

San Francisco Bay Conservation and Development Commission

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ATTACHMENT THREE (Violation Report)

File:	ER2000.097
Permit:	1998.011.02
Date Mailed:	March 23, 2016
35th Day After Mailing:	April 27, 2016
45th Day After Mailing:	May 7, 2016
60th Day After Mailing:	May 22, 2016
Hearing Date:	May 2016

**VIOLATION REPORT/COMPLAINT
FOR THE IMPOSITION OF ADMINISTRATIVE CIVIL PENALTIES
ENFORCEMENT INVESTIGATION NO. ER2000.097
TRUX AIRLINE CARGO SERVICES AND THE CITY OF SOUTH SAN FRANCISCO**

FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS, AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER, A PERMIT REVOCATION ORDER, OR A CIVIL PENALTY ORDER BEING ISSUED TO YOU, OR A SUBSTANTIAL ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.

The San Francisco Bay Conservation and Development Commission is issuing this violation report/complaint for the administrative imposition of civil penalties and statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of the Commission's laws and a Commission permit. The report contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and reference to all the pertinent evidence on which the staff currently relies. All the evidence this report refers to is available in the permit and enforcement files for this matter located at the Commission's office. You can review these materials at the Commission's office or have copies made at your expense or both by contacting Maggie Weber or Marc Zeppetello of the

Commission's staff at telephone number (415) 352-3600. This report also informs you of the nature of the possible violations so that you can fill out the enclosed statement of defense form and otherwise be prepared for Commission enforcement proceedings.

Issuance of this report and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold an enforcement hearing, and the Commission will determine what, if any, enforcement action to take.

Careful reading of and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the violation report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact, Maggie Weber or Marc Zeppetello of the Commission's staff at telephone number (415) 352-3600 as quickly as possible. Thank you for your cooperation.

I. Person or persons believed responsible for the illegal activity:

Name: Robert Simms, CEO/General Counsel
Trux Airline Cargo Services, the owner and operator of the project known as Park SFO

Address: 237 Harbor Way
P.O. Box 2505
South San Francisco, CA 94083

Telephone: (650) 871-6137

Name: Brian McMinn, Director
Department of Public Works
City of South San Francisco

Address: P.O. Box 711
South San Francisco, CA 94080

Telephone: (650) 877-8550

II. Brief description of the nature of the illegal activity:

- A. Failure to permanently guarantee all public access areas, in violation of Special Condition II.B.2, Public Access Area Guarantee, of BCDC Permit No. 1998.011.02 ("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 (See Exhibits #2 and #4).

- 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 (See Exhibits #2 and #5).
- 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 (See Exhibits #2 and #4).
- 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 (See Exhibits #2 and #6).
- 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 (See Exhibit #7).
- 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 re-alignment of a section of the public access walkway and changes to the width and location of sidewalks and bike lanes¹ located on the segment of the Bay Trail (see Exhibit #2).
- 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 (See Exhibit #8).

III. Description of and location of property on which illegal activity occurred:

The violations are located in the Commission's shoreline band jurisdiction and in required public access areas outside of the Commission's shoreline band jurisdiction, adjacent to the Park SFO parking structure at 195 North Access Road, in the City of South San Francisco, San Mateo County (See Exhibits #1, #2, #3).

¹ Exception noted in II.J below.

The project site is comprised of several assessor parcels including:

- A. APNs 015-180-250, 015-173-200, 015-173-190, 015-180-210 (owned by Robert Simms)
- B. APN 015-180-260 (owned by City of South San Francisco)
- C. 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)

The above-listed parcels shall hereinafter collectively be referred to as the "Property."

IV. Name of owner, lessee (if any), and other person(s) (if any) who controls property on which illegal activity occurred:

Trux Airline Cargo Services, CEO Robert Simms ("Simms") and City of South San Francisco ("City").

V. Approximate date (and time if pertinent and known) illegal activity occurred:

The violations cited in Sections II.A and II.B above, begun on or about November 13, 2001, and continue through the present.

