

San Francisco Bay Conservation and Development Commission

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Scott's Jack London Seafood, Inc.
2770 Camino Diablo, #B
Walnut Creek, CA 94597

and

Port of Oakland
P.O. Box 2064
Oakland, CA 94604-2064

Respondents.

COMMISSION
CEASE AND DESIST AND CIVIL PENALTY
ORDER NO. CDO 2017.01

Effective Date: April 6, 2017

TO SCOTT'S JACK LONDON SEAFOOD, INC. AND THE PORT OF OAKLAND:

I. CEASE AND DESIST

Pursuant to California Government Code Section 66638, Scott's Jack London Seafood, Inc. ("Scott's") and the Port of Oakland ("Port"), all of their agents and employees, and any other persons acting on behalf of or in concert with them (collectively "Respondents") are hereby ordered to cease and desist all activity in violation of BCDC Permit No. 1985.019.09B, BCDC Permit No. 1985.019.20A, or the McAteer-Petris Act ("MPA") at Jack London Square in Oakland, as described herein. Specifically, Respondents are ordered to:

- A. Cease and desist from violating BCDC Permit Nos. 1985.019.09B and 1985.019.20A, and the McAteer-Petris Act.
- B. Fully comply with requirements of Sections III and IV of this Cease and Desist and Civil Penalty Order ("Order").

II. FINDINGS

This Order is based on the following findings. The administrative record in support of these findings and this Order includes: (1) all documents and other evidence cited herein including Attachment A – Additional Findings; and (2) all additional documents listed in the Index of Administrative Record, Attachment B hereto.

A. BCDC Permit No. 1985.019.09B, as amended through October 7, 1997 ("the Permit"), issued jointly to Scott's and the Port, authorizes the construction, use, and maintenance of a 4,400-square-foot pavilion, in a portion of the Franklin Street Plaza at Jack London Square in Oakland, for shared public and private use at a ratio of 80% public to 20% private, and the installation of café seating, benches, lighting, and other site furnishings within the pavilion and larger, approximately 23,000-square-foot plaza.

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B. BCDC Permit No. 1985.019.020A, as amended through April 10, 2008 (“the Port’s Permit”), issued to the Port, authorized certain development activities along a six-block section of the Port’s waterfront property between Jefferson and Harrison Streets at Jack London Square.

C. In or about December 2011, Scott’s contacted BCDC staff regarding certain modifications to the pavilion proposed by Scott’s. Between December 2011 and November 2012, BCDC staff and Scott’s continued to discuss, BCDC staff provided comments on, and Scott’s sought BCDC staff approval of various potential modifications to the pavilion proposed by Scott’s. As of November 2012, staff informed Scott’s that it had not obtained BCDC staff approval of its proposed pavilion modifications and stated that Scott’s should coordinate with the Port and that Respondents should jointly present a revised proposal to BCDC.

D. In December 2012, BCDC staff learned that Scott’s had commenced construction of certain modifications to the pavilion without obtaining approval from BCDC staff or the Commission, which upon completion in March 2013, included an unauthorized permanent metal-frame doorway and new retractable wall panel system, and that Scott’s had also installed planters in a public access area without authorization.

E. On May 16, 2013, BCDC’s Chief of Enforcement issued, pursuant to section 11386 of the Commission’s regulations (14 C.C.R. § 11386), an enforcement letter to Respondents describing a number of alleged violations of the MPA and/or the Permit, including:

1. Construction of an unauthorized metal-framed doorway, storage area, and stage, and installation of multiple planters, in a public access area;
2. Failure to obtain BCDC staff approval of design and construction plans prior to replacing the former tent walls with a retractable wall panel system used to enclose the pavilion;
3. Failure to provide six years of reports of private events in the pavilion;
4. Failure to record a public access legal instrument for the pavilion; and
5. Failing to install and maintain all the public access improvements at the pavilion for at least 292 days per year.

F. The May 16, 2013, enforcement letter directed Respondents to take certain actions to retain the opportunity to resolve the alleged violations with standardized fines, as specified in 14 C.C.R. § 11386, including:

1. Remove the metal-framed doorway, storage area, and planters from the public access area;
2. Submit and obtain BCDC staff approval of a full set of plans for the retractable wall panel system;
3. Submit six years of past due reports of private events for the pavilion meeting the requirements of the Permit; and

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4. Submit and obtain BCDC staff approval of a legal instrument to record the pavilion public access area; and
5. Install and repair certain public access improvements.

G. Following receipt of the May 16, 2013, enforcement letter, Respondents did not remove the unauthorized structures and improvements. Instead, Scott's continued to use the pavilion for private events and engaged in discussions with BCDC staff over an approximately two-year period regarding the possibility of obtaining after-the-fact approval of some or all of the unauthorized structures or improvements either by BCDC staff, through plan review and approval, or by potential amendments to the Permit and the Port's Permit. Respondents made two presentations regarding their various proposals to BCDC's Design Review Board, on February 10, 2014 and April 6, 2015. As of the date of this Order, Respondents have not submitted a complete application to amend the Permit or the Port's Permit, and have not removed or obtained approval of the unauthorized construction of the metal-framed entry doorway, storage area and stage, or retractable wall panel system, or of the unauthorized installation of the multiple planters in the public access area.

H. After learning of Scott's unauthorized construction activities in a dedicated public access area, BCDC staff continued its enforcement investigation. That investigation revealed numerous additional alleged violations of the Permit or the Port's Permit, including but not limited to, Scott's extensive non-Permit complaint use of the pavilion for private events over an approximately 12-year period.

I. In or about September 2015, BCDC staff informed Respondents that the Executive Director intended to initiate an enforcement proceeding regarding the numerous violations of the Permit or the Port's Permit, including, but not limited to the unresolved issues regarding Scott's unauthorized construction in a public access area, that would likely result in the Commission issuing a cease and desist and administrative civil penalty order against Respondents. Respondents requested an opportunity to seek to negotiate a proposed settlement with BCDC.

J. On July 19, 2016, the Executive Director and Respondents agreed to a settlement in principle on the terms of a proposed stipulated order, subject to review and approval of the proposed order by the Commission's Enforcement Committee and by the Commission.

K. On October 20, 2016, the Enforcement Committee held a public hearing and adopted the staff's recommendation that the Commission issue the proposed stipulated order.

L. On November 3, 2016, the Commission rejected the Enforcement Committee's recommended enforcement decision (i.e., adoption of the proposed stipulated order). The Commission provided comments on certain issues raised by the alleged violations and directed staff to commence a formal enforcement proceeding if staff and Respondents were unsuccessful in returning to the Enforcement Committee within two months with a different proposed order that responded to and took into account the direction provided by the Commission.

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M. By letter dated December 8, 2016, to BCDC's Chief Counsel, Marc Zeppetello, from Scott's counsel, Michael P. Verna, Scott's provided a settlement proposal to staff. After reviewing Scott's proposal, and after further discussions between Mr. Zeppetello and Mr. Verna regarding the prospects for reaching an agreement on a proposed settlement, staff determined that the proposal was not responsive to the Commission's direction and that it would not be possible to reach an agreement with Respondents on a revised proposed stipulated order that would be acceptable to the Commission. Therefore, on December 19, 2016, staff commenced a formal enforcement proceeding by mailing to Respondents a Violation Report/Complaint for the Imposition of Administrative Civil Penalties ("Violation Report/Complaint").

N. In summary, the violations or categories of violation of the Permit or the Port's Permit documented by BCDC staff's enforcement investigation include the following:

1. Unpermitted development by unauthorized construction in public access areas of a metal-framed entry doorway, wood and metal-framed walls, multiple moveable wall panels and ceiling tracks in the pavilion; storage area and stage; roof extension and planters.
2. Non-Permit compliant use of the pavilion, in violation of Special Condition II.B.2.c, Event Schedule Reporting, including Permit Exhibit A, Guidelines for Private Use of Public Pavilion, during the period 2004-2015:
 - a. Providing fewer than 292 public use days per year;
 - b. Providing, on average per month during winter season, fewer than five (5) public use weekend days and nights;
 - c. Holding, on average per month during winter season, more than four (4) private use weekend days and nights;
 - d. Holding, on average per month during summer season, more than three (3) private use weekend days and nights;
 - e. Providing fewer than three (3) public use weekend days and nights per month; and
 - f. Holding more than two consecutive private use days.
3. Unpermitted use of the Franklin and Broadway Street plazas by placing tents and stanchions, storing event related equipment (including planters), and displaying promotional vehicles;
4. Untimely submittal of private event schedules as required by Special Condition II.B.2.c, Event Schedule Reporting, including Permit Exhibit A, Guidelines for Private Use of Public Pavilion;
5. Failure to record a public access legal instrument for the pavilion public access area prior to commencement of construction, as required by Special Condition II-B-3, Permanent Guarantee;

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6. Failure to provide all required public access improvements during public use days, as required by Special Condition II.B.5, Improvements Within the Public Access Area; and
7. Failure to obtain plan approval prior to installation of public access improvements, as required by Special Condition II.A, Specific Plans and Plan Review.

O. The pavilion modifications constructed by Scott's including, but not necessarily limited to, the metal entry doorway, retractable wall panel system, roof extension, and storage shed and stage are unauthorized and include components and dimensions that staff has advised Respondents have adverse impacts on public access requirements of both the Permit and the Port's Permit. Unless and until the Commission acts favorably to approve proposed modifications to the pavilion, the as-built pavilion modifications shall remain unauthorized and subject to removal and/or reconstruction. Moreover, the Commission cannot act on a request to authorize proposed pavilion modifications until Respondents submit two complete applications to amend the Permit and the Port's Permit, respectively, that comply with the Commission's regulations pertaining to material amendments to a major permit as outlined in 14 C.C.R. §§10310, 10824, and Appendices D, E, F.

P. The additional findings set forth in Attachment A hereto, and incorporated by reference herein, more fully describe each of Respondents' violations or categories of violation, and include information regarding the dates of violation and references to supporting evidence.

