

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

July 22, 2016

TO: Commissioners and Alternates

FROM: Larry Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Maggie Weber, Enforcement Analyst (415/352-3668; maggie.weber@bcdc.ca.gov)
Marc Zeppetello, Chief Counsel (415/352-3655; marc.zeppetello@bcdc.ca.gov)

SUBJECT: Staff Recommended Enforcement Decision Regarding Proposed Stipulated Commission Cease and Desist and Civil Penalty Order No. CCD 2016.01; Trux Airline Cargo Services and City of South San Francisco
(For Commission consideration on August 4, 2016)

Staff Recommendation

Due to a lack of quorum on July 21, 2016, the Enforcement Committee was unable to hold a public meeting on the recommended enforcement decision and no action was taken. Therefore, the Commission will hold the first and only public hearing and vote on the recommended enforcement decision.

Attached is a copy of the final proposed Stipulated Cease and Desist and Civil Penalty Order No. CCD 2016.01 (“Stipulated Order”) that requires Trux Airline Cargo Services (“Trux”) and the City of South San Francisco (“City”) to: (1) resolve three outstanding permit violations by recording two legal instruments to dedicate the public access and open spaces areas and resolve specific maintenance issues in the public access “finger” park, all within 45 days of July 21, 2016; and (2) pay an administrative civil penalty of \$210,000 within 14 days of the date of issuance of the Order, with a suspension of \$10,000 for timely compliance with the terms of the Order.

The Stipulated Order mailed to the Commission on July 22, 2016, is slightly modified from the version mailed to the Enforcement Committee on July 15, 2016, to account for the fact that the Enforcement Committee did not act on the matter at its July 21st public

meeting as expected. The Stipulated Order has been modified to: (1) update paragraph 7 to eliminate the reference to the Enforcement Committee hearing; (2) remove paragraph 8 stating the Enforcement Committee held a public hearing to consider the matter on July 21, 2016; and (3) change the date of completion in paragraphs 13, 14, 15 and 17 from “within 45 days of the date of the Enforcement Committee hearing” to “within 45 days of July 21, 2016”.

The following documents are posted on the BCDC website: (1) the July 22st Proposed Stipulated Order; (2) Violation Report with Exhibits; (3) Executed BCDC Permit No. 1998.011.04; (4) Trux’s Statement of Defense; (5) City’s Statement of Defense; (6) Staff’s proposed pre-settlement Order, dated June 21st; and (7) Staff’s pre-settlement Recommended Enforcement Decision, dated June 21st.

San Francisco Bay Conservation and Development Commission

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TRUX Airline Cargo Services
237 Harbor Way
P.O. Box 2505
South San Francisco, CA 94083

and

City of South San Francisco
P.O. Box 711
South San Francisco, CA 94080

STIPULATED CEASE
AND DESIST AND
CIVIL PENALTY ORDER
NO. CCD 2016.01

Effective Date: August 4, 2016

The San Francisco Bay Conservations and Development Commission (“BCDC” or “Commission”) and TRUX Airline Cargo Services (“Trux”) and the City of South San Francisco (“City”) enter into this Stipulated Cease and Desist and Civil Penalty Order (“Order”), and the Commission adopts the Order pursuant to Government Code Sections 66638 and 66641.6. The Commission, Trux, and the City are collectively referred to as “Parties.” Trux and the City are sometimes jointly referred to as “Permittees.”

I. INTRODUCTION

1. On September 23, 1998, the Commission issued BCDC Permit No. 11-98 (“the Permit”) to Trux and the City, as co-permittees, to construct, use and maintain a six-story airport parking structure known as Park SFO, located at 195 North Access Road in South San Francisco, along with paved surface parking on three “fingers” of land, and to provide specified public access and open space amenities. On May 10, 2016, the Commission issued Amendment No. 4 to the Permit, BCDC Permit No. 1998.011.04, which as of the Effective Date of this Order is the operative permit for the Park SFO facility and the associated public access and open space amenities.

2. The permitted site is comprised of several assessor parcels including:

- APNs 015-180-250, 015-173-200, 015-173-190, 015-180-210 (owned by Robert Simms);
- APN 015-180-260 (owned by City of South San Francisco); and
- APN 092-020-130 (operated and maintained by the City of South San Francisco pursuant to Use Permit No. 3950, issued on May 1, 2007 by the property owner, the San Francisco International Airport, a division of the City and County of San Francisco).

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3. On November 15, 2001, and 14 years later, on July 30, 2015, the Commission commenced an enforcement action against the Permittees concerning alleged public access and other violations of the Permit. On March 23, 2016, staff commenced a formal enforcement proceeding by issuing a Violation Report and Complaint for the Imposition of Administrative Civil Penalties (“Violation Report”). The Violation Report identified eleven alleged violations of the Permit:

- a. Failure to permanently guarantee all public access areas, in violation of Special Condition II.B.2, Public Access Area Guarantee, of the Permit.
- b. Failure to permanently guarantee the open space area for wildlife habitat, in violation of Special Condition II.J.1, Wildlife Refuge Area, of the Permit.
- c. Failure to post one Bay Trail sign, one Public Shore sign, and three public shore parking signs in conformance with the staff-approved public access signage plan entitled “Preliminary Signage Program for BCDC,” prepared by Molly Duff, dated November 24, 1998, and approved by BCDC staff on August 20, 2001, in violation of Special Condition II.A.3, Plan Approval, which requires conformance with the final approved signage plan.
- d. Failure to provide and maintain adequate signage for eight public parking spaces, in violation of Special Condition II.B.4.b, Improvements within the Total Public Access Area, of the Permit.
- e. Failure to provide signage that clearly promotes the required public access amenities, in violation of Special Conditions II.B.4.e, Improvements within the Total Public Access Area, of the Permit.
- f. Failure to screen the parking structure by not placing landscaping on its south and east sides to reduce visual impacts of the structure from the BCDC-required public access areas, in violation of Special Condition II.B.4.g, of the Permit.
- g. Failure to maintain the BCDC-required public access improvements and areas, such as landscaping, seating, path surfaces and signage, in violation of Special Condition II.B.6, Maintenance, of the Permit.
- h. Failure to submit two, past-due monitoring reports for the wildlife habitat surrounding the “finger” parking areas, in violation of Special Condition II.K, “Finger” Parking Monitoring Reports, of the Permit.
- i. Failure to authorize by an amendment to Special Conditions II.B.4.c and .d of the Permit, the as-built and desired realignment of a section of the public access walkway and changes to the width and location of sidewalks and bike lanes located on the segment of the Bay Trail.

