

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING
PARTIAL TRANSCRIPT - ITEM 5

HYBRID IN-PERSON/TELECONFERENCE MEETING
HOSTED BY THE SAN FRANCISCO BAY
CONSERVATION AND DEVELOPMENT COMMISSION
375 BEALE STREET
SAN FRANCISCO, CALIFORNIA

THURSDAY, MARCH 14, 2024

9:30 A.M.

Reported by: Ramona Cota

APPEARANCESEnforcement Committee

Marie Gilmore, Chair

Letty Belin

Rebecca Eisen

John Vasquez

Counsel to the Committee

Shari Posner, Deputy Attorney General
Office of the Attorney General

BCDC Staff

Rachel Cohen, Enforcement Analyst

Adrienne Klein, Principal Enforcement Analyst

Margie Malan, Legal Secretary

Greg Scharff, General Counsel

Respondent

Chris Henry
Bayview 1, LLC

Tim Galusha

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PROCEEDINGS

9:45 a.m.

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2
3 COMMITTEE CHAIR GILMORE: We move on to Item number 5,
4 which is a hearing and a vote on a recommended enforcement
5 decision to resolve ER2021.080.00, Bayview 1, LLC. So, it
6 is a presentation and a vote on a proposed recommended
7 decision to adopt a Cease and Desist Order to be issued to
8 Bayview 1, LLC, owner of record of the subject property
9 ER2021.080.00, which is located at 660 Bridgeway in
10 Sausalito, Marin County.

11 If this committee votes to adopt this recommended
12 enforcement decision, which includes the proposed Order, it
13 will be put up for a vote of approval or rejection by the
14 full Commission at its April 4, 2024 meeting, which is
15 scheduled to be held online and in-person at the Metro
16 Center, which is located at 375 Beale Street in San
17 Francisco and the meeting will start at 1:00 p.m.

18 So, after BCDC staff gives its opening remarks, the
19 Respondent will be invited to present their remarks, then I
20 will allow public comment on this item. Afterwards we, the
21 Committee, shall hold our discussion and vote on the
22 staff's recommendation.

23 So, at this time, will the representative or
24 representatives for the Respondent please identify
25 themselves for the record? Respondents?

1 MS. COHEN: They are just being promoted to Panelists
2 now, I believe.

3 CHAIR GILMORE: Thank you.

4 MR. HENRY: Good morning. Can you hear me?

5 CHAIR GILMORE: Yes.

6 MR. HENRY: Good morning. My name is Chris Henry; I
7 am the owner of the building. I am here to respond, to
8 answer any questions and to give you my side of the story.

9 CHAIR GILMORE: Great. Thank you and welcome. Thank
10 you for being here.

11 Okay. So, we are now going to hear presentations from
12 the Staff and the Respondents. Each side will be allotted
13 20 minutes to deliver their presentations, if needed. Each
14 side will summarize its position on the matters at hand
15 with particular attention to those issues that are in
16 actual controversy where that exists between the Staff and
17 the Respondents.

18 Presentations made by the parties as well as any
19 public comments to follow shall be limited to responding to
20 evidence already made as part of the enforcement record.
21 This Committee shall not allow the introduction of any new
22 evidence or oral testimony.

23 So, I will now invite Enforcement Analyst Rachel Cohen
24 to give her opening remarks. Rachel, thank you.

25 MS. COHEN: Thank you, Chair Gilmore. Just a second

1 for me to share my screen, please. Let's see. Does that
2 appear in full screen for you?

3 CHAIR GILMORE: Yes, it does.

4 MS. COHEN: Okay, great, thanks.

5 Good morning, all. Today I will present Enforcement
6 Case number ER2021.080, for which the Respondent is
7 Mr. Chris Henry and his company, Bayview 1, LLC. This case
8 involves a longstanding obstruction to permit-required
9 public access and unpermitted redevelopment activities in
10 BCDC's jurisdiction. Mr. Henry's nearly 15-year history of
11 failing to comply with the terms of his BCDC permit and the
12 McAteer-Petris Act has caused staff to commence a formal
13 enforcement proceeding to restore public access.

14 Here is our outline for today. We will go through the
15 location of the violations, history of noncompliance,
16 timeline of events, violation summary, defenses and
17 rebuttals, and finally the staff's recommendation.

18 These two images are vicinity maps at two different
19 scales of 660 Bridgeway Boulevard, Sausalito, Marin County.
20 Originally a ferry terminal, this privately-owned, two-
21 story building is now the home to restaurants and shops in
22 downtown Sausalito.

23 This is a clean scan of the plan, which is Exhibit A
24 to Permit M1979.088.00. Bridgeway Boulevard is over here,
25 if you can see my cursor, to the west, and the Bay is over

1 here on the eastern side and the building is here in the
2 middle. There is a faint red outline on the 1,558 square
3 foot public access area, which wraps around the southern
4 and the eastern sides of the building, and also includes
5 the staircase landing pad on the second floor, which offers
6 members of the public an elevated view of the Bay.

7 The original permit in 1979 allowed for renovations to
8 the ground floor restaurant Il Piccolo Cafe and repairs to
9 the deck support structure, and required landscaping,
10 public trash containers, and no fewer than two benches to
11 be made available to the public. The access area provides
12 sweeping Bay views and a connection to the Yee Tock Chee
13 Park to the immediate south.

14 This dark blue polygon, if you can follow my cursor,
15 approximately outlines the space which used to be used by
16 Il Piccolo Cafe.