III. CONDITIONS

A. On and after the Effective Date of this Order, Respondents shall cease and desist from all activity in violation of the Permit, the Port's Permit, and the McAteer-Petris Act.

B. **Make Public Access Available.** On and after the Effective Date of this Order, Respondents shall make the pavilion and all other public access areas around the pavilion (except for areas occupied by a built-in unauthorized structure, such as the storage shed and pavilion walls and panels) available to the public for unrestricted public access, as required by Special Condition II.B.1 of the Permit and Special Condition B.II.1 of the Port's Permit, except as otherwise provided in accordance with Special Condition II.B.2 of the Permit.

C. **No Storage of Equipment In or Unauthorized Use of Public Access Areas.** On and after the Effective Date of this Order, Scott's shall cease and desist from storing, and shall not store, any restaurant equipment or site furnishings in any required public access areas at any time, and shall cease and desist from using, and shall not use, any portion of the Franklin and Broadway plazas for private events, to store any restaurant equipment or site furnishings, or to display promotional materials.

D. **Planter Removal.** No later than 15 days after the Effective Date of this Order, Scott's shall permanently remove all planters from the area around the pavilion and shall not place or storage planters within the Commission's jurisdiction without Commission authorization.

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E. Compliance with Permit Exhibit A, Guidelines for Private Use of Public Pavilion. On and after the Effective Date of this Order, Respondents shall comply fully with Special Condition II.B.2 of the Permit, Public Use of the Pavilion, and shall use the pavilion for private events only as specified in Exhibit A to the Permit, "Guidelines for Private Use of the Public Pavilion," including but not limited to using the pavilion for no more than 73 days of private use annually.

F. Submit Complete Applications to Amend the Permit and the Port's Permit. No later than 45 days after the Effective Date of this Order, Respondents shall submit to the Executive Director a fully completed and properly executed application to amend the Permit, and the Port shall submit to the Executive Director a fully completed and properly executed application to amend the Port's Permit. Those applications shall include the following:

1. Respondents' application to amend the Permit shall request after-the-fact authorization for the following structural components of the pavilion that Scott's constructed without authorization: (1) the permanent wall and retractable wall panel system along portions of the exterior of the pavilion; (2) the stage along the western interior boundary of the pavilion; (3) the storage area behind the stage; and (4) the structure that connects the roof of the pavilion to the roof of the restaurant. In preparing their application, Respondents shall take into account the plans depicting the proposed public pavilion modifications presented to the Design Review Board on April 6, 2015, and the DRB's comments on those plans. The application shall also request authorization for new entrance doors into the pavilion, which would be integrated into the retractable wall panel system and installed by Scott's to replace the existing permanent door structure and metal framing at the entrance to the pavilion that Scott's constructed without authorization. The application shall also include: (1) detailed architectural plans for the proposed project including but not limited to new entrance doors and any modifications to the retractable wall panel system necessary to integrate the doors into that system; (2) documentation of discretionary approval and CEQA review from the City of Oakland; (3) a statement of total project costs; and (4) payment of the appropriate application filing fee. The application shall not include a request to increase use of the pavilion for private events.
2. Respondents' application to amend the Permit and the Port's application to amend the Port's Permit shall include a public access plan for the pavilion and the public access areas around the pavilion based on the conceptual plan that Scott's proposed, and BCDC staff modified, during a meeting on August 28, 2015, that takes advantage of existing elements, considers factors pertaining to existing limitations, and attempts to unify the public space inside and outside of the pavilion. The plan shall provide high quality chairs placed both inside and outside the pavilion; repair existing paving beneath the pavilion and toward Water Street (some areas have been poorly patched and require replacement pavers); in the plaza east of the pavilion and north of Kincaid's, remove trees, use vertical lights to create and angled

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“procession” towards the water, incorporate a few simple permanent concrete seawalls around an area with decomposed granite paving (and place tables and chairs within this area), provide benches in a line along the water facing east toward Pescatore restaurant, and provide planted screens around Kincaid’s walls and trash areas.

G. Provide Public Access Improvements Required by the Permits. No later than 30 days after the Effective Date of this Order, Respondents shall provide all improvements within the public access area required by Special Condition II.B.5 of the Permit including: (1) at least four public access signs, two permanent and two temporary, to facilitate shoreline public access between Franklin Street and Broadway on the Bay side of Scott’s; and (2) at least 15 tables and 35 chairs that are to be in place at all times except when the pavilion is in use for private events or other approved events, as authorized by the Permit.

H. Record Legal Instrument. No later than 30 days after the Effective Date of this Order, excluding the time period(s) during which the draft guarantee is held by staff counsel for review, Respondents shall submit proof of recordation with Alameda County of a legal instrument that guarantees the public access area required by Special Condition II.B.1 and 2 of the Permit, in accordance with Special Conditions II.B.3 and 4 of the Permit. For reference purposes, the public access area over which the legal instrument is to be recorded is shown on Exhibit A of the Port’s Permit as “Scotts Pavilion.”

I. Submit Pavilion Events Schedules. No later than 30 days after the Effective Date of this Order, Scott’s shall submit to both the Port and BCDC all past-due quarterly event schedules, as required by Special Condition II.B.2.c of the Permit, and the Port shall submit to BCDC all past-due annual summaries of event schedules, as required by Special Condition II.B.2.c of the Permit. In addition, commencing May 15, 2017, Scott’s shall submit to BCDC by no later than the 15th of each month a statement for the prior month listing all events held at the pavilion and the duration of each event, including both setup and breakdown times.

J. Further Review By The Commission. If Respondents fail to submit complete applications to amend the Permit and the Port’s Permit by no later than 45 days after the Effective Date of this Order, in accordance with Condition III.F, above, or if the Executive Director has not filed those application as complete by no later than July 10, 2017, the Executive Director shall schedule a public hearing before the Commission to report on the status of Respondents’ applications, their compliance with the Permit and the Port’s Permit since January 1, 2017, and their compliance with the terms of this Order. At such hearing, the Commission may, if recommended by the Executive Director, order that this enforcement proceeding be reopened and that the Commission consider modifying this Order to revoke the Permit and to order Respondents to remove any or all structures within the shoreline band on the state tidelands occupied by the pavilion.

IV. CIVIL PENALTY ORDER

A. Government Code Section 66641.5(e) provides that the Commission may administratively impose civil liability for any violation of the MPA or a BCDC 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.

B. Government Code Section 66641.9(a) states:

In determining the amount of administrative civil liability, the commission shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

C. **Nature of the Violations.** Scott's violated the requirements of the Permit repeatedly and consistently, as follows:

1. **Non-permit Compliant Use of the Pavilion.** As documented on pages 8 through 17 in the Violation Report/Complaint, Scott's regularly held more private events than allowed by the Permit and operated the pavilion in numerous other ways that violate the requirements of the Permit.
2. **Unauthorized Use of the Franklin and Broadway Street Plazas.** Scott's regularly displayed a promotional vehicle in the Broadway Street Plaza and stored event-related equipment including planters in the Franklin Street Plaza. Scott's was repeatedly notified that these activities were unauthorized yet continued to commit the violations.
3. **Event Schedules and Scheduling.** Respondents habitually failed to submit quarterly reports and, to a lesser extent, annual summaries of scheduled events.
4. **Public Access Improvements.** Scott's failed to place the tables, chairs and signs in the pavilion when it was in public use almost continuously since 1998. As of the date of the Violation Report/Complaint, Scott's was posting only one of the two required moveable signs and it was not located in the pavilion where it is required to be located.
5. **Recordation of Legal Instrument for the Public Access Area.** Respondents have failed to resolve this issue despite the fact that Commission staff provided all the information necessary to achieve compliance with this requirement in a letter dated December 12, 2013.

6. **Failure to Obtain Plan Approval for the Public Access Improvements.** Respondents failed to obtain plan approval for the public tables, chairs and signage prior to constructing the pavilion.

D. **Circumstances of the Violations.** On multiple occasions, BCDC staff described to Scott's the permit requirements and the proper corrective actions and requested that actions and events remain within the authorized numbers. Despite these meetings and communications, the same unauthorized conduct continued. Circumstances of this matter support the conclusion that violating the BCDC permit was an intentional business decision by Scott's, whereby potential BCDC penalties may have been factored into decisions to proceed unabated over at least a 12-year period.

E. **Extent of Violations.** The non-permit compliant elements of the violations have both spatial and temporal components. The facts demonstrate the long duration of these violations and the expansion of private use beyond the limits of the pavilion into the Broadway and Franklin Street Plazas.

F. **Gravity of the Violations.** The open views of the estuary afforded by the space occupied by the pavilion are the only unobstructed views of the estuary that are available to persons approaching from Franklin Street. Therefore, the obstruction of those public views by Scott's unauthorized private events is a significant detriment to the public.

1. **Adverse Impacts on Public Access.** Each and every violation cited in the Violation Report/Complaint adversely impacts existing required physical and visual public access in and adjacent to the pavilion.
2. **Unauthorized Construction of the Pavilion Enclosure System.** Scott's knowingly and intentionally commenced and completed construction of its new pavilion enclosure system without the necessary Commission staff or Commission approval.
3. **Permit Application Filing Process.** Respondents failed to submit two complete applications to retroactively authorize those elements of the pavilion construction project eligible for retroactive approval. In addition, Respondents have failed to submit a revised public access proposal.
4. **Failure to Cooperate**
 - a. On May 30, 2013, during a site visit with the Commission's Executive Director, Mr. Fagalde stated he would not remove the permanent metal-framed entry doorway;
 - b. During a meeting with Ms. Miramontes and Ms. Klein on April 17, 2014, Mr. Fagalde said he could not remove the permanent metal-framed entry doorway;
 - c. During a meeting with Commission staff on November 18, 2014, Mr. Gallagher said he could not remove the permanent metal-framed entry doorway;

- d. As these communications show, it was not a matter of not being able to remove the permanent metal-framed entry doorway from the project for a 3.5-year period, but rather an unwillingness to remove it. This became apparent when, on February 20, 2015, Respondents submitted a plan proposing to replace the permanent metal-framed entry doorway with additional retractable wall panels that include an entry doorway;

G. Susceptible to Removal or Resolution. Whether the violation is susceptible to removal or resolution:

1. Susceptible

- a. The unpermitted construction of the new pavilion enclosure system is susceptible to resolution through the combined removal of portions of the new pavilion enclosure system and after-the-fact approval of the remainder of it; and
- b. The failure to gain approval of a legal instrument to permanently guarantee the public access area and/or record an approved legal instrument is also susceptible to resolution by obtaining staff approval of a legal instrument and subsequently recording it.

