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To: [Marie Gilmore](#); [Scharff, Greg@BCDC](#); [Malan, Margie@BCDC](#); [Trujillo, Matthew@BCDC](#)
Cc: [Lou Vasquez](#); [Mali Richlen](#)
Subject: Additional Written Testimony for Seaplane Investments, LLC ER 2019.063.00 - Enforcement Hearing May 30, 2023
Date: Saturday, May 27, 2023 12:19:15 PM
Attachments: [ER 2019.063.00 Respondent Submission of Additional Evidence.pdf](#)

All:

Please see the attached additional testimony submitted on behalf of Seaplane Investments, LLC, in connection with ER 2019.063.00, Agenda Items 5 and 6 on the Enforcement Committee Agenda for May 30, 2023.

Please add this to the administrative record.

Thanks very much.

Jillian

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May 25, 2023

Re: Enforcement Order 2019.063.00 – Respondent’s Submittal of Additional Written
Testimony in Response to Recommended Enforcement Decisions & Public Comment

Commissioner Gilmore:

On behalf of Seaplane Investments, LLC (“SI” or “Respondent”), we are providing this supplemental letter to respond to certain misstatements made in staff’s Recommended Enforcement Decision CCD 2023.002.00 (“RED”) and the additional letter from Edgcomb Law entered into the record as “Public Comment” related to Agenda Item #6, which comment letter was received by staff in March 2023, but was never shared with SI. SI only learned about this letter along a separate letter filed by Edgcomb Law in January 2023, when such documents were included as part of the Agenda Package for CCD 2023.002.00 on May 19, 2023. It is unclear why staff chose not to share either letter with SI when both directly address the alleged claims against SI. Because staff declined to share these letters with SI anytime between March and May, this is Respondent’s first opportunity to address these allegations and those made in the May 19, 2023, RED.

1. Misstatements of Fact in the RED; SI Has Tried Repeatedly To Resolve the Alleged Violations;

As mentioned in Respondent’s Statement of Defense, dated September 2, 2022 (“September SOD”) and the Statement of Defense, dated December 1, 2022 (“Dec SOD”), SI’s primary goal throughout this process has been to bring the property into compliance by completing a permitting effort to cover any features on the property that BCDC alleges require after-the-fact (“ATF”) authorization and to construct public access improvements, including sea level rise improvements and a new connection to the County of Marin’s bike path parallel to 101 as requested by staff.

There are several statements in the RED suggesting that SI has “failed to resolve” the outstanding violations and failed to file a permit application for these features. The Public Comment from Edgcomb law spends quite a bit of time making a similar claim. While acknowledging that SI filed a permit application in February 2022 for all of these features, staff incredulously suggests that “In more than 14 months that Respondent has owned the property, [Respondent] has failed to resolve the permit . . . or even to make meaningful steps toward resolving them.” (RED, p. 9.) This statement is patently false. The RED also incorrectly states that “Respondent states it wishes to invest resources in resolving the violations, but staff’s application filing letter, dated March 30, 2022, remains entirely unanswered.” (RED, p. 16.) These statements are not only provably false based on documents in the record, but reflect either a complete neglect of the actual facts or bad faith on the part of enforcement counsel. As indicated in both the September SOD, the December

SOD, and the administrative record, it is well established that SI has made repeated, concerted efforts to resolve all of the alleged violations and to work with BCDC permitting staff to process a permit for all alleged violations on the site, even features that likely were in place prior to the passage of the McAteer-Petris Act. The record, which would be reviewed by the full Commission and by a reviewing court of law, clearly shows that SI has not only submitted a permit application for all of the features identified in CCD 2023.002.00, but they have provided supplemental information in the form of a 20+ supplemental package to address BCDC's informational questions at substantial cost. And most importantly, the permit application and all supplemental materials, including a shoreline improvements plan is currently pending before BCDC permit analyst, Mr. Sam Fielding.

For the avoidance of any doubt, here are the facts as established by documents in the record.

SI filed a permit application to cover all ATF features on February 28, 2022, approximately 1 month after the permits were assigned to SI and within seven months of owning the property. (See the full February 28, 2022, Application included as Exhibit 23 to the July 29, 2022, Violation Report.) The February 2022 Application included not just the ATF requests, but also included a new shoreline improvements plan to address staff's requests to enhance existing public access. BCDC responded to the February 2022 Permit Application by requesting additional information on March 30, 2022. (See Exhibit 26 to the July 29, 2022, Violation Report.) SI provided additional information supporting the permitting application as an attachment to the September SOD, including a specific public access improvement plan. (See September SOD, Exhibit 1, CRKW Drawings.)

SI then worked with additional landscape architects, Jeffrey Miller and Associates, to update the plan to not only address BCDC's informational requests in the March 30, 2022, letter, but also to include newly identified features, the second heliport pad and walkways, that enforcement counsel identified for the *very first time* in the July 29, 2022, Violation Report as unauthorized. SI filed a detailed permit application supplement providing this information with BCDC on April 7, 2023, (See Attachment A to this letter), to which BCDC permit analyst, Sam Fielding, responded on May 8, 2023 (See Attachment B to this letter.)

The Permit Application package provided to date requests authorization for:

1. Public access improvements and construction of a new, raised bike path connection as requested by staff (alleged violations #1-2);
2. Seaplanes, seaplane storage, repair/maintenance and fueling tank (alleged violation #3);
3. Second helipad and walkways (*new* alleged violation #4);
4. U-shaped boat docks (alleged violation #5); and
5. Replaced emergency seaplane ramp (alleged violation #6).

(July Violation Report, Exhibit 23; Attachment A to this letter.) SI copied enforcement staff on the April 7, 2023, package to Mr. Fielding, to ensure they were kept apprised of SI's continued efforts to bring the site into compliance. It is unclear why enforcement counsel continues to suggest that SI has failed to respond to BCDC's informational requests or provide supplemental information on the Permit Application. That's simply not the case. The April 2023 supplemental package was substantial and cost SI tens of thousands of dollars to complete. SI is now working to address the few items that Mr. Fielding identified in the May 8, 2023, letter, including preparing a sea level rise analysis to address flooding on the site, which is estimated to cost approximately \$48,000 for the plan alone and does not include the significant cost associated with implementing adaptation measures to address flooding. (See Attachment C with a draft Scope of Work from Moffat and Nichol, dated January 18, 2023.) SI has paid tens of thousands of dollars – causing them to operate in the red- to complete these permitting efforts all while struggling to defend itself against a barrage

of inappropriate fines in excess of \$200,000, and staff continues to erroneously claim that SI has not taken any remedial actions.

One of the remedies identified in the RED is to file a permit application to request ATF authorization for the violations at issue by December 31, 2023 (See RED, p. 1), which SI has already done. All SI wants is to focus its attention and resources on completing this permitting effort to bring the site into compliance, to improve existing public access, and to address sea level rise and flooding on the property.

We have attached the April 2023 supplement and BCDC's response (Attachments A and B) and are sharing them with the Enforcement Committee to clarify the misstatements made in the RED and to ensure that these permitting documents are included in the administrative record as integral evidence establishing SI's ongoing efforts to bring the site into compliance.

We want to reiterate that SI has not yet taken issue with BCDC's assertion that all of the features at issue require authorization (although certain features appear to pre-date the McAteer-Petris Act). Instead, SI has tried tirelessly to work as a reasonable actor by filing a permit application for all of the features without complaint. All would like to be able to get out from under the threat of \$200,000+ in inappropriate fines to focus its efforts on compliance and complete the ATF permitting process.

