

San Francisco Bay Conservation and Development Commission

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DRAFT MINUTES

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653;

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Reylina Ruiz, Director, Administrative and Technology Services (415/352-3638;

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SUBJECT: Approved Minutes of April 4, 2024, Hybrid Commission Meeting

[Note: Agenda Item 9 was taken out of order. These minutes reflect this agenda item as listed on the agenda and not as taken in chronological order.]

1. Call to Order. The hybrid meeting was called to order by Chair Wasserman at 1:06 p.m. The meeting was held with a principal physical location of 375 Beale Street, San Francisco, California, and online via Zoom and teleconference. Instructions for public participation were played.

Chair Wasserman stated: With that, and my very short additional comments that I hope we do not need to worry about being Zoom-bombed by virtual speakers.

We have not been, but if that occurs you will find I have a fairly stern gavel.

An organization announcement. We are going to switch Items 8 and 9; 9 will be a fairly brief item.

Chair Wasserman proceeded to Agenda Item 2, Roll Call.

2. Roll Call. Present were Chair Wasserman, Vice Chair Eisen, Commissioners Addiego, Ahn, Benson, Eckerle, Eklund, El-Tawansy (represented by Alternate Ambuehl), Gunther, Lee, Mashburn (represented by Alternate Vasquez), Pine, Ranchod (represented by Alternate Nelson), Randolph, Showalter, Tam (represented by Alternate Gilmore) and Zepeda.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: USACE (Beach), U.S. Environmental Protection Agency (Blake), Association of Bay Area Governments (Burt), Contra Costa County (Gioia), Sonoma County (Gorin), Governor (Hasz), State Lands Commission (Lucchesi), Marin County (Moulton-Peters), City and County of San Francisco (Peskin), Napa County (Ramos)

3. Public Comment Period. Chair Wasserman called for public comment on subjects that were not on the agenda.

No members of the public addressed the Commission.

Chair Wasserman moved to Approval of the Minutes.

4. Approval of Minutes of the February 15, 2024 Meeting. Chair Wasserman asked for a motion and a second to adopt the minutes of February 15, 2024.

MOTION: Commissioner Gilmore moved approval of the Minutes, seconded by Commissioner Nelson.

The motion carried by voice vote with no abstentions.

5. Report of the Chair. Chair Wasserman reported on the following:

Rising Sea Level Working Group. We had an interesting and productive meeting this morning in this building and by Zoom on our Rising Sea Level Working Group, talking about the outline as we move forward for our Regional Adaptation Plan and implementation of the SB 272 guidelines, the Laird bill guidelines. Lively discussion about what they are going to mean, about various things to make sure that various important policy issues are appropriately emphasized.

Supervisor/Commissioner Gioia raised the issue of when we are going to talk again about governance and whether we believe we need more authority. We will have that discussion, but we are building towards it.

Indeed, it was discussed in the second presentation, which was on how our staff is working to modernize and organize more efficiently our permitting system.

A number of things about it were encouraging. One of them is that they are looking to how we can, in fact, get our application process as fully as possible online, which will help everybody, our staff as well as applicants and those concerned about applications. It is a very significant effort. Most of it will be done internally. Some will need some additional resources, something we are consistently fighting for.

New York Times Article. I also noted with interest an article in *The New York Times* this morning on the cloud gun being shot off in San Francisco Bay as a way of trying to redirect heat upwards by creating microparticles in the air. It was sent to me by a friend who had a tagline, does this need a BCDC permit? In fact, staff is looking into that.

But it was actually encouraging to me in a very different context. The article is worth reading, in part because it talks about a range of new ways of looking at climate change and global warming using new scientific techniques, some of which may have their own side effects that need to be evaluated.

I still hold out hope that there will be some scientific breakthroughs that are going to help us adapt to rising sea levels. I do not think it will involve turning the sea into microparticles, but I do think that there are some things out there that will help us. But we are not depending on them. We are moving forward with our efforts using the techniques that we know to address the need that we know we need to meet.

Next Meeting. A couple of things about meetings. Our next meeting on April 18 will occur fully virtually because of construction here at Metro Center that will not allow us to be present here. The meeting of the 18th is fully virtual. Everybody needs to register with Sierra where they will be. She is very good at helping you do that if you need assistance. Hopefully, you can do it in clusters as a number of you have been doing. At that meeting we may take up the following matters:

1. Consideration of a permit application for development at 505 East Bayshore in Redwood City;
2. Consideration of an enforcement case in the city of San Rafael;
3. A progress report on our Regional Shoreline Adaptation Plan and new Regulatory Roadmap that will draw from the discussion I described this morning; and,
4. A briefing by NASA on the science used to create California's draft

Rising Sea Level Guidance.

I also want to encourage for our May 2 meeting that as many people as possible actually come in. I want to describe it as one of our anchor meetings where we can get more of us together. It will be an important meeting in terms of a number of topics to be discussed so it will be, I think, worth your time to join us in person if you possibly can.

Ms. Peterson chimed in: Chair Wasserman, if I may?

Chair Wasserman acknowledged: You may.

Ms. Peterson continued: I know we have implemented a new process for a quorum and for that April 18 meeting it is due, the quorum is due today. If you could notify me by the end of the day, I would greatly appreciate it, since you are all here in a captive audience. Thank you.

Chair Wasserman reiterated: So just to repeat, I asked you to provide the information, Sierra is telling you to do it right now. And if not this moment by the end of the day.