The maintenance of public access areas free from storage of restaurant related equipment.

The provision of all required public access improvements (public access tables, chairs and signs).

Use of the pavilion in compliance with the Permit (*i.e.*, 292 days/year of unrestricted public access, etc.).

2. Not Susceptible. The following violations are not susceptible to removal or resolution:

- a. The multitude of past permit non-compliant uses, such as but not limited to the provision of fewer than 292 public access days at the pavilion, from 2004 through 2016 and continuing through the present;
- b. The past installation, storage and display of unauthorized structures and materials in the Broadway and Franklin Street Plazas;
- c. The past failure to submit quarterly reports of proposed events in a timely manner;
- d. The past failure to submit annual reports in a timely manner; and
- e. The failure to provide all of the required public access tables, chairs and signs between 2000 and the present.

H. Cost to State. The estimated costs to the state in pursuing this enforcement action total at least 1,109 hours and a cost of over \$83,224 through the date of issuance of the Violation Report/Complaint, and additional costs have accrued since that time.

I. With Respect to the Violator

- 1. Ability to Pay and Effect on Business.** Scott's has provided "profit/loss" financial statements that include annual net profit figures. For each of the three most recent years, 2014-2016, Scott's earned an average annual net profit of approximately \$548,549. In addition, in response to a subpoena issued by the Executive Director, Scott's has produced its balance sheets for 2014 and 2015. Those balance sheets include the following figures that are relevant to Scott's ability to pay and the effect of any penalty on its ability to continue in business:

Balance Sheet Description	2014	2015
Inter Company Account Receivable (Current Asset)	\$6,048,315	\$6,646,394
Total Current Assets	6,847,473	\$7,229,226
Retained Earnings	\$4,996,157	\$5,394,308
Total Stockholders Equity	\$5,975,582	\$6,245,857

These average annual net profit and balance sheet figures indicate that Scott's has the ability to pay the penalty imposed by the Commission.

- 2. Voluntary Removal or Resolution.** The Commission finds no evidence that Scott's has made any effective effort to voluntarily remove the unauthorized structures. Instead, the evidence cited on pages 34 through 38 in the Violation Report/Complaint demonstrates a steady pursuit of project completion and retention of unauthorized construction in direct contradiction to the information and direction provided by BCDC staff. On the contrary, Scott's has protracted this enforcement matter by its stubborn belief that it can perpetually operate the pavilion in disregard of its permit and the law.
- 3. Prior History.** Respondents have been repeatedly and consistently violating the Permit and the MPA since at least 2000 as shown by the evidence cited in the Violation Report/Complaint and the findings of this Order.
- 4. Culpability.** Scott's is fully responsible and thus culpable. Scott's executed the Permit, attesting that it understood the permit conditions, and has proceeded for 15 years to ignore the requirements of its Permit and the MPA, as well as the direction from many members of the BCDC staff.

5. **Economic Savings.** The Commission is not in a position to quantify any economic savings to Respondents resulting from the violations, but Scott's has clearly benefitted economically from deferring removal of the unauthorized construction at the pavilion while continuing to over use the pavilion for private events. Similarly, Scott's has profited from the events in excess of 73 per year that it holds in the pavilion.

J. **Such other matters as justice may require.** No business located within BCDC's jurisdiction other than Scott's has made such extensive use of a dedicated public access space for private profit. No other business within BCDC's jurisdiction has so flagrantly, extensively, and knowingly violated the terms of its Permit and the MPA. Moreover, as of the date of this Order, all but one of the violations (plan approval) are ongoing and Respondents have neither removed the unauthorized structures, filed as complete the permit amendment applications necessary to seek authorization for the unpermitted construction, nor ceased the non-compliant and illegal uses of the pavilion and the unpermitted uses of the Franklin Street Plaza.

K. Based on consideration of the relevant factors set forth in Government Code Section 66641.9(a), the penalty amounts authorized by Government Code Section 66641.5(e), and the preceding findings, the Commission hereby finds that an administrative civil penalty of \$841,180 is justified to resolve this matter.

L. Pursuant to Government Code Section 66647, within 30 days of the Effective Date of this Order, Respondents shall remit payment to the Commission, by cashier's check, in the amount of \$841,180, payable to the San Francisco Bay Conservation and Development Commission – Bay Fill Clean-Up and Abatement Fund.

V. TERMS

A. Under Government Code Section 66641, any person who intentionally or negligently violates any cease and desist order issued by the Commission may be liable civilly in the sum of up to \$6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

B. This Order does not affect any duties, right, or obligations under private agreements or under regulations of other public bodies.

C. Scott's and the Port, must conform strictly to this Order.

D. This Order does not constitute a recognition of property rights.

E. This Order is effective upon issuance thereof.

VI. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Section 66639, within thirty (30) days after service of a copy of a cease and desist order issued by the Commission, any aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of the order in any judicial proceedings brought to enforce the order or for other civil remedies.

DATED: April ___, 2017

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission

List of Attachments

Attachment A: Additional Findings

Attachment B: Revised Index of Administrative Record

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

ATTACHMENT A – ADDITIONAL FINDINGS COMMISSION CEASE AND DESIST AND CIVIL PENALTY ORDER NO. CDO 2017.01

In support of and as the basis for Commission Cease and Desist and Civil Penalty Order No. CDO 2017.01 (“Order”), the Commission hereby finds, in addition to those findings set forth in Section II of the Order, as follows:

I. INTRODUCTION

A. On March 6, 1986, the Commission issued to the Port BCDC Permit No. 1985.019.00, for development activities along a six-block section of the Port’s waterfront property between Jefferson and Harrison Streets, known as Jack London Square.

B. On February 13, 1996, the Commission issued BCDC Permit No. 1985.019.08, which added Scott’s, a tenant of the Port, to the Port’s permit, and authorized the construction, use and maintenance of a 4,400-square-foot pavilion, in a portion of the Franklin Street Plaza, for shared public and private use, at a ration of 80% public to 20% private¹, and the installation of the café seating, benches, lighting and other site furnishings within the pavilion and the larger approximately 23,000 square-foot Franklin Street Plaza.

C. On July 8, 1997, the Commission split BCDC Permit No. 1985.019.08 into two permits:

1. BCDC Permit 1985.019.08A (hereafter “the Port’s Permit”) issued solely to the Port pertains to all of Jack London Square except the pavilion; and
2. BCDC Permit No. 1985.019.08B (hereinafter “the Permit”) issued to Scott’s and the Port pertains to only the pavilion.

D. On October 7, 1997, the Commission re-issued the Permit, as BCDC Permit No. 1985.19.09B, to correct the omission of a special condition that occurred during the permit split. The Permit has not been amended since that date.

II. ALLEGED VIOLATIONS

There are seven categories of alleged violations described in Sections A through G, below. The following information is provided for each category: (1) nature of the violations; (2) legal basis for the violation; and (3) description and evidence of violations.

A. Construction of Unpermitted Development

1. **Nature of Violations.** Construction of unpermitted development consisting of a:
 - a. Roof extension west of the pavilion;
 - b. Storage area and stage west of the pavilion; and

¹ The permit does not distinguish for and nonprofit events; they both constitute private use of a public space.

- c. Metal-framed entry doorway, wood and metal-framed wall, multiple moveable wall panels and ceiling tracks in the pavilion.
2. **Legal Basis for Violation.** Under California Government Code Section 66632(a), any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission.
3. **Description and Evidence of Violations.** Scott's conducted the following activities within the area of the Commission's jurisdiction without obtaining a permit or permit amendment:
 - a. **Roof Extension West of the Pavilion.** As evidenced by Port staff member Julie Braun's observations outlined in an email dated April 24, 2015, and as shown in Google Earth aerial imagery, on or about March, 2000, Scott's constructed a roof extension joining its building to the pavilion.
 - b. **Storage Area and Stage West of the Pavilion.** As evidenced by the observations of Ms. Braun, as described in an email, dated April 24, 2015, to Adrienne Klein, Chief of Enforcement, and as shown in photographs taken by Ellen Miramontes, Bay Design Analyst, during a site visit on March 12, 2013, on or about July, 2011, Scott's constructed a 255-square foot storage area.
 - c. **Metal-framed Entry Doorway, Wood and Metal-Framed Wall, Multiple Moveable Wall Panels and Ceiling Tracks in the Pavilion.** As evidenced by the observations of Tammy Borichevsky and Keith Miller, California Canoe and Kayak, in emails, dated February 25, March 3, and March 6, 2013, the first two of which included photographs, between December 28, 2012, and March 6, 2013, Scott's constructed a permanent wall in the northwest corner of the pavilion, a permanent metal-framed entry doorway on the east side of the pavilion and a retractable wall panel system to enclose the pavilion.

B. Non-permit Compliant Use of the Pavilion.

1. **Nature of Violations.** Non-permit compliant use of the pavilion through excessive private use:
 - a. **Minimum Number of Public Use Days (annual).** Providing fewer than 292 public use days per year;
 - b. **Minimum Number of Public Use Weekend Days and Nights² (winter season average).** Providing, on average per month during winter season (January – April, November and December), fewer than five (5) public use weekend days and nights;

² Permit Exhibit A defines "weekend nights" as Friday and Saturday and "weekend days" as Saturday and Sunday, which this report collectively refers to as "weekend days and nights".