The RED incorrectly states that "Respondent has failed to resolve any of the six allegations outlined in the Violation Report and Complaint, despite having received an initial contact letter from BCDC on February 18, 2020, more than two and a half (2.5) years ago." (RED, p.3.) This statement is false. SI did not purchase the property until July 21, 2021, one and a half (1.5) years *after* the letter referenced by BCDC. Logic dictates that SI could not possibly have received the February 18, 2020, letter. This letter was addressed to Mr. Price, the previous owner. BCDC enforcement counsel has repeatedly tried to assign the crimes, delays, and failure to comply by the previous owner- Mr. Price - to SI, which is not only inappropriate, but violates state law and basic tenets of fairness, due process, and equal protection under the law.

SI has taken many steps to resolve the alleged violations since purchasing the property in July of 2021. In addition to filing the permit application and detailed supplemental materials, SI has:

1. Removed vehicles that were of concern to BCDC within Yolo Street;
2. Added public access signage along the public access pathway;
3. Added two ADA parking spaces with signs;
4. Met with County officials on several occasions to discuss the proposed bike path connection; and
5. Submitted an interim public access improvements plan including constructing a raised bridge to reach the Marin bike path to protect against flooding.

These actions hardly reflect a Respondent who is failing to work towards resolving the issues on the site. Quite the contrary, this is clear substantial evidence of a property owner who has taken tangible steps toward compliance, even as staff has moved the goal post for compliance repeatedly.

As established in the administrative record by BCDC's own timeline of events, all of these actions were taken within 1.5 years of ownership, whereas the previous owner – who has never once been fined– failed to address *any* of these compliance issues in over 20+ years of ownership and over 12 years of discussions with BCDC about these issues. The suggestion that SI should have anticipated a potential \$180,000 fine associated with the outstanding violations based on a due diligence review is preposterous. BCDC has never once, in all of its correspondence and violation notices sent to Mr. Price over a decade between 2010-2020 regarding these alleged violations, levied fines against Mr. Price. Indeed, the correspondence between Mr. Price and BCDC suggested only that a permit

application would be required, which SI has already provided and is working to finalize with permitting staff.

The RED also suggests that “Respondent has not submitted a written settlement proposal.” (RED, p. 4.) Here again, this statement is false and belies what appears to be a concerted effort to paint SI as unreasonable and unwilling to work with enforcement staff, which could not be farther from the truth. Without waiving privileged protections of specific settlement proposals, SI has submitted three different detailed settlement proposals that include sea level rise improvements, public access improvements, full permitting for all ATF features, at one point a Supplemental Environmental Project. All of the offers would allow for full permitting of the site, sea level rise analysis and adaptation measures, and would avoid causing financial hardship and potential foreclosure on the property. All of these offers were summarily rejected by staff simply because they wanted more money in fines.

To be clear, we remain confident that both the Commission and a reviewing court would determine that fines are not appropriate against SI for the six alleged violations, but in the interest of reaching a reasonable settlement with BCDC and bringing about compliance, SI at one point even offered to pay a certain amount in fines simply to resolve the matter. SI provided a detailed Appendix J analysis supporting all of its offers. Staff has yet to provide a detailed response to any one of these offers except to say simply that they want more money in fines. SI has been trying to settle this matter in earnest for the past year, but cannot agree to inappropriate and excessive fines that will prevent compliance and lead to potential foreclosure of the property.

The RED also suggests that SI never responded to the Cease and Desist Orders (“CDOs”) regarding the emergency seaplane ramp request (RED, p. 16). This is also provably false from the documents BCDC itself has placed on the record. Mr. Sharp, SI’s previous attorney, filed a 20-page package complete with Declarations from the Federal Aviation Administration (“FAA”) on July 14, 2022, directly with Mr. Plater to specifically respond to the CDOs. (See further discussion below on the need for emergency repairs). The package clarified the details surrounding the necessary emergency repair. (See Exhibit 28 to the July 29, 2022, Violation Report and discussion below.) It is both disingenuous and false to suggest that SI never responded to the CDOs.

SI’s attempts to comply and work reasonably with staff are clear in the voluminous documents in the record, including two different permit submittals, repeated responses to BCDC requests, phone calls, emails, and letters. It boggles the mind how enforcement counsel can suggest with a straight face that “Respondent has elected to ignore BCDC and its regulatory requirements.” (RED, p.16.) These kind of statements reflect the type of attitude and behavior that SI has been dealing with in engaging with enforcement counsel over the past year, which in no way serves the public good or protects precious Bay resources. For some unknown reason, enforcement counsel continues to ignore the existing documents on the record evidencing SI’s clear attempts to comply. The fact that certain permitting submittals require additional information is standard practice in permitting with BCDC as staff almost universally asks for additional information when responding to permit applications and hardly stands as evidence that SI has been “ignoring BCDC’s regulatory requirements”. It often takes months of back and forth discussions with staff to provide a complete application. The fact that SI did not provide what BCDC considered a complete application with its first submittal – particularly in light of BCDC having moved the ball of compliance by identifying a brand new violation in the sprawling July Violation Report requiring revisions to the permit application – is hardly evidence that SI was ignoring regulatory requirements.

On the contrary, SI has been working with two different landscape architects, coastal engineers, the County, and attorneys to meet the complicated and ever-evolving compliance requirements laid out by staff for this site.

2. Emergency Seaplane Ramp Repair; SI Could Not Legally Comply With the Cease and Desist Orders

The RED's characterization of the emergency seaplane ramp repair as a "Major Construction Project" smacks of either a fundamental misunderstanding of the work completed or a bad faith attempt to make SI look like a malicious actor, similar to efforts made in the Edgcomb Letter. Indeed, the truth is much more mundane and innocent. As stated in the September SOD, the July 14, 2022, letter from Mr. Sharp (Exhibit 23 to the July 29, 2022, Violation Report), and the December SOD, the seaplane ramp repair was essential and required to address an emergency situation involving a dilapidated trex board ramp that was damaging seaplanes. The construction resulted in in-kind replacement of a ramp that is a total of 451 square feet in size or approximately 0.01 acres. The Commission currently recognizes this type of activity as minor enough to receive a general authorization under Regionwide Permit 3, which allows for up to 1,000 square feet of dock construction, and typically requires only consent approval. This is not a major construction project and categorizing it as such is highly disingenuous.

As is evidenced in the record, Seaplane Adventures was forced to complete these emergency repairs to ensure safe operations under its FAA Air Carrier Certificate. (See September SOD, Declaration of Thorpe, and July 14, 2022 Letter to Mr. Plater, Exhibit 23, July Violation Report.) We submitted pictures of the damage to the seaplanes caused by the dilapidated trex board ramp. (See Exhibit H to December SOD). This type of hazard is considered a violation of the Seaplane Adventure's Air Carrier Certificate pursuant to safety regulations, which require it to ensure that its seaplane business is "properly and adequately equipped and able to operate safely under" aviation safety rules set out by statute and by FAA regulations. ((49 U.S.C. §§ 44705, 44711; 14 CFR Part 119; See Sharp September 2022 SOD, Declaration of Thorpe.)