- A. For the violations cited in Sections II.C through II.G above, staff confirmed these violations on the June 19, 2015 site visit and provided notice to Simms and City by letter on July 30, 2015 (see Exhibit #32).
- B. For the violation cited in Section II.H, staff became aware of this violation while reviewing the Permit file in June 2015 and provided notice to Simms and the City by letter on July 30, 2015 (see Exhibit #32).
- C. For the violations cited in Sections II.I and II.J, staff informed Simms and the City by email on December 27, 2007 that they needed to obtain an amendment to the Permit to authorize a new location of the required public access re-alignment.
- D. For the violation cited in Section II.K, staff became aware of this violation on the January 19, 2016 site visit and provided notice to Simms that same day by email. Simms claims that the unauthorized gate and fence was constructed years ago after the Airport built the bridge that connects the "finger" park to North Access Road (see Exhibit #39).

VI. Summary of all pertinent information currently known to the staff in the form of proposed findings with references to all pertinent supporting evidence contained in the staff's enforcement file (the file is available at the Commission's office for your review; you should call the above listed staff enforcement officer to arrange to the review the file):

- A. **Relevant Files.** This violation report/complaint is based on the following findings and the relevant San Francisco Bay Conservation and Development Commission (BCDC) files including:
1. Permit File No. 1998.011.02; and
 2. Enforcement File No. ER2000.097
- B. **Permit Authorization and Special Conditions and Expiration Date.** On September 23, 1998, the Commission issued BCDC Permit No. 1998.011.00 (See Exhibit #9) to Trux Airline Cargo Services, owned by Simms, and the City to construct, use, maintain a six-story airport parking structure known as Park SFO along with paved surface parking on three "fingers" of land, and provide public access amenities as follows:
1. Special Condition II.A.1, Plan Review, of the Permit requires that no work shall be commenced until final precise plans are reviewed and approved in writing by or on behalf of the Commission;
 2. Special Condition II.A.3, Conformity with Final Approved Plans, of the Permit requires that all work, improvements, and uses shall conform to the final approved plans;
 3. Special Condition II.B.2, Public Access Area Guarantee, of the Permit requires that prior to the use of any authorized parking facilities, the public access areas shall be permanently guaranteed;
 4. Together, Special Condition II.B.4, Improvements Within the Total Public Access Area, along with Exhibit C of the Permit, require that certain public access amenities shall be installed prior to the use of any of the parking facilities. These public access amenities include:
 - a. A 67,350-square-foot public access "finger" park that includes landscaping, pathways, access sidewalks and bike lanes leading from North Access Road and an overlook area (Special Condition II.B.4.a);
 - b. A minimum of eight signed, public parking spaces (Special Condition II.B.4.b);
 - c. Sidewalks and Class II bike lanes along North Access Road from its intersection with South Airport Boulevard, east to the southern end of the North Access Road Bridge over San Bruno Channel (Special Condition II.B.4.c). Exhibit C of the Permit requires 4'6" wide sidewalks and 8' wide bike paths on both sides of North Access Road, and 4' wide sidewalks and 4' wide bike paths on both sides of North Access Road Bridge² over San Bruno Channel;
 - d. A sidewalk and Class II bike lanes along the north side of North Access Road, from the southern end of the North Access Road Bridge over San Bruno Channel to the existing tidegate bridge over San Bruno Channel, and a new

² North Access Road Bridge is referred to "San Bruno Channel Bridge East" in Exhibit C, however this violation report will refer to this roadway, which crosses over San Bruno Channel just west of the parking structure, exclusively as North Access Road Bridge (See Exhibit #2).

