dr. Marino, concluded that they "suffer from design and methodological
24 problems, which in their entirety preclude any definitive statement regarding
25 carcinogenicity of RF radiation... Based on the findings of these RF radiation studies,
26 there appears to be little evidence to conclude or deny that a cancer risk exists from
27 exposure to RF radiation." Reference 24, chapter 3.

28
29 Another peer review of the literature concludes "there is no convincing evidence in the
30 published literature to support the contention that exposures to extremely low frequency
31 electric and magnetic fields ... are demonstrable health hazards. Epidemiological findings

32
⁹ For instance, a study of leukemia among electrical workers showed risk factors of 1.1 to 1.8, leading the
authors to conclude there is a weak correlation between employment in electrical occupations and leukemia
risk. (Leukemia is a family of neoplastic diseases of the hematopoietic system in which a clone of cells
proliferates abnormally, placing normal marrow, infiltrating other hematopoietic tissues, and leading to
death.) But they pointed out that none of the epidemiological surveys on which their conclusion were based
established that exposure to ELF EMFs is the causal factor leading to an elevated cancer risk among
workers. Reference 23, pp. 109, 306-307.

of an association between electric and magnetic fields and childhood leukemia or other childhood or adult cancers are inconsistent and inconclusive. No plausible biological mechanism is presented that would explain causality. Neither is there conclusive evidence that these fields initiate cancer, promote cancer, or influence tumor progression." Reference 12, pp. 16-17.

In testimony before the Illinois Commerce Commission, another researcher reviews several of the 70-plus epidemiological studies of ELF EMF emissions and cancer, concluding that there is no causal association. Reference 17, particularly pp. 10-13.

A 1996 peer review by an epidemiologist at the American Cancer Society of more than 50 studies concludes that epidemiological data linking cancer and EMFs is weak, inconsistent and inconclusive leaving the researcher "uncertain and rather doubtful that any real biological link exists between EMF exposure and carcinogenicity." Reference 18, p. 42.

A peer review of 129 studies regarding the potential relationship of cancer and EMFs, including studies completed between 1991 and 1996, includes the following findings:

- Most of the studies involve ELF and power density and SARs much higher than relevant in the BACTC case. Even so, the risk ratios relating cancer to exposure of all forms of EMF is <1 to 3.¹⁰ If EMFs were a significant risk factor for cancer, risk ratios would be much higher. For instance, the risk of developing lung cancer from exposure to certain kinds of asbestos is 5 to 20. The risk ratio of liver cancer from exposure to chlorinate solvents is as high as 200. Some known carcinogenic viruses have risk ratios in excess of 200. Because of the low (and some negative)¹¹ risk ratios involving EMFs and cancer, it cannot be inferred that exposure to EMFs is causally related to cancer.

¹⁰ "Risk ratio" is a generic term commonly used in epidemiology to describe a number of specific measures of the extent to which individuals in one population are more or less likely to develop a condition than individuals in another population. It is difficult to identify a specific threshold where a risk ratio indicates a causal relationship between a given agent and condition. The risk ratio required to identify such a threshold varies based on the quality of the study, the level of exposure in the environment, the size of the population and other factors. Particularly where laboratory data do not provide strong evidence for carcinogenicity, the presence of negative data (i.e., risk ratios less than 1.0) requires larger risk ratios to justify a finding that a given agent (e.g., EMFs) may be causally associated with a given condition (e.g., cancer: incidence or promotion). Consistently higher risk ratios are needed to warrant an inference of a causal relationship. Dr. Buffler posits that risk ratios must consistently approximate or exceed 2.0 - 3.0 in order to state that there is an association between EMF exposure and cancer. Also see Reference 12, p. 6.

¹¹ In contrast there are no risk ratios identified in the scientific literature on the link between smoking and cancer that are less than 1.0 except for one methodologically flawed study.

• If EMF exposure was carcinogenic, then the populations with the greatest exposure to EMFs would have the highest risk of cancer. This type of "dose/response" relationship is characteristic of environmental carcinogens. But, in the case of EMFs, there are numerous studies where the highest exposure group did not demonstrate the highest cancer rates or a significant increase. A study completed in 1996 involving a very large well-documented military population failed to indicate an association of tumors in the central nervous system with high power EMF exposure. These results suggest that the actual agent responsible for increased cancer rates has not been identified, but that EMF exposure is not among them, particularly at the low levels relevant to the BACTC case.¹²

• Many of the studies of ELF radiation that show large risk ratios use surrogate measures (e.g., job title and wiring patterns) in lieu of actual measurement of exposure conditions. This may be necessary in early studies, but detracts from the probative value of the research unless confirmed by later studies. This is what happened with asbestos exposure and smoking. But early suggestive causal relationships were confirmed over time by better experiments. In contrast, studies of EMF exposure and cancer follow no reliable pattern. Most recent experiments result in risk ratios of less than 1.0 (negative association) or between 1.0 and 3.0. This inconsistency disproves a causal relationship exists.

• Studies using direct measures of exposure to ELF EMF do not show a stronger association between exposure and cancer than studies using indirect measures such as job titles. For instance, in studies of childhood cancer, risk ratios are lower with direct measures of ELF exposure. This suggests the association between ELF EMFs and cancer is the result of a variable other than exposure to EMFs. See also Reference 12, pp. 8-9.

• Some studies that purport to contain evidence supporting the claim that ELF exposure is a risk factor for cancer have serious methodological flaws. This can result in selectivity. See also Reference 12, p. 10.¹³

¹² Dr. Marino agrees that there is no dose/response relationship for EMF exposure and its effects. Reference 19, p. 106; Reference 20, pp. 986-988. From that, he infers frequency and power density do not determine effects or their significance; consequently there is no threshold of effects, and even the lowest levels of exposure are significant. Such an inference involves a leap of intuition not supported by facts, however sincere and well-intentioned the motivation for that leap.

¹³ If a person shoots 100 bullets randomly at the side of a barn, some of the bullets will land in a cluster simply by chance. If someone purported to rely on the clusters as evidence of shooting skill, ignoring all of the scattered and errant shots, it would be logically fallacious. This has occurred with studies of childhood cancer and ELF exposure where the original research reported several hundred risk ratios, while the final report relied on only some results to prove the association and ignored the lower risk ratios from other parts of the study (like the bullets that missed or were scattered all over the barn). Dr. Marino's testimony

Dr. Marino offered a number in units of $\mu\text{W} \cdot \text{hr}/\text{cm}^2 \cdot \text{yr}$ as the annual dose of EMFs to which people in the vicinity of the BACTC facility would be exposed. No other reference in the record uses $\mu\text{W} \cdot \text{hr}/\text{cm}^2 \cdot \text{yr}$ as a measure of exposure. Such an approach is not consistent with any scientifically accepted dosimetric model or other evidence in the record. The accepted method of describing EMF exposure is in terms of power density which is expressed as a unit of energy per unit area (e.g., watts/square meter or, at the levels relevant to the BACTC facility, in terms of microwatts per square centimeter or $\mu\text{W}/\text{cm}^2$). There is no evidence RF EMF exposures can be added and multiplied meaningfully in the manner in which Dr. Marino has or that such a calculation is relevant to the likelihood of effects from EMF exposure or to the significance of those effects. The use of such a measurement detracts from the probative value of his testimony and contributes to the consultant's conclusion that it is not substantial evidence.

Based on the foregoing, there is no support for the testimony by Dr. Marino that persons exposed to EMFs from the BACTC facility "would be exposed to a significant source of serious disease." Moreover that statement is not supported by Dr. Marino's second declaration wherein he says, "it is not possible to determine whether the BACTC site constitutes a hazard." His inconsistent statements further detract from the probative value and credibility of his testimony and contribute to the consultant's conclusion that it is not substantial evidence that the BACTC facility may have a significant nonthermal effect.

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on carcinogenesis are not supported by facts; therefore such inferences are not reasonable.

5. Effects on reproduction, growth and development

Any environmental agent introduced during pregnancy that interferes with development of the fetus is termed a teratogen. Reference 10, p. 49.

RF EMF radiation can produce teratogenic effects. Whether this teratogenic influence is derived primarily from thermal stress or from some frequency- or field-specific action of

exhibits this selectivity. He relies on parts of some studies to prove the existence of a high risk factor while ignoring other parts of the same studies that would show a lower risk ratio. He fails to include studies that fail to support his thesis, including many more recent studies with better research designs. This decreases the probative value of Dr. Marino's conclusions.

the RF EMF radiation, or from a combination of the two, has not been determined. The question of possible teratogenic effects from low-level, long-term exposures has been addressed in only a few studies and the results are not conclusive. At frequencies that are highly penetrating in human tissue and at levels that appear nonthermal, there are very few studies reported. Reference 10, pp. 66-67. For instance:

- Exposure of *Drosophila* at 2450 MHz continuous wave for 10 minutes at an SAR of 0.64 V/g did not affect survival rates. Reference 10, p. 50.

- Exposure of mice at 148 MHz for 1 hour daily from day 2 through day 19 of gestation in a rectangular coaxial exposure system at 0.5 mW/cm² (SAR 0.013 W/kg) showed no statistically significant difference on fetuses. Reference 10, p. 63.

Reports of effects on reproduction from ELF EMFs "are not supported by the totality of basic science and human studies that pertain to reproduction... [T]here is no convincing evidence to support suggestions that electric and magnetic fields result in birth defects or other reproductive problems." Reference 12, pp. 13, 17.

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on reproduction, growth or development are not supported by facts; therefore such inferences are not reasonable.

6. Effects on hematopoietic and immune systems

A large number of studies of effects of microwave and RF radiation on hematopoietic tissues and immune function have been carried out, but the results are not always clear and often are conflicting. However changes that have been reported are usually transient and result from acute, thermally significant exposures. Chronic exposure of rats for most of their lifetime at SARs up to 0.4 W/kg had no effect on any hematopoietic parameter or on immunological responses. Reference 11, p. 46-47.

Similar results are reported by other researchers. See, e.g., Reference 20, pp. 861-866, wherein the author describes one effect of EMF exposure, inhibition of cAMP independent protein kinases (messenger enzymes important for protein synthesis in cells), was strongly dependent on amplitude modulation (which does not occur at the BACTC facility) and time dependent. The effect occurred only in the first 15-30 minutes of exposure and then

disappeared despite continued exposure. He concluded available literature on immunological responses to microwave EMF radiation shows effects are inconsistent and when they occur, are transient. He further notes that studies performed under well controlled conditions of exposure provide evidence that no detectable changes in lymphocyte activity occurs following EMF exposure *in vitro* when proper control of temperature is achieved. Thus the effects observed in earlier studies cannot be related to specific non-thermal effects. Reference 20, p. 873.

In another experiment, rabbits were exposed to 2.45 GHz continuous or pulsed fields at a maximum power density of 1.5 mW/cm² for 2 hours daily for 3 months. The mean SAR was 0.5 W/kg. An additional group of 6 rabbits was sham-exposed. No significant differences between groups were seen in hematologic profiles obtained monthly. Reference 10, p. 77.

Irradiation at non-thermagenic levels, i.e., at SARs below 1 W/kg and at frequencies between 300 kHz and 200 GHz, results in few, if any, unequivocal effects on the hematopoietic or immune systems of experimental animals. Even if effects are found under idealized experimental designs and are confirmed in several laboratories, it will be extremely difficult to extrapolate and interpret these effects into potential detrimental effects in man without a better understanding of the cellular mechanism involved. Reference 10, pp. 86-87. Also see Reference 25, pp. 69-70.

In general, Eastern European scientists have reported hematologic effects at power densities much lower than those found to yield positive effects by Westerners. However many of their studies failed to include appropriate sham-control groups, absorbed energy measurements were nonexistent or inadequate, exposed animals were group-housed, and/or the data were presented in a manner such that statistical evaluations were impossible. Reference 10 pp. 68-69. Long term exposure experiments in which altered immune function have been reported at relatively low power densities seem to be due to stress from handling and poorly controlled irradiation conditions. Reference 20, p. 883.

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on hematopoietic and immunologic systems are not supported by facts; therefore such inferences are not reasonable.

7. Effects on endocrine system

To maintain homeostasis, a mammal possesses two control mechanisms that react to changes in internal and external environments. These two control mechanisms are the neural and endocrine systems. The endocrine system consists of a number of glands that secrete hormones into the bloodstream. This system is described in several of the references in the record, including Reference 19, pp. 112-113, Reference 16, pp. 88-91, and Reference 23, pp. 160-167 (pineal gland).

Acting alone or in concert, the various components of the neuroendocrine system play a central role in maintaining homeostasis. The level of each hormone is regulated by a complex monitoring and feedback mechanism. The sensitivity of this system to perturbation is greatest at its highest level, the hypothalamus, where small chemical or electrical stimuli can produce significant alterations in the amount of hormones secreted by an endocrine gland. Thus, the neuroendocrine system provides a sensitive series of indicators for analyzing responses to the influence of environmental changes.

But neuroendocrine alterations are not necessarily pathologic, because the function of the neuroendocrine system is to maintain homeostasis, and hormone levels will fluctuate to maintain such organismic stability. Reference 10, pp. 88-91. The NCRP concludes there is no reliable evidence that endocrine disturbance of a pathological nature occurs in rats at SARs less than 4 W/kg. Assuming a similar sensitivity of the human being, endocrine disturbances should not occur below an average SAR of 0.4 W/kg. Reference 10, p. 110.

In research regarding exposure to ELF EMFs, it has been suggested that EMFs constitute a stress to the endocrine system (among others). The most credible evidence suggests that there may be a mild stress response when animals are initially exposed to the fields, but there seems to be no long-term stress response that are the result of such exposures. Experiments reporting greater effects were prone to methodological flaws and were not easily replicable if at all, in part, because of species-specific differences. Reference 26, pp. 60-65. Thus, functional changes of the hormone-producing glands, with the exception of the pineal, as a result of electric or magnetic field exposure are either minimal or nonexistent. Reference 12, p. 16.

Another study reports that ELF EMF exposure affects circadian rhythms of animals, but "much work remains to be accomplished before the observed effects and their biological

consequences are clearly understood." The report concludes that "ELF exposure alters internal rhythms, increases arousal in animals and is transient in its effect." Reference 25, pp. 59-62.

Research regarding exposure to ELF's and its relation to changes in pineal gland function reported that exposure resulted in a slight increase in melatonin metabolite excretion that moderated and stopped as the exposure continued over time and the body adapted to the exposure. "Whether or not this adaptive response constitutes any significant challenge in homeostasis for humans is unclear." The author of that research concludes "[i]t remains to be determined whether ELF field effects on pineal gland function represent a health risk to humans." Reference 23, pp. 177-178.

Even Dr. Marino concludes "[m]ost of the endocrine system effects seem to be compensatory rather than pathological." Reference 19, p. 120. Although he goes on to argue that an exposed animal is not the same after such compensation as before it, and is, therefore, more likely to be susceptible to subsequent stresses, this requires a leap of intuition not necessarily drawn from the evidence. He concedes that even his own research fails to show consistent results, suggesting uncontrolled variables are present that mediate the effects and their potential significance. Without further research, conclusions about the significance of endocrine effects are premature.

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on the endocrine system are not supported by facts; therefore such inferences are not reasonable.

8. Effects on cardiovascular function

There are relatively few studies about cardiovascular effects of RF EMF exposure. Several investigators have reported changes in cardiovascular function of experimental preparations *in vitro* exposed to EMF. Others have explored changes in the heart after irradiation of whole animals. Reference 17, pp. 111-116.

The *in vitro* effects appear to be the result of neurotransmitter release at the cut nerve endings and is not an effect on the myocardium or pacemaker cells *per se*. No effects were seen during irradiation of hearts *in situ*. The NCRP concludes that "[b]ased on available data, exposure to fields at low levels (<10 mW/cm² or <2 W/kg) for short periods of time

1 does not appear to produce cardiovascular effects. Data on long-term exposure are scanty
2 and contradictory." Reference 10, p. 117.

3
4 Another study describes the research to date and concludes EMF exposure even at rates
5 much higher than those relevant to the BACTC site do not cause more than transient
6 effects. Serum chemistry also appears to be unaffected by exposure to ELF EMFs.
7 Reference 25, pp. 68-69.

8
9 Based on the foregoing, the consultant concludes inferences that RF EMFs have significant
10 effects on the cardiovascular system are not supported by facts; therefore such inferences
11 are not reasonable.

12 13 9. Effects on the blood-brain barrier

14
15 The blood-brain barrier is a system of specialized blood vessels that invest most areas of
16 the brain. The current anatomical conception of the barrier is that of a highly differentiated
17 organelle, a specialized capillary. The cells of these capillaries form tight junctions. In
18 contrast to most capillaries that lie outside the brain and spinal cord, most capillaries within
19 the cranial vault are generally lacking the intracellular fenestrae and intercellular clefts that
20 would allow ready passage of small molecules from blood to interstitial fluid.

21
22 Functionally the blood-brain barrier is a selectively permeable hydrophobic membrane.
23 Small lipid-soluble molecules readily cross the membrane. Certain lipid insoluble
24 molecules such as glucose also readily cross the membrane via carrier proteins that have a
25 high affinity with specific molecules. These carriers increase the intracellular flux of
26 transported molecules well above the rate afforded by simple diffusion. It serves not only
27 to restrict entry of toxic polar molecules into the brain but also as a regulatory system that
28 stabilizes and optimizes the fluid environment of the brain's intercellular compartment.
29 Reference 10, pp. 118-121.

30
31 The research to date shows the blood-brain barrier is not adversely affected by weak RF
32 EMFs. Although levels as low as $30 \mu\text{W}/\text{cm}^2$ have been reported to have an effect (see,
33 e.g., the work of Frey and Preston summarized in Reference 19, p. 100 and Preston's
34 book (Reference 21)), none of the investigations that has revealed altered measures of the
35 barrier by brief exposures to weak-to-moderate fields has generated evidence of irreversible
36 physical insult. Reference 10, pp. 142-144.

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on the blood brain barrier are not supported by facts; therefore such inferences are not reasonable.

10. Effects on the nervous system

Quoting from Dr. Marino, "[t]he nervous system consists of the peripheral nerves, the spinal cord and the brain. It is the means by which the organism receives information from the environment, and by which it controls its internal processes... An EMF effect on [the body] could be expressed in two ways, an alteration in the properties or function of the nervous system itself ... or an alteration in the body's system or organs that are controlled by the nervous system, such as the endocrine or cardiovascular systems..." Reference 19, p. 96.

Environmental ELF fields between 10^{-7} and 10^{-8} V/cm have been reported to contribute to certain biological functions, including navigation and prey detection by sharks and rays, bird navigation, altered biological rhythms in man and birds, and subjective estimates of time by monkeys. Reference 10, p. 147; Reference 19, pp. 66-74.

Acute or chronic EMF exposure at SARs greater than 2 W/kg can produce morphological alterations in the central nervous system (CNS), with effects increasing as SARs increase. But these effects are thermal. Reference 31, p. 5-43. Some other effects, thought to be nonthermal, also appear to be thermally related, such as increased permeability of the blood brain barrier. See above.

Effects from lower levels of exposure that have been reported in the literature are difficult to interpret. Exposure to low levels of pulsed or continuous wave microwave or RF radiation at SARs as low as 0.46 W/kg have been reported to affect neurotransmitter metabolism and the concentration of receptors involved in stress and anxiety responses in different parts of the rat brain. Exposure to very low levels of amplitude modulated RF or microwave radiation, too low to involve heating, has been reported by several groups to alter brain activity in cats and rabbits and to affect calcium ion mobility in the cat cortex and in chick brain tissue *in vivo*. Effective SARs were less than 0.01 W/kg. The changes in calcium ion mobility have not been easy to corroborate; two groups failed to observe these effects in similar studies. Reference 11, pp. 45-46. Prolonged exposure to low levels of RF EMFs

1 also has been reported to affect activity levels in animals, first showing increased activity
2 and later showing decreased activity. Reference 19, pp. 102-103. But, as with much of
3 the research results, the significance of these effects has not been determined.

4
5 In this regard, Dr. Marino advances a hypothesis in his testimony and his two books
6 (Reference 19, p. 107 and Reference 20, pp. 992-1019) that EMFs are a form of
7 environmental stressor that elicits CNS effects. Clinical observations have implicated acute
8 and chronic stressors as a risk factor for many diseases including cardiovascular disease,
9 diabetes, depression, allergies and cancer. If EMFs are a form of chronic stressor, then
10 increasing EMFs by any amount that causes a compensatory or adaptive adrenal-cortical
11 response increases the level of stress and, consequently, the likelihood that an individual
12 will be unable to accommodate subsequent stresses and/or will develop some form of
13 disease. Dr. Marino concedes the relationship of exposure and disease is complex, and that
14 all chronically-applied stressors have a near-zero probability of affecting an individual's
15 risk of disease; nevertheless, he argues that, because EMF is a stressor, all human diseases
16 are likely to be exacerbated by chronic exposure to them.

17
18 Once again, the consultant concludes that Dr. Marino's hypothesis, while as provocative
19 and worthy of continuing research as is the significance of all of the other effects reported
20 and theorized in the literature, is just an hypothesis and relies on an intuitive leap from the
21 evidence rather than on the evidence itself or reasonable inferences from the evidence. The
22 discussion above regarding risk factors and the relationship of EMFs to cancer applies
23 equally to the relation of EMFs and nervous system effects; that is, the epidemiological
24 evidence does not support the relationship. Because the suggestion that any increase in
25 EMFs that produces any change in adrenal-cortical response is significant, Dr. Marino's
26 hypothesis is far-reaching in its implications. If that hypothesis is proved, it would be an
27 indictment of power and telecommunications systems on which modern society depends.
28 Because of these consequences, such an hypothesis cannot be accepted without
29 substantially more evidence to support it than is available today.

30
31 Based on the foregoing, the consultant concludes inferences that RF EMFs have significant
32 effects on the nervous system are not supported by facts; therefore such inferences are not
33 reasonable.

11. Effects on behavior

Some of the more challenging questions regarding biological effects of exposure to RF EMFs have stemmed from reports of altered behavior. In 1973, for example, at a symposium entitled *Biological Effects and Health Hazards of Microwave Radiation*, several Eastern European investigators reported that behavior and neurological anomalies were observed in workers exposed to RF EMFs in industrial settings. With few exceptions, the Western scientific community responded skeptically to the Eastern reports. This skepticism apparently stems from the lack of such positive findings by Western investigators. Attempts by Western investigators employing improved methodologies have not confirmed the Eastern reports of effects from long term exposure to low levels of RF EMFs. (Reference 10, pp. 169, 175-187)

Several conclusions regarding the behavioral response to RF EMF irradiation can be drawn that enjoy a substantial consensus among scientists of many disciplines. "Behavior not only provides a highly sensitive index of field-body interactions, but a broad spectrum of end points. A single pulse of RF EM energy can be heard by human beings and experimental animals, the threshold of perception requiring but a few millijoules per kilogram of body mass. The threshold of convulsive activity, which anchors the near-lethal side of the behavioral spectrum, requires absorption of energy six orders of magnitude greater. It is within this intermediate range of end points that consensus is lost and controversy begins. At least for acute exposures, the problem lies in the interpretation of the implications of altered behavior... That is a question that cannot be answered solely in the behavioral laboratory." (Reference 10, pp. 189-190)

In experimental studies that have been conducted to determine whether ELF EMFs cause behavioral alterations, no effects have been observed at very low field strengths (7 to 100 V/m). At higher field strengths, "remarkably few robust effects have been demonstrated... Effects that have been observed, usually arousal or activity responses, are probably due to the animal's detection and possible perception of the electric field." (i.e., due to heating or shock). Reference 25, p. 56-58.

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on behavior are not supported by facts; therefore such inferences are not reasonable.

12. Cataractogenesis

The absorption of RF EMF energy at microwave frequencies has been shown experimentally to result in damage to ocular tissues. But it takes much higher energy levels than relevant to the Mount Barnabe case. The limited data on RF EMF-induced cataracts in human beings following acute, high-intensity exposure indicates the involvement of thermal damage to lens tissue. The results of epidemiological studies of the relation between occupational RFEM exposure and ocular changes do not provide evidence of deleterious effects. 10 mW/cm² is a practical limit for ocular damage from intermittent exposure to microwave fields. (Reference 10, pp. 191-206).

Based on the foregoing, the consultant concludes inferences that RF EMFs have significant effects on cataractogenesis are not supported by facts; therefore such inferences are not reasonable.

Conclusion

The research clearly shows that EMFs can result in certain biological effects. However it also shows that most reported effects are due to thermalizing levels of EMFs. Nonthermal effects occur, but, because the human body is remarkably adaptive in that it compensates for exposure to relatively low thermal and nonthermal EMFs, most if not all of these effects are transient and insignificant. Generally a body exposed to nonthermal levels of EMFs will return to a normative baseline condition even with continued exposure. Dr. Marino says as much in his 1988 text. Reference 20, p. 979. Many of the studies that purport to observe effects from exposure to EMFs are *in vitro*. Dr. Marino concedes that, "beyond the phenomenon of detection, the significance of *in vitro* studies with respect to intact organisms remains dubious." Reference 20, p. 984. Yet *in vitro* studies constitute the majority of the evidence that nonthermal levels of EMFs cause effects, significant or otherwise. Given the state of the research, it is premature to infer that low levels of RF EMFs may cause significant nonthermal health effects.

A RECOMMENDED EMF EXPOSURE STANDARD

As noted at pp. 4-13 through 4-17 of the Mann County Telecommunications Facilities Policy Plan, thresholds for exposure to EMF use safety factors, because of limited knowledge about potential health effects of such exposure and the variety of conditions under which exposure might occur. The International Radiation Protection Association (IRPA) lists the following reasons for such a safety factor:

1. Absorption of electromagnetic energy by humans of various sizes, with particular reference to whole or partial body resonant absorption of energy.
2. Incomplete understanding of the relationship between peak SAR and effects.
3. Adverse environmental conditions, such as high ambient temperature and humidity and low air movement.
4. Reflection, focusing and scattering of the incident fields in such a way that enhanced absorption occurs.
5. Possible altered response of humans taking medicines.
6. Possible combined effects of RF EMF with chemical or other physical agents in the environment.
7. The possible effect of modulated microwave fields on the CNS and the possible existence of "power" and "frequency" windows for such effects.
8. Possible nonthermal effects.¹⁴

¹⁴ Therefore Dr. Marino's testimony that the IEEE standard does not include "a safety standard for EMFs with regard to the occurrence of health risks" (Reference 27, p. 879) is not supported by the facts. The fact show the IEEE standard is substantially the same as the IRPA standard in that it uses the same safety factors. The IRPA standard says clearly the safety factor for uncontrolled exposure conditions includes consideration of possible nonthermal effects. The IEEE standard rationale includes recognition that non-thermal effects are mentioned as potential health hazards, and that the much larger safety factor for uncontrolled exposure is warranted to protect against such potential hazard. However IEEE concludes "[r]esearch on the effects of chronic exposure and speculations on the biological significance of nonthermal interactions have not yet resulted in any meaningful basis for alteration of the standard." Reference 3, p. 23-24. The fact that IEEE did not recommend a standard based on nonthermal effects does not mean such effects were not considered. The record shows nonthermal effects were considered in setting the standard and the safety factors for the standard. See, e.g., studies listed in Reference 14, p. 17

However the IRPA notes that, "at present, data on 5, 6, 7 and particularly 8, are insufficient to make either a health risk assessment or even to determine if these effects present a potential health concern." Reference 5, pp. 81-82.

Exposure of the general population to frequencies above 10 MHz should not exceed an SAR of 0.08 W/kg when averaged over the whole body and over any 6-minute period based on worst case conditions. The standard also should protect against high partial body exposures and shock due to induced currents. The IEEE C95.1-1991 standard does so. Therefore the consultant recommends the County adopt that standard to replace the standard it now uses. The existing standard is based on ANSI C95.1-1982. See Reference 13 for a discussion of the differences between the 1982 and 1991 standards, particularly pp. 64-67.

IEEE C95.1-1991 is based on assumptions that the threshold of adverse effects from radiofrequency EMF exposure is not more than 4 W/kg and a safety factor of 10 for a controlled exposure environment (i.e., where there is exposure of persons who are aware of the potential for exposure as a concomitant of employment or other voluntary circumstance) and a safety factor of 50 for an uncontrolled exposure environment, (i.e., where there is exposure of persons who have no knowledge of control of their exposure). Thus even if the "possible" effects do occur in fact, the foregoing standard protects the general public against such effects by allowing them to be exposed to only 1/50 the amount of the EMF energy known to cause effects. This adequately protects healthy adults and children, the affirmed and EMF-sensitive, embryos/fetuses, and people who are immunologically compromised.

When one considers that typical exposures from the proposed cellular facility will be only 3% of the recommended standard (assuming the transmitters operate at 40% of their maximum power rather than worst case conditions), the actual exposure from the BACTC facility will be well below the recommended standard. Moreover, if as urged by Dr. Marino, the significance of effects increases with exposure time, then the BACTC site is even safer, because people will be exposed to the highest levels of EMFs from that site only when they are on the Lookout balcony. The nearest dwelling is so far away from the transmitting antenna that EMF levels drop to ambient amounts at that dwelling. They pose no meaningful change to the EMF environment at that dwelling, particularly when the effects of in-house electric power systems and appliances are considered.

1 The consultant is guided in this recommendation by the rationale promulgated by the
2 Institute of Electrical and Electronics Engineers (IEEE) (see Reference 3), American
3 National Standards Institute (ANSI), National Council on Radiation Protection and
4 Measurements (NCRP) (see Reference 10, pp. 271-290), National Radiation Protection
5 Board (UK) (NRPB) (see Reference 28, pp. 38-43) and International Radiation Protection
6 Association, (IRPA) (see Reference 5, pp. 72-82), all of whom have adopted or
7 recommended adoption or consideration of a standard similar to IEEE C95.1-1991 (533 to
8 600 $\mu\text{W}/\text{cm}^2$ in the 800 - 900 MHz frequencies relevant to cellular telephones) based on
9 more information than that on which the EMF Report was based. The NRPB standard is
10 higher (2624-3321 $\mu\text{W}/\text{cm}^2$ in the relevant frequencies). The IRPA standard is a little
11 lower (400-450 $\mu\text{W}/\text{cm}^2$ in the relevant frequencies). Reference 14, p. 10. But, as it
12 relates to nonthermal effects at the levels at which Dr. Marino argues significant effects
13 occur, the difference between the IEEE and IRPA standards is not significant. If the
14 County wants to adopt a standard with an even larger safety factor than that used by IEEE
15 and NCRP, it could adopt the standard promulgated by IRPA. In either event, the Mount
16 Barnabe facility will comply with those standards with the addition of the BACTC facility.

17
18 Substantial evidence in the record does not warrant a more stringent standard than the one
19 articulated in IEEE C95.1-1991. Dr. Marino argues that EMFs at or below the IEEE
20 standard "may alter the shape of a protein in the membranes of a cell thereby allowing ions
21 to enter the cell, triggering alterations in the cell function. EMFs may alter the activity of
22 enzymes that catalyze biochemical reactions thereby making some reactions more or less
23 likely to occur... There are many other possibilities that may, in principle, mediate an
24 effects of an external EMF on the function of the cells of the body." Reference 27, p. 871.
25 But such possibilities do not amount to substantial evidence. They are theoretical. Even if
26 such effects occur, there is no evidence that, at the power levels and frequencies relevant in
27 this case, such effects are significant. On the contrary, the substantial weight of evidence is
28 that such effects, if they occur, are transitory and do not result in lasting consequences.
29 Therefore they are not significant.

30
31 The IEEE standard concludes "[n]o reliable scientific data exist indicating that: ...
32 Nonthermal (other than shock) or modulation-specific sequelae of exposure may be
33 meaningfully related to human health." (Reference 3, p. 23). The IEEE standard and the
34 substantially similar NCRP and IRPA standards all consider nonthermal effects. They
35 simply conclude the evidence does not support a conclusion that such effects occur or that,
36 if they occur, they are hazardous. The IEEE standard was based in part on a review of the

1 literature, including studies of nonthermal effects of EMF. See, e.g., the studies listed in
2 Reference 14 at p. 17. Dr. Marino's testimony that the IEEE standard ignores nonthermal
3 effects is not supported by the facts.

4 No reputable standard-setting agency has accepted Dr. Marino's thesis that nonthermal
5 effects of radiofrequency EMFs are an environmental stressor of such significance that
6 nonthermal effects should be regulated more stringently than proposed for thermal effects
7 of radiofrequency EMFs including relevant safety factors. The consultant came to the same
8 conclusion after a review of the literature on which the EMF Report is based.

9
10
11 The IEEE standard includes a large safety factor, in part, to protect against such potential
12 nonthermal effects. No greater effort is warranted based on the available information.

13
14 Ongoing research will generate additional information. That information may alter the
15 conclusions in this report. Therefore the consultant also recommends the County monitor
16 that research and take appropriate action to amend its standards for RF facilities if and when
17 warranted by such new information. Assuming the County adopts an ordinance to
18 incorporate IEEE C95.1-1991 into its code, the consultant recommends that ordinance
19 require a review of the standard at least every five years based on the results of subsequent
20 research. In the absence of an other authoritative, independent resource, such as the US
21 EPA, the County could appoint its chief medical official or an independent expert(s) in
22 epidemiology and/or related disciplines to undertake a review of new literature before the
23 County reviews the standard. The consultant also recommends the County condition
24 granting of leases and permits on compliance with subsequently enacted EMF standards so
25 that existing facilities can be required to be brought into compliance or removed if
26 subsequent research shows that the levels of EMFs existing at some future date exceed the
27 levels permitted by subsequently enacted County standards.

28
29 DATED this 22nd day of March, 1995.

30
31 Respectfully submitted,
32 LARRY EPSTEIN, PC

33
34
35 Larry Epstein, AICP

APPENDIX A
LIST OF CASES INVOLVING THE "FAIR ARGUMENT" STANDARD

- Ass'n for Protection of Environmental Values in Ukiah v. City of Ukiah*, 2 Cal.App.4th 720 (1991).
- Cathay Mortuary, Inc. v. San Francisco Planning Commission*, 207 Cal.App.3d 275 (1989).
- Citizens' Committee to Save Our Village v. City of Claremont*, 37 Cal.App.4th 1157 (1995).
- Citizen Action to Serve All Students v. Thornley*, 222 Cal.App.3d 748 (1990).
- City of Antioch v. City Council of the City of Pittsburg*, 187 Cal.App.3d 1325 (1986).
- City of Carmel-By-The-Sea v. Board of Supervisors*, 183 Cal.App.3d 229 (1986).
- City of Livermore v. Local Agency Formation Commission*, 184 Cal.App.3d 531 (1986).
- Friends of "B" Street v. City of Hayward*, 106 Cal.App.3d 988 (1980).
- Gentry v. City of Murrieta*, 36 Cal.App.4th 1359 (1995).
- Heninger v. Board of Supervisors*, 186 Cal.App.3d 601 (1986).
- Leonoff v. Monterey County Board of Supervisors*, 222 Cal.App.3d 1337 (1990).
- Meridian Ocean Systems, Inc. v. Cal. State Lands Commission*, 222 Cal.App.3d 153 (1990).
- NRDC v. Fish & Game Commission*, 28 Cal.App.4th 1104 (1994).
- Newberry Springs Water Ass'n v. County of San Bernardino*, 150 Cal.App.3d 740 (1984).
- No Oil, Inc. v. City of Los Angeles*, 13 Cal.App.3d 68 (1974).
- Oro Fino Gold Mining Corp. v. County of El Dorado*, 225 Cal.App.3d 872 (1990).
- Perley v Board of Supervisors*, 137 Cal.App.3d 424 (1982).
- Pisto.esi v. City of Madera*, 138 Cal.App.3d 284 (1982).
- Quail Botanical Gardens Foundation, Inc. v. City of Encinitas*, 29 Cal.App.4th 1597 (1994).
- Schaeffer Lard Trust v. San Jose City Council*, 215 Cal.App.3d 612 (1989).
- Sierra Club v. County of Sonoma*, 6 Cal.App.4th 1307 (1992).
- Stanislaus Audubon Society v. County of Stanislaus*, 33 Cal.App.4th 144 (1995).
- Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296 (1988).