Critically, the CDOs were addressed to SI, Seaplane Adventure's landlord, who could not legally comply with the demand in the CDOs as it would detrimentally impact a wholly separate business entity. If SI, the landlord, came in and unilaterally removed an essential safety feature of Seaplane Adventures, thereby shutting down a historic seaplane operation and causing FAA violations, SI would be subject to criminal and civil liability. It is well settled law that public agencies must act within their legal authority and are expected to follow established procedures and processes. Failing to comply with the law in issuing orders is a clear abuse of discretion that is regularly overturned by reviewing courts. *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners*, 91 Cal.App.4th 1344, 111 Cal. Rptr. 2d 598 (Cal. Ct. App. 2001). BCDC cannot require or compel citizens to engage in activities that are prohibited by law or that would infringe upon their legal rights. Accordingly, BCDC was not authorized to make the demands in the CDOs and such orders would be summarily dismissed by a court of law.

SI explained all of this in the July 14, 2022, letter, to which enforcement counsel never responded and continues to ignore in the RED. Instead, enforcement counsel responded by issuing a sprawling Violation Report two weeks later identifying six violations – one of which had never before been identified by BCDC - with maximum penalties of \$30,000 for each.

In the RED, staff concedes that "only the uses as they existed onsite as of Jan 1, 1974, are grandfathered." We have provided to staff an aerial of the site as it existed in 1957, which was included in the April 7, 2023 Permit Application Supplemental Package (See Attachment A to this letter), which clearly shows that the *entire area at issue*, was filled in 1957, including the heliport pad and walkway area. The small seaplane ramp at the time was concrete and covered the same footprint as the emergency repair completed in March 2022.

3. The Fact that SI Did Not Commit Any of the Violations Is Highly Relevant

Staff concedes that SI did not commit any of the violations, but then amazingly suggests that this fact “is irrelevant.” (RED, p. 9). This statement is not supported by the McAteer-Petris Act, the Government Code, Title 14 regulations, Appendix J guidelines or California case law. We are floored that staff would attempt to make this assertion as culpability and fault are key factors in determining liability and civil penalties under the McAteer-Petris Act. (CA Gov Code 66641.9). The fact that SI had nothing to do with any of the six violations – and five of them happened before SI’s ownership – is HIGHLY relevant to the analysis of the degree of culpability, nature, gravity, and prior history of violations, which factors the Commission must consider when determining the amount of civil penalties that would be appropriate here. (CA Gov Code 66641.9).

We agree with the assertion that when SI accepts the obligations under the permits through assignment, it is obligated to comply with its terms and conditions. However, such assignment does not also include accepting purely punitive penalties associated with previous crimes or bad actions undertaken by Mr. Price during his 20+ year ownership of the property. The requirement related to permit assignment is to bring the property into compliance, which should be BCDC’s primary goal under the Bay Plan and McAteer-Petris, and which SI has been attempting to do. The suggestion in the RED (p. 8) and the Edgcomb Letter that BCDC is authorized under the McAteer-Petris Act to hold SI accountable for all crimes, delays, and bad actions of previous owners is ludicrous and violates basic tenets of due process, fairness, equal treatment, and the language of McAteer-Petris, which clearly states that the Commission is only authorized to bring violations against the “person or governmental agency [who] has undertaken, or is threatening to undertake” the violation or placement of unauthorized fill. CA Gov Code 66638.

Five of the six violations took place under Mr. Price’s ownership. To the extent that any civil, punitive penalties are appropriate for these five alleged violations, such fines must be levied against the party that undertook the violation, Mr. Price. It is particularly troubling that staff has proposed to push the penalty clock to start decades before SI could have done anything to address or prevent the alleged violation. One wonders how such an arbitrary and aggressive stance could ever be supported by either the Government Code or the factors identified in Appendix J, which require strict consideration of culpability, previous violations, and the efforts taking to resolve the issue. SI is responsible for bringing the property into compliance, which it has been diligently trying to do since purchasing the property.

Enforcement counsel likes to repeatedly tout *Leslie Salt* for the proposition that the McAteer-Petris Act is at all times and universally a strict-liability statute, suggesting that culpability, as he puts it “is irrelevant.” This is a blatant misreading of the *Leslie Salt* case, the McAteer-Petris Act, and BCDC’s regulations. In *Leslie Salt*, the court allowed a strict liability application in the very limited circumstances in which a midnight dumper placed several hundred tons of fill and was completely unknown to both BCDC and the property owner at the time. *Leslie Salt v BCDC*, 153 Cal.App.3d 605, 609. (1984). In this limited circumstance, BCDC had no one else to hold accountable, and public welfare considerations applied to allow BCDC to hold the innocent property owner responsible. *Id.*

But even in *Leslie Salt*, where the damage was extensive, and there was no other entity to blame, BCDC granted the innocent owner an opportunity to cure the violation before starting the penalty clock against the innocent property owner (Leslie Salt was given time to remove the fill material before being subject to penalties), *Leslie Salt*, 153 Cal.App.3d 605, 609. (1984). Here, the violator (or dumper) is well known to BCDC, Mr. Price. He exists and is still in business. He was the main focus of attempts to bring the property into compliance for over 10 years and failed to do so. The actual fill at issue here is not several hundred tons, but rather 808 square feet or 0.01 acres of fill and the innocent owner has taken repeated actions to address the issues. There is simply no reason supported by law or common sense to leave the previous owner free from all liability and to uphold

maximum civil penalties against the innocent owner who is trying to comply. This approach is particularly egregious violation #4 related to the heliport pad and walkways, which alleged violation was lodged against SI for the very first time in the July Violation Report with a \$30,000 price tag and absolutely *no opportunity to cure prior to issuing penalties*. Indeed, as stated in the September SOD and the December SOD, we remain confused as to why civil penalties, if appropriate at all, are not directed to Mr. Price.

SI has no issue bringing the property into compliance and has been diligently trying to do so. What we take significant issue with- and a reviewing court would agree – is the attempt to apply and inappropriate strict-liability standard to apply maximum punitive penalties based on claims of culpability and previous bad actions on the part of another party. Penalties, we might add, that will quite literally prevent compliance and the preservation of Bay resources, which is BCDC's primary mission. Taking this approach risks sending the site into foreclosure, which will leave the property dilapidated for decades. Staff's approach here defies logic, contradicts public policy, and undermines BCDC's mandate to protect the Bay.

4. Civil Penalties Would Cause a Financial Hardship:

In response to claims made by staff and Edgcomb Law (a party that has absolutely no basis for making assertions related to Respondent's financial standing), that SI would not face financial hardship in paying the proposed maximum civil penalties, we are providing the attached 2022 Profit and Loss Statement for Seaplane Investments, LLC, which was shared with staff during settlement negotiations, and should be added to the record. As told repeated to staff, in addition to being wildly inappropriate, the maximum fines currently proposed would cause a significant financial hardship to a company that is currently operating in the red. SI's only asset is the 242 Redwood Highway Ave property whose key tenant on the property is Seaplane Adventures, the tenant and entity that runs the seaplane operations and provides a significant portion of SI's income.