- c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Holding, on average per month during winter season, more than four (4) private use weekend days and nights;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Holding, on average per month during summer season (May – October), more than three (3) private use weekend days and nights;
 - e. **Minimum Number of Public Use Weekend Days and Nights Per Month.** Providing fewer than three (3) public use weekend days and nights per month; and
 - f. **Maximum Number of Consecutive Private Use Days.** Holding more than two consecutive private use days.
2. **Legal Basis for Violations.** Special Condition II.B of the Permit and Permit Exhibit A, entitled “Guidelines for Private Use of Public Pavilion,” together set forth the following requirements:
 - a. The pavilion must be publicly available for 292 days/year and may be privately occupied for a maximum of 73 days/year;
 - b. The pavilion must be available for public use an average of five (5) weekend days and nights per month during the winter season;
 - c. The average number of weekend days and nights for private use may not exceed four (4) weekend days and nights per month during the winter season;
 - d. The average number of weekend days and nights for private use may not exceed three (3) weekend days and nights per month during the summer season;
 - e. There must be at least three (3) weekend days and nights available for public use every month; and
 - f. There must not be more than two consecutive private use days.
3. **Description and Evidence of Violations.** Staff relied on data from the Port’s property manager, who dispatched a security officer to monitor pavilion use on a daily basis, for the non-permit compliant uses of the pavilion that occurred in 2004 through 2007 and 2012 through 2015. Between 2008 and 2011, Port-generated data was not provided. In the absence of data from the Port’s property manager, staff relied on data from Scott’s for the non-permit compliant uses of the pavilion that occurred in 2008 through 2011.³

³ Commission staff believes that the data from Scott’s for 2008, 2009, 2010, and 2011 under-reports private pavilion use because whenever two sets of data are available, the Port property manager’s data shows more private pavilion use than Scott’s data.

4. **2004.** As evidenced by the information contained in the report from Rhonda Hirata, Director, External Communications, Jack London Square Marketing, dated March 31, 2005, as adjusted by Commission staff:⁴
 - a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 268 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Scott's used the pavilion an average of five (5) [vs. the maximum of four (4)] weekend days and nights in the months of January, February, March, April, November and December;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of seven (7) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
 - e. **Minimum Number of Public Use Weekend Days and Nights (per month).** In May, there were only two (2) [vs. the minimum three (3)] required public use weekend days and nights; and
 - f. **Maximum Number of Consecutive Private Use Days.** In May, there were six (6) more than two consecutive private use days. In June, there were four (4) more than two consecutive private use days. In August, there were two (2) more than two consecutive private use days.
5. **2005.** As evidenced by the information contained in the report from Rhonda Hirata, Director, External Communications, Jack London Square Marketing, dated March 31, 2006, as adjusted by staff:⁵

⁴ In calculating the minimum number of public use days, the Port's property manager counted two private events that occurred on the same day as two days of non-public use. BCDC staff has counted each of these 11 dual-event days as a single private use day, resulting in 11 more public access days than calculated by the Port's property manager.

In calculating the three monthly averages, the Port's property manager and the staff conducted their calculations differently yet reached the same or similar conclusions. The minor deviations in these results do not affect the determination of whether or not a violation has occurred.

The Port's property manager did not calculate the minimum number of public use weekend days and nights per month nor the maximum number of consecutive private use days.

⁵ In calculating the three monthly averages, Port's property manager and the staff conducted their calculations differently yet reached the same or similar conclusions. The minor deviations in these results do not affect the determination of whether or not a violation has occurred.

The Port's property manager did not calculate the minimum number of public use weekend days and nights per month nor the maximum number of consecutive private use days.

- a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 255 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Scott's used the pavilion an average of six and a half (6.5) [vs. the maximum of four (4)] weekend days and nights in the months of January, February, March, April, November and December;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of seven and six tenths (7.6) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
 - e. **Minimum Number of Public Use Weekend Days and Nights (per month).** No Violation; and
 - f. **Maximum Number of Consecutive Private Use Days.** In April there were six (6) more than two consecutive private use days. In May there were eight (8) more than two consecutive private use days. In June, there were two (2) more than two consecutive private use days. In October, there was one (1) more than two consecutive private use days. In November there were two (2) more than two consecutive private use days. In December there were nineteen (19) more than two consecutive private use days.
6. **2006.** As evidenced by the information contained in the report from Rhonda Hirata, Director, External Communications, Jack London Square Marketing, dated February 22, 2007, as adjusted by Commission staff:⁶
- a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 266 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;

⁶ In calculating the minimum number of public use days, the Port's property manager determined that there were 286 public use days whereas staff, reviewing the same data, determined that there were 266 public use days.

In calculating the three monthly averages, the Port's property manager and the staff conducted their calculations differently yet reached the same or similar conclusions. The minor deviations in these results do not affect the determination of whether or not a violation has occurred.

The Port's property manager did not calculate the minimum number of public use weekend days and nights per month nor the maximum number of consecutive private use days.

- c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Scott's used the pavilion an average of five and a half (5.5) [vs. the maximum of four (4)] weekend days and nights in the months of January, February, March, April, November and December;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of six and a half (6.5) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
 - e. **Minimum Number of Public Use Weekend Days and Nights (per month).** No Violation; and
 - f. **Maximum Number of Consecutive Private Use Days.** In March there were eight (8) more than two consecutive private use days. In May, there was one (1) more than two consecutive private use days. In October, there were two (2) more than two consecutive private use days. In November, there were two (2) more than two consecutive private use days. In December, there were three (3) more than two consecutive private use days.
7. **2007.** As evidenced by the information contained in the report from Rhonda Hirata, Director, External Communications, Jack London Square Marketing, dated April 7, 2008, as adjusted by Commission staff:⁷
- a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 278 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Scott's used the pavilion an average of four and a half (4.5) [vs. the maximum of four (4)] weekend days and nights in the months of January, February, March, April, November and December;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of four and a half (4.5) [vs. the

⁷ In calculating the minimum number of public use days, the Port's property manager determined that there were 258 public use days whereas staff, reviewing the same data, determined that there were 278 public use days.

In calculating the three monthly averages, the Port's property manager and the staff conducted their calculations differently yet reached the same or similar conclusions. The minor deviations in these results do not affect the determination of whether or not a violation has occurred.

The Port's property manager did not calculate the maximum number of consecutive private use days.

- maximum of three (3)] weekend days and nights in the months of May through October;
- e. **Minimum Number of Public Use Weekend Days and Nights (per month).** No Violation; and
 - f. **Maximum Number of Consecutive Private Use Days.** In February there was one (1) more than two consecutive private use days. In May, there were two (2) more than two consecutive private use days. In December, there were six (6) more than two consecutive private use days.
8. **2008.** As evidenced by the information contained in the report prepared by Steve Hanson, Scott's consultant, dated July 19, 2013, as modified by Commission staff's calculations:⁸
- a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 273 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Scott's used the pavilion an average of four and eight tenths (4.8) [vs. the maximum of four (4)] weekend days and nights in the months of January, February, March, April, November and December;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of five and eight tenths (5.8) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
 - e. **Minimum Number of Public Use Weekend Days and Nights (per month).** No Violation; and
 - f. **Maximum Number of Consecutive Private Use Days.** In March there was one (1) more than two consecutive private use days. In April, there were two (2) more than two consecutive private use days. In May there was one (1) more than two consecutive private use days. In August, there were three (3) more than two consecutive private use days. In October, there were two (2)

⁸ Scott's data consist of a list of 107 events, the date on which the event occurred, and the hours of duration of each event. The report totals the number of hours that the 107 events lasted and, based on this, concludes that the pavilion was occupied for a 19-day period, or at 5.35% of capacity. Scott's reached this conclusion by calculating the total number of hours the pavilion was used for private events and divided that number by 24 hours. Scott's methodology for calculating private pavilion use is flawed because any day the pavilion is subject to any private use for any amount of time counts as a private use day. Staff conducted independent calculations and reached significantly different conclusions.

more than two consecutive private use days. In December, there were two (2) more than two consecutive private use days.

9. **2009.** As evidenced by the information contained in the undated report from Scott's submitted by John Briscoe with a letter, dated June 20, 2013, as adjusted by Commission staff:⁹
 - a. **Minimum Number of Public Use Days (annual).** No violation;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** No Violation;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of three and eight tenths (3.8) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
 - e. **Minimum Number of Public Use Weekend Days and Nights (per month).** No Violation; and
 - f. **Maximum Number of Consecutive Private Use Days.** In October there were two (2) more than two consecutive private use days. In December, there was one (1) more than two consecutive private use days.
10. **2010.** As evidenced by the information contained in the undated report from Scott's submitted by John Briscoe with a letter, dated June 20, 2013, as adjusted by Commission staff:¹⁰
 - a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 277 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** No Violation;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of four (4) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;

⁹ Scott's data consist of a list of un-numbered events, and the date on which the event occurred. Staff conducted independent calculations to reach the conclusions cited herein.

¹⁰ Scott's data consist of a list of un-numbered events and the date on which the event occurred. Staff conducted independent calculations to reach the conclusions cited herein.

- e. **Minimum Number of Public Use Weekend Days and Nights (per month).** No Violation; and
 - f. **Maximum Number of Consecutive Private Use Days.** In April, there were for two (2) more than two consecutive private use days. In May there was one (1) more than two consecutive private use days. In June there was one (1) more than two consecutive private use days. In October, there were for four (4) more than two consecutive private use days. In November, there was one (1) more than two consecutive private use days. In December, there was one (1) more than two consecutive private use days.
11. **2011.** As evidenced by the information contained in the undated report from Scott's submitted by John Briscoe with a letter, dated June 20, 2013, as adjusted by Commission staff:¹¹
- a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 280 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** No Violation;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of five and one tenth (5.1) [vs. the maximum of three (3)] weekend days and nights in the months of May through October; and
 - e. **Minimum Number of Public Use Weekend Days and Nights (per month).** No Violation; and
 - f. **Maximum Number of Consecutive Private Use Days.** In March there was one (1) more than two consecutive private use days. In May, there were two (2) more than two consecutive private use days. In July there was one (1) more than two consecutive private use days. In September, there were two (2) more than two consecutive private use days. In November, there was one (1) more than two consecutive private use days. In December, there were two (2) more than two consecutive private use days.
12. **2012.** As evidenced by the information contained in the report from Michael Meyer, Director, Cushman & Wakefield of California, Inc., dated April 18, 2013, as adjusted by Commission staff:¹²

¹¹ Scott's data consist of a list of un-numbered events and the date on which the event occurred. Staff conducted independent calculations to reach the conclusions cited herein.