17 And then moving on to this black rectangle. The
18 second amendment to the 1979 permit allowed for 155 square
19 feet of the public access area, which is approximately
20 outlined with this black rectangle, to be used for outdoor
21 dining with tables and chairs that were accessible to the
22 public and to patrons of the cafe. The authorization to
23 use the public access area for outdoor dining ceased when
24 the cafe closed around 2016.

25 This photo was taken in March of 2022 from south of

1 the building facing north. The public access area is
2 partially shown here under these overhangs. This plywood
3 in the picture blocks part of the public access, but it is
4 meant to wrap around this eastern side of the building and
5 go up the stairs here.

6 This photo was taken on March 3, 2024 from the
7 southeastern corner of the building facing southwest. The
8 public access area, again, includes this area under the
9 overhangs and this walkway.

10 And then kind of in the same position but just turning
11 around. This photo faces northeast and these are those
12 stairs that ascend to the second-floor deck.

13 This slide shows where BCDC's shoreline band and Bay
14 jurisdictions are. This is just to show you that nearly
15 the entire building is within BCDC's jurisdiction.

16 So now that we have reviewed the permit required
17 public access requirements, I will review the history of
18 noncompliance at this site before circling back to the
19 current violations.

20 Mr. Henry took over ownership of 660 Bridgeway in
21 2007. And as you can see from this long list of prior
22 enforcement cases, violations of the permit under
23 Mr. Henry's ownership began in 2010 and have regularly
24 occurred since then.

25 There were six cases between 2010 to 2016, which dealt

1 with restaurant staff refusing to allow members of the
2 public to use the public outdoor dining tables. Restaurant
3 staff were telling members of the public to either purchase
4 food or leave the area. For two of these cases Mr. Henry
5 was fined \$100 for repeating the same violation within five
6 years. Two cases dealt with a failure to post required
7 public shore signage, and a 2021 case addressed
8 unauthorized outdoor dining tables.

9 I want to focus on ER 2016.013 when Mr. Henry
10 announced his intent to construct a new restaurant space by
11 using the former Il Piccolo Cafe and demolishing and
12 expanding into the neighboring business suites within the
13 building.

14 Mr. Henry was informed in April and September of 2016
15 that he must obtain a BCDC permit amendment prior to
16 commencing this project.

17 However, despite staff's warning, their November 2016
18 site visit revealed that much of the public access space
19 had been blocked off and construction of the restaurant
20 renovation project had commenced without BCDC permits.

21 Staff initiated standardized fines and Mr. Henry
22 submitted an incomplete permit application for the project.

23 After more than a year, Mr. Henry failed to complete
24 his permit application and it was returned unfiled. Since
25 construction had stopped and the public access was

1 restored, staff closed the case in June of 2018 and
2 Mr. Henry was fined \$21,000 for the violations. When staff
3 notified Mr. Henry that the case was being closed, they
4 again reminded him that his property was within the
5 Commission's jurisdiction and governed by the 1979 permit
6 and the McAteer-Petris Act. Staff told him that he must
7 seek and obtain a BCDC permit amendment prior to
8 recommencing his project or a formal enforcement action
9 would be initiated. Mr. Henry nonetheless reinitiated this
10 project without obtaining approval, and this is one of the
11 subject projects of today's enforcement case.

12 So, moving on to our timeline for this case.

13 In August of 2021, staff received an enforcement
14 report which alleged that the Respondent was again
15 obstructing the public access pathway with plywood and
16 tables.

17 In September of 2021 enforcement staff mailed a
18 violation notice initiating an enforcement action and
19 standardized administrative fines. Staff of the second-
20 floor restaurant, the Barrel House Tavern, replied and said
21 that the public access path had been blockaded by plywood
22 due to a fire and that staff of the fire department
23 instructed them to close off the back patio. BCDC staff
24 requested documentation of the fire marshal's direction but
25 never received it. Staff also informed Mr. Henry that the

1 city of Sausalito's process is separate and distinct from
2 BCDC's.

3 Later that year in December, enforcement staff asked
4 for documentation from Mr. Henry that the public access had
5 been unblocked. Mr. Henry's response indicated that the
6 public access remained blockaded and he provided no date by
7 which he aimed to reopen the space.

8 In March and December of 2022, and also in April of
9 2023, staff visited the site and documented the persistence
10 of the violations. The shoreline public access had been
11 completely blockaded and unauthorized work was occurring on
12 the ground floor public access area and within the ground
13 floor commercial space. The entire public access area was
14 being used to store furniture, construction materials and
15 trash bins, making it unusable to the public.

16 In December of 2023, a member of the public emailed
17 staff photographs documenting that development activities
18 had expanded again to include raised wooden flooring, a
19 high-top bar, and a new glass wall railing in the public
20 access space, appearing to staff that Mr. Henry intended to
21 privatize the public access space for use by the new
22 restaurant. Enforcement staff then notified the Respondent
23 that the opportunity to resolve the case using standardized
24 fines was no longer available.

25 On January 24, 2024, enforcement staff issued a

1 violation report and complaint for administrative civil
2 penalties to Mr. Henry, and on January 31, he confirmed he
3 had received it.

4 Since the 1979 permit runs with the land and has not
5 yet been formally assigned to Mr. Henry on paper, staff
6 requested that Mr. Henry complete a permit assignment form.
7 He agreed to work on completing the permit assignment form
8 on February 6, but we still have not received one.

9 On February 9, Mr. Henry pledged to send documentation
10 that he had made the public access area consistent with the
11 permit. He also pledged to submit an after-the-fact permit
12 application.