Form 700 Filing. I do not want to steal Larry's thunder but there are still a few of us who may not have filed our Form 700 disclosures. He has been in contact with us. I did file mine, just turned it in so I am not a wonderful example, but please do get it in. Yes, I could not have bugged you if I had not done that, I would have hidden beneath the table.

Joe Bodovitz: On a sadder note, although it is also a celebratory note. I would hope that all of you have seen the publication on the website about our appreciation of Joe Bodovitz's work, who passed last month. He was BCDC's first

Executive Director and went on to be the first Executive Director of the Coastal Commission and is really a giant in the regulatory, he ultimately went to PUC as well.

As Executive Director Goldzband wrote in the statement that we have posted, no individual in the state's history was more directly responsible for the creation of our coastal zone management policies than Joe.

He was a terrific example. I did have the pleasure of having a couple of conversations with him when I first joined the Board. He was a quiet, solid leader. I am not going to make comparisons, but he had no desire to be flamboyant. Not talking about you, Larry. But he really did provide tremendous leadership in areas that to a slight extent we have come to take for granted but was really pioneering work when he did it. He is missed, and at the end of this meeting I will ask for a motion to adjourn in his memory.

Ex Parte Communications: If there is any Commissioner who wishes to report an ex parte communication that you have not filed in writing, now is the time to do so. This is on a adjudicatory matter that we have not heard. Any Commissioner wish to make such ex parte communication report?

Seeing none, that brings us to the Report of the Executive Director.

6. Report of the Executive Director. Executive Director Goldzband reported: Your hopefully not flamboyant Executive Director.

Welcome to our first Commission meeting during the spring of 2024. Spring, as we can look outside, has always been a confusing season. Charles Dickens famously noted that spring feels like summer when the day is sunny and it feels like winter in the shade. I take heart in that lesson, not just because it is hard to know

how to dress for tomorrow's Opening Day ballgame at Oracle Park.

Spring is complex and, candidly, so is what BCDC does. The Rising Sea Level Working Group heard two very substantive presentations this morning centering on how BCDC may define what a local government's rising sea level plan should contain, and the staff's multi-dimensional plan to reform many of our regulatory processes.

Finding the answers to these documents and processes will depend upon our collective ability to understand and resolve intricate and difficult issues and conversations, during which unfamiliar sun and shade may be present.

Of course, while our job as staff is to help you through those tricky conversations, we should remember that Mark Twain once said that "In the spring, I have counted 136 different kinds of weather inside of 24 hours."

With regard to staffing, unless we hear otherwise from you, we plan to hire Dr. Britne Clifton as a Climate Adaptation Specialist working in the Regulatory Improvements Team with Ethan Lavine. Britne has expertise in restoration and climate adaptation, has worked as a research associate at the Oak Ridge National Laboratory and as a graduate researcher, and was the project lead for multiple riparian and floodplain restoration research projects at the Nature Conservancy's Cosumnes River Preserve. Britne's a Bobcat, having earned her doctorate in Environmental Systems from UC Merced, a Charger having earned a Master in Earth Systems Science from the University of Alabama in Huntsville, and holds a BS in Biology from Athens State University, Alabama's oldest school of higher learning. Unless we hear from you otherwise, Britne will start with us on April 18.

I am happy to report that your staff has started its series of presentations

about SB 272 implementation to city and county local elected officials.

Commissioner Dave Pine stepped forward almost immediately after we asked for your help, and he arranged our briefing to the San Mateo Council of Cities almost two weeks ago, for which we thank you. I also want to thank Supervisors Gioia, Gorin, Lee, Ramos, Tam, and Vasquez for arranging presentations in their counties. And we are working with the remaining supervisors to brief their elected officials about the development of the SB 272 guidelines and to answer their questions about BCDC. We will report on those discussions during the next Rising Sea Level Working Group meeting as well.

Last Thursday while I was on a plane back from Washington, DC, Steve Goldbeck worked with Chair Wasserman, and he approved an emergency permit for a homeowner in Belvedere whose dock broke free of its piles in a winter storm. The 300-square-foot dock was attached to two wood pilings, one of which broke off and washed away. The emergency permit enabled the homeowner to remove the dock and allows the owner to apply for a new permit for replacing the dock.

I was returning from Washington DC because Planning Director Jessica Fain and I attended the annual Coastal States Organization and NOAA meetings for coastal zone managers. Every time I attend such a meeting, I am even more impressed by the caliber of our colleagues nationwide as we all tackle challenges such as rising sea levels, permitting, budgeting, et cetera.

Jessica and I were fortunate to meet with staff members of both US Senators and staff of six House members, including Representatives Pelosi, Mullin, DeSaulnier, Garamendi, Huffman, and Eshoo, all of whose offices are consistent supporters of

enterprising coastal zone management.

Jessica quickly briefed staff members on SB 272 and our emerging Regional Shoreline Adaptation Plan program, and I spoke very quickly about BCDC's emerging role in the reconstruction of Highway 37.

You may have seen that a few of our stakeholders raised concerns about the safety of bridges above the Bay in light of the disaster recently in Baltimore Harbor. Caltrans District 4 Director and BCDC Commissioner Dina El-Tawansy let us know that Caltrans plans to present a briefing to the Commission, and likely MTC as well, later this spring or early summer to inform you about bridge safety and stability in the Bay.