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- j. Construction of two 5-foot wide bike lanes verses two 8-foot wide bike lanes on both sides of North Access Road as required by plans entitled, "North Access Road Public Access Project," dated April 12, 2006 and November 21, 2006 ("Public Access Plan"), approved by Brad McCrea, Bay Design Analyst, on April 12, 2007.
- k. Construction of an unauthorized gate and fence in the shoreline band.

4. Government Code Section 66641.5(e) provides that the Commission may administratively impose civil liability for any violation of the Permit in an amount of which shall not be less than \$10 nor more than \$2,000 for each day in which the violation occurs or persists, but may not administratively impose a penalty of more than \$30,000 for a single violation. In the Violation Report, the Commission staff proposed a total penalty of \$315,000, including \$30,000 per violation for each of the 10 violations cited in Paragraph 3.a. through 3.j., and \$15,000 for the violation cited in Paragraph 3.i.

5. On May 18, 2016, Trux and the City each submitted a Statement of Defense in response to the Violation Report. In their Statements of Defense, Trux and the City generally denied the allegations in the Violation Report and their liability for civil penalties.

6. On June 21, 2016, the Commission staff issued its Staff Recommended Enforcement Decision Regarding Proposed Commission Cease and Desist Order and Civil Penalty Order No. CCD2016.01 ("Staff Report") and an accompanying proposed cease and desist and civil penalty order ("Proposed Order"). The Staff Report responded to the defenses raised by the Permittees in their Statements of Defense regarding both their liability for the alleged Permit violations and the appropriateness of the proposed penalties. As of the date of the Staff Report and Proposed Order, the Permittees had resolved eight of the alleged violations, leaving three violations unresolved. Acknowledging that certain defenses raised by the Permittees had merit, the staff proposed to reduce the amount of the total penalty. Specifically, the Staff Report and Proposed Order recommended that the Permittees pay a penalty of \$255,000 into the Bay Fill Clean-Up and Abatement Fund, with \$30,000 of the amount suspended if the Permittees comply in a timely manner with the Proposed Order, including resolving the three outstanding Permit violations.

7. On June 26, 2016, and at the request of the Permittees, Commission staff met with representatives of Trux and the City, and the Parties agreed to a settlement in principle on the terms of this Order, subject to review and approval of this Order by the Commission.

8. On August 4, 2016, at a notice public meeting, the Commission considered this Order and all comments pertaining thereto, and approved this Order.

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II. ADMINISTRATIVE RECORD AND FINDINGS

9. The Administrative Record for this Order includes the relevant Commission permit and enforcement files (Permit File No. 1998.011.04; Enforcement File No. ER2000.097). The Administrative Record also includes the:

- a. Violation Report;
- b. Statement of Defense submitted by Trux;
- c. Statement of Defense submitted by the City;
- d. June 21st Staff Report and Proposed Order; and
- e. July 8, 2016, Staff Recommended Enforcement Decision Regarding Proposed Stipulated Cease and Desist and Civil Penalty Order No. CCD2016.01.

10. The Commission's decision to issue this Order is based on the findings set forth in Attachment A to this Order and incorporated by reference herein. The Permittees agree with some, but dispute and object to many, of the Commission's findings.

11. The Commission and the Permittees enter into this Order to settle the claims alleged against the Permittees in the Violation Report, as summarized in Paragraph 3, above, and described more fully in the Commission's findings. The Parties consider this Order to constitute a reasonable settlement of disputed claims, which will result in full compliance with the Permit. In stipulating to this Order, neither Trux nor the City admit liability for any claim or alleged violation, or admit any fact or Commission finding relating to such alleged liability.

III. CEASE AND DESIST ORDER

12. Pursuant to California Government Code Section 66638, the Commission orders Trux and the City, and Trux and the City agree, to cease and desist all activity in violation of the Permit at the permitted site and to comply fully with the following conditions of this Order.

13. **Permit Special Condition II.B.2 (Public Access Guarantee).** Within 45 days of July 21, 2016, excluding the time period(s) in which the draft guarantees are held by staff counsel for review, submit proof of recordation with San Mateo County of two staff-approved legal instruments that permanently guarantee the public access areas required by Special Condition II.B.2 of the Permit.

14. **Permit Special Condition II.H.1 (Open Space for Wildlife Habitat Instrument).** Within 45 days of July 21, 2016, excluding the time period(s) in which the draft guarantees are held by staff counsel for review, submit proof of recordation with San Mateo County of two staff-approved legal instruments that permanently guarantee the open space areas required by Special Condition II.H.1 of the Permit that surrounds the "fingers" and as generally shown on Exhibit B to the Permit.

15. Permit Special Condition II.B.5 (Public Access Maintenance). Within 45 days of July 21, 2016, excluding the time period(s) in which plans are held by staff for review, resolve the following nine maintenance issues:

- a. Submit, obtain staff approval of, and implement a revised Planting Plan that:
 - (1) Depicts all existing landscaping (such as but not necessarily limited to one pine, two toyon, four coyote brush, unknown ground cover, ceanothus and unknown purple flowering plant) not shown on the approved plan; and
 - (2) Proposes new landscaping for sparsely covered areas¹ (the lookout point and area around single existing pine tree located north of trail in the “Finger” park).
- b. Install the plants shown on the Planting Plan that are not planted onsite such as but not necessarily limited to three ceanothus, two coyote brush, four sage, and one peppermint willow.
- c. Replace all dead and dying plants such as but not necessarily limited to one coffeeberry, one peppermint willow, four dear grass, and up to 24 Erigeron Karvansianus, and verify that the adjacent irrigation is functional and that each species is obtaining an adequate water supply.
- d. Replace header board in southwest corner of “Finger” Park next to the picnic table so that it is flush with grade surface and no longer a tripping hazard.
- e. Replace round trashcan liners with square trashcan liners so that they fit in the existing square containers and include lids.
- f. Regularly remove all trash onsite including along the slopes from the top of the bank to the marsh and in the adjacent marsh including but not limited to an office chair, two computer monitors, at least 60 glass bottles, an orange cone, three plastic posts and various pieces of paper and paper trash.
- g. Provide nighttime photographs to confirm the all existing lighting in the “Finger” park is operational.