The attached balance sheet shows SI operating at a loss of \$140,000 annually, due in large part to the fees associated with trying to address BCDC's concerns and the moving target of compliance (hiring consultants, landscape architects, coastal engineers, and lawyers, installing public access signage, painting parking lines, adding ADA spaces, etc.). To date, SI has spent almost \$100,000 in attempts to bring the property into compliance, which sum does include the cost it has spent defending itself against egregious and inappropriate punitive penalties. The significant financial impact that would result from paying an additional \$200,000+ in civil penalties will make compliance impossible and likely would lead to potential default on the property and ultimate foreclosure. Without waiving any claim that such fines are inappropriate and should be dismissed, we provide the attached Profit and Loss statement to refute claims that SI would not face any financial hardships. We respectfully ask that it be added to the record as highly relevant evidence under 14 CCR 11329 in helping Commissioners determine Respondent's "ability to pay" as required under both Government Code § 66641.9(a) and the Appendix J Guidelines. Including this information will not substantially impact any other party as staff has already seen this document; however, not including it will substantially prejudice SI and impair the Commission's ability to adequately review the appropriate amount of administrative civil liabilities under the Government Code and the Appendix J Guidelines.

As stated repeatedly throughout the September SOD, the December SOD, and this letter, SI's primary goal has been and continues to be bringing the site into compliance. Unfortunately, if SI is forced to pay \$200,000+ in unjustified fines, it will not be able to afford completing the permit process, which includes paying a landscape architect, a biologist, and coastal engineers to complete a sea level rise assessment, constructing new public access improvements, and sea level rise adaptation measures to address flooding. The company will fold and the property will go into

foreclosure and remain dilapidated, preventing BCDC's goal and mission to protect the public trust and Bay resources.

5. Admission of December Statement of Defense Is Required:

There have been suggestions made in the RED and direct claims in the Edgcomb Letter that the December 1, 2022, Statement of Defense ("SOD") should not be considered with respect to the six violations. The December 1, 2022, is highly relevant evidence admissible under 14 CCR 11329 and must be considered to avoid substantially prejudicing SI. The contradictory and unnecessarily confusing communications with staff between 2021-2022 caused Mr. Sharp, SI's previous counsel, to specifically reserve the right to file additional evidence in the September SOD because he assumed more time would be required to both understand the violations at issue in two different enforcement efforts under ER 2019.063.00 and to provide SI with a fair defense. Highlighting just a few of the confusing and inconsistent messages received from staff:

- Being told verbally that the seaplane ramp could be repaired by Ms. Klein to Mr. Singer at a site visit, then receiving two CDOs ordering SI to remove the ramp and charging a maximum penalty for completing the replacement in kind.
- Receiving a 30-day letter indicating that violations were being resolved through the February 2022 Application process (March 30, 2022, letter).
- Then receiving a sprawling violation report (July 2022) saying that each of the features included in the February 2022 Application triggered a \$30,000 penalty and referencing brand new features as violations.
- Receiving a standardized fines letter three days later in August 2022 under the same enforcement number (2019.063.00) for three different violations from those listed in the July Violation Report.
- Finally being asked by staff to delay the hearing process in September to resolve all violations only to then be told that SI missed its window to appeal and have its rights adjudicated.

Understandably confounded by this process, SI specifically reserved the right to submit supplement evidence as part of the September SOD given the confusing nature of the varied and inconsistent allegations. It took several discussions between Mr. Trujillo and Mr. Sharp, in September to even determine which violations were still at issue, and Mr. Trujillo himself was confused by the inconsistent communications.

The December SOD specifically supplements the Sharp September SOD and became necessary to adequately defend and adjudicate SI's rights once staff clarified by email from Ms. Klein to Rudder Law Group in November 2022 (who had taken over representation from Mr. Sharp) that all of the nine violations would be addressed in the same enforcement hearing. The December SOD provides new, critical evidence that is highly relevant to the proceeding and would substantially prejudice SI if it is not considered in conjunction with assessing fines related to the six violations. No other party would suffer from including this evidence as Mr. Plater himself attempted to respond to the December SOD claims in the RED. Courts have repeatedly held that agencies must consider relevant evidence provided before an adjudicatory hearing, particularly as is the case here, when the evidence establishes that the agency has not proceeded in a manner required by law and abused its discretion. *Western States Petroleum Associates v California Air Resources Board* 9 Cal.4th 559 (1995). Accordingly, we are confident that the Commission would remand this issue back to the Enforcement Committee if the Committee were to choose to ignore the substantial evidence on the record provided in the December SOD.

The supplemental information provided herein is critical to the Commission's adjudication of the facts and highly relevant evidence admissible under 14 CCR 11328 and 11329. Failure to accept

the information below and attached would substantially prejudice SI. No other party will suffer in anyway by the acceptance of the information provided here, and it is critical to ensure a fair hearing and adjudication of SI's rights.

Accordingly, we assume the Enforcement Committee will include and consider these critical documents in its adjudication of SI's rights and obligations under ER 2019.063.00. And we are confident that Commissioners – and a reviewing court – would demand the same.

We want to thank the Enforcement Committee for its time in reviewing all of the extensive materials in this matter. We know that Commissioner's time is extremely valuable and had hoped to work out a settlement with staff to avoid this hearing. However, we look forward to the opportunity to have SI's rights fairly adjudicated and to identifying a solution that will both ensure compliance of this dilapidated property that has been left derelict for decades and avoid bankrupting a small business and shuttering a historic seaplane operation.

Thank you in advance for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jillian Blanchard', with a stylized flourish at the end.

Jillian Blanchard
Rudder Law Group

Encl

CC:
Matthew Trujillo
Greg Scharff
Margie Malan
Lou Vasquez
Mali Richlen

ATTACHMENT A



RUDDER LAW GROUP

NAVIGATING THROUGH ENVIRONMENTAL REGULATION

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April 7, 2023

Sam Fielding, Permit Analyst
San Francisco Bay Conservation & Development Commission
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San Francisco, CA 94105
Phone: 415.352.3662

SUBJECT: 30-Day Letter: 242 Redwood Highway New Shoreline Improvements and After-the-Fact Authorizations; BCDC Permit Application for Nonmaterial Amendment to Permit No. 1973.014.05

Dear Sam:

Thank you for BCDC's response letter dated March 30, 2022, ("**BCDC's 30-Day Letter**") to the permit application for the 242 Redwood Highway New Shoreline Improvements and After-the-Fact Authorizations ("**SI Improvement and ATF Project**" or the "**Project**") filed with BCDC on February 28, 2022 ("**SI Permit Application**"). On behalf of the applicant, Seaplane Investments, LLC ("**SI**"), we are providing this detailed response to BCDC's 30-Day Letter to update and supplement the SI Permit Application.

With this permitting effort, SI is proposing to permit any features on the Project site that may require BCDC's authorization, including seaplane storage repair and maintenance, additions to floating docks, a seaplane fuel tank, the restored seaplane ramp, and a heliport pad and walkway in order to address all outstanding enforcement issues identified under Enforcement Matter ER2019.063, and any alleged violations of Permit 1973.014.01 and Permit M1985.030.01. This supplement also includes a revised Permit Application Form (**Exhibit A**) to address BCDC's request to authorize these features as a nonmaterial amendment as Permit 1973.014.01.

In addition, the Project includes proposed new shoreline and public access improvements to address BCDC staff's requests to improve the existing public access. The shoreline improvements included in the revised application are based on the public access improvements previously proposed by SI in the February 28, 2022, Permit Application and its Statement of Defense, dated September 1, 2022 (See Figure in **Exhibit B**) as further refined by SI's architects in 2023 to improve public access and build a public access connection to the existing Marin County bike path, pending approval by Marin County (See Revised **Site Plan** with proposed public access improvements, **Exhibit C**).

