

# 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

BRIDGEWAY 558 REAL PROPERTY LLC  
(Trident/Ondine Restaurants)  
558 BRIDGEWAY  
SAUSALITO, CA 94965

STIPULATED CEASE  
AND DESIST AND  
CIVIL PENALTY ORDER  
NO. CDO 2017.02

Effective Date: October 5, 2017

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The San Francisco Bay Conservations and Development Commission (“BCDC” or “Commission”) and Bridgeway 558 Real Property, LLC (“Bridgeway”) enter into this Stipulated Cease and Desist and Civil Penalty Order (“Order”), and the Commission issues the Order pursuant to Government Code Sections 66638 and 66641.6. The Commission and Bridgeway are collectively referred to as “Parties.” Bridgeway is sometimes referred to as “Permittee.”

## I. FINDINGS

- A. BCDC Permit No. M1975.102.00 (“the Permit”), issued to Ronald MacAnnan, then owner of the restaurant structure, authorized the removal and replacement of a single, split-level, 2,637-square-foot dining deck in the Bay, attached to a pre-existing structure, and for the replacement of caps and piles on a one-for-one basis.
- B. In 1980, the Trident Restaurant was renamed Horizons. Ondine, a second restaurant exclusively open for private events, occupies the second floor of the structure.
- C. **Past Enforcement History.** In October 1999, BCDC staff received a report of the unauthorized placement of a 15-foot-wide boat dock with two pilings and a gangway on City property located adjacent to Horizons/Ondine Restaurants (“the Restaurants”). BCDC staff contacted the City and learned that Trident, LLC, then owner of the Restaurants and successor in interest to the permittee, Mr. MacAnnan, was actively pursuing local approval of the structures under construction, as well as a lease with the City to expand onto adjacent City property. BCDC staff delayed commencing an enforcement action until Trident, LLC obtained a lease and local approval from the City, which are both required to complete a Permit amendment application to authorize the structures after-the-fact.

On April 23, 2001, after having had ample time to negotiate a lease and receive local approval from the City yet failing to do so<sup>1</sup>, BCDC staff wrote Trident, LLC a letter that commenced the standardized fines process for the unauthorized boat dock, gangway, and pilings. The Restaurants were sold before the violation was resolved.

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<sup>1</sup> The City would not provide local discretionary approval until the boat dock satisfied the uniform building code’s ADA accessibility requirements. Trident, LLC alleged hardship in meeting this local requirement but never filed the necessary paperwork with the City to receive an exemption from the accessibility requirement.

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- D. In May 2003, the Restaurants were transferred from Trident, LLC to Robert A. Freeman, with notice of the ongoing enforcement investigation by BCDC resulting from the unauthorized boat dock, gangway, and pilings.
- E. On November 24, 2003, BCDC staff wrote Mr. Freeman a letter that commenced the standardized fine process for the unauthorized boat dock, gangway, and pilings, and explained that for years, BCDC had been waiting for a Permit amendment application to authorize the project after-the-fact, but that the prior owner never obtained a lease from the City to secure a legal interest in the property where the violation is located, or discretionary approval from the City.
- F. On May 28, 2004, Mr. Freeman transferred the property to Bridgeway 558 LLC; Mr. Freeman is the Executive Officer of Bridgeway 558 LLC.
- G. On November 24, 2004, the standardized fine accruing for the unauthorized boat dock, gangway, and pilings reached the statutory maximum of \$30,000.
- H. From 2004 until 2012, BCDC staff did not hear from Mr. Freeman, or any Bridgeway 558 LLC representative.
- I. In 2012, Horizons Restaurant reverted back to its historic name, The Trident.
- J. On May 3, 2012, BCDC staff received an email from the City, inquiring if a permit had been issued for the boat dock. BCDC staff responded that the boat dock is unauthorized and that years ago, when staff was working with Mr. Freeman to authorize the project, the City informed staff that the project could not obtain local discretionary approval until it became ADA accessible, or the owner of the Restaurants received a hardship exemption from that requirement.
- K. On May 28, 2012, Bridgeway 558 LLC, through its then agent Don Olsen, submitted an incomplete permit amendment application, associated with a restaurant remodeling project, to expand the back deck of the structure, which would increase the footprint of the pre-existing structure, located over the Bay. The application did not include a request for after-the-fact authorization for the boat dock, gangway and pilings constructed more than a decade earlier.
- L. On June 22, 2012, BCDC staff responded to the application and requested: (1) a complete narrative description of the already completed and proposed work shown in the plans provided with the application; (2) a valid grant deed or long-term lease issued to either Bridgeway 558 LLC or Mr. Freeman for both the properties on which the Restaurants and its fixtures are located; (3) a processing fee; (4) proof of local discretionary approval; (5) environmental documentation; and (6) a public access proposal.