16. After the Effective Date of this Order, refrain from engaging in any activity at the permitted site that does not comply with the Permit or that otherwise violates the terms or conditions of the Permit.

¹ The landscaping palette should match that used in the staff-approved plans entitled “Park SFO Airport Parking Expansion: Renovation Planting Plan,” prepared by Jeanne Lau, last revised April 4, 2016 (the Planting Plan).

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IV. CIVIL PENALTY ORDER

17. Pursuant to California Government Code Sections 66641.5 through 66641.9, the Commission hereby assess and orders Trux and the City jointly to pay a civil penalty of \$210,000, which Trux and the City agree to pay in settlement of this matter; provided, however, that \$10,000 of the penalty shall be suspended if Trux and the City comply fully, within 45 days of July 21, 2016, with the conditions of Paragraphs 13 through 15, above. This penalty payment shall constitute Trux's and the City's full and complete satisfaction of their liability for civil penalties for all alleged violations summarized in Paragraph 3 and described more fully in Attachment A, through the date of this Order.

18. Trux and the City shall remit the penalty payment to the Commission by two cashier's checks, in the amounts of \$200,000 and \$10,000, respectively, each check payable to the San Francisco Bay Conservation and Development Commission – Bay Fill Clean-Up and Abatement Fund, within 14 days of the Effective Date of this Order. Commission staff will hold the check in the amount of \$10,000 until Trux and the City fully comply with Paragraph 13 through 15 of this Order. If Trux and the City fully comply with Paragraphs 13 through 15, Commission staff will return the check to Trux and the City within 10 days of compliance. If Trux and the City fail to comply with each and every requirement of Paragraphs 13 through 15 on time, Commission staff will cash the check.

V. STIPULATED PENALTIES

19. Upon written demand by the Executive Director listing specific violations of Paragraphs 13 through 15, Trux and the City jointly shall pay stipulated penalties in accordance with the following schedule for each failure to comply in a timely manner with the following requirements of this Order:

- a. Failure to submit proof of recordation with San Mateo County of each of two staff-approved legal instruments that permanently guarantee the public access areas required by Special Condition II.B.2 of the Permit, as specified in Paragraph 13:
1 or more days late: \$200 per day
- b. Failure to submit proof of recordation of each of the two staff-approved legal instruments that permanently guarantee the open space areas required by Special Condition II.H.1 of the Permit, as specified in Paragraph 14:
1 or more days late: \$200 per day
- c. Failure to comply with Special Condition II.B.5 of the Permit by resolving all of the nine maintenance issues specified in Paragraph 15:
1 or more days late: \$200 per day

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20. If the Executive Director demands stipulated penalties in the amount stated above for any delay in compliance, Trux and the City hereby waive the right to seek judicial review of their liability for such stipulated penalties.

21. Trux and the City shall jointly pay stipulated penalties, upon written demand by the Executive Director, by cashier's check payable to the San Francisco Bay Conservation and Development Commission Bay Fill Clean-Up and Abatement Fund, no later than 30 days after receipt of such demand. Payment of stipulated penalties shall not relieve Trux and the City of any other obligation or liability to comply with the requirements of this Order or the Permit, except that payment of stipulated penalties shall constitute full and complete satisfaction of Trux's and the City's liability for civil penalties for the violation giving rise to the penalty.

VI. EXTENSION OF TIME

22. If the Permittees believe that an event arising from causes beyond the control of Trux, the City, or their contractors or agents has occurred that will delay timely compliance with any provision of Paragraphs 13 through 15 and justifies an extension of a compliance date set forth herein, Trux or the City shall notify the Commission by e-mail within 3 business days of when Trux or the City first knew of the event. The e-mail notice shall describe the cause or causes of the delay, the anticipated length of time the delay may persist, the measures taken or to be taken by Trux or the City to prevent or minimize the delay, the schedule by which these measures will be implemented, and the additional time requested to comply. The City may also request an extension of the compliance dates set forth in Paragraphs 13 and 14 if the sole grounds for the delay is the scheduling of a City Council meeting to consider approval of the legal instruments referenced therein.

23. The Executive Director may grant an appropriate extension of time to comply with any provision of Paragraphs 13 through 15, in response to a request made by Trux or the City pursuant to Paragraph 22, for good cause shown. If the Executive Director grants an extension of time, Trux and the City shall be excused from liability for any stipulated penalties associated with the delay or impediment to performance.

VII. NOTICE

24. All notices required or desired to be sent pursuant to this Order shall be provided to:

For the Commission:

Maggie Weber, (415) 352-3668, maggie.weber@bccdc.ca.gov

Marc Zeppetello, (415) 352-3655, marc.zeppetello@bccdc.ca.gov

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600

San Francisco, CA 94102

**Stipulated Commission Cease and Desist
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For Trux

Robert Simms, (650) 871-5571, rsimms@parksfo.com
Trux Airline Cargo Services
237 Harbor Way
P.O. Box 2505
South San Francisco, CA 94083

with a copy to:

Ed Suman, (650) 583-3200, edsuman@sbcglobal.net
881 Sneath Lane, #218
San Bruno, CA 94066

For the City:

Brian McMinn, Director, (650) 877-8550, brian.mcminn@ssf.net
Department of Public Works
City of South San Francisco
P.O. Box 711
South San Francisco, CA 94080

with a copy to:

Jason Rosenberg, (415) 421-3711, jrosenberg@meyersnave.com
City Attorney
Meyers Nave
575 Market Street, Suite 2080
San Francisco, CA 94105

VIII. RELEASE

25. This Order shall constitute a full settlement of the violations summarized in Paragraph 2, and described in the findings set forth in Attachment A, through the date of this Order and a full release from further penalties with respect to such violations, but does not limit the Commission from taking appropriate enforcement action concerning other or future violations.

IX. WAIVER

26. Trux and the City hereby waive their right to seek judicial review of this Order.

X. BINDING EFFECT

27. This Order shall apply to and be binding upon: (1) the Commission, its Executive Director, and staff; (2) Trux and its officers, directors, employees and agents; and (3) the City, its City Council, employees and agents.

XI. DISCLAIMER OF EFFECT OF ORDER ON PRIVATE RIGHTS OR LAWS AND REGULATIONS OF OTHER PUBLIC BODIES

28. 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.

