

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

July 23, 2010

**TO:** All Commissioners and Alternates

**FROM:** Will Travis, Executive Director (415/352-3653 [travis@bcdc.ca.gov](mailto:travis@bcdc.ca.gov))  
Tim Eichenberg (415/352-3655 [time@bcdc.ca.gov](mailto:time@bcdc.ca.gov))  
Ande Bennett (415/352-3626 [andeb@bcdc.ca.gov](mailto:andeb@bcdc.ca.gov))

**SUBJECT: Recommended Enforcement Decision Regarding Proposed Commission Cease and Desist and Civil Penalty Order No. CCD 4-09; San Pedro Cove Homeowners Association, Al Lamperti (Lamperti Incorporated), and the Charles E. Paganini Estate**  
(For Commission consideration and vote on August 5, 2010)

## Summary and Recommendations

This Recommended Enforcement Decision settles an enforcement action against Mr. Charles Paganini, Mr. Al Lamperti, and the San Pedro Cove Homeowners Association (Respondents) for violation of Permit No. 27-77 (the Permit). The Permit authorized the construction of the San Pedro Cove Unit 2 Subdivision (the project) located on Point San Pablo Road in the City of San Rafael, Marin County and contained certain public access conditions. In order to resolve the enforcement action and provide the public access required in the Permit, the staff and the Respondents have agreed to the terms and conditions of a proposed Commission Cease and Desist and Civil Penalty Order No. CCD 4-09 (the Order). The Enforcement Committee met on July 22, 2010 and approved a Recommended Enforcement Decision and the proposed Order, and the Committee recommends that the Commission issue the proposed Order.

Attached to this memorandum for Commission review and approval are the following documents: (1) the Recommended Enforcement Decision by the Enforcement Committee to the Commission (Attachment One); the proposed Order and exhibits (Attachment Two); and (3) the Stipulation to the Order signed by the Respondents (Attachment Three).



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**ATTACHMENT THREE—STIPULATION FORM**

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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## ATTACHMENT ONE—RECOMMENDED ENFORCEMENT DECISION

July 23, 2010

**TO:** All Commissioners and Alternates

**FROM:** Will Travis, Executive Director (415/352-3653 [travis@bcdc.ca.gov](mailto:travis@bcdc.ca.gov))  
Tim Eichenberg (415 352-3655) [time@bcdc.ca.gov](mailto:time@bcdc.ca.gov)  
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**SUBJECT: Recommended Enforcement Decision Regarding Proposed Commission Cease and Desist and Civil Penalty Order No. CCD 4-09; San Pedro Cove Homeowners Association, Al Lamperti (Lamperti Incorporated), and the Charles E. Paganini Estate**  
(For Commission consideration and vote on August 5, 2010)

### Enforcement Committee Recommendation

The Enforcement Committee recommends that the Commission adopt this Recommended Enforcement Decision and issue the proposed Cease and Desist and Civil Penalty Order No. CCD 4-09 (the Order), to the San Pedro Cove Homeowners Association (HOA), Al Lamperti (Lamperti Incorporated), and the Charles Paganini Estate (the Estate) (collectively known as the Respondents) for the reasons stated below.

This matter arises out of an enforcement action commenced by Commission staff against the Respondents for violations to Permit No. 27-77, as amended, authorizing Unit 2 of the San Pedro Cove Subdivision in the City of San Rafael, Marin County. In order to save the time and expense necessary to contest this matter, the staff and Respondents have agreed to the terms of the proposed Order (Attachment Two) that would resolve all of the allegations.

The Enforcement Committee has determined that the proposed Order is a fair resolution of the alleged violations under the circumstances and recommends that the Commission issue the proposed order.

### Enforcement Decision

#### I. Permit History



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In 1978, Charles Paganini obtained BCDC Permit No. 27-77 (the permit) to construct Unit 2 of the San Pedro Cove Subdivision. The project was delayed and modified and in 1990, the developer, Al Lamperti, obtained Amendment No. Five to reconfigure the project and the

public access requirements. Mr. Lamperti commenced construction of the 22 houses in the Commission's jurisdiction in 1991. Ownership of the designated public access and open space parcels was transferred to the San Pedro Cove Homeowners Association (HOA) that same year.