In sum, the updated application includes the following features, which are specifically defined in the attached revised Permit Application Form (**Exhibit A**):

After the Fact Requests:

1. Seaplane storage, repair and maintenance
2. Seaplane Fuel Tank
3. U-shaped floating docks - one long and two short cross beams
4. Helipad and walkways

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 7, 2023

5. Restored Seaplane Ramp

New Shoreline Improvements:

1. New ADA parking spots
2. New composite boardwalk with asphalt transitions connection to Marin County bike path (pending County approval)
3. New pole mounted public access signage along the public access pathway

See **Exhibit C** with a revised and detailed Site Plan, which depicts all of these features.

SI is eager to bring the property into compliance and intends for this permitting effort to address all outstanding enforcement issues on the property. We have copied BCDC's enforcement team on this letter to keep all parties within BCDC informed. (See discussion below regarding the Cease and Desist Order related to the restored seaplane ramp.)

Below we have identified all of the informational requests included in BCDC's 30-Day Letter and have provided SI's responses to help move the permitting process forward.

Note that SI has already removed the asphalt overlay across Yolo Street to provide elevated access to the heliport pad authorized in Permit M1985.030.00, which was three inches, not three feet as identified in BCDC's 30-Day Letter. In addition, SI is not proposing to repair docks at this time. Accordingly, these features have been removed from the draft Project Description provided below and have been removed from the revised Application Form, attached as **Exhibit A**.

1. Total Project and Site Information

- a. Installing improvements to enable required shoreline access. The improvements would consist of:
 1. A **[28-foot-long by 10-foot-wide]**, 280-square-foot wooden boardwalk, supported by **[8 number of 12-inch material]** piles;
 2. One [approximately **6.5-foot-long by 10-foot-wide**], -square-foot asphalt ramp connecting the wooden boardwalk to the Marin County bike path and one **[7-foot-long by 12-foot-wide]** -square-foot asphalt ramp connecting to the seaplane parking lot and shoreline access path;
 3. Modifying existing parking spaces for three vehicles to accommodate two **9-foot-wide by 18-foot-long** ADA parking spaces along Bolinas Street;
- b. The project additionally proposes after-the-fact authorization of the following components:
 1. A **63-square-foot** concrete seaplane fuel tank and fueling pumps [*unclear when installed, but we believe it has been in place for several decades*];
 2. A **19'-10" foot wide x 30'3" foot-long (608 total square feet)** concrete seaplane launch ramp, [**installed in 2022**], which was restored to its original 1957 concrete footprint. (*See the attached revised site plan (**Exhibit C**) and let us*

know whether you need any additional information regarding the design of this feature);

3. A **63 square feet** fuel tank;
4. Addition of existing 357 square-foot floating seaplane dock;
5. Storage of, and repairs to, a maximum of [**five**] seaplanes; and
6. Existing helipad and two walkways.

*Please verify whether the proposed project has been described in full; if not, please provide any missing details including the information in [**brackets**]. Additionally, please provide further detail concerning the proposed work and unauthorized work completed in the Bay and shoreline band described above, including materials, dimensions, and years completed.*

SI Response: All brackets have been filled and all proposed work has been included. As described above, we have removed any reference to dock repair and the elevated walkway across Yolo Street because they are either not proposed (dock repair) or no longer present (walkway). We also may implement adaptive management measures in the future to address sea level rise as identified in the sea level rise assessment, which will be provided separately.

2. **Fill in the Bay and Shoreline Band Information**

The proposed project appears to include work in the Commission's Bay and Shoreline Band jurisdictions. Please note that given the presence of tidal marsh vegetation within your proposed project site, the Bay is defined as extending up to five feet above mean sea level for this area or to the upland extent of the marsh vegetation if it is below this elevation. The shoreline band is further defined as the area between the Bay and 100 feet landward of and parallel with that line. Please revise your provided project plans to delineate BCDC jurisdiction on the site.

SI Response: See revised Site Plan included as **Exhibit C**, which clearly delineates BCDC's Bay and shoreline band jurisdiction.

It is not clear from your application which portions of the project will occur within the 100-foot shoreline band versus in the Bay jurisdiction. Please complete Boxes 3 and 4 of the application form for an administrative permit and provide all project details relevant to the Commission's jurisdictions.

SI Response: Please see the attached revised Permit Application Form (**Exhibit A**), which updates the information in Boxes 3 and 4 to include all features identified above.

3. **Project Plans**

Please provide a site plan that includes property lines, existing and proposed structures or improvements, the shoreline [up to five feet above Mean Sea Level], any marshes, wetlands, or mudflats, the corresponding 100-foot shoreline band line, scale, north arrow, date, and the name of the person who prepared the plans.

SI Response: Please See revised Site Plan included as **Exhibit C**, which identifies all property lines,

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 7, 2023

existing and proposed structures and improvements, the shoreline, and the corresponding 100-foot shoreline band line, scale, north arrow, date, and the name of the architect who prepared the plan.

Please also clarify the following details:

1. *The Commission's jurisdictions on the project site;*

SI Response: See revised Site Plan included as **Exhibit C**, which clearly delineates BCDC's Bay and shoreline band jurisdiction.

2. *It does not appear the boat docks were included in the project plans. Please update the plans to include these structures and specify the dimensions of the boat docks and any pilings, and indicate which ones were preexisting and those that are after-the-fact constructions you are requesting approval for;*

SI Response: See revised Site Plan included as **Exhibit C**. As indicated above, no new construction is proposed for these docks. In addition, as confirmed by BCDC in its July Violation Report, dated July 28, 2022, Exhibits 8, and 11-13, BCDC confirmed that the existing u-shaped dock was permitted under Permit 1973.014.05. Accordingly, SI is only requesting authorization for the three added cross beam docks constructed in approximately 2011, 2018, and 2019. (See **Exhibit D** of this package for copies of the relevant exhibits from the July Violation Report from BCDC.) Note that this is a request for after the fact authorization for construction carried out by another party. The total square footage of cross beams docks to be authorized after the fact is 357 square feet, as indicated in the revised BCDC Permit Application Form, **Exhibit A**.

3. *Clarify the extent of area dedicated to seaplane storage, how many seaplanes may be on site, and the dimensions of the heliport access ramp and whether and how it contributes to onsite ponding following tidally induced site flooding;*

SI Response: See the revised Application Form in **Exhibit A** and the revised Site Plan included as **Exhibit C** for the dimensions of the heliport pad and walkways.

We are not sure what is meant by the heliport access ramp, but the helipad and the two walkways have been in place for decades and do not contribute significantly to ponding. These features are significantly smaller than the previous concrete pad and footprint that existed in 1957 (**See Exhibit E** for an aerial showing the concrete pad in place in 1957).

4. *Specify the maximum parking capacity to be provided, and if there will be spaces dedicated for public access. The existing permit authorizes 17 parking spaces for houseboat residents. Please indicate where these spaces are located – we believe it is Parepa Street - and provide an exhibit that shows all parking areas with parking spaces shown;*

SI Response: The Project will provide two ADA public access spaces along Bolinas Street. (See **Exhibit C** for the exact location.) The 17 spaces provided as houseboat parking are

located along Parepa street and are indicated on the revised Site Plan (**Exhibit C**).