- a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 171 of the required 292 days;
- b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
- c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Scott's used the pavilion an average of nine (9) [vs. the maximum of four (4)] weekend days and nights in the months of January, February, March, April, November and December;
- d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of eight and half (8.5) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
- e. **Minimum Number of Public Use Weekend Days and Nights (per month).** In March, there was only one (1) [vs. the minimum three (3)] required public use weekend days and nights. In May, there were zero (0) [vs. the minimum three (3)] required public use weekend days and nights. In September, there were only two (2) [vs. the minimum three (3)] required public use weekend days and nights. In December, there were zero (0) [vs. the minimum three (3)] required public use weekend days and nights; and
- f. **Maximum Number of Consecutive Private Use Days.** In January, there was one (1) more than two consecutive private use days. In February, there were two (2) more than two consecutive private use days. In March, there were 15 more than two consecutive private use days. In April, there were 10 more than two consecutive private use days. In May, there were 19 more than two consecutive private use days. In June, there were two (2) more than two consecutive private use days. In July, there were six (6) more than two consecutive private use days. In August, there were four (4) more than two consecutive private use days. In September, there were 15 more than two consecutive private use days. In October, there were four (4) more than two consecutive private use days. In November, there were six (6) more than two consecutive private use days. In December, when construction of the new pavilion enclosure commenced, there were twenty-nine (29) more than two consecutive private use days.

¹² The Port's property manager determined that there were 182 private use days. The Port's property manager did not calculate the minimum number of public use days. The Port's property manager states that Scott's exceeded the number of consecutive private use days but did not provide this or any other calculations. Staff conducted independent calculations to reach the conclusions cited herein.

13. **2013.** As evidenced by the information contained in the report from Jennifer Koidal, General Manager, Cushman & Wakefield of California, Inc., dated March 12, 2014, as adjusted by Commission staff:¹³
- a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 207 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** On average, Scott's provided only four and six tenths (4.6) [vs. the minimum of five (5)] publicly available weekend days and nights in the months of January, February, March, April, November and December;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Scott's used the pavilion an average of eight and six tenths (8.6) [vs. the maximum of four (4)] weekend days and nights in the months of January, February, March, April, November and December;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of six and one tenths (6.1) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
 - e. **Minimum Number of Public Use Weekend Days and Nights (per month).** In January, there were zero (0) [vs. the minimum three (3)] required public use weekend days and nights. In February, there were zero (0) [vs. the minimum three (3)] required public use weekend days and nights; and
 - f. **Maximum Number of Consecutive Private Use Days.** In January, there were twenty-nine (29) more than two consecutive private use days. In February, there were twenty-eight (28) more than two consecutive private use days. In March, when construction of the new pavilion enclosure was completed, there were eleven (11) more than two consecutive private use days. In April, there were five (5) more than two consecutive private use days. In October, there were three (3) more than two consecutive private use days. In November, there was one (1) more than two consecutive private use days. In December, there were sixteen (16) more than two consecutive private use days.

¹³ The Port's property manager determined that there were 153 private use days. The Port's property manager did not calculate the minimum number of public use days. The Port's property manager states the number of weekend days and nights that the pavilion was in private use but it does not calculate the required averages. It states that Scott's exceeded the number of consecutive private use days but did not provide this or any other calculations. Staff conducted independent calculations to reach the conclusions cited herein.

14. **2014.** As evidenced by the information contained in the report from Michael Meyer, Director, Cushman & Wakefield of California, Inc., dated March 16, 2015, as adjusted by Commission staff:¹⁴
- a. **Minimum Number of Public Use Days (annual).** The pavilion was open for public use only 271 of the required 292 days;
 - b. **Minimum Number of Public Use Weekend Days and Nights (winter season average).** No Violation;
 - c. **Maximum Number of Private Use Weekend Days and Nights (winter season average).** Scott's used the pavilion an average of five (5) [vs. the maximum of four (4)] weekend days and nights in the months of January, February, March, April, November and December;
 - d. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of four and five tenths (4.5) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
 - e. **Minimum Number of Public Use Weekend Days and Nights (per month).** No Violation; and
 - f. **Maximum Number of Consecutive Private Use Days.** In April, there were five (5) more than two consecutive private use days. In May, there were three (3) more than two consecutive private use days. In June, there was one (1) more than two consecutive private use days. In October, there were three (3) more than two consecutive private use days. In November, there was one (1) more than two consecutive private use days. In December, there were five (5) more than two consecutive private use days.
15. **2015.** As evidenced by the information contained in the report from Jennifer Koidal, Vice President and General Manager, CIM Group, dated July 18, 2016, as adjusted by Commission staff:¹⁵

¹⁴ The Port's property manager determined that there were 97 private use days. The Port's property manager did not calculate the minimum number of public use days. The Port's property manager states the number of weekend days and nights that the pavilion was in private use but it does not calculate the required averages. It states that Scott's exceeded the number of consecutive private use days but did not provide this or any other calculations. Staff conducted independent calculations to reach the conclusions cited herein.

¹⁵ The Port's property manager did not calculate the required average number of weekend days and nights that the pavilion was in private use, but it does not calculate the required averages. It states that Scott's exceeded the number of consecutive private use days, closed the retractable wall panels too soon before some events and opened them too long after the end of some events, and lapsed in maintenance of floor and furniture. Staff conducted independent calculations to reach the conclusions cited herein.

- a. **Maximum Number of Private Use Weekend Days and Nights (summer season average).** Scott's used the pavilion an average of three and six tenths (3.6) [vs. the maximum of three (3)] weekend days and nights in the months of May through October;
 - b. **Maximum Number of Consecutive Private Use Days.** In February, there was one (1) more than two consecutive private use days. In May, there were three (3) more than two consecutive private use days. In October, there were four (4) more than two consecutive private use days. In December, there was one (1) more than two consecutive private use days.
- C. **Unpermitted Use of the Franklin and Broadway Street Plazas¹⁶**
1. **Nature of Violations.** The installation, storage or display of unauthorized structures as follows:
 - a. Unauthorized use of the Broadway Street Plaza by displaying a promotional vehicle adjacent to the main restaurant entrance.
 - b. Unauthorized use of the Franklin Street Plaza (outside the pavilion boundary) by installing event tents, stanchions, and planters and by storing event-related equipment including planters.
 2. **Legal Basis for Violations.** Under California Government Code Section 66632(a), any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission.
 3. **Description and Evidence of Violations.** Scott's conducted the following activities within the area of the Commission's jurisdiction without obtaining a permit or permit amendment:
 - a. As evidenced by an email from Steve Fagalde, Senior Vice President, Scott's, to Julie Braun, dated December 16, 2011, for a 30-day period each summer of the years 2000 through 2011, Scott's parked a promotional vehicle in the Broadway Street Plaza. This totals 330 days.
 - b. As evidenced by the photographs contained in the report from Rhonda Hirata, Director, External Communications, Jack London Square Marketing, dated March 31, 2005:
 - (1) On May 8, 2003, Scott's installed a tent in the Franklin Street Plaza.
 - (2) On May 9, 2003, Scott's installed a tent and stanchions in the Franklin Street Plaza.

¹⁶ Both the Franklin and Broadway Street Plazas are dedicated public access areas subject to the requirements of the Port's Permit.

- (3) On May 10, 2003, Scott's installed a tent, stanchions and planters in the Franklin Street Plaza.
- (4) On May 23, 2003, Scott's installed a tent and stanchions in the Franklin Street Plaza.
- (5) On May 25, 2003, Scott's installed a tent in the Franklin Street Plaza.
- (6) On September 20, 2003, Scott's installed a tent, stanchions and planters in the Franklin Street Plaza.
- c. For a five-day period between 9:00 am on December 7, and 9:00 am on December 12, 2012, Scott's installed a tent in the Franklin Street Plaza, as evidenced by: (a) Security Officer Tim Crosby's notes contained in the report submitted by Jennifer Koidal, General Manager, Cushman and Wakefield, dated March 12, 2014; and (b) A photograph attached to an email, dated December 19, 2012, from Maryann Starn, General Manager, Cushman and Wakefield to BCDC staff.
- d. As evidenced by a photograph attached to an email of the same date to Mr. Fagalde from Ms. Starn, Cushman and Wakefield, on December 19, 2012, Scott's installed an entry doorway and carpeted walkway with railings in the Franklin Street Plaza adjacent to the pavilion.
- e. As evidenced by photographs taken by Lee Huo, San Francisco Bay Trail, attached to an email of the same date, on February 10, 2014, Scott's stored event related equipment and placed planters in the Franklin Street Plaza.
- f. As evidenced by photographs taken by Keith Miller, California Canoe and Kayak, sometime before February 25, 2013, Scott's installed a tent in the Franklin Street Plaza, apparently for construction staging.
- g. As evidenced by photographs taken by Mr. Miller, California Canoe and Kayak, on April 28, 2013, Scott's installed planters in the Franklin Street Plaza.
- h. On April 30 and May 1, 2013, Scott's installed tents in the Franklin Street Plaza, as evidenced by: (a) Universal Protection Services' Security Officer Alan Humphrey's notes in the report submitted by Ms. Koidal, Cushman and Wakefield, dated March 12, 2014; and (b) Photographs taken by Mr. Miller, California Canoe and Kayak.
- i. As evidenced by four photographs taken by Security Officer Humphrey, submitted to Julie Braun, Port, by email, dated May 22, 2013, for a 26-hour period beginning on May 19, 2013, and ending on May 20, 2013, Scott's erected a tent in the Franklin Street Plaza.
- j. As evidenced by Universal Protection Services' Security Officer Dominic Wade's notes in the report submitted by Ms. Koidal, Cushman and Wakefield, dated

March 12, 2014, for a 24-hour period beginning at 7:00 am on June 8, 2013, and ending on June 9, 2013, Scott's erected a tent in the Franklin Street Plaza.