**APPENDIX B
REFERENCES USED TO PREPARE THE EMF REPORT**

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2. Victor Ciaravino, Martin L. Meltz and David N. Erwin, "Effects of Radiofrequency Radiation and Simultaneous Exposure with Mitomycin C on the Frequency of Sister-Chromatid Exchanges in Chinese Hamster Ovary Cells," *ENVIRONMENTAL MUTAGENESIS* 9:393-399 (1987).¹
3. IEEE Standards Board, *IEEE STANDARD FOR SAFETY LEVELS WITH RESPECT TO HUMAN EXPOSURE TO RADIO FREQUENCY ELECTROMAGNETIC FIELDS, 3 KHZ TO 300 GHZ, IEEE C95.1-1991*.¹
4. O.P. Gandhi (ed.), *BIOLOGICAL EFFECTS AND MEDICAL APPLICATIONS OF ELECTROMAGNETIC ENERGY*. Englewood Cliffs, NJ: Prentice Hall (1990).¹
5. A.S. Duchene, J.R.A. Lakey, M.H. Repacholi, (eds.), *International Radiation Protection Association, Non-Ionizing Radiation Committee, IRPA GUIDELINES ON PROTECTION AGAINST NON-IONIZING RADIATION*. New York: Pergamon Press, 1991.¹
6. James J. Kerbacher, Martin L. Meltz and David N. Erwin, "Influence of Radiofrequency Radiation on Chromosome Aberrations in CHO Cells and Its Interaction with DNA-Damaging Agents," *RADIATION RESEARCH* 123:311-319 (1990).¹
7. Martin L. Meltz, Phyllis Eagan and David N. Erwin, "Absence of Mutagenic Interaction Between Microwaves and Mitomycin C in Mammalian Cells," *ENVIRONMENTAL AND MOLECULAR MUTAGENESIS* 13:294-303 (1989).¹
8. Martin L. Meltz, Phyllis Eagan and David N. Erwin, "Proflavin and Microwave Radiation: Absence of a Mutagenic Interaction," *BIOELECTROMAGNETICS* 11:149-157 (1990).¹
9. Martin L. Meltz and Kathleen A. Walker, "Radiofrequency (Microwave) Radiation Exposure of Mammalian Cells During UV-Induced DNA Repair Synthesis," *RADIATION RESEARCH* 110:255-266 (1987).¹
10. National Council on Radiation Protection and Measurements, *BIOLOGICAL EFFECTS AND EXPOSURE CRITERIA FOR RADIOFREQUENCY ELECTROMAGNETIC FIELDS (NCRP REPORT NO. 86)*. April 2, 1986.¹
11. National Radiological Protection Board, Advisory Group on Non-Ionizing Radiation, *ELECTROMAGNETIC FIELDS AND THE RISK OF CANCER*. Vol. 3, No. 1 (1992).¹
12. Oak Ridge Associated Universities Panel for the Committee on Interagency Radiation Research and Policy Coordination, *HEALTH EFFECTS OF LOW FREQUENCY ELECTRIC AND MAGNETIC FIELDS*. USGPO, 029-000-00443-9 (1992).¹
13. R.C. Petersen, *Radiofrequency/Microwave Protection Guides*, *HEALTH PHYSICS*, Vol. 61, No. 1, 59-67 (July, 1991).¹

14. P.A. Buffler, "Cellular Telephones and Human Health: A Review," unpublished report, (January 26, 1996).¹
15. J.M. Osepchuk, "Some Misconceptions About Electromagnetic Fields and Their Effects and Hazards," in O.P. Gandhi (ed.), **BIOLOGICAL EFFECTS AND MEDICAL APPLICATIONS OF ELECTROMAGNETIC ENERGY**. Prentice-Hall: Englewood Cliffs, NJ (1990).¹
16. J.R. Jauchem, "Alleged Health Effects of Electromagnetic Fields and Microwaves: Additional Misconceptions in the Literature," **JOURNAL OF MICROWAVE POWER AND ELECTROMAGNETIC ENERGY**, 28:14-155 (1993).¹
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18. C. Heath, "Electromagnetic Field Exposure and Cancer: A Review of Epidemiological Evidence," **CA CANCER JOURNAL FOR CLINICIANS** 46:1, pp. 29-44 (January/February, 1996).¹
19. R.O Becker and A.A. Marino, **ELECTROMAGNETISM AND LIFE**. SUNY Press: Albany (1982).²
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26. P.J. Bierbaum and J.M. Peters (eds.), **Proceedings of the Scientific Workshop on the Health Effects of Electric and Magnetic Fields on Workers**. USDHHS (NIOSH) publication no. 91-111 (1991).²
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RED Exhibit D

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30. R.D. Weller, "Evaluation of Radio Frequency Exposure Conditions as Measured on September 14, 1995," Hammett & Edison, Inc. (9/15/95).¹

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² Cited by MBHA.

³ Provided by Marin County.

⁴ Included by consultant.

APPENDIX C
BASIC FACTS ABOUT EMF AND ITS INTERACTION WITH
BIOLOGICAL SYSTEMS

EMF Fields

All radiofrequency transmitters emit non-ionizing energy in the form of electric and magnetic fields.¹ The following text describes some of the salient features of such fields and quotes extensively from Reference 24, pp. 2-2 through 2-8. See also Reference 23, pp. 19-24 and Reference 31, chapter 3.

Electric fields occur when electric charges are present. The difference between charges is measured in volts (V). The electric field is a description of the force that a unit charge will experience at any point in space. Electric charges attract more strongly as they are moved closer together. The strength of the electric field (E) between conductors is given by:

$$E = V/d \text{ (where } d \text{ is the distance between the conductors)}$$

The unit for electric fields is volts/meter (V/m). Electric fields have a magnitude and a direction for each point in space. The direction of an electric field at a given point is defined as the direction in which a small positive charge will move if placed at that point. In general the direction of the electric field can vary for each point in space.

If a conducting path is provided between areas of separated charge, the charges will flow between the two area. This flow of charge is called electric current and is measured in units of amperes (A).

Magnetic fields occur when charges are in motion, as in the case of electric current. The strength of a magnetic field (H) at a distance, d, from a conductor carrying a current, I, is:

¹ All hot bodies emit EMF. For instance it is estimated that the sun and stars produce weak fields with a mean power density ranging from 10^{-5} to 10^{-7} $\mu\text{W}/\text{cm}^2$. The black-body radiation from the earth is estimated to be 0.3 to 0.0003 $\mu\text{W}/\text{cm}^2$ at frequencies of 30 to 300 GHz. The mean level of EMF from broadcast radiofrequency sources is estimated to be 10^{-3} $\mu\text{W}/\text{cm}^2$. The US Environmental Protection Agency described population-weighted average EMF exposure levels from RF sources in urban areas calculated from measurements in 15 large cities. The estimated residential median exposure for people in these areas was 0.005 $\mu\text{W}/\text{cm}^2$ at FM, radio and television broadcast frequencies and 0.019 $\mu\text{W}/\text{cm}^2$ at AM broadcast frequencies (30 Hz - 806 MHz). The report concluded there is negligible background exposure above 806 MHz. Reference 11, p. 27; Reference 5, pp. 3-4; Reference 15, pp. 543-544; Reference 224, p. 2-20.

$H = I/(2\pi d)$ measured in units of amperes per meter (A/m)

The field is directed in a circle around a conductor such that the field vector at any point is tangent to the circle. The direction of a magnetic field also can vary for each point in space.

Electric and magnetic fields which vary in time are described by a frequency, the number of times that the field oscillates per second. The unit for frequency is cycles per second or Hertz (Hz). The dielectric properties or permittivity of biological substances vary with the frequency of electric field exposure.

A changing electric field creates a magnetic field and vice versa. The magnitude of the field produced by a change in the other field is proportional to the time-rate-of-change. In a rapidly changing electric field, some energy propagates away as electromagnetic radiation which travels in a vacuum at the speed of light (3×10^8 meters/second). This radiation may be described by the wavelength in meters. Power density is a vector quantity describing the rate at which energy is transmitted through a unit area expressed in watts per square meter (W/m^2), or, at the power levels relevant to the BACTC facility, in microwatts per square centimeter ($\mu W/cm^2$).

In the near field of an antenna, which generally extends from the antenna to a distance of a wavelength or two, the relationship between field strength and power density is complex, and power density is not a reliable measure of effect. A more meaningful quantity in such cases is the specific absorption rate (SAR). This quantity is the measure of the power absorbed per unit mass of the biological specimen under study in watts per kilogram (W/kg).

Beyond the near field, the radius of the EM wave is so large that it is flat compared to an object on the field. At this point the electric and magnetic fields form "plane waves" over which their intensity is constant. This makes it easier to measure and calculate intensities and power densities. At the frequencies relevant to the EMF Report, the waves in question are plane waves, because the near field extends a very short distance from the radiating antenna (i.e., the wavelength at 856 MHz is less than one-tenth of a meter).

Interaction of EMF with people and animals

Electromagnetic waves either reflect and scatter or are absorbed when they strike an object in their path. Nonconducting materials absorb little and reflect or transmit most EM energy they receive. Animal tissue has both properties. It reflects and absorbs depending on several factors. When studying possible health effects of EMF, only absorption matters. Four factors affect the amount of electromagnetic energy absorbed by animal tissue:

1. The capacity of an object to conduct electromagnetic energy or to permit it into the tissue. Different tissues absorb and conduct energy in different ways and amounts, depending mostly on the water content of the tissue. Tissue with high water content, such as the blood, skin, muscle and the brain, conduct and permit more electromagnetic energy than tissue with lower water content, such as bones and fat. Most EMF energy passes through the fatty surface layers of a body and are absorbed by deeper tissues.

The ability of tissue to conduct or reflect EMF, called "dielectric" properties, varies with frequency. At frequencies above 5 GHz (wavelength length than 6 cm), typical microwave frequencies, the ability of the tissue to conduct energy is so great that very little EMF energy penetrates deeply into the body, and it is deposited near a body's surface instead.

2. The size of the object compared to the wavelength of the EMF source. The ratio of energy absorbed by a given object is called an "absorption coefficient." This coefficient varies with the wavelength of the EMF.

When a wave strikes an object that is much smaller than the wavelength, little energy is deposited in the object, and that which is absorbed is distributed uniformly through the object. Such an object has an absorption coefficient of 0 to 0.5.

When a wavelength is a little smaller than the object it strikes, the object may absorb a small amount of energy, and that which is absorbed tends to be deposited near the surface. Such an object has an absorption coefficient of 0.5 or more.

When an object and wavelength are about the same size, "resonance" occurs. Substantially more energy may be absorbed by the object, (absorption coefficient of 1.5 to 4). The energy generally penetrates into the object and is deposited in differing amounts in various parts of the interior, with "hot spots" of highest energy absorption near the object's center.

1
2 The resonant frequency of a typical ungrounded adult (long axis 1.74 meters) is about 70
3 MHz. At 2450 MHz, a typical adult will absorb only about 50% of the incident EM
4 energy. The resonant frequency of a small adult or child is about 100 MHz. The resonant
5 frequency for a rat is about 700 MHz. Reference 5, p. 80. These principles provide some
6 insight into the question of frequency scaling in animal exposure systems. In general, a
7 given electric field will produce a different SAR in a human than in a rat. One way to
8 equalize absorbed power in humans and animals is to conduct the animal experiments at a
9 higher frequency so that the SARs are the same. While this approach addresses the
10 problem of total absorbed power, issues of body geometry and local current densities are
11 not as easily resolved.

12
13 3. The shape and geometry of an object and its orientation to the EMF. The edge of an
14 EMF wave is perpendicular to the direction in which the wave is traveling, called a
15 "vector." At resonant and sub-resonant frequencies, an EMF wave will have the most
16 effect on an object whose major axis is parallel to that vector. For instance if an electric
17 field vector is parallel to the major axis of an object, that object will receive 10 times more
18 energy at resonance than if the EMF vector is oriented to the minor axis.

19
20 Differences in geometry between a rat and a human also dictate that different current
21 densities will be produced in a given tissue type (e.g., the liver) in the two species.
22 Further, tissue electrical properties will differ at the two frequencies. For thermal effects
23 experiments, it may be sufficient to equalize SARs, but nonthermal experimental results in
24 animals or tissue cultures cannot be accurately applied to humans until the qualities
25 necessary for the interaction are identified. Otherwise, one does not know whether to
26 adjust for frequency, SAR, current density or internal field strength. This point
27 emphasizes the need for interaction mechanism theories that will afford some criteria for
28 sorting through the practically infinite range of possible EM-exposure conditions.

29
30 4. The complexity of the EMF. Descriptions of EMF studied experimentally typically
31 assume an ideal environment, one in which a single plane wave is transmitted from a single
32 distant source and strikes an object suspended in space. However, in practice, an EMF
33 environment is seldom so simple. For instance, people are not suspended in space. They
34 commonly are positioned near other objects, such as the ground, buildings and other
35 people, that reflect EMF energy. This reflection can increase or decrease the amount of
36 energy to which an object at a given point is exposed.

APPENDIX D
MODELS OF BIOLOGICAL INTERACTION WITH EMF

The following text describes four models that attempt to explain how EMF interacts with biological systems and quotes extensively from Reference 24, pp. 2-20 through 2-29, among other cited references. Also see Reference 11, pp. 35-36.

Such models are needed to explain why certain effects occur. They are critical to substantiating inferences that effects of EMF relate to certain health consequences and that effects observed under certain exposure conditions will occur under other exposure conditions. (e.g., that effects observed *in vitro* can be related by inference to effects *in vivo*, that effects observed at one frequency and power density or SAR can be related by inference to effects at other frequencies, power densities or SARs, and that effects observed in one species can be related by inference to effects in other species).

For instance, identification of a physical or chemical agent as a suspected or known carcinogen is a multi-factored process. Epidemiological evidence alone is rarely sufficient to make the determination. Laboratory animal confirmation in multiple species and evidence of a plausible dose/response relationship is also needed. Finally there needs to be evidence of a plausible biological mechanism. The weaker the epidemiological evidence, the more critical the mechanism become. The biological explanation need not be comprehensive but must be sufficient to explain the manner in which exposure to the agent in question might translate into higher rates of cancer. Reference 14, p. 9. Particularly where evidence that ELF EMFs may have an effect is urged as the reason why RF EMFs will have the same effect, the lack of a model to explain the association between the two forms of EMFs renders the evidence of little probative value. It surely is not significant evidence that exposure to RF EMFs will have the same result as exposure to ELF EMFs.

Present biological models do not explain observed effects of exposure to low level EMF radiation. No single theory has provided a broad predictive ability. See Reference 23, chapter 12 for a discussion of interaction mechanisms generally.

Unfortunately "the basic physical process involved has been all but ignored in the attempt to pinpoint biological effects. It is abundantly clear, however, that without a firm understanding of the initial interaction there can be very little progress for the life scientists studying this problem." Reference 23, p. 285.

1 A number of investigators have developed interaction mechanism theories based on electric
2 field driven alterations in ion transport across cell membranes. These theories attempt to
3 explain experimental findings such as calcium efflux and other effects which might be
4 linked to changes in ion concentrations or gradients. The difficulty encountered by such an
5 approach is that details of cell microstructure are only now being elucidated. Theoretical
6 models must therefore either make assumptions about these cell features, or use
7 experimental results to infer their operation. See Reference 23, chapter 10.

8
9 Another prominent interaction theory is centered around a phenomena known as cyclotron
10 resonance. This well-known physical principle describes the motion of a charged particle
11 in a static magnetic field absorbing energy from a time-varying electric or magnetic field.
12 Although cyclotron resonance of charged particles is a well-known physical principle, it is
13 not clear what role this phenomenon may play in biological systems. At this point, it is
14 possible only to search for bioeffects which occur at the predicted combinations of static
15 and alternating fields corresponding to the cyclotron resonance frequencies for biologically
16 important ionic species. See Reference 23, chapter 11 for a discussion of ion cyclotron
17 resonance effects of ELF fields in biological systems.

18
19 Another approach to explaining the mechanisms behind nonthermal effects is based on
20 classical linear physics theory that the energy deposited in a biological system by
21 nonthermal EMF exposure is insufficient to produce significant direct interactions with
22 biological molecules. Proponents of this theory have attempted to identify higher states of
23 order or coherence in biological systems which may be sensitive to weak interactions based
24 on concepts of theoretical physics rather than molecular or cellular biology.

25
26 Yet another model relies on solitons or solitary waves that can carry weak signals along
27 intramembranous protein particles that pass through cell membranes. See Reference 23, p.
28 226.

29
30 None of these models has gained widespread acceptance in the scientific community. The
31 primary obstacle for any such theory is to explain how weak fields, which deposit tiny
32 amounts of energy into living systems that are awash with much greater levels of random
33 thermal energy, can be detected by these systems.

APPENDIX E
DISTINCTIONS BETWEEN ELF AND RF FIELDS

4 Much of the research in the record involves exposure to EMFs at extra low frequencies
5 (ELF) associated with electric power lines and appliances (e.g., 60 Hz) rather than
6 radiofrequencies (RF) at which BACTC will transmit (856 MHz). The following text
7 describes differences between EMF at extra low frequencies and radiofrequencies and
8 quotes extensively from Reference 24, pp. 2-5 through 2-20.

9
10 Extremely low frequency (ELF) fields range from 3 Hz to 300 Hz (wavelengths of 10⁹ to
11 10⁴ kilometers). The radiofrequency (RF) range is generally defined as 10,000 Hz to 300
12 gigahertz (GHz) (1 GHz = one billion Hz) (wavelengths of 1 millimeter to 100 meters).
13 ELF and RF fields interact differently with the body.

14
15 ELF fields vary so slowly that they can be considered quasi-static when interacting with a
16 human body, because the dimensions of the body are very small with respect to the
17 wavelength of the field.

18
19 Radiofrequency fields oscillate thousands to billions times more rapidly than ELF fields,
20 and their interactions with the body are more complex. The body can absorb significant
21 amounts of energy from RF fields, because the body is a lousy antenna; that is, it absorbs
22 energy from the electromagnetic field, re-radiates or reflects a portion of the energy, and
23 dissipates the rest through resistive and dielectric losses.

24
25 In real objects, like the human body, both the dielectric constant and conductivity vary with
26 frequency. When the body is exposed to an external RF electric field, an internal electric
27 field is produced which in turn drives internal currents. The distribution of current inside
28 the body may be even more complex than for the case of ELF exposures. Internal electric
29 field strength varies in a fashion similar to the SAR curve. At whole-body resonance the
30 internal electric field strength is comparable in magnitude to the external electric field
31 strength. This result is in sharp contrast to the case of ELF exposures where internal
32 electric field strengths are orders of magnitude lower than external fields. Reference 24,
33 pp. 2-5 through 2-10; Reference 15, pp. 538-542.

1 ELF and RF radiation differ in the amount of energy contained in the radiation by a factor
2 million times. Consequently it would be inappropriate to directly extrapolate effects of
3 exposure to RF EMFs from studies of the effects of ELF EMFs, at least in the absence of a
4 reliable biological mechanism to explain the manner in which EMFs cause cancer.
5 Reference 14, p. 5.

6
7 Based on the foregoing differences between ELF and RF EMFs and their interaction with
8 biological systems, inferences about the effect of RF EMFs based on evidence about ELF
9 EMFs are not reasonable when not supported by a plausible model or laboratory evidence
10 linking the two.

11
12 MBHA disputes the foregoing conclusion. Dr. Marino argues that EMF-induced effects
13 are largely independent of the type of field to which a subject is exposed. He reasons this
14 from observations that common physiological responses are produced by spectrally
15 different EMFs. Reference 20, pp. 985-990. However his conclusion is contrary to many
16 observations that show different effects result from exposure to different kinds of EMFs.
17 His conclusions also conflict with basic concepts about energy. His conclusions also are
18 based in part on experiments that suffer from methodological flaws and poor controls,
19 particularly experiments in Eastern Europe that are consistently disapproved by Western
20 scientists for their lack of rigor and lack of replicability. It is unclear whether Dr. Marino
21 believes ELF and RF fields have the same effect. The weight of authority is that they do
22 not. At best, a given form of EMFs may be suggestive of effects of another form. For that
23 reason, and because so much of the literature about EMF effects involves ELFs, research
24 about ELFs is cited in this report where sufficiently qualified. But, in general, the
25 consultant believes the substantial weight of authority is that the case for nonthermal effects
26 of RF EMFs needs to be made based on that form of EMFs.
27

EMPLOYEES
Title 1

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2d 278, 129 P.2d

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12 Cal.App. 370.

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113) 165 Cal.

GENERAL LIABILITY PROVISIONS
Div. 3.6

§ 820.2

Superintendent of streets of a city, was liable for any damages resulting from his negligence in repairing a sewer, notwithstanding his official capacity. *Butler v. Ashworth* (1894) 102 Cal. 663, 36 P. 922.

17. Utilities

Action against city for fire damage wherein it was alleged that city employees while acting in scope of their employment closed water valve and left it closed without notifying either city fire department or plaintiff so that water was not available at hydrants to extinguish fires in vicinity of plaintiff's premises was barred by governmental immunity. *Heleck and Moran v. City of Modesto* (1966) 49 Cal.Rptr. 377, 64 Cal.2d 229, 411 P.2d 105.

18. Pleadings

Prison supervisory personnel with no personal involvement was not alleged could not be held responsible for act of their subordinates under California law. *Milton v. Nelson, C.A.9* (Cal.)1975, 527 F.2d 1158.

Allegations that county medical center was requested to perform blood test for acquired immunodeficiency syndrome (AIDS) after police officer was possibly exposed to AIDS virus, but that medical center tested blood for hepatitis instead of AIDS and discarded remaining unused blood sample, were sufficient to form basis for negligence action in absence of some immunity applicable to county medical center's employees. *Smith v. County of Kern* (App. 5 Dist. '993) 25 Cal.Rptr.2d 716, 20 Cal.App.4th 1826, review denied.

Under Public Officers Liability Act (repealed), allegations of complaint and proof in addition to those required to state cause of action against city under Public Liability Act were required as against city councilmen and officers. *Barsroom v. City of Redley* (App. 4 Dist. 1940) 38 Cal. App.2d 413, 10: P.2d 743.

Plaintiff suing public officers for alleged negligence was required to bring complaint within: *Stats.1919, p. 756, § 1* imposing liability on officers. *Shannon v. Fleishacker* (App. 1931) 116 Cal.App. 258, 2 P.2d 837, hearing denied 116 Cal.App. 258, 3 P.2d 1020.

19. Evidence

In action against officers of irrigation district for damages for death of plaintiffs' minor daughter alleged to have been caused by dangerous condition of structure across canal, evidence was insufficient to prove notice by officers of the dangerous condition as required by *Stats.1919, p. 756, as basis of recovery. Osborne v. Imperial Irr. Dist.* (App. 1935) 8 Cal. App.2d 622, 47 P.2d 798.

Evidence, in action for damages against directors of irrigation district for alleged negligence and misconduct in failing, refusing, and neglecting to supply plaintiff with necessary water, sustained finding that damage accruing to plaintiff's rice crop was not caused by any willful violation of duty by said directors or through any negligence or misconduct on their part. *Nissen v. Coult* (App. 3 Dist. 1929) 96 Cal.App. 611, 274 P. 602.

20. Damages, generally

Award of \$12,000 compensatory damages to plaintiff who proved that, without any justification associated with a legitimate police function, police officer severely beat him while holding him in a helpless position on the ground, was supported by evidence. *Scruggs v. Haynes* (App. 1 Dist. 1967) 60 Cal.Rptr. 355, 252 Cal. App.2d 256.

21. Punitive damages

County officials were liable to same extent as private individuals for their alleged intentional infliction of emotional distress so that allegations in employees' complaint relating to punitive damages should not have been stricken. *Runyon v. Superior Court (Franco)* (App. 4 Dist. 1986) 232 Cal.Rptr. 101, 187 Cal.App.3d 878.

Award of \$5,000 punitive damages against defendant policeman would not be set aside as improper where plaintiff proved that, without any justification associated with a legitimate police function, the officer severely beat him while holding him in a helpless position on the ground. *Scruggs v. Haynes* (App. 1 Dist. 1967) 60 Cal.Rptr. 355, 252 Cal.App.2d 256.

§ 820.2. Discretionary acts

Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

(Added by Stats.1963, c. 1681, p. 5269, § 1.)

Legislative Committee Comments—Senate

This section restates the pre-existing California law. *Lipman v. Brisbane Elem. School* (1955) 55 Cal.2d 224, 11 Cal.Rptr. 97, 359 P.2d 465 (1961); *Hardy*

Consulting Group, Inc.
TELECOMMUNICATIONS

RECEIVED BY
APR 11 1996 10:36

NOTICE OF TRANSMITTAL

DATE: April 9, 1996

DELIVERED BY:

TO: Marin County Planning Department
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

HAND MAIL XX
PICK-UP
OVERNIGHT

FROM: James Calkins

RE: Pacific Bell Mobile Services' Personal Communications Services (PCS) Site
SF306 located at 242 / 260 Redwood Highway in Mill Valley

THE FOLLOWING DOCUMENTS ARE ENCLOSED:

- One (1) Zoning/Development Application
- One (1) Environmental Review Submission
- One (1) Application Check in the amount of \$3,895
- One (1) Owner Authorization
- One (1) Noise Information
- One (1) Photograph Simulation
- One (1) Evaluation of Radio Frequency Exposure Conditions
- One (1) 11"x17" set of drawings
- Eight (8) 24"x36" sets of drawings

PURPOSE/COMMENTS:

Please find enclosed the above referenced materials for our proposed Personal Communications Services (PCS) installation at 242 / 260 Redwood Highway in Mill Valley. The materials enclosed are in response to the preliminary review by your staff.

Please let me know at your earliest convenience if the application is complete or if you need additional information.

Thank you for your assistance.



Consulting Group, Inc.
TELECOMMUNICATIONS SERVICES

RED Exhibit D

RECEIVED
JUL 19 1995
PACIFIC BELL
COMMUNICATIONS

OWNER/AGENT AUTHORIZATION

I do hereby authorize PACIFIC BELL MOBILE SERVICES and its authorized agent, JM CONSULTING GROUP, INC., to act as "Applicant" in the processing of all applicable applications, permits, and other related activities, including applying for, receiving, and copying as-built drawings and microfilm from City or County Archives, associated with the permitting/entitlement of a Personal Communications System (PCS) facility in the City of Mill Valley and in the County of Marin, on the property described below:

PBMS Project Number: SF-306

Name: Richardson Bay

APN: 052 247 01

Property Address: 242 Shoreline Hwy.

Owner/Owner's Representative: St. O.P. Signature

Date: 8-28-95

Please print name and title: Steve Price Pending Owner

RED Exhibit D

Consulting Group, Inc.
TELECOMMUNICATIONS

RECEIVED BY
JUN 13 P 3:31

NOTICE OF TRANSMITTAL

DATE: April 8, 1996

DELIVERED BY:

TO: Marin County Planning Department
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

**HAND
MAIL
PICK-UP
OVERNIGHT**

FROM: James Calkins

RE: Noise Information

THE FOLLOWING DOCUMENTS ARE ENCLOSED:

One (1) Noise Dispersion Figure
One (1) Sound Intensity Levels Chart

PURPOSE/COMMENTS:

Pursuant to your request, I am providing information on the noise levels emitted from Personal Communications Services (PCS) installations. The above referenced materials should answer your questions with regard to the noise levels of our proposed PCS installations.

You will find that emissions from PCS installations are well below ambient sound levels. The noise from Base Transceiver Stations (BTS) can most closely be compared to noise generated in a typical conversation.

Please do not hesitate to call me at (415) 737-5407 if you have further questions.

Thank you for your assistance.

Technical data for FBS 2101

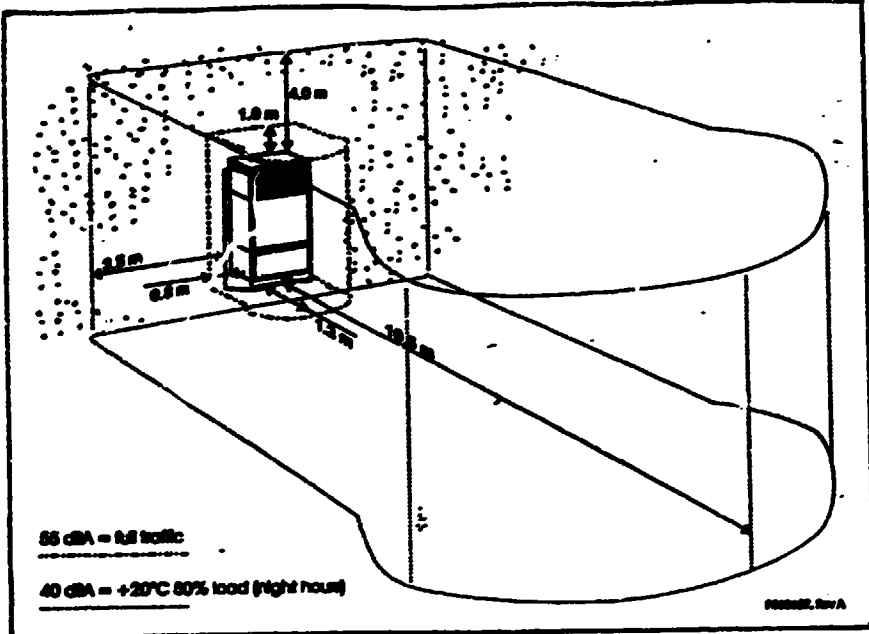


Figure 6. Noise dispersion for a wall mounted cabinet

SOUND INTENSITY LEVELS

SOUND SOURCE (DISTANCE FROM OBSERVER)	LEVEL (dB)
THRESHOLD OF PAIN	120+
AIRCRAFT ENGINE (20')	120+
AMPLIFIED ROCK MUSIC	110
THUNDER	110
PIEZOELECTRIC BUZZER (12')	108
AIR FORCE T-38 (2,500' OVERHEAD)	90
CO2 PELLET GUN (12')	90
DIGITAL ALARM CLOCK (12')	85
ELECTRIC TYPEWRITER (18')	80
AIR FORCE T-38 (1 MILE)	70
SOFT BACKGROUND MUSIC	30
QUIET WHISPER	20
THRESHOLD OF HEARING	0

THE ABOVE SHADED REGION REPRESENTS THE dB LEVEL EMITTED FROM
 BASE TRANSCEIVER STATIONS (BTS). THE MAXIMUM POSSIBLE NOISE
 INTENSITY LEVEL EMITTED IS 65 dB.

Marin County Community Development Agency

RECEIVED BY _____

Mark J. Rosenfeld, AICP, Director

MAR 9 1981

ENVIRONMENTAL REVIEW SUBMISSION COMMUNITY DEVELOPMENT

THIS APPLICATION MUST BE SUBMITTED WITH THE COMPLETED ZONING/DEVELOPMENT AND/OR SUBDIVISION APPLICATION

TO BE FILLED BY APPLICANT (Please type or print legibly)

- Assessor's Parcel No(s): 052-247-01 Zoning: BFC - RCR
- Project Address: 242 Redwood Hwy City/Zip: Mill Valley, CA 94941
- Property Owner: Steve Price Phone: (415) 388-7661
- Owner's Address: 242 Redwood Hwy City/Zip: Mill Valley, CA 94941
- Applicant: JM Consulting Group for Pacific Bell Mobile Services Phone: (415) 737-5407
(if different from owner)
- Applicant's Address: 844 Dubuque Ave. City/Zip: S. San Francisco, CA 94080

The California Environmental Quality Act (CEQA) requires an analysis of whether a proposed project will have a significant adverse impact on the environment, either individually or cumulatively with other projects. To assist the Planning Department in its review of your project, please answer the following questions to the best of your ability.

- Will the project involve any excavation, grading or filling? Yes _____ No X
If yes, describe _____
- What is the present use of the site: Helipad
If agriculture, would the project result in the reduction in acreage of any agricultural crop or agricultural activity? Yes _____ No _____
If yes, explain _____
- Does the project involve a change in the course or direction of water movements or configuration of either marine or fresh water? Yes _____ No X
If yes, explain _____
- Will the project or its related activities result in the generation of hydrocarbons, odors, dust, smoke, radiation, etc.? Yes _____ No X Not Sure _____
If yes or not sure, explain _____

RED Exhibit D

5. Will the development of the project affect buildings of historic importance? Yes ___ No X (Not Sure ___)
If yes or not sure, explain _____
6. Will the development of the project affect lands preserved under an agricultural, scenic or open space contract or easement? Yes ___ No X Not Sure ___
If yes or not sure, explain _____
7. Will the development of the project result in the displacement of people or business activity? Yes ___ No X
If yes, explain _____
8. Will the project involve the provision of new off-street parking spaces? Yes ___ No X Not Applicable ___
If yes or no, explain _____

9. Will the project or its related activities have an effect on or result in a need for new systems or substantial alterations to the following utilities

	Yes	No	Not Sure
• Sewer or septic systems?	()	(x)	()
• Water for domestic use and fire protection?	()	(x)	()
• Natural gas or electricity?	()	(x)	()
• Storm water drainage?	()	(x)	()
• Solid waste disposal?	()	(x)	()
• Communication systems?	()	(x)	()
• Plant facilities for any of the above (sewer plants, microwave station, water tanks, etc.)?	()	(x)	()


If you answered yes or not sure to any of the above, explain: _____

SIGNATURE

I hereby certify that I have read this application form and that to the best of my knowledge, the information in this application and all the exhibits are full, complete, and correct. I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for denying the application, for suspending or revoking a permit issued on the basis of these subsequent representations, or the seeking of such other and further relief as may seem proper to the County of Marin.

Please see attached Owner Authorization

Signature of Owner(s)


Signature of Applicant

Date

Date

RED Exhibit D

Marin County Community Development Agency

RECEIVED BY

Mark J. Riesenfeld, AICP, Director

FD-203-9 ZONING/DEVELOPMENT APPLICATION

TYPE OF APPLICATION:

- COASTAL PERMIT
 DESIGN REVIEW
 MINOR DESIGN REVIEW
 DESIGN REVIEW EXEMPTION
 FLOATING HOME EXCEPTION*
 GENERAL PLAN/COMMUNITY PLAN AMENDMENT
 MASTER PLAN
- PRECISE DEVELOPMENT PLAN
 REZONING
 SECOND UNIT USE PERMIT
 SIGN PERMIT/REVIEW*
 USE PERMIT
 VARIANCE*
 TIDELANDS PERMIT

*Requires Supplemental Application/Information

TO BE COMPLETED BY PLANNING DEPARTMENT STAFF:

Date Received: 4-16-96 FEES:
Receipt No: 25764 Permit: DK 125.00
Received by: AT Permit: UP 2615.00
Planner Assigned: CPJ Cat. Exempt: 150.00
Concurrent Application: _____ Initial Study: 2890.00
Reviewing Authority: _____ Other: PreApp -200
Total: 2,590.00
(Make checks payable to: Marin County Planning Department)

Hearing: () Non-Hearing: ()
Assessor's Parcel No. _____ Application No.(s): DK 96-405
UP 96-406

TO BE COMPLETED BY APPLICANT: (Please type or print legibly)

- Assessor's Parcel No(s): 052-247-01 Zoning: BFC - RCR
- Project Address: 242 Redwood Hwy City/Zip: Mill Valley, CA 94941
- Property Owner: Steve Price Phone: (415) 388-7661
- Owner's Address: 242 Redwood Hwy City/Zip: Mill Valley, CA 94941
- Applicant: Bell Mobile Services Phone: (415) 737-5611
(if different from owner) JM Consulting Group for Pacific
JTM CAULKIN
- Applicant's Address: 844 Dubuque Ave. City/Zip: S. San Francisco, CA 94080
- All correspondence will be sent to the applicant. Please indicate any others to receive correspondence.
Name _____ Address: _____

- Description of Application: (specifically describe what you wish to accomplish)
Installation of Personal Communications Services (PCS) wireless
communications facility for Pacific Bell Mobile Services (PBMS).

TO BE COMPLETED BY APPLICANT: (continued)

9. State of California Hazardous Waste and Substances Sites List (C.G.C. § 65962.5)

Pursuant to California Government Code Section 65962.5(e), before a local agency accepts as complete an application for any development project, the applicant shall consult the latest State of California Hazardous Waste and Substances Sites List on file with the Planning Department and submit a signed statement indicating whether the project is located on a site which is included on the List.

Statement: I have consulted the latest State of California Hazardous Waste and Substances List on file with the Planning Department, and I have determined that the project site is (is not) included on the List.

Date of List consulted: 3/25/96

Source of the listing: _____ (To be completed only if the site is included on the List)

SIGNATURE:

I hereby certify that I have read this application form and that to the best of my knowledge, the information in this application form and all the exhibits are complete and accurate. I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for rejecting the application, deeming the application incomplete, denying the application, suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the County of Marin.

Please see attached Owner Authorization
Signature of Property Owner(s) _____ Signature of Applicant _____

I hereby authorize employees of the County of Marin to enter upon the subject property, as necessary to inspect the premises and process this application.

Please see attached Owner Authorization.
Signature of Property Owner _____

I hereby authorize the Planning Department to reproduce plans and exhibits as necessary for the processing of this application. Multiple signatures are required when plans are prepared by multiple professionals.

Please see attached Owner Authorization
Signature of Property Owner _____ Signature of Plan Preparer _____

The property involving this permit request may be subject to deed restrictions called Covenants, Conditions and Restrictions (CC&Rs) which may restrict the property's use and development. These deed restrictions are private agreements and are NOT enforced by the County of Marin. Consequently, development standards specified in such deed restrictions are NOT considered by the County when granting permits.

You are advised to determine if the property is subject to deed restrictions. If so, contact the appropriate homeowners association and adjacent neighbors about your project prior to proceeding with construction. Following this procedure will minimize the potential for disagreement among neighbors and possible litigation.