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- M. In July 2012, Bridgeway 558 LLC commenced work on expanding the back deck of the structure without authorization.
- N. On August 14, 2012, Bridgeway 558 LLC, through Don Olsen, submitted a second incomplete application to amend the Permit.
- O. On August 23, 2012, BCDC staff responded to the application and requested: (1) a complete project description; (2) a valid property interest for APN 065-172-015, presently owned by the City; (3) the remainder of the processing fee; (4) proof of local discretionary approval; (5) environmental documentation; and (6) a public access proposal.

The letter also commenced the standardized fine process for unauthorized deck expansion work that was the subject of the requested amendment. Mr. Freeman was given two options to resolve the violations: either submit a complete amendment application and subsequently obtain an amendment to the Permit, or remove all unauthorized development.

- P. On September 12, 2013, after not receiving a response for over one year, staff wrote Mr. Olsen a letter to provide notice that: (1) the amendment application remained incomplete; (2) the proposed public access was insufficient; (3) the standardized fine accruing for the unauthorized deck expansion had reached the statutory maximum of \$30,000; and (4) staff would commence formal enforcement if the application remained unfiled. Staff did not receive a response.
- Q. On October 24, 2014, staff informed Mr. Freeman that his representative, Mr. Olsen, was ineffective and recommended that Mr. Freeman retain a new representative.
- R. On October 31, 2014, Mr. Freeman retained a new representative, attorney John Scheuring, to oversee the completion of the amendment application and resolve the enforcement matter.
- S. On December 8, 2014, staff provided Mr. Scheuring a list of the outstanding documents and information required to complete the amendment application. Staff worked with Mr. Scheuring through 2015, and although some progress was made, the application remained incomplete.
- T. On October 13, 2015, staff sent Mr. Scheuring an email explaining that the following documents and information were needed to file the application as complete: (1) confirm that the built size of the dock is 1,172 square feet and, therefore, fits within the area Mr. Freeman has leased from the City; (2) provide a copy of the fully executed lease granted from the City to Mr. Freeman that includes a legal description and all exhibits; (3) provide the outstanding \$250 application fee; (4) provide proof of local discretionary approval in form of a Conditional Use Permit issued by the City; and, (5) although not needed to file the application but necessary to assure a staff recommendation of approval for the project, provide an adequate public access proposal.

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- U. On October 16, 2015, Mr. Scheuring responded by email inquiring if BCDC requires a written statement or a drawing to confirm the built size of the dock and that it fits into the area subject to the lease. Mr. Scheuring did not provide a copy of the fully executed lease. He promised to provide the outstanding \$250 application fee, the local discretionary approval, and a public access proposal but as of the mailing of this Order, has not yet done so.
- V. On April 14, 2017, after not receiving any further communication from Bridgeway 558 LLC, BCDC staff informed both Mr. Freeman and Mr. Scheuring by letter that the Executive Director had terminated the opportunity to resolve the penalty portion of the enforcement matter using the standardized fine process and would commence a formal enforcement proceeding.
- W. On May 18, 2017, attorney Keith Garner informed BCDC staff that Mr. Freeman, upon receiving the April 14<sup>th</sup> letter, retained him as a new representative to complete the Permit amendment application and resolve the enforcement action.
- X. On June 16, 2017, the Executive Director commenced a formal enforcement proceeding by issuing a Violation Report and Complaint for the Imposition of Administrative Civil Penalties (“Violation Report”).
- Y. In summary, the violations of the McAteer-Petris Act alleged by the Executive Director in the Violation Report are:
  - 1. Placement, maintenance, and use of unauthorized fill in the Bay consisting of a boat dock, gangway, and pilings.
  - 2. Placement, maintenance, and use of unauthorized fill in the Bay consisting of a significant remodel of the pile-supported restaurants, including the expansion of two decks.
- Z. On June 29, 2017, BCDC staff met with Bridgeway’s counsel at BCDC’s office to discuss the Violation Report, the status of the incomplete application to amend the Permit and a public access proposal, and the administrative penalties necessary to resolve the violations. Additional settlement discussions between Bridgeway’s counsel and BCDC staff occurred following the June 29<sup>th</sup> meeting.
- AA. On August 11, 2017, the Parties agreed to a settlement in principle on the terms of this Order, subject to review and approval at a public hearing by the Commission’s Enforcement Committee and a public meeting by the Commission, respectively.
- BB. On August 23, 2017 Bridgeway completed the application to amend the Permit.
- CC. On September 7, 2017, the Enforcement Committee held a noticed public hearing to consider this Order and all comments pertaining to this Order. Upon the recommendation of the Enforcement Committee, the Commission considered and approved this Order at a public meeting on October 5, 2017.