- sidewalk and Class II bike lane from North Access Road at the existing tidegate bridge³ to the new "finger" park, including crosswalks where necessary (Special Condition II.B.4.d). Exhibit C of the Permit requires 4' wide sidewalks and 4' bike paths on both sides of North Access Road South of San Bruno Channel;
- e. New road and trail signs that promote pedestrian use of North Access Road sidewalk and the "finger" park (Special Condition II.B.4.e);
 - f. Site furnishings, including a minimum of four benches and two garbage containers, and appropriate lighting (Special Condition II.B.4.f);
 - g. Landscaping of the south and east side of the parking structure, including tall trees, designed to screen the parking structure and reduce its visual impacts (Special Condition II.B.4.g);
5. Special Condition II.B.6 (Maintenance) of the Permit require areas and improvements within the public access area to be permanently maintained;
 6. Special Condition II.J.1 (Open Space for Wildlife Habitat Instrument) of the Permit requires that an open space permanent guarantee instrument shall be approved for recordation by the Executive Director prior to use of the parking facilities and that the instrument shall be recorded within 30 days of approval; and
 7. Special Condition II.K ("Finger" Parking Monitoring Reports) of the Permit requires Mr. Simms and the City to monitor the wildlife habitat surrounding the project site for ten years after the use of the parking facility begins and present said monitoring activities in two monitoring reports, one at five years and one at ten years, prepared by a biologist determined to be qualified by BCDC staff.
 8. The permit expired on September 1, 2002 (See Exhibit #9).
- C. The Permit was executed by the City and Mr. Simms on October 5, 1998 (See Exhibit #9).
 - D. 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).
 - E. 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

³ The tide gate bridge is located on the east side of the parking structure, crossing over San Bruno Channel (See Exhibit #2).

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).

- F. 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".
- G. Park SFO parking facility opened for business on or about September 1, 2001.
- H. 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).
- I. 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.
- J. 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:
 - 1. Failure to permanently guarantee the public access area;
 - 2. Failure to improve the public access area with the required amenities
 - a. Construction debris remained at finger park;
 - b. Public parking obstructed by hazardous waste;
 - c. Absence of signage for public parking;
 - d. Absence of approved plant materials at entrance of parking lot;
 - e. Absence of approved public access signs; and
 - f. Failure to maintain public access area;
 - 3. Failure to remove construction debris from the middle "fingers";
 - 4. Failure to provide transitional upland habitat enhancement;
 - 5. Failure to permanently guarantee open space area; and
 - 6. Failure to submit confirmation of shielding of night security lighting.

The letter commenced an administrative penalty clock for "standardized fines" (See Exhibit #13).
- K. 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.

- L. 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).
- M. On January 31, 2002, Ms. Bennett received a letter from Mr. Simms responding to Ms. Bennett's November 15, 2001 letter stating that:
1. The construction debris at the "finger" park was cleared;
 2. The landscaping at the "finger" park was repaired;
 3. The hazardous waste was removed from public parking area;
 4. Plant materials were installed at the entrance to parking lot;
 5. Signage for public parking was installed;
 6. Signs were installed consistent with the approved signage program;
 7. Landscaping was installed to provide transitional upland habitat; and
 8. Night security lighting was shielded (See Exhibit #15).
- N. 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 re-submitted 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, letter⁴ (See Exhibit #16).
- O. 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).
- P. 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).
- Q. 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).

⁴ The record is silent as to when, if ever, Ms. Bennett confirmed Mr. Simms resolved the violations. Regardless, many of those violations are present today and are accounted for in staff's July 30, 2015 letter, cited in Finding VI.TT of this Violation Report.

- R. 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.
- S. 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, unfeasible (See Exhibit #20).
- T. 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).
- U. On July 31, 2002, Mr. Simms submitted to Ms. Sampson revised permanent guarantee documents for the public access and open space areas.
- V. 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).
- W. 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).
- X. 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).
- Y. 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.
- Z. 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.
- AA. On May 20, 2003, Mr. McCrea provided comments to the City, for its preliminary plan submittal entitled, "North Access Road Public Access Project".

- BB. 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).
- CC. 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.⁵
- DD. On June 2, 2006, after many years of coordination between the City, the Airport, Mr. Simms, and BCDC, the Airport conditionally approved the a new location for the required Bay Trail walkways and bike paths on North Access Road, pending the submittal of project plans.
- EE. 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).
- FF. 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:
1. 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;
 2. 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
 3. 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

⁵ The request was returned unfiled to the City and Mr. Simms in April 2007 because the proposed trail realignment was not feasible.