13 On February 27, 2024. Staff spoke with Mr. Henry,
14 Millard Arterberry, the designer and architect for the
15 renovation, the restaurant renovation project, and Tim
16 Galusha, Mr. Henry's friend who is a lawyer. Staff
17 explained the Enforcement Committee hearing process and the
18 statement of defense form due date; and staff again advised
19 Mr. Henry to apply for after-the-fact authorization for the
20 fire repairs and interior restaurant renovations, since
21 both occurred in BCDC jurisdiction without BCDC approval.
22 Staff encouraged Mr. Henry to apply for a nonmaterial
23 amendment to the 1979 permit instead of a regionwide
24 permit, stating that permit staff may require additional
25 public access in lieu of the years of closure and

1 unauthorized work.

2 On February 28, 2024, staff received Mr. Henry's
3 application for after-the-fact approval of the fire repair
4 project. Despite staff's recommendation that Mr. Henry
5 apply to amend the 1979 permit and include both the fire
6 repair and restaurant renovation projects, the application
7 was for an abbreviated, regionwide permit for fire repairs
8 only and excludes the restaurant renovation project
9 completely.

10 As noted earlier, on March 3, 2024, BCDC staff
11 conducted a site visit and observed that wooden barricades
12 were still being used to block much of the public access
13 area and other portions of the public access area were
14 being used for private storage of restaurant materials and
15 rubbish and work on the interior of the restaurant appeared
16 incomplete.

17 Despite Mr. Henry excluding the restaurant renovation
18 project from the permit application, he did submit the
19 project plans. The image on the left shows the former Il
20 Piccolo space here and a wine bar and retail space across
21 the hallway.

22 And as you can see on the right, the restaurant has
23 expanded into the former wine bar and retail space and fill
24 has been placed internally consisting of new restrooms, a
25 new kitchen, a new dining room, a new office space and

1 likely more.

2 There is also red shading here to illustrate part of
3 the public access area. There is a clear intent here to
4 place tables and chairs for the restaurant throughout the
5 public access space on the southern as well as the eastern
6 sides of the building.

7 In sum, Violation 1 is for the unauthorized
8 redevelopment activities on the ground floor of 660
9 Bridgeway Boulevard in BCDC's Bay and shoreline band
10 jurisdiction; and Violation 2 is for closing, blockading
11 and removing the required public access amenities and
12 intending to privatize the public access area for
13 restaurant use.

14 Respondent submitted a Statement of Defense form with
15 attachments on February 28, 2024. In it, Mr. Henry admits
16 to owning the property subject to the complaint, that work
17 was performed to the back deck, and that he installed
18 plywood to block access to it.

19 We will now move on to the seven defenses and
20 rebuttals.

21 Defense 1 is that Respondent received building permits
22 from the city of Sausalito for the restaurant remodel work.

23 However, receiving a city of Sausalito building permit
24 does not absolve Respondent from his responsibility to
25 consult BCDC prior to performing work in BCDC jurisdiction,

1 to obtain BCDC approval for the work, and to comply with
2 the McAteer-Petris Act.

3 Additionally, the separation and distinction between
4 BCDC and the city of Sausalito's processes was explained to
5 Mr. Henry in writing in 2021. And even if it had not been,
6 Mr. Henry is still responsible for obtaining BCDC
7 authorization prior to placing fill within or making any
8 change in use of any area within BCDC jurisdiction, or any
9 change to existing required public access.

10 Defense 2 is that nobody mentioned anything to
11 Mr. Henry about having to get BCDC approval for the
12 restaurant remodel work.

13 Despite it being solely Mr. Henry's responsibility to
14 comply with the McAteer-Petris Act and the regulations
15 applicable to his property, staff explicitly informed him
16 three times in 2016 and 2018 that he must obtain a BCDC
17 permit amendment prior to commencing this project.

18 Defense 3 is that nobody mentioned anything to
19 Mr. Henry about having to go through BCDC to get approval
20 for the fire restoration repair work.

21 Mr. Henry should have known that he needed to consult
22 BCDC. Staff repeatedly asked him for documentation that
23 the fire department directed closure of the public access
24 area; and staff informed him that the blockade was a
25 violation and asked him to remove the sheet of plywood that

1 was blocking public access.

2 Defense 4 is that Mr. Henry was directed by the city
3 of Sausalito Building Department and the Fire Marshal to
4 install plywood and block access to the back deck as it was
5 unsafe from the fire.

6 The McAteer-Petris Act requires any person to receive
7 BCDC authorization before making any substantial change in
8 use of any water, land or structure within BCDC's
9 jurisdiction, such as closing the public access. BCDC has
10 procedures in place to respond to instances when emergency
11 work is required, yet there is no record of Mr. Henry
12 proactively informing BCDC about the fire and the need to
13 close public access areas for emergency repairs prior to or
14 just after the repairs occurred.

15 There is a history of correspondence with Mr. Henry
16 that demonstrates that he should have known that he needed
17 to inform BCDC about the closure of the public access area.

18 And lastly, we have never seen documentation that the
19 fire department directed him to close the deck.

20 Defense 5 is that Mr. Henry went through the required
21 channels of the city and was issued a permit.

22 However, Mr. Henry did not go through all the required
23 channels to receive approvals for the fire restoration and
24 restaurant renovation work because BCDC is a required
25 channel.

1 The case history demonstrates again that Mr. Henry
2 should have known that he needed to inform BCDC about the
3 closure of the public access area.