XII. DISCLAIMER OF RECOGNITION OF PROPERTY RIGHTS

29. This order shall not constitute any recognition of property rights.

XIII. STRICT COMPLIANCE OBLIGATION AND POSSIBLE COURT ACTION FOR NONCOMPLIANCE

30. Strict compliance with this Order is required. Pursuant to the McAteer-Petris Act Sections 66640 and 66641.7(b), failure to comply with the terms of this Order or to pay all applicable administrative civil penalties may result in the Commission filing a lawsuit against Trux and the City. Pursuant to the McAteer-Petris Act, Section 66641, any person who intentionally or negligently violates a Commission cease and desist order may be liable civilly for up to \$6,000 for each day in which such violation persists. Prior to filing any lawsuit under this Section, the Commission will meet and confer with Trux and the City with the goal of resolving any alleged violation and avoiding litigation.

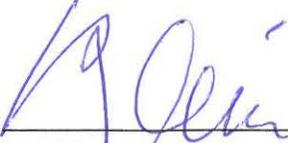
FOR THE SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

Dated: _____

LAWRENCE J. GOLDZBAND
Executive Director

FOR TRUX AIRLINE CARGO SERVICES

Dated: 7-21-16



ROBERT SIMMS
CEO and General Counsel

FOR THE CITY OF SOUTH SAN FRANCISCO

Dated: July 21, 2016



BRIAN MCMINN
Director
Department of Public Works

Attachment A

**STIPULATED COMMISSION CEASE AND DESIST AND CIVIL PENALTY ORDER
NO. CCD2016.001**

In support of, and as the basis for, Stipulated Commission Cease and Desist and Civil Penalty Order No. CCD 2016.001, the Commission hereby finds:

1. The Permit was executed by Trux and the City on October 5, 1998 (See Exhibit #9)².
2. On June 8, 2001, Brad McCrea, Bay Design Analyst for BCDC, received a letter dated June 7, 2001 from Mr. Simms requesting an extension of time to complete the Bay Trail walkway and bike path required by Special Condition II.B.1 of the Permit because permission was needed from the City and San Francisco International Airport (“Airport”) to build a section of the authorized and required Bay Trail walkway and bike path is located on City and Airport property (See Exhibit #10).
3. On July 6, 2001, Steve McAdam, BCDC Deputy Director, granted the request to extend the completion date to October 31, 2001 for the Bay Trail walkway and bike path. Mr. McAdam acknowledged that Special Condition II.B.4 of the Permit requires the public access amenities to be completed prior to the use of any of the parking facilities, but determined that Simms could proceed in opening the parking facility immediately, on the condition that he completed the outstanding public access improvements by October 31, 2001 (See Exhibit #11).
4. On August 20, 2001, staff approved the signage plan entitled “Preliminary Signage Program for BCDC,” prepared by Molly Duff, and dated November 24, 1998, for all signage on the “east side of the site.”
5. Park SFO parking facility opened for business on or about September 1, 2001.
6. On October 16, 2001, Mr. Simms requested another extension of time to complete the Bay Trail walkway and bike path; another extension was granted, moving the permit expiration date to May 1, 2002 (See Exhibit #12).
7. On November 13, 2001, Ande Bennett, BCDC enforcement staff analyst, conducted a site visit at the Property and observed that the public access and open space areas were not being provided and maintained in a manner that was consistent with the requirements of the Permit. Ms. Bennett also reviewed the Permit file and noted a number of past-due required documents.
8. On November 15, 2001, Ms. Bennett wrote Mr. Simms a letter, and copied the City, that memorialized the findings from her November 13, 2001 site visit and listed the following violations of the Permit:
 - a. Failure to permanently guarantee the public access area;
 - b. Failure to improve the public access area with the required amenities:

² Exhibits 9 through 44 referenced herein are exhibits to the Violation Report issued March 23, 2016.

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- (1) Construction debris remained at finger park;
 - (2) Public parking obstructed by hazardous waste;
 - (3) Absence of signage for public parking;
 - (4) Absence of approved plant materials at entrance of parking lot;
 - (5) Absence of approved public access signs; and
 - (6) Failure to maintain public access area;
- c. Failure to remove construction debris from the middle “fingers;”
 - d. Failure to provide transitional upland habitat enhancement;
 - e. Failure to permanently guarantee open space area; and
 - f. Failure to submit confirmation of shielding of night security lighting.

The letter commenced an administrative penalty clock for “standardized fines” (See Exhibit #13).

9. On November 19, 2001, Mr. Simms submitted to Ellen Sampson, BCDC staff counsel, copies of draft legal instruments for the public access and open space areas.
10. On November 29, 2001, Ms. Sampson provided comments to Mr. Simms for revisions to the draft legal instruments that were necessary to make them consistent with the permit’s requirements (See Exhibit #14).
11. On January 31, 2002, Ms. Bennett received a letter from Mr. Simms responding to Ms. Bennett’s November 15, 2001 letter stating that:
 - a. The construction debris at the “finger” park was cleared;
 - b. The landscaping at the “finger” park was repaired;
 - c. The hazardous waste was removed from public parking area;
 - d. Plant materials were installed at the entrance to parking lot;
 - e. Signage for public parking was installed;
 - f. Signs were installed consistent with the approved signage program;
 - g. Landscaping was installed to provide transitional upland habitat; and
 - h. Night security lighting was shielded (See Exhibit #15).
12. On February 21, 2002, Ms. Bennett wrote Mr. Simms a letter, and copied the City, to ensure he understood his obligations relative to satisfying the requirements of the Permit. Ms. Bennett additionally stated that Mr. Simms has not yet resubmitted draft permanent guarantees for the public access and open spaces areas and also that she would conduct a site visit in the near future to confirm Mr. Simms had addressed and resolved the violations as stated in his January 29, 2002, letter (See Exhibit #16).