I am excited to announce BCDC's first-ever Rising Together: Bay Adapt Summit, a community event in San Francisco on August 8, so mark your calendars now.

Rising Together will be an immersive and dynamic all-day summit. It will bring together community leaders to celebrate sea level rise adaptation through the region and educate community members on the latest climate actions in their neighborhoods. As part of the event, we will be hosting an award ceremony that will honor exemplary climate change leaders. By doing so, those leaders are advancing BCDC's Joint Platform to advance the protection of people and the natural and built environment from rising sea levels.

Now the ask: we are looking to honor one local government staff member, one community leader, and one elected official, each of whom will be helping build more resilient shorelines and communities. So, please feel free to nominate a leader in your community who has displayed excellence in preparing the Bay Area or our

communities for rising sea levels. Our Bay Adapt website contains all the information. We will be emailing that link to all of our Bay Adapt stakeholders and all of our Commissioners, Alternates, and Advisory Board members.

As Chair Wasserman said, Joseph E. Bodovitz passed away in early March. I was honored to represent the Commission at the memorial service. I want to read to you the appreciation that is on BCDC's website because I think it is important for the public to hear and for all of us to hear again.

“Joe Bodovitz’s contributions to California’s conservation policies cannot be overstated. He began his professional career as a journalist working for the *San Francisco Examiner*. He moved to SPUR (San Francisco Planning and Urban Research) where, in 1964, he began to work on Bay-related issues. This resulted in his leading a staff and consultant team that drafted the original San Francisco Bay Plan as BCDC’s first Executive Director. Perhaps as proof that “no good deed should go unpunished,” when BCDC’s first Chair, Mel Lane, was asked by Governor Ronald Reagan in 1972 to chair the new California Coastal Commission, Mr. Lane hired Joe away from BCDC to be its initial ED as well. Nobody in the entire State of California was more influential in developing California’s coastal zone management policies than Joe Bodovitz.”

Seven years later, Joe became Executive Director of the California Public Utilities Commission, which he led for seven years. He then served as head of the California Environmental Trust and later as the

project director for BayVision 2020, which attempted to reduce the silo effects and redundancies caused by the myriad regional planning and implementation government bodies in the Bay Area developed during the post-World War II period.”

“Joe was born in Oklahoma City in 1930. He studied English Literature at Northwestern University, he was a Wildcat, and served in the U.S. Navy during the Korean War. After the war, Joe completed his graduate degree in journalism at Columbia University, so he was a Lion. Joe was always generous with his time and in his efforts to help BCDC.”

“Joe routinely answered my questions about how he made decisions in light of competing perspectives and how he used his experience to forecast issues. His advice was always relevant, even though much has changed as we work in 2024.”

I encourage you to visit the website of the University of California’s Library to examine Joe’s oral history because it is absolutely a great read.

Finally, Chair Wasserman, I want to reiterate what you said about the important announcement. Due to construction here, our next Commission meeting in two weeks will be held totally virtually. We will be posting the meeting notice and agenda as we normally do. And you can expect those next two meetings later in the following two months, May and June, also to be virtual. We are hoping that we will get our space back in July, but we are not quite counting on it yet.

With that, Chair Wasserman, I am happy to answer any questions.

No questions were posed to the Executive Director.

7. Consideration of Administrative Matters. Chair Wasserman stated Regulatory Director Harriet Ross was available to answer questions on administrative matters.

No questions were posed to the Regulatory Director.

8. Public Hearing and Vote on an Enforcement Committee Recommended Enforcement Decision, Including Proposed Cease and Desist and Civil Penalty Order Number CCD2024.001.00 (BCDC Enforcement Case ER2021.080.00). Chair Wasserman stated: That brings us back to Item 8, a Public Hearing and Possible vote on the Enforcement Committee's Proposed Recommended Enforcement Decision to require statutory and permit compliance at 660 Bridgeway Boulevard in Sausalito, Marin County; and a payment of a \$60,000 administrative civil liability in order to resolve BCDC Enforcement Case ER2021.080.00, against the owner of record, Bayview 1, LLC.

In a moment, Rachel Cohen of our enforcement team will present the item, but first I would ask Mr. Chris Henry, who owns Bayview, or his representative to come forward and identify themselves as being present.

Mr. Darien Key responded: Good Afternoon, Commissioners. Attorney for Bayview 1, LLC, Darien Key with Fennemore Wendel.

Chair Wasserman acknowledged: Thank you. I want to state the process that we are going to go through.

BCDC enforcement staff will first present the case and the proposed Cease and Desist and Civil Penalty Order for our consideration; after which time Mr. Henry's representative will be given an opportunity to comment.

After all the presentations have been given, the public comment period will be opened. Those comments will be limited to three minutes per person.

After the public comment period has been closed, the floor will be opened to members of the Commission to ask follow-up questions of staff and Mr. Henry's representative and deliberate on the matter.

All speakers must limit their presentation and comments to the evidence already made part of the record, which has been published online with this meeting's agenda, and/or the policy implications of such evidence. We will not allow the presentation of any oral testimony or new evidence.

Before Ms. Cohen gives her presentation, I want to do two things. First, I want to open the public hearing on the matter. It is so open.

Second, I invite Commissioner Gilmore, the Chair of the Enforcement Committee, to give a brief summary of the Committee's hearing on this matter that took place on March 14, 2024. Chair Gilmore, you have the floor.