Please see attached Owner Authorization
Signature of Property Owner _____

PROPERTY TAX ASSESSMENT SUB SYSTEM--PLANNING
SORT BY OWNER NAME / SELECT BY PROPERTY
GIMMLER - PRICE 052-247-01

9/26/1996 9:39
TS6.MLRREQ
PL.CARPER

043-401-15
GOLDEN GATE BAPTIST SEM
SEMINARY DR
MILL VALLEY CA 94941

901-100-10
CRUMLEY-BENKOWITZ ASSOC
1709 BRIDGEWAY
SAUSALITO CA 94965

901-100-03
ADAMS TERESA B
240 REDWOOD HWY BERTH 3
MILL VALLEY CA 94941

901-100-04
HARRTMAN BARBARA TR
3170 VALLEY GREEN LN
NAPA CA 94958

901-100-11
GRILLER JOHN
GRILLER MARY ANN
208 SANIA RUSA AVE
SAUSALITO CA 94965

043-401-16
GOLDEN GATE BAPTIST SEM
SEMINARY DR
MILL VALLEY CA 94941

901-100-04
LEVIN LYDIA
8 JANE CHAMBERLAIN
PO BOX 252
SAUSALITO CA 94966

901-100-10
KEYS MARY M
1781 REA ST
SAN MATEO CA 94403

901-100-07
MOTT PHILIP R
240 REDWOOD HWY 7C
MILL VALLEY CA 94941

059-310-11
MARIN COUNTY OF
SAN RAFAEL CA 94901

059-310-10
MARIN COUNTY OF
SAN RAFAEL CA 94901

901-100-06
LINDGREN JIRLEY
240 REDWOOD HWY 6
MILL VALLEY CA 94941

901-100-09
TAT HONG KUNG FU ACADEMY
1854 19TH AVE
SAN FRANCISCO CA 94122

901-100-08
SIMON MARCIA
PO BOX 1004
SAUSALITO CA 94966

901-100-05
PURDY ED
PO BOX 1085
TIBURON CA 94920

9/26/1996 9:39
TS6-MBLRREG
PL-CARPER

PROPERTY TAX ASSESSMENT SUB SYSTEM--PLANNING
SORT BY OWNER NAME / SELECT BY PROPERTY
GIMMLER - PRICE 052-247-01

PAGE: 2 001
T61513P
T615111

15
-8
113

TOTAL LABEL COUNT

----- END OF REPORT FOR PROGRAM T61513P -----

RED Exhibit

TS6 MBLRREQ REQUEST MAILING ADDRESS LABELS T61511 05

Requestor: PL CARPER Time: 09/27/1996 09:05
Priority: I I = Immediate Batch Copies: 2 Output: S S = System Printer
Sort by: O O=Owner Name, P=Property, S=Owner Name within Census Tract,
 Z=Owner Name within Zip Code

Select by: P A=All Properties, C=City, M=Mapbook, P=Property,
 S=Census Tract, T=Tax Rate Area Job Id: T61511

Start Selection - End Selection Use Code (AT = all taxable codes)
90110001 TOP 90110011 TOP

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

MORE

MORE

Include Living Units: A A-All, S=1 or 2, M=3 or Greater
Report Heading: GIMMLER - PRICE 052-247-01

TS6 CMD: _____ KEY: _____

1- 2- 3- 4- 5- 6- 7-

-----END OF REPORT FOR PROGRAM:T61511 -----

*Please note -
There are 2 sets
of mailing labels for
this project - 1 from
APN Book 52 and
1 from APN Book 901*

RED Exhibit

Planner: GDMMLER

Project: K...E/PAC BELL

04/29/96

Labels: 11

05224703
COUNTY OF MARIN
P O BOX 4186
SAN RAFAEL, CA 94913

05224707
COUNTY OF MARIN
P O BOX 4186
SAN RAFAEL, CA 94913

05224708
COYNE CHARLES B
1000 FRONT STREET
SACRAMENTO, CA 95814

05222704
DIVERSIFIED REALTY SVCS INC
P.O. BOX 3016
SAN RAFAEL, CA 94912

05222709
LITTORAL DEVELOPMENT CO
260 REDWOOD HWY
MILL VALLEY, CA 94941

05222601
LITTORAL DEVELOPMENT CO
260 REDWOOD HWY
MILL VALLEY, CA 94941

05224401
LITTORAL DEVELOPMENT CO
260 REDWOOD HWY
MILL VALLEY, CA 94941

05222714
MARIN COUNTY OF
SAN RAFAEL, CA

05224701
MITCHELL CLAYTON E T TR ETAL
KEEGIN SUSAN TR ETAL
300 MONTGOMERY ST STE 1050
SAN FRANCISCO CA 94104

05224702
MITCHELL CLAYTON E T TR ETAL
KEEGIN SUSAN TR ETAL
300 MONTGOMERY ST STE 1050
SAN FRANCISCO CA 94104

05224501
STECKLER DOROTHY J ETAL
ESTATE OF GEORGE KAPPAS ETAL
C/O STECKLER-PACIFIC CO INC
100 GATE SD ROAD
SAUSALITO, CA 94965

Price

052-247-01

CAG

- 1. Steve Price - 242 Redwood Hwy.
Mill Valley 94941
- 2. JM Consulting Group for Pacific Bell Mobile Services
844 Dubuque Ave.
So. San Francisco 94080

3. Tam Valley of Richardson Bay clubs

4. Env Sec

5. DP list

* BOS Appeal Notices
FC Stat reports to:

- ✓ Joyce Linn POB 734 MV 94942
- ✓ Richard F. ... POB ... MV ...
- ✓ ... 240 ... MV 94941
- ✓ ... POB 1004 Saus 94046 on labels

Send BOS letters to:

~~6. KENNETH STOCKERD
COMMUNICATION SYSTEMS DEVELOPMENT, INC.
24001 WATKINS ST.
HAYWARD, CA 94544~~

→ ✓ Christie Craft
5320 Toline
Sacramento, CA 95841

aka Jack Krystal
1277 4th St. Suite 202
SR CA 94701

7. Bill Jarvis
Commun. Systems Development, Inc.
(same as)

8. Jim Proeme
P.O. Box 701
Occidental, CA 95465 } wants copy of minutes

COMMUNITY DEVELOPMENT AGENCY

COUNTY OF MARIN

PLANNING DIVISION

PROJECT TYPE & YEAR: DX/UP 1996

A.P.N.: 052-247-01

NAME

PRICE, STEVE / PAC BELL



24X

052-247-01

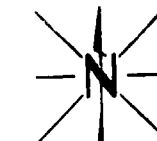
GENERAL NOTES

- DRAWINGS ARE NOT TO BE SIGNED, SEVEN DURING THE PRESENCE, AND THE SET OF PLANS IS SUBJECT TO BE USED FOR CONSTRUCTION PURPOSES ONLY, WHICH WOULD PREVENT THE ORIGINAL CONTRACTOR'S SCOPE OF WORK FROM BEING EXCEEDED. THE ORIGINAL CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES, STRUCTURES, AND ANY OTHER ITEMS NECESSARY TO COMPLETE INSTALLATIONS AS DESCRIBED HEREIN.
- PRIOR TO THE SUBMISSION OF BIDS, THE CONTRACTOR SHOULD VISIT THE JOB SITE AND FAMILIARIZE HIMSELF WITH ALL CONDITIONS AFFECTING THE PROPOSED PROJECT, WITH THE CONSTRUCTION AND CONTRACT DOCUMENTS, FIELD CONDITIONS AND CONFIRM THAT THE PROJECT MAY BE ACCOMPLISHED AS SHOWN PRIOR TO PROCEEDING WITH CONSTRUCTION. ANY DISCREPANCIES, OR DISCREPANCIES ARE TO BE BROUGHT TO THE ATTENTION OF THE ARCHITECT/ENGINEER.
- THE ORIGINAL CONTRACTOR SHALL RECEIVE WRITTEN AUTHORIZATION TO PROCEED WITH CONSTRUCTION PRIOR TO STARTING WORK ON ANY ITEM NOT CLEARLY DEFINED BY THE CONSTRUCTION DOCUMENTS/ CONTRACT DOCUMENTS.
- THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE PROJECT DESCRIBED HEREIN. THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES AND PROCEDURES AND FOR COORDINATING ALL PORTIONS OF THE WORK UNDER THE CONTRACT.
- THE CONTRACTOR SHALL INSTALL ALL EQUIPMENT AND SYSTEMS ACCORDING TO MANUFACTURER'S/ VENDOR'S SPECIFICATIONS UNLESS NOTED OTHERWISE OR WHERE LOCAL CODES OR ORDINANCES TAKE PRECEDENCE.
- ALL WORK PERFORMED ON PROJECT AND MATERIALS INSTALLED SHALL BE IN STRICT ACCORDANCE WITH ALL APPLICABLE CODES, REGULATIONS, AND ORDINANCES. CONTRACTOR SHALL OBTAIN ALL NOTICES AND CONSENTS WITH ALL LOCAL, MUNICIPAL, STATE, FEDERAL AND LOCAL ORDINANCES OF ANY PUBLIC AUTHORITY, MUNICIPAL AND UTILITY COMPANY SPECIFICATIONS, AND LOCAL AND STATE JURISDICTIONAL CODES BEARING ON THE PERFORMANCE OF THE WORK.
- GENERAL CONTRACTOR SHALL FURNISH AT THE PROJECT SITE A FULL SET OF CONSTRUCTION DOCUMENTS UPDATED WITH THE LATEST REVISIONS AND ADDENDUMS OR CLARIFICATIONS FOR THE USE BY ALL PERSONNEL INVOLVED WITH THE PROJECT.
- THE STRUCTURAL COMPONENTS OF THIS PROJECT SITE/ FACILITY ARE NOT TO BE ALTERED BY THIS CONSTRUCTION PROJECT UNLESS NOTED OTHERWISE.
- DETAILS INCLUDING HEREIN ARE INTENDED TO SHOW THE GENERAL OF WORK. MORE SPECIFICATIONS MAY BE REQUIRED TO FULLY COMPLY WITH THE REQUIREMENTS, AND SUCH SPECIFICATIONS SHALL BE INCLUDED AS PART OF THE SCOPE OF WORK.
- SEE PENETRATIONS THROUGH FIRE-RATED AREAS WITH U.L. LISTED OR FIRE RESISTANT APPROVED MATERIALS IF APPLICABLE TO THIS FACILITY AND ON PROJECT SITE.
- PROVIDE A PORTABLE FIRE EXTINGUISHER WITH A RATING OF NOT LESS THAN 2-A OR 2-B RATED TO BE KEPT AT ALL TIMES THROUGHOUT THE PROJECT AREA DURING CONSTRUCTION.
- THE CONTRACTOR SHALL MAKE NECESSARY PROVISIONS TO PROTECT EXISTING UTILITIES, STRUCTURES, FENCES, CURBS, ETC. BEFORE CONSTRUCTION. UPON COMPLETION OF WORK, CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES, STRUCTURES, FENCES, CURBS, ETC. THAT MAY HAVE OCCURRED DURING THE PROJECT.
- CONTRACTOR SHALL SEE TO IT THAT GENERAL WORK AREA IS KEPT CLEAN AND MAINTAIN PROPER ACCESS TO ALL UTILITIES, STRUCTURES, FENCES, CURBS, ETC. AND REMOVE DEBRIS AND WASTE EQUIPMENT NOT SPECIFIED AS REMAINS ON THE PROPERTY. THE WORK AREA SHALL BE KEPT CLEAN AND FREE FROM SPILL, DIRT, OR DEBRIS AT ALL TIMES.
- THE ARCHITECT/ENGINEER HAS MADE EVERY EFFORT TO SET FORTH IN THE CONSTRUCTION AND CONTRACT DOCUMENTS THE COMPLETE SCOPE OF WORK. CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES, STRUCTURES, FENCES, CURBS, ETC. IN THE PROJECT AREA. CONTRACTOR SHALL NOT EXCEED THE CONSTRUCTION FROM COMPLETION OF THE PROJECT AND APPROVATIONS IN ACCORDANCE WITH THE INTENT OF THESE DOCUMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR NOTIFYING IN WRITING THE ARCHITECT/ENGINEER OF ANY DISCREPANCIES, OR DISCREPANCIES PRIOR TO THE SUBMISSION OF CONTRACTOR'S PROPOSAL. IN THE EVENT OF DISCREPANCIES, THE CONTRACTOR SHALL PRICE THE MORE COSTLY OR EXTENSIVE WORK, UNLESS DIRECTED OTHERWISE.


PACIFIC BELL®

Mobile Services

260 REDWOOD HIGHWAY
MILL VALLEY, CA
SF306



DATE: 11/06/95		
ENGINEER: WMW		
DRAWN BY: SD		
REVISIONS		
DATE	DESCRIPTION	INITIAL

PACIFIC  BELL®
Mobile Services
4420 ROSEWOOD DR. BLDG. 2, 4TH FLOOR
PLEASANTON, CALIFORNIA 94588

LEGEND

- A — ANTENNA CABLE (ABOVE GROUND)
- T — TELEPHONE SERVICE (ABOVE GROUND)
- E — POWER SERVICE (ABOVE GROUND)
- G — GROUND RING (ABOVE GROUND)
- A — ANTENNA CABLE (BURIED)
- T — TELEPHONE SERVICE (BURIED)
- E — POWER SERVICE (BURIED)
- G — GROUND RING (BURIED)
- (E) EXISTING
- (N) NEW
- T.O.R. TOP OF ROOF
- T.O.P. TOP OF PARAPET
- T.O.A. TOP OF ANTENNA

PROJECT SUMMARY

APPLICANT / LESSEE:
PACIFIC BELL MOBILE SERVICES
844 DUBUQUE AVE
SOUTH SAN FRANCISCO, CA 94080

PROPERTY OWNER:
MITCHELL CLAYTON E TRU; KEEON SUSAN TRUST
300 MONTGOMERY STREET #1050
SAN FRANCISCO, CA 94104

PROJECT DESCRIPTION:
INSTALL NEW PCS ANTENNA ARRAY AND
RADIO EQUIPMENT MODULE ON EXISTING ROOF

EXISTING PROPERTY INFORMATION:
ASSESSOR'S PARCEL NO.: 052-247-01

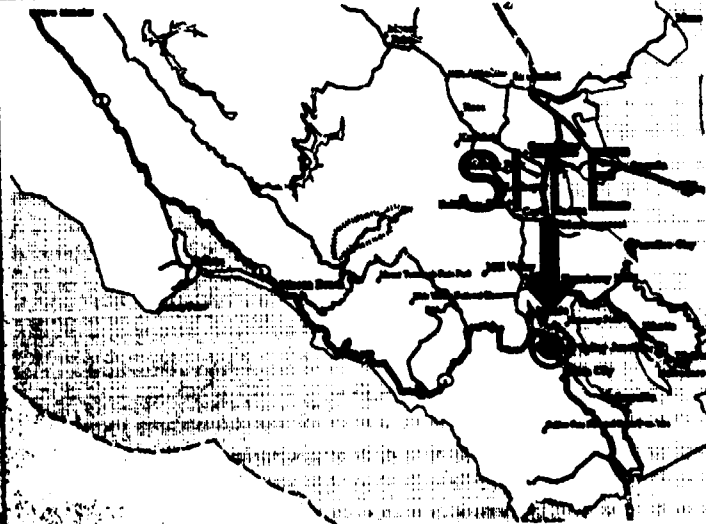
SHEET INDEX

T-1 PROJECT INFORMATION
A-1 PLANS / ELEVATIONS
C-1 ROOF SURVEY

VICINITY MAP



GENERAL LOCATION MAP



CONTACTS

PACIFIC BELL MOBILE SERVICES:
844 DUBUQUE AVE
SOUTH SAN FRANCISCO, CA 94080

INDEPENDENT CONTRACTOR & APPLICATION CONTACT:
J.M. CONSULTING GROUP, INC.
844 DUBUQUE AVE
SOUTH SAN FRANCISCO, CA 94080
DAVID PRICE (415) 737-5319

ARCHITECT:
ON DESIGN ARCHITECTS
844 DUBUQUE AVE
SOUTH SAN FRANCISCO, CA 94080

ELECTRICAL ENGINEER:

CIVIL ENGINEER

STRUCTURAL ENGINEER

CONSTRUCTION CONTRACTOR

**EXHIBIT
"A"**

APPROVAL SIGN OFF OF WORKING DRAWINGS			
	DATE	PRINT NAME	SIGNATURE
RF ENGINEERING	11/16/95	W. Morrison	<i>[Signature]</i>
RF MANAGER	11/16/95	W. Morrison	<i>[Signature]</i>
SITE DEVELOPMENT MANAGER	11/16/95	W. Morrison	<i>[Signature]</i>
INDEPENDENT CONTRACTOR - SAR	11/16/95	W. Morrison	<i>[Signature]</i>
INDEPENDENT CONTRACTOR - LUP	11/16/95	W. Morrison	<i>[Signature]</i>
INDEPENDENT CONTRACTOR - PE	11/16/95	W. Morrison	<i>[Signature]</i>

If the image appears cut-off or is not as legible as the overlay, it's due to the poor quality of the original document.

RECEIVED

APR 09 1996

COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

260 Redwood HWY
Mill Valley, CA
94941

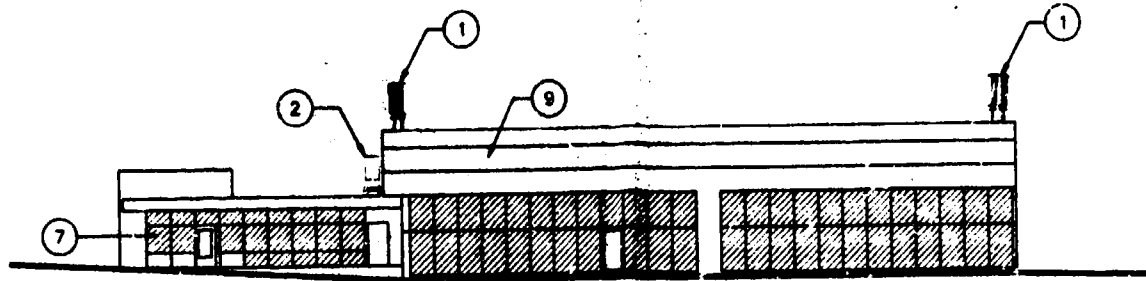
SF306

PROJECT INFORMATION

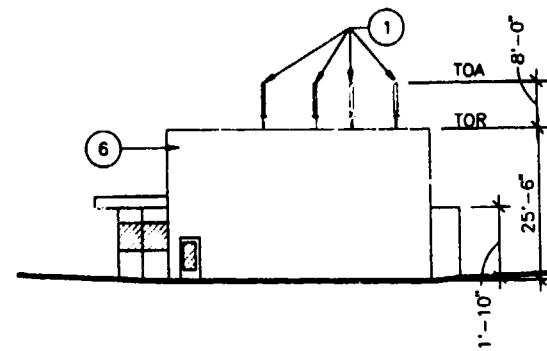
T-1

FILE COPY

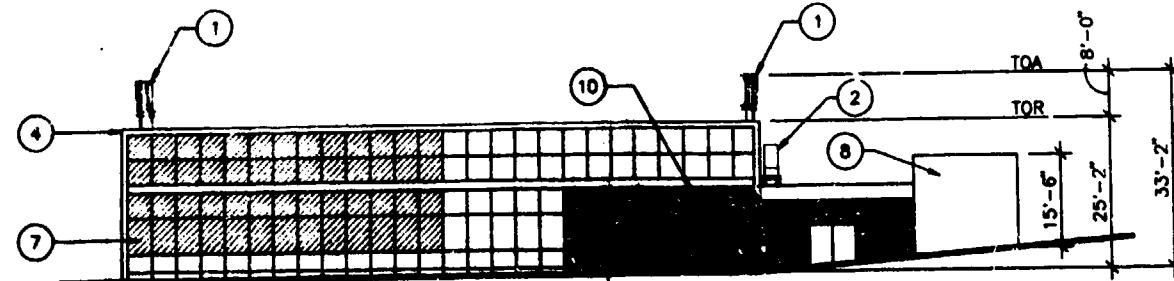
052-247-01



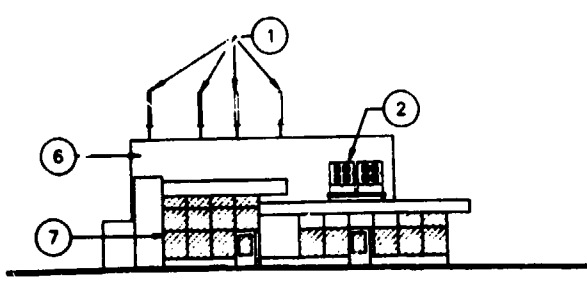
EAST ELEVATION
Scale: 1/16" = 1'-0"



NORTH ELEVATION
Scale: 1/16" = 1'-0"



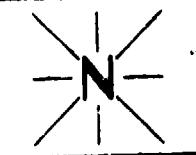
WEST ELEVATION
Scale: 1/16" = 1'-0"



SOUTH ELEVATION
Scale: 1/16" = 1'-0"

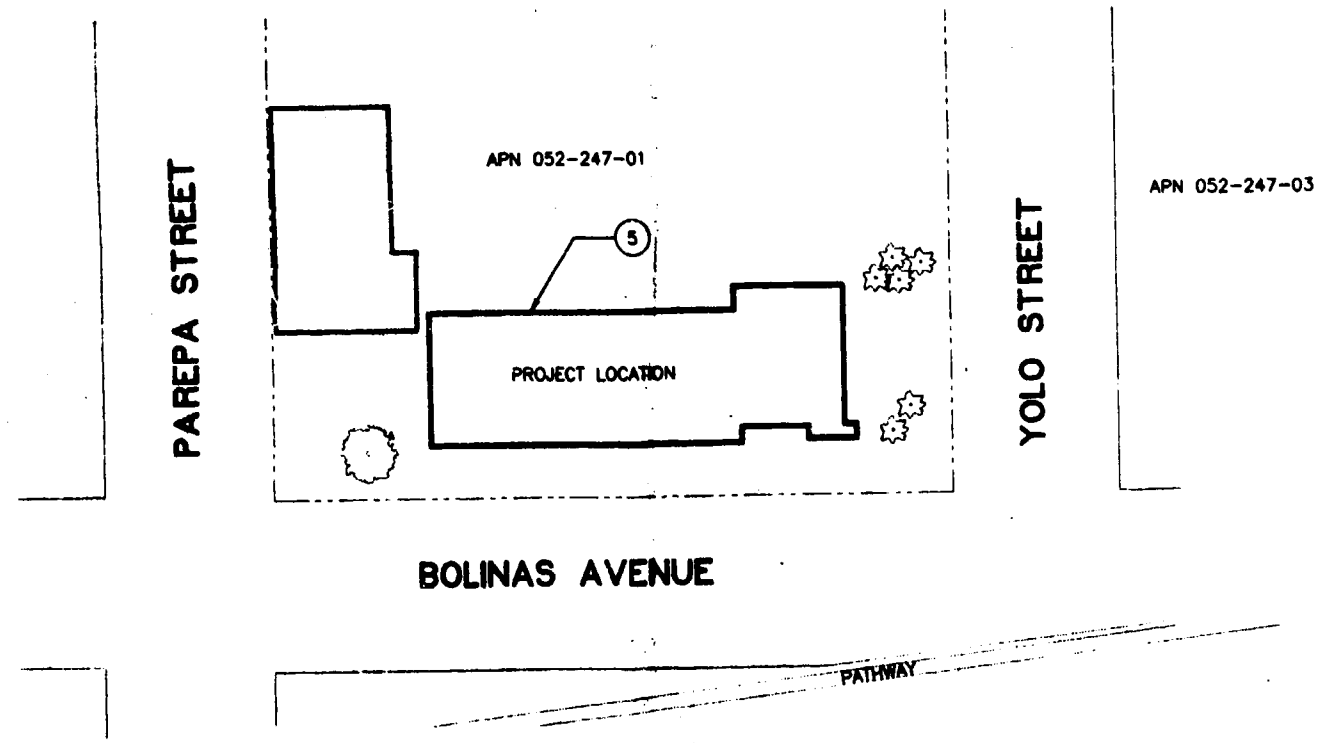
KEY NOTES:

- (This sheet only)
- ① PROPOSED ANTENNA(S)
 - ② PROPOSED BTS (2 UNITS)
 - ③ CONDUIT & CABLE TRAY RUNS
 - ④ ROOF LINE
 - ⑤ BUILDING LINE
 - ⑥ STUCCO
 - ⑦ GLAZING
 - ⑧ BLUE TILE MURAL
 - ⑨ PLYWOOD PANELS
 - ⑩ WOODEN SCREEN

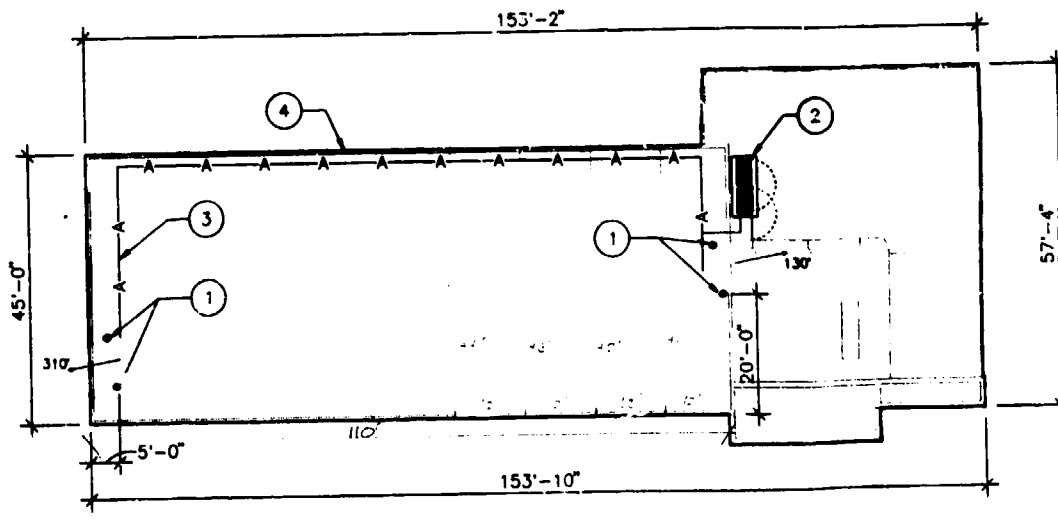


DATE: 09/29/95		
ENGINEER: WMW		
DRAWN BY: SD		
REVISIONS		
DATE	DESCRIPTION	INITIAL

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 4420 ROSEWOOD DR. BLDG. 2, 4TH FLOOR
 PLEASANTON, CALIFORNIA 94588



SITE PLAN
Scale: 1/32" = 1'-0"



ROOF PLAN
Scale: 1/16" = 1'-0"

260 Redwood HWY
 Mill Valley, CA
 94941

SF306

PLANS / ELEVATIONS

A-1

24X

052-247-01

- NOTE:
1. AZIMUTHS SHOWN HEREON ARE GEODETIC AZIMUTHS.
 2. DISTANCES SHOWN ARE GRID DISTANCES.
 3. TO OBTAIN GRID AZIMUTHS, ROTATE DRAWING 01°13'58.04" CLOCKWISE ABOUT THE NORTHWEST BUILDING CORNER.
 4. HORIZONTAL DATUM: NAD 83 (1992)
 5. VERTICAL DATUM: NAVD 88
 6. EPOCH DATE: 1991.35
 7. DATE OF SURVEY: 8/31/95

PROPERTY INFORMATION
 BUILDING OWNER: LITORAL DEVELOPMENT COMPANY
 BUILDING LOCATION: 260 REDWOOD HIGHWAY, MILL VALLEY, CALIFORNIA

N

DATE: 8/31/95

ENGINEER:

DRAWN BY: NORTHERN

REVISIONS

DATE	DESCRIPTION	INITIAL

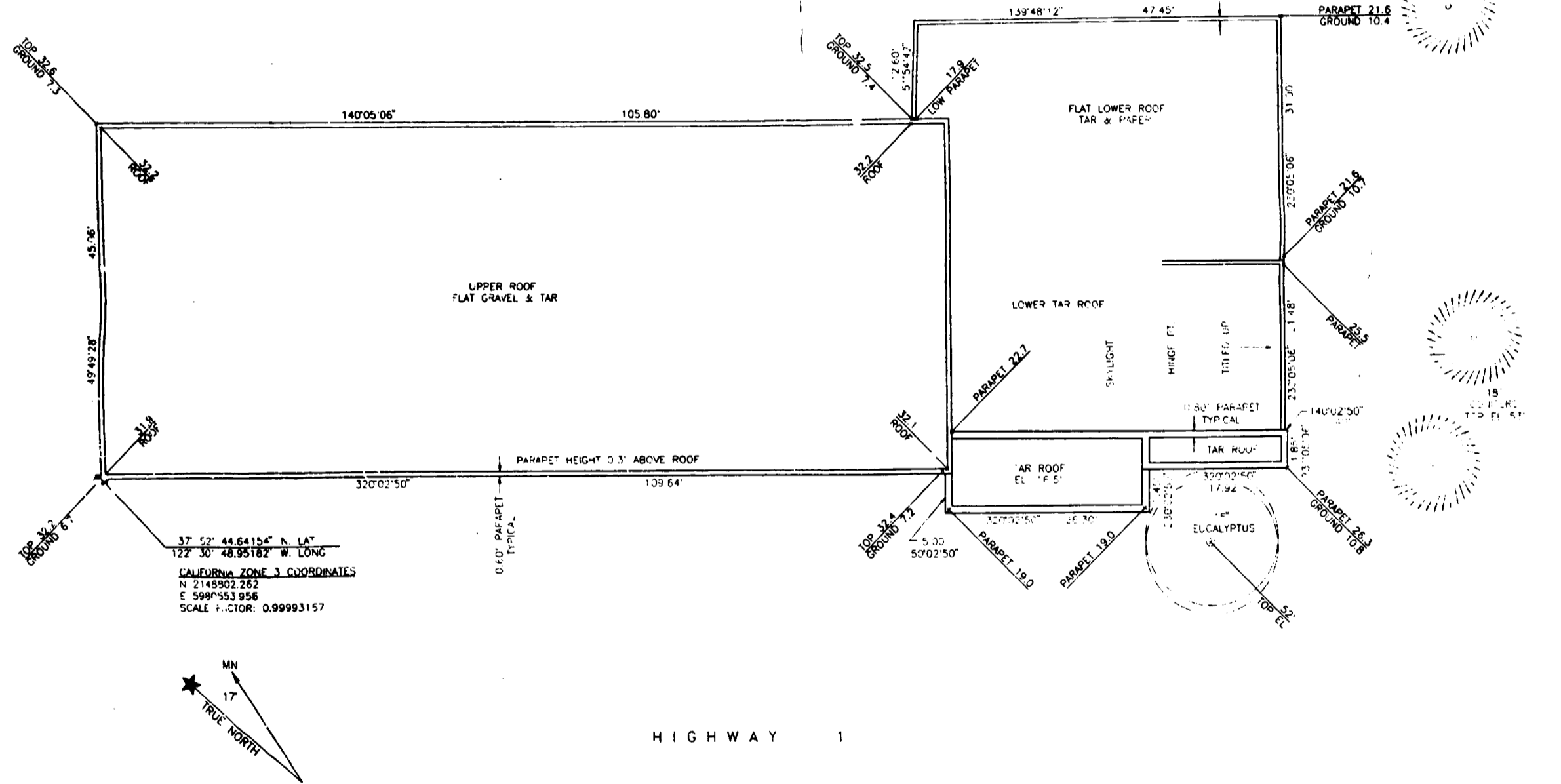
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Mobile Services
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 PLEASANTON, CALIFORNIA 94588

SEA PLANE TOURS
 260 REDWOOD HWY.
 MILL VALLEY, CA.

SF-306
 SCALE: 1/8" = 1'

ROOF SURVEY

C-1

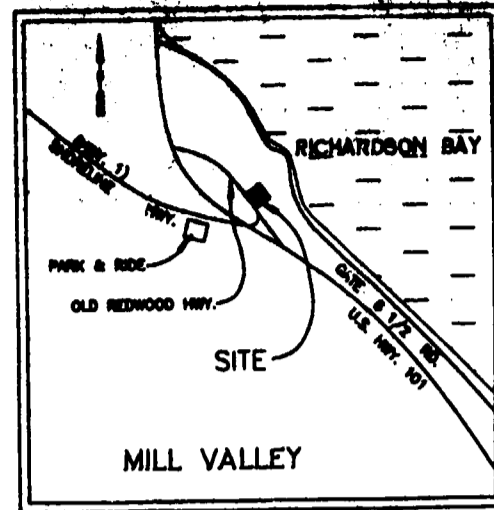


SURVEYOR'S STATEMENT
 THE INFORMATION SHOWN HEREON REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT AT THE REQUEST OF J.M. CONSULTING GROUP, INC. ON AUGUST 23, 1995.

ROGER A. NORTHERN P.L.S. 3954 _____ DATE _____

24X

052-247-01

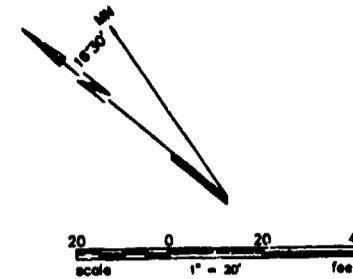


EASEMENT NOTES

① 17' WIDE PAVED EASEMENT PER BOOK 2881 O.L. PAGE 081, MARIN COUNTY RECORDS.

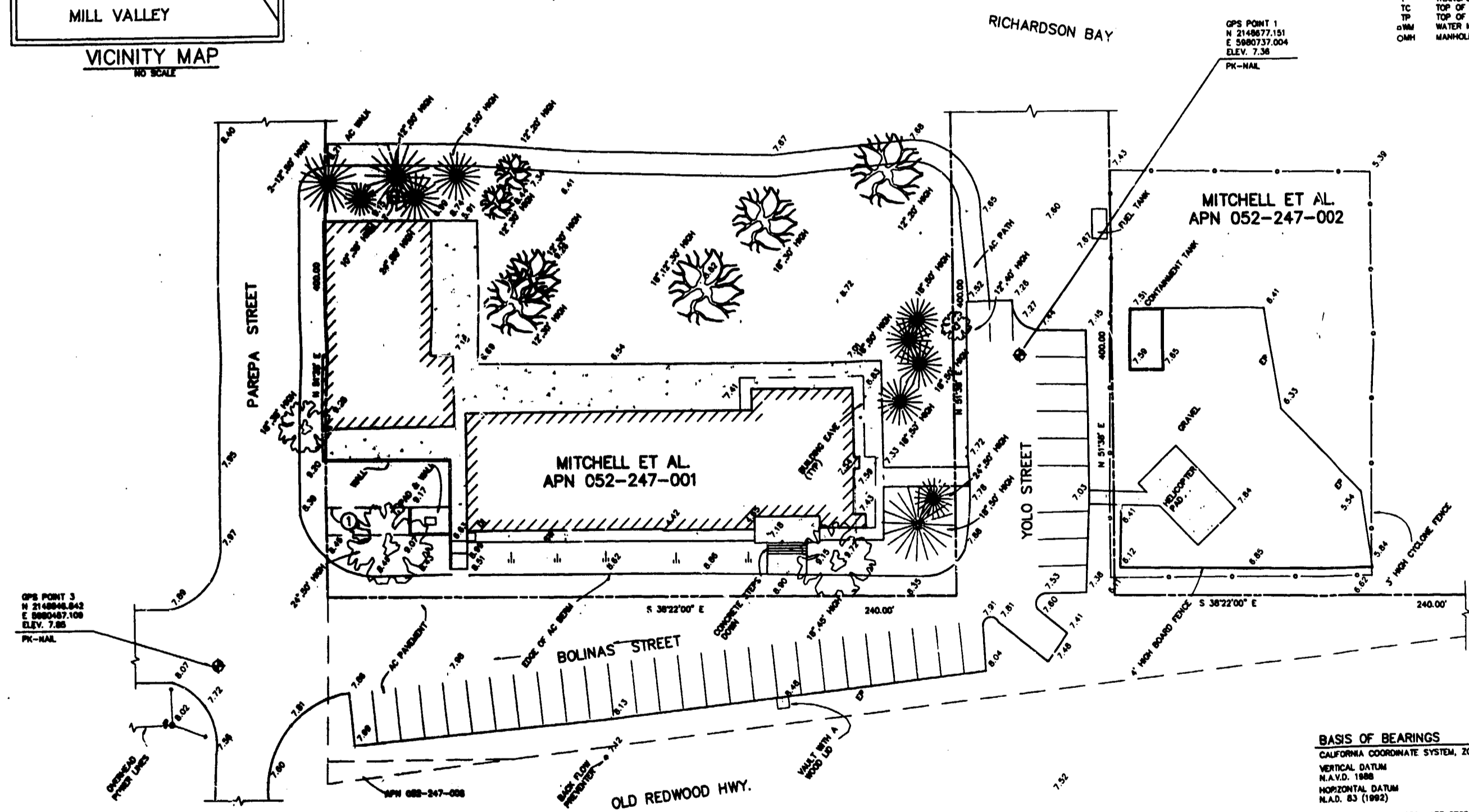
RECORD TITLE INDIRECT BASED UPON A PRELIMINARY TITLE REPORT PREPARED BY FIRST AMERICAN TITLE COMPANY OF LOS ANGELES, CA. ORDER NO. 8-1843088, DATED SEPTEMBER 27, 1995. THE FINDER ASSUMES NO RESPONSIBILITY IN THE TITLE RESEARCH.

NOTE:
THE SHOWN BOUNDARY IS PREDICATED ON AN ANALYSIS OF EXISTING IMPROVEMENTS AND RECORD DATA. IT IS NOT, AND SHOULD NOT BE TAKEN AS A FORMAL BOUNDARY DETERMINATION.



SYMBOLS & LEGEND

- EUCALYPTUS TREE
- PINE TREE
- ORNAMENTAL TREE
- AREA LIGHT
- STREET LIGHT
- GUY ANCHOR
- WATER VALVE
- FIRE HYDRANT
- TRAFFIC SIGN
- CATCH BASIN
- DROP INLET
- ELECTRICAL BOX OR VAULT
- EDGE OF PAVEMENT
- GAS METER
- JOINT UTILITY POLE
- NATURAL GROUND
- TRANSFORMER
- TOP OF CONCRETE
- TP TOP OF PAVEMENT
- WM WATER METER
- MM MANHOLE



BASIS OF BEARINGS
CALIFORNIA COORDINATE SYSTEM, ZONE THREE
VERTICAL DATUM
N.A.V.D. 1988
HORIZONTAL DATUM
N.A.D. 83 (1992)
AZIMUTHS SHOWN HEREON ARE GEODETIC.
DISTANCES ARE GRID DISTANCES
CONVERGENCE ANG. = -11.78662" AT GPS POINT 1
SCALE FACTOR = 0.99993165 AT GPS POINT 1
LAT. 37°52'43.444" - AT GPS POINT 1
LONG 122°50'46.636" - AT GPS POINT 1

SURVEYOR'S STATEMENT
THE INFORMATION SHOWN ON THIS SITE MAP IS THE RESULT OF A SURVEY BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT AT THE REQUEST OF JI CONSULTING GROUP, INC. IN AUGUST, 1995.