4 Yet Mr. Henry did not voluntarily apply for a BCDC
5 permit until he was subject to this enforcement action and
6 the permit application is not inclusive of all the work
7 that was performed.

8 Defense 6 is that Mr. Henry did not add any fill.

9 While staff concedes that the footprint of the deck is
10 the same now as it was before the unauthorized work was
11 performed, Mr. Henry expanded the original restaurant space
12 by demolishing and utilizing the adjacent commercial
13 spaces.

14 Mr. Henry changed the use of the area by reducing
15 public access and views, placing impediments within the
16 public access space, and intending to privatize the public
17 access area for restaurant use. He removed public trash
18 containers, removed a public bench, added a standing bar in
19 the bench's place, added raised wooden decking, a new glass
20 deck railing, and the plans for the new restaurant
21 illustrate his intention to place restaurant dining tables
22 and chairs throughout the public access area. All of these
23 activities require BCDC consultation and authorization.

24 Defense 7 is that the administrative civil penalty
25 would possibly bankrupt the Respondent or put him out of

1 business and Bayview 1, LLC employs many different people
2 and they and their families rely on the Respondent for
3 their living.

4 The Statement of Defense form allows respondents an
5 opportunity to express whether they will be unable to pay
6 the proposed penalty, or whether paying the penalty would
7 have a substantial adverse effect on their ability to
8 continue in business. However, since information relative
9 to these considerations is exclusively in the possession
10 and control of the violator, Appendix J of the Commission's
11 regulations requires violators to submit factual
12 information and supporting documentation to enable staff
13 and the Commission to evaluate their financial condition.
14 Examples of relevant supporting documentation that a
15 violator should provide include audited financial
16 statements, balance sheets, profit and loss statements,
17 statements of net worth, tax returns, and more.

18 And since no factual information or documentation was
19 submitted to support this claim, staff cannot consider this
20 as a viable defense and the Respondent's ability to pay is
21 not in question.

22 To review the proposed administrative civil penalty,
23 Appendix J of the Commission's regulations require staff to
24 assess certain characteristics when settling on the
25 appropriate fine amount, including but not limited to the

1 Respondents degree of culpability, history of violations,
2 any voluntary resolution efforts, any economic benefit to
3 the violator, and other factors.

4 Our analysis determined that for each violation the
5 gravity of harm for this case is moderate and the extent of
6 deviation from the statutory requirement to provide the
7 permit-required public access and secure a permit or remove
8 the unauthorized fill is major.

9 Daily penalty per violation was assessed for 937 days,
10 during which time the Respondent failed to take voluntary
11 action to correct violations. Fines for each of the two
12 violations are capped at \$30,000, so staff proposes a
13 penalty amount of \$60,000.

14 Moving on to our recommended enforcement decision.

15 We recommend that the Enforcement Committee recommends
16 to the Commission to authorize the Executive Director to
17 issue the proposed Cease and Desist and Civil Penalty Order
18 number CCD2024.001.00, which would order the Respondent to:

19 Cease and desist from violating the permit and the
20 McAteer-Petris Act.

21 To fully restore and maintain the public access area
22 within 30 days of Order issuance.

23 To obtain a permit or permit amendment for all
24 unauthorized work by the end of 2024.

25 To complete a permit assignment form for the 1979

1 permit within 45 days of Order issuance.

2 To cease and desist from any development of the ground
3 floor restaurant space, formerly Il Piccolo Cafe, and the
4 adjacent wine bar and retail space, and to not conduct any
5 business or other use of the space until a Commission
6 permit that authorizes such use is obtained.

7 And to pay \$60,000 in administrative civil liability
8 within 30 days of Order issuance.

9 That concludes the staff's presentation, and I will
10 stop sharing my screen now.

11 CHAIR GILMORE: Thank you, Rachel.

12 I think I am going to hold questions until we hear
13 from the Respondent. So, is he still on the screen?
14 Mr. Henry, could you please make your presentation. And I
15 am just going to remind you that you are limited to
16 discussing evidence that is already part of the enforcement
17 record. So, thank you, sir, and you may begin.

18 MR. HENRY: Okay. First of all, can everybody hear me
19 okay?

20 CHAIR GILMORE: Yes.

21 MR. HENRY: Okay, great, thank you.

22 Well, thank you for being here today and thank you for
23 having me, I appreciate that. I wanted to go over a few
24 things with you here and correct and make clear a little
25 bit more of actually what happened as this is not, what you

1 previously heard is not all, you know, factual and true and
2 kind of brushed over.

3 First off, I have always complied with BCDC, you know,
4 requirements. If there is something that needed to be
5 done, you know, I always did it. And there was a problem
6 with the previous tenant that was there, Piccolo Cafe. He
7 is the gentleman that provided the initial plans. And he
8 is the one that did all the violations, you know, prior to
9 him vacating, you know, as mentioned back in 2016 and all
10 those previous violations. They were his responsibility.
11 He did that, I didn't do that. So, I just wanted to make
12 that clear. And every time BCDC stepped in I made the
13 tenant comply and as far as I know everything was cleared.
14 You know, benches were, you know, cleared off, garbage cans
15 were installed. You know, the previous tenant was the one
16 that told the public they had to sit there and, you know,
17 buy a meal from him. It wasn't me, I had nothing to do
18 with that. And when I found out about it I corrected that.
19 I just wanted to make that clear that I have always
20 complied.