- k. As evidenced by observations of the staff of the Port of Oakland and summarized in a letter dated July 18, 2013, from Adrienne Klein, BCDC's Chief of Enforcement, to John Briscoe, Briscoe, Ivester and Bazel LLP, Scott's former counsel, for at least a 36-day period from June 12th to July 18, 2013, Scott's staged a promotional vehicle in the Broadway Plaza.
- l. As evidenced by a photograph attached to a letter dated December 19, 2013, to Mr. Fagalde from Ms. Koidal, General Manager, Cushman and Wakefield, on December 18, 2013, Scott's erected a tent in the Franklin Street Plaza.
- m. As evidenced by photographs taken by Ms. Klein during a site visit, on January 21, 2014, unauthorized planters and other equipment, including the public tables and chairs, were stored in the Franklin Street Plaza.
- n. On April 28, 2014, Scott's erected a tent in the Franklin Street Plaza (south of the pavilion) and also placed pipes and ladders in the Franklin Street Plaza, creating non-public conditions, as evidenced by: (a) the photograph attached to the letter, dated April 30, 2014, to Mr. Fagalde from Jennifer Koidal, Cushman and Wakefield; (b) observations by Sean Palmer, General Manager, Kincaid's Restaurant; and (c) observations by Tammy Borichevsky, California Canoe and Kayak, in an email dated April 28, 2014.
- o. As evidenced by the letter to Mr. Fagalde, dated July 2, 2014, from Monique Scott, Assistant Property Manager, Cushman and Wakefield, on July 2, 2014, Scott's staged a promotional vehicle in the Broadway Street Plaza.
- p. As evidenced by Ms. Klein's observations during a site visit on September 19, 2014, and documented with photographs, the following conditions existed at the public pavilion:
 - (1) Despite being publicly available, two of the retractable wall panels were in place along the southern, waterside of the pavilion;
 - (2) Seven unauthorized planters were in place, two next to the stage/storage area and five in the Port's public access area near the southern exit door from the restaurant;
 - (3) Several unauthorized benches were located inside the pavilion in line with the structural support columns; and
 - (4) An hydraulic jack was stored in the northwest corner of the pavilion.
- q. For approximately 40 hours beginning at 8:20 am on December 7, 2014, and ending at midnight on December 8, 2014, Scott's erected a tent in the Franklin Street Plaza and placed planters and stanchions, as evidenced by: (a) Universal

Protection Services' Security Officer Rashema Jacobs' notes in the report, dated March 16, 2015, from Ms. Koidal, Cushman and Wakefield; and (b) three photographs submitted by Mr. Miller, California Canoe and Kayak, via email on December 8, 2014.

- r. As evidenced by Security Officer Rashema Jacobs' notes in the report, dated March 16, 2015, from Ms. Koidal, Cushman and Wakefield, for approximately 15 hours beginning at 8:25 am on December 16, 2014, Scott's erected a tent in the Franklin Street Plaza.
- s. As evidenced by Keith Miller's and Jennifer Koidal's observations on September 21, 2015, Scott's erected a red carpet, stanchions and dining tables in the Franklin Street Plaza.
- t. As evidenced by photographs taken by Ade Barari on August 14, 2016, and submitted by Jennifer Koidal, CIM Group, on August 23, 2016, Scott's placed eleven planters (10 terra cotta and one metal) in the Franklin Street Plaza.
- u. As evidenced by photographs taken by Tammy Borichevsky and submitted by Keith Miller on August 15, 2016, Scott's stored four stacks of private dining tables, two serving tables, one mechanical lift, and placed seven planters (five terracotta and one metal) in the Franklin Street Plaza.
- v. As evidenced by photographs taken by Mark Madamba on August 16, 2016, and submitted by Jennifer Koidal, CIM Group, on August 23, 2016, Scott's placed eight terra cotta planters and one mechanical lift in the Franklin Street Plaza.
- w. As evidenced by photographs taken by Mark Madamba on August 17, 2016, and submitted by Jennifer Koidal, CIM Group, on August 23, 2016, Scott's placed four terra cotta planters and one mechanical lift in the Franklin Street Plaza.

D. Untimely Submittal of Private Event Schedules

1. Nature of Violations

- a. Failure by Scott's to submit to the Port by the 1st of January, April, July and October of each year, a quarterly calendar of events; and
- b. Failure by the Port to submit to BCDC by March 1st of every year, a summary of the scheduled events for the previous year; and
- c. Holding unscheduled events.

2. Legal Basis For Violations. Special Condition II.B of the permit including Permit Exhibit A, entitled "Guidelines for Private Use of Public Pavilion," sets forth the following requirements:

- a. **Quarterly Calendar of Events.** By the 1st of January, April, July and October of each year, Scott's must submit a quarterly calendar of events to the Port.

- b. **Annual Summary of Events.** By March 1st of every year, the Port must submit a summary of the scheduled events for the previous year to BCDC.
 - c. **Unscheduled Events.** The holding of an event within the pavilion or public access plaza not listed in the schedule of events, or the approval of a schedule of events that is inconsistent with the Permit Exhibit A, Guidelines for Private Use of the Pavilion, is prohibited.
3. **Description and Evidence of Violations.**
- a. **Quarterly Calendar of Events¹⁷:**
 - (1) Scott's did not submit a 2013 first quarter calendar of events. On April 5, 2013 (and again on October 1, 2013, revised), Scott's submitted a "committed" calendar of events from April 3rd through December 2013, as evidenced by an email from Jennifer Koidal, dated July 13, 2015, which renders these four reports a cumulative total of 97 days late, as of July 1, 2016;
 - (2) On January 13, 2014, Scott's submitted its first quarter calendar of events. On March 5, 2014, Scott's submitted its second quarter calendar of events. On October 1, 2014, Scott's submitted a third and fourth quarterly "activity report", as evidenced by an email from Jennifer Koidal, dated July 13, 2015, which renders these four reports a cumulative total of 104 days late;
 - (3) On January 16, 2015, Scott's submitted its first quarter calendar of events. On June 9, 2015, Scott's submitted its second quarter calendar of events. On July 1, 2015, Scott's submitted its third quarter calendar of events. Scott's did not submit a 2015 fourth quarter calendar of events, as evidenced by an email from Jennifer Koidal, dated July 13, 2015, which renders these three reports a cumulative total of 357 days late, as of July 1, 2016.
 - (4) Scott's did not submit a 2016 first quarter calendar of events. On April 27, 2016 (and again on May 18, 2016, revised), Scott's submitted its second quarter calendar of events. On April 27, 2016, Scott's submitted its third¹⁸ quarter calendars of events, as evidenced by an email from Jennifer Koidal, dated July 18, 2016, which renders these three reports a cumulative total of 208 days late, as of July 1, 2016.

¹⁷ Following the issuance of an enforcement letter, dated May 16, 2013, the Permittees submitted the annual reports for Years 2008 through 2012 on June 20, 2013, ranging from five years to three months past due. As described in staff's response to this submittal, dated July 18, 2013, staff accepted the annual reports as retroactive fulfillment of the requirement to provide the quarterly reports and the Permittees accrued no standardized fines for these 24 violations because they submitted the reports within 35 days of staff's enforcement letter, dated May 16, 2013.

¹⁸ Scott's also submitted its fourth quarter report on April 27, 2016.

- b. **Annual Summary of Events.** The cumulative total number of days late that the Permittees have submitted the annual summaries of events is 230 days as outlined below:
- (1) In 2003, the Permittees submitted the annual summary of events 54 days late, as evidenced by the letter, dated April 23, 2004, from Rhonda Hirata, Cushman and Wakefield, to Adrienne Klein.
 - (2) In 2004, the Permittees submitted the annual summary of events 30 days late, as evidenced by the letter, dated March 31, 2005, from Rhonda Hirata, Jack London Square Marketing, to Adrienne Klein.
 - (3) In 2005, the Permittees submitted the annual summary of events 30 days late, as evidenced by the letter, dated March 31, 2006, from Rhonda Hirata, Jack London Square Marketing, to Adrienne Klein.
 - (4) In 2006, the Permittees submitted the annual summary of events 53 days late, as evidenced by the letter, dated February 22, 2007, from Rhonda Hirata, Jack London Square Marketing, to Adrienne Klein.
 - (5) In 2007, the Permittees submitted the annual summary of events 37 days late, as evidenced by the letter, dated April 7, 2008, from Brian Lee, Cushman and Wakefield, to Adrienne Klein.¹⁹
 - (6) In 2013, the Permittees submitted the annual summary of events 11 days late, as evidenced by the letter, dated March 12, 2014, from Jennifer Koidal, Cushman and Wakefield to Adrienne Klein.
 - (7) In 2014, the Permittees submitted the annual summary of events 15 days late, as evidenced by the letter, dated March 16, 2015, from Jennifer Koidal, Cushman and Wakefield to Adrienne Klein.
 - (8) In 2015, the Permittees submitted the annual summary of events 149 days late, as evidenced by the letter, dated July 18, 2016, from Jennifer Koidal, CIM Group to Adrienne Klein.

E. Failure to Dedicate the Pavilion Public Access Area

1. **Nature of Violation.** Failure to dedicate the required public access area before commencement of construction of the pavilion.

¹⁹ Following the issuance of an enforcement letter, dated May 16, 2013, the Permittees submitted the annual reports for Years 2008 through 2012 on June 20, 2013, ranging from five years to three months past due. As described in staff's of response to this submittal, dated July 18, 2013, the Permittees accrued no standardized fines for these violations because they submitted the reports within 35 days of staff's enforcement letter, which is a penalty-free period within which a violator may resolve a violation, as provided for by Commission Regulation 11386.