Commissioner Gilmore presented the following: Thank you, Chair Wasserman.

On March 14, the Enforcement Committee held a hearing and a vote on the Executive Director's recommended enforcement decision against Mr. Henry to address longstanding violations of BCDC Permit Number M1979.088, as amended, and Section 66632 of the McAteer-Petris Act at the commercial property at 660 Bridgeway Boulevard in downtown Sausalito.

Upon reviewing the evidence pertinent to this case and conducting our hearing, which included presentations and comments by staff as well as the Respondent, represented by Mr. Henry, who is the sole owner and officer of Bayview 1, LLC, the Enforcement Committee voted to adopt, without changes, the Executive Director's recommended Enforcement Decision as the Enforcement Committee's

recommendation to the full Commission.

As a reminder to my fellow Commissioners, I will now review, in summary, the actions that we are allowed to take today. We may:

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

(2) dismiss the entire matter by voting not to issue the proposed order,

(3) remand the matter back 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 regulations 11327.

So, with all of that in mind, I am going to invite Ms. Cohen to make her presentation.

Ms. Cohen addressed the Commission: Thank you, Commissioner Gilmore and Chair Wasserman.

Good afternoon, all. Today I will present Enforcement Case Number ER2021.080.00, for which the Respondent is Mr. Chris Henry and his company, Bayview 1, LLC.

This case involves a longstanding obstruction to permit-required public access and unpermitted redevelopment activities in BCDC's jurisdiction. Mr. Henry's nearly 15-year history of failing to comply with the terms of his BCDC permit and the

McAteer-Petris Act has caused staff to commence a formal enforcement proceeding to restore public access.

Today we will go through the location of the violations, history of noncompliance, timeline of events, violation summary, Respondent defenses and staff rebuttals, and finally the Enforcement Committee's recommended enforcement decision.

These are vicinity maps at two scales of 660 Bridgeway Boulevard, Sausalito, Marin County. Originally a ferry terminal, the privately-owned, two-story building is now the home to a restaurant and shops in downtown Sausalito.

This is a clean scan of the site plan, which is Exhibit A to the permit. Bridgeway Boulevard is over here to the west, if you can follow my cursor, the building is here, and the Bay is over here on the eastern side of the building. The approximately 1,558-square-foot public access area, shown in a faint red outline, wraps around the southern and eastern sides of the building, and includes the staircase landing pad halfway up the staircase to the second floor, offering members of the public an elevated view of the Bay.

The original permit in 1979 allowed for renovations to the ground floor restaurant, Il Piccolo Café, and repairs to the deck support structure, and it required landscaping, public trash containers, and no fewer than two benches to be made available to the public. The public access area provides sweeping Bay views and a connection to the park to the immediate south.

This dark blue dashed polygon approximately outlines the space which was formerly used by Il Piccolo Café.

The area outlined with the black rectangle represents 155 square feet of the public access space, which the second permit amendment authorized the permittee to use for outdoor dining, with tables and chairs that were accessible to the public and to patrons of Il Piccolo Café. The authorization to use the public access area for outdoor dining ceased when the café closed around 2016.

This photo was taken in March of 2022 from south of the building facing north. The public access area is partially shown here under these overhangs. The plywood sheets in this photo partially block access to the public access space, but it does continue around the southeastern corner of the building and up the stairs here.

This photo was taken in March of 2024 from the southeastern corner of the building facing west. The public access area, again, includes the area under the overhang here and this walkway. The public access space which was authorized by BCDC included a continuous paved surface, and this raised wooden decking was placed through the public access space without BCDC authorization.

This photo was also taken in March 2024 from the eastern side of the building facing northeast. These are the stairs that ascend to the second-floor deck and public access stair landing pad. And you can see the unauthorized, raised wooden decking continues throughout this section of the public access area.

This slide shows BCDC's shoreline band and Bay jurisdiction, showing that nearly the entire building is within BCDC's jurisdiction.

So now that I have reviewed the permit's public access requirements, I will review the history of noncompliance at this site before circling back to the current violations.

Mr. Henry took over ownership of 660 Bridgeway in 2007. This long list of prior enforcement cases shows that violations of the permit under Mr. Henry's ownership began in 2010 and have regularly occurred since then.

Six cases between 2010 to 2016 dealt with restaurant staff refusing to allow members of the public to use the public outdoor dining tables. Restaurant staff told members of the public to either purchase food or leave the area. For two of these cases, Mr. Henry was fined for repeating the same violation within five years.

Two cases dealt with a failure to post required public shore signage, and a 2021 case addressed unauthorized outdoor dining tables.

I want to draw your attention to ER2016.013 when Mr. Henry announced his intent to construct a new restaurant space on the first floor of the building, demolishing the former café space and expanding into the neighboring business suites within the building.

Mr. Henry was informed in April and September of 2016 that he must obtain a BCDC permit amendment prior to commencing this project. However, a November 2016 site visit revealed that much of the public access space had been blocked off and construction of the restaurant renovation project had commenced without BCDC permits.

Staff initiated standardized fines and Mr. Henry submitted an incomplete permit application for the project. After more than a year, Mr. Henry failed to complete his permit application and it was returned unfiled, with a note reminding him that his property was within the Commission's jurisdiction and subject to the 1979 permit and the McAteer-Petris Act.