The amended permit requires an 800-foot path from Point San Pedro Road to and along the shoreline of a parcel known as the Eastern Wildlife Area, and a 1,060-foot path through the subdivision, from Point San Pedro Road to a deck overlooking the Bay on the south side of the subdivision. These requirements, including signage and other amenities, were to be provided prior to the sale of any home. The Eastern Wildlife Area is a 2.9-acre marsh and upland area that is required to be maintained for public access and habitat. The wildlife area, the public access, and a 10.68-acre open-water area were required to be permanently reserved by legal instruments prior to the construction of any home. A map that depicts the site is attached as Exhibits A and B of the proposed Order (Attachment Two).

## **II. Alleged Violations**

In 2004, staff determined that the public access had not been completed, the open space and public access areas had not been reserved, and that the route to the shoreline was not accessible to the public and commenced an enforcement action (ER04-43). In April of 2007, staff notified the Respondents of the apparent violations and civil penalties that had accrued.

Staff alleged that the Respondents failed to: (1) submit and obtain approval of final construction plans prior to installing the public access overlook deck and pathway consistent with the permit and Commission design guidelines; (2) provide and maintain the required public access improvements to and along the eastern shoreline; (3) provide and maintain public access signage; (4) permanently guarantee the public access areas; (5) permanently guarantee the open water area; (6) permanently guarantee the open space area known as the Eastern Wildlife Area, and; (7) resolve administrative civil penalties of \$180,000 that accrued for alleged violations.

The Respondents contested these allegations. However, the HOA and Mr. Lamperti (Mr. Paganini passed away in 2007) cooperated with staff to develop an approvable public access plan as the basis of a settlement agreement. Furthermore, the HOA, Mr. Lamperti, and the trustees of the Estate of Charles Paganini agreed to settle this matter with BCDC, and agreed that the HOA would stipulate to and carry out the out the terms of the Order. The new public access plan (depicted in Exhibits A and B to the Order in Attachment Two) provides upgrades and additions to the public access design to offset the delay in providing the public benefits required by the permit. The Respondents have also made the existing shoreline areas more accessible during the interim, by removing vegetation and insuring that entrance gates were open to the public. Therefore, the staff agreed to reduce and stay the civil penalties if the HOA complies with the terms of the Order in order to resolve the uncertainty of contesting the allegations, avoid additional burdens on Commission resources, and provide an incentive to achieve compliance.

## **III. Summary of the Settlement and Proposed Order**

The proposed Order requires the Respondents to comply with the public access conditions

of the permit by undertaking a schedule to complete the following tasks: (1) assign the permit to the HOA; (2) obtain sufficient property rights to complete the required public access; (3) obtain local government easements and discretionary approvals for the upgraded public access; (4) amend the permit to conform with a new public access plan developed in coordination with Commission staff; (5) provide final public access and landscaping plans consistent with staff approved concept plans; (6) complete the public access facilities within 18 months of the issuance of the Order; (7) remove any signage that discourages use of the public access areas; (8) provide legal instruments for the public access and open space areas, and; (9) pay civil penalties for noncompliance with any term of the Order, which would be stayed if respondents comply with all of the terms of the Order.

#### **IV. Enforcement Committee Recommendation**

The Committee concludes that the proposed Order fairly resolves the alleged violations because the Respondents must obtain a permit amendment within 9 months of the issuance of the Order, and no later than 18 months from the issuance of the Order provide additional public access improvements to compensate for the loss of public access in the past years. The additional improvements include: (1) at the Eastern Wildlife Area, a viewing area with two benches, a shoreline connector path that leads to the Loch Lomond development, substantial landscaping at the entrance and three other locations, and invasive pampas grass removal and control; (2) upgrade the path leading to the overlook deck and improve the overlook deck entrance, and; (3) expand the signage program.

The Committee also concludes that it is reasonable to reduce the civil penalty of \$180,000 and stay the reduced amount to provide an incentive to achieve compliance with the terms and conditions of the proposed Order, to resolve the uncertainty of contesting the allegations, and to avoid additional burdens on Commission resources.

In order to resolve the enforcement issues without further delay, expense and uncertainty, the staff and Respondents have agreed to the proposed Order (Attachment Two). The Respondent HOA has signed a Stipulation agreeing to comply with the proposed Order (Attachment Three), and the Enforcement Committee recommends that the Commission issue the proposed Order.