2. **Legal Basis for Violation.** Special Condition II.B.3, Permanent Guarantee, requires the Permittees to dedicate the 4,400-square-foot public access area known as the pavilion prior to the commencement of construction.
3. **Description and Evidence of Violations.**
 - a. Sometime between February 13, 1996, the date of issuance of the permit amendment that authorized the pavilion and 2000, exact date unknown, the Permittees commenced and completed construction of the pavilion.
 - b. By letter dated May 16, 2013, Ms. Klein notified the Permittees that they had failed to dedicate the 4,400-square-foot public access area.
 - c. Following notification of this Permit violation, between May 16 and September 11, 2013, the Permittees prepared several draft legal instruments for staff's review.
 - d. On September 11, 2013, BCDC Legal Intern Simran Mahal conditionally approved a draft legal instrument, as evidenced by an email of the same date to Peter Prows, Briscoe, Ivester & Bazel, LLP, counsel to Scott's.
 - e. Between September 11 and December 13, 2013, the Permittees determined that the area covered by the lease between the Port and Scott's does not overlap with the boundary of the pavilion.
 - f. In a series of email messages between April 18 and July 24, 2014, Deputy Port Attorney Joshua Safran raised a number of issues regarding the terms of the dedication of the pavilion as a public access area. The most significant of these issues was a proposal by Mr. Safran that, due to restrictions on the Port's ability to encumber tidal lands conveyed to it by the State of California, the term of the public access dedication to be made by Scott's and the Port be limited to 66-years. Commission Staff Counsel John Bowers responded to this proposal by pointing out that that Port's proposal was based on a misconception as to the term of the dedication required by the Permit, which Mr. Safran had characterized as "permanent" or "perpetual." As Mr. Bowers advised Mr. Safran, the term of the dedication required by the Permit is not in fact "permanent," but rather, pursuant to section 10503(c) of the Commission's regulations, is limited to the duration of the permit and of the improvements that it authorizes. Mr. Bowers further advised Mr. Safran that any change in the terms of the Permit, such as a change in the term or duration of the public access dedication required by the Permit, could only occur by means of an amendment to the Permit, and that any limitation on the term of the Permit's dedication requirement would need to be accompanied by a corresponding change or reduction in the term of the Permit itself.

- g. As of the date of this Order, the Co-Permittees have neither dedicated the 4,400-square-foot public access area in the manner required by the Permit nor submitted an application to amend the Permit to change the terms, including duration, of the Permit's dedication requirement.
- F. Failure to Provide All of the Required Public Access Improvements During Public Use Days**
1. **Nature of Violation.** Failure to install and maintain on a continuous basis since the date of issuance of the permit all of the required public access improvements when the pavilion was open.
 2. **Legal Basis of Violation**
 - a. Special Condition II.B.5.c, Public Access, requires the Permittees to install “[a]t least four...public access signs, two permanent and two temporary, to facilitate shoreline public access between Franklin Street and Broadway on the Bay side of Scott’s Restaurant. The temporary signs shall be installed and removed when approved private events are held.”²⁰
 - b. Special Condition II.B.5.d, Public Access, requires the Permittees to install “[a]t least 15 tables and 35 chairs...to be in place at all times, except when the pavilion is needed for approved private events or other approved public events.”
 3. **Description and Evidence of Violations.**
 - a. As evidenced by personal observations of Keith Miller, California Canoe and Kayak, and Julie Braun, Port, in emails dated April 16 and 24, 2015, respectively, Scott’s failed to install all of the required tables, chairs and signs for a 13-year period from January 1, 2000 through July 22, 2013;
 - b. As evidenced by a photograph, dated July 22, 2013, taken by Mr. Fagalde and submitted by Peter Prows, Briscoe, Ivester and Bazel LLP, former counsel to Scott’s, on July 22, 2013, Scott’s partially resolved this violation by installing tables and chairs;
 - c. As evidenced by Ms. Klein’s observations during a site visit on September 19, 2014 and documented with photographs, the required tables and chairs were not provided;
 - d. As evidenced by two emails, dated April 16, 2014, and April 30, 2015, both from Keith Miller, Scott’s has failed to install the moveable “Public Shore” signs alongside the public tables and chairs; and

²⁰ One public access sign shall be installed at the entrance to the gangway leading to the kayak launch float that describes the rules and hours for public use of the kayak launch float.

- e. As evidenced by photographs taken by Robert Howard on August 13, 2016, and submitted by Jennifer Koidal, CIM Group, on August 23, 2016, the required moveable public shore signs were not located in the pavilion adjacent to the tables and chairs.
- f. As evidenced by photographs taken by Ade Bakari on August 14, 2016, and submitted by Jennifer Koidal, CIM Group, on August 23, 2016, the required moveable public shore signs were not located in the pavilion adjacent to the tables and chairs.
- g. As evidenced by photographs taken by Mark Madamba on August 15, 2016, and submitted by Jennifer Koidal, CIM Group, on August 23, 2016, the required moveable public shore signs were not located in the pavilion adjacent to the tables and chairs; one sign was placed bayward and outside the perimeter of the pavilion next to the bench overlooking the Bay.
- h. As evidenced by photographs taken by Mark Madamba on August 16, 2016, and submitted by Jennifer Koidal, CIM Group, on August 23, 2016, the required moveable public shore signs were not located in the pavilion adjacent to the tables and chairs.
- i. As evidenced by an email, dated August 16, 2016, from Tammy Borichevsky and Keith Miller, Scott's has failed to install both moveable "Public Shore" signs alongside the public tables and chairs.

G. Failure to Obtain Plan Approval Prior to Installation of Public Access Improvements

1. **Nature of Violation.** Failure to obtain written plan approval from the BCDC staff in advance of installing public tables and chairs.
2. **Legal Basis of Violations.** Special Condition II.A, Specific Plans and Plan Review, of the Permit states, in part, that "[n]o work whatsoever shall be commenced...until final precise ...plan information for that portion of the work have been submitted to, reviewed and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the staff."
3. **Description and Evidence of Violations.**
 - a. As evidenced by the photograph, dated July 22, 2013, taken by Steve Fagalde and submitted by Mr. Prows, on July 22, 2013, Scott's installed the required public access tables and chairs prior to receiving BCDC staff review and approval of the plans required by Special Condition II.A of the Permit.
 - b. By email to Ms. Klein, dated September 19, 2013, Mr. Prows submitted a set of design specifications for the 15 public access tables and 35 chairs.

- c. By email to Ms. Klein, dated October 15, 2013, Mr. Prows submitted a proposed public access signage plan as required by Special Condition II.B.5.c of the Permit.²¹
- d. By email to Ms. Klein, dated October 16, 2013, Mr. Prows submitted a plan-view illustration showing the proposed locations of the public furniture for staff's review and approval.²²
- e. By letter to Mr. Prows, dated October 18, 2013, Ms. Miramontes retroactively approved the design specifications for the public access tables and chairs and requested changes to the signage plan.
- f. By email to Ms. Miramontes, dated October 30, 2013, Mr. Prows submitted a revised signage plan.²³
- g. By letter to Mr. Prows dated November 19, 2013, Ms. Miramontes approved the signage plans, which resolved this violation.

²¹ The plans, which are not dated and do not indicate who prepared them, have the following titles: "Public Pavilion Regulatory Signs: Location/Site Plan," "Public Pavilion Regulatory Signs: Exhibit Plan" and "Public Pavilion Regulatory Signs: Exhibit Plan, Sign Specifications."

²² The plans, which are not dated and do not indicate who prepared them, have the following titles: "Public Pavilion Table and Chair Exhibit" and "Public Pavilion Table and Chair Exhibit, Page 2."

²³ The plans are entitled "Public Pavilion Regulatory Sign Specifications," dated October 22, 2013, and prepared by Steve Hanson.

**Scott's Jack London Seafood Inc. and the Port of Oakland, Violation Report/Complaint for Administrative
Imposition of Civil Penalties
Revised Index of Administrative Record (2/3/2017)**