When staff closed the case and Mr. Henry was fined \$21,000 for the violations, staff clearly directed him to not resume the project without first seeking and obtaining a BCDC permit. Mr. Henry nonetheless reinitiated this renovation project around 2022 without obtaining approval from BCDC, and this is one of the subject projects of today's enforcement proceeding.

Moving on to our current case.

In August 2021, staff received an enforcement report which alleged that the Respondent was again obstructing the public access pathway, this time with plywood and tables.

In September of 2021, enforcement staff mailed a violation notice initiating an enforcement action and standardized administrative fines. Staff of the second-floor restaurant replied and said that the public access path had been blockaded by plywood due to a fire and that the Fire Marshal and Marin Southern Fire District instructed them to close off the back patio. BCDC staff requested documentation of the Fire Marshal's direction but never received it. Staff also informed Mr. Henry that the city of Sausalito's process is separate and distinct from BCDC's.

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

In March and December of 2022, and April of 2023, staff visited the site and documented the persistence of the violations. The shoreline public access had been completely blockaded and unauthorized work was occurring on the ground floor

public access area and within the ground floor commercial space. The entire public access area was being used to store furniture, construction materials and trash bins, making it unusable to the public.

In December of 2023, a member of the public emailed staff photographs documenting that the development activities had expanded to include raised wooden flooring, a high-top bar, and a new glass wall railing in the public access space, appearing to staff that Mr. Henry intended to privatize the public access space for use by the new restaurant.

Enforcement staff then notified the Respondent that the opportunity to resolve the case using standardized fines was no longer available.

On January 24, 2024, enforcement staff issued the violation report and complaint for administrative civil penalties to Mr. Henry. And on January 31 Mr. Henry emailed staff and confirmed he had received the violation report and complaint.

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

On February 8, 2024, Mr. Henry pledged to send documentation that he had made the public access area consistent with the 1979 permit. He also pledged to submit an after-the-fact permit application for the unauthorized work.

On February 27, 2024, staff spoke with Mr. Henry and his architect. Staff explained the Enforcement Committee and Commission hearing processed and the

statement of defense form due date. Staff again advised Mr. Henry to apply for an after-the-fact permit authorization for the fire repairs and interior restaurant renovations, since both occurred in BCDC jurisdiction without BCDC approval. And staff advised him that BCDC may require additional public access in lieu of the years of closure and unauthorized work.

On February 28, 2024, staff received Mr. Henry's incomplete application for after-the-fact approval of the fire repair project. Despite staff's recommendation that Mr. Henry include both the fire repair and the restaurant renovation projects, the application excludes the restaurant renovation project and the changes to the public access space completely.

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

These are snapshots of the restaurant renovation plans. The image on the left shows the pre-construction conditions, with the former Il Piccolo Café outlined in a dashed blue outline and the former wine bar and retail space on the other side of this hallway.

The image on the right shows post-construction conditions. And as you can see from the solid blue outline, the restaurant has expanded into the former hallway and wine bar and retail space, and fill has been placed internally consisting of new restrooms, a new kitchen, a new dining room, and a new office space. The public

access areas outlined in red show the intent to privatize the public access space for use by the new restaurant by placing tables and chairs throughout.

So, in sum, Violation 1 is for the unauthorized redevelopment activities on the ground floor of the building; and Violation 2 is for closing, blockading and removing the required public access amenities and intending to privatize the public access area for restaurant use.

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

Moving on to defenses and rebuttals.

Defense 1 is that Mr. Henry received building permits from the City of Sausalito for the restaurant remodel work.

However, receiving a City of Sausalito permit does not absolve the Respondent from his responsibility to consult BCDC prior to performing work in BCDC jurisdiction, to obtain BCDC approval for the work, and to comply with the McAteer-Petris Act.

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

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

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

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

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

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

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

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

Lastly, BCDC has never seen documentation that the fire department directed

him to close the deck.

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

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

The case history demonstrates again that Mr. Henry should have known that he needed to inform BCDC about the closure of the public access area. Yet, Mr. Henry did not voluntarily apply for a BCDC permit until he was subject to this enforcement action and the permit application is not inclusive of all of the work that was performed.

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

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

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

Defense 7 is that the administrative civil penalty would possibly bankrupt

Respondent or put him out of business and Bayview 1, LLC employs many different people and they and their families rely on the Respondent for their livings.

The Statement of Defense form allows respondents an opportunity to express whether they will be unable to pay the proposed penalty, or whether paying the penalty would have a substantial adverse effect on their ability to continue in business. However, since information relative to these considerations is exclusively in the possession and control of the violator, Appendix J of the Commission's regulations requires violators to submit factual information and supporting documentation to enable staff and the Commission to evaluate the violator's financial condition.

Examples of relevant supporting documentation that a violator should provide include audited financial statements, balance sheets, profit and loss statements, statements of net worth, tax returns, and more.

However, since no factual information or documentation was submitted to support this claim, staff cannot consider this as a viable defense and Mr. Henry's ability to pay is not in question.

To review the proposed administrative civil penalty, Appendix J of the Commission's regulations requires staff to assess certain characteristics when settling on the appropriate fine amount, including but not limited to the Respondent's degree of culpability, history of violations, voluntary resolution efforts, any economic benefit to the violator, and other factors.

Our analysis determined that for each violation the gravity of harm for this case is moderate and the extent of deviation from the statutory requirement to

provide the permit-required public access and secure a permit or remove the unauthorized fill is major.