**ATTACHMENT TWO—PROPOSED ORDER**

July 23, 2010

San Pedro Cove Homeowners Association, Inc.  
c/o Kris Kimball, President  
501 San Pedro Cove Road  
San Rafael, California 94901

**SUBJECT:** Proposed Stipulated Commission Cease and Desist and Civil Penalty Order No. 4-09 for San Pedro Cove Subdivision Unit II, in the City of San Rafael; BCDC Permit No. 27-77 and Enforcement File No. ER04-43  
**Effective Date:** August 5, 2010

Dear Mr. Kimball:

**I. Settlement**

The San Francisco Bay Conservation and Development Commission (“the Commission”) initiated an enforcement action (“the Action”) against the San Pedro Cove Homeowners Association (“the HOA”), and the Charles E. Paganini Estate and Al Lamperti (“Original Developers”) who were the original developers of Unit II of the San Pedro Cove subdivision (“the Project”) in the City of San Rafael (“the City”), which was authorized by BCDC Permit No. 27-77 (“the permit”). The Action concerns the failure to: (1) obtain written approval of final construction plans prior to installing the public access overlook deck and overlook pathway; (2) provide and maintain the required public access facilities to and along the eastern shoreline; (3) provide and maintain signage that makes the public access areas available to the public; (4) permanently guarantee the public access areas; (5) permanently guarantee the open water area; and (6) permanently guarantee the open space area known as the Eastern Wildlife Area. BCDC contends that potential administrative civil penalties of up to \$180,000 have accrued for these six alleged violations, under Government Code Section 66641.5.

The HOA has reached an agreement with the Original Developers pursuant to which the HOA has agreed to take responsibility for the Action, and to hold harmless and indemnify the Original Developers with regard to the Action. BCDC therefore agrees to, and hereby does, dismiss the Original Developers from the Action, to pursue no further action against them related to the Action, and to enter into this stipulated Order only with the HOA.

The HOA contends that under the circumstances the imposition of civil penalties is unwarranted and would not be successfully imposed in a contested hearing. However, the Commission and the HOA wish to settle and resolve all matters that give rise to this proceeding and any potential penalties, and therefore enter into this settlement and stipulated cease and desist and civil penalty order solely to avoid the delay, expense and uncertainty that would result from formal contested Commission enforcement proceedings and potential litigation. In doing so, the HOA admits no wrongdoing or liability with regard to the matters addressed by the order.

Therefore, pursuant to California Government Code Section 66638 et. seq., the HOA stipulates to this order and all of its terms and, based on these stipulations, the Commission orders the HOA to comply fully with Sections II and III of this order.

## **II. Stipulated Cease and Desist Order**

The HOA shall do all of the following:

- A. **Assignment:** Within 60 days of the date of issuance of this order, the HOA shall submit for Commission staff review and approval a document in substantially the same form as Attachment 1 (Assignment Form) to take assignment of the permit, and shall take assignment of the permit.
- B. **Property Rights:** Within six months of the date of issuance of this order, the HOA shall submit for Commission staff review and approval the necessary documents to obtain sufficient property rights across lands owned by Loch Lomond Marina to allow the construction, use, and maintenance of the public access entrance to the Eastern Wildlife Area, and shall obtain such easement or property rights. If the Commission staff believes that the documents submitted are inadequate the Commission shall inform the HOA in writing and the HOA shall have 14 days to respond in order to resolve any alleged inadequacy, and additional time shall be allowed if there is a delay in BCDC staff review of submitted documents. In addition, the HOA shall in good faith endeavor to obtain both the agreement of the owners of the Loch Lomond property and the City of San Rafael. If the HOA is unable to obtain these rights, the HOA shall within 8 months of issuance of this order provide an approvable design for an alternative entrance to the Wildlife Area that is located on HOA property. The approved alternative shall be appended to the public access concept plan (Exhibit B attached hereto) and submitted with the permit amendment request required by Section II-D, herein, no later than 9 months after issuance of this order. The HOA shall not be held in breach of this agreement and subject to penalties in the event that a third party prevents the HOA from providing a public access entrance to the Eastern Wildlife Area despite the HOA's exercise of due diligence.

- C. **Local Government Approvals:** Within 9 months of the issuance of this order, the HOA shall submit for Commission staff review and approval all necessary revisions to the local government permits and easements to allow construction, use, and maintenance of the public access areas required by the permit, and shall obtain such local government approvals. If the Commission staff believes that revisions to the local government permits and easements submitted are inadequate the Commission shall inform the HOA in writing and the HOA shall have 14 days to respond in order to resolve any alleged inadequacy, and additional time shall be allowed if there is a delay in BCDC staff review of submitted documents. In addition, the HOA

shall in good faith endeavor to obtain the approval of the local government, but the HOA shall not be held in breach of this agreement and subject to penalties in the event that a third party refuses to cooperate, or if said approvals cannot be obtained within the time frames set forth, through no fault of the HOA.