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).

- GG. 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).
- HH. On December 27, 2007, Ms. Bennett stated in an email 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, 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.
- II. 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 signage⁶ (See Exhibit #28).
- JJ. 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.
- KK. 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.

⁶ Although this landscaping plan was never approved, in September 2015, BCDC staff determined the 2008 comments for revision to obtain approval were minor and 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 has 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.

- LL. 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.
- MM. 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).
- NN. 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.
- OO. 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).
- PP. 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).
- QQ. 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.

- RR. On June 19, 2015, BCDC staff conducted a site visit and found several new (or possibly continuing) Permit violations, including:
1. 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);
 2. 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);
 3. 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);
 4. 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
 5. Failure to maintain the "finger" park in violation of Special Condition II.B.6, Maintenance of Public Access Areas (See Exhibit #7).
- SS. 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.
- TT. 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,⁷ and included instructions for how to resolve all of the violations and bring the Permit into compliance (See Exhibit #32).
- UU. 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

⁷ 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).

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).

- VV. 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).
- WW. In a September 8, 2015, the City and Mr. Simms met with BCDC staff to discuss how to resolve the Permit violations.
- XX. 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).
- YY. 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).
- ZZ. 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).
- AAA. 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.
- BBB. 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).

- CCC. 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.
- DDD. On January 15, 2016, Mr. Simms submitted a planting plan to BCDC staff, in order to address the maintenance issues at the "finger" park.
- EEE. On January 19, 2016, Mr. Simms submitted proposed signage design proofs the required public access signs missing from the corner of North Access Road and the east entrance to the parking structure.
- FFF. On January 19, 2016, BCDC staff met at the Property 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 Exhibits #5 and #8).
- GGG. 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:
1. 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;
 2. 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;
 3. The planting plan looked good but could not be approved until it included plantings to reduce the visual impacts from the parking garage; and
 4. 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).
- HHH. 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.

- III. 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).
- JJJ. On January 29, 2016, Mr. Simms called Ms. Weber and confirmed that the gate and fence was not authorized, and that he and the City would revise their amendment request to seek after-the-fact authorization for it.
- KKK. 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).
- LLL. 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 (See Exhibit #42).
- MMM. On February 9, 2016, Mr. Simms provided Ms. Weber a revised planting plan for Ms. Miramontes, Bay Design Analyst, to review.
- NNN. 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).
- OOO. 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).
- PPP. 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).
- QQQ. On March 10, 2016, BCDC staff visited the site and determined that the bike lanes located on North Access Road had been build five-feet wide instead of eight-feet wide, as specified 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.

VII. Provisions of law or Commission permit that the staff alleges has been violated:

Section 66632. Permit for Fill, Extraction of Materials or Substantial Change in Use of Land, Water or Structure; Application for Permits.

Permit No. 1998.011.02: Special Conditions II.A (Specific Plans and Plan Review), II.B (Public Access) II.J.1 (Open Space for Wildlife Habitat Instrument), II.K ("Finger" Parking Monitoring Reports). These Special Conditions are more fully described in Section VI.B. Permit No. 1998.011.03 is attached as Exhibit 9.

VIII. If the staff is proposing that the Commission impose an administrative penalty as part of this enforcement proceeding, the amount of the proposed penalty:

Staff proposes a penalty of \$300,000 (\$30,000 per violation cited in Sections II.A – II.J of this report, and \$15,000 for the single violation cited in Section II.K of this report) under Section 66641.5(e) of the McAteer-Petris Act.

The City and Mr. Simms' opportunity to resolve these violations through standardized fines has ceased; staff recommends that the Commission collect administrative penalties under Section 66641.5(e) of the McAteer-Petris Act.

IX. Any other statement or information that the staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violations:

Staff has provided all necessary information in the findings outlined in Section VIII above.