DAVID A. MILLER
L.S. 5000
SEP. 12/94/95
COUNCIL OF CALIFORNIA SURVEYORS

PRINTED
OCT 19 1995

DATE: 10/19/95		
ENGINEER: WMW		
DRAWN BY: DNW		
REVISIONS		
DATE	DESCRIPTION	INITIAL

PACIFIC BELL®
Mobile Services
4420 ROSEWOOD DR. BLDG. 2, 4TH FLOOR
PLEASANTON, CALIFORNIA 94598

RICHARDSON BAY
260 REDWOOD HWY.
MILL VALLEY, CA.

SF-306-02
SCALE: 1" = 20'

SITE PLAN

C-2

24X

MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY

BRIAN C. CRAWFORD, DIRECTOR

ZONING/DEVELOPMENT APPLICATION

TYPE OF APPLICATION:

- | | |
|--|---|
| <input type="checkbox"/> MASTER PLAN | <input type="checkbox"/> DESIGN REVIEW |
| <input type="checkbox"/> PRECISE DEVELOPMENT PLAN | <input type="checkbox"/> MINOR DESIGN REVIEW |
| <input type="checkbox"/> COASTAL PERMIT | <input type="checkbox"/> SECOND UNIT PERMIT |
| <input type="checkbox"/> FLOATING HOME ADJUSTMENT* | <input type="checkbox"/> SIGN PERMIT/REVIEW* |
| <input type="checkbox"/> FLOATING HOME ARCHITECTURAL DEVIATION | <input checked="" type="checkbox"/> USE PERMIT |
| <input type="checkbox"/> GENERAL/COMMUNITY PLAN AMENDMENT | <input type="checkbox"/> VARIANCE |
| <input type="checkbox"/> REZONING | <input type="checkbox"/> TIDELANDS PERMIT |
| <input type="checkbox"/> TREE REMOVAL PERMIT | <input type="checkbox"/> LARGE FAMILY DAY-CARE PERMIT |

***Requires Supplemental Application/Information**

TO BE COMPLETED BY PLANNING DEPARTMENT STAFF:

FEES:

Date Received: _____ Permit: _____
 Receipt No: _____ Permit: _____
 Received By: _____ Cat. Exempt: _____
 Planner Assigned: _____ Initial Study: _____
 Concurrent Application: _____ Other: _____
 Reviewing Authority: _____

TOTAL: _____

(Make checks payable to: Marin County Planning Department)

Hearing: Non-Hearing:

Note: Fees may not be refunded in full if the application is withdrawn.

Assessor's Parcel No.(s) _____ Application No.(s): _____

TO BE COMPLETED BY APPLICANT: (Please type or print legibly)

- Assessor's Parcel No(s): 052-247-01,-02 Zoning: _____
- Project Address: 242 Redwood Highway City/Zip: Mill Valley, CA 94941
- Property Owner: Steven Price Phone: (415) 850-5200
- Owner's Address: 242 Redwood Highway City/Zip: Mill Valley, CA 94941
- Owner's Email: steve@priceandmulvihill.com
- Applicant: Steven Price Phone: Same
- Applicant's Address: Same City/Zip: Same
- Applicant's Email: Same
- All correspondence will be sent to the applicant. Please indicate any others to receive correspondence:
 Name: _____ Address: _____

TO BE COMPLETED BY APPLICANT: (continued)

10. Description of Application: *(Specifically describe the application and include additional sheets if needed.)*

Use Permit Renewal-No Changes

11. State of California Hazardous Waste and Substances Sites List (C.G.C. § 65962.5)

Pursuant to California Government Code Section 65962.5(e), before a local agency accepts as complete an application for any development project, the applicant shall consult the latest State of California Hazardous Waste and Substances Sites List on file with the Planning Department and submit a signed statement indicating whether the project is located on a site which is included on the List.

Statement: I have consulted the latest State of California Hazardous Waste and Substances List on file with the Planning Department, and I have determined that the project site **is / is not** (circle one) included on the List.

Date of List consulted: 9/19/12

Source of the listing: _____ (To be completed only if the site is included on the List)

SIGNATURE:

The property involving this permit request may be subject to deed restrictions called Covenants, Conditions and Restrictions (CC&Rs) which may restrict the property's use and development. These deed restrictions are private agreements and are NOT enforced by the County of Marin. Consequently, development standards specified in such deed restrictions are NOT considered by the County when granting permits. I understand that it is my responsibility to determine if the property is subject to deed restrictions and if so, I certify that I have contacted the appropriate homeowners association and adjacent neighbors about the project prior to proceeding with construction. Following this procedure will minimize the potential for disagreement among neighbors and possible litigation.

I hereby authorize employees, agents, and/or consultants of the County of Marin to enter upon the subject property upon reasonable notice, as necessary, to inspect the premises and process this application. I understand that in cases where the development site is large or cannot be easily seen or accessed from the nearest public road, the Community Development Director may determine that a publicly noticed site inspection by the decisionmaker is necessary. In this instance, I hereby authorize the conduct of such inspections of the premises upon reasonable notice.

I hereby authorize the Planning Department to reproduce plans and exhibits as necessary for the processing of this application. I understand that this may include circulating copies of the reduced plans for public inspection. Multiple signatures are required when plans are prepared by multiple professionals.

I hereby certify that I have read this application form and that to the best of my knowledge, the information in this application form and all the exhibits are complete and accurate. I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for rejecting the application, deeming the application incomplete, denying the application, suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the County of Marin. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this application was signed at

Mill Valley, California on 9/19/12.

Signature of Property Owner(s) and Applicant(s)

Signature of Plan Preparer

MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

3501 Civic Center Drive, Room 308, San Rafael, CA 94903-4157

Telephone (415) 499-6269 Fax (415) 499-7880

RED Exhibit D

Receipt Date: 10/04/2012
Receipt #: 2013-0131
Project Date: 10/04/2012
Project ID: 2012-0302

Applicant: COMMODORE MARINA LLC
240 242 REDWOOD HWY
MILL VALLEY, CA 94941
ATTN: STEVE PRICE

Project Originated by: ALVES

Check Submitted by: COMMODORE MARINA LLC
Assessor's Parcel: 052-247-01

Payments and/or Transfers

Use Permit Renewal	UP-13-5	R SAP Fund/GL: 10000 / 2111325	1,450.00

Payment on : 10/04/2012 09:58:08 AM			
Check number: 006322			
Amount: 1,450.00			
Address: COMMODORE MARINA LLC			
242 REDWOOD HIGHWAY			
MILL VALLEY, CA 94941			
Phone: 415 850-5200			

Project Cover Sheet **RED Exhibit D**

Project Name COMMODORE MARINA LLC

Planner

Parcel 052-247-01

Applicant COMMODORE MARINA LLC

Owner COMMODORE MARINA LLC

240 242 REDWOOD HWY

240 242 REDWOOD HWY

MILL VALLEY, CA 94941

ATTN: STEVE PRICE

MILL VALLEY, CA 94941

Club List/Design Review Board: N/A

Mailing List labels attached

Environmental Secretary

Interested Parties

Name	Company	Address	City, State Zip
------	---------	---------	-----------------

NO INTERESTED PARTIES

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

San Francisco Bay Conservation and Development Commission **RED Exhibit E**

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

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

Via Certified and Electronic Mail

October 27, 2022

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

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

Dear Lou Vasquez:

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

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

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

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



Seaplane Investment, LLC
Enforcement Case ER2019.063.00

Page 2
October 24, 2022
RED Exhibit E

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

Sincerely,

DocuSigned by:

7A7D306B857043F
ADRIENNE KLEIN

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

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

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

AK/mm

RED Exhibit E

San Francisco Bay Conservation and Development Commission

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

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

Sent Via Certified and Electronic Mail

October 27, 2022

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

SUBJECT: Notice of Complaint for Administrative Civil Penalties

BCDC Case Number: ER2019.063.00

Permit Numbers: 1973.014.04 and M1985.030.01

Date Mailed: October 27, 2022

35th Day after Mailing: December 1, 2022

60th Day after Mailing: December 26, 2022

Enforcement Committee Hearing Date: December 21, 2022

COMPLAINT FOR ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES

ENFORCEMENT CASE ER2019.063.00

Seaplane Investment, LLC

(Respondent)

**Guidance to
Respondent**

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

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



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

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

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

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

Complaint for Administrative Imposition of Civil Penalties

I. Person or persons believed responsible for illegal activity:

Seaplane Investment, LLC

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

- A. Violation 1. Between August 20, 2021, 30 days following the July 21, 2021, property purchase date, and January 6, 2022, Respondent violated Permit 1973.014.03, Standard Condition IV.C, Permit Assignment, by failing to submit a fully executed permit assignment form and supporting legal documentation.
- B. Violation 2. Between August 20, 2021, 30 days following the July 21, 2021, property purchase date, and January 6, 2022, Respondent violated Permit M1985.030.00, Standard Condition IV.E, Permit Assignment, by failing to submit a fully executed permit assignment form and supporting legal documentation.
- C. Violation 3. Between August 31, 2021, to January 25, 2022, Respondent violated Authorization Section I.C, Deadlines for Commencing and Completing Authorized Work, of Permit 1973.014.03 by failing to complete houseboat remodeling and relocation work in SF Bay by August 31, 2021, the date of expiration, and continuing the work with an expired permit.



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

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

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

Seaplane Investment, LLC; County of Marin

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

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

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

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

- A. Permit 1973.014.04, which applies to APN 052-247-01 (Block 167), was originally issued to Commodore Marina, LLC, on August 24, 1973. Standard Condition IV.C of the permit states "The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit." VR&C Exhibits 2A-E.
- B. Permit M1985.030.01, which applies to APN 052-247-02 (Block 164), was originally issued to Commodore Helicopters, Inc., and Walter Landor on August 25, 1988, and amended once on December 28, 1989. Standard Condition IV.E states "The rights



derived from this amended permit are assignable as provided herein An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the original application and request for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.” VR&C Exhibit 3.

- C. On July 21, 2021, title for both parcels transferred from Commodore Marina LLC to Seaplane Investment LLC. VR&C Exhibit 1.
- D. On October 8, 2021, BCDC issued a letter to Shannon Sullivan, Authorized Representative, Seaplane Investment LLC, and Mr. Sharp, Counsel to Seaplane Adventures, LLC, commencing standardized fines pursuant to Regulation 11386 for five violations, three of which are relevant to this proceeding:
 - a. Violations 1 and 2. Two permit assignments necessary because of the title transfer; and
 - b. Violation 3. Failing to complete houseboat renovations and relocation by the August 31, 2021, deadline authorized by BCDC Permit 1973.014.03. VR&C Exhibit 4.
- E. On January 3, 2022, Lou Vasquez, Manager, Seaplane Investments LLC, submitted two, executed permit assignment forms for BCDC Permits 1793.014.01 and M1985.030.01, respectively, resolving Violations 1 and 2 as described in the letter dated October 8, 2021. VR&C Exhibit 5.
- F. On December 17, 2021, Respondent submitted photographic evidence that the houseboat had been relocated to the authorized position and the two pilings and work platform had been removed from SF Bay and, on January 25, 2022, BCDC issued Permit 1973.014.04, the after-the-fact extension of completion time to complete the houseboat remodeling and relocation project, thereby resolving Violation 3 as described in the letter dated October 8, 2021. VR&C Exhibit 2E.
- G. On August 2, 2022, BCDC informed Respondent to pay \$12,300 in standardized fines for Violations 1 through 3. The letter stated that the duration of Violations 1 and 2 was from October 8, 2021, to January 3, 2022, resulting in a standardized fine of \$3,000 per assignment violation. The letter stated that the duration of Violation 3 was from October 8, 2021, to January 25, 2022, resulting in standardized fine of \$6,300 for the violation. The letter directed Respondent to submit a check for \$12,300 made payable to the SF Bay Fill Clean-up and Abatement Fund within days or by September 2, 2022. VR&C Exhibit 6.
- H. Between August 2, 2022, and September 21, 2022, Respondent did not submit the \$12,300 dollar standardized fine.



- I. On September 21, 2022, staff issued a Final Notice Letter to Respondent stating that Respondent had 35 days, or until October 26, 2022, to resolve the penalty portion of the violations using standardized fines. VR&C Exhibit 7.
- J. Between September 21, 2022, and October 26, 2022, Respondent did not submit the \$12,300 dollar standardized fine.
- K. As of the date of mailing of this Complaint, Respondent has not submitted the standardized fines accrued for two permit assignment violations that persisted between August 20, 2021 (30 days following July 21, 2021, the property purchase date), and January 3, 2022, and for working on a houseboat remodeling and relocation project with an expired permit between August 31, 2021, and January 25, 2022.

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

McAteer-Petris Act Section 66632(a)

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

Permit 1973.014.01, Standard Condition IV.C, Permit Assignment

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

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

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

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

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



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

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

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

X. List of staff exhibits:

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

Exhibit 02A: Permit 1973.014.01

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

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

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

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

Exhibit 03: Permit M1985.030.01

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

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

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

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

XI. Additional Administrative Record Documents

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

Property Detail Report

For Property Located At :

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

RED Exhibit E

Exhibit 01



RealQuest

Owner Information

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

Location Information

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

Owner Transfer Information

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

Last Market Sale Information

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

Prior Sale Information

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

Property Characteristics

Year Built / Eff: 1954 / Total Rooms/Offices
Gross Area: 14,562 Total Restrooms:
Building Area: 14,562 Roof Type:
Tot Adj Area: Roof Material:
Above Grade: Construction:
of Stories: Foundation:
Other Improvements: Building Permit Exterior wall:
Basement Area:

Garage Area:
Garage Capacity:
Parking Spaces:
Heat Type:
Air Cond:
Pool:
Quality:
Condition:

Site Information

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

Tax Information

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

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

Property Tax: \$21,240.20
Tax Area: 90019
Tax Exemption:

RED Exhibit E



2021-0047902
Recorded Exhibit E

RECORDING REQUESTED BY:

Old Republic Title Company

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

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

When Recorded Mail Document and Tax Statements to:

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

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

Grant Deed

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

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

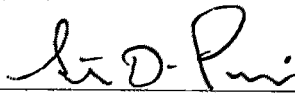
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Commodore Marina, LLC

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

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

Date: July 21, 2021

Commodore Marina, LLC, a California limited liability company

By: 
Steven D. Price, its sole member

RED Exhibit E

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

State of California
County of Sonoma

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

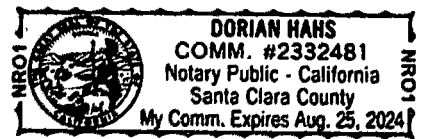
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: *Dorian Hahs*

Name: Dorian Hahs
(Typed or Printed)

(Seal)



RED Exhibit E

ORDER NO. : 0224054343

EX. A REF. PG. 1

EXHIBIT A

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

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

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

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

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

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

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

Property Detail Report

For Property Located At :
,, CA

RED Exhibit E



RealQuest

Owner Information

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

Location Information

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

Owner Transfer Information

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

Last Market Sale Information

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

Prior Sale Information

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

Property Characteristics

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

Site Information

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

Tax Information

Total Value: \$112,841
Land Value: \$112,841
Improvement Value:
Total Taxable Value: \$112,841

Assessed Year: 2021
Improved %:
Tax Year: 2021

Property Tax: \$24,294.50
Tax Area: 90018
Tax Exemption:

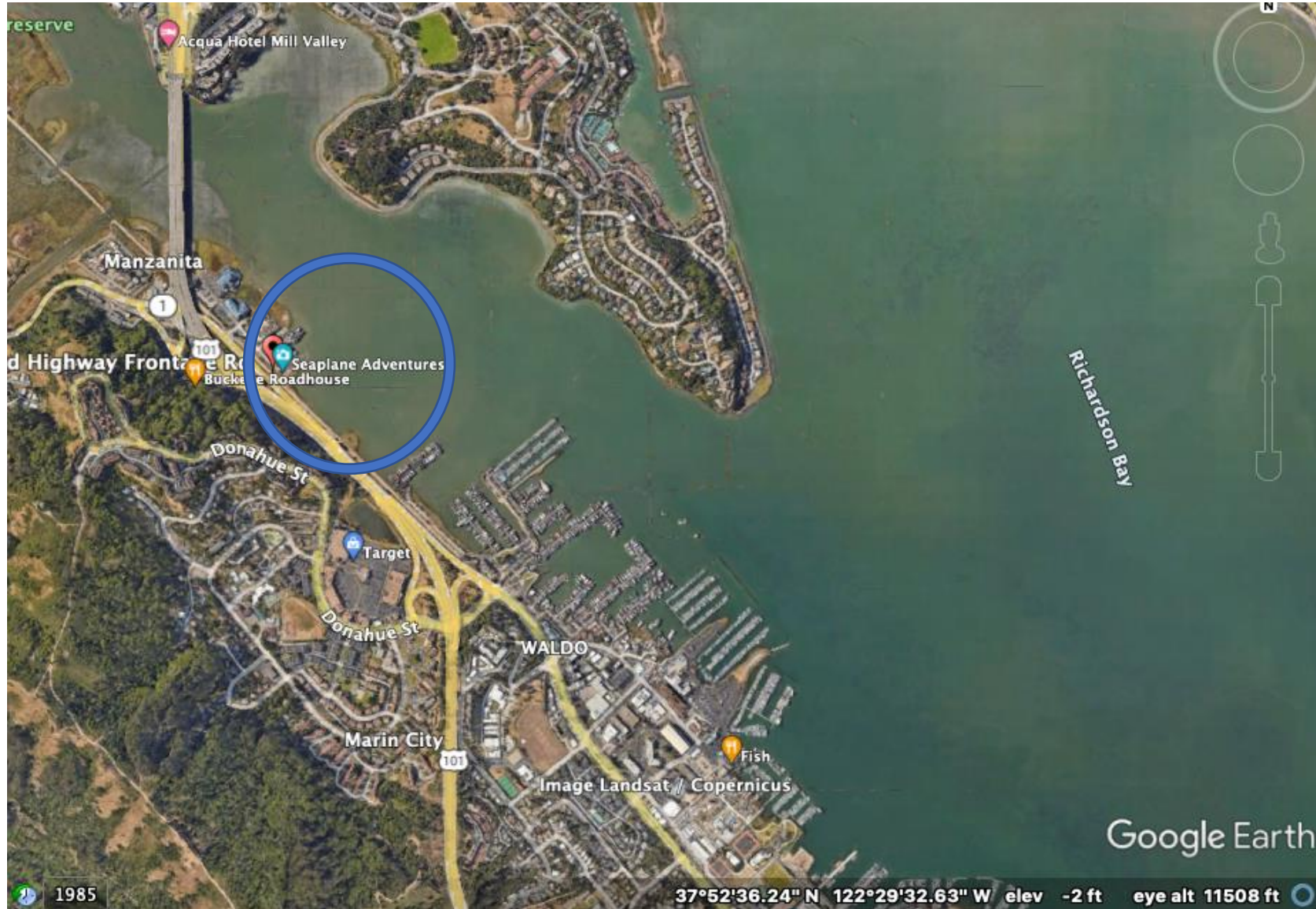
RED Exhibit E

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



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

RED Exhibit E



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

RED Exhibit E



November 21, 2017

Exhibit 02A

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

ATTENTION: Steve Price

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

Dear Mr. Price:

Enclosed please find an original of BCDC Amended Permit No. 1973.014.01, stamped "BCDC Original," and one copy, stamped "Permittee's Copy," both executed by the Executive Director, incorporating the amendment requested in Mr. Harold Hedelman's letter dated September 26, 2017. In the amended permit, deleted language has been ~~struck through~~ and added language has been underlined.

I am issuing this amendment, which is included in the attached amended permit, on behalf of the Commission and upon the following findings and declarations:

1. This amendment to the permit is issued pursuant to Regulation Section 10810 upon the same criteria provided for the issuance of administrative permits in that the project authorized by this amendment, is a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).
2. The amendment to the permit is consistent with the San Francisco Bay Plan and the McAteer-Petris Act because the proposed project will not adversely affect the Bay nor public access to and enjoyment of the Bay consistent with the project.

You must (1) **complete** the acknowledgment section of the amended permit stamped "BCDC Original," which indicates that you have read and that you understand all of the terms and conditions of the amended permit, and (2) **return** that entire executed "BCDC Original" to the Commission's office within the ten-day time period. The copy stamped "Permittee's Copy" should be retained by you for your records along with the Notice of Completion and Declaration of Compliance form, which you must return to the Commission upon project completion.

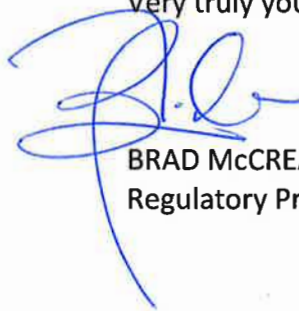
Furthermore, your permit contains special conditions which require you to take certain specific actions. Please understand that **no** work may commence on the project until the permit stamped "BCDC Original" is executed and returned to the Commission. Until the Commission receives the executed permit, Mr. Hedelman does not have the necessary authorization for the work authorized under the permit. The commencement of any work within the Commission's jurisdiction without the necessary authorization from the Commission is a violation of the McAteer-Petris Act and could subject you to substantial fines.

Steve Price
Commodore Marina, LLC
November 21, 2017
Page 2

RED Exhibit E

If you should have any questions regarding the amended permit or the procedure outlined above, please contact Erik Buehmann of our staff at 415-352-3645 or erik.buehmann@bcd.ca.gov.

Very truly yours,



BRAD McCREA
Regulatory Program Director

Enc.

BM/EB/ra

cc: Harold Hedelman

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

NOTICE OF COMPLETION AND DECLARATION OF COMPLIANCE

San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Ladies and Gentlemen:

You are hereby informed that the work authorized by the above-referenced amended permit was completed on _____.

I have personally reviewed the terms and conditions of the amended permit, the final plans approved by or on behalf of the Commission, and the completed project and hereby certify that the project is in compliance with all terms and conditions of the amended permit and conforms to the plans previously reviewed and approved by or on behalf of the Commission. I further certify that all conditions of the amended permit, particularly with regard to plan review, public access areas and improvements, recordation, open space restrictions and other special conditions have been met.

I, _____, hereby declare under penalty of perjury that the foregoing is true and correct and that if called upon to testify to the contents of this notice, I would so testify.

Executed on this _____ day of _____, 20____,

at _____, California.

(Permittee)

Print Name and Title

PERMIT NO. 1973.014.01

(Originally Issued on August 24, 1973, and Amended Through November 21, 2017)

AMENDMENT NO. ONE

Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, California 95448

On August 16, 1973, the San Francisco Bay Conservation and Development Commission, by a vote of 17 affirmative, 0 negative, approved the resolution pursuant to which this the original permit is was issued. Moreover, on November 21, 2017, pursuant to Commission Regulation Section 10822, the Executive Director approved Amendment No. One, to which this amended permit is hereby issued:

I. Authorization

A. **Authorized Project.** Subject to the conditions listed below, the applicant is granted permission to do the following work and make the following uses of its property at 240 Redwood Highway, County of Marin:

1. In the Bay.

- a. Construct a bulkhead and place clean earth fill landward of the existing vegetation line on approximately 6,600 square feet of Bay surface on Block 167, Yolo and Parepa Streets, for landscaped public access and landscaping to improve shoreline appearance (Original Authorization);
- b. Construct an approximately 2-foot high berm on the northeast and southeast edge of the Marin County Heliport landing pad and install a flap-gate on the east corner of the berm (Original Authorization);
- c. Reconstruct an existing 2,880-square-foot houseboat mooring pier by removing 23 existing piles, driving 17 new piles and installing sewer lines and other service utilities (Original Authorization);
- d. Realign 11 existing houseboat berths along the reconstructed dock and connect all houseboats to a shoreside sewer system (Original Authorization); and
- e. Remove an abandoned houseboat and barge (Original Authorization);
- f. Relocate the existing approximately 1,528-square-foot houseboat moored at Berth #11 approximately 18 feet to the northwest to remove it from an existing right-of-way, including removing eight 18-inch-in-diameter wood pilings and installing, using, and maintaining approximately four new pilings (12-inches-in-diameter) at the new berth (Amendment No. One);

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 2

- g. Install, use, and maintain an approximately 112-square-foot float for access to the boat at Berth #11 and remove the existing approximately 224-square-foot float (Amendment No. One);
- h. Renovate, use, and maintain the houseboat at Berth #11, including replacing two first-story and two second-story cantilevered decks, totaling approximately 247 square feet to replace removed decking totaling approximately 96 square feet (Amendment No. One); and
- i. Relocate the existing houseboat at Berth #10 7-8 feet to the northwest to accommodate the relocated houseboat at Bert #11 and extend, use, and maintain an approximately 35-square-foot float to provide access to the houseboat Berth #10 (Amendment No. One).

2. Within the 100-foot shoreline band

- a. Place clean earth fill over approximately 29,000 square feet (0.66 acre) of shoreline surface area to establish proper grade for drainage and to be used for project landscaping, landscaped public access, and automobile circulation and parking (Original Authorization);
- b. Renovate an existing office building for continued office use (Original Authorization);
- c. Remove abandoned boat hulls, a concrete pad with wooden boat frames, a concrete apron, and a restaurant building (Original Authorization); and
- d. Construct and use 17 parking spaces for houseboat residents (Original Authorization).

B. Based on Application Dated This amended authorization is generally pursuant to, and limited by the original application dated May 9, 1973, and the letter dated August 28, 2017, requesting Amendment No. One, including all accompanying and subsequent correspondence and exhibits, and subject to the modifications required by conditions herein.

C. Deadlines for Commencing and Completing Authorized Work. The project authorized in the original authorization was to commence by March 1, 1974, and was to be diligently pursued to completion within one year of commencement, no later than March 1, 1975, unless an extension of time was granted by a further amendment of the original permit.

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 3

The project authorized in Amendment No. One must commence by November 1, 2018, and must be diligently pursued to completion within one year of commencement, no later than November 1, 2019, unless an extension of time is granted by a further amendment of this amended permit.

II. Special Conditions

The authorization made herein shall be is subject to the following special conditions, in addition to the standard conditions in Part IV:

A. **Construction Document(s).** The improvements authorized herein shall be built generally in conformance with the following documents:

1. **Amendment No. One:** "Hedelman Houseboat," prepared by Hayden Collective, dated August 10, 2016.

The permittee(s) is responsible for assuring that all construction documents accurately and fully reflect the terms and conditions of this amended permit and any legal instruments submitted pursuant to this amended authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment. No further plan review is required for the work authorized by Amendment No. One.

B. **Construction Document(s) Review and Approval.** For work not authorized in Amendment No. One, or any substantial changes to work authorized by Amendment No. One, no work whatsoever shall commence pursuant to this amended permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 45 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. If final construction document review is not completed by or on behalf of the Commission within the 45-day period, the permittee(s) may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A of this amended permit (Amendment No. One).

1. **Document Details.** All construction documents shall be labeled with: the Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas and view corridor(s) required herein. Documents for shoreline protection projects must be dated and include the preparer's certification of project safety and contact

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 4

information. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment (Amendment No. One).

2. **Conformity with Final Approved Documents.** All authorized improvements and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment (Amendment No. One).
3. **Discrepancies between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions of this [amended] permit or legal instruments, the special condition shall prevail (Amendment No. One).
4. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the amended permit and/or consultation with the Commission Design Review Board (Amendment No. One).

A. Plan Review

1. ~~No fill whatsoever shall be placed and no work whatsoever shall be performed at any location pursuant to this permit until all final site, architectural, landscaping, grading, and engineering plans (including topographic survey) for the project, including work to be performed in compliance with conditions, are submitted to, and reviewed and approved by or on behalf of the Commission. In each instance, plan review shall be completed within 30 days after receipt of the plans to be reviewed. Approval or disapproval shall be based upon conformity with this permit.~~
2. ~~Plans shall include the following items:~~
 - a. ~~A detailed site plan showing the relationship of the property, including existing and permitted improvements, to development on surrounding properties;~~

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 5

- ~~b. A detailed landscape plan showing proposed trees, shrubs, ground cover, lighting, benches, signing, trash and litter receptacles, pathway, and pathway surface material, and irrigation system;~~
- ~~c. A topographic map of the subject property on a two foot contour interval;~~
- ~~d. An engineering plan showing solid earth fill and riprap to be placed and bulkhead and berm to be constructed;~~
- ~~e. An engineering plan for the piers, including a sketch of a typical pier;~~
- ~~f. An overall bicycle/pedestrian circulation plan showing connections to appropriate facilities or possible future facilities on adjoining properties; and~~
- ~~g. An overall automobile circulation and parking plan.~~

BC. Public Access

1. Prior to the commencement of any construction, applicant by instrument(s) acceptable to counsel to BCDC, shall have irrevocably subjected its interest in the following portions of the project property to the exclusive rights of the general public for viewing, fishing, walking, sitting, bicycling, and related purposes:
 - a. In Block 167, a 30-foot wide strip of land, landward of the bulkhead authorized herein, extending from Yolo Street to the area described in ~~II.B.1b~~ Special Condition II.C.1.b below; and
 - b. A strip of land east of the area described in ~~II.B.1a~~ Special Condition II.C.1.a above, to the eastern property line of Block 167, and between Parepa Street and the southern edge of the parking spaces authorized herein to the new bulkhead authorized herein and the shoreline on south.
2. Prior to the commencement of any construction authorized by the Original Permit, the applicant shall be instrument(s) acceptable to counsel for BCDC agree to undertake, or agree with a public agency for said agency to undertake, permanent maintenance responsibility for the facilities required by Special Conditions II.C.1.a ~~II.B.1a~~ and II.C.1.b ~~II.B.1b~~.
3. Prior to the commencement of any construction authorized by the Original Permit, applicant, by instrument(s) acceptable to counsel to BCDC, shall have permanently guaranteed that the area of the applicant's property now subject to tidal action outboard of the bulkhead and berm authorized herein shall remain in its present natural state, except for the changes authorized under this permit.

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 6

4. Prior to occupation of any of the renovated offices or new houseboats authorized by the Original Permit herein, the applicant shall make the following improvements within the areas reserved for public access:
 - a. Remove debris from the shoreline of the property;
 - b. Landscape the public access area referred to in Special Condition II.C.1.a and II.C.1.b ~~II.B.1a and II.B.1b~~ according to the approved landscape plans and requirements (see ~~II.A.1~~ Special Condition II.B); and
 - c. Provide an 8-foot-wide all-weather pathway suitable for pedestrian and bicycle use leading from the existing Marin County Bike Path adjacent to Bolinas Street to the shoreline by either paralleling Yolo Street in Block 167, or if permission is received from the County of Marin, by passing within Yolo Street, hence along the shoreline to the northeast edge of the property.
 5. Applicant shall provide, if it is determined during plan review (see ~~II.A.1~~ Special Condition II.B) that on-street parking for the use of the general public using the public access area is not adequate, free parking on the project site for the general public using the public access area.
- CD. Use of Solid Fill.** The fill approved herein for Block 167, Yolo and Parepa Streets, shall be used only for project landscaping and landscaped public access, pedestrian and bicycle pathways, and in Block 164 for heliport flood control purposes only.
- DE. Houseboats.**
1. Permittee may moor not more than 11 houseboats at the project site, all within Block 167, which shall, when first moored and at all times thereafter, float at a tidal stage of +5.0 feet MLLW datum without any dredging being required to meet this condition. Any houseboat which replaces an existing moored boat (and which itself was not so moored on August 16, 1973) must be of equal or lesser draft than the houseboat it replaces.
 2. Plan approval as provided in Special Condition II.B ~~II.A.1~~ shall specify the precise location of houseboat moorings to be allowed, and have attached in writing the name of the berth lessee, name (if any) of the boat, and the dimensions and draft of the boat. No plan review approval is required for the work authorized by Amendment No. One.
 3. On or before March 1, 1975, all boats that are occupied as residences within the project area shall have received a certificate of occupancy from the County of Marin; any boat not meeting these requirements shall have been removed from the project site prior to that date. Furthermore, prior to that date all structures shown on the

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 7

application for BCDC permit as an "abandoned houseboat" shall either have received a building permit and/or certificate of occupancy from the County of Marin for use as a dwelling and be moored at one of the new berthing sites approved herein, or shall have been removed from the site.

4. Prior to the mooring of any new houseboat or the relocation of an existing houseboat to a new berth authorized herein after initial occupation of the new berth and the listing of its lessee in compliance with ~~II.D.2~~ Special Condition II.E.2 above, applicant shall provide in writing the name and address of the new lessee, name (if any) of the boat, berthing location of the boat prior to mooring at the project site and mooring location at the project site and the mooring destination of the replaced boat, and the dimensions and draft on the new or relocated boat.

EF. Water Quality (Original Authorization)

1. The water edge of the fill shall be faced with either a bulkhead or engineered riprap so as to minimize erosion, siltation, and other distribution of fill materials.
2. Provisions shall be made in plans approved pursuant to Special Condition II.B ~~II.A.1~~ for removal of all sunken debris from the shoreline and houseboats areas where there would be a hazard to water quality.
3. The reconstructed houseboat mooring pier authorized under this original permit shall contain sewage connections to an existing public sewer system (Sausalito-Marín City Sanitary District) and pumpout facilities capable of accepting all wastes from vessels serving each houseboat to be moored alongside and it shall be a condition of any lease or rental agreement written or oral, expressed or implied, that each houseboat shall be linked to the sewer line and any violation by such a houseboat of the Regional Water Quality Control Board standards shall be grounds for eviction. Each houseboat shall be sewerred within 48 hours of its berthing and remain permanently sewerred thereafter.

FG. Safety. The design and construction of all structures, solid fill, and method of securing houseboats to the pier authorized herein, shall be such as to comply with any conditions as to engineering recommended by the Commission's Engineering Criteria Review Board.

H. Water Quality Protection (Amendment No. One). The permittee shall ensure that activities authorized herein occurring in the Commission's Bay jurisdiction fully comply with the San Francisco Bay Regional Water Quality Control Board ("RWQCB") Water Quality Certification dated October 4, 2017.

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 8

III. Findings and Declarations

This amended authorization permit is issued given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

A. Solid Fill (Original Authorization).

1. As limited by Special Condition II.C ~~II.B-1~~ and II.C ~~II.D~~, the solid fill approved herewith for Block 167, Yolo and Parepa Streets would be a minor fill for improving shoreline appearance (specifically as defined in Commission Regulation Section 10700, previously Commission Regulation Section 10433).
2. The present appearance of the Bay and shoreline in the area proposed for filling is characterized by decaying structures, abandoned automobiles, ragged shore elevations, and general clutter which adversely affects enjoyment of the Bay and its shoreline within the site area itself and with adjacent areas of the Bay and shoreline; it is economically infeasible to improve that shoreline appearance without fill; the amount of filling approved (6,600 square feet) is the minimum necessary to improve shoreline appearance; and the propose project features extensive landscaping of fill and adjacent areas which improve the shoreline appearance.
3. There is no alternative upland location available for the landscaped shoreline because that is the area of existing adverse appearance.
4. The nature, location, and extent of the fill are such as to minimize harmful effects to the Bay; the fill would be safely engineered and Special Condition II.C.3 ~~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 may hold the property.

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 9

B. Houseboat and Boat Docks (Original Authorization).

1. There were on August 16, 1973, at Commodore Properties, 11 houseboat moorings. It appears that there were the same number of moorings in said areas on November 10, 1969. The permittee may have legal rights to maintain within said areas moorings for said number of houseboats, even though said houseboats will not be "floating" at all stages of the tide on all days.
 - a. No dredging will be necessary to enable the houseboats moored as authorized herein to meet the requirements of Special Condition II.E.1 H-D-1.
 - b. Dredging in these areas might adversely affect the ecology of the Bay because of the polluted nature of the sediments in the Bay bottom in this area.
 - c. Mooring of the houseboats as authorized herein would not cause a harmful amount of sedimentation and probably would not adversely affect the ecology of the Bay, and in any event, would affect the ecology far less than the dredging required to enable houseboats moored there to float at all times.
3. The relocation of houseboat berths authorized by this permit will improve the appearance of that part of Richardson Bay covered by this permit.
4. The proposed mooring of houseboats complies with the San Francisco Bay Plan policies on houseboats in that the boats will be connected to a shoreline sewage treatment facility (as established in Special Condition II.E.3 H-E-3), will require no fill except for piers on pilings and is acceptable to the local government having jurisdiction.

C. **Fill and Changes of Use Within a Shoreline Band (Original Authorization).** The project will, in the final design to be approved pursuant to Special Condition II.B H-A-1, provide maximum feasible public access to the shoreline of Richardson Bay consistent with continuation of the existing use of the property primarily for houseboat mooring and office use.

ED. Conclusion (Original Authorization). For all these above reasons, the public benefit from the fill authorized herein would clearly exceed public detriment from the loss of water areas, therefore, the project authorized by the original permit is consistent with the San Francisco Bay Plan, the McAteer-Petris Act, the California Environmental Quality Act, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone.

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 10

E. Amendment No. One. Amendment No. One authorizes the relocation of the existing houseboat at Berth #11, authorized by the original permit, to remove the houseboat from encroaching upon a "paper street" right-of-way held by the County of Marin. The houseboat at Berth #11 and the houseboat at Berth #10 will be relocated, and the floats used to access the houseboat will be replaced. The float used to access the houseboat at Berth #11 will be reduced in size, and the float for Berth #10 will be slightly expanded. Eight existing pilings will be removed and replaced with four pilings to support the houseboat at Berth #11, resulting in a net decrease of nine-square-feet of solid fill in the Bay. Amendment No. One also authorizes the renovation of the houseboat at Berth #11. The renovation will include the replacement of decks at the first and second story of the houseboat that were removed in 2016 due to the deck's dilapidated condition. The renovated decks will result in a net increase of approximately 151 square feet of new cantilevered fill.