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DD. The Commission and Bridgeway enter into this Order to settle the claims alleged against Bridgeway as summarized in Paragraph I.Y, above. The Parties consider this Order to constitute a reasonable settlement of disputed claims, which will result in full compliance with the Permit.

**II. CEASE AND DESIST ORDER**

- A. Pursuant to California Government Code Section 66638, the Commission orders Bridgeway, and Bridgeway hereby agrees, to comply fully with the following conditions of this Order.
- B. On and after the Effective Date of this Order, Bridgeway shall cease and desist from all activity in violation of the Permit and McAteer-Petris Act.
- C. By no later than 30 days after issuance of the amended Permit and BCDC staff approval of public access plans, Bridgeway shall make available for public access use, as required by the amended Permit:
  - 1. An ADA accessible public restroom, available whenever the Restaurants are open to the public, which is currently from 10:30 a.m. to 9:00 p.m. seven days a week, but may be reasonably adjusted by the Restaurants from time to time in their reasonable discretion (the "Hours of Operation");
  - 2. An approximately 80-square foot public access seating area on the north side of the restaurant with two south-facing benches and one trash container;
  - 3. An ADA-accessible four-foot-wide by approximately 101-foot-long designated pathway across the wooden deck used for patron parking from Bridgeway Avenue to the public restroom, and an ADA-accessible four-foot-wide approximately 75-foot-long designated path from the Restaurants' ADA ramp under the awning of the main structure to public access seating area; and
  - 4. A total of three public shore signs designating the public seating area and a total of three restroom signs designating the availability of the public restroom and hours of use.

**III. CIVIL PENALTY ORDER**

- A. Pursuant to California Government Code Sections 66641.5 through 66641.9, the Commission hereby assesses and orders Bridgeway to pay a civil penalty of \$30,000, which Bridgeway agrees to pay in settlement of this matter. This penalty payment shall constitute Bridgeway's full and complete satisfaction of their liability for civil penalties for all alleged violations summarized in Paragraph I.Y, through the date of this Order.
- B. Pursuant to Government Code Section 66647, within 30 days of the Effective Date of this Order, or November 5, 2017, Bridgeway shall remit the penalty payment to the Commission by cashier's check, in the amount of \$30,000, payable to the San Francisco Bay Conservation and Development Commission – Bay Fill Clean-Up and Abatement Fund.

**IV. STIPULATED PENALTIES**

A. Upon written demand by the Executive Director listing specific violations of this Order, Bridgeway shall pay stipulated penalties in accordance with the following schedule for each failure to comply in a timely manner with the following requirements of this Order:

1. Failure to make available to the public no later than 30 days after issuance of the amended Permit and BCDC staff approval of public access plans, pursuant to and consistent with the requirements of the amended Permit and BCDC staff-approved plans: (a) an ADA accessible public restroom, available during the Hours of Operation, required by Paragraph II.C.1; (b) an approximately 80-square foot public access seating area on the north side of the restaurant with two south-facing benches and one trash container, required by Paragraph II.C.2; (c) an ADA-accessible four-foot-wide by approximately 101-foot-long designated pathway across the wooden deck used for patron parking from Bridgeway Avenue to the public restroom, and an ADA-accessible four-foot-wide approximately 75-foot-long designated path from the Restaurants' ADA ramp under the awning of the main structure to the public access seating area, required by Paragraph II.C.3; and (d) a total of three public shore signs designating the public seating areas and a total of three restroom signs designating the availability of the public restroom and hours of use, required by Paragraph II.C.4.

<b>1 to 7 days late:</b>	\$100 per day per item listed in subsections (a) through (d) above
<b>8 and more days late:</b>	\$200 per day per item listed in subsections (a) through (d) above

- B. Bridgeway shall pay stipulated penalties, upon written demand by the Executive Director, by cashier's check payable to the San Francisco Bay Conservation and Development Commission Bay Fill Clean-Up and Abatement Fund, no later than 30 days after receipt of such demand. Payment of stipulated penalties shall not relieve Bridgeway of any other obligation or liability to comply with the requirements of this Order or the Permit, except that payment of stipulated penalties shall constitute full and complete satisfaction of Bridgeway's liability for civil penalties for the violation giving rise to the penalty.
- C. If the Executive Director demands stipulated penalties in the amounts stated above for any delay in compliance, Bridgeway hereby waives the right to seek judicial review of their liability for such stipulated penalties.
- D. If Bridgeway fails to comply with any of the above-referenced requirements of Paragraph II.C for 30 or more days, the Commission reserves the right to request that the Attorney General petition the superior court for the issuance of a preliminary or permanent injunction, or both, to compel immediate compliance with this Order and for the imposition of civil penalties for any violations of this Order. In determining appropriate civil penalties, the court shall take into

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consideration all relevant circumstances, in accordance with Government Code Section 66641(b), and shall not apply the stipulated penalties specified in Section IV of the Order, which are intended solely for the purpose of providing an expeditious procedure for securing timely compliance with this Order as an alternative to the remedies provided by the statute. If the Commission files a court action to seek penalties greater than the amounts stated herein, for any delay in compliance of 30 or more days, Bridgeway reserves the right to seek judicial review of their liability for such penalties.