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13. On March 19, 2002, Ms. Bennett wrote a letter to the City stating that the City and Mr. Simms, as co-permittees, are equally liable to resolve all violations to the Permit (See Exhibit #17).
14. On March 27, 2002, the City and Mr. Simms wrote Ms. Bennett a letter requesting an amendment to the Permit, proposing an alternative route for the North Access Road Bay Trail walkway and bike path because they had determined the route specified in Authorization Section I.A.1.f and Special Conditions II.B.1 and II.B.4.d of the Permit would not be feasible. The letter also informed BCDC that moving forward, the City would take the administrative role in resolving the Permit violations (See Exhibit #18).
15. On April 26, 2002, Ms. Bennett responded to the amendment request, informing the City and Mr. Simms that their application was incomplete pending the submittal of plans for the proposed trail reroute, a planting plan for landscaping the south and east side of the parking structure, and an environmental review, if applicable (See Exhibit #19).
16. On June 17, 2002, BCDC and City staff met at the Property to discuss alternative routes for the required Bay Trail walkway and bike path along North Access Road.
17. On July 16, 2002, Ms. Bennett received a letter from the City informing BCDC staff that the City had determined that the alternative route that appeared to be a viable solution agreed on during the June 17 site visit would be too costly and, therefore, infeasible (See Exhibit #20).
18. On July 23, 2002, Ms. Bennett responded to the July 12 letter from the City and suggested setting up a meeting to discuss a final resolution to the realignment of the required public access sidewalks and bike paths, and requested that the City provide a cost break down of the alternative routes deemed too costly (See Exhibit #21).
19. On July 31, 2002, Mr. Simms submitted to Ms. Sampson revised permanent guarantee documents for the public access and open space areas.
20. On August 29, 2002, Ms. Sampson provided Mr. Simms comments to further revise the permanent guarantee documents (text and exhibits) to enable her to grant approval (See Exhibit #22).
21. On September 6, 2002, BCDC staff met with the City and Mr. Simms to discuss alternative routes for the required Bay Trail walkway and bike path along North Access Road. The parties verbally agreed upon an alternative route located on property owned by Caltrans and the Airport, pending authorization from Caltrans and the Airport to construct a portion of the proposed route on their property (this route was not pursued by the City and Mr. Simms).

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22. On March 3, 2003, Mr. Simms provided Ms. Sampson with a third revised draft of the required permanent guarantee documents for the public access and open space areas located on his property, pursuant to Ms. Sampson's August 29, 2002 comments. Mr. Simms requested Ms. Sampson not review his submittal because he was still working on the document to permanently guarantee the public access required on the City's property. In other words, this draft was only partially responsive to the permit's requirements (See Exhibit #23).
23. On April 16, 2003, the City submitted preliminary plans for the alternative Bay Trail walkway and bike path route entitled, "North Access Road Public Access Project," dated April 11, 2003.
24. On May 14, 2003, BCDC issued Amendment No. Three to the Permit to authorize flexibility for partially relocating and a third extension of time through October 15, 2003 for completing the Bay Trail walkway and bike path public access obligation on North Access Road between Airport Boulevard and the Finger Park.
25. On May 20, 2003, Mr. McCrea provided comments to the City, for its preliminary plan submittal entitled, "North Access Road Public Access Project".
26. On July 11, 2003, Mr. McAdam wrote a letter to the City and Mr. Simms stating that Amendment No. Three would become null and void if the Permittees failed to provide an executed original of the Amendment by July 18, 2003. The Permittees never submitted an executed original and therefore, Amendment No. Three is null and void (See Exhibit #24).
27. On September 29, 2003, the City and Mr. Simms submitted an incomplete request for the fourth amendment to the Permit to revise the Permit language to authorize moving a section of the approved Bay Trail walkway and bike path.³
28. On June 2, 2006, after many years of coordination between the City, the Airport, Mr. Simms, and BCDC, the Airport conditionally approved a new location for the required Bay Trail walkways and bike paths on North Access Road, pending the submittal of project plans.
29. On November 27, 2006, Mr. McCrea received from the City final drawings of the proposed - not yet authorized - realignment of the required public access sidewalks and bike paths on North Access Road, which relocated a portion of the required trail to north of San Bruno Channel between the North Access Road Bridge and the Tide Gate Bridge in order to connect the Bay Trail to the "finger" park. These plans are entitled, "North Access Road Public Access Project" originally dated April 12, 2006 and revised on November 21, 2006 (See Exhibit #25).

³ The request was never completed and was returned unfiled to the City and Mr. Simms in April 2007 because the trail realignment was not built consistent with this request.

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30. On April 12, 2007, Mr. McCrea conditionally approved the plans for the realignment of the required public access sidewalks and bike paths on North Access Road entitled, "North Access Road Public Access Project" dated April 12, 2006 and November 21, 2006 ("Public Access Plan"), reflecting the agreement between the Permittees and staff to relocate a section of the required public access trail and modify the requirements for sidewalks and bike lanes on North Access Road and the North Access Road Bridge. These modifications to what was required in Special Condition II.B.4.d and Exhibit C of the Permit were:

- a. On North Access Road, expanding the required sidewalk on the north side of the street from 4.5' to 8' wide, maintaining 8' wide bike lanes on both sides of the street, and removing the 4.5' wide sidewalk from the south side of the street;
- b. On the North Access Road Bridge, removing the 4' sidewalks from both sides of the street and replacing the two required 4' wide bike lanes with a 7'3" wide bike lane on the west side of the Bridge and a 7'10" wide bike lane on the east side of the Bridge; and
- c. Moving the section of trail located south of San Bruno Channel, between the North Access Road Bridge and Tide Gate Bridge, to north of San Bruno Channel, directly south of the parking structure. Special Condition II.B.4.d and Exhibit C of the Permit required a 4' wide sidewalk on the north side of this section and 4' wide bike lanes on both sides, whereas this modification replaced this requirement with a 10' wide sidewalk.

This realignment was approved in advance of the submittal of a request to amend the Permit to replace the current requirements of Special Condition II.B.4.d of the Permit. Mr. McCrea noted further that final landscaping plans still must be submitted for BCDC's review and approval prior to the installation of the landscaping (See Exhibit #26).

31. In May 2007, the City of San Francisco's Airport division issued a Use Permit to Mr. Simms and the City to build and maintain a portion of the public access trail on Airport property (See Exhibit #27).
32. On December 27, 2007, Ms. Bennett explained to the City that because a portion of the required public access walkways and bike paths are located on the city of San Francisco's property (which has obtained a Use Permit from the Airport for the portion of the trail located on the Airport's property, adjacent to the parking structure), the City must apply for an amendment to the Permit to revise Section I.A.1.f and Special Condition II.B.4.d to replace the required location of the section of trail located south of the parking structure, from the south side San Bruno Channel to the north side of San Bruno Channel, directly adjacent to the south wall of the parking structure. This amendment must be issued in order for the City to submit its permanent guarantee for its portion of the public access area, as required by Special Condition II.B.2 of the Permit.