	Document Description	Date
1	BCDC Permit No. 1985.019.08A	2/13/96
2	BCDC Permit No. 1985.019.09B	10/7/97
4	Letter and report from Rhonda Hirata, Cushman and Wakefield, to Adrienne Klein, dated April 23, 2004	4/23/04
5	Letter and report From Rhonda Hirata, Director, External Communications, Jack London Square Marketing, Dated March 31, 2005	3/31/05
6	Letter and report From Rhonda Hirata, Director, External Communications, Jack London Square Marketing, Dated March 31, 2006	3/31/06
7	Letter and report From Rhonda Hirata, Director, External Communications, Jack London Square Marketing, Dated February 22, 2007	2/22/07
8	Letter and report From Rhonda Hirata, Director, External Communications, Jack London Square Marketing, Dated April 7, 2008	4/7/08
9	Communication between BCDC staff and permittees, dated December 14, 2011 and January 13, 2012	12/14/2011, 1/13/2012
10	Email from Steve Fagalde, Senior Vice President, Scott's, to Julie Braun, dated December 16, 2011	12/16/11
11	Communications between BCDC staff and permittees, dated February 1 (meeting), March 9 (meeting), March 12 (submittal from Scott's), March 26 (letter to Scott's), July 10 (meeting), August 23 (letter from Scott's), September 12 (letter to Scott's), October 28 (submittal from Scott's), and November 20 (letter to Scott's), 2012	2/1/12, 3/9/12, 3/12/12, 3/26/12, 7/10/12, 8/23/12, 9/12/12, 10/28/12, 11/20/12
12	Photograph and e-mail to BCDC staff, dated December 19, 2012, from Maryann Starn, General Manager, Cushman and Wakefield to BCDC	12/19/12
13	Photograph and e-mail to Mr. Fagalde from Maryann Starn, Cushman and Wakefield, dated December 19, 2012	12/19/12
14	Communications between BCDC staff and permittees, dated January 9, January 16 (email and a letter), February 27, March 14 (plan review), May 30 (site visit notes and letter), June 3, September 3, September 5, September 6 (letter), September 30 (applications), October 29 (letter), and November 25, 2013	1/9/13, 1/16/13, 2/27/13, 3/14/13, 5/30/13, 9/3/13, 9/5/13, 9/6/13, 9/30/13, 10/29/13, 11/25/13,
15	Photographs Taken By Ellen Miramontes, Bay Design Analyst, During a Site Visit on March 7, 2013	3/7/13
16	Emails and/or Photographs from Tammy Borichevsky and Keith Miller, California Canoe and Kayak, to BCDC, Dated February 25, March 3, March 6, April 11, April 28, April 30, May 1, 2013	2/25/13, 3/3/13, 3/6/13, 4/11/13, 4/28/13, 4/30/13, 5/1/13
17	Report from, Michael Meyer, Director, Cushman & Wakefield of California, Inc., dated April 18, 2013	4/18/13
18	Julie Braun's E-mail Dated April 24, 2015 - Duplicate. See #55	4/24/15
19	May 16, 2013 Enforcement Letter from BCDC to the Permittees	5/16/13
20	May 16, 2013, Application Letter from BCDC to the Permittees	5/16/13
21	Security Officer Humphrey, submitted to Julie Braun, Port, by email, dated May 22, 2013	5/22/13
22	Undated Report From Scott's, Submitted By John Briscoe With a Letter, Dated June 20, 2013	6/20/13
23	Letter dated July 18, 2013, from Adrienne Klein, BCDC's Chief of Enforcement, to John Briscoe, Briscoe, Ivester and Bazel LLP	7/18/13
24	Report Prepared By Steve Hanson, Scott's Consultant, Dated July 19, 2013. Received by BCDC on July 23, 2013	7/19/13
25	Photograph, dated July 22, 2013, taken by Mr. Fagalde and submitted by Peter Prows, Briscoe, Ivester and Bazel LLP, former counsel to Scott's, on July 22, 2013	7/22/13
26	Email dated September 11, 2013, from BCDC Legal Intern Simran Mahal to Peter Prows, Briscoe, Ivester & Bazel, LLP, counsel to Scott's, that conditionally approved a draft legal instrument (includes LI submitted on September 6, 2013)	9/11/13
27	Email and design specifications for tables and chairs to Ms. Klein from Peter Prows, dated September 19, 2013	9/19/13
28	Email and proposed public access signage plan to Ms. Klein from Mr. Prows, dated October 15, 2013	10/15/13
29	Email and plan-view illustration showing the proposed locations of the public furniture to Ms. Klein from Mr. Prows, dated October 16, 2013	10/16/13
30	Letter to Mr. Prows from Ms. Miramontes, dated October 18, 2013	10/18/13
31	Email to Ms. Miramontes from Mr. Prows, dated October 30, 2013	10/30/13
32	Letter to Mr. Prows from Ms. Miramontes, dated November 19, 2013	11/19/13
33	Letter from staff to permittees, dated December 12, 2013, regarding legal instrument	12/12/13
34	Letter dated December 19, 2013, and photograph, to Mr. Fagalde from Ms. Koidal, General Manager, Cushman and Wakefield	12/19/13
35	Email from Linda Meyer to Margie Turrel, dated April 8, 2013, called "Pavilion Use Dates 2013-14 and attachment (forwarded to Adrienne Klein by Jenni Koidal)	4/8/13
36	Photographs taken by Ms. Klein during a site visit, on January 29, 2014	1/29/14
37	Design Review Board meeting materials and minutes on February 10, 2014	2/10/14
38	Photographs and e-mail from Lee Huo, San Francisco Bay Trail, dated February 10, 2014	2/10/14
39	Communications between BCDC staff and permittees, dated April 17, May 9, May 15, May 19, May 20, May 21, May 23, May 28, July 9, July 25, September 7, and September 23, 2014	4/17/14, 5/9/14, 5/15/14, 5/19/14, 5/20/14, 5/21/14, 5/23/14, 5/28/14, 7/9/14, 7/25/14, 9/7/14, 9/23/14
40	Report from Jennifer Koidal, General Manager, Cushman & Wakefield of California, Inc., dated March 12, 2014	3/12/14
41	Revised Annual Report - Public Pavilion Usage 2013	3/12/14
42	Series of email messages between April 18 and July 24, 2014, between Deputy Port Attorney Joshua Safran and BCDC Staff Counsel John Bowers, regarding the legal instrument	4/18/2014 - 7/24/2014
43	Observations by Sean Palmer, General Manager, Kincaid's Restaurant	4/28/14

	Document Description	Date
44	Observations by Tammy Borichevsky, California Canoe and Kayak, in an email dated April 28, 2014	4/28/14
45	Photograph attached to the letter, dated April 30, 2014, to Mr. Fagalde from Jennifer Koidal, Cushman and Wakefield	4/30/14
46	Letter dated May 16, 2014, to staff from Mr. Fagalde, wherein he declined to follow the Design Review Board's recommendation	5/16/14
47	Letter to Mr. Fagalde, dated July 2, 2014, from Monique Scott, Assistant Property Manager, Cushman and Wakefield	7/2/14
48	Ms. Klein's observations during a site visit on September 19, 2014, documented with photographs	9/19/14
49	Meeting between BCDC staff and permittees on November 18, 2014	11/18/14
50	Three photographs submitted by Mr. Miller, California Canoe and Kayak, via email on December 8, 2014	12/8/14
51	Email from Steve Hanson to Julie Braun, dated January 16, 2015. Subject: Public Quarterly Submittal for January through March 31, 2015. Attachment: Pavilion 2014 1st quarter dates January - March 31, 2014	1/16/15
52	Communications between BCDC staff and permittees, dated January 29, February 20, 2015	1/29/15, 2/20/15
53	Report from Michael Meyer, Director, and Jenni Koidal Cushman & Wakefield of California, Inc., dated March 16, 2015	3/16/15
54	Annual Report - Public Pavilion Usage 2014	3/16/15
55	Design Review Board meeting materials and minutes on April 6, 2015	4/6/15
56	Observations of Keith Miller, California Canoe and Kayak, in an email, dated April 16, 2015	4/16/15
57	Observations of Julie Braun, Port, in an email, dated April 24, 2015 - Duplicate See #18	4/24/15
58	Email, dated April 30, 2015, from Keith Miller	4/30/15
59	Email between Kelly Hodgins and Jenni Koidal, dated June 9, 2015, at 2:13 p.m. and 5:51 p.m. Subject: Revisions for 2nd Quarter Pavilion Report from Scott's JLS	6/9/15
60	Email from Kelly Hodgins to Jenni Koidal, dated July 1, 2015. Subject: 3rd quarter Pavilion Report Scott's JLS	7/1/15
61	Email from Jennifer Koidal, dated July 13, 2015, which includes four 2013 quarterly reports, four 2014 quarterly reports, & three 2015 quarterly reports	7/13/15
62	Keith Miller's and Jennifer Koidal's observations on September 21, 2015	9/21/15
63	Email from Steve Hanson to Julie Braun, dated January 12, 2016. Subject: Public Quarterly Submittal for January through March 31, 2015. Attachment: Pavilion 2014 1st quarter dates January - March 31, 2014	1/12/16
64	Communication between Adrienne Klein and 3 staff members of the City of Oakland on February 5, 2016	2/5/16
65	Email from Jenni Koidal to Adrienne Klein, dated June 28, 2016. Subject: BCDC. Attached: 2015 Pavilion Use	6/28/16
66	Email and 3, 2016 Quarterly Reports from Jennifer Koidal, Vice President and General Manager, CIM Group, dated July 18, 2016	7/18/16
67	Letter from Jenni Koidal to Adrienne Klein, dated July 18, 2016 and 2015 Annual Report	7/18/16
68	Letter from Jenni Koidal to Adrienne Klein, dated July 18, 2016 and 2016 Annual Report	7/18/16
69	Annual Report - Public Pavilion Usage 2015 (No Report Attached)	7/18/16
70	Letter from Jenni Koidal to Adrienne Klein, dated August 1, 2016. Subject and Attached: 1st and 2nd quarter pavilion use	8/1/16
71	Photographs taken by Tammy Borichevsky and submitted by Keith Miller on August 15, 2016	8/15/16
72	Photographs taken and submitted by Tammy Borichevsky and Keith Miller on August 16, 2016	8/16/16
73	Photographs taken by Robert Howard on August 13, 2016, by Ade Barari on August 14, 2016, and by Mark Madamba on August 15, 16, and 17, 2016, and submitted by Jennifer Koidal, CIM Group, on August 23, 2016	8/23/16
74	October 20, 2016 Enforcement Committee Meeting and Public Hearing Minutes	10/20/16
75	November 3, 2016 Commission Meeting and Public Hearing Minutes	11/3/16
76	Letter and attachments to Marc Zeppetello from Michael P. Verna, Bowles and Verna LLP	12/8/16
77	Documents Added to the Record After Issuance of the Violation Report	
77	Deposition Subpoena for Production of Business Records issued to Scott's Jack London Seafood, Inc.	12/22/16
78	Port of Oakland Statement of Defense	
79	Scott's Statement of Defense (including Declarations and Exhibits)	
80	Scott's Jack London Seafood, Inc. Balance Sheets for December 2015 and December 2014	
81	BCDC Summary and Analysis of Scott's Jack London Seafood Inc. Event Invoices for the Years 2014 - 2016	
82	BCDC Letter to the Port of Oakland re: Apparent Violations of BCDC Permit No. 1985.085.00A	7/26/00
83	Scott's Letter to BCDC re: Request Chages to Guidelines for Private Use of Public Pavilion	6/1/01
84	BCDC Response Letter to Scott's Request for Amendment 11 to BCDC Permit No. 1985.085.00A	6/26/01
85	Letter to BCDC from The Port of Oakland Environmental Department	3/30/94
86	BCDC Application Form, Attachment A, Box 5, Project Information	3/30/94