5. *As public access is proposed as a part of your project, please provide a public access and/or open space exhibit that clearly indicates the area to be dedicated as public access and/or open space, including width, length, elevations, and monuments, where appropriate. The exhibit must be legible when the exhibit is reduced to 8 1/2" x 11" and include a graphic scale. Please also indicate if any of the parking spaces will be dedicated public shore parking spaces that are free and open to the public.*

SI Response: With the exception of the requests for after the fact authorizations, all work proposed in this application will go towards improving and expanding public access. Please see the proposed public access improvements on **Exhibit C**, including the proposed bike path connection, the public access pathway, and new ADA parking. SI also will be completing a sea level rise analysis for the public pathway and will include any of the proposed sea level rise improvements identified in the sea level rise analysis as part of the public access package. The current estimate of total public access provided is 5,439 square feet.

4. **Processing Fee**

Your application appears to qualify for a nonmaterial amendment to a major permit. As it is the result of an enforcement action, it is subject to double the standard application processing fee. Please note that Appendix M of the Commission's Regulations define the total project cost as "expenditures, including the cost for planning, engineering, architectural, and other services, made or to be made for designing the project plus the estimated cost of construction of all aspects of the project both inside and outside the Commission's jurisdiction," and should include all the new and after-the-fact work that you are requesting approval for. Your application states that the total project cost is \$50,000. Please confirm the total project cost as stated in your application as \$50,000, or provide an updated estimate. If this total project cost is accurate, a processing fee of \$600 is required for continued processing of the application. If your total project cost is different, please provide an updated estimate and we will let you know what the associated permit fee is.

SI Response: SI agrees that a nonmaterial amendment is appropriate here. SI has estimated the cost to complete the project and permit the after the fact features as \$50,000; however, the actual costs of the Project will depend on the outcome of the sea level rise assessment and any immediate adaptive measures that may be necessary to address flooding. Depending on design, it could cost upwards of \$500,000. We will calculate and submit fees once the sea level rise assessment is complete.

5. **Proof of Adequate Property Interest**

Please submit documentation, such as a copy of a grant deed or lease which demonstrates that the applicant has adequate legal interest in the property, or a letter which authorizes the applicant to act on behalf of the property owner for all matters pertaining to this permit. It appears that Marin County owns Yolo Street and you will need local approval for any work in the Yolo Street right-of-way before we can file the application for this project. Please also indicate the party which holds legal interest in the bike path being connected via asphalt ramp to the proposed boardwalk.

SI Response: SI has provided the grant deed for the SI property as **Exhibit F**. SI is in discussions with the County to determine whether the County will grant the authority to complete the bike path connection. We will provide the necessary documentation related to the bike path connection as soon as it becomes available.

6. Other Governmental Approvals

Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. If applicable to the proposed project, we will also need to receive project approval(s) and all “take” authorizations from the state and federal resource agencies. Our regulations prohibit us from filing an application prior to receiving this documentation.

SI Response: The only work in water that may require Water Board approval is the restoration of the seaplane ramp, which falls within the Water Board General Order for Overwater Structures. The work also falls with the Programmatic Section 7 and EFH Consultations and nationwide non-reporting for the US Army Corps of Engineers.

7. Environmental Documentation

Please provide environmental documentation, as required under the California Environmental Quality Act (CEQA), in the form of a categorical or statutory exemption, negative declaration, or other certified environmental impact document.

SI Response: As determined in the 1973 permit, and confirmed in the 2017 amendment, these types of repairs and replacements in kind are categorically exempt. See 1973 Permit, Section III, F.

8. Local Government Approval

Please submit all the relevant documentation which clearly indicates that all the local government discretionary approvals have been received for the project.

SI Response: We refer you to the cover letter that was attached to the original SI Permit Application, dated February 28, 2022, filed by the Law Offices of John Sharp, which provides a detailed list of all applicable local approvals that have been received for the existing Project, including the updated Use Permit and the 2002 Categorical Exemption for the Project.

9. Interested Parties

It is necessary to have a complete list of interested parties prior to filing an application. Therefore, I am returning Box 9 of the application form so that you can provide a list of adjacent property owners and other parties known to be interested in your project, wherever possible, please include email addresses as all correspondence related to Commission meetings and permits is currently being sent electronically.

SI Response: There is only one property owner and one lessee within 300 feet of the project. We will provide that list separately.

10. Public Access

The Commission's law and policies require that proposed development provide the maximum feasible public access consistent with the project. Your proposal appears to include some public access improvements, such as parking modifications, boardwalk construction, and signage to make the already required public access areas in the existing permit more functional/usable as required by the San Francisco Bay Plan public access policies. Many of these improvements were recommended by staff to help resolve compliance issues for the required public access areas.

The project also includes a request to authorize other new fill, such as the dock expansion, after-the-fact. Please indicate whether any portions of the new fill would be designated for public access purposes or not. Please indicate if there is sufficient public parking along the street or not. Please clarify whether there are any proposed dedicated public access parking spaces associated with the project. For the Yolo and Bolinas Street rights of way, please clarify any proposed parking and the number of spaces. Please note that staff needs to understand the uses on the new fill and would not be able to recommend approval to the Commission for a proposal that does not provide the maximum public access consistent with the project.

Public access improvements associated with project should be sited and designed, managed and maintained to avoid impacts from future sea level rise and flooding. If the proposed public access cannot remain viable given projected sea level rise over the life of the project, alternative, equivalent access would be required. Therefore, please indicate what the estimated life of the project is and assess the effect of a mid- and end- of-century sea level rise based on the 100-year flood projected for the proposed access area. If desired, BCDC staff can provide some additional guidance on this assessment. If the assessment shows that potential flooding at the site would threaten public access viability, the access should be designed to be resilient to a mid-century sea level rise projection. If proposed project and access would remain in place beyond mid-century, an adaptive management plan to address impacts of sea level rise at end of century should be prepared or alternative, equivalent access should be proposed. Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete.

SI Response: The project will not result in any new fill of the Bay, but does include requests for authorization for a restored seaplane ramp and three small cross beam docks associated with the seaplane operations, which together total 808 square feet of fill. Because these features are critical to the safe operation of the seaplane business, it would not be safe to offer public access on these features.

The seaplane ramp restoration is within the same footprint as the previous concrete ramp that existed on the site in 1957. (See the 1957 Aerial provided as **Exhibit E**.) As described further below, the trex board design needed to be upgraded to concrete to ensure the safe operations of the seaplane business consistent with Seaplane Adventures certification from the Federal Aviation Administration ("FAA").

The helipad and helipad walkways, included in the shoreline band, are all much smaller in size than the heliport pad that existed at the site in 1957 (see aerial provided as **Exhibit E**), which shows a fully built out concrete pad covering the entire shoreline band area.

The proposed project will not increase the number of users who currently use the site; however, it will serve to improve and expand existing public access. Specifically, SI proposes to: increase ADA access and create 2 new public parking spaces; improve the existing public pathway by adding signage; and protect the pathway until mid-century from sea level rise and potential flooding consistent with the findings and recommendations in the Sea Level Rise Risk Assessment that SI is currently preparing for the site. In addition, the Project includes building an elevated connection to the Marin County bike path from the shoreline access path, including a raised bridge to protect against flooding. This last feature will be contingent upon County approval, which SI is currently working with the County to provide. (See **Exhibit C** for a detailed Site Plan showing all proposed public access improvements.)

The Project proposes to provide, enhance, and preserve in perpetuity the shoreline path and bike path connection, along with the ADA parking spaces, totaling 5,439 square feet. SI also commits to completing a Sea Level Rise Risk Assessment for this area, which is currently in progress, that will include measures to address flooding in the area to protect the public access area until at least mid-century based on 2018 OPC Guidelines.

