

San Francisco Bay Conservation and Development Commission

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September 22, 2017

TO: Commissioners and Alternates

FROM: Enforcement Committee (Greg Scharff, Chair, Mark Addiego, Geoffrey Gibbs, Marie Gilmore, Sanjay M. Ranchod*, Jill Techel) **Absent*

SUBJECT: Enforcement Committee's Recommended Enforcement Decision Regarding Bridgeway 558 Real Property, LLC; Proposed Stipulated Cease and Desist and Civil Penalty Order No. CDO 2017.02
(For Commission consideration on October 5, 2017)

Recommendation

The Enforcement Committee recommends that the Commission adopt the Recommended Enforcement Decision on proposed Stipulated Cease and Desist and Civil Penalty Order No. CDO 2017.02 ("Stipulated Order") to Bridgeway 558 Real Property, LLC ("Bridgeway"), for the reasons stated below. This matter arises out of an initial enforcement action commenced by BCDC staff in October 1999 and a second enforcement action commenced by BCDC staff in August 2012.

The Stipulated Order requires Bridgeway within specified time frames to, among other provisions: (1) cease and desist from all activity in violation of BCDC Permit No. M1975.102.00; (2) provide signed public access amenities including a restroom, two benches, and a trash can; (3) pay a civil penalty of \$30,000 to the Bay Fill Clean-up and Abatement Fund; and (4) pay stipulated penalties for late compliance with any term of the Stipulated Order. All other provisions are described in full within the Stipulated Order. The Enforcement Committee has determined that the proposed Stipulated Order is a fair resolution of the alleged violations.

On September 7, 2017, the Enforcement Committee held a public hearing on this matter and, after considering staff's and the respondent's presentations, determined that the proposed Stipulated Order is an appropriate resolution of the violations of the Permit and McAteer-Petris Act.

Attachments to this staff recommendation include: (1) the Violation Report; (2) the proposed Stipulated Order; (3) the Permit; (4) a vicinity map; and (5) a site map, a site plan, and two images of the site.

Staff Report

Background. On August 16, 1976, the Commission issued BCDC Permit No. M1975.102.00, to then owner of the restaurant structure, Ronald MacAnnan, to authorize the removal and replacement of a single, split-level, 2,637-square-foot pile-supported dining deck in the Bay, attached to a pre-existing pile-supported structure, and for the replacement of caps and piles on a one-for-one basis at existing Trident Restaurant located in Sausalito, Marin County. In 1980, the Trident Restaurant was renamed Horizons. Ondine, a second restaurant exclusively used for private events, occupies the second floor of the structure.

Enforcement History. In October 1999, BCDC staff received a report of the unauthorized placement of a 10-foot-wide boat dock with two pilings and a gangway on City of Sausalito property located adjacent to Horizons/Ondine Restaurants (“the Restaurants”). BCDC staff contacted the City and learned that Trident, LLC, then owner of the Restaurants and successor in interest to Mr. MacAnnan, was actively pursuing local approval of the structures under construction, as well as a lease with the City to expand onto adjacent City property, which are both required to complete a Permit amendment application to enable BCDC to authorize the structures after-the-fact. BCDC staff delayed commencing an enforcement action until Trident, LLC had obtained a lease and local approval from the City.

On April 23, 2001, BCDC staff wrote Trident, LLC a letter that commenced the standardized fines process for the unauthorized boat dock, gangway, and pilings. In May 2003, Trident, LLC transferred the Restaurants to Robert A. Freeman, with notice of the ongoing enforcement investigation by BCDC but prior to securing a lease and local discretionary approval from the City.

On November 24, 2003, BCDC staff wrote Mr. Freeman a letter that commenced the standardized fine process for the unauthorized boat dock, gangway, and pilings. On May 28, 2004, Mr. Freeman transferred the property to Bridgeway, for which he is its Executive Officer. On November 24, 2004, the standardized fine accruing for the unauthorized boat dock, gangway, and pilings reached the statutory maximum of \$30,000. From 2004 until 2012, BCDC staff did not hear from Mr. Freeman, or any Bridgeway representative. In 2012, Horizon’s Restaurant reverted back to its prior name, The Trident.

On May 3, 2012, BCDC staff received an email from the City, inquiring if a permit had been issued for the boat dock. BCDC staff responded that the boat dock remained unauthorized.

On May 28, 2012, Bridgeway submitted an incomplete permit amendment application to BCDC associated with a proposed restaurant remodeling project, including expansion of the back deck of the structure. The application did not include a request for after-the-fact

authorization for the boat dock, gangway, and pilings constructed more than a decade earlier. Without authorization in July 2012, Bridgeway commenced work on the restaurant remodeling project. The remodeling project was completed in August 2012.

Between 2012 to 2017, BCDC staff attempted to work with Bridgeway to authorize after-the-fact the gangway, boat dock, pilings, and restaurant remodel with little progress. On April 14, 2017, BCDC staff notified Bridgeway that the Executive Director had directed staff to commence a formal enforcement proceeding to resolve the violations and complete the outstanding amendment application immediately. On June 16, 2017, the Executive Director issued a Violation Report and Complaint for the Imposition of Administrative Civil Penalties (“Violation Report”) to expedite resolution of the violations.

Violations. In summary, the violations of the McAteer-Petris Act alleged by the Executive Director in the Violation Report include the following:

1. The placement, maintenance, and use of unauthorized fill in the Bay, consisting of a boat dock, gangway, and pilings.
2. The placement, maintenance, and use of unauthorized fill in the shoreline band, consisting of a significant remodel of the pile-supported Restaurants, including the expansion of the second story dining deck¹.

Negotiations and Settlement Agreement. After the Violation Report was issued, Bridgeway met with BCDC staff resulting in the negotiation of a resolution, and provision of the outstanding information required to complete the BCDC application to amend the Permit, which now enables staff to provide after-the-fact authorization for the unauthorized structures in the Bay and shoreline band. The resolution to the violations is set forth in the Stipulated Order.

In summary, the Stipulated Order requires Bridgeway within specified time frames to: (1) cease and desist from all activity in violation of BCDC Permit No. M1975.102.00; (2) provide signed public access amenities including a restroom, two benches, and a trash can; (3) pay a civil penalty of \$30,000 to the Bay Fill Clean-up and Abatement Fund; and (4) pay stipulated penalties for late compliance with any term of the Stipulated Order.

On August 11, 2017, BCDC staff and Bridgeway reached a settlement in principle on the terms of an agreement, which is provided in the proposed Stipulated Order. On August 23, 2017, Bridgeway completed its application to amend the Permit. The Enforcement Committee has determined that the recommended enforcement decision and proposed Stipulated Order is a fair resolution of the alleged violations.

¹ The Violation Report mistakenly indicates that the restaurant remodel occurred in the Bay instead of in the shoreline band and refers to the construction of two decks rather than the construction of a second story deck.