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33. On February 13, 2008, the City and Mr. Simms submitted a proposed landscaping plan for BCDC staff's review and approval. Staff provided comments for revision, instructing that the plan could be approved upon adding eight benches at the "finger" park and public access signage. (See Exhibit #28)⁴.
34. In 2010, the construction of the re-aligned public access trail on North Access Road was completed, absent a time extension or permit amendment, across the Airport's property, south of the parking structure, on the south side of the San Bruno Channel.
35. While construction of the re-aligned public access trail on North Access Road was underway, Ms. Bennett unsuccessfully attempted to get the City to submit an application to amend the Permit in order to accurately reflect the as-built public access trail. Between 2008 and April 2015, staff ceased pushing for cooperation and progress from the City and Mr. Simms, and the case has remained open and unresolved.
36. On April 10, 2015, following a period of five years with no communication from the City and Mr. Simms, in an apparent attempt to meet its requirement to permanently guarantee the public access area, the City submitted a survey of the section of realigned trail across the Airport's property, south of the parking structure on the south side of the San Bruno Channel.
37. On May 14, 2015, Maggie Weber, Enforcement Analyst for BCDC and Ms. Bennett's successor, responded by email to the City's April 10 submittal, copying Mr. Simms. Ms. Weber explained to the City and Mr. Simms that the survey needed a few modifications before it would be a suitable exhibit for the pending public access permanent guarantee. Additionally, Ms. Weber reminded both the City and Mr. Simms that the violation involving the failure to gain staff approval of the permanent guarantee could not be resolved until the City and Mr. Simms had submitted a complete amendment request for after-the-fact authorization to construct the required public access walkways and bike paths differently than required. She informed them that it would be necessary to complete the Permit amendment first, because the San Mateo County Recorder's Office checks to make sure that the area required to be dedicated by the permit matches the area being dedicated by the guarantee (See Exhibit #29).
38. On June 1, 2015, BCDC staff, City staff, Mr. Simms and John Fugle, Mr. Simm's architect, met to discuss steps to resolve Permit violations and an independent request to amend the Permit to construct an additional parking structure adjacent to the existing Park SFO structure ("Phase II"). At this time, the City committed to working with Ms. Weber to finally submit a complete request to amend the Permit and resolve all of the Permit violations as soon as possible.

⁴ Although this landscaping plan was never approved, in September 2015, BCDC staff determined that the 2008 comments for revision to obtain approval were minor and that the plan could have been conditionally approved so long as the benches and signage were subsequently included. Since the finger park landscaping generally appears to conform to the proposed landscaping plan, staff determined to consider this violation resolved. Therefore, it is not necessary to treat Mr. Simms and the City's failure to obtain plan approval as a violation subject to this enforcement proceeding.

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39. On June 9, 2015, the City submitted a revised proposed exhibit for the permanent guarantee. The proposed exhibit showed the portion of the required public access walkway that was located on the Airport's property would not be part of the permanent guarantee in spite of it being "required" (See Exhibit #30).
40. On June 10, 2015, Ms. Weber responded to the City's June 9 submittal, asking why the proposed exhibit did not show the portion of the required public access walkway located on the Airport's property as part of the area to be permanently guaranteed. Ms. Weber also explained to the City and Mr. Simms that BCDC staff could not provide a more detailed review of the April 6, 2015 and June 9, 2015 submittals until a complete application to amend the Permit is filed (See Exhibit #31).
41. On June 11, 2015, BCDC staff, City staff, Mr. Simms and Mr. Fugle conducted a conference call to discuss the Phase II project proposal. At the end of the meeting, Ms. Weber reminded the City and Mr. Simms about their obligation to submit the amendment request to authorize the realignment of the required public access trails in order to resolve some of their Permit violations. The City stated that the amendment request would be provided within the next few weeks.
42. On June 19, 2015, BCDC staff conducted a site visit and found several new (or possibly continuing) Permit violations, including:
 - a. The required public parking spots adjacent to the "finger" park were all occupied by valeted cars in violation of Special Condition II.B.4.b, Public Parking (See Exhibit #6);
 - b. One of the two required public parking signs had been uprooted from the ground in violation of Special Condition II.B.4.b, Public Parking Signage, and approved signage plan (See Exhibit #5);
 - c. Missing Public Shore and Bay Trail signs at the corner of North Access Road and the entrance to the parking structure and "finger" park in violation of Special Condition II.B.4.e, Public Access Signage, and approved signage plan (See Exhibit #4);
 - d. Failure to plant visually screening landscaping adjacent to the south and east sides of the parking structure in violation of Special Condition II.B.4.g, Reduce Visual Impacts (See Exhibit #6); and
 - e. Failure to maintain the "finger" park in violation of Special Condition II.B.6, Maintenance of Public Access Areas (See Exhibit #7).
43. On July 17, 2015, Ms. Weber received a call from the City explaining that federal aviation law prevents the Airport from permanently guaranteeing its property, because they reserve the right to take it back if an aviation need for the property arises. Ms. Weber verbally agreed to modify the permanent guarantee requirement to reflect this fact because she determined that it is a realistic limitation that would not result in a material reduction of the public access benefits required by the permit.