- D. **Submission of Amendment Request:** Within 9 months of the issuance of this order, the HOA shall submit to the Commission a fileable amendment request to revise the public access requirements of the permit, in full conformance with paragraphs II-C through II-H herein, and with the conceptual public access plan prepared by Matthew Gaber, dated March 26, 2010 and entitled "San Pedro Cove Overlook" (Exhibits A-1 and A-2 attached hereto) and "San Pedro Cove Eastern Wildlife Area" (Exhibit B attached hereto).
- E. **Approval of Final Public Access and Landscaping Plans:** Within 12 months of the date of issuance of this order, the HOA shall submit for Commission staff review and approval, final approvable public access and landscaping plans consistent with the requirements of the amended permit and Exhibits A and B attached hereto.
- F. **Completion of Public Access Facilities:** Within 18 months of the date of issuance of this order, the HOA shall complete and make available the following improvements to the public for unrestricted public access for walking, bicycling, sitting, viewing, and other related purposes consistent with the requirements of the amended permit and final approved public access and landscaping plan referenced in Section II-E:
1. Install an 8 foot-wide by approximately 500-foot long all-weather path in the Eastern Wildlife Area from Point San Pedro Road to the eastern shoreline and the eastern property line that establishes a connection to the future Loch Lomond shoreline path, and provide an approximately 100-foot-long spur that terminates at the six-foot-wide loop trail described in item 2, below;

2. Install a six-foot-wide and approximately 200-foot-long all-weather loop trail in the Eastern Wildlife Area, which commences at the spur trail terminus described in Section II.F.1 above, runs along the shoreline until it intersects with the eight-foot-wide path at the southeasterly corner of the parcel, and provide two seating areas with wooden benches;
  3. Install a post-and cable fence that is three feet high and approximately 250 feet long along the west side of the central pathway through the Eastern Wildlife Area, which extends no further Bayward than the terminus of the 8-foot-wide spur;
  4. Either complete the removal of the strip of pampas grass in the Eastern Wildlife Area, which covers an estimated 7,200 square feet along the eastern fence-line, or submit an open space management plan approved by Commission staff to permanently confine the pampas grass to its present location as part of the permanent guarantee for the open space in Section II-H below;
  5. Install native landscaping at the five locations shown in the conceptual plans for the Eastern Wildlife Area;
  6. Install improvements within the 1,060-foot-long and 6 foot-wide pathway easement connecting Point San Pedro Road to the southern overlook within the subdivision, and provide deck seating at the southern overlook;
  7. Install a bike rack at the foot of the eastern stairway to the overlook;
  8. Install way-finding signs to the southern overlook deck and along the 1,060-foot-long public access pathway easement leading to the southern overlook deck, and install public access signs on the pathway through the Eastern Wildlife Area, consistent with the requirements of the amended permit and the final approved public access and landscaping plan referenced in Section II.E.
  9. Submit for Commission staff review and approval a vegetation management plan to ensure that the public views are not obstructed at the southern overlook deck.
- G. **Removal of Signs:** Within 30 days of the issuance of this order, the HOA shall remove the "Private Property, Residents and Guests Only" sign located at the entrance to the San Pedro Cove development. The HOA shall obtain written approval from Commission staff for the content and location of any signs to be posted at the entrance of San Pedro Road or along any of the public access paths or open space areas that might discourage use of these areas by the public during daylight areas. The HOA shall establish a system or protocol so that the entrance gate of the subdivision shall be maintained in an open position during daylight hours, sunrise to sunset, consistent

with the permit's reasonable rules and restrictions, and shall monitor compliance with this directive.

- H. **Legal Instruments:** Within 18 months of the issuance of this order, the HOA shall record a legal instrument acceptable to Commission staff to permanently guarantee a public access easement for: (1) all public access areas shown in the conceptual public access plans (attached as Exhibits A and B); (2) the 2.9 acre Eastern Wildlife Area as generally depicted in Exhibit B; and (3) the 10.68 acres of open water south and east of the subdivision, as generally provided in Amendment No. Five to the permit. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the sufficiency of the instruments and its exhibits to: (a) create legally enforceable rights and duties to provide the public access area required by the permit and this order; (b) clearly show the areas to be reserved with a legally sufficient description of the boundaries of such area; and (c) create legal rights in favor of the public for public access and open space that will run with the land and be binding on any subsequent purchasers, licensees, and users.
- I. The instrument(s) shall be recorded within 30 days of approval by staff. If the Commission staff believes that the documents submitted are inadequate the Commission shall inform the HOA in writing and the HOA shall have 14 days to respond in order to resolve any alleged inadequacy, and additional time shall be allowed if there is a delay in BCDC staff review of submitted documents.