21 There was a problem with getting notifications as I
22 moved. During COVID it has just been -- the restaurant
23 business has just -- was just a disaster. And I moved and
24 I didn't receive any notifications from BCDC from about
25 2020 when COVID hit, I moved so I didn't know about all the

1 notifications that were alleged in this complaint. I
2 didn't find out about even this hearing until I was
3 notified by my attorney that Rachel contacted him. This
4 was the first that I heard about this whole situation,
5 about the hearing and the noncompliance for, you know,
6 going back to 2021, because I had never received any
7 notification from you guys. During COVID I moved away and
8 my address changed.

9 And there was a fire at the back of the building that
10 destroyed the whole back part of the building, the deck,
11 the back part. The restaurant part downstairs, the storage
12 area, and the back stairs were completely burned. Back in
13 I believe it was 10/27 of '21 I went through the process
14 with the city for fire restoration. Complied. You know, I
15 hired an architect and engineer, we supplied all the plans.
16 Went through the process with the city. We had, we had
17 several hearings. Went through the historic landmarks
18 board. We received approval after two, I believe it was
19 two hearings there, and we went through the process.
20 Nobody ever told me that I had to go through BCDC. I was
21 not aware of that, otherwise I certainly would have.

22 I hired an architect, submitted the plans. The
23 application was approved. And we didn't, we didn't add any
24 fill to the project. It was all the area that burned we
25 replaced in kind. We didn't grab any extra space anywhere.

1 The only thing that was different was there was a seating
2 bench on the back part, we put a standing rail there. So
3 actually, you could get more people in there to stand and
4 view the Bay.

5 It was mentioned that we closed off the back portion
6 of the building during -- since 2021. That's true, that's
7 because we were directed by the fire marshal. It was
8 unsafe. The back deck where there was holes in there.
9 People, you know, if it was open to the public, people
10 would walk in there and fall in the Bay and it would be
11 just a disaster. I would get sued and it just wasn't safe.
12 And I didn't know that my manager didn't supply the proof
13 from the fire marshal but I could certainly do that. They
14 required that the building, the access there be closed off.

15 So, we went through the whole, you know, process with
16 the city and the historical landmarks board. Permit, a
17 permit was issued and we have begun work and it has just
18 been super difficult, you know, the restaurant business
19 with COVID and, you know, all the regulations. But I want
20 to comply and I -- you know, I want to make sure everybody
21 is happy but at the same time I need to be given a fair
22 shake. And I wasn't notified, you know, due to my address
23 change and so this hearing and all this was kind of brought
24 on to me sort of a little bit by surprise. I was given,
25 you know, short notice to get to get ready for this.

1 I welcome your input, I want to work with you. Like
2 I, like I mentioned, I applied for the permit. Now that I
3 know that I had to do it I applied to the permit with you
4 guys. I submitted the paperwork and the application fee.
5 I hand-carried a \$400 application fee down there and you
6 guys were closed. The security guard said nobody was
7 around, so I put the check underneath the door. I am
8 hoping that you got it, but I am still not 100 percent sure
9 that you did get it. And I haven't heard back anything
10 from BCDC regarding the application, permit application
11 that I put in.

12 So, I think the fine is heavy. I think -- I don't
13 think it is fair. You know, I was required to close the
14 building off. And I want to comply, you know. Like I
15 said, I have hired an architect and an engineer and
16 submitted the plans and the fee and I am open to your,
17 your, your comments.

18 CHAIR GILMORE: So, are you finished, Mr. Henry?

19 MR. HENRY: Do I get a chance to speak again or is
20 this it?

21 CHAIR GILMORE: This is it unless members of the
22 committee have any questions for you.

23 MR. HENRY: Okay. I don't understand what, what cease
24 and desist really means, cease and desist.

25 CHAIR GILMORE: Stop what you are doing immediately.

1 MR. HENRY: Yeah, all the, all the, well, I understand
2 that. But all the, all the repairs, the fire were, have
3 been made. So -- and we put it back as it was. That is
4 all I have to say.

5 CHAIR GILMORE: Okay, thank you, Mr. Henry. We
6 appreciate your comments.

7 So, now I am going to ask Committee Members for their
8 questions -- well, actually their questions. We will get
9 to the discussion after we ask for public comment. So,
10 clarifying questions on behalf of Committee Members.
11 Anybody?

12 COMMISSIONER BELIN: Question?

13 CHAIR GILMORE: Letty.

14 COMMISSIONER BELIN: My question, you said you had no
15 notification from BCDC. When do you say that you first had
16 notification from BCDC?

17 MR. HENRY: When I received an email from my attorney,
18 Bill Hatcher. He sent me an email. And that was, well, it
19 was about 30 days before, before this hearing. It was a
20 notification that this hearing was going to happen. I got
21 an email from Mr. Hatcher, my attorney, just saying, you
22 know, get in touch with BCDC, you know, regarding this
23 hearing. I moved away during COVID and I didn't get the --
24 you know, I moved away in 2020 and you guys had my old
25 address.

1 COMMISSIONER BELIN: So, you say that you had no
2 notification from BCDC until just like very, very recently?
3 I mean, that is, I am having trouble seeing how it would
4 work because --

5 MR. HENRY: Me too.

6 COMMISSIONER BELIN: Well, anyway, anything else to
7 say? You are saying that you just heard from BCDC just
8 very, very, within the last few weeks?

9 MR. HENRY: I would say within the past -- well, there
10 was an extension. Rachel gave us like I think a 30 day
11 extension. He sent me an email saying, you know, get in
12 touch with BCDC, they are going to have this hearing. And
13 then I think Rachel went back or the BCDC staff went back
14 and re-noticed it again and gave another 30 days. So, yes,
15 it is short notice. But all through COVID I didn't receive
16 anything, you know, during that. You know, when the fire
17 happened and it burned the back of the building off I
18 didn't, I didn't receive any written correspondence from
19 BCDC at all.