44. On July 30, 2015, Ms. Weber sent the City and Mr. Simms a letter that memorialized the outcomes of the June 1st and June 11th meetings, the June 19th site visit including the newly-discovered violations, and noted that no amendment request for after-the-fact authorization for the realignment of the required public access walkways and bike paths had been submitted. The letter commenced a penalty clock for standardized fines for any violations not already subject to the November 15, 2001 penalty clock, that were discovered on the June 19 site visit,⁵ and included instructions for how to resolve all of the violations and bring the Permit into compliance (See Exhibit #32).
45. In a letter dated August 21, 2015, and received by BCDC on August 27, 2015, Mr. Simms responded to Ms. Weber's July 30th letter. Therein, he states that he was not aware of his compliance issues with the existing Permit. Mr. Simms responded to each item discussed in the July 30 letter and requested a meeting to review all pertinent documents and relevant facts related to the enforcement investigation (See Exhibit #33).
46. In a letter dated August 27, 2015, and received by BCDC on August 31, 2015, the City submitted to Ms. Weber an incomplete amendment request seeking after-the-fact authorization for the realignment of the required public access walkways and bike paths (See Exhibit #34).
47. In a September 8, 2015, the City and Mr. Simms met with BCDC staff to discuss how to resolve the Permit violations.
48. On September 29, 2015, Ms. Weber sent the City and Mr. Simms a letter that memorialized the September 8th meeting, provided comments on the status of the Permit violations, and reiterated what was needed to file as complete the amendment application for after-the-fact authorization for the realignment of the public access walkways and bike paths. As of this date, the City and Mr. Simms had not resolved any of the violations outlined in Ms. Weber's letter dated July 30, 2015 (See Exhibit #35).
49. On November 4, 2015, Mr. Simms requested BCDC staff's approval of his selected biologist to perform the habitat monitoring required around the "Finger Parking" areas and prepare the monitoring reports. Ms. Weber approved the selected biologist on November 5, 2015 (See Exhibit #36).
50. On November 10, 2015, Ms. Weber emailed Mr. Simms to notify him that Ms. Weber and Marc Zeppetello, BCDC Chief Counsel, had reviewed the draft permanent public access and open space guarantee documents he had provided in 2003 for the public access and open space areas on his property and that they required revisions. To this end, Ms. Weber requested electronic copies of the documents so staff could electronically make the revisions, which would be easier for Mr. Simms. Finally, staff reminded Mr. Simms that civil penalties would continue to accrue until all of the violations are completely resolved (See Exhibit #37).

⁵ In addition to the Permit violations discovered on the June 19 site visit, BCDC staff also determined that the Permittees failed to submit two required reports in 2006 and 2011 for monitoring the habitat adjacent to the fingers, in violation of Special Condition II.K (Finger Parking Monitoring Reports).

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51. On December 17, 2015, the City submitted a draft permanent guarantee document for the public access area located on its property. The Permit requires permanent guarantees for both public access and open space areas. Since both the City and Mr. Simms have separate and distinct ownership interests in the Property subject to these requirements (and the open space area is located entirely on property owned by Mr. Simms), BCDC staff has agreed to accept separate permanent guarantee documents from Mr. Simms and the City.
52. On December 21, 2015, Ms. Weber and Mr. Zeppetello attempted to reach Mr. Simms by telephone to discuss the draft permanent guarantee documents he had submitted and, ultimately, sent an email requesting he revise the submittals and set up a time to talk with Mr. Zeppetello (See Exhibit #38).
53. On January 12, 2016, BCDC staff, City staff, Mr. Simms and Mr. Fugle met to discuss this ongoing enforcement action and also, the Phase II expansion project. At this time, BCDC staff notified the City and Mr. Simms that it had determined that they had made little progress toward resolution and it was time to switch gears and pursue resolution of the violations through a formal enforcement proceeding.
54. On January 15, 2016, Mr. Simms submitted a planting plan to BCDC staff, in order to address the maintenance issues at the “finger” park.
55. On January 19, 2016, Mr. Simms submitted proposed signage design proofs for the required public access signs missing from the corner of North Access Road and the east entrance to the parking structure.
56. On January 19, 2016, BCDC staff met at the site with City staff and Mr. Simms. During this site visit, Ms. Weber identified an additional permit violation consisting of the unauthorized placement of a gate and fence located between the existing parking structure and the required public access parking area. Ms. Weber also observed that since her prior site visit on June 19, 2016, none of the required maintenance activities described in her letter dated July 30th had occurred in the public access area, the missing public parking sign had not been replaced, and the single posted public parking sign was shrouded behind an overgrown bush (See Exhibit #5 and 8).
57. On January 19, 2016, Ms. Weber sent an email to Mr. Simms and the City, memorializing the site visit, including the discovery of the unauthorized gate and fence, and the shrouded public parking sign, as well as responding to Mr. Simms’s planting plan and signage submittals. Ms. Weber informed Mr. Simms and the City that:
 - a. The unauthorized gate and fence could potentially be authorized, but in order to do so, they would need to revise their still-incomplete amendment request seeking after-the-fact authorization for the trail realignment to also include the gate/fence;
 - b. The parking signage violation would not be resolved until both the missing sign on the south side of the parking area was replaced and the overgrown bush was trimmed so that the parking sign on the north side of the parking area is visible;

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- c. The planting plan looked good but could not be approved until it included plantings to reduce the visual impacts from the parking garage; and
 - d. Regarding the signage specifications, the directional arrow needed to be revised for the “Public Shore Parking” sign and a required Bay Trail sign is missing from the submittal (See Exhibit #39).
58. On January 22, 2016, the City submitted to BCDC staff a revised Exhibit A-1 to the Permit showing the public access realignment. Upon receipt of this exhibit, Mr. Simms and the City’s application to amend the Permit would have been filed as complete, but for their failure to supplement the request to include after-the-fact authorization for the unauthorized gate and fence located between the existing parking structure and required public access parking lot.
59. On January 22, 2016, Marc Zeppetello emailed Mr. Simms to provide detailed instructions for preparing updated versions of the draft permanent public access and open space guarantees in an electronic format (See Exhibit #40).
60. On January 29, 2016, Mr. Simms called Ms. Weber and confirmed that the gate and fence were not authorized, and that he and the City would revise their amendment request to seek after-the-fact authorization for it.
61. On February 6, 2016, the City and Mr. Simms electronically submitted a revised amendment request that included a request for after-the-fact authorization for the unpermitted gate and fence. Upon receipt of this request, the application to amend the Permit was filed as complete. BCDC staff received a hard copy of the revised amendment request on February 10, 2016 (See Exhibit #41).
62. On February 9, 2016, Mr. Simms provided Ms. Weber with the first of two required past due reports for monitoring the wildlife habitat surrounding the “finger” parking areas which staff reviewed and approved; this submittal resolved “Violation H”. (See Exhibit #42).
63. On February 9, 2016, Mr. Simms provided Ms. Weber a revised planting plan for Ms. Miramontes, Bay Design Analyst, to review.
64. On February 10, 2016, Mr. Simms submitted photographs showing that the missing public access signs were installed consistent with the staff approved public access signage plan entitled, “Preliminary Signage Program for BCDC”, prepared by Molly Duff, and dated November 24, 1998, in accordance with Special Condition Conditions II.B.4.e, which requires signage that clearly promotes the required public access amenities, and II.A.3, which requires conformity to the final approved signage plan (See Exhibit #43).
65. On February 11, 2016, Ms. Weber confirmed the installation of the required public access signs had been undertaken in a manner that is consistent with Special Conditions II.B.4.e and II.A and the approved signage plan (See Exhibit #43).