Special Condition II.A and II.B has been revised in Amendment No. One to provide for future plan review consistent with the Commission's current practice. No further plan review is required, however, for work authorized by Amendment No. One. Special Condition II.H has been included to ensure the work is consistent with the approval by the Regional Water Quality Control Board. The work authorized by Amendment No. One is consistent with the requirements set forth in Special Condition II.E. As a result, the project authorized by Amendment No. One is consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan, including the policies related to Other Uses of the Bay and Shoreline concerning houseboats. The work authorized by Amendment No. One is consistent with the requirements related to minor fill to improve shoreline appearance, minimum fill, and alternative upland location as applied in the findings of the original permit. The project authorized by Amendment No. One constitutes a project similar to a routine repair, reconstruction, replacement, removal and maintenance that does not involve any substantial enlargement or change in use as defined in Regulation Section 10601(a)(6), that has no greater adverse impact on the Bay than the listed activities, as defined in Regulation Section 10601(e)(3), and thus, constitutes a "minor repair or improvement" for which the Executive Director may issue an amendment to an administrative permit, pursuant to Government Code Section 66632(f) and Code of Regulations Section 10820.

DE. California Environmental Quality Act. ~~Other Environmental Effects~~. Pursuant to Regulation Section 10931(a), the project authorized by ~~this~~ the original permit is ~~was~~ categorically exempt from the requirement to prepare an environmental impact report.

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 11

On September 12, 2017, the Regional Water Quality Control Board, as lead agency for the project authorized by Amendment No. One, certified that the project was categorically exempt from the requirement to prepare environmental documentation pursuant to Section 15301 of the CEQA Guidelines.

EG. Coastal Zone Management Act. The Commission further finds, declares, and certifies that the activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

IV. Standard Conditions

- A. ~~All required permissions from governmental bodies must be obtained before the commencement of work; this includes, but is not limited to, the U.S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.~~
- B. ~~Work authorized herein must commence prior to March 1, 1974, or this permit will lapse and become null and void. Such work must also be diligently prosecuted to completion and must be completed by March 1, 1975, unless an extension of time is granted by amendment of the permit.~~
- C. ~~The attached Notice of Completion shall be returned to the Commission within 30 days following completion of the work.~~
- D. ~~Work must be performed in the precise manner and at the precise locations indicated in your application.~~
- E. ~~Work shall be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. Any seepage returning to the Bay will be subject to the regulations of the Regional Water Quality Control Board.~~
- F. ~~The rights derived from this permit are assignable, but such assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the application for this permit and the permit itself, and agrees to be bound by the conditions hereof.~~

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and

Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 12

- ~~G. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or to his assignee if the permit has been effectively assigned.~~
- ~~H. This permit shall not take effect unless the permittee executes a copy of this letter and returns it to the Commission within fifteen days after the date hereof.~~
- A. Permit Execution.** This amended permit shall not take effect unless the permittee(s) execute the original of this amended permit and return it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. Permit Assignment.** The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.
- D. Permit Runs with the Land.** Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 13

- F. Built Project Must Be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.
- G. Life of Authorization.** Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.
- H. Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the amended permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- I. Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This amended permit reflects the location of the shoreline of San Francisco Bay when the amended permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this amended permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignees if the amended permit has been assigned.
- K. Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures

RED Exhibit E

PERMIT NO. 1973.014.01

Commodore Marina, LLC

(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)

AMENDMENT NO. ONE

Page 14

placed in reliance on this amended permit shall be subject to removal by the amended permittee(s) or their assignees if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

L. Permission to Conduct Site Visit. The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

M. Abandonment. If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

N. Best Management Practices

1. Debris Removal. All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee(s), its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.

2. Construction Operations. All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee(s) shall immediately retrieve and remove such material at its expense.

O. In-Kind Repairs and Maintenance. Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.

RED Exhibit E

PERMIT NO. 1973.014.01
Commodore Marina, LLC
(Originally Issued on August 24, 1973, and
Amended Through November 21, 2017)
AMENDMENT NO. ONE
Page 15

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission

By: 

BRAD McCREA
Regulatory Program Director

BM/EB/ra

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn.: Certification Section
Environmental Protection Agency
Marin County Planning Department

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____ Commodore Marina, LLC
Permittee

On _____ By: _____

Print Name and Title

Exhibit 02B

PERMIT NO. 1973.014.02
(Amendment No. Two)
TIME EXTENSION

December 20, 2019

Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, California 95448

SUBJECT: BCDC Permit No. 1973.014.02; Time Extension

To Whom It May Concern:

As requested in your letter dated November 7, 2019 and received in our office on November 14, 2019, you are hereby granted an extension of completion time until October 31, 2019 for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10822, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact me at 415-352-3645 or erik.buehmann@bcdc.ca.gov.

Very truly yours,



Erik Buehmann
Coastal Program Manager

EB/ra

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Exhibit 02C

**CORRECTED PERMIT NO. 1973.014.02
(Amendment No. Two)
TIME EXTENSION**

September 2, 2020

Commodore Marina, LLC
1083 Vine Street #244
Healdsburg, California 95448

SUBJECT: Corrected BCDC Permit No. 1973.014.02 (Amendment No. Two); Time Extension

To Whom It May Concern:

As requested in your letter dated November 7, 2019 and received in our office on November 14, 2019, you are hereby granted an extension of completion time until October 31, 2020 for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10822, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact me at 415-352-3645 or erik.buehmann@bcdc.ca.gov.

Very truly yours,

DocuSigned by:
Erik Buehmann
DE28A8DB779F45C...

ERIK BUEHMANN
Bay Resources Program Manager

EB/ra

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Exhibit 02D

April 16, 2021

Commodore Marina
1083 Vine Street #244
Healdsburg, California 95448
via email: <haroldhedelman@gmail.com>

SUBJECT: BCDC Permit No. 1973.014.003; Time Extension

Dear Mr. Harold Hedelman:

As requested in your letter dated October 29, 2020 and received in our office on November 10, 2020, you are hereby granted an extension of completion time, until August 31, 2021, for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01.

The construction activities authorized at 240 Redwood Highway in the City of Mill Valley, Marin County, shall be built generally in conformance with the plan titled "11 Commodore Heliport remodel, Remodel – Refurbish Houseboat," prepared by Leal Royce Charonnat Architect + Engineering, dated November 26, 2018.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10810, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact Rowan Yelton of our staff at 415-352-3613 or rowan.yelton@bcdc.ca.gov.

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency
Steve Price, <steve@priceandmulvihill.com>
Adrienne Klein, <adrienne.klein@bcdc.ca.gov>

LJG/RY/ra



San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdca.gov | www.bcdca.gov

January 25, 2022

Exhibit 02E

Seaplane Investment LLC
315 Linden Street,
San Francisco, CA 94102
Via email: <lou@bldsf.com>
ATTN: Lou Vasquez, Manager

SUBJECT: BCDC Permit No. 1973.014.04 (Amendment No. Four); Time Extension

Dear Mr. Vasquez:

As requested in your letter dated August 9, 2021 and received in our office August 9, 2021, you are hereby granted an after-the-fact extension of completion time, until October 31, 2021 for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01. The construction activities authorized were built generally in conformance with the plan titled "11 Commodore Heliport remodel, Remodel – Refurbish Houseboat", prepared by Leal Royce Charonnat Architect + Engineering, dated November 26, 2018.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10810, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact Rowan Yelton of our staff at 415-352-3613 or rowan.yelton@bcdca.gov.

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency
Harold Hedelman, houseboat owner, <haroldhedelman@gmail.com>
Aaron Singer, Seaplane Investment LLC, <aaron@seaplane.com>
Adrienne Klein, San Francisco Bay Conservation and Development Commission
<adrienne.klein@bcdca.gov>

LJG/RY/ra



SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

THIRTY VAN NESS AVENUE, SUITE 2011
SAN FRANCISCO, CA 94102-6080
PHONE: (415) 557-3686



BCDC Original

PERMIT NO. M85-30

(Issued on August 25, 1988, As
Amended Through December 28, 1989)

AMENDMENT NO. ONE

Exhibit 03

Commodore Helicopters, Inc.
240 Redwood Highway
Mill Valley, California 94941

ATTENTION: Eve Geertsema
Corporate Secretary

AND

Walter Lander
1001 Front Street
San Francisco, California 94111

RECEIVED
JAN 9 1990

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Gentlemen:

I. Authorization

A. Subject to the conditions stated below, the permittees, Commodore Helicopters, Inc., and Walter Lander, ~~is~~ are hereby authorized to do the following:

Location: In the Bay and within the 100-foot shoreline band, at the Commodore Heliport, 240 Redwood Highway, in an unincorporated area north of Sausalito, in Marin County.

Description: (1) In the Bay, repair a tidal flap gate; and (2) within the 100-foot shoreline band:
(a) Place 170 23 cubic yards of aggregate and pave 2,500 640 square feet of an existing heliport landing pad to protect the landing pad from ponding and flooding; and
~~(2)~~ (b) install a fuel storage tank and fuel containment area to meet safety standards; (c) pave a 1,400-square-foot area; and
(d) fill a 2,370-square-foot area with 88 cubic yards of fill. This is an after-the-fact permit ~~application~~ in that the ~~fuel storage tank~~ work has already been completed. The project would not result in any expansion of the heliport.

RED Exhibit E

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
Page 2

B. This amended authority is generally pursuant to and limited by: your (1) the original application submitted by Commodore Helicopters, Inc., dated March 12, 1985, including its accompanying and subsequent correspondence and exhibits; (2) your letter dated April 18, 1989, requesting Amendment No. One, including its accompanying and subsequent correspondence and exhibits; and (3) all conditions of this amended permit.

C. Work authorized herein for filling and paving the helipad must commence prior to June 1, 1989, or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within one year of commencement or by June 1, 1990, whichever is earlier, unless an extension of time is granted by amendment of the permit has already been completed. No additional work may be performed pursuant to this amended permit.

II. Special Conditions

The amended authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

A. Helicopter Pad and Fuel Storage Tank. The helicopter pad shall be filled and paved and the fuel storage tank shall be constructed in accordance with plans prepared by Anrig-Doyle, Civil Engineers, dated July 1, 1988, entitled "Commodore Helicopter."

III. Findings and Declarations

On behalf of the Commission, I find and declare that:

A. The project authorized by this amended permit involves the placement of small amounts of inert inorganic fill to raise the level of an existing helipad and to install a fuel storage tank and containment structure and to pave a 1,400-square-foot area which does not have an adverse effect on present or possible future maximum feasible public access to the Bay, on present or possible future use for a designated priority water-related use, and on the environment, as defined in Regulation Section 10601(b)(1), and involves routine repairs to an existing culvert in the Bay and maintenance to the area by filling and regrading to prevent ponding neither involving any substantial enlargement or change in use, as defined in Regulation Section 10601(a)(9), and thus is a "minor repair or improvement" for which the Executive Director may issue (1) a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a), and (2) an amendment to a permit, pursuant to Regulation Section 10810.

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PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
Page 3

B. The improvements authorized in Amendment No. One were installed prior to any BCDC authorization being granted. After the work had come to the attention of the staff, the staff met with the permittees on March 30, 1989, and informed them that they may be in violation of the McAteer-Petris Act and that they needed to obtain a BCDC permit for the improvements. At the same time, the staff opened Enforcement Case ER89-14 for the possible violation. This amended permit authorizes all of the unauthorized improvements the Commission is aware of. Therefore, once the permittees execute and return this amended permit authorization to the BCDC offices as required by Standard Condition IV-J, the Commission will consider Enforcement Case ER89-14 to be resolved.

C. Notice of Potential for Extension of BCDC Jurisdiction. The plans submitted for Amendment No. One showed the top of the dike approved in BCDC Permit No. 14-73 to be at a present elevation below the line of highest tidal action. Thus, the flood protection function of the dike is compromised and areas behind the dike can be inundated by tidal action. Commission Regulation Section 10123 states that areas subject to tidal action after September 17, 1965, and therefore subject to BCDC "bay" jurisdiction, excludes areas that as a result of natural destruction of man-made works are currently below the line of highest tidal action, but such exclusion is valid "only for a period ending on year after the Commission has given an affected property owner written notice of the potential extension of the Commission's jurisdiction as a result of the destruction."

In accordance with Commission Regulation Section 10123, BCDC herein gives the permittees notice that the areas landward of the dike surrounding the helipad will be considered BCDC "bay" jurisdiction up to the line of highest tidal action, with a corresponding 100-foot shoreline band jurisdiction landward of that line, if the dike is not repaired by December 13, 1990, to remain at an elevation above the line of highest tidal action.

D. The project authorized by this amended permit is consistent with the McAteer-Petris Act and the San Francisco Bay Plan in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay.

E. The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

F. Pursuant to Regulation Section 11501, the project authorized by this amended permit is categorically exempt from the requirement to prepare an environmental impact report.

RED Exhibit E

PERMIT NO. M85-30

(Issued on August 25, 1988, As Amended Through December 28, 1989)

AMENDMENT NO. ONE

Commodore Helicopters, Inc.,
and Walter Lander

Page 4

~~E/~~ G. Pursuant to Regulation Section 10620, ~~the~~ the original project was listed with the Commission on August 18, 1988.

IV. Standard Conditions

A. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.

B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within ~~10~~ ten days ~~of the work~~
~~of the work~~.

C. Work must be performed in the precise manner and at the precise locations indicated in your original application and amendment request, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.

D. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittees will be subject to the regulations of the Regional Water Quality Control Board in that region.

E. The rights derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the original application and amendment request for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.

F. Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.

G. Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

RED Exhibit E

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
Page 5

H. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If ~~a~~ this amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittees or ~~its~~ their assignee upon receiving written notification by or on behalf of the Commission to remove the fill.

I. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittees or ~~its~~ their assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittees or ~~its~~ their assignee if the amended permit has been assigned.

J. This amended permit shall not take effect unless the permittees execute~~s~~ the original of this amended permit and return~~s~~ it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

K. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the amended permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit.

L. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction up to the line of highest tidal action.

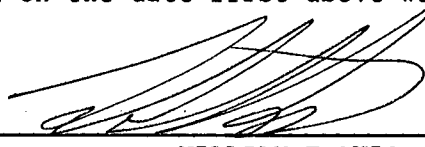
M. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittees or ~~its~~ their

RED Exhibit E

PERMIT NO. M85-30
(Issued on August 25, 1988, As
Amended Through December 28, 1989)
AMENDMENT NO. ONE
Commodore Helicopters, Inc.,
and Walter Lander
Page 6

their assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.



WILLIAM TRAVIS
Acting Executive Director

Enc.
0025r-12/28/88
WT/DP/mm

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
Environmental Protection Agency, Attn: Tom Yokum, P-5
City of Mill Valley, Attn: Planning Department
Planning Advisory Corporation, Attn: Tom Newton

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at MILL VALLEY, CA COMMODORE HELICOPTERS
Applicant
On JAN. 08, 1990 By: 
CORPORATE SECRETARY
Title

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at San Francisco, CA COMMODORE HELICOPTERS/WALTER LANDOR
Applicant
On 1-8-90 By: Anne Coffelt - Program Director
FOR WALTER LANDOR
Title Assistant

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Exhibit 04

Via Certified Mail and Electronic Mail

October 8, 2021

ATTN: John E. Sharp
Law Offices of John E. Sharp
24 Professional Center Parkway,
Suite 110 San Rafael, CA 94903
Email: john@johnsharplaw.com

For

ATTN: Shannon Sullivan
Authorized Representative
Seaplane Investment LLC
315 Linden Street
San Francisco, CA 94102-5109

Subject: BCDC Enforcement Case ER2019.063.00, Notice of Violations of the McAteer-Petris Act, BCDC Permit 1973.014.01 (and two time extensions) (APN 052-247-01), and BCDC Permit M1985.030.01 (APN 052-247-02)

Dear Seaplane Investment LLC:

On September 15, 2020, BCDC informed Commodore Marina and Seaplane Adventures that the permittees are in violation of the McAteer-Petris Act for placing fill without a permit and making unauthorized uses in the Bay and shoreline band in violation of special conditions of Permit 1973.014.01, issued to Commodore Marina LLC on November 21, 2017, for failing to provide and maintain required public access and to limit the use of the property to authorized uses. While we have exchanged a number of communications since that time, the respondents have not yet resolved the violations cited in that letter. In addition, there are new violations of Permit 1973.014.01 and Permit M1985.030.01, issued to Commodore Helicopters, Inc. and Water Landor, on December 28, 1989.

On July 14, 2021, in response to submittals from Mr. Sharp on behalf of Seaplane Adventures and Mr. Sorenson on behalf of Commodore Marina, we met to provide clear direction on what the respondents need to do to resolve the violations. In preparation for that meeting, I sent you



an email urging you to prepare and submit a request to amend the permit to retroactively authorize existing unauthorized fill and uses (Exhibit 1). We expected an amendment request in late August 2021. You informed us by telephone that you could not meet that timeline. On August 25, 2021, we requested an alternate date by which we could expect the amendment request. On September 3, 2021, I shared some suggestions for providing the missing public access prepared by our landscape architect (Exhibit 2). John Sharp's most recent communication in a letter dated September 24, 2021, indicated that the actions would be forthcoming. As a result of your failure to submit a site survey that identifies the current edge of Bay and 100-foot-shoreline band, your failure to submit a fileable request to amend the permit to authorize unauthorized fill and uses, and your failure to provide the required and missing public access, we are issuing this notice of violation enforcement letter.

BCDC Permit 1973.014.01 which applies to Assessor Parcel Number (APN) 052-247-01 includes Standard Condition IV.C. entitled Permit Assignment which states that:

The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

On July 21, 2021 Commodore Marina and Seaplane Adventures sold APN 052-247-01 to Seaplane Investment LLC. Former and current permittees have not completed the required permit assignment form with supporting current ownership documentation.

BCDC Permit M1985.030.01 which applies to APN 052-247-02 includes Standard Condition IV.E. entitled Permit Assignment which states that:

The rights derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the original application and amendment request for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.



On July 21, 2021 Commodore Marina and Seaplane Adventures sold APN 052-247-02 to Seaplane Investment LLC. Former and current permittees have not completed the required permit assignment form with supporting current ownership documentation.

Permit 1973.014.01 authorizes the permittees to:

- f. Relocate the existing approximately 1,528-square-foot houseboat moored at Berth #11 approximately 18 feet to the northwest to remove it from an existing right-of-way, including removing eight 18-inch-in-diameter wood pilings and installing, using, and maintaining approximately four new pilings (12-inches-in-diameter) at the new berth;
- g. Install, use, and maintain an approximately 112-square-foot float for access to the boat at Berth #11 and remove the existing approximately 224-square-foot float;
- h. Renovate, use, and maintain the houseboat at Berth #11, including replacing two first-story and two second-story cantilevered decks, totaling approximately 247 square feet to replace removed decking totaling approximately 96 square feet; and
- i. Relocate the existing houseboat at Berth #10 7-8 feet to the northwest to accommodate the relocated houseboat at Bert #11 and extend, use, and main-tain an approximately 35-square-foot float to provide access to the houseboat Berth #10.

Permit 1973.014.01 required this work to be completed by November 1, 2019. On September 2, 2020, BCDC issued Corrected Permit No. 1973.014.02, which authorized a time extension valid until October 31, 2020. On April 16, 2021, BCDC issued Permit No. 1973.014.03, which authorized a time extension until August 31, 2021. On August 9, 2021, Harold Heldman, a marina tenant not authorized to request amendments, submitted a request for an additional time extension that has not yet been filed as complete and has not been issued. Therefore, the houseboat renovation and relocation was not completed by August 31, 2021, as authorized and the work to complete the project that is underway is unauthorized pending an additional time extension.

The McAteer-Petris Act (MPA) in Section 66632(a) relating to permit applications requires:

Any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission and, if required by law or by ordinance, from any city or county within which any part of the work is to be performed. For purposes of this title, "fill" means earth or any other

substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. For the purposes of this section "materials" means items exceeding twenty dollars (\$20) in value.

Permittees have constructed unauthorized boat docks, replaced the boat ramp, installed a fuel tank, and are storing planes and parking on Yolo Street. These activities are the placement of fill and/or a substantial change in use of BCDC's Bay and/or shoreline band jurisdictions and require after-the-fact authorization or removal.

BCDC Permit 1973.014.01 in Special Condition II.C.4.c entitled Public Access requires the permittee to:

Provide an 8-foot wide all weather pathway suitable for pedestrian and bicycle use leading from the existing Marin County Bike Path adjacent to Bolinas Street to the shoreline by either paralleling Yolo Street in Block 167, or if permission is received from the County of Marin, by passing within Yolo Street, hence along the shoreline to the northeast edge of the property.

Permittees have failed to install and/or maintain the public access as required by the permit.

BCDC Permit 1973.014.01 in Special Condition II.D, entitled Use of Solid Fill requires:

The fill approved herein for Block 167, Yolo and Parepa Streets, shall be used only for project landscaping and landscaped public access, pedestrian and bicycle pathways, and in Block 164 for heliport flood control purposes only.

Permittees failed to limit use of Yolo Street exclusively for public access. However, staff will not commence a penalty clock for this permit violation as it would duplicate the penalty clock that will toll for the violations of the McAteer Petris Act. In considering an after-the-fact amendment request from owners, this special condition must be considered.

Pursuant to BCDC Regulation 11386, the applicable provisions of which are specified below, this letter initiates separate penalty clocks for each of the violations listed below with how it/they can be resolved. Seaplane Investment LLC has 35 calendar days from the date of this letter to resolve the violations before fines begin to accrue. A detailed description of how fines accrue is attached to this letter in Appendix 1.

The Permit requirements specified above have not been satisfied. Therefore, Seaplane Investments LLC has four permit violations and one McAteer-Petris Act violation.

Violations One and Two: Failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit in violation of 11386(e)(2) for not submitting permit assignment forms for Permit 1973.014.01 and Permit M1985.030.01.



Staff recommendation to resolve these violations: Complete and submit two permit assignment forms with change in ownership information as required by the permits and as specified on BCDC's website and spelt out below:

- Instructions
 - All owners on the deed must sign the assignment form, either as the people granting the assignment (assignors) or the people accepting the assignment (assignees). Type the name(s) of each signatory under the signature.
 - If the assignor or assignee is an entity, trustee or person with power of attorney, then the authorized representative may sign. The authorized representative must, by signing the form, have the authority to bind the entity or owner to the terms of the permit.
 - Fill in the blanks as appropriate to the permit.
- Attachments
 - Attach a copy of the deed, recent title report or lease that demonstrates that the person (or the entity) accepting the assignment has control over the property.
 - Attach a signature authority if the person signing the form is acting on behalf of an entity, or as trustee or with the power of attorney
- Forms
 - Partial Assignment of BCDC permit (PDF) || MS Word
 - Assignment of BCDC permit (PDF) || MS Word

Violation Three: Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit for unauthorized houseboat renovations and relocation in violation of 11386(e)(4).

Staff recommendation to resolve violation: Submit a fileable application to amend the existing permit so that staff can issue a time extension to complete the proposed work. The application must be submitted by an authorized representative of Seaplane Investment LLC. Harold Heldman is not an authorized representative of Seaplane Investment LLC.

Violation Four: Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit for unauthorized work in the Bay and shoreline band by installing and using a boat dock, and installing and using a Sea Plane fueling tank and a launch ramp in the Yolo Street right-of-way (ROW), parking vehicles and storing and repairing Seaplanes in an unapproved location in violation of 11386(e)(4).

Staff recommendation to resolve violation: Submit a fileable application to amend the permit for all unauthorized activities and obtain authorization after-the-fact for the fill and these activities or remove the unauthorized fill and/or immediately stop all unauthorized



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit E
October 8, 2021
Page 6

activities. As you have been advised throughout our ongoing communications the fill and activities qualify for review as a nonmaterial permit amendment. Please submit a complete project description, a site survey that maps the location of the mean high tide line, where tidal marsh vegetation is present the location of five feet above mean sea level and the correlating 100 foot shoreline band, project plans, evidence of pursuing quiet title for the Yolo Street ROW as required by the County of Marin, and double the permit application fee because the application will resolve an enforcement action. Please refer to the information in Attachment 2 and in our letter to you dated September 15, 2020 (Attachment 4).

Violation Five: Failure to comply with any condition required by a Commission permit for failure to provide required public access in violation of 11386(e)(3).

Staff recommendation to resolve violation: Submit and obtain approval of a plan to provide the public access required by Special Condition II.C.4.c and construct the required public access pursuant to the staff approved plan. Please refer to our letter to you dated September 15, 2020 (Attachments 2 and 4) and the initial public access suggestion prepared by Ashley Tomerlin, BCDC Bay Development and Design Analyst, shared with Mr. Sharp by email on September 3, 2021 (Attachment 3). Upon completion, you must notify staff by submitting photographs and inviting us to conduct a site visit to verify that conditions are compliant with the permit and to be reviewed and approved plans.

We look forward to assisting you in resolving this enforcement matter by obtaining submissions of both permit assignments with supporting documentation by November 15, 2021; submissions of two separate fileable after-the-fact permit applications no later than October 31, 2021, for the houseboat, and no later than November 30, 2021 for the other unauthorized fill and substantial changes in use; obtaining the remaining permit amendments no later than February 28, 2022; and installing the missing public access area in conformance with approved plans by December 31, 2021. When these actions are completed (and any standardized fines that may accrue are paid) Enforcement Case ER2019.063 will be resolved. You can reach me by phone by calling 415-352-3609 or by email at adrienne.klein@bcdc.ca.gov.

Sincerely,

Adrienne Klein

ADRIENNE KLEIN
Principal Enforcement Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3609
Fax: 415-352-3606
Email: adrienne.klein@bcdc.ca.gov
Website: www.bcdc.ca.gov



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit E
October 8, 2021
Page 7

AK/mm

- Encls. 1. Appendix of Standardized Fines and Enforcement Options
2. Klein/Sharp Emails between July 14, 2021 and September 3, 2021
3. Ashley Tomerlin, BCDC Bay Development and Design Analyst, Public Access Recommendations, September 3, 2021
4. September 15, 2020 BCDC letter to Commodore

cc: Brent Plater, BCDC Lead Enforcement Attorney, brent.plater@bcdc.ca.gov;
Priscilla Njuguna, BCDC Enforcement Policy Manager, priscilla.njuguna@bcdc.ca.gov;
Aaron Singer, Seaplane Investment LLC, aaron@seaplane.com;
John Sharp, Law Offices of John E. Sharp, Attorney for Aaron Signer, john@johnsharplaw.com;
Steve Price, Seaplane Adventures, steve@seaplane.com;
Steve Price, President and CEO, Price & Mulvihill Investigations, Inc. steve@priceandmulvihill.com;
Neil Sorensen, Attorney at Law, Attorney for Commodore Marina, LLC and Steve Price, Owner, neil@sorensenlaw.com.



Appendix 1. Explanation of Standardized Fines Pursuant to Regulation § 11386**Enforcement Options.**

Pursuant to section 11386 of the BCDC's administrative regulations, you may resolve the penalty portion of each alleged violation by paying the standardized fines described below or you have the option to seek resolution through a formal enforcement proceeding that would involve a public hearing. If any of your actions are determined to be knowing and intentional violations or violate a term of a cease and desist order, the law (sections 66641.5(c) and 66641 of the McAteer-Petris Act, respectively) provides that we may refer this matter to the Office of the Attorney General, which could subject you to significant court imposed penalties.

Cease and Desist and Civil Penalty Order.

If you have not corrected all the alleged violations within 125 days of the date of this letter, you may no longer have the option to settle this matter with standardized fines and we may, pursuant to sections 66638 and 66641.5(e) of the McAteer-Petris Act, commence a formal enforcement proceeding that could lead to the issuance of a cease and desist and civil penalty order with an administratively imposed civil penalty of between \$10 and \$2,000 per day up to a maximum of \$30,000 per alleged violation.

§ 11386 (e)(2) For the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit.

If the alleged violation is fully corrected within 35 days of the date of this letter, no civil penalty will apply.

For each document submitted between 36 and 65 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$1,000 per document.

For each document submitted between 66 and 95 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$3,000 per document.

For each document submitted more than 95 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$3,000 per document plus \$100 per day for each document, from the 96th day to the date the document is received by the staff.

§ 11386 (e)(4) For the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit.

If the alleged violation is *fully corrected* within 35 days of the date of this letter, *no civil penalty* will apply.



If a fileable application is submitted between 36 and 65 days and a permit *amendment* is obtained within 155 days after the date of the mailing of this letter **or** the unauthorized activity is completely corrected between 36 and 65 days then you may resolve the penalty portion of the alleged violation by paying a *standardized fine of \$2,000*.

If a fileable application is submitted between 66 and 95 days and a permit *amendment* is obtained within 185 days after the date of the mailing of this letter or the unauthorized activity is completely corrected between 66 and 95 days then you may resolve the penalty portion of the alleged violation by paying a *standardized fine of \$5,000*.

If a fileable application is submitted **or** the unauthorized activity is completely corrected more than 95 days after the date of the mailing of this letter then you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$5,000 plus \$100 per day from the 96th day to the date a permit *amendment* is obtained or the unauthorized activity is completely corrected.

§ 11386 (e)(3) For the failure to comply with any condition required by a Commission permit.

If the alleged violation is fully corrected within thirty-five days of the date of this letter, then no civil penalty will apply.

If corrected between 36 and 65 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$1,000 for each violation noted above.

If corrected between 66 and 95 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$3,000 for each violation noted above.

If corrected more than 95 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$3,000 for each violation noted above, plus \$100 per day per violation, from the 96th day to the date the required improvements are provided.

RED ~~Exhibit 05~~ EXHIBIT E

Assignment of BCDC Permit

Commodore Marina, LLC; 1083 Vine Street, #244, Healdsburg, CA 95448; (415) 850-5200,
(full name, address, and telephone number of current permittee-assignor)

by its Managing Member,
(title or position of person executing for assignor, e.g., President, Secretary, etc., if any)

Steve Price, assignor, hereby assigns all rights and
(full name of person executing for assignor,
if different from name of assignor)

interests in San Francisco Bay Conservation and Development Commission Permit No. 1973.014.01

dated August 24, 1973, as amended through Amendment

No. 1973.014.03, dated April 16, 2021,
(number and date of last amendment, if applicable; otherwise cross out)

to Seaplane Investments, LLC, a California Limited Liability Company,
(full name of assignee) (type of entity receiving assignment
e.g. a California Corporation, a Nevada
partnership, an individual, etc.)

315 Linden Street, San Francisco, CA 94102,
(full address of person or entity receiving assignment)

Executed on this 1/3/2022 day of 1/3/2022, 201/3/2022, at
Sonoma, California.

DocuSigned by:
Steve Price
(signature of assignor or person executing for assignor)

RED Exhibit E

-2-

Seaplane Investments, LLC, 315 Linden Street, San Francisco, CA 94102, (415) 332-4843,
(full name, address, and telephone number of entity or person taking assignment)

by its Manager, Lou Vasquez
(name and title or position of person executing for assignee,
e.g., President, Secretary, etc., if any)

assignee, acknowledges that, he [she or it] has read and understood the application for
Permit No. 1973.014.01, and the permit itself, as amended through Amendment No. Three,
dated 4/16/21, and hereby accepts those rights, interest, and obligations in BCDC Permit
No. 1973.014.03, as amended, and agrees to be bound by all the terms and conditions of the
permit and any amendments.

Executed on this 1/3/2022 day of 1/3/2022, 201/3/2022, at
Santa Rosa, California.

DocuSigned by:
Lou Vasquez

(signature of assignee or person executing for
assignee)

Revised 2/2/00

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Assignment of BCDC Permit

Commodore Marina, LLC; 1083 Vine Street, #244, Healdsburg, CA 95448; (415) 850-5200,
(full name, address, and telephone number of current permittee-assignor)

by its Managing Member
(title or position of person executing for assignor, e.g., President, Secretary, etc., if any)

Steve Price, assignor, hereby assigns all rights and
(full name of person executing for assignor,
if different from name of assignor)

interests in San Francisco Bay Conservation and Development Commission Permit No. M1985.030.01

dated December 28, 1985, as amended through Amendment

No. Not Applicable, dated _____,
(number and date of last amendment, if applicable; otherwise cross out)

to Seaplane Investments, LLC, a California Limited Liability Company,
(full name of assignee) (type of entity receiving assignment
e.g. a California Corporation, a Nevada
partnership, an individual, etc.)

315 Linden Street, San Francisco, CA 94102,
(full address of person or entity receiving assignment)

Executed on this 1/3/2022 day of 1/3/2022, 201/3/2022, at

Sonoma, California.

DocuSigned by:

Steve Price

(signature of assignor or person executing for assignor)

RED Exhibit E

-2-

Seaplane Investments, LLC, 315 Linden Street, San Francisco, CA 94102, (415) 332-4843,
(full name, address, and telephone number of entity or person taking assignment)

by its Manager, Lou Vasquez,
(name and title of person executing for assignee,
e.g., President, Secretary, etc., if any)

assignee, acknowledges that, he [she or it] has read and understood the application for
Permit No. M1985.030.01 and the permit itself, as amended through Amendment No. _____,
dated _____, and hereby accepts those rights, interest, and obligations in BCDC Permit
No. _____, as amended, and agrees to be bound by all the terms and conditions of the
permit and any amendments.

Executed on this 1/3/2022 day of 1/3/2022, 201/3/2022, at
Santa Rosa, California.

DocuSigned by:
Lou Vasquez

(signature of assignee or person executing for
assignee)

Revised 2/2/00

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OPERATING AGREEMENT OF SEAPLANE MANAGEMENT, LLC

THIS OPERATING AGREEMENT (the “Agreement”) of Seaplane Management, LLC (the “Company”) is entered into effective June 25, 2021 (the “Effective Date”) by and among (i) Lou Vasquez, an individual, as the manager (the “Manager”) and (iii) the Persons named as the Members on Exhibit A attached hereto.

RECITALS

A. The Company was formed on June 25, 2021, in accordance with the California Revised Uniform Limited Liability Company Act (the “LLC Act”).

B. The Company has been formed to serve as the manager of, and hold an equity interest in, Seaplane Investment, LLC (“Seaplane Investment”). Seaplane Investment has been formed to acquire, hold and manage certain real property identified as 240 – 242 Redwood Highway, Mill Valley, CA 94941 (together with all improvements from time to time thereon, all personal property owned by the Company and used in connection with the ownership or operation thereof, and all rights appurtenant thereto or useful in connection therewith, the “Property”), for investment, appreciation and the production of income.

C. The parties hereto wish to set forth the terms and conditions for the operation and governance of the Company on the terms set forth herein.

AGREEMENT

In consideration of the terms and conditions contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. FORMATION OF LIMITED LIABILITY COMPANY

1.1 Name and Principal Office.

The Members hereby form the Company pursuant to the LLC Act. The business of the Company shall be conducted under the name of Seaplane Management, LLC. The principal office of the Company shall be at 315 Linden Street, San Francisco, California 94102, or at such other place as may be designated in writing by the Manager.

1.2 Purpose.

The primary purpose of the Company is to serve as the manager of, and hold an equity interest in, Seaplane Investment, and to engage in any and all activities necessary or incidental to the foregoing business.

1.3 Addresses of the Members.

The names and addresses of the Members are listed on Exhibit A.

1.4 Term of the Company.

The term of the Company commenced on June 25, 2021, upon the filing of the Articles of Organization, and shall continue until dissolved and terminated in accordance with Section 6 of this Agreement or by operation of law.

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1.5 Definitions

As used in this Agreement, the following terms shall have the following meanings:

(a) *“Adjusted Capital Account”*: the Member's Capital Account, reduced by the net adjustments, allocations and distributions described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) and (6) which, as of the end of the Company's taxable year are reasonably expected to be made to such Member, and increased by the sum of (i) any amount which the Member is required to restore to the Company upon liquidation of his or its interest in the Company (or which is so treated pursuant to Treasury Regulation §1.704-1(b)(2)(ii)(c)); (ii) the Member's share of the Company's Minimum Gain (as determined under Treasury Regulation §1.704-2(g)(1)); and (iii) the Member's share of Partner Nonrecourse Debt Minimum Gain (as determined under Treasury Regulation §1.704-2(i)(3)).

(b) *“Adjusted Invested Capital”*: an amount equal to a Member's Capital Contributions, less distributions made to the Member pursuant to Section 3.2(a) of this Agreement.

(c) *“Affiliate”*: the members, partners or constituent shareholders of a Member, or any other partnership, corporation, limited liability company or other entity owned or controlled by a Member or by the same persons who own or control a Member.

(d) *“Agreement”*: this Amended and Restated Operating Agreement, as originally executed and as amended, modified, supplemented or restated from time to time in accordance with its terms.

(e) *“Articles of Organization”*: the Articles of Organization of the Company, as originally filed and as amended or restated from time to time in accordance with this Agreement and with the LLC Act.

(f) *“BBA Rules”*: means the partnership audit rules contained in the Bipartisan Budget Act of 2015 and enacted as Sections 6221 through 6241 of the Code.

(g) *“Book Value”*: with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Book Value of any asset contributed (or deemed contributed) to the Company shall be such asset's gross fair market value at the time of such contribution;

(ii) The Book Value of all Company assets shall be adjusted to equal their respective gross fair market values at the times specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f) if the Manager so elects;

(iii) If the Book Value of an asset has been determined pursuant to clause (i) or (ii), above, such Book Value shall thereafter be adjusted in the same manner as would the asset's adjusted basis for federal income tax purposes except that depreciation or amortization deductions shall be computed under Section 1.5(t)(iv).

(h) *“Capital Account”*: an individual “Capital Account” shall be maintained for each Member. The Capital Account of each Member shall be:

(i) Increased by (i) the amount of money contributed by the Member, (ii) the fair market value of property contributed by the Member net of liabilities secured by such

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property that the Company is considered to assume or take subject to under Section 752 of the Code, and (iii) such Member's share of Company Net Income; and

(ii) Decreased by (i) the amount of money distributed to such Member from the Company (other than to any Member in repayment of any loan or advance), (ii) the fair market value of property distributed to the Member by the Company net of liabilities secured by such property that such Member is considered to assume or take subject to under Section 752 of the Code; (iii) such Member's share of Company Net Losses.