20 COMMISSIONER BELIN: So, it sounds like you basically
21 didn't know anything about who BCDC is and what they do.

22 MR. HENRY: No, no, no, I wouldn't say that. I worked
23 with BCDC before during the, you know, the issues with the
24 previous tenant, Piccolo Cafe, when he asked that somebody
25 from the public buy a sandwich or leave. And I have been

1 in touch with BCDC over the years. But during that period
2 during COVID when I moved away that I didn't have any, I
3 didn't receive any correspondence. But prior, prior to
4 that when the previous tenant was there, Mauro, who left
5 owing me a lot of rent by the way and I had to evict. But
6 you know, during COVID I didn't, I didn't receive anything.

7 CHAIR GILMORE: Okay.

8 COMMISSIONER BELIN: Okay, go on. I see John has his
9 hand up.

10 CHAIR GILMORE: Okay, John.

11 COMMISSIONER VASQUEZ: Yes, thank you. This is a
12 question of Mr. Henry. When did you employ your attorney
13 on this issue?

14 MR. HENRY: I think when we had the -- I haven't
15 actually employed him. But when we had the call with
16 Rachel I had him, I had him on the line. But he is, I
17 don't have an attorney per se. He is, he was on the call
18 with Rachel. We did a sort of a compliance call. You
19 know, I wanted to make sure that the team was together to
20 make sure the plans were together and in order that they
21 were supposed to be, and so I had him on the call. I don't
22 even know if he is on the call today, but I don't. You can
23 tell me. I don't -- I haven't talked to him.

24 MR. GALUSHA: This is Tim. I am on.

25 MR. HENRY: (Overlapping.)

1 MR. GALUSHA: Yeah, hi, Chris, I am on the call. But
2 I think Mr. Vasquez may have been asking about the prior
3 attorney.

4 MR. HENRY: Oh, he was, he is just the process notice
5 person for the LLC. That is all he, that is all his
6 function is. He was -- when I -- when I initiated the LLC,
7 I don't know, 13 years ago, he was the notice person.
8 That's it. That is all the only involvement he has; or has
9 ever had.

10 COMMISSIONER VASQUEZ: Okay.

11 CHAIR GILMORE: All right. Rebecca.

12 COMMISSIONER EISEN: Yes. Maybe Rachel can help
13 clarify this, but it sounds as if they are was no
14 assignment to an attorney to be the appointed person to
15 receive notifications. I don't know what happened with --
16 if you move, obviously, you usually submit something to the
17 post office so that whatever is sent to you is forwarded.
18 But the notion that the Respondent didn't get any
19 notifications, Rachel, I wonder if you could just sort of
20 respond to what you have just heard about that.

21 MS. COHEN: Yeah, thank you for the opportunity.
22 There were email communications between BCDC staff and
23 Mr. Henry dating back to I believe 2021, which were made a
24 part of the record. There are exhibits to the violation
25 report and complaint and the recommended enforcement

1 decision that show that he was clearly notified about the
2 fire repair project and blocking public access being an
3 issue with BCDC. We were requesting that documentation
4 from him over email and he was responding over email.

5 And then there was a brief mailing issue with the
6 violation report and complaint that we mailed. It was
7 returned to us as undeliverable so we did reissue it and
8 we -- by doing that we did reschedule the hearing date to
9 today. It was, I believe, previously scheduled for likely
10 early February. Mr. Henry got in contact with us when he
11 did receive the reissued violation report and complaint.
12 We have been in regular communication since January 31st.

13 And I believe also to respond to the question about
14 when he employed his attorney. Bill Hatcher is just the
15 agent of service, so he acknowledged that he received it as
16 well. And Tim Galusha, who is on the phone, we had that
17 compliance call on February 27.

18 And, if I may, the information about the tenant being
19 responsible for all of those violations, that is new
20 information to us and is not part of the record so I would
21 caution you to consider it today.

22 And, yeah, I think that is all I have for now.
23 Hopefully, that answers your question.

24 COMMISSIONER EISEN: It does, Rachel. And thank you
25 for bringing up the issue about the tenant because -- and I

1 see that Greg is on the call. But generally speaking, if
2 somebody owns a property that is subject to BCDC
3 jurisdiction I don't think that can be assigned. Those
4 obligations cannot be assigned to a tenant without BCDC's
5 permission. So, I think I am hearing you say that we don't
6 have anything in our files that says the tenant is hereby
7 responsible for the permit requirements and not the owner.
8 Is that right?

9 MS. COHEN: That's correct.

10 COMMISSIONER EISEN: Okay, thank you.

11 MS. COHEN: Yeah, Mr. Henry was the Respondent for all
12 of those previous enforcement cases.

13 CHAIR GILMORE: So, my comment about that would be,
14 yes, the permit does run with the land. He is the owner of
15 record and so therefore he is responsible for compliance
16 with all aspects of the permit. And I find it a little bit
17 incredulous for him to say that he didn't know that he had
18 to comply with BCDC permits, since the record clearly shows
19 a past history of dealing with BCDC, I think as far back as
20 2016. And so for him to say that I didn't know I had to
21 get permits from BCDC, or, I didn't at least have to check
22 with them, I have a hard time really accepting that.