11. Water Quality

Please provide additional details on how and where the seaplanes are fueled any minimization measures that are used to help prevent spills or other impacts to water quality.

SI Response: Seaplane Adventures is a tenant on the property and is required by local approvals to implement a Spill Containment and Response Plan, which includes specific BMPs for the use of fuel on the site.

Other Issues. *In addition to the issues cited above, the following matters should be considered in submitting additional materials to us as part of the application process.*

12. Cease and Desist Order

Executive Director Cease and Desist Order ECD2022.002 issued to you on March 15, 2022, requires you to remove the unauthorized fill for a seaplane ramp placed in the Bay and/or Shoreline Band. Therefore, you are required to restore the ramp to the condition that existed before you undertook the recent unauthorized work and BCDC will not be able to evaluate the recently placed fill after the fact as part of this permit application.

You may be able to apply for a permit amendment in the future to construct a new, concrete boat ramp, which would be subject to our staff's future evaluation. However, the only boat ramp that staff will evaluate as part of this pending amendment request is a replacement, lumber surface layer.

SI Response: As provided to BCDC enforcement staff in a Statement of Defense, dated December 1, 2022, the seaplane ramp repair involved the restoration of the ramp to the previous concrete construction that existed in the 1950's. This emergency restoration was carried out by Seaplane Adventures in reliance upon the verbal confirmation provided by Adrienne Klein to Aaron Singer at a 2020 enforcement site visit that Seaplane Adventures would be allowed to fix the ramp to ensure the continued safe operation of the seaplane business.

SI filed the application in February 2022 with the understanding that the ramp could be repaired

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 7, 2023

with trex board. SI later learned from Seaplane Adventures that that repairing the trex board alone would not be sufficient to ensure safe operations and comply with FAA requirements. (See **Exhibit G** for a copy of the marine engineer's letter Seaplane Adventures provided to SI confirming this fact.)

In March 2022, the trex ramp further deteriorated after a storm resulting in emergency conditions when the ramp damaged two seaplanes at the start of the first tourist season after a two-year pause during the pandemic. (See **Exhibit H** for pictures of the damage caused in March 2022 by the previous trex board ramp.).

Even though SI had a pending application, Seaplane Adventures was forced to take immediate action to address the emergency condition in March 2022 and relied on the verbal statements of Ms. Klein to complete such repairs. Specifically, to comply with FAA regulations and to avoid further damage to million dollar sea planes, Seaplane Adventures completed an emergency restoration of the ramp to the original concrete condition shown in the 1957 aerial (**Exhibit E**). Seaplane Adventures was careful to ensure that the footprint of the restored ramp did not exceed the original concrete ramp.

All of this information was provided to Mr. Brent Plater in a letter by SI's previous attorney, John Sharp, in response to the Administrative Cease and Desist Order in a letter dated July 14, 2022 (See **Exhibit I**) and in subsequent communications related to the enforcement matter, Statement of Defense submitted by the Law Offices of John Sharp, dated September 1, 2022, and Statement of Defense submitted by Rudder Law Group, LLP, dated December 1, 2022.

SI would not be authorized or able to remove the emergency ramp repair for the following reasons:

1. The ramp was installed by Seaplane Adventures as an emergency repair and is vital to the continued operation of the historic seaplane business that has been in place since 1947;
2. Removing the ramp would violate FAA requirements to ensure safe seaplane operations;
3. SI does not have the authorization to remove a feature that is controlled by its tenant without facing significant liability for causing tortious interference with another business;
4. If SI is forced to remove the seaplane ramp, Seaplane Adventures will be forced out of business, which would not only result in financial ruin for Seaplane Adventures, but also for SI, as the tenant's lease payments are the primary source of income for the property; and
5. Replacing the existing ramp with the previous trex board will not provide sufficient support to safely operate the seaplanes, as described in the consultant letter in **Exhibit G**.

For all of these reasons, we respectfully request that BCDC work with us to permit the concrete version of the seaplane ramp that exists there today. The ramp at issue will result in a total of 451 square feet of fill in the Bay and falls squarely within the Commission's previous authorization of minor fill activities under Regionwide Permit 3. Accordingly, we see no justification for requiring the

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 7, 2023

removal of this necessary seaplane ramp, which would cause far greater impacts to the Bay. We look forward to working with BCDC to complete permitting for this small, but critical, feature on the property.

SI has obtained authorization from Seaplane Adventures to seek such authorization and has proposed the construction of new public access improvements to mitigate for the ramp. This feature has been included in the updated BCDC Permit Application provided in **Exhibit A**.

13. Public Notice

Please find enclosed the "Notice of Application" form to be posted at or near the project site in a prominent location to notify members of the public about the pending application for the proposed project.

SI Response: SI will post the Notice of Application at the project site and forward pictures of the specified location in a separate email.

We hope the above provides the information that BCDC needs to move the permit amendment process forward. We would like to schedule a call with you in the next week or so to discuss this response, any additional outstanding items, and to confirm the permit timeline. SI looks forward to resolving all issues and receiving a permit to address all alleged unauthorized features before the end of 2023, if possible.

I will reach out soon to schedule a meeting to discuss the application. Please feel free to reach out with any questions that you may have in advance of our meeting. Thanks again for all of your help in processing this permit application.

Sincerely,



Jillian Blanchard
Rudder Law Group, LLP

CC:

Lou Vasquez, SI
Mali Richlen, SI
Grant Barbour, SI
Aaron Singer, SI
Matthew Trujillo, BCDC
Adrienne Klein, BCDC

Enclosures

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 7, 2023

EXHIBIT A

BCDC APPLICATION FORM

[Reset](#)
[Print](#)

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

BCDC Application Form

For BCDC Use Only

Application number: _____

Fee: _____

Checklist of Application Requirements

(For Applicant's Use)

	Major Permit	Administrative Permit	Regionwide Permit
<input checked="" type="checkbox"/> Application Form	One fully completed and signed original and seven copies	One fully completed and signed original	One fully completed and signed original
<input type="checkbox"/> Large Scale Project Site Plan	One copy	One copy	One copy
<input checked="" type="checkbox"/> 8.5"x11" Project Site Plan	Seven copies	One copy	One copy
<input checked="" type="checkbox"/> 8.5"x11" Public Access and Open Space Plan	Seven copies	One copy	None
<input checked="" type="checkbox"/> 8.5"x11" Vicinity Map	Seven copies	One copy	One copy
<input checked="" type="checkbox"/> Proof of Legal Property Interest	One copy	One copy	One copy
<input checked="" type="checkbox"/> Local Government Discretionary Approval	One copy	One copy	None
<input checked="" type="checkbox"/> Environmental Documentation	One copy of environmental determination and EIR or EIS Summary	One copy of environmental determination	None
<input checked="" type="checkbox"/> Water Quality Certification/Waiver	One copy, if applicable	One copy, if applicable	One copy, if applicable
<input type="checkbox"/> Dept. of Toxic Substances Control Approval	One copy, if applicable	One copy, if applicable	One copy, if applicable
<input type="checkbox"/> Biological Opinion/Take Authorization from state and federal agencies	One copy, if applicable	One copy, if applicable	Not applicable
<input type="checkbox"/> Application Processing Fee	As specified in Commission regulations, Appendix M	As specified in Commission regulations, Appendix M	As specified in Commission regulations, Appendix M
<input type="checkbox"/> Notice of Application*	Posted at project site	Posted at project site	Posted at project site
<input type="checkbox"/> Certification of Posting the Notice of Application*	One signed original returned to BCDC	One signed original returned to BCDC	One signed original returned to BCDC

*BCDC staff will provide the forms for posting the Notice of application and the Certification.