For purposes of computing the balance in a Member's Capital Account, no credit shall be given for any capital contribution which the Member is obligated to make until such contribution is actually made. Notwithstanding any other provision in this Agreement to the contrary, the Capital Accounts of the Members shall be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv).

(i) *"Capital Contributions"*: the contributions (if any) made by each Member to the Company pursuant to Article 2 of this Agreement.

(j) *"Code"*: the Internal Revenue Code of 1986, as amended.

(k) *"Company"*: Seaplane Management, LLC, a California limited liability company.

(l) *"Designated Individual"*: as defined in Section 3.9(a).

(m) *"Gross Income"*: the Company's gross income as determined for federal income tax purposes for each fiscal year or period but computed with the adjustments specified in Sections 1.5(t)(i) and 1.5(t)(iii).

(n) *"LLC Act"*: the California Revised Uniform Limited Liability Company Act, as amended from time to time.

(o) *"Majority in Interest"*: Members holding a majority of the Percentage Interests in the Company.

(p) *"Manager"*: The Manager of the Company is Lou Vasquez.

(q) *"Member"*: A Person who: (i) has been admitted to the Company as a Member in accordance with this Agreement and whose name is set forth on Exhibit A attached hereto and (ii) has not resigned or withdrawn as a Member or, if other than an individual, been dissolved.

(r) *"Membership Interest"*: A Member's rights in the Company, collectively, including any right to vote or participate in management, and any right to information concerning the business and affairs of the Company provided by the LLC Act.

(s) *"Net Cash Flow"*: (i) distributions received by the Company related to Seaplane Investment and/or the Property, plus (ii) any reserves held by the Company to the extent that the Manager determines that such reserves should be released and applied to expenses or distributed to the Members, plus (iii) any other income or receipts of the Company, less (iv) funds expended to repay obligations of the Company or to pay ordinary and necessary expenses of operating the Company, and reserves to meet anticipated expenses as determined by the Manager.

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Any reimbursement or compensation paid pursuant to Section 4.4 shall be deducted as expenses of the Company.

(t) *“Net Income and Net Loss”*: the Company's taxable net income or net loss for each fiscal year or other period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this Section 1.5(s) shall be added to such taxable income or subtracted from such taxable loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures under Code Section 704(b) and not otherwise taken into account in computing Net Income or Net Loss pursuant to this Section 1.5(s), shall be subtracted from such taxable income or added to such taxable loss;

(iii) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of such property rather than its adjusted tax basis;

(iv) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account depreciation, amortization or depletion on the assets' respective Book Values in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g)(3); and

(v) The amount of any Gross Income allocated to the Members pursuant to Section **Error! Reference source not found.**, below, shall not be included as income or revenue.

(u) *“Partnership Representative”*: that individual or entity with substantial presence in the United States that represents the Company in any Company tax proceeding as provided under Code Section 6223(a) and corresponding provisions of applicable state law.

(v) *“Percentage Interest”*: as to any Member, the percentage set forth opposite the name of such Member under the like heading in Exhibit A attached hereto.

(w) *“Person”*: any individual or entity, including without limitation a corporation, partnership, association, limited liability company, limited partnership, trust, unincorporated association, government or governmental agency or authority.

(x) *“Property”*: as defined in the Recitals hereto.

(y) *“Pro Rata”*: with respect to all of the Members collectively, in proportion to their relative Percentage Interests at the time or times in question.

(z) *“Seaplane Investment”*: Seaplane Investment, LLC, a California limited liability company.

(aa) *“Tax Matters Representative”*: as defined in Section 3.9(a).

(bb) *“Treasury Regulations”*: final and temporary income tax regulations issued by the U.S. Treasury Department, Title 26 of the Code of Federal Regulations.

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2. CAPITALIZATION OF THE COMPANY

2.1 *Members; Capitalization.*

(a) *Initial Capital Contributions; Percentage Interests.* As of the Effective Date, no Member has made capital contributions to the Company. Each Member shall initially have the Percentage Interest set forth on Exhibit A opposite such Member's name. Exhibit A shall be updated from time to time to reflect any changes in the capital contributions or Percentage Interests of the Members, or to reflect the addition or departure of any Member.

(b) *Additional Capital.* If, at any time and from time to time, the Manager determines that the Company requires capital, then the Manager may request that the Members contribute additional capital to the Company in amounts necessary to meet such obligations ("Additional Contributions"). If the Manager determines that Additional Contributions are necessary, the Manager will issue a written notice to the Members setting forth the amount of additional capital that is required. The Members shall not be required to contribute additional capital. In the event that any Members elect to make Additional Contributions, each such participating Member shall contribute his or her Pro Rata share of the additional capital set forth in the notice unless such participating Members agree otherwise.

(c) *Failure to Contribute.* In the event that the Members do not make the full amount of Additional Contributions requested by the Manager in a capital call notice, then the Manager may obtain the necessary capital through other means approved by a Majority in Interest, including loans from Members or third parties, or the admission of additional Members. Unless the Members unanimously agree otherwise, the Percentage Interests of the Members shall not change as a result of any Additional Contribution made by one or more Members.

2.2 *Withdrawal and Return of Capital.*

A Member shall not be entitled to withdraw any part of the Member's Capital Contribution or to receive any distributions, whether of money or property, from the Company except as provided in this Agreement.

2.3 *Limitation of Liability.*

Except as required under the LLC Act or as expressly agreed to in writing by the Member to be charged with such liability, no Member shall be personally liable for any debt, obligation or liability of the Company, whether that debt, obligation or liability arises in contract, tort or otherwise.

3. COMPANY ACCOUNTING AND DIVISION OF PROFITS

3.1 *Fiscal Year/Accounting Method.*

The fiscal year of the Company shall be the calendar year. Contributions by Members shall be kept in a bank account of the Company for the benefit of the Company to assure application of such funds for Company purposes. The Company books shall be kept on the cash method or the accrual method as determined by the Manager. Company funds shall not be commingled with the funds of any Member or any other person, company or entity.

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3.2 Distributions.

The Manager shall make distributions of Net Cash Flow to the Members when and as declared by a Majority in Interest in the following manner and order of priority:

(a) First, to the Members in proportion to the relative amounts of their respective Adjusted Invested Capital, until their Adjusted Invested Capital has been reduced to zero; and

(b) Thereafter, to the Members in proportion to their Percentage Interests.

3.3 Allocation of Net Income and Net Losses.

For purposes of adjusting the Capital Accounts of the Members, Company Net Income and Net Losses shall be allocated to the Members in compliance with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder in a manner that as closely as possible tracks how distributions, as set forth above in Section 3.2, are made to the Members.

3.4 Compliance with Regulatory Allocation Requirements.

(a) Notwithstanding any other provision of this Agreement to the contrary, if in any year there is a net decrease in the amount of the Company's Minimum Gain (within the meaning of Treasury Regulation §1.704-2(d)) then each Member shall first be allocated items of Gross Income for such year equal to that Member's share of the net decrease in Company Minimum Gain (within the meaning of Treasury Regulation §1.704-2(g)(1)).

(b) Notwithstanding any other provision of this Agreement to the contrary other than Section 3.4(a), above, if in any year there is a net decrease in the amount of the Partner Nonrecourse Debt Minimum Gain (within the meaning of Treasury Regulation §1.704-2(i)(3)) then each Member shall first be allocated items of Gross Income for such year equal to that Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain (within the meaning of Treasury Regulation §1.704-2(i)(5)).

(c) Notwithstanding any of the provisions above (except Sections 3.4(a) and 3.4(b), which shall be applied first), if in any fiscal year or other period a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6), which creates or increases a negative balance in such Member's Adjusted Capital Account, Gross Income (and items thereof) shall first be allocated to Members with negative Adjusted Capital Account balances at the end of such fiscal year, in proportion to such negative balances, until such balances are increased to zero.

(d) Notwithstanding the provisions of Section 3.3, Net Losses (or items thereof) allocated pursuant to Section 3.3 shall not be allocated to a Member if such allocation would cause or increase a negative balance in such Member's Adjusted Capital Account at the end of the fiscal year of such allocation and shall be reallocated to the other Members, subject to the limitations of this Section 3.4.

(e) Any Net Loss or deductions attributable to Partner Nonrecourse Debt (within the meaning of Treasury Regulation §1.704.2(b)(3)) shall be allocated to the Member who bears the economic risk of loss with respect to such Debt.

(f) Allocations of book and tax items with respect to property contributed by any Member shall be made solely for federal income tax purposes as required by Section 704(c) of

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the Code. Following any revaluation of the Company's assets and the adjustment of any Member's Capital Account pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(f) to reflect such revaluation, the Members' Capital Accounts shall be adjusted for various items as computed for book purposes with respect to such revalued assets as required by Treasury Regulation §1.704-1(b) and the Members' shares of such items as computed for tax purposes with respect to such items shall be determined as required by Treasury Regulation §1.704-1(b).

3.5 Curative Allocations.

The allocations set forth in Section **Error! Reference source not found.** (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulations sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may affect results which would be inconsistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Manager is authorized to divide other allocations of Net Income, Net Losses and other items among the Members, to the extent that such items exist, so that the net amount of the Regulatory Allocations and the special allocations to each Member is zero. The Manager will have discretion to accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Regulations.

3.6 Members Not Resident in California.

Each Member who is not a resident of the State of California, or who subsequently becomes a nonresident, shall execute and deliver to the Company the agreement required under California Revenue and Taxation Code §18633.5(e). Such agreement shall include, among other things, the agreement of such nonresident Member to file a California state income tax return and to make timely payment of all taxes imposed on such Member by the State of California with respect to the income of the Company.

3.7 Company Records.

The Manager shall maintain, or cause to be maintained, appropriate books, records, and reports for the Company as required by the LLC Act, which shall be available for inspection or copying by the Members as required by the LLC Act.

3.8 Tax Information.

The Manager shall deliver to each Member, within ninety (90) days after the end of each fiscal year of the Company, all information necessary from the Company for the preparation of each Member's state and Federal income tax returns.

3.9 Tax Matters Representative

(a) The Manager shall be the Partnership Representative of the Company (the "Tax Matters Representative"). Each Member (including the Manager) must take such actions as are necessary to perfect such designation. For any tax year that the Tax Matters Representative is not an individual, the Manager shall designate an individual, who would otherwise be eligible to serve as Partnership Representative, as the sole individual through whom the Partnership Representative may act (the "Designated Individual"). The Tax Matters Representative is specifically directed and authorized to take whatever steps deemed necessary or desirable to perfect any such designation, and the Tax Matters Representative and the Members shall execute any forms or statements required in connection therewith.

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(b) The Tax Matters Representative shall have full authority to take any action on behalf of the Company under Code Section 6223 including, without limitation, the authority to: (i) manage and control any tax audit or examination of the Company, (ii) represent the Company in connection with any administrative or judicial tax proceeding, (iii) extend the statute of limitations on any tax assessment, (iv) contest or settle any tax assessment or adjustment on behalf of the Company, (v) propose any modification available under Code Section 6225(c) to any underpayment of tax by the Company, (vi) cause the Company to elect the application of Code Section 6226 with respect to any tax underpayment, and (vii) file a request for administrative adjustment of Company tax items, or, to the extent any such request is not allowed in full, file a petition for adjustment with the Tax Court, any District Court, or the United States Court of Federal Claims. The Company shall be responsible for all expenses paid or incurred by the Tax Matters Representative in good faith in connection with any such tax matters. If any state, local or non-U.S. tax law provides for a “tax matters partner”, “partnership representative” or person having similar rights, powers, authority or obligations, the Tax Matters Representative shall also serve in such capacity.

(c) Every Member, on such Member’s tax returns, will treat a Company tax item in a manner that is consistent with the treatment of the item on the Company’s tax return.

(d) All Members will cooperate reasonably with the Tax Matter Representative in connection with any audit, tax proceeding or tax filing including, without limitation: (i) making available to the Tax Matters Representative such personnel or other information of the Member as may reasonably be deemed necessary by the Tax Matters Representative in connection with any audit, tax proceeding or tax filing and (ii) taking such actions requested by the Tax Matters Representative, including filing amended tax returns and paying any tax due in accordance with Code Section 6225(c)(2).

(e) A Member’s obligation under this Section 3.9 will survive the transfer of any interest in the Company by a Member and the termination, dissolution, liquidation and winding up of the Company.

4. ADMINISTRATIVE PROVISIONS

4.1 *Management Vested in Manager.*

(a) Management of the Company shall be vested in one Manager. The Manager may be, but is not required to be, a Member of the Company. The initial Manager shall be Lou Vasquez. References herein to the “Manager” shall be deemed to refer to the initial Manager, while so appointed. Lou Vasquez may be removed as Manager upon a vote of a Majority in Interest of the Members.

(b) The Manager shall direct, manage and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Agreement or by non-waivable provisions of applicable law, all decisions concerning the management of the Company’s business shall be made by the Manager and the Manager shall have authority to manage and control the business and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company’s business.

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(c) Unless authorized to do so by this Agreement, no Member (other than the Manager), attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

4.2 Member Approval for Certain Actions.

Notwithstanding Section 4.1, the Manager shall not take any of the following actions without the prior written approval of a Majority in Interest:

- (a) Incur any indebtedness or guaranty any indebtedness.
- (b) Loan money to any Member.
- (c) Enter into any contract on behalf of the Company.
- (d) Make any distributions under this Agreement.
- (e) Liquidate or dissolve the Company.
- (f) Amend any of the organizational documents of the Company.
- (g) Admit any new Members to the Company.
- (h) Employ or terminate any employee or consultant of the Company.
- (i) Make any expenditure of Company assets in excess of \$1,000.
- (j) Make any amendment to this Agreement, provided that the Manager may unilaterally make any amendment: (i) to reflect transfers permitted under Article 5, (ii) to comply with requirements of income tax laws or regulations, provided that such amendment may not materially diminish the rights or materially increase the obligations of any Member, or (iii) to revise Exhibit A to reflect the addition or substitution of Members, the return of capital to Members, or the creation or sale of additional Membership Interests in the Company.

4.3 Competing Ventures.

Nothing contained herein shall preclude any Member (including a Manager) from purchasing or owning any other property, or rights therein, or in any manner investing in, participating in, developing or managing any other venture of any kind, without notice to the other Members, without participation by the other Members, and without liability to them or any of them. Each Member waives any rights it may have against the others for capitalizing on information received as a consequence of its connection with the affairs of the Company.

4.4 Reimbursement and Compensation.

(a) The Manager shall not receive any compensation for services provided to the Company unless approved by a Majority in Interest of the Members.

(b) The Manager shall be entitled to reimbursement for expenses incurred on behalf of the Company, including but not limited to expenses incurred prior to or in connection with formation of the Company, and any legal fees incurred in the preparation and negotiation of this Agreement and any amendments hereto. The Manager shall also be reimbursed by the Company for the costs of forming and administering the Manager, including but not limited to any legal fees incurred in the preparation and negotiation of the operating agreement of the Manager and any amendments thereto, annual franchise taxes due to the State of California with respect to

RED Exhibit E

the Manager, and costs of preparing state and federal income tax returns of the Manager. There shall be no reimbursement for general overhead costs of the Manager.

5. TRANSFER OF A COMPANY INTEREST

5.1 *Compliance With This Agreement.*

A Member shall not sell, transfer or assign all or any part of such Member's Membership Interest without strictly complying with Sections 5.2, 5.3 and 5.4 of this Agreement. No sale, transfer or assignment of all or any part of a Membership Interest in violation of this Agreement shall be valid or effective. A Member may not dissociate from the Company without the written consent of the Manager. Dissociation shall not release a Member from any obligations and liabilities under this Agreement accrued or incurred before the effective date of dissociation. A dissociating Member shall have only the rights of a holder of a transferable interest in the Company in respect of the Member's Membership Interest in the Company. Unless all remaining Members consent to the dissociation, the dissociating Member shall not be entitled to a distribution of its transferable interest until the dissolution and liquidation of the Company. The transferable interest of a dissociating Member shall not mean or include any right to share in the income, gains, losses, deductions, credits, or similar items of the Company attributable to any period following dissociation, or any right to information concerning the business and affairs of the Company except as provided in Section 17704.10 of the LLC Act.

5.2 *No Lien or Encumbrance of Interest in Company.*

No Member may pledge, assign as security, grant a lien upon, or otherwise encumber all or any part of a Membership Interest in the Company except with the consent of the Manager.

5.3 *Conditions on Transfer.*

The transfer of all or any part of a Membership Interest in the Company will be valid and effective only if the following conditions are satisfied:

(a) *Allowed Transfers.* A transfer will be allowed only by a Member to himself under declaration of trust, to a spouse or child of the Member by testamentary disposition or under declaration of trust (of which the transferring Member is a trustee) or by distribution from such a trust, or to a custodianship (of which the transferring Member is custodian), to a family partnership or limited liability company (of which the transferring Member or his designee is a general partner or manager), or to any transfer to another existing Member. A "family partnership or limited liability company" shall mean a limited partnership or limited liability company in which a majority of the interests are held by a Member, members of his family, or trusts for their benefit. Any other transfer by a Member shall be subject to the right of first offer set forth in Section 5.4.

(b) *Execute Documents.* The transferor and the transferee shall properly execute documents or instruments which the Manager may determine to be necessary or desirable to effect such transfer, including written acceptance, ratification and approval of all of the terms and conditions of this Agreement and its amendments.

(c) *Pay or Assume All Obligations.* The transferor or transferee shall have:
(i) performed and paid all obligations owed to the Company or the Manager, and (ii) paid all reasonable expenses of the Company connected with the transfer.

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(d) *Compliance With Securities Laws.* The transfer of the ownership interest of the transferor does not, to the reasonable satisfaction of the Manager, violate any state or Federal securities laws.

5.4 Right of First Offer.

Each time a Member proposes to transfer all or any part of its Membership Interest (the "Proposed Transfer Interest") other than pursuant to Section 5.3(a), such Member (a "Transferring Member") shall first offer the Proposed Transfer Interest to Manager, and if the Manager does not accept such offer then to the other Members (each a "Non-Transferring Member"), in accordance with the following provisions:

(a) The Transferring Member shall deliver a written notice ("Option Notice") to the Manager stating (i) the Transferring Member's bona fide intention to transfer the Proposed Transfer Interest, (ii) the Membership Interest to be transferred, and (iii) the purchase price and terms of payment for which the Transferring Member proposes to transfer the Proposed Transfer Interest.

(b) Within sixty (60) days after receipt of the Option Notice, the Manager shall notify the Transferring Member in writing of its desire to purchase a portion and up to all of the Proposed Transfer Interest upon the price and terms of payment designated in the Option Notice. If the Option Notice provides for the payment of non-cash consideration, the Manager may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as reasonably determined by the Manager. If the Manager determines not to purchase all of the Proposed Transfer Interest, it shall provide to the other Non-Transferring Members within such sixty (60) day period a copy of the Option Notice along with written notice of the portion, if any, which the Manager has elected to purchase.

(c) Within sixty (60) days after receipt of notice from the Manager under Section 5.4(b), each Non-Transferring Member shall notify the Transferring Member in writing of its desire to purchase a pro rata portion and up to all of the Proposed Transfer Interest not purchased by the Manager, upon the price and terms of payment designated in the Option Notice. If the Option Notice provides for the payment of non-cash consideration, such purchasing Members each may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as determined by the Manager (or by a Majority in Interest of the Members if the Transferring Member is the Manager). The failure of any Non-Transferring Member to submit a notice within the applicable period shall constitute an election on the part of such Non-Transferring Member not to purchase any of the Proposed Transfer Interest. If any Non-Transferring Member elects not to purchase the pro rata share of the Proposed Transfer Interest that such Non-Transferring Member is entitled to purchase, then the other Non-Transferring Members that have elected to purchase portions of the Proposed Transfer Interest may purchase additional portions of the Proposed Transfer Interest in proportion to their respective Percentage interests.

(d) If the Manager and/or other Non-Transferring Members elect to purchase the Proposed Transfer Interest, then the closing of such purchase shall occur within ninety (90) days after delivery of the last notice required under Section 5.4(b) or 5.4(c). At or before the closing Transferring Member and the purchasing Manager and other Non-Transferring Members

RED Exhibit E

shall execute such documents and instruments and make such deliveries as may be reasonably required to consummate such purchase.

(e) If the Manager and other Non-Transferring Members elect not to purchase, or default in their obligation to purchase, the Proposed Transfer Interest, then the Transferring Member may transfer the Proposed Transfer Interest, providing such transfer (i) is completed within one hundred twenty (120) days after the expiration of the Non-Transferring Members' right to purchase the Proposed Transfer Interest under Section 5.4(c) and (ii) is made at a price equal to or higher than that designated in the Option Notice and on payment terms no more favorable to the buyer than those terms designated in the Option Notice. If the Proposed Transfer Interest is not so transferred within such period, the Transferring Member must give notice in accordance with this Section 5.4 prior to any other or subsequent transfer of the Proposed Transfer Interest.

5.5 *Transferee Not Admitted as Member.*

A transferee allowed under Section 5.3(a) shall be automatically admitted as a substituted Member in the Company. Any other transferee shall be admitted as a substituted Member only with the consent of the Manager. A transferee that does not become a substituted Member shall not be entitled to participate in the management or affairs of the Company or to exercise any rights of a Member but shall be entitled to receive any share of profits and losses and distributions to which its transferor would have been entitled, to the extent of the interest held by the assignee. Until a transferee is admitted as a substituted Member, there shall be no voting rights attached to the transferred economic interest or membership interest. The interest held by the transferee shall be subject to the same restrictions on transfer as are interests held by Members, as set forth in this Section 5. The transferee shall have the same obligations to the Company as a Member holding the same interest would have, including obligations to contribute Supplemental Capital and any unsatisfied obligation of the transferee's predecessor in interest in respect of the interest transferred.

5.6 *Divorce of a Member; Spousal Consent.*

(a) Any former spouse of a Member who receives an interest in the Company upon the divorce of that Member shall be treated as a transferee holding an economic interest under Section 5.5, with no right to participate in the management or affairs of the Company or to exercise any rights of a Member.

(b) It will be a condition precedent to admittance as a Member that the Person seeking to become a Member execute this Agreement and that, if the Person is an individual, the Person's spouse or registered domestic partner execute a Spousal Consent in substantially the form attached to this Agreement as Exhibit B. Further, if a Member is unmarried, divorced from the spouse or registered domestic partner who executes the Spousal Consent or if a Member's spouse or registered domestic partner is deceased, and the Member subsequently marries or remarries or becomes a registered domestic partner, as the case may be, the Member shall cause the Member's new spouse or domestic partner to execute a Spousal Consent..

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6. DISSOLUTION/TERMINATION OF COMPANY

6.1 *Dissolving Events.*

The Company shall be dissolved upon the occurrence of any of the following events:

- (a) Consent of a Majority in Interest of the Members to dissolve; or
- (b) Any other event causing the dissolution of the Company under the LLC

Act.

6.2 *Winding Up of the Company.*

(a) Upon dissolution of the Company, the Company shall continue in existence until the winding up of its affairs is completed and the Manager shall wind up the affairs of the Company, liquidate the Company assets, and pay the debts, liabilities and claims against the Company. The Company shall engage in no further business other than as may be necessary to wind up the business of the Company and to distribute Company assets.

(b) Distributions in liquidation may be made in cash or in kind, as determined by the Manager. Distributions in kind shall be valued at fair market value as determined by the Manager and shall be subject to reasonable conditions and restrictions necessary or advisable in the discretion of the Manager in order to preserve the value of the property or other assets so distributed. Any distributions in kind shall be made to the Members in proportion to their allocable share of any such distribution unless otherwise agreed by all Members.

(c) The Net Income and Net Losses of the business during the period of dissolution shall be divided among or borne by the Members in accordance with the provisions of Section 3.3. Any property distributed in kind by the Company, whether in the liquidation or otherwise, shall be valued at fair market value by the Manager and treated (for the purposes of adjusting Capital Accounts) as though the property were sold for such value and the cash proceeds were distributed. The difference between the value of property distributed in kind and its Book Value shall be treated (for the purposes of adjusting Capital Accounts) as Net Income or Net Loss and shall be credited or charged to the Members in proportion to their respective shares of Net Income and Net Losses pursuant to Section 3.3.

(d) The proceeds from the liquidation of Company assets shall be applied and distributed by the end of the Company fiscal year in which liquidation occurs (or, if later, within 90 days after the date of such liquidation) according to the following order:

- (i) First, to pay expenses of winding up the Company and to pay creditors of the Company other than Members, in the order of priority as provided by law;
- (ii) Next, the Liquidating Member shall set up any reserves which they reasonably deem necessary for any contingent or unforeseen liabilities or obligations of the Company other than to the Members (which reserves when they become unnecessary shall be distributed in the remaining priority set forth in this Section 6.2(d)). If such reserves are established, the Company shall comply with the requirements of Treasury Regulation §1.704-1(b) regarding revaluation of Company property, adjustments of the Capital Accounts of the Members and ultimate distributions of such reserves;
- (iii) The remainder, among the Members according to the priorities set forth in Section 0.

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7. LIABILITY AND INDEMNIFICATION OF THE MANAGER AND MEMBERS

7.1 *Liability.*

The Manager shall not be individually liable for the return of any contribution made to the Company by the Members. In the absence of fraud, gross negligence, material breach of fiduciary duties, material breach of this Agreement, or willful misconduct by the Manager, the Manager shall not be liable to the Company or the Members for any act or omission concerning the Company business.

7.2 *Indemnification.*

(a) In the absence of fraud, gross negligence, material breach of fiduciary duty, material breach of this Agreement, or willful misconduct on the part of a Manager, a Member, their Affiliates, or any employee or agent of a Manager, the Tax Matters Representative, the Designated Individual, a Member or their Affiliates, the Company shall indemnify and hold each of them harmless from and against any loss, expense, damage or injury suffered or sustained by any of them by reason of any acts, omissions, or alleged acts or omissions arising out of any activity performed in good faith on behalf of the Company, but excluding any claims made by the Company or the Members.

(b) This indemnification shall include, but not be limited to: (i) payment of reasonable attorneys' fees and other expenses incurred in settling any claim or threatened action, or incurred in any finally-adjudicated legal proceeding, and (ii) the removal of any liens resulting from an indemnified matter affecting any property of a Manager, the Tax Matters Representative, the Designated Individual, a Member or their Affiliates, or any employee, shareholder, member or agent of a Manager, a Member or their Affiliates. Notwithstanding the foregoing, this indemnification shall include reasonable attorney's fees, to be paid as incurred, provided that, if there is a reasonable question whether the indemnitee is entitled to indemnification under this section, a court of competent jurisdiction may provide for a reasonable undertaking or other security for the benefit of the Company to ensure repayment of any such advances if it is ultimately determined that such indemnitee is not entitled to indemnification from the Company.

8. GENERAL PROVISIONS

8.1 *Entire Agreement*

This Agreement contains the entire understanding among the Members and supersedes any prior written or oral agreement between them respecting the Company. There are no representations, agreements, arrangements, or understandings, oral or written, among the Members relating to the Company which are not fully expressed in this Agreement, other than any agreements which may exist between Members for the purchase of interests in the Company. This Agreement shall be construed in accordance with its fair meaning and not strictly for or against any party hereto, notwithstanding that this Agreement or any portion hereof may have been drafted by counsel for only one party.

8.2 *Amendments.*

This Agreement is subject to amendment only with the consents required by Section **Error! Reference source not found.** of this Agreement.

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8.3 Governing Law.

All questions with respect to the interpretation of this Agreement and the rights and liabilities of the Members shall be governed by the laws of the State of California as they are applied to contracts entered into between residents of California to be performed entirely within California.

8.4 Meetings of Members; Actions Without Meetings.

The Company is not required to hold meetings of the Members, or to maintain minutes of meetings if meetings are held, except at the discretion of the Manager. The Manager may call for and conduct meetings of the Members pursuant to the procedures set forth in the LLC Act. Any action that may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote were present and voted. Any action taken without a meeting shall be effective when the required minimum number of Votes have been received.

8.5 Severability.

If any one or more of the provisions of this Agreement are determined to be invalid or unenforceable, such provision or provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

8.6 Counterparts.

This Agreement may be executed by facsimile or scanned .pdf (or similar electronic file format) and in any number of counterparts and when so executed, all of such counterparts shall constitute a single instrument binding upon all parties notwithstanding the fact that all parties are not signatory to the original or to the same counterpart.

8.7 Captions.

The captions and headings in this Agreement are for reference and convenience only and shall not limit or expand the meaning of the provisions of this Agreement.

8.8 Survival of Rights.

Subject to the restrictions against unauthorized assignment or transfer set forth in this Agreement, the provisions of this Agreement shall inure to the benefit of and be binding upon each Member and his or her heirs, devisees, legatees, personal representatives, successors, and assigns.

8.9 Additional Documents

Each Member agrees to execute and deliver to the Manager any additional documents and instruments which the Manager deem necessary or desirable to carry out the provisions of this Agreement or the business of the Company.

8.10 Mediation, Arbitration and Attorneys' Fees

(a) Any controversy or claim arising out of or relating to this Agreement, the Company or the Members' rights or duties (a "Dispute") shall be resolved by mediation and binding arbitration pursuant to this Section 8.10, which shall be initiated by written notice from any one party to the other parties, of the existence of a Dispute.

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(b) Upon delivery of notice of a Dispute pursuant to Section 8.10(a), the parties shall jointly choose an impartial mediator within fifteen (15) business days after the notice of Dispute has been delivered to all parties. The parties shall then engage in mediation to resolve such Dispute for a period of thirty (30) business days, which mediation period may be extended by mutual consent of the parties.

(c) If the parties are unable to resolve the Dispute by mediation or are unable to agree upon a mediator within the periods set forth in Section 8.10(b), then such Dispute shall be resolved by binding arbitration in San Francisco County, California, as selected by the party initiating the arbitration. Such arbitration shall be conducted by JAMS/Endispute or by any other judicial arbitration service agreed to by the parties, and judgment upon the award may be entered in any court of competent jurisdiction. The arbitrator shall apply California substantive law to the proceeding. Discovery of documents shall be allowed only to the extent authorized by the arbitrator, and shall be conducted under the direction of the arbitrator. No other form of discovery, including but not limited to the taking of depositions, shall be allowed. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages provided by California law, but shall not have the power to award punitive damages. The arbitrator shall prepare in writing and provide to the parties an award including factual findings and the reasons on which the decision is based. The prevailing party or parties in such arbitration and any ensuing legal action shall be reimbursed by the party or parties who do not prevail for their reasonable attorney's, accountants', and experts' fees and the costs of such arbitration and action.

8.11 Notices

Any notice shall be in writing and shall be deemed duly given when personally delivered to the Member to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, registered or certified mail, postage prepaid, to the address set forth on Exhibit A for such Member, or to any other address of which the Manager is notified in writing. Notices may also be delivered via e-mail to the e-mail address provided by a Member or Manager, subject to the requirement that receipt of any notice delivered via e-mail is confirmed by return e-mail.

8.12 Gender

As used in this Agreement the masculine, feminine or neuter gender and the singular or plural number will be construed to include the others unless the context indicates otherwise.

8.13 No Third Party Beneficiaries.

Except as otherwise specifically provided in this Agreement, the provisions of this Agreement are not intended to be for the benefit of or enforceable by any third party and shall not give rise to a right on the part of any third party, including without limitation, any right to (i) enforce or demand enforcement of a Member's obligation to make Capital Contributions, to return distributions, or to make other payments to the Company as set forth in this Agreement or (ii) demand that the Company or the Managing Member issue any capital call.

[Signature page follows.]

RED Exhibit E

[Signature Page to Operating Agreement of Seaplane Management, LLC]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

MANAGER:



Lou Vasquez

OTHER MEMBERS:



Signature

Aaron Singer

Print Name

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EXHIBIT A
SEAPLANE MANAGEMENT, LLC
List of Members effective June 25, 2021

Name and Address	Percentage Interest
Aaron Singer [ADDRESS]	21.0%
Loring Sagan [ADDRESS]	15.98%
Lou Vasquez [ADDRESS]	14.98%
Mali Richlen [ADDRESS]	15.6%
Grant Barbour [ADDRESS]	14.98%
Scott Eschelman [ADDRESS]	14.98%
Tyler Kepler [ADDRESS]	2.5%
Totals	100%

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EXHIBIT B

SEAPLANE MANAGEMENT, LLC

Spousal Consent

The undersigned is the spouse or registered domestic partner of one of the Members of Seaplane Management, LLC, a Delaware limited liability company (the "Company"). The undersigned hereby agrees that he or she has read the Company's Operating Agreement, effective as of June 25, 2021 (the "Operating Agreement"), understands its terms and conditions and agrees to be bound by them. The undersigned agrees that in case of dissolution of his or her marriage to, or domestic partner status with, the Member or beneficiary, he or she will accept a purchase of whatever community property interest (if any) he or she may have in his or her spouse's or domestic partner's, as applicable, membership interest in the Company, on the terms and conditions stated in the Operating Agreement. The undersigned has been advised to seek independent legal advice with respect to his or her execution of this Spousal Consent and has either obtained legal advice or has voluntarily chosen not to do so. The undersigned further acknowledges that the terms and provisions of the Operating Agreement may be modified pursuant to agreement of the parties, including modification of the price and terms of payment for any membership interest to be sold under the Operating Agreement. Any changes to the Operating Agreement will neither terminate nor affect in any manner this Spousal Consent. The undersigned will not take any action in contravention of the Operating Agreement, including, but not limited to, implementing any estate planning documents that are inconsistent with this Spousal Consent.

Dated: _____, 20__

Signature of Spouse or Domestic Partner

Name of Spouse or Domestic Partner



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Audit Trail

TITLE	Seaplane Management (no spouse)
FILE NAME	Seaplane Manageme... 7-21-21)[5].docx
DOCUMENT ID	ddb061705358164f4e5c32e764ad7ab40c28750
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	Ⓢ Completed

Document History



SENT

07 / 23 / 2021
19:49:20 UTC

Sent for signature to Aaron Singer (aaron@seaplane.com) and Louis Vasquez (lou@bldsf.com) from robbie@bldsf.com
IP: 98.37.57.245



VIEWED

07 / 23 / 2021
22:55:26 UTC

Viewed by Aaron Singer (aaron@seaplane.com)
IP: 71.13.55.189



SIGNED

07 / 26 / 2021
16:19:41 UTC

Signed by Aaron Singer (aaron@seaplane.com)
IP: 166.205.124.70



VIEWED

07 / 26 / 2021
16:42:12 UTC

Viewed by Louis Vasquez (lou@bldsf.com)
IP: 73.162.17.92



SIGNED

07 / 26 / 2021
16:42:34 UTC

Signed by Louis Vasquez (lou@bldsf.com)
IP: 73.162.17.92



COMPLETED

07 / 26 / 2021
16:42:34 UTC

The document has been completed.

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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Via email only

Exhibit 06

August 2, 2022

ATTN: John E. Sharp
Law Offices of John E. Sharp
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903
Email: john@johnsharplaw.com

For

ATTN: Lou Vasquez, Manager
Seaplane Investment LLC
315 Linden Street
San Francisco, CA 94102-5109
Email: lou@bldsf.com

SUBJECT: Standardized Fines Due for Violations 1, 2 and 3 as per 10.08.2022 Letter. BCDC Enforcement Case ER2019.063.00, BCDC Permit BCDC Permit 1973.014.01 (and time extensions) (APN 052-247-01)

Dear Mr. Vasquez:

As you are aware, BCDC issued a letter on October 8, 2021 (attached), that commenced a standardized fines penalty clock pursuant to BCDC Regulation 11386 for five¹ violations, three of which are the subject of this letter:

Violations 1 and 2. For failure to submit a document in the form, manner and time required by the permit; i.e., two permit assignments due within 30 days of July 21, 2021, for Permits 1973.014.01 and M1985.030.01, respectively.

¹ BCDC revoked Seaplane Investment, LLC's opportunity to resolve Violations 4 & 5 through the standardized fine process on July 29, 2022, and on the same day initiated formal enforcement proceedings for these violations as well as four others.



Violation 3. For the failure to obtain a permit prior to undertaking the activity that can be authorized by an administrative permit; i.e., failing to complete the houseboat remodel and re-location and removal of two pilings and a work platform prior to the permit completion date of August 31, 2021.

The letter states that any violation that is resolved within 35 days of October 8, 2021, i.e., by November 12, 2021, shall accrue no fine. You resolved zero violations within 35 days; therefore, the following standardized administrative fines have accrued for each violation.

Violations 1 and 2.

The letter states that if a violation involving a missing document is resolved between 36 and 65 days of October 8, 2021, or between November 13 and December 12, 2021, the penalty for each violation is \$1,000. You did not resolve either permit assignment violation during this time.

It further states that if this same violation is resolved between 66 and 95 days of October 8, 2021, or between December 13, 2021, and January 11, 2022, the penalty for each violation is \$3,000.

You resolved both permit assignment violations on January 3, 2022, by submitting two fully executed permit assignment forms and an executed operating agreement, which staff was able to subsequently approve. Therefore, for Violations 1 and 2, you accrued two standardized fines of \$3,000 each, totaling \$6,000.

Violation 3.

The letter states that if a violation involving the failure to obtain a permit prior to undertaking the activity that can be authorized by an administrative permit is resolved between 36 and 65 days of October 8, 2021, or between November 13 and December 12, 2021, the penalty for the violation is \$2,000. You did not resolve Violation 3 by December 12, 2021.

It further states that if this same violation is resolved between 66 and 95 days of October 8, 2021, or between December 13, 2021, and January 11, 2022, the penalty for the violation is \$5,000. You did not resolve Violation 3 by January 11, 2022.

It further states that if this same violation is resolved more than 95 days from October 8, 2021, or any time after January 11, 2022, the penalty for the violation is \$5,000 plus \$100/day from Day 96 to the date of resolution.