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66. On February 19, 2016, BCDC staff provided comments to the City and Mr. Simms for revising the planting plan that was submitted on February 9, 2016. These comments noted that the City and Mr. Simms failed to address reducing the visual impacts of the parking structure on both the south and east sides of the structure, as required by Special Condition II.B.4.g of the Permit (See Exhibit #44).
67. On March 10, 2016, BCDC staff visited the site and determined that the bike lanes located on North Access Road had been built five-feet wide instead of eight-feet wide, as specified in the staff-approved plans entitled, "North Access Road Public Access Project", dated April 12, 2006 and November 21, 2006, resulting in a loss of a total of six feet of required public access.
68. On March 23, 2016, BCDC staff issued the Violation Report.
69. On March 29, 2016, Trux submitted a revised draft of the open space permanent guarantee. On April 6, 2016, BCDC staff provided comments for revising the draft open space permanent guarantee, including a recommendation to retain a surveyor to resolve the issues with the legal description and exhibits.
70. On April 4, 2016, BCDC staff approved the Planting Plan, which includes new vegetation for the "Finger" Park and landscaping adjacent to the east and south walls of the parking structure.
71. On April 6, 2016, Trux submitted photographs to BCDC staff, showing that the missing Bay Trail, Public Shore, and Public Shore Parking Signs had been installed. Trux also submitted photographs showing that the hedge formerly obstructing the public shore parking sign on the north side of the parking area was trimmed and the fallen public shore parking sign on the south side of the parking area was replaced. This submittal resolved Violations C, D, and E outlined in the Violation Report.
72. On April 15, 2016, the City submitted a draft public access permanent guarantee; on May 4th and May 6th, BCDC staff provided comments for revision.
73. On April 20, 2016, the permittees requested and on April 21, 2016, the BCDC staff authorized a 21-day extension to the 35 days allowed to submit a response to the Violation Report. In their extension request, Trux and the City waived the 60-day deadline for BCDC to hold a public hearing.
74. On May 10, 2016, BCDC staff issued Permit No. 1998.011.04, also known as Amendment 4 to the Permit, which provides after-the-fact authorization for as-built public access amenities and the gate and fence. The issuance of this amendment resolved Violations I, J, and K outlined in the Violation Report.

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75. On May 17, 2016, Trux submitted photographs to BCDC staff that showed that some of the landscaping maintenance issues had been addressed at the “Finger” Park implemented in compliance with the 2016 staff-approved Planting Plan. Trux also informed BCDC staff that the concrete planters for visual screening, that are shown in the 2016 staff-approved Planting Plan, had been ordered and would be installed in four weeks.
76. On May 18, 2016, the City submitted a revised draft of the legal description and survey for the public access permanent guarantee; on June 8, 2016, BCDC staff responded to the submittal, informing the City that the legal description was not consistent with Permit No. 1998.011.04 and, therefore, must be accordingly revised.
77. On May 20, 2016, BCDC staff responded to the photographs that Trux submitted on May 17, 2016, informing Trux and the City that the maintenance issue in the “Finger” Park generally had been addressed with four exceptions, which when implemented would resolve the maintenance issue. These actions include: (1) staking the Peppermint Willow trees consistent with BCDC’s Shoreline Plants Guide; (2) landscaping the “look out point” at the “Finger” Park with *Baccharis pilularis* (Pigeon Point coyote brush); (3) replace the weathered seating located at the “Finger” Park; and (4) repair path surfaces with cracks and bumps greater than ¼ inch.
78. On June 16, 2016, Trux submitted photographs to BCDC staff that showed the concrete planters east of the parking structure were installed and planted with vegetation consistent with the 2016 staff-approved Planting Plan. This installation, along with the already completed planting adjacent to the south wall of the parking structure resolved Violation F in the Violation Report.
79. On June 20, 2016, BCDC staff conducted a site visit to follow up on the photographs submitted by Trux on May 17, 2016 and June 16, 2016, to determine whether the ongoing maintenance issues had, in fact, been fully resolved (Violation G in the Violation Report). Staff observed the site to be in better condition than the prior site visit conducted on January 19, 2016. However, staff determined that there are old and new maintenance issues that need to be addressed, including but not necessarily limited to:
 - a. The approved Planting Plan does not match the onsite conditions and must be revised to show all existing plants and to propose planting in areas that were discovered to be barren of landscaping;
 - b. Trux and the City have not installed all of the landscaping shown on the Planting Plan and must install the missing landscaping;
 - c. There are dead and dying plants that must be replaced;
 - d. Header board in the southwest corner of the “Finger” Park is broken and must be replaced;

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- e. The two required trash cans need new square vs. round liners that fit the square containers and provide lids to prevent the wind from dispersing their contents;
 - f. Trash and disposed items need to be removed from the public access areas and the adjacent slopes and marsh areas on either side of the “Finger” Park;
 - g. Weeds need to be removed from the “Finger” Park;
 - h. All of the lighting has loose wiring and may not be providing proper night lighting;
 - i. The concrete wall at the east end of the “Finger” Park is broken and needs repair;
 - j. Retaining wall/fence at the east end of the “Finger” Park is broken and needs repair;
and
 - k. Fence at crosswalk needs to be repaired.
80. On May 18, 2016, Trux and the City each submitted a Statement of Defense responding to the allegations set forth in the Violation Report. In their Statements of Defense, Trux and the City generally deny their liability for the alleged violations.
81. On June 21, 2016, the Commission staff issued its Staff Report and an accompanying Proposed Order. The Staff Report responded to the defenses raised by the Permittees in their Statements of Defense regarding both their liability for the alleged Permit violations and the appropriateness of the proposed penalties.
82. An administrative penalty of \$210,000, with \$10,000 of that amount suspended if the Permittees timely comply with this Order, is justified to resolve this matter because the cumulative nature of the violations resulted in adverse impacts to the required public access, the violations are extensive in that they affect the entire public access area and there are many, rather than just a few, violations of the permit’s conditions, and BCDC staff had to spend a significant amount of its limited resources to resolve these violations. The Permittees have negligently, or knowingly and intentionally, violated several terms of the Permit for a fifteen-year period and failed to take voluntary and comprehensive action to correct the violations until after staff commenced a formal enforcement proceeding and issued its Violation Report on March 23, 2016.