### III. Stipulated Civil Penalty Order

- A. **Penalty.** The Commission contends that potential administrative civil penalties up to \$180,000 have accrued for the alleged violations listed in Section I above since November 25, 1992. The HOA has denied responsibility for said penalties, both in the application of any civil penalty and in amount. Specifically, the HOA contends that until the enforcement action was undertaken it did not have knowledge of the violations as a result of the Original Developers' alleged acts or omissions, and since becoming aware of the alleged violations has worked closely with the BCDC to remedy the violations, such that its conduct in this matter does not represent the repeat or egregious violations for which the civil penalties were established. The Original Developers contend that they completed the public access areas to the satisfaction of the BCDC staff at the time the lots were sold, and that civil penalties are not appropriate given the history of the project and BCDC approvals. However, the HOA has agreed that in lieu of further enforcement proceedings, it will stipulate to the institution of a civil penalty only as an incentive to complete the obligations set forth herein, without any admission of any violation or application of a penalty. The civil penalties agreed to are also stayed, subject to Paragraph B below.

**B. Payment of Stayed Penalties for Noncompliance with this Stipulated Order.** The HOA shall be responsible for and pay the following penalties for violating the terms or conditions of Section II of this Order:

1. A \$10,000 penalty for violating any of the provisions of Section II-A-E;
2. A \$10,000 penalty for violating any of the provisions of Section II.F;
3. A \$5,000 penalty for violating any of the provisions of Section II.G; and
4. A \$5,000 penalty for violating any of the provisions of Section II.H.

An additional \$5,000 penalty shall be assessed if within 90 days after the stay expires any one of the above four violations of the order is not fully resolved. Prior to declaring a breach the Executive Director, who shall be solely responsible in the exercise of his or her reasonable discretion for determining whether or not the HOA has complied with this order, and whether the violation(s) of specific terms and conditions justifies the penalty, shall send the HOA a written notice of the asserted violation and penalties, and provide the HOA with a thirty day right to cure period. If the HOA does not cure the violation, then within 30 days of the date of the Executive Director's notice, the HOA shall submit a check for the full amount of each penalty, payable to the San Francisco Bay Conservation and Development Commission Bay Fill Cleanup and Abatement Fund. If the penalty is not submitted in the required time period, or all improvements are not completed in accordance with the amended permit and final approved public access and landscaping plan referenced in Section II.E, court imposed penalties described in Section VII of this Order may be pursued.

#### **IV. Findings**

This order is issued based on the following findings:<sup>1</sup>

- A. On May 24, 1978, the Commission issued Permit No. 27-77 to Charles Paganini to construct 17 single family residences within the Commission's jurisdiction, as part of the San Pedro Cove Unit II Subdivision (the project) located on Point San Pablo Road in the City of San Rafael.
- B. The proposed project was owned by Charles Paganini.
- C. On October 6, 1987, the Commission issued the last of four time extensions for the project. When the Commission issued its last time extension, no work on the project had commenced.
- D. On August 26, 1988, the permittee's representative Al Lamperti, and his attorney Cecilia Bridges, informed the Commission of the permittee's proposal to modify the project and

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<sup>1</sup> All documents referenced herein may be found and are contained in the files for BCDC Permit No. 27-77 and Enforcement File No. ER04-43.

amend the permit pursuant to recently revised environmental documents and local government approvals.