On December 17, 2022, Mr. Sharp submitted photographic evidence that the houseboat had been relocated to the authorized position and that the two pilings and work platform had been removed from SF Bay. On January 6, 2022, staff approved the permit assignment to Seaplane Investments LLC enabling the Executive Director to issue the after-the-fact extension of completion time on January 25, 2022, which together with the houseboat's relocation resolved this violation. Thirteen days elapsed between January 12 and 25, 2022. Therefore, you accrued a standardized fine of \$6,300 for Violation 3.



Seaplane Investment, LLC
Enforcement Case ER2019.063.00

RED Exhibit E Page 3
August 2, 2022

Standardized Fines Due.

The total standardized fine for Violations 1, 2 and 3 is \$12,300. The standardized fines for this violation are due within 30 days of the date of this letter, or by September 1, 2022. Please prepare and submit a cashier's check or money order for \$12,300 made out to the "Bay Fill Clean-up and Abatement Fund." Please include the Enforcement Case ER2019.063.00 identification number on the check and mail it to my attention to the address listed below.

Upon receipt of the standardized fine, the three violations addressed herein will be fully resolved though Enforcement Case ER2019.063 will remain open pending resolution of the violations cited in the Violation Report and Complaint issued to you on July 29, 2022. Your failure to submit this payment may result in additional formal enforcement proceedings, or a referral to the Attorney General for court-ordered collection proceedings.

Sincerely,

Adrienne Klein

ADRIENNE KLEIN
Principal Enforcement Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3609
Fax: 415-352-3606
Email: adrienne.klein@bcdc.ca.gov
Website: www.bcdc.ca.gov

cc: Aaron Singer, aaron@seaplane.com
Brent Plater, Lead Enforcement Attorney, brent.plater@bcdc.ca.gov

Enclosures:

1. Letter dated October 8, 2021 without attachments
2. Email from Klein to Sharp, dated October 22, 2021
3. Email from Klein to Sharp, dated January 6, 2022
4. After-the-fact Time Extension, dated January 25, 2022

AK / mm



San Francisco Bay Conservation and Development Commission **RED Exhibit E**

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Attachment 1

Via Certified Mail and Electronic Mail

October 8, 2021

ATTN: John E. Sharp
Law Offices of John E. Sharp
24 Professional Center Parkway,
Suite 110 San Rafael, CA 94903
Email: john@johnsharplaw.com

For

ATTN: Shannon Sullivan
Authorized Representative
Seaplane Investment LLC
315 Linden Street
San Francisco, CA 94102-5109

Subject: BCDC Enforcement Case ER2019.063.00, Notice of Violations of the McAteer-Petris Act, BCDC Permit 1973.014.01 (and two time extensions) (APN 052-247-01), and BCDC Permit M1985.030.01 (APN 052-247-02)

Dear Seaplane Investment LLC:

On September 15, 2020, BCDC informed Commodore Marina and Seaplane Adventures that the permittees are in violation of the McAteer-Petris Act for placing fill without a permit and making unauthorized uses in the Bay and shoreline band in violation of special conditions of Permit 1973.014.01, issued to Commodore Marina LLC on November 21, 2017, for failing to provide and maintain required public access and to limit the use of the property to authorized uses. While we have exchanged a number of communications since that time, the respondents have not yet resolved the violations cited in that letter. In addition, there are new violations of Permit 1973.014.01 and Permit M1985.030.01, issued to Commodore Helicopters, Inc. and Water Landor, on December 28, 1989.

On July 14, 2021, in response to submittals from Mr. Sharp on behalf of Seaplane Adventures and Mr. Sorenson on behalf of Commodore Marina, we met to provide clear direction on what the respondents need to do to resolve the violations. In preparation for that meeting, I sent you



an email urging you to prepare and submit a request to amend the permit to retroactively authorize existing unauthorized fill and uses (Exhibit 1). We expected an amendment request in late August 2021. You informed us by telephone that you could not meet that timeline. On August 25, 2021, we requested an alternate date by which we could expect the amendment request. On September 3, 2021, I shared some suggestions for providing the missing public access prepared by our landscape architect (Exhibit 2). John Sharp's most recent communication in a letter dated September 24, 2021, indicated that the actions would be forthcoming. As a result of your failure to submit a site survey that identifies the current edge of Bay and 100-foot-shoreline band, your failure to submit a fileable request to amend the permit to authorize unauthorized fill and uses, and your failure to provide the required and missing public access, we are issuing this notice of violation enforcement letter.

BCDC Permit 1973.014.01 which applies to Assessor Parcel Number (APN) 052-247-01 includes Standard Condition IV.C. entitled Permit Assignment which states that:

The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

On July 21, 2021 Commodore Marina and Seaplane Adventures sold APN 052-247-01 to Seaplane Investment LLC. Former and current permittees have not completed the required permit assignment form with supporting current ownership documentation.

BCDC Permit M1985.030.01 which applies to APN 052-247-02 includes Standard Condition IV.E. entitled Permit Assignment which states that:

The rights derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the original application and amendment request for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.



On July 21, 2021 Commodore Marina and Seaplane Adventures sold APN 052-247-02 to Seaplane Investment LLC. Former and current permittees have not completed the required permit assignment form with supporting current ownership documentation.

Permit 1973.014.01 authorizes the permittees to:

- f. Relocate the existing approximately 1,528-square-foot houseboat moored at Berth #11 approximately 18 feet to the northwest to remove it from an existing right-of-way, including removing eight 18-inch-in-diameter wood pilings and installing, using, and maintaining approximately four new pilings (12-inches-in-diameter) at the new berth;
- g. Install, use, and maintain an approximately 112-square-foot float for access to the boat at Berth #11 and remove the existing approximately 224-square-foot float;
- h. Renovate, use, and maintain the houseboat at Berth #11, including replacing two first-story and two second-story cantilevered decks, totaling approximately 247 square feet to replace removed decking totaling approximately 96 square feet; and
- i. Relocate the existing houseboat at Berth #10 7-8 feet to the northwest to accommodate the relocated houseboat at Bert #11 and extend, use, and main-tain an approximately 35-square-foot float to provide access to the houseboat Berth #10.

Permit 1973.014.01 required this work to be completed by November 1, 2019. On September 2, 2020, BCDC issued Corrected Permit No. 1973.014.02, which authorized a time extension valid until October 31, 2020. On April 16, 2021, BCDC issued Permit No. 1973.014.03, which authorized a time extension until August 31, 2021. On August 9, 2021, Harold Heldman, a marina tenant not authorized to request amendments, submitted a request for an additional time extension that has not yet been filed as complete and has not been issued. Therefore, the houseboat renovation and relocation was not completed by August 31, 2021, as authorized and the work to complete the project that is underway is unauthorized pending an additional time extension.

The McAteer-Petris Act (MPA) in Section 66632(a) relating to permit applications requires:

Any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission and, if required by law or by ordinance, from any city or county within which any part of the work is to be performed. For purposes of this title, "fill" means earth or any other

substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. For the purposes of this section "materials" means items exceeding twenty dollars (\$20) in value.

Permittees have constructed unauthorized boat docks, replaced the boat ramp, installed a fuel tank, and are storing planes and parking on Yolo Street. These activities are the placement of fill and/or a substantial change in use of BCDC's Bay and/or shoreline band jurisdictions and require after-the-fact authorization or removal.

BCDC Permit 1973.014.01 in Special Condition II.C.4.c entitled Public Access requires the permittee to:

Provide an 8-foot wide all weather pathway suitable for pedestrian and bicycle use leading from the existing Marin County Bike Path adjacent to Bolinas Street to the shoreline by either paralleling Yolo Street in Block 167, or if permission is received from the County of Marin, by passing within Yolo Street, hence along the shoreline to the northeast edge of the property.

Permittees have failed to install and/or maintain the public access as required by the permit.

BCDC Permit 1973.014.01 in Special Condition II.D, entitled Use of Solid Fill requires:

The fill approved herein for Block 167, Yolo and Parepa Streets, shall be used only for project landscaping and landscaped public access, pedestrian and bicycle pathways, and in Block 164 for heliport flood control purposes only.

Permittees failed to limit use of Yolo Street exclusively for public access. However, staff will not commence a penalty clock for this permit violation as it would duplicate the penalty clock that will toll for the violations of the McAteer Petris Act. In considering an after-the-fact amendment request from owners, this special condition must be considered.

Pursuant to BCDC Regulation 11386, the applicable provisions of which are specified below, this letter initiates separate penalty clocks for each of the violations listed below with how it/they can be resolved. Seaplane Investment LLC has 35 calendar days from the date of this letter to resolve the violations before fines begin to accrue. A detailed description of how fines accrue is attached to this letter in Appendix 1.

The Permit requirements specified above have not been satisfied. Therefore, Seaplane Investments LLC has four permit violations and one McAteer-Petris Act violation.

Violations One and Two: Failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit in violation of 11386(e)(2) for not submitting permit assignment forms for Permit 1973.014.01 and Permit M1985.030.01.



Staff recommendation to resolve these violations: Complete and submit two permit assignment forms with change in ownership information as required by the permits and as specified on BCDC's website and spelt out below:

- Instructions
 - All owners on the deed must sign the assignment form, either as the people granting the assignment (assignors) or the people accepting the assignment (assignees). Type the name(s) of each signatory under the signature.
 - If the assignor or assignee is an entity, trustee or person with power of attorney, then the authorized representative may sign. The authorized representative must, by signing the form, have the authority to bind the entity or owner to the terms of the permit.
 - Fill in the blanks as appropriate to the permit.
- Attachments
 - Attach a copy of the deed, recent title report or lease that demonstrates that the person (or the entity) accepting the assignment has control over the property.
 - Attach a signature authority if the person signing the form is acting on behalf of an entity, or as trustee or with the power of attorney
- Forms
 - Partial Assignment of BCDC permit (PDF) || MS Word
 - Assignment of BCDC permit (PDF) || MS Word

Violation Three: Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit for unauthorized houseboat renovations and relocation in violation of 11386(e)(4).

Staff recommendation to resolve violation: Submit a fileable application to amend the existing permit so that staff can issue a time extension to complete the proposed work. The application must be submitted by an authorized representative of Seaplane Investment LLC. Harold Heldman is not an authorized representative of Seaplane Investment LLC.

Violation Four: Failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit for unauthorized work in the Bay and shoreline band by installing and using a boat dock, and installing and using a Sea Plane fueling tank and a launch ramp in the Yolo Street right-of-way (ROW), parking vehicles and storing and repairing Seaplanes in an unapproved location in violation of 11386(e)(4).

Staff recommendation to resolve violation: Submit a fileable application to amend the permit for all unauthorized activities and obtain authorization after-the-fact for the fill and these activities or remove the unauthorized fill and/or immediately stop all unauthorized



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit E
October 8, 2021
Page 6

activities. As you have been advised throughout our ongoing communications the fill and activities qualify for review as a nonmaterial permit amendment. Please submit a complete project description, a site survey that maps the location of the mean high tide line, where tidal marsh vegetation is present the location of five feet above mean sea level and the correlating 100 foot shoreline band, project plans, evidence of pursuing quiet title for the Yolo Street ROW as required by the County of Marin, and double the permit application fee because the application will resolve an enforcement action. Please refer to the information in Attachment 2 and in our letter to you dated September 15, 2020 (Attachment 4).

Violation Five: Failure to comply with any condition required by a Commission permit for failure to provide required public access in violation of 11386(e)(3).

Staff recommendation to resolve violation: Submit and obtain approval of a plan to provide the public access required by Special Condition II.C.4.c and construct the required public access pursuant to the staff approved plan. Please refer to our letter to you dated September 15, 2020 (Attachments 2 and 4) and the initial public access suggestion prepared by Ashley Tomerlin, BCDC Bay Development and Design Analyst, shared with Mr. Sharp by email on September 3, 2021 (Attachment 3). Upon completion, you must notify staff by submitting photographs and inviting us to conduct a site visit to verify that conditions are compliant with the permit and to be reviewed and approved plans.

We look forward to assisting you in resolving this enforcement matter by obtaining submissions of both permit assignments with supporting documentation by November 15, 2021; submissions of two separate fileable after-the-fact permit applications no later than October 31, 2021, for the houseboat, and no later than November 30, 2021 for the other unauthorized fill and substantial changes in use; obtaining the remaining permit amendments no later than February 28, 2022; and installing the missing public access area in conformance with approved plans by December 31, 2021. When these actions are completed (and any standardized fines that may accrue are paid) Enforcement Case ER2019.063 will be resolved. You can reach me by phone by calling 415-352-3609 or by email at adrienne.klein@bccdc.ca.gov.

Sincerely,

Adrienne Klein

ADRIENNE KLEIN
Principal Enforcement Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3609
Fax: 415-352-3606
Email: adrienne.klein@bccdc.ca.gov
Website: www.bccdc.ca.gov



Seaplane Investment LLC
Enforcement Case ER2019.063.00

RED Exhibit E
October 8, 2021
Page 7

AK/mm

- Encls. 1. Appendix of Standardized Fines and Enforcement Options
2. Klein/Sharp Emails between July 14, 2021 and September 3, 2021
3. Ashley Tomerlin, BCDC Bay Development and Design Analyst, Public Access Recommendations, September 3, 2021
4. September 15, 2020 BCDC letter to Commodore

cc: Brent Plater, BCDC Lead Enforcement Attorney, brent.plater@bcdc.ca.gov;
Priscilla Njuguna, BCDC Enforcement Policy Manager, priscilla.njuguna@bcdc.ca.gov;
Aaron Singer, Seaplane Investment LLC, aaron@seaplane.com;
John Sharp, Law Offices of John E. Sharp, Attorney for Aaron Signer, john@johnsharplaw.com;
Steve Price, Seaplane Adventures, steve@seaplane.com;
Steve Price, President and CEO, Price & Mulvihill Investigations, Inc. steve@priceandmulvihill.com;
Neil Sorensen, Attorney at Law, Attorney for Commodore Marina, LLC and Steve Price, Owner, neil@sorensenlaw.com.



Attachment 2
RED Exhibit E

From: [John Sharp](#)
To: [Klein, Adrienne@BCDC](#)
Cc: [Aaron Singer](#); [haroldhedelman@gmail.com](#); [Yelton, Rowan@BCDC](#); [Njuguna, Priscilla@BCDC](#)
Subject: Re: Commodore Marina: Houseboat move (Enforcement Case ER2019.063)
Date: Friday, October 22, 2021 6:24:39 PM

I believe the pilings have been moved. We'll confirm and submit next week.
Thanks,
John

Sent from my iPhone

On Oct 22, 2021, at 5:11 PM, Klein, Adrienne@BCDC
<adrienne.klein@bcdc.ca.gov> wrote:

Dear John,

We would like to issue the TE in October so please complete the permit assignment as soon as possible and advise Rowan and me who will sign on behalf of Seaplane Adventures LLC and provide documentation to support that person's authority to act on behalf of the LLC.

As Aaron knows b/c we met while I was onsite on Wednesday, October 20th, as you reported I observed that the houseboat has been moved north from its prior location. Thank you for undertaking this work and the reason the TE application request should be filed and issued ASAP.

Aaron mentioned, and I observed, that there remain two pilings and floating structure to be removed from the view corridor/right of way. Based on my understanding of the permit requirement, there is no approval for any floating structure to be located south of the houseboat. We also expect that the kayaks we observed in the view corridor will be stored out of the view corridor.

Thank you very much,

Adrienne

From: John Sharp <john@johnsharplaw.com>
Date: Tuesday, October 19, 2021 at 3:21 PM
To: "Yelton, Rowan@BCDC" <rowan.yelton@bcdc.ca.gov>
Cc: Aaron Singer <aaron@seaplane.com>, "Klein, Adrienne@BCDC" <adrienne.klein@bcdc.ca.gov>, "haroldhedelman@gmail.com" <haroldhedelman@gmail.com>
Subject: Commodore Marina: Houseboat move

RED Exhibit E

Hello Rowan,

I represent Seaplane Investments, LLC, the current owners of the property formerly owned by Mr. Price of Commodore Marina. This confirms said ownership, and further, that we are working with BCDC and Ms. Klein, to both complete permit assignments and to submit documentation of the fact that Mr. Hedelman's houseboat has been moved, which we understand to be the case. As requested in Ms. Klein's letter of October 8, 2021, we will provide permit assignments on or before November 15, 2021 and will confirm that the houseboat has been moved on or before October 31, 2021. Please feel free to contact me with any questions or comments.

Thank you,

John E. Sharp
Law Offices of John E. Sharp
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903
(415) 479-1645 (phone)
(415) 295-7020 (fax)

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From: [Klein, Adrienne@BCDC](mailto:Klein,Adrienne@BCDC)
To: [John Sharp](mailto:John.Sharp)
Cc: [Plater, Brent@BCDC](mailto:Plater,Brent@BCDC); [Scharff, Greg@BCDC](mailto:Scharff,Greg@BCDC)
Subject: BCDCC Enforcement Case ER2019.063.00: Updated assignments attached for Permits 1973.014.03 and M1985.030.01 (Seaplane Investments LLC)
Date: Thursday, January 6, 2022 11:27:38 AM
Attachments: [2021.10.08 35 Day Letter Template ER2019.063\[1\].pdf](#)

BCDCC Enforcement Case ER2019.063.00
Permits 1973.014.03 and M1985.030.01
Updated assignment forms and operating agreement

Dear John,

The two assignments forms and related operating agreement submitted on 1/3/2022 have been filed in the above-listed files. No further documentation for Permit M1985.030.01 is required.

However, for Permit 1973.014.03, please advise BCDC if Seaplane Adventures has an ongoing interest in the property governed by this permit or if Seaplane Investments LLC is the sole ownership interest? If Seaplane Adventures has an ongoing interest, the partial assignment should have been used as there continue to be two permittees. If Seaplane Adventures no longer has any interest, please complete a second assignment form in which Seaplane Adventures assigns its permit rights and obligations to Seaplane Investments LLC.

As of January 3, 2022, 87 days had passed since the issuance of the October 8, 2021 letter that commenced the standardized fines outlining four violations (attached). The assignment matter for the 1985 permit is resolved and has accrued a \$3,000 fine. Your timely response to this email will enable resolution of the assignment matter for the 1973 permit, which is currently subject to a \$3,000 fine. The other two violations, pertaining to unauthorized fill and uses and failure to comply with the public access requirements, are pending unresolved and the fines for each of these violations are at \$5,000 and \$3,000, respectively, and will each begin accruing a daily fine of \$100 on January 12, 2022, which is 96 days from October 8, 2021, until those matters are resolved. This is also true for the 1973 assignment matter.

Sincerely,

Adrienne

From: John Sharp <john@johnsharplaw.com>
Date: Monday, January 3, 2022 at 4:02 PM
To: "Klein, Adrienne@BCDC" <adrienne.klein@bcdca.gov>, "Plater, Brent@BCDC" <brent.plater@bcdca.gov>
Subject: Updated assignments attached

Adrienne and Brent:

RED Exhibit E

Attached please find the updated, signed permit assignments between Commodore Marina, LLC and Seaplane Investments, LLC.

Please feel free to call with any questions or comments,

Thank you,

John E. Sharp
Law Offices of John E. Sharp
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903
(415) 479-1645 (phone)
(415) 295-7020 (fax)

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San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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January 25, 2022

Seaplane Investment LLC
315 Linden Street,
San Francisco, CA 94102
Via email: <lou@bldsf.com>
ATTN: Lou Vasquez, Manager

SUBJECT: BCDC Permit No. 1973.014.04 (Amendment No. Four); Time Extension

Dear Mr. Vasquez:

As requested in your letter dated August 9, 2021 and received in our office August 9, 2021, you are hereby granted an after-the-fact extension of completion time, until October 31, 2021 for the work authorized by Amendment No. One of BCDC Permit No. 1973.014.01. The construction activities authorized were built generally in conformance with the plan titled “11 Commodore Heliport remodel, Remodel – Refurbish Houseboat”, prepared by Leal Royce Charonnat Architect + Engineering, dated November 26, 2018.

This extension of time is for the completion of work authorized only and does not apply to any other time requirement in the amended permit. This extension of time is issued pursuant to the authority granted by Government Code Section 66632(f), Regulation Section 10810, and upon the finding that this time extension is not a material alteration of the project authorized by BCDC Permit No. **1973.014.01**.

Except as stated herein, all conditions of the permit, as amended, dated November 21, 2017, remain in full force and effect. If you should have any questions, please contact Rowan Yelton of our staff at 415-352-3613 or rowan.yelton@bcdc.ca.gov.

Sincerely,

DocuSigned by:

FD166E908010417...

LAWRENCE J. GOLDZBAND
Executive Director

cc: U.S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
U.S. Environmental Protection Agency
Harold Hedelman, houseboat owner, <haroldhedelman@gmail.com>
Aaron Singer, Seaplane Investment LLC, <aaron@seaplane.com>
Adrienne Klein, San Francisco Bay Conservation and Development Commission
<adrienne.klein@bcdc.ca.gov>

LJG/RY/ra



San Francisco Bay Conservation and Development Commission **RED Exhibit E**

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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Via Email Only

Exhibit 07

September 21, 2022

Seaplane Investment, LLC
315 Linden Street
San Francisco, CA 94102-5109

AND

Seaplane Investment, LLC
242 Redwood Highway
Mill Valley, CA 94941

Email: Lou Vasquez, lou@bldsf.com

SUBJECT: FINAL WARNING LETTER - Opportunity to Resolve the Paper Violations Using Standardized Fines Terminates in 35 days (BCDC Enforcement Case ER2019.063.00)

Dear Lou Vasquez:

In the letter dated August 2, 2022, staff notified you that you had accrued \$12,300 of standardized fines for three paper violations and that you must pay those fines by September 1, 2022. As of today's date, BCDC has no record of receiving any payment from you nor have you responded to that letter. That letter states that your failure to pay these standardized fines may result in additional enforcement proceedings or referral to the Attorney General.

This is a final notice letter to inform you that your opportunity to resolve the penalty portion of the three resolved "paper" violations using standardized fines, as outlined in the August 2, 2022, letter will terminate within 35 days of issuance of this letter, on October 26, 2022. If on or before October 26, 2022, you pay the total accrued fine of \$12,300 as outlined in the August 2, 2022, letter these three violations will be fully resolved. If you do not pay the total accrued fine on or before October 26, 2022, staff will commence a second formal enforcement proceeding to collect an administrative civil penalty for each of these violations.

If you have any questions about BCDC's enforcement procedures feel free to contact Brent Plater, Lead Enforcement Attorney, or me by phone or email.



Seaplane Investment, LLC
Enforcement Case ER2019.063.00

RED Exhibit E

Page 2
September 2, 2022

Sincerely,

DocuSigned by:


ADRIENNE KLEIN

Principal Enforcement Analyst
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3609
Fax: 415-352-3606
Email: adrienne.klein@bcdc.ca.gov
Website: www.bcdc.ca.gov

cc: John E. Sharp, Esq., admin@johnsharplaw.com
Aaron Singer, aaron@seaplane.org

Enclosure: Letter dated August 2, 2022

AK/mm

RED Exhibit E**§ 11211. Submittal of an Amendment.**

(a) Within ten (10) working days of receipt by the Commission of a proposed amendment to the local protection program or component thereof, the Executive Director shall determine whether the proposed amendment meets the submittal requirements of Section 11210.

(b) If the Executive Director determines that the proposed amendment and supporting materials meet the submittal requirements of Section 11210, the Executive Director shall stamp all the materials "Filed BCDC" and the date of filing and notify the entity that submitted the proposed amendment of its filing.

(c) If the Executive Director determines that the proposed amendment does not satisfy the requirements of Section 11210, the Executive Director shall transmit to the entity that proposed the amendment a written explanation of why the proposed amendment and supporting materials do not comply with Section 11210.

(d) The filing of a proposed amendment and supporting materials shall constitute submittal of the amendment pursuant to California Public Resources Code Section 29410.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11212. Processing Amendments to the Local Protection Program or Component Thereof.

The Commission shall process a proposed amendment to the Suisun Marsh local protection program or to any component thereof in accordance with Sections 11202 through 11208, except that amendments designated as minor by the Executive Director under Sections 11213 and 11214 shall be processed only as provided in Section 11214.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11213. Definition of a Minor Amendment.

A minor amendment to the Suisun Marsh local protection program or any component thereof is an amendment that is consistent with California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan and that is one or more of the following:

(a) changes in wording, maps, or diagrams of any general, specific, or area plan, other policy document, zoning ordinance, zoning district map, regulation, or standard that does not change the designated, allowable, or permitted use, density, or intensity of land use or sphere of influence or boundary of any city; or

(b) changes in any certified management plan or policy document of the Suisun Resource Conservation District or the Solano County Mosquito Abatement District that does not change the permitted or allowable use of any land and does not change any water management program or practice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11214. Designation of an Amendment as Minor.

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States

Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice. NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11215. Frequency of Amendments.

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Chapter 13. Enforcement Procedures**Subchapter 1. General Provisions****§ 11300. Grounds for the Issuance of Cease and Desist Orders.**

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

(1) the violation of a term or condition of a permit,
 (2) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
 (3) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d); Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11302. Grounds for the Imposition of Administrative Civil Penalties.

Any one of the following actions shall constitute grounds for the imposition of civil penalties by the Commission:

- (1) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (2) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer–Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11386.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment filed 5–22–2003; operative 6–21–2003 (Register 2003, No. 21).

Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil penalties by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and otherwise follow the format for a staff violation report as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution or by appointment by the Chair without Commission objection to assist the Commission in carrying out its enforcement responsibilities.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before a hearing officer, the enforcement committee, or the Commission as part of a Commission enforcement proceeding.

(d) "Hearing Officer," means any person appointed by the Commission to receive evidence, hear arguments, make findings of fact, and recommend to the Commission what action it should take on an enforcement matter.

(e) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(f) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report and a statement of defense form in accordance with Section 11321(c).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

§ 11320. Staff Investigation and Discovery.

As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180–11181, 66637, 66638 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes that the results of an enforcement investigation so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that complies with the format set out in Appendix H,

(2) a complaint for civil penalties that complies with the format set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that complies with the format set out in Appendix I. The violation report and complaint for civil penalties can be combined into a single document so long as it contains all the information required for both.

(b) The violation report shall refer to all documents on which the staff relies to provide a prima facie case and give notice that the documents may be inspected at the Commission's office and that copies will be provided with five days prior notice and upon payment of the cost of copying.

(c) Issuance of a violation report shall occur when the violation report is mailed by certified mail to all persons or entities named as a respondent in the violation report. Issuance of a complaint for civil penalties shall occur when the complaint for civil penalties is mailed by certified mail to all persons or entities named as a respondent in the complaint.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

RED Exhibit E**§ 11322. Respondent's Required Response to the Violation Report.**

(a) Within thirty-five (35) days of the issuance of the violation report and the statement of defense form, each respondent shall submit to the Commission as its office an original and five copies of the completed statement of defense form and an original (or verified copy) and five copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person relied on by staff in its violation report is needed to show or contest a fact alleged in the violation report, the respondent shall request such cross-examination in the statement of defense form. The addendum shall list the name of each person the respondent wants to cross examine, all documents about which the respondent wants to cross examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for civil penalties and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form and all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters, and any request to allow cross-examination.

(d) If the staff wants to cross-examine, the staff shall, within seven days of receiving a statement of defense form, mail to all respondents a list of all persons that the staff wants to cross examine, the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for civil penalties together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) The Executive Director may at his or her discretion extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension and a written demonstration of good cause. The extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for the imposition of administrative civil penalties by submitting a cashier's check in the appropriate amount to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall file his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29610-29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee, the Commission, or a hearing officer, the Executive Director shall mail by regular mail a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5, and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11324. Distribution of the Violation Report, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall mail by regular mail the following materials to each respondent, and to the committee members if the enforcement hearing will be held before the enforcement committee, to the hearing officer if the enforcement hearing will be held before a hearing officer, or to the Commission if the enforcement hearing will be held before the Commission: (1) the violation report, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code, and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11325. Ex Parte Contacts.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12-27-2004; operative 1-26-2005 (Register 2004, No. 53).

§ 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order.

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(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a brief summary of (A) any background to the alleged violation, (B) the essential allegations made by staff in its violation report (C) a list of all essential allegations either admitted or not contested by respondent(s), (D) all defenses and mitigating factors raised by the respondent(s), and (E) any rebuttal evidence raised by the staff to matters raised in the statement of defense form with references to supporting documents;

(2) a summary and analysis of all unresolved issues;

(3) a statement of whether the Executive Director has issued a cease and desist order and its expiration date; and

(4) a recommendation on what action the Commission should take; and

(5) the proposed text of any cease and desist order, permit revocation order, or civil penalty order that the Executive Director recommends that the Commission issue.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66642 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, indicate what matters are already part of the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the reported party(s);

(e) other speakers may speak concerning the matter;

(f) presentations made by the staff, a respondent, and other speakers shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the committee and the Commission shall not allow oral testimony unless the committee and Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to cross-examine all witnesses who are allowed to testify and a right to have rebuttal witnesses similarly testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing

pursuant either to Section 11322(a) or Section 11322(c) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered.

(h) Committee members, a hearing officer, and Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee, hearing officer, or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members, the hearing officer, or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(k) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an Executive Director's recommended enforcement decision within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the completed statement of defense form except to the extent the Executive Director has extended the time for such submittal pursuant to Section 11322(d) or the Commission admits the evidence into the record pursuant to Section 11327(f) and this section. To this end, the Commission, any hearing officer, and the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission, hearing officer, or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner and would be substantially harmed if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury or in the form of another document referred to in a violation report or complaint for the imposition of civil penalties and the declarant or author of the other document is subject to cross-examination as provided in Sections 11321, 11322, and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall consult with the Deputy Attorney General in attendance at the hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).

§ 11330. Adoption of an Enforcement Committee or a Hearing Officer Recommended Enforcement Decision.

After the enforcement committee or a hearing officer has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

- (a) all of the matters required by Section 11326; and
- (b) any further written report on or explanation of the enforcement proceedings as the enforcement committee or hearing officer believes is appropriate.

The enforcement committee or a hearing officer can adopt with or without change the staff recommended enforcement decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director, by the enforcement committee, or by a hearing officer, the staff shall mail the recommended enforcement decision to all respondents and to all Commissioners.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) When the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter to the enforcement committee or hearing officer or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

- (1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or civil penalty order;

RED Exhibit E

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed civil penalty order or (B) adopt the recommended enforcement decision with regard to one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed civil penalty order and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee, hearing officer, or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Section 11327 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

When the Executive Director refers an enforcement matter directly to the Commission rather than to the enforcement committee, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10-11-89; operative 11-10-89 (Register 89, No. 30). For prior history, see Register 87, No. 30.

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Civil Penalty Order.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11335. Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11336. Distribution of Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11337. Notice of Public Hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11338. Public Hearing Procedure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11339. Admissibility of Evidence.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

- (1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;
- (2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;
- (3) identification of the property where the activity has been undertaken or may be undertaken;
- (4) a description of the activity;
- (5) the effective date of the order;
- (6) the expiration date, if any, of the order;
- (7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer–Petris Act, the Suisun Marsh Preservation Act, or a permit;
- (8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;
- (9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;
- (10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and
- (11) such other provisions that the Commission has approved, including provisions relating to:
 - (A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;
 - (B) the obligation to conform strictly to the order and the consequences of the failure to do so; and
 - (C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order or a civil penalty order so long as the combined order contains all the information required under these regulations for both such orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued, but he or she shall not do so in a manner that extends the 90–day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11344. Amendments to Cease and Desist Orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

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§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and a civil penalty order so long as the combined order contains all the information required by these regulations for both types of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11360. Preparation and Execution of Commission Cease and Desist Orders and Permit Revocation Orders.

The Executive Director shall prepare and sign a cease and desist order or a permit revocation order authorized by the Commission no later than the fifth (5th) working day following approval.

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NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.

§ 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, a civil penalty order, or of any modification of such orders, is complete when the Executive Director executes the original copies of the order or modification and they are stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modifications to each person to whom the order is being issued no later than the second working day following the date of issuance. The Executive Director shall cause to be personally served or mail by registered mail a civil penalty order or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by regular mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification to each person who appeared at the hearing and submitted a written request for a copy as soon as possible after the Commission authorized the order or modification. (For civil penalty orders, see subdivision (d) of Government Code Section 66641.6.)

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

(a) the violation report, including all documents referred to in the report;

(b) any complaint for civil penalties;

(c) all timely filed statement of defense form(s);

(d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;

(e) the staff recommended enforcement decision, including all documents referred to in the recommendation,

(f) minutes of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if eyewitness or expert testimony is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;

(g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;

(h) any enforcement committee's or hearing officer's recommended enforcement decision,

(i) any order that the Commission issues,

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- (j) all other materials maintained in the Commission's file for the enforcement matter,
- (k) such other permit or other Commission files as have explicitly been made a part of the record,
- (l) the McAteer-Petris Act,
- (m) the San Francisco Bay Plan,
- (n) the Suisun Marsh Preservation Act,
- (o) the Suisun Marsh Protection Plan,
- (p) the Suisun Marsh Local Protection Program, and
- (q) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29210(e), Public Resources Code. Reference: Sections 66639-66640 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

- 1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11380. Contents of Complaint for Administrative Imposition of Civil Penalties.

The complaint shall follow the same format as required for a Violation Report in Appendix H to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

- 1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11381. Commission Hearing on Complaint for Administrative Imposition of Civil Penalties.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either (1) hearing the matter itself within 60 days of the service of the complaint or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint.

(b) The Executive Director shall determine whether to refer a complaint for the administrative imposition of civil penalties to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint for civil penalties to the Commission or to the enforcement committee, he or she shall consider the following factors:

- (1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,
- (2) the relative workloads of the Commission and the enforcement committee at the time,
- (3) whether the complaint involves any policy issues that should be determined by the Commission initially,
- (4) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and
- (5) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

- 1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11382. Further Procedures for Commission Review of Complaints for the Issuance of Civil Penalty Orders.

The Commission shall follow the procedures established by Sections 11310 and 11321 through 11334 and Sections 11361 through 11370 of these regulations when it considers recommended enforcement decisions from either the staff or the enforcement committee or a hearing officer relative to the possible administrative imposition of civil penalties.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

- 1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11383. Contents of a Commission Civil Penalty Order.

(a) A Commission civil penalty order shall be signed by the Executive Director and shall contain the following:

- (1) the name(s) of the person(s) required to pay the civil penalty;

- (2) the amount of the civil penalty;
- (3) the date by which the civil penalty must be paid;
- (4) written findings that (1) explain the decision to issue the civil penalty order and (2) provide the factual and legal basis for the issuance of the order, and
- (5) notice that a person to whom the Commission issues a civil penalty order may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) A civil penalty order can be combined with a cease and desist order or a permit revocation order so long as the information required under these regulations for both is contained in the combined order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

- 1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11384. Modification of a Commission Civil Penalty Order.

The Executive Director may modify a civil penalty order if the modification would not alter the amount of the penalty or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

- 1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11385. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a civil penalty order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a civil penalty order by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

- 1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11386. Standardized Fines.

(a) This Section shall apply to an enforcement action if the Executive Director determines:

- (1) that an alleged violation is one of the types identified in subsection 11386(e);
- (2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and
- (3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) Except as provided in subsection (g), if this Section applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) believed to be responsible for the alleged violation that contains all of the following information:

- (1) the nature of the alleged violation and each and every action that must be taken to correct the alleged violation;
- (2) the fact that if the alleged violation is fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any civil penalty; and
- (3) the fact that if the alleged violation is not fully corrected within 35 days of mailing of the notice, the person believed to be responsible for the alleged violation may be subject to the payment of a civil penalty and

may resolve the penalty portion of the alleged violation by paying the standardized fine specified in subsections (e), and (f) without having to go through a formal enforcement proceeding pursuant to Sections 11300 through 11385 except as provided in subsection (h).

(c) Except as provided in subsection (g), if the person believed to be responsible for the alleged violation completes each and every corrective action specified in the notice pursuant to subsection (b) within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized or other fine.

(d) Except as provided in subsections (g) and (h), if the person believed to be responsible for the alleged violation fails to complete one or more of the corrective actions required by the notice pursuant to subsection (b) within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the penalty portion of the alleged violation by completing each and every action required by the notice sent pursuant to subsection (b) and by paying a fine in the amount provided in subsections (e) and (f).

(e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing the work authorized by the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each document plus ONE HUNDRED DOLLARS (\$100.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (e)(1) and (e)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement, plus ONE HUNDRED DOLLARS (\$100.00) per day for each violation, from the ninety-sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and

fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS (\$2,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained, or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than 95 days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day to the date the violation is completely corrected.

(f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

(g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to

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be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS (\$100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty-five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the amount is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66641.5,

Government Code, and Sections 29201(e) and 29521, Public Resources Code.

HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

Subchapter 1. Marsh Development Permits Issued by Local Governments

Article 1. Application

§ 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as "a marsh development authorization," by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

[The next page is 539.]

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Chapter 13. Enforcement Procedures

Subchapter 1. General Provisions

§ 11300. Grounds for the Issuance of Cease and Desist Orders.

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

- (a) the violation of a term or condition of a permit,
- (b) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
- (c) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641(d), Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Redesignation of former subsections (1)-(3) as subsections (a)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11302. Grounds for the Imposition of Administrative Civil Liability.