23 I have a question. This is very sort of esoteric, but
24 I want it for my own edification. So, the record said that
25 staff urged the Respondent to get a permit amendment as

1 opposed to a regional permit. Could you explain that
2 thinking? And I think -- did he apply for a regional
3 permit or a permit amendment? I am not sure.

4 MS. COHEN: Mr. Henry applied for a regionwide permit
5 instead of a permit amendment; and the application was only
6 for the fire repairs and not for the restaurant renovation.
7 Regionwide permits are for essentially de minimis projects,
8 and they don't require public access in order for us to
9 issue them. Whereas an amendment to the regionwide permit
10 would allow us to consider new public access considerations
11 in lieu of the years of closure and the unauthorized work
12 and it would also be an opportunity to formally assign the
13 permit to Mr. Henry.

14 CHAIR GILMORE: So, in asking for a regionwide permit,
15 he was only seeking to bring into compliance the fire
16 portion, but not the restaurant addition and not the public
17 access. So basically, he was nonresponsive to BCDC's
18 requests.

19 MS. COHEN: (Nodded.)

20 CHAIR GILMORE: Okay, thank you.

21 Any other questions? I see Mr. Henry's hand up. I
22 will allow you one quick comment.

23 MR. HENRY: Okay, thank you. This is the first time
24 that I have been through this process; and the architect, I
25 am not sure if he is been through this process before or if

1 he is on the call. But I -- the permit application should
2 have been for the restaurant as well, not just the fire
3 repair. So, we want to, we want to make sure that we do
4 that right, you know. That was an oversight on either his
5 part or my part. We want to make sure that we are clear
6 that we want to, it is for the restaurant and the fire
7 repair.

8 CHAIR GILMORE: While I appreciate that comment,
9 Mr. Henry, we are charged with what is on the record, and
10 what is on the record is a permit for the fire repairs not
11 the restaurant. And so if you would want to bring the
12 restaurant into compliance, that is clearly another permit
13 and I urge you to have a discussion with staff outside of
14 this procedure.

15 Okay, do I have any other clarifying comments from
16 committee members before I open it up for public comment?
17 Rebecca.

18 COMMISSIONER EISEN: I just want to be sure. I have
19 some questions about the fine and payments and things like
20 that, but you are saying that after public comment we will
21 have a chance to discuss all of that?

22 CHAIR GILMORE: Correct.

23 COMMISSIONER EISEN: Great, thanks.

24 CHAIR GILMORE: Okay. Ms. Klein.

25 MS. KLEIN: Thank you, Chair Gilmore. Apologies if

1 this is clear, but I just want to make sure that we all
2 understand there is no permit for the fire repairs yet. He
3 has submitted an incomplete application, so the fire
4 repairs remain unauthorized along with all of the other
5 work that has taken place at the site.

6 CHAIR GILMORE: Oh, thank you very much, that is a
7 very good clarifying comment.

8 Okay, so going on to, do we have any public comment on
9 this matter?

10 MS. MALAN: We do not, Chair Gilmore.

11 CHAIR GILMORE: Okay, so we are going to close the
12 nonexistent public comment.

13 Okay, Committee Members, it is time for discussion.
14 And Rebecca, you said you had some questions so I am going
15 to start off with you.

16 COMMISSIONER EISEN: Yes, I do. So, like, so just as
17 a preface, you know, when you own property on the edge of
18 the Bay, which is a public benefit, the Bay, you know, it
19 carries with it these obligations. And I understand that
20 COVID and running a restaurant and all of that is
21 difficult, but the obligations to the public have to be
22 considered always when you are lucky enough to own property
23 on the edge of our beautiful Bay.

24 The six items that Rachel listed that we want to have
25 happen, the cease and desist, et cetera, et cetera. What I

1 am hoping is that with respect to each one, so that there
2 is no, no coming back and saying, I didn't understand, I
3 didn't get it, I wasn't aware, that the consequences of not
4 doing any one of those things is spelled out for the
5 Respondent. So, if you don't within 45 days pay the fine,
6 et cetera, the consequence is that the fines will continue,
7 or whatever the consequence is, or what consequences might
8 be. So that -- because I am afraid that some of the
9 situations that we have people say, well, you know, what is
10 the worst that could happen if I don't do that? I want
11 them to understand, you know, that penalties will continue,
12 you know, further action will be taken, et cetera, so that
13 we really have some solid compliance with the, with the
14 decision we make today. Is that, is that something, Greg
15 or Rachel, that we can make sure to spell out in the, in
16 the decision?

17 MS. COHEN: The terms of the proposed Commission Cease
18 and Desist Order do state that the Respondent must strictly
19 conform to the expressed terms of the Order. And that if
20 Mr. Henry intentionally or negligently violates any part of
21 the Order that he may be liable for \$6,000 for each day
22 that the violations persist. And any failure to comply
23 with the Cease and Desist Order, that the Attorney General
24 may petition the Superior Court for the issuance of a
25 preliminary or permanent injunction or both restraining

1 Mr. Henry from continuing any activity in violation of the
2 Cease and Desist Order. So that is probably about as
3 firmly as it is written so far.

4 COMMISSIONER EISEN: I think that's good. And is
5 there a cap on the \$6,000 a day or does it just continue ad
6 infinitum?

7 MR. SCHARFF: It continues infinitum. In fact, for
8 other people it has gone up over a couple of million bucks
9 at times.

10 COMMISSIONER EISEN: Okay. And one quick question.
11 There was a \$21,000 penalty that you described for us. Was
12 that paid and was that paid timely?