- E. On December 7, 1990, the Commission issued Amendment No. Five to the permit, which reduced the amount of Bay fill for the project, modified the alignment of the public access routes and the overlook deck, and replaced the requirement to create 1.5 acres of tidal marsh with a requirement to permanently reserve 2.9 acres within the Commission's shoreline band jurisdiction known as the Eastern Wildlife Area.
- F. On December 14, 1990, Amendment No. Five was recorded by Marin County.
- G. Prior to the construction of the homes, the amended permit requires the permittee to record legal instruments or other dedications approved by Commission staff to permanently reserve: (1) the required public access areas; (2) 2.9 acres of open space known as the Eastern Wildlife Area; and (3) 10.68 acres of tide lots. The legal instruments were never executed or recorded.
- H. Prior to the construction of the public access, the amended permit requires the permittee to obtain approval for final, precise grading, landscaping, and engineering plans. No final public access construction plans were ever approved by Commission staff.
- I. Prior to the sale of any home, the amended permit requires the permittee to construct a pathway from Point San Pedro Road to the Eastern Shoreline Area, a path from Point San Pedro Road to an overlook deck with seating and bike racks, and public access signs. The eastern pathway, the overlook seating, and bike racks were not installed, and the other improvements were built without final plan approval by Commission staff.
- J. On November 25, 1992, Commission staff disapproved the draft legal instrument for permanent reservation of the public access, tide lots and open space submitted by Ms. Bridges on October 29, 1992. Staff also notified the original developers of the permit violations triggered by commencement of construction, the civil penalties for which permittees were liable, and the deficiencies of the legal instrument.
- K. On April 21, 1993, Ms. Bridges submitted a letter to the Commission concerning the status of permit compliance. The submittal included revised draft instruments to permanently reserve the public access, the tide lots, and open space. The revised instruments, which included a dedication of the public access to the City, were not approvable under the permit conditions.
- L. On April 21, 1993, Ms. Bridges submitted the CC&Rs for the HOA and the grant deed that conveyed the public access parcels to the HOA. The CC&Rs notify purchasers of property in the subdivision of their obligations under the permit.

- M. On November 30, 1995, the Commission approved Amendment No. Six to the permit removing requirements for the 375-foot-long path southeast of the Eastern Wildlife Area and for a separate pathway on the portion of the 1,060-foot-long path that is adjacent to San Pedro Cove Road.
- N. On April 30, 2007, Commission staff notified HOA President Mike Nelson, Mr. Paganini, and Mr. Lamperti that the existing public access improvements were not consistent with the permit and that civil penalties had accrued for this and other violations of the permit. Thereafter, Commission staff met with Mike Nelson, Rick Kahn, and Ken Gosliner, members of the HOA, to discuss how the violations might be resolved.
- O. On January 17, 2008, Mr. Lamperti, Mr. Nelson, and Chris Kimball met with Commission staff to obtain comments on a preliminary design concept for upgrading and completing the public access required by the permit.
- P. On October 6, 2008, staff sent a letter to Patty Paganini, trustee for the Charles A. Paganini Estate, to inform her of the Commission's enforcement of the permit violations, the accrued civil penalties, and the on-going meetings with members of the HOA and Mr. Lamperti to resolve the violations. The Commission has not received a response to this letter.
- Q. On October 10, 2008, Mr. Lamperti, representatives of the HOA, and their attorney, David Feingold, met with staff and Deputy Attorney General Chris Tiedemann to discuss elements of an adequate public access plan and an agreement to resolve the permit violations and accrued penalties.
- R. On March 26, 2010, the HOA submitted a final conceptual plan for public access and landscaping, which Commission staff approved as the basis of this order and for a permit amendment that would resolve the permit violations. The plan provides additional public access improvements that include: (1) a shoreline connector path to the future Loch Lomond development, two benches, invasive weed control, and substantial landscaping at the Eastern Wildlife Area; (2) improvement to the overlook deck entrance; (3) and an expanded signage program (see Exhibits A and B).
- S. Construction of the public access improvements at San Pedro Cove pursuant to the terms and conditions of this order provides substantial public benefits and will resolve any and all violations related to the permit. Therefore, the Commission finds that the proposed order is a fair and appropriate resolution of this matter.

#### **V. Disclaimer of Effect of Order on Private Rights or Public Regulations**

This order shall have no effect on any duties, rights, or obligations established by private agreement or by the laws and regulations of other governmental bodies.

#### **VI. Waiver of Right To Appeal**

By stipulating to the issuance of this order, the HOA waives any right to contest the issuance of this order in any manner whatsoever.

**VII. Possible Court Action For Noncompliance**

Failure to comply with the terms of this order may result in the Commission filing a lawsuit against the parties who fail to comply with this order. Any person who intentionally or negligently violates a Commission cease and desist order may be liable civilly for up to \$6,000.00 for each day in which such violation persists.

**VIII. Stipulation**

The HOA has stipulated to the issuance of this proposed order by stipulation dated April 26, 2010.

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

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WILL TRAVIS  
Executive Director  
San Francisco Bay Conservation  
and Development Commission