X. List of staff exhibits:

- Staff Exhibit #1: Park SFO Vicinity Map
- Staff Exhibit #2: Park SFO Site Map
- Staff Exhibit #3: Parcel Map
- Staff Exhibit #4: Photographs of Violations cited in Section II.C & E of this report
- Staff Exhibit #5: Photographs of Violation cited in Section II.D of this report
- Staff Exhibit #6: Photographs of Violation cited in Section II.F of this report
- Staff Exhibit #7: Photographs of Violation cited in Section II.G of this report
- Staff Exhibit #8: Photographs of Violation cited in Section II.I of this report
- Staff Exhibit #9: BCDC Permit No. 1998.011.00, issued September 23, 1998
- Staff Exhibit #10: June 8, 2001 letter from Mr. Simms to Mr. McCrea
- Staff Exhibit #11: July 6, 2001 letter from Mr. McAdam to Mr. Simms
- Staff Exhibit #12: October 16, 2001 letter from Mr. Simms to Mr. McAdam
- Staff Exhibit #13: November 15, 2001 enforcement letter from Ms. Bennett to Mr. Simms
- Staff Exhibit #14: November 29, 2001 letter from Ms. Sampson to Mr. Simms

- Staff Exhibit #15: January 31, 2002 letter from Mr. Simms to Ms. Bennett
- Staff Exhibit #16: February 21, 2002 enforcement letter from Ms. Bennett to Mr. Simms
- Staff Exhibit #17: March 19, 2002 letter from Ms. Bennett to the City
- Staff Exhibit #18: March 27, 2002 letter from the City and Mr. Simms to Ms. Bennett
- Staff Exhibit #19: April 26, 2002 letter from Ms. Bennett to the City and Mr. Simms
- Staff Exhibit #20: July 16, 2002 letter from the City to Ms. Bennett
- Staff Exhibit #21: July 23, 2002 letter from Ms. Bennett to the City
- Staff Exhibit #22: August 29, 2002 letter from Ms. Sampson to Mr. Simms
- Staff Exhibit #23: March 3, 2003 letter from Mr. Simms to Ms. Sampson
- Staff Exhibit #24: July 11, 2003 letter from Mr. McAdam to Mr. Simms and the City
- Staff Exhibit #25: November 27, 2006 letter from the City to Mr. McCrea
- Staff Exhibit #26: April 12, 2007 letter from the City to Mr. McCrea
- Staff Exhibit #27: Airport Use Permit, executed May 2007
- Staff Exhibit #28: Landscaping plan submittal by Mr. Simms, received by staff February 13, 2008.
- Staff Exhibit #29: May 14, 2015 email from Ms. Weber to the City
- Staff Exhibit #30: June 9, 2015 proposed exhibit for trail realignment submittal from the City to Ms. Weber
- Staff Exhibit #31: June 10, 2015 email from Ms. Weber to the City
- Staff Exhibit #32: July 30, 2015 enforcement letter from Ms. Weber to the City and Mr. Simms
- Staff Exhibit #33: August 27, 2015 letter from Mr. Simms to Ms. Weber
- Staff Exhibit #34: August 27, 2015 incomplete permit amendment request from the City to Ms. Weber
- Staff Exhibit #35: September 30, 2015 enforcement letter from Ms. Weber to the City and Mr. Simms
- Staff Exhibit #36: November 5, 2015 email from Ms. Weber to Mr. Simms
- Staff Exhibit #37: November 10, 2015 email from Ms. Weber to Mr. Simms
- Staff Exhibit #38: December 21, 2015 email from Ms. Weber to Mr. Simms
- Staff Exhibit #39: January 19, 2016 email from Ms. Weber to Mr. Simms
- Staff Exhibit #40: January 22, 2016 email from Mr. Zeppetello to Mr. Simms

- Staff Exhibit #41: Revised Amendment request, dated February 5, 2016, and received by BCDC staff on February 10, 2016
- Staff Exhibit #42: February 10, 2016 email from Ms. Weber to Mr. Simms
- Staff Exhibit #43: February 11, 2016 email from Ms. Weber to Mr. Simms and February 10, 2016 email from Mr. Simms to Ms. Weber with attached photographs
- Staff Exhibit #44: February 19, 2016 email, from Ms. Weber to Mr. Simms