Any one of the following actions shall constitute grounds for the imposition of administrative civil liability by the Commission:

- (a) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (b) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e) and 66641.6, Government Code; and Sections 29610 and 29611, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

3. Amendment of section heading, designation of former subsection (1)-(2) as subsection (a)-(b) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer-Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal

Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66640(a), 66641(b) and 66642(a), Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

3. Amendment of subsection (c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil liability by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and follow the format and include the information for a staff violation report/complaint as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution. The Chair shall appoint Commission members or other representatives of the Commission to the enforcement committee with the concurrence of the Commission to assist the Commission in carrying out its enforcement responsibilities. The enforcement committee shall consist of no fewer than four and no more than six Commission members or other representatives of the Commission. A quorum of the enforcement committee necessary to conduct business, to hold hearings and to vote on recommended enforcement decisions shall consist of three members notwithstanding the total number of enforcement committee members. The enforcement committee shall select from its members a chair, who shall serve for a period agreed upon by a majority of the enforcement committee members. The enforcement committee shall conduct its hearings in accordance with the Commission's laws and regulations upon matters referred to it by either the Executive Director or the Commission. The Chair of the Commission may change the members of the enforcement committee from time to time as necessary due to changes in membership of the Commission or to fill vacancies on the committee provided that the Chair notifies the Commission prior to such change at a Commission meeting and the Commission concurs.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before the enforcement committee or the Commission as part of a Commission enforcement proceeding.

(d) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(e) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report or complaint and a statement of defense form in accordance with Section 11321(c).

(f) As used in this Chapter, “significant harm to the Bay’s resources or to existing or future public access” shall be determined based on both the context and intensity of the violation.

(1) “Context” refers to the location of the violation and the characteristics of the area where it occurs. Areas with important environmental or ecological significance (e.g., habitat or refugia for sensitive species) are generally considered to be more significant than previously degraded habitat or areas with limited habitat value, and highly visible and/or frequently used areas are generally considered to be more significant than isolated areas with low visibility or infrequent usage.

(2) “Intensity” refers to the severity of the impact and the degree to which it affects the environment or public access. Violations presenting significant ecosystem hazards (e.g., toxic or biohazardous fill) or involving large portions of a particular site shall generally be considered to be more severe. In addition, violations that substantially interfere with the ability to use designated public access or encompass large portions of a designated public access area will be considered to be more significant.

(3) Where multiple violations are alleged at a site, if a single violation results in harm that is individually limited but cumulatively significant when added to other violations at the site, it shall be determined that the violation has resulted in significant harm to the Bay’s resources or to existing or future public access.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e), 66641.6 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
3. Amendment of subchapter heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability

§ 11320. Staff Investigation and Discovery, and Appointment of a Hearing Officer.

(a) As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

(b) At the request of the Executive Director or the chair of the enforcement committee, or on its own initiative, the Commission may appoint a hearing officer to conduct an investigation or hold a hearing, make proposed findings of fact, and recommend to the Commission what action it should take on an enforcement matter. A hearing officer appointed to hold an enforcement hearing shall proceed in accordance with the procedural requirements of Section 11327 and shall adopt a recommended enforcement decision in accordance with Section 11330.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180, 11181, 66637, 66638, 66641.5(e), 66641.6 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of article heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes, as a result of an enforcement investigation, that any person has caused or threatens to cause significant harm to the Bay’s resources or to existing or future public access, or that the nature, circumstances, extent, and gravity of the violation or violations so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that follows the format and contains the information set out in Appendix H,

(2) a complaint for administrative civil liability that follows the format and contains the information set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that follows the format and requests the information set out in Appendix I. The violation report and complaint for administrative civil liability can be combined into a single document so long as it contains all the information required for both.

(b) The violation report and/or complaint shall list all documents, including any declarations under penalty of perjury, on which the staff relies to provide a prima facie case of the violations alleged and copies of all such documents shall be attached to or accompany the violation report and/or complaint or shall be provided to the respondent in electronic format upon request.

(c) Issuance of a violation report and/or complaint shall occur when the violation report and/or complaint is mailed by certified mail to all persons or entities named as a respondent in the violation report and/or complaint. Upon written consent of the respondent or respondent’s authorized representative, a violation report and/or complaint shall be mailed to the respondent or the respondent’s authorized representative by email.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

§ 11322. Respondent’s Required Response to the Violation Report or Complaint, the Executive Director’s Consideration of the Respondent’s Response, and Extensions of Time.

(a) Within thirty–five (35) days of the issuance of the violation report and/or complaint and the statement of defense form, each respondent shall submit to the Commission at its office an original and one copy of the completed statement of defense form (or an original and one copy of a document providing the information requested by the form) and an original (or verified copy) and one copy of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross–examination of a person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint is needed to show or contest a fact alleged in the violation report and/or complaint, the respondent shall request such cross–examination in the completed statement of defense form. The completed statement of defense form or an addendum shall list the name of each person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint that the respondent wants to cross examine, all documents referred to in such person’s declaration about which the respondent wants to cross–examine, a description

of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for administrative civil liability and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed administrative civil penalty or (2) the completed statement of defense form, copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding in accordance with subsection (a), and any request to allow cross-examination in accordance with subsection (b).

(d) If the staff wants to cross-examine any person whose declaration under penalty of perjury has been submitted with a respondent's completed statement of defense form, the staff shall, within seven days of receiving the completed statement of defense form, mail to all respondents a list of all persons whose declaration under penalty of perjury has been submitted by respondent that the staff wants to cross examine, all documents referred to in such person's declaration about which staff wants to cross-examine the person, a description of the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for administrative civil liability together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) If the Executive Director issues a violation report only, and not a complaint for administrative civil liability, the Executive Director shall for good cause extend the 35-day time limit imposed by subsection (a) upon receipt within the 35-day time limit of a written request for such extension and demonstration of good cause. If the Executive Director issues a violation report and complaint for administrative civil liability or only a complaint for administrative civil liability, the Executive Director shall for good cause extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension, demonstration of good cause, and waiver of and consent to extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b). Any extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for administrative civil liability by submitting a cashier's check in the amount of the penalty proposed in the complaint to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall submit his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

(i) At any time after issuance of a violation report and/or complaint, the Executive Director and a respondent may agree on the terms of a proposed stipulated order or a proposed settlement agreement to resolve a violation or violations, which may include a schedule of corrective actions to be implemented by the respondent and payment of administrative civil penalties. The Executive Director shall include the proposed stipulated order or proposed settlement agreement in his or her recommended

enforcement decision prepared in accordance with Section 11326. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has not submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination in accordance with subsections (a) and (b), the respondent shall submit his or her completed statement of defense form, copies of any supporting documents, and any request for cross-examination within 35 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement. Thereafter, the enforcement matter shall proceed according to these regulations. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has previously submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination, the Executive Director shall prepare a new recommended enforcement decision in accordance with Section 11326 within 30 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement, and thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11415.60, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee or the Commission the Executive Director shall mail by first class mail or send by email, and shall also make available on the Commission's website, a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address, the Deputy Attorney General advising the enforcement committee or Commission, and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed and posted on the Commission's website pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing by first class mail or sending by email, and also making available on the Commission's website, written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11324. Distribution of the Violation Report, Complaint, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall make available on the Commission's website and shall mail by first class mail or send by email the following materials to each respondent, to the committee members if the enforcement hearing will be held before the enforcement committee or to the Commission if the

enforcement hearing will be held before the Commission, and to the Deputy Attorney General advising the enforcement committee or Commission: (1) the violation report and/or complaint for administrative civil liability and all documents or other evidence cited therein or listed on an index of supporting documents or evidence attached thereto, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11325. Ex Parte Contacts. [Repealed]

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12-27-2004; operative 1-26-2005 (Register 2004, No. 53).

§ 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil liability.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a summary of (A) any background to the alleged violation, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), and (D) all defenses and mitigating factors raised by the respondent(s);

(2) any staff response to the defenses, mitigating factors, or arguments raised by the respondent(s), and any rebuttal evidence submitted by the staff to matters raised in the statement of defense form, with references to supporting documents;

(3) a summary and analysis of all disputed issues;

(4) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify all violations for which administrative civil penalties are proposed and include:

(A) the total amount of proposed administrative civil penalties; and

(B) a statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

(5) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

(6) a recommendation on what action the Commission should take; and

(7) the proposed text of any cease and desist order, permit revocation order, order setting administrative civil liability, or stipulated order that the Executive Director recommends that the Commission issue or any settlement agreement that the Executive Director recommends that the Commission approve.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair or enforcement committee chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair or enforcement committee chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and/or complaint for administrative civil liability and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the respondent party or parties;

(e) members of the public may speak concerning the matter;

(f) presentations made by the staff, a respondent, and the public shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the enforcement committee or the Commission shall not allow oral testimony unless the committee or Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to examine or cross-examine all witnesses who are allowed to testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing pursuant either to Section 11322(b) or Section 11322(d) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered. Following cross-examination of a witness whose declaration under penalty of perjury has become part of the enforcement record, a representative of the opposing party shall be entitled to examine the witness on the area or areas of information addressed during cross-examination. Neither cross-examination nor direct examination shall be allowed of any person who has not submitted a declaration under penalty of perjury which has become part of the enforcement record and who has not been identified in writing pursuant to either Section 11322(b) or Section 11322(d), including any member of the public who has commented on an enforcement matter or submitted information related to an alleged violation.

(h) enforcement committee members or Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall rule on any objections to the admissibility of evidence or the acceptance of late evidence and identify any evidence submitted but rejected because it was not filed in a timely manner or in violation of Section 11328.

(k) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(f) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an enforcement committee recommended enforcement decision in accordance with Section 11330 within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the violation report and/or complaint or the completed statement of defense form, except to the extent otherwise provided by Section 11322(d) or the Executive Director has extended the time for such submittal pursuant to Section 11322(f), or the Commission or enforcement committee admits the testimony into the record pursuant to Section 11327(f) and this section. To this end, the Commission or the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner but was unable to do so and would be substantially prejudiced if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence, including but not limited information provided by the public to the Commission or staff or in public comments, may be admitted and used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury and the declarant is subject to cross-examination as provided in Sections 11322 and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair or the enforcement committee chair shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair or the enforcement committee chair shall consult with the Deputy Attorney General advising the Commission or enforcement committee at the hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; Section 29601, Public Resources Code; and Section 351, Evidence Code.

HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).
3. Amendment of subsections (b), (d) and (e) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11330. Adoption of an Enforcement Committee Recommended Enforcement Decision.

(a) After the enforcement committee has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

(1) a summary of (A) any background to the alleged violations, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), (D) the defenses and mitigating factors raised by the respondent(s), and (E) the staff's response to the defenses, mitigating factors, or arguments raised by the respondent(s);

(2) a statement of any rulings by the enforcement committee;

(3) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify the violations for which penalties are proposed and include:

(A) the total amount of proposed administrative civil penalties; and

(B) a statement of the applicable factors set forth in Government Code Section 66641.9 that the enforcement committee considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

(4) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

(5) any further written report on or explanation of the enforcement proceedings as the enforcement committee believes is appropriate;

(6) a recommendation on what action the Commission should take; and

(7) the proposed text of any cease and desist order, permit revocation order, order setting administrative civil liability, or stipulated order that the enforcement committee recommends that the Commission issue or any settlement agreement that the enforcement committee recommends that the Commission approve.

(b) The enforcement committee can adopt with or without change the Executive Director's recommended enforcement decision. The chair of the enforcement committee shall direct Commission counsel to prepare the enforcement committee recommended enforcement decision, provided that: (1) Commission counsel shall submit the enforcement committee recommended enforcement decision to the respondent(s) by email for review not less than three days before the Executive Director mails the recommended decision to the Commission and respondent(s) in accordance with Section 11331; and (2) if the respondent(s) provides written comments on or objections to the recommended decision within two days of receipt thereof, the Executive Director may modify the recommended decision based on such comments or objections, if he or she determines that such modifications are appropriate, and shall include the respondent's comments or objections when mailing the recommended decision to the Commission and respondent(s) in accordance with Section 11331.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11331. Referral of the Recommended Enforcement Decision to the Commission:

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director or by the enforcement committee, the staff shall mail by first class mail or send by email, and shall also make available on the Commission's website, the recommended enforcement decision to all respondents, to all Commissioners, and to the Deputy Attorney General advising the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Codes.

HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) Except as provided in subsection (c), when the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments or comments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

- (1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or order setting administrative civil liability;
- (2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed order setting administrative civil liability or (B) if the recommended enforcement decision includes one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed order setting administrative civil liability, adopt the recommended enforcement decision with regard to one or more proposed orders and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;
- (3) remand the matter to the enforcement committee or the staff for further action as the Commission directs; or
- (4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Sections 11327 and 11328 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

(c) If the respondent(s) agrees in writing to accept the recommended enforcement decision, and the Executive Director also agrees to accept the recommended decision, the Executive Director shall calendar the recommended enforcement decision as a consent item on a Commission meeting agenda. At the Commission meeting, after allowing public comment on the consent item the Commission shall determine by a majority of those commissioners present and voting whether to adopt the recommended enforcement decision on consent without any change and without any further proceedings. If a majority of those commissioners present and voting do not determine to adopt the recommended decision on consent, the Commission shall proceed to act on the matter in accordance with subsections (a) and (b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

The Executive Director shall determine whether to refer an enforcement matter to the Commission or to the enforcement committee. When the Executive Director refers an enforcement matter directly to the Commission, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10-11-89; operative 11-10-89 (Register 89, No. 30). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Order Setting Administrative Civil Liability.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil liability by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, and 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, subsection (a) and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11335. Staff Report and Recommendation. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11336. Distribution of Staff Report and Recommendation. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11337. Notice of Public Hearing. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11338. Public Hearing Procedure. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11339. Admissibility of Evidence. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

(1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;

(2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;

(3) identification of the property where the activity has been undertaken or may be undertaken;

(4) a description of the activity;

(5) the effective date of the order;

(6) the expiration date, if any, of the order;

(7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer-Petris Act, the Suisun Marsh Preservation Act, or a permit;

(8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;

(9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;

(10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and

(11) such other provisions that the Commission has approved, including provisions relating to:

(A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;

(B) the obligation to conform strictly to the order and the consequences of the failure to do so; and

(C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order and/or an order setting administrative civil liability so long as the combined order contain all the information required under these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment of subsection (b) and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued for good cause, but he or she shall not do so in a manner that extends the 90-day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66637, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission for good cause if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director by filing a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11344. Amendments to Cease and Desist Orders. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, or the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and/or an order setting administrative civil liability so long as the combined order contains all the information required by these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of subsections (a)(2) and (b) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order for good cause if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of subsections (b)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11360. Preparation and Execution of Commission Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability.

The Executive Director shall prepare and sign a cease and desist order, a permit revocation order, or an order setting administrative civil liability authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, an order setting administrative civil liability, or of any modification of such orders, is complete when the Executive Director executes the original copy of the order or modification and it is stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modification of such orders to each person to whom the order or modification is being issued and the owner of the property on which any violation addressed by the order occurred no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or modification by email.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by certified mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification of such an order to each person who appeared at the hearing and submitted a written request for a copy no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person who appeared at the hearing and submitted a written request for a copy, except that with the consent of the party to be served, the Executive Director shall serve any such order or order modification by email. In addition, the Executive Director shall post on the Commission's website a copy of a cease and desist order, permit revocation order, or an order setting administrative civil liability, or any modification of such orders no later than the second working day following issuance.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

- (a) the violation report, including all documents referred to in the report;
- (b) any complaint for administrative civil liability;
- (c) all timely filed statement of defense form(s), including all documents submitted therewith;
- (d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;
- (e) the Executive Director's recommended enforcement decision, including all documents and any other evidence referred to or included in the recommendation,
- (f) minutes or a verbatim transcript of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if any oral testimony or any cross-examination and direct examination of a person whose declaration under penalty of perjury has become part of the enforcement record is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;
- (g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;
- (h) any enforcement committee's or hearing officer's recommended enforcement decision,
 - (i) any order that the Commission issues,
 - (j) such other permit or other Commission files as have explicitly been made a part of the record,
 - (k) the McAtteer-Petris Act, if relevant to any of the issues raised in the proceeding,
 - (l) the San Francisco Bay Plan, if relevant to any of the issues raised in the proceeding,
 - (m) the Suisun Marsh Preservation Act, if relevant to any of the issues raised in the proceeding,
 - (n) the Suisun Marsh Protection Plan, if relevant to any of the issues raised in the proceeding,
 - (o) the Suisun Marsh Local Protection Program, if relevant to any of the issues raised in the proceeding, and
 - (p) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66640, 66641.5(e), 66641.6 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11380. Content of Complaint for Administrative Civil Liability.

The complaint shall follow the format and contain the information set out in Appendix H to these regulations. The complaint shall identify the violations for which administrative civil penalties are proposed and include:

- (a) a list or table of all alleged violations for which staff is proposing a penalty;
- (b) the total amount of proposed administrative civil penalties; and

(c) a statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29610 and 29611, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11381. Commission Hearing on Complaint for Administrative Civil Liability.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either: (1) hearing the matter itself within 60 days of the service of the complaint; or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint. With the written consent of the respondent(s) to whom a complaint is issued, the Executive Director shall for good cause extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b).

(b) The Executive Director shall determine whether to refer a complaint for administrative civil liability to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint to the Commission or to the enforcement committee, he or she shall consider the following factors:

- (1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,
- (2) whether the Executive Director has issued a cease and desist order for the violation or violations alleged in the complaint, and whether the Executive has proposed that any order setting administrative civil liability be combined with a Commission cease and desist order and/or a permit revocation order,
- (3) the relative workloads of the Commission and the enforcement committee at the time,
- (4) whether the complaint involves any policy issues that should be determined by the Commission initially,
- (5) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and
- (6) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e) and 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11382. Further Procedures for Commission Review of Complaints for Administrative Civil Liability.

The Commission shall follow the procedures established by Sections 11321 through 11334 of these regulations when it considers a recommended enforcement decision from either the staff or the enforcement committee relative to the possible imposition of administrative civil liability.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11383. Contents of a Commission Order Setting Administrative Civil Liability.

(a) A Commission order setting administrative civil liability shall be signed by the Executive Director and shall contain the following:

- (1) the name(s) of the person(s) required to pay the civil penalties;

(2) the amount of the civil penalties and findings that address the applicable factors set forth in Government Code Section 66641.9 that the Commission considered in determining the amount of the civil penalties;

(3) the date by which the civil penalties must be paid in full, or, if the penalties are to be paid in installments, the amount of each installment and the date by which each installment must be paid;

(4) written findings that (1) explain the decision to issue the order setting administrative civil liability and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues an order setting administrative civil liability may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) An order setting administrative civil liability can be combined with a cease and desist order or a permit revocation order so long as the combined order contains all the information required under these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29610 and 29611, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11384. Modification of a Commission Order Setting Administrative Civil Liability.

The Executive Director may modify an order setting administrative civil liability for good cause if the modification would not alter the total amount of the civil penalties or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11385. Appeal from Modification of an Order Setting Administrative Civil Liability.

(a) A person to whom the Commission has issued an order setting administrative civil liability may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of an order setting administrative civil liability by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

Article 3. Standardized Fines

§ 11386. Applicability of Article.

(a) This Article shall apply to an enforcement action if the Executive Director determines:

(1) that an alleged violation is one of the types identified in Section 11390;

(2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and

(3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) For purposes of this Article, "significant harm to the Bay's resources or to existing or future public access" shall be determined in accordance with Section 11310(f).

(c) If an enforcement action involves both an alleged violation that has not resulted in significant harm to the Bay's resources or to existing or future public access and an alleged violation that has resulted in significant harm to such resources or public access or that is otherwise not subject to resolution under this Article, the Executive Director may, depending on the nature and extent of all the violations and on whether the responsible party has taken appropriate action to resolve the violations, commence Commission enforcement proceedings for all the alleged violations by following the procedures established by Sections 11321 through 11334 of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).
5. New article 3 heading, amendment of section heading and subsections (a)-(a)(10), renumbering of former subsections (b)-(b)(3) to new section 11387, renumbering of former subsection (c) to new section 11388, renumbering of former subsection (d) to new section 11389, renumbering of former subsections (e)-(h) to new section 11390, renumbering of former subsections (i)-(k) to new section 11391, new subsections (b)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11387. Notice of Alleged Violation.

If this Article applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) responsible for the alleged violation(s) that contains all of the following information:

(a) the nature of the alleged violation(s) and each and every action that must be taken to correct the alleged violation;

(b) the fact that if the alleged violation(s) are fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any fine; and

(c) the fact that if the alleged violation(s) are not fully corrected within 35 days of mailing of the notice, the person responsible for the alleged violation(s) may be subject to the payment of a fine and may resolve the alleged violation(s) by taking each and every corrective action required by the notice and paying the standardized fine specified in Section 11390(a) or 11390(b) without having to go through a Commission enforcement proceeding pursuant to Sections 11321 through 11334, except as provided in Section 11390(d).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11386, subsections (b)-(b)(3) to new section 11387 filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11388. Opportunity to Complete Corrective Action without Imposition of a Standardized Fine.

Except as provided in Section 11390(c), if the person responsible for the alleged violation(s) submits to the Executive Director information demonstrating that the alleged violation(s) have not occurred or that such person has completed each and every corrective action specified in the notice pursuant to Section 11387 within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized fine.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11386, subsection (c) to new section 11388 filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11389. Opportunity to Complete Corrective Action with Imposition of a Standardized Fine.

Except as provided in Sections 11390(c) and 11390(d), if the person responsible for the alleged violation(s) fails to submit to the Executive Director information demonstrating that such person has completed each and every corrective action required by the notice pursuant to Section 11387 within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the alleged violation(s) by completing each and every corrective action required by the notice sent pursuant to Section 11387 and by paying a fine in the amount provided in Sections 11390(a) or 11390(b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11386, subsection (d) to new section 11389 filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

§ 11390. Violations Subject to a Standardized Fine and Schedule of Standardized Fines.

(a) The following standardized fines shall apply to the following types of alleged violations:

(1) for the failure to return an acknowledged, executed Commission permit before commencing the work authorized by the permit, or, for any permit issued to authorize previously commenced or completed work, for failure to return an acknowledged, executed permit within the time period stated in the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an acknowledged, executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each document plus FIVE HUNDRED DOLLARS (\$500.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (a)(1) or (a)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND

DOLLARS (\$5,000.00) for each violation of each separate permit requirement, plus FIVE HUNDRED DOLLARS (\$500.00) per day for each violation, from the ninety-sixth (96th) day to the date the violation is corrected or the required improvements are provided.

(4) for the failure to obtain a Commission permit or an amendment to a previously issued Commission permit prior to undertaking any activity that can be authorized by an administrative permit or an amendment to previously issued Commission permit:

(A) if either a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted between thirty-six (36) and sixty-five (65) days and a permit or permit amendment is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted between sixty-six (66) and ninety-five (95) days and a permit or permit amendment is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the ninety-sixth (96th) day to the date the fully complete and properly executed application accompanied by a check or money order for the applicable application fee is submitted or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit or an abbreviated regionwide permit:

(A) if either a complete notice of intent to proceed under a regionwide permit or abbreviated regionwide permit is submitted between thirty-six (36) and sixty-five (65) days and the Executive Director approves the notice of intent to proceed within one hundred and fifty-five (155) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted between sixty-six (66) and ninety-five (95) days and the Executive Director approves the notice of intent to proceed within one hundred and eighty-five (185) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FOUR THOUSAND DOLLARS (\$4,000.00);

(C) if a complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected within the same time limits: FOUR THOUSAND DOLLARS (\$4,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the ninety-sixth

(96th) day to the date the complete notice of intent to proceed is submitted or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission’s laws and policies:

(A) if the violation is corrected and the area restored to its prior status between thirty–six (36) and sixty–five (65) days after the mailing of the notice required by Section 11387: THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty–six (66) and ninety–five (95) days after the mailing of the notice required by Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than ninety–five (95) days after the mailing of the notice required by Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day to the date the violation is completely corrected.

(b) A person responsible for any alleged violation must pay double the amount listed in subsection (a) to resolve the alleged violation if that person has previously paid or has been assessed but has failed to pay any standardized fine pursuant to subsection (a) and Section 11391 within the five years prior to resolution of the alleged violation.

(c) If a violation resolved pursuant to Section 11388 is repeated by the same person within five years of the resolution of the prior violation, Section 11388 and subsections (a) and (b) shall not apply. Instead, the person responsible for the subsequent violation may resolve the subsequent alleged violation by paying TWO HUNDRED DOLLARS (\$200.00) per day for each day the subsequent alleged violation occurs or persists after the date of the mailing of the notice required by Section 11387.

(d) If the person responsible for the alleged violation does not complete all the required corrective actions within 125 days of the notice mailed pursuant to Section 11387 or does not pay the amount of standardized fines assessed in accordance with this section when payment is due under Section 11391(c) or (d), the Executive Director may commence Commission enforcement proceedings in accordance with Sections 11321 through 11334. If the Executive Director determines that the person responsible for the violation has not made a good–faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for resolution of the violation using the standardized fine process by mailing a notice stating that the process is no longer available. After mailing such notice, the Executive Director shall commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11386, subsections (e)–(h) to new section 11390 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

§ 11391. Notice of Liability for Standardized Fines and Opportunity to Appeal or to Resolve Violation through Commission Enforcement Proceedings.

(a) After the violation has been completely resolved, the Commission staff shall notify the person responsible for the violation by first class mail or email of the amount of standardized fines assessed in accordance with Section 11390. The notice shall state that if any person subject to standardized fines believes that the amount of standardized fines is inappropriate or was not properly determined in accordance Section 11390, that person can appeal the amount of the fines to the Executive Director and the Chair by submitting to the Executive Director within 21 days of the date of the notice a written statement that the person is appealing and the reasons for the appeal. The Commission staff shall submit to the Executive Director a response to the appeal within 14 days after receipt

thereof. The Executive Director and the Chair can reduce the amount of the standardized fines to an amount that they believe is appropriate and can establish a schedule for the payment of the standardized fines in installments.

(b) If any person subject to the standardized fines listed in Sections 11390(a), (b), or (c) believes that the 35–day time limit for resolution without a standardized fine established pursuant to Sections 11387 and 11388 is not feasible, that person may appeal the time limit to the Executive Director and the Chair by submitting to the Executive Director within 35–days of the notice mailed pursuant to Section 11387 a written statement that the person is appealing the 35–day time limit, the reasons for the appeal, and a proposed alternative date to complete the required corrective action. The Executive Director and the Chair can modify the 35–day time limit and the time periods for accrual of standardized fines set forth in Section 11390(a) for the violation as they believe appropriate.

(c) If any person subject to standardized fines does not appeal the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), the full amount of such fines shall be due and payable by cashier’s check thirty (30) days after the date of the notice provided under subsection (a).

(d) If any person subject to standardized fines appeals the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), any fines the Executive Director and Chair determine to be appropriate shall be due and payable by cashier’s check by the date or dates specified in their decision on the appeal.

(e) Any person receiving a notice under Section 11387 may waive the opportunity to resolve the violation under this Article by submitting a letter to the Executive Director indicating such a waiver and requesting that the violation be resolved through Commission enforcement proceedings in accordance with Sections 11321 through 11334 if that person believes such proceedings are necessary to fairly determine liability for the violation, the appropriate remedy, or the appropriate fine or administrative civil penalty amount. A waiver of the opportunity to resolve a violation under this Article and request that the violation be resolved through Commission enforcement proceedings may be submitted at any time after receipt of a notice under Section 11387 but no later than: (1) twenty one (21) days after the date of the notice provided by Commission staff under subsection (a) of amount of standardized fines assessed, if the person receiving such notice elects not to appeal the amount of such fines to the Executive Director and Chair; or (2) fourteen (14) days after the date of the decision of the Executive Director and Chair on any appeal of the amount of standardized fines. If a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings is submitted after the Commission staff has provided notice under subsection (a) of the amount of standardized fines assessed or after the decision of the Executive Director and Chair on any appeal of the amount of standardized fines, no such fines shall be due pursuant to that notice or that decision, and the appropriate amount of fines or administrative civil penalties shall be determined through Commission enforcement proceedings.

(f) If a person subject to standardized fines fails to pay such fines when due and payable under subsection (c) or (d), as applicable, and if such person has not submitted a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings under subsection (e), the Executive Director shall commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation. In those proceedings, the person subject to such fines may not contest his or her liability for the violation or that the violation occurred, and the Commission shall determine only whether the amount of standardized fines was properly calculated in accordance with Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

Statement of Defense Form
Enforcement Case ER2019.063.00

RED Exhibit E

Seaplane Investment, LLC

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **ADRIENNE KLEIN** OR **BRENT PLATER** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY **December 1, 2022** MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

**San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105**

The forms should also be emailed to Margie Malan at margie.malan@bed.edu.gov

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **ADRIENNE KLEIN** or **BRENT PLATER** of the Commission Enforcement Staff at telephone number **415-352-3609** or **415-352-3628**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report):

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

3. Facts or allegations contained in the violation report of reference to paragraph number in the violation report):

which you have as personal knowledge (with specific

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

5. Any other information, statement, etc. that you want to make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

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7. Name of any person whose declaration under penalty of perjury was listed in the violation report as being part of the staff's case who the respondent wants to cross-examine, all documents about which you want to cross-examine the person, area or areas of information about which the respondent wants to cross-examine the witness, information that the respondent hopes to elicit in cross-examination, and the reason(s) why some other method of proving this information is unsatisfactory:

Statement of Defense Form
Enforcement Case ER2019.063.00

RED Exhibit E

Seaplane Investment, LLC

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **ADRIENNE KLEIN** OR **BRENT PLATER** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY **December 1, 2022** MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

**San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105**

RED Exhibit E

The forms should also be emailed to Margie Malan at margie.malan@bcd.ca.gov.

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **ADRIENNE KLEIN** or **BRENT PLATER** of the Commission Enforcement Staff at telephone number **415-352-3609** or **415-352-3628**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report/Complaint):

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report/Complaint):

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3. Facts or allegations contained in the violation report of which you have no personal knowledge (with specific reference to paragraph number in the violation report/Complaint):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

5. If the Executive Director is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding and if you would be unable to pay the proposed penalty or paying the proposed penalty would have a substantial adverse effect on your ability to continue in business, provide factual information establishing such inability to pay or such adverse effect. Submit all relevant supporting documentation which may include but not limited to audited financial statements and reports (or if not audited, then those that are the basis of tax returns or regulatory filings), balance sheets, profit and loss statements, statements of net worth, annual budgets, bond prospectuses, and tax returns including supporting forms and schedules as may be applicable. Before submitting this information redact (cover or blackout) all personal information including your social security or tax-payer identification number, driver's license/state identification number, financial account number and any other private non-public personal information including a residential address, telephone numbers, or personal email address.

6. Any other information, statement, etc. that you want to make:

7. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

8. Name of any person whose declaration under penalty of perjury was submitted with the violation report/complaint as being part of the staff's case who the respondent wants to cross-examine, identify all documents referred to in such person's declaration about which you want to cross-examine the person, the area or areas of information about which the respondent wants to cross-examine the person, and the information that the respondent hopes to elicit in cross-examination, and state the reason(s) why some other method of proving this information is unsatisfactory.

RED Exhibit F: Respondent's Second
Statement of Defense, dated 12/01/22



December 1, 2022

Lawrence J. Goldzband
Executive Director
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

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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

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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

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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

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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.

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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,

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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.)

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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

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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.)

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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

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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

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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.

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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.

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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.

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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:

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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

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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.

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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

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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

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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.

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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:

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- 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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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 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

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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

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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.

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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.

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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

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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

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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.

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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

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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@bdc.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:

Four horizontal lines for providing answers to question 7.

EXHIBIT B
Email from Adrienne Klein to Sorenson,
Price, Sharp, and Singer, dated June 24,
2021

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JS

From: Klein, Adrienne@BCDC <adrienne.klein@bcdcc.ca.gov>
Sent: Thursday, June 24, 2021 7:57 PM
To: Plater, Brent@BCDC <brent.plater@bcdcc.ca.gov>; Njuguna, Priscilla@BCDC <priscilla.njuguna@bcdcc.ca.gov>; Delaporta, Megan@BCDC <megan.delaporta@bcdcc.ca.gov>; Creech, John@BCDC <john.creech@bcdcc.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

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and shoreline band and/or an intensification of use of the Bay. The permit area includes the 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](#)

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[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#

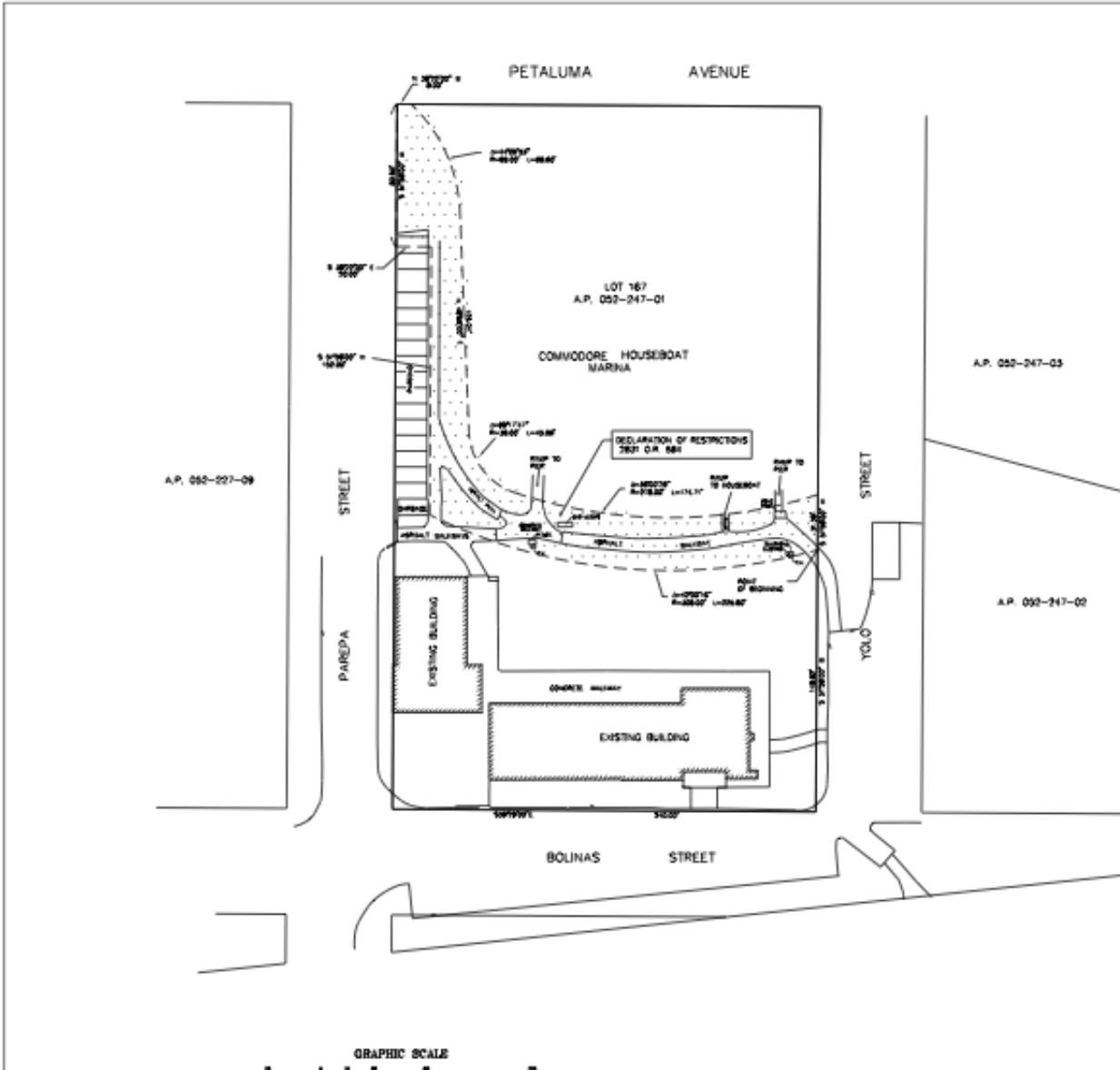
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Plater, Brent@BCDC <brent.plater@bcdc.ca.gov>; Njuguna, Priscilla@BCDC <priscilla.njuguna@bcdc.ca.gov>; Delaporta, Megan@BCDC <megan.delaporta@bcdc.ca.gov>; Creech, John@BCDC <john.creech@bcdc.ca.gov>; John Sharp <john@johnsharpplaw.com>; Steve Price <steve@seaplane.com>; neil@sorensenlaw.com <neil@sorensenlaw.com>



Permit No.
M1985....)[1].pdf



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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



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EXHIBIT C **RED Exhibit F**

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.

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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

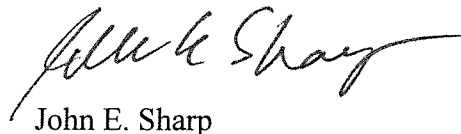
We will apply to move the current 2-3 foot berm on the inside of the courtyard to the outside of the shoreline access path along the Bay shoreline. We would construct a hybrid structural/earthen retaining wall the length of the pathway along the houseboats which will protect the shoreline access path, 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)



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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@bccdc.ca.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
-

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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:

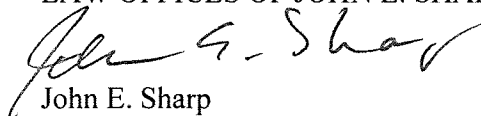
We herewith submit the following:

- 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)

RED Exhibit F

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)

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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
242 Redwood Hwy Mill valley CA 94941, California.

DocuSigned by:

BC8A044649C9441...
(signature of assignee or person executing for
assignee)

Revised 2/2/00

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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)

RED Exhibit F

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

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RED Exhibit F



EXHIBIT E
WAIVER AND RESOLUTION REQUEST

RED Exhibit F
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

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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

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;

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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

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Commodore Properties

PERMIT NO. 14-73

Page Three

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.

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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 (specificantly as defined in Commission Regulation 10433).

2. The present appearance of the Bay and shoreline in the area proposed for fill-ing 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.

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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.

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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

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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

RED Exhibit F



RED Exhibit F



RED Exhibit F