**V. EXTENSION OF TIME**

- A. If Bridgeway believes that an event arising from causes beyond the control of Bridgeway, or its contractors or agents has occurred that will delay timely compliance with any provision of Paragraph II.C and justifies an extension of a compliance date set forth herein, Bridgeway shall notify BCDC staff by e-mail within 5 business days of when Bridgeway first knew of the event. The e-mail notice shall describe the cause or causes of the delay, the anticipated length of time the delay may persist, the measures taken or to be taken by Bridgeway to prevent or minimize the delay, the schedule by which these measures will be implemented, and the additional time requested to comply.
- B. The Executive Director may grant an appropriate extension of time to comply with any provision of Paragraph II.C, in response to a request made by Bridgeway pursuant to Paragraph V.A, for good cause shown. If the Executive Director grants an extension of time, Bridgeway shall be excused from liability for any stipulated penalties associated with the delay or impediment to performance.

**VI. ADDITIONAL TERMS**

- A. **Notice.** All notices required or desired to be sent pursuant to this Order shall be provided to:

**For the Commission:**

Maggie Weber, (415) 352-3668, maggie.weber@bcdc.ca.gov  
Marc Zeppetello, (415) 352-3655, marc.zeppetello@bcdc.ca.gov  
San Francisco Bay Conservation and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102

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**For Bridgeway:**

Robert A. Freeman, 415-331-3232, rfreems@comcast.net

Bridgeway 558 Real Property, LLC  
558 Bridgeway  
Sausalito, CA 94965

with a copy to:

Keith Garner (415) 774-2991, kgarner@sheppardmullin.com  
Sheppard, Mullin, Richter & Hampton LLP  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, CA 94111-4109

- B. **Release.** This Order shall constitute a full settlement of the violations summarized in Paragraph I.Y, through the date of this Order and a full release from further penalties with respect to such violations, but does not limit the Commission from taking appropriate enforcement action concerning other or future violations.
- C. **Expiration.** This Order shall expire 30 days after Bridgeway has: (a) complied fully with the requirements of Paragraph II.C; (b) paid all civil penalties due pursuant to Paragraphs III.A and III.B; and (c) paid all stipulated penalties demanded by the Executive Director pursuant to Paragraphs IV.A and IV.B.
- D. **Waiver.** Bridgeway hereby waives its right to seek judicial review of this Order.
- E. **Binding Effect.** This Order shall apply to and be binding upon: (1) the Commission, its Executive Director, and staff; and (2) Bridgeway and its officers, directors, employees and agents.
- F. **Disclaimer of Effect of Order on Private Rights or Laws and Regulations of Other Public Bodies.** This Order shall have no effect on any duties, rights, or obligations established by private agreement or by the laws and regulations of other governmental bodies.
- G. **Disclaimer of Recognition of Property Rights.** This order shall not constitute any recognition of property rights.
- H. **Strict Compliance Obligation and Possible Court Action For Noncompliance.** Strict compliance with this Order is required. Pursuant to the McAtteer-Petris Act Sections 66640 and 66641.7(b), failure to comply with the terms of this Order or to pay all applicable administrative civil penalties may result in the Commission

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filing a lawsuit against Bridgeway. Pursuant to the McAteer-Petris Act, Section 66641, any person who intentionally or negligently violates a Commission cease and desist order may be liable civilly for up to \$6,000 for each day in which such violation persists. Prior to filing any lawsuit under this Section, the Commission will meet and confer with Bridgeway with the goal of resolving any alleged violation and avoiding litigation.

FOR THE SAN FRANCISCO BAY CONSERVATION  
AND DEVELOPMENT COMMISSION

Dated: \_\_\_\_\_

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LAWRENCE J. GOLDZBAND  
Executive Director

BRIDGEWAY 558 REAL PROPERTY LLC  
(Trident/Ondine Restaurants)

Dated: 8/23/17

  
\_\_\_\_\_  
ROBERT A. FREEMAN  
Executive Officer

CONFIDENTIAL DOCUMENT UNDER PROTECTIVE ORDER