Daily penalties per violation was assessed for 937 days, during which Mr. Henry failed to take voluntary action to correct the violations. Fines for each of the two violations are capped at \$30,000 and staff proposes a total penalty amount of \$60,000.

Moving on to our recommended enforcement decision.

The Enforcement Committee recommends that the Commission authorize the Executive Director to issue the proposed Cease and Desist and Civil Penalty Order Number CCD2024.001.00, which would order the Respondent to:

Cease and desist from violating BCDC Permit M1979.088.02 and the McAteer-Petris Act.

To fully restore and maintain public access within 30 days of Order issuance.

By December 31, 2024, to obtain a permit or permit amendment for extensive ground floor restaurant redesign work that commenced in or around November 2016 and has continued to date, as well as any work that was performed in the public access areas.

To complete a permit assignment form for BCDC Permit M1979.088.02 within 45 days of Order issuance.

To cease and desist from any development of the ground floor restaurant space, and to not conduct any business or other use of the space until a Commission permit that authorizes such use and fill placed therein is obtained.

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

issuance.

That concludes the staff's presentation.

Commissioner Gilmore acknowledged: Thank you, Rachel.

I will now invite Mr. Henry's representative, Mr. Key, to comment.

Chair Wasserman noted: I would note, although Mr. Key may do so, that apparently Mr. Henry is virtually participating.

Mr. Key spoke: That is correct. He will be available for questions, should you have any, or of myself.

Good afternoon, Commissioners. My name is Darian Key, attorney with Fennemore Wendel, on behalf of Bayview 1, LLC, as to BCDC enforcement hearing ER21-080.

You will see in our submitted comments that my client has made two requests for you today. The first is a continuance of 30 days since our office was just hired last Friday to represent Bayview. We request this time to review the record and to better understand a better compliance strategy for Bayview to come into compliance with his obligations for BCDC permits. The second is that the administrative fee be stayed until a final compliance obligation due date of December 31, 2024. The reason for these requests is so that Bayview can come into compliance with its BCDC obligations.

Staff has requested six decision points for the Commission to adopt. I will not repeat them in their entirety, they are on your staff reports, pages 1 and 2. But I would like to address what he has done so far as to those six points.

The first is that Bayview has submitted a permit amendment to try and come

into compliance. To the extent BCDC staff believes a different permit or a different permit amendment is needed, he along with our review will assist that and do that within 30 days so that they are now properly reviewing new permits.

Second, Bayview has reopened the public access area, removed all tables, chairs, errant materials and waste containers. We submitted photos yesterday demonstrating that. In addition, Bayview is currently working on providing the required benches and trash containers.

Bayview is requesting this continuance in enforcement so we can focus on repairing his compliance obligations, as opposed to paying enforcement costs that won't resolve these underlying problems. The point of these requests is so that he can come into compliance.

Fourth, Bayview will submit an application for the permit assignment within 45 days.

Fifth, Bayview will currently cease and desist all future development and ground floor operations until a BCDC permit has been authorized.

And lastly, Bayview requests that the stay of enforcement for \$60,000 be stayed until December 31, 2024. If all requested work is properly permitted by December 31 of that day, he would request at that time the fee be waived. If all work is not properly permitted by that date, Bayview will not oppose the imposition of the fee, subject to an extension of time.

Thank you for taking the time to hear our request. My client and I are available for questions should you have them.

Commissioner Gilmore continued: Thank you for your comments, Mr. Key; and

thank you to staff for the presentation.

Chair Wasserman, would you please open the public comment period.

Chair Wasserman announced: The public comment period is opened. I believe there are no members of the audience who have submitted cards. Do we have any virtual cards submitted?

Ms. Peterson replied: There are no hands raised, Chair Wasserman.

Chair Wasserman announced: With that I will close the public comment period and ask Commissioners if they have any questions.

I do want to point out or reemphasize two things that Chair Gilmore of the Enforcement Committee stated. One, we cannot consider evidence that was not presented at the Enforcement Committee, so the pictures that Mr. Key referred to cannot be considered. Two, our choices in action are in fact, very limited. We can approve the recommendation; we can reject it entirely; or we can send it back to the Enforcement Committee.

With that, are there any comments or questions from Commissioners?

Commissioner Vasquez asked: Rachel, in your presentation you said that Mr. Henry took over the ownership of the property in 2007 and that there were already issues of compliance; is that correct?

Ms. Cohen replied: I was referring to issues with compliance that occurred after Mr. Henry took over ownership.

Commissioner Vasquez continued: Yes, but he took over, according to the PowerPoint, in 2007.

Ms. Cohen agreed: Yes. The violations under his ownership began in 2010.

Commissioner Vasquez clarified: 2010. Okay, then it is only 14 years that he has had an opportunity to come into compliance.

Ms. Cohen acknowledged: Pardon me on my math.

Commissioner Vasquez noted: I just raise the issue that asking for more time, when you have had plenty of time to come into compliance, and then to ask us to waive it. No, the fines are for the past noncompliance, not because you do the work and somehow that goes away. Those are just my thoughts.

Commissioner Eklund asked: Are we allowed to ask a question of the Applicant?

Chair Wasserman answered: You are.

Vice Chair Eisen reiterated: Yes.

Commissioner Eklund continued: We are. My question to the Applicant, not his representative but the Applicant, is why didn't he seek legal counsel earlier?