13 MS. COHEN: It was paid. I believe that there was a
14 settlement agreement at that time to allow for it to be
15 paid in installments and I am not sure over how long. But
16 I have no information about whether those installments were
17 paid on time or not.

18 COMMISSIONER EISEN: Okay. All right. Thank you.
19 That is all I had.

20 CHAIR GILMORE: Anybody else?

21 Okay. Okay, if there are no other comments can I have
22 a motion and a second to approve the Executive Director's
23 recommended enforcement decision regarding the two proposed
24 stipulated -- well, actually, hold on, I am ahead of
25 myself. Staff recommendation. Caught that.

1 MS. COHEN: Would you like me to make the
2 recommendation again?

3 CHAIR GILMORE: Please.

4 MS. COHEN: Okay.

5 CHAIR GILMORE: Just so we are clear for the record.

6 MS. COHEN: Sure. Should I share my screen or just
7 read it?

8 CHAIR GILMORE: Why don't you just read it.

9 MS. COHEN: Okay. Staff recommends that the
10 Enforcement Committee votes to recommend that the
11 Commission authorizes the Executive Director to issue the
12 proposed Cease and Desist and Civil Penalty Order number
13 CCD2024.001.00. Is it okay if I paraphrase the Order
14 terms?

15 CHAIR GILMORE: Please.

16 MS. COHEN: It would -- thank you. It would order the
17 Respondent, Mr. Henry, to:

18 Cease and desist from violating BCDC permit
19 M1979.088.02 and the McAteer-Petris Act.

20 To fully restore and maintain the public access area
21 within 30 days of Order issuance.

22 To obtain a permit or permit amendment for all
23 unauthorized work by December 31, 2024.

24 To complete a permit assignment form for the 1979
25 permit within 45 days of Order issuance.

1 To cease and desist from any development of the ground
2 floor space and to not conduct any business or other use of
3 the space until a Commission permit that authorizes such
4 use is obtained.

5 And to pay \$60,000 in administrative civil liability
6 within 30 days of Order issuance.

7 CHAIR GILMORE: Thank you. Now, may I have a motion
8 and a second on the recommended enforcement decision?

9 MR. GALUSHA: Excuse me, is it -- I don't know if it
10 is too late, but I just was wondering if somebody could
11 explain the 60,000, where that number comes from? Like,
12 why is that the number?

13 COMMISSIONER VASQUEZ: Who was that?

14 COMMISSIONER EISEN: That's the Respondent.

15 CHAIR GILMORE: That was the Respondent.

16 Rachel, could you summarize just very quickly, just
17 before we --

18 MS. COHEN: Sure. I believe that was Tim Galusha and
19 not the Respondent, but happy to summarize. So, the
20 Commission's regulations require us to consider certain
21 characteristics of the violation. It is helpful to take a
22 look at Appendix J of the Commission's regulations to help
23 answer this question. There is sort of a whole rubric that
24 we go through and a whole process that we go through when
25 analyzing the violations. So, that helps us settle on the

1 extent of deviation from the statutory requirements as well
2 as the gravity of harm of the violations. And those
3 basically land us at a certain daily penalty and that daily
4 penalty amount is then multiplied by the amount of days
5 that the violation persisted. So, that landed us at a
6 daily penalty amount of \$1,600 per day. But since the
7 violations persisted for 937 days, they are capped at
8 \$30,000 for each violation.

9 CHAIR GILMORE: Okay. Thank you, Rachel.

10 Okay, now I am looking for a motion and a second to
11 accept the staff recommendation.

12 COMMISSIONER EISEN: I move to accept the staff
13 recommendation.

14 COMMISSIONER BELIN: Second.

15 CHAIR GILMORE: Okay. It was moved by Commissioner
16 Eisen; and was it second by Commissioner Vasquez?

17 COMMISSIONER VASQUEZ: No, Belin.

18 COMMISSIONER BELIN: (Raised hand.)

19 COMMISSIONER EISEN: Belin.

20 CHAIR GILMORE: No, Belin, thank you. Thank you.

21 COMMISSIONER VASQUEZ: Before we move on, can Greg
22 explain the process after this. This is a recommendation
23 to the full Commission, is it not?

24 CHAIR GILMORE: Yes.

25 COMMISSIONER VASQUEZ: And that Mr. Henry will have an

1 opportunity again to speak before the full Commission.

2 MR. SCHARFF: That is correct, he will.

3 COMMISSIONER VASQUEZ: Thank you.

4 CHAIR GILMORE: Thank you. Adrienne, would you please
5 call the roll?

6 MS. KLEIN: Yes. Commissioner Belin, or Committee
7 Member Belin?

8 COMMISSIONER BELIN: Yes, aye.

9 MS. KLEIN: Commissioner Vasquez?

10 COMMISSIONER VASQUEZ: Yes.

11 MS. KLEIN: Commissioner Eisen?

12 COMMISSIONER EISEN: Yes.

13 MS. KLEIN: Commissioner Gilmore?

14 CHAIR GILMORE: Yes.

15 MS. KLEIN: The motion passes.

16 CHAIR GILMORE: The motion passes by a vote of four to
17 zero. I want to thank all the Commissioners and staff and
18 the Respondent.

19 So, our next item on the agenda is adjournment. Does
20 anybody object to adjourning this meeting? Hearing no
21 objections, we are adjourned. Thank you, everyone.

22 (Thereupon, the Enforcement Committee meeting was
23 adjourned at 10:01 a.m.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of March, 2024.



RAMONA COTA, CERT**478