Authority: Sections 66632, Government Code; and Section 29201(e), Public Resources Code.

Reference: Sections 65940-65942, 66605, 66632(b) and (f) and 84308, Government Code; Sections 2770, 2774, 21080.5, 21082, 21160 and 29520, Public Resources Code; and the San Francisco Bay Plan.

Box 1

Property Ownership and Applicant Information (must be completed by all applicants)

a. APPLICANT:



Owens
project
site



Leases
project
site



Homeowner
Association
owns/will own



Other Property Rights: _____

Name/Title: Seaplane Investments, LLC

Address: 242 Redwood Highway

City, State, Zip: Mill Valley, CA 94941

Telephone: (818) 371-8418 Fax: _____

Email: malirichlen@gmail.com

APPLICANT'S REPRESENTATIVE: ☐ None

Name/Title: Jillian Blanchard/Rudder Law Group, LLP

Address: 1101 Marina Village Pkwy, Suite #201

City, State, Zip: Alameda, CA 94501

Telephone: (415) 867-6769 Fax: _____

Email: jblanchard@rudderlawgroup.com

I hereby authorize Jillian Blanchard of Rudder Law Group, LLP

to act as my representative and bind me in all matters concerning this application.



Signature of Applicant

Mali Richlen

Print Name

04/05/2023

Date (mm/dd/yyyy)

b. CO-APPLICANT:



Owens
project
site



Leases
project
site



Homeowner
Association
owns/will own



Other Property Rights: _____

Name/Title: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____

Email: _____

CO-APPLICANT'S REPRESENTATIVE: ☐ None

Name/ Title: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____

Email: _____

I hereby authorize _____

to act as my representative and bind me in all matters concerning this application.

Signature of Co-Applicant

Print Name

Date (mm/dd/yyyy)

c. PROPERTY OWNER: ☒ Same As Applicant or Co-Applicant

OWNER'S REPRESENTATIVE:



None

Name/Title: _____

Name/Title: _____

Address: _____

Address: _____

City, State, Zip: _____

City, State, Zip: _____

Telephone: _____ Fax: _____

Telephone: _____ Fax: _____

Email: _____

Email: _____

I hereby authorize _____

to act as my representative and bind me in all matters concerning this application.

Signature of Owner

Print Name

Date (mm/dd/yyyy)

(Box 1, Property Ownership and Applicant Information, continued)

- d. Provide documentation of property interests, such as a copy of a grant deed, lease or easement, and Conditions Covenants and Restrictions, for a homeowner's association, that demonstrates that the owner or applicant has adequate legal interest in the property to undertake the proposed project. See Commission regulations Appendix F for complete details.

See attached Exhibit F.

e. DISCLOSURE OF CAMPAIGN CONTRIBUTIONS:

The following contributions of more than \$250 were made by the applicant or applicant's representative to a BCDC commissioner or commissioner's alternate in the preceding twelve months to support the commissioner's or alternate's campaign for election to a local, state or federal office.

Contribution Made To:

Contribution Made By:

Date of Contribution:

☒ No such contributions have been made.

f. CERTIFICATION OF ACCURACY OF INFORMATION AND AUTHORIZATION TO INSPECT:

I hereby certify under penalty of perjury that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for denying the permit, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission. I further agree that the Commission staff may, with 24 hours notice, inspect the project site while this application is pending.

■ 

Signature of Applicant or Applicant's Representative

4/6/23

Date (mm/dd/yyyy)

■ _____
Signature of Co-applicant or Co-applicant's Representative

Date (mm/dd/yyyy)

■ _____
Signature of Co-applicant or Co-applicant's Representative

Date(mm/dd/yyyy)

■ _____
Signature of Co-applicant or Co-applicant's Representative

Date (mm/dd/yyyy)

Box 2

Total Project and Site Information (must be completed by all applicants)

- a. Project Street Address: 242 Redwood Highway
- b. City, County, Zip: Mill Valley, Marin, CA 94941
- c. Assessor's Parcel Number(s): 052-247-01 052-247-02
- d. Latitude: 37 52' 44" N Longitude: 122 30' 48" W
- e. Previous BCDC permit number(s) for work at this site: 1973.014.03; M1985.030.01
- f. Project Name: SHORELINE IMPROVEMENTS AND AFTER-THE-FACT AUTHORIZATIONS FOR SEAPLANE INVESTMENTS, LLC
- g. Brief Project Description: After the fact authorizations for seaplane ramp, docks, fuel tank, helipad and walkways, seaplane storage
Public Access Improvements: new boardwalk transition to connect shoreline path to bike path with shoreline access path; new ADA parking and signage. Sea level rise improvements.
- h. Date work is expected to begin: 01/05/2024
Date work is expected to be completed: 06/05/2024
- i. Total Project Cost: \$ \$50,000-100,000 See Supplemental Package
- j. Length of shoreline on the project site: 477 feet
- k. Length of shoreline at adjacent property owned or controlled by the applicant: 0 feet
- l. Approximate size of project site within BCDC's "shoreline band" jurisdiction: 49,488 square feet
- m. Approximate size of project site within BCDC's "Bay" or "certain waterway" jurisdiction: 14,880 square feet
- n. Approximate size of project site within BCDC's managed wetland or salt pond jurisdiction: 0 square feet
- o. Approximate size of project site within the Suisun Marsh: 0 square feet
- p. Approximate size of project site outside of BCDC's jurisdiction: 24,925 square feet
- q. Approximate total size of project site (including areas outside BCDC's jurisdiction): 89,293 square feet
- r. Area of total project site reserved for non-public access uses: 70,859 square feet
- s. Area of total project site reserved for public access: 18,434 square feet
- t. Does the project involve development within the primary management area of the Suisun Marsh?
☐ Yes ☒ No

If "Yes," provide any relevant duck club number(s): _____

(Box 2, Total Project and Site Information, continued)

u. Project Details. Complete all that apply.

Proposed Elements of the Project	In BCDC's Bay, Certain Waterway, Managed Wetlands or Suisun Marsh Jurisdiction*	In BCDC's Shoreline Band jurisdiction	Outside BCDC's jurisdiction	Totals
1. Structures	0 _____sq.ft.	0 _____sq.ft.	0 _____sq.ft.	0 _____sq.ft.
2. All Roads, Parking, Pathways, Sidewalks	0 _____sq.ft.	3,570 _____sq.ft.	2,836 _____sq.ft.	6,406 _____sq.ft.
3. Number of Parking Spaces:	0	0	2 ADA spaces	
4. All Landscaping	_____sq.ft.	_____sq.ft.	_____sq.ft.	_____sq.ft.
5. Left undeveloped	12,995 _____sq.ft.	45,975 _____sq.ft.	16,730 _____sq.ft.	75,700 _____sq.ft.
6. Shoreline Protection	_____sq.ft.	_____sq.ft.	_____sq.ft.	_____sq.ft.
7. Piers, docks and other marine-related purposes	808 _____sq.ft.	157 _____sq. ft.	0 _____sq.ft.	965 _____sq.ft.
8. Areas used for other purposes (specify)	_____sq.ft.	_____sq.ft.	_____sq.ft.	_____sq.ft.
Totals:	13,808 _