Mr. Henry replied: Good afternoon, Chris Henry here. Thank you for taking the time to hear me today, I appreciate it. I hired my attorney. I didn't realize I was going to need legal representation until the hearing. I moved during COVID and I didn't receive a lot of the correspondence that Rachel said were sent out. Once I found out the situation I hired the attorney.

Commissioner Eklund acknowledged: Thank you.

Chair Wasserman asked: Any other questions from Commissioners?

Commissioner Randolph chimed in: Just following up on that. Was the correspondence sent by mail during COVID or by email or how was that communicated?

Ms. Cohen stated: Correspondence was sent by mail and email during COVID and Mr. Henry was responding to us through email in 2021. There were some mailing issues with the first version of the violation report and complaint that was mailed in December. It was returned undeliverable, so we reissued it with a new hearing date to Mr. Henry's current address. And he did get in touch with us just a few days after it was mailed to him at his new address.

Chair Wasserman asked: Did he appear at the Enforcement Committee?

Ms. Cohen replied: Yes, he appeared virtually.

Chair Wasserman announced: Thank you. Any other questions or comments?

The comment period is now closed.

Chair Gilmore, would you like to move the Enforcement Committee Recommendation?

Commissioner Gilmore stated: Thank you, Chair Wasserman. I move to adopt without any changes the Executive Director's recommended enforcement decision as was ably stated by staff.

MOTION: Commissioner Gilmore moved approval of the Staff Recommendation, seconded by Commissioner Nelson.

VOTE: The motion carried with a vote of 17-0-0 with Commissioners Addiego, Ahn, Ambuehl, Benson, Eckerle, Eklund, Gilmore, Gunther, Lee, Nelson, Pine, Randolph, Showalter, Vasquez, Zepeda, Vice Chair Eisen and Chair Wasserman voting, "YES", no "NO" votes, and no "ABSTAIN" votes.

Chair Wasserman acknowledged: Thank you all for that effort.

[Note: Agenda Item 9 was taken out of order and was heard after Agenda Item 7.]

9. Commission Consideration of a Contract Amendment with Resources Legacy Fund for Environmental Justice Advisors. Chair Wasserman stated: That brings us to Item 9. As I noted, we are going to shift the order. A request from staff to consider authorizing the Executive Director to amend an existing contract with Resources Legacy Fund to further administer funding for the Commission's Environmental Justice Advisory Program. Our Environmental Justice Policy Manager Phoenix Armenta will provide the staff analysis.

Senior Manager for Climate Equity and Community Engagement Armenta addressed the Commission: Thank you, Chair Wasserman. Good afternoon, Commissioners. My name is Phoenix Armenta, and I am the Senior Manager for Climate Equity and Community engagement for BCDC. Today I am coming to you with a staff report and recommendation to approve an amendment to the contract with the Resources Legacy Fund (RLF) in order to fund our EJ Advisors Program.

Our EJ Advisors Program was launched in 2021 with generous funding from the Resources Legacy Fund, a leading philanthropic nonprofit organization. The EJ Advisors Program was created to help BCDC implement its environmental justice and equity policies, which the Commission adopted as a Bay Plan Amendment in 2019.

The Resources Legacy Fund originally funded six EJ Advisors with annual stipends of \$6,000 per year. RLF committed to funding for three years of the program with the understanding that BCDC would gradually take over funding from them. In 2022, they provided stipends for five advisors and in 2023, they provided stipends for three EJ Advisors, with BCDC making up the remainder of the funding.

Although our original agreement has come to an end, this year, RLF has agreed

to continue acting as our fiscal sponsor to the EJ Advisor Program.

Here are our six current EJ Advisors, Naama Raz-Yaseef from the Watershed Project, Niria Garcia of the Indian Cultural Organization, Julio Garcia of Rise Up South City, Violet Saena of Climate Resilient Communities, Selena Feliciano of SF Consulting Company, and Anthony Khalil of the Bayview Hunters Point Advocates. Julio, Violet, Selena and Anthony have been with the program from the beginning, and they are about to start their fourth year with BCDC. Naama and Niria began their tenure with the EJ Advisors in December of 2023.

On this slide we have the overarching goals of the EJ Advisors Program created with the EJ Advisors. They include:

Advance and recommend to the Commission how best to embed equity and environmental justice principles throughout BCDC's programs, policies and processes.

Work with BCDC staff and Commission to develop metrics to track the implementation of such changes.

Encourage Commission appointing authorities to select Commissioners and Alternates who reflect the diversity of Bay shoreline and inland communities.

Increase strategies for a more diverse workplace at BCDC.

Develop a permitting and planning model that better incorporates meaningful and robust community engagement during development and permitting processes, especially in areas most vulnerable to sea level rise.

These goals are also aligned with our EJ and social equity policies, our Racial Equity Plan and our Strategic Plan.

Over the past three years, the EJ Advisors have advised us on a variety of

topics to achieve the aforementioned goals. They hold monthly meetings and regularly participate in the Commissioner EJ Working Group meetings.

They participated in a workshop on environmental justice concerns in the permitting process. Their advice on the permitting process continues as we are working to implement some of their suggestions.

They also participated in drafting some of the original objectives in the Racial Equity Plan, participated in our October 2022 Racial Equity Workshop, and are expected to review the updated draft when it comes out.

Their activities include commenting on and making recommendations for the CBO mapping tool.

Their most recent project has focused on planning a series of toxic tours for BCDC staff and Commissioners.

They are currently undergoing an organizational development assessment of the program with consultants from MIG.

This contract allows us to pay the final installation for the EJ Advisors from the grant that we received from the State Coastal Conservancy for Bay Adapt work.

This will allow us to pay for six EJ Advisor stipends at \$10,000 per year. In addition, this will fund their activities on the Bay Adapt Implementation Committee and the RSAP Advisory Group.

Because we requested this additional year of fiscal sponsorship, RLF is charging an administrative fee of 17% per invoice. This will bring the total of the contract up to \$180,000.

This contract helps us to align the EJ Advisors Program with Gavin Newsom's

Executive Order to embed equity into state government operations, our Strategic Plan and the forthcoming Racial Equity Action Plan. As I noted previously, we are currently contracting with an organizational development consultant to continue the development of the EJ Advisors Program.

In conclusion, the staff recommends that the Commission authorize its Executive Director to amend an existing contract with the Resources Legacy Fund from \$74,000 up to \$180,000 to administer stipends to BCDC's EJ Advisors and extend the end date to June 30, 2025. Thank you.

Chair Wasserman acknowledged: Thank you. With that presentation complete I want to open a public hearing on the matter and invite anyone from the public who wishes to do so to make a comment. Do we have any speakers on this matter?

No members of the public addressed the Commission.

Chair Wasserman continued: Any questions or comments from Commissioners?

Commissioner Ahn spoke: Phoenix, very much appreciate the presentation. As Chair of the EJ Working Group always believed that stipends are a really important part to resource and community participation, making sure people feel valued for the input that they are giving to this body.

I wanted you to hopefully provide a better sense of context. Do we have a sense across other agencies what they do on something like a community participation stipend nowadays? I know this has become standard practice amongst a lot of state agencies, but I am hoping also that the community leaders themselves appreciate the increase from 6,000 to 10,000. It does seem like a big jump, so I am

hoping you can speak a little bit about, 1) how does it compare in the larger ecosystem, and 2) are the community leaders who are part of the current body okay with it?

Ms. Armenta explained: In terms of other agencies, I think it is comparable to what other agencies are offering. We have set it out that they are getting paid \$125 an hour at 80 hours for the entire year. That includes a meeting a month plus the EJ Advisor Working Group plus time for them to do extra activities. As of yet it seems that they are satisfied with that payment. So far, everyone seems to be okay with it.

Commissioner Ahn acknowledged: That is good to hear. Thanks.

Chair Wasserman asked: Any other questions or comments?

Commissioner Showalter commented: I just wanted to thank the Resources Legacy Fund for this grant, it is very helpful to us.

Chair Wasserman continued: Thank you, Pat; indeed it is.

I would entertain a motion to close the public hearing and a second.

MOTION: Vice Chair Eisen moved to close the public hearing, seconded by Commissioner Ahn. The motion carried by a voice vote with no abstentions or objections.

Chair Wasserman continued: Phoenix, make the Staff Recommendation, please.

Ms. Armenta read the following into the record: The staff recommends that the Commission authorize its Executive Director to amend an existing contract with the Resources Legacy Fund from \$74,000 up to \$180,000 to administer stipends to BCDC's EJ Advisors and extend the end date to June 30, 2025.

Chair Wasserman asked: Any questions?

I would entertain a motion to approve the Recommendation.

MOTION: Commissioner Lee moved approval of the Staff Recommendation, seconded by Commissioner Eklund.

VOTE: The motion carried with a vote of 16-0-0 with Commissioners Addiego, Ahn, Ambuehl, Benson, Eckerle, Eklund, Gilmore, Gunther, Lee, Nelson, Pine, Randolph, Vasquez, Zepeda, Vice Chair Eisen and Chair Wasserman voting, "YES", no "NO" votes, and no "ABSTAIN" votes.

Chair Wasserman announced: Thank you. The motion passes. Go forth and continue the good work. Thank you very much.

10. Adjournment. Chair Wasserman stated: That brings us to Adjournment. As I stated earlier, I would ask that the motion to adjourn be made in honor of Joe Bodovitz, our first Executive Director.

Commissioner Nelson stated: I wanted to make that motion and also simply to say that I worked for Save the Bay for many years and had the pleasure of working with Joe during those many years, and after, and I just wanted to reinforce what the Chair and Larry have already said. Joe was wise and kind and generous and modest. He has an enormous responsibility both for the agency world we live in and the coastal zone we all enjoy. But really, I think had a gift for demonstrating, showing that effective government agencies can work effectively for people and it is a tremendous legacy.

Joe was among the last of the original Save the Bay generation. We have lost the three ladies, Mel Lane, Dwight Steele, the legislators who carried the McAteer-

Petris Act. Joe was among the last of that first generation of the pioneers of the Save the Bay movement, which just to remind folks, is arguably the first major urban environmental movement on the globe, the first coastal protection movement on the globe. Joe was a part of a really visionary generation and a wonderful person, so I will move the recommendation.

Chair Wasserman added: And I am going to exercise Chair's prerogative and second that motion in Joe's memory.

Unless there is a negative vote, we are adjourned in the memory of Joe Bodovitz, may he be an example for us all.

Upon motion by Commissioner Nelson, seconded by Chair Wasserman, the Commission meeting was adjourned at 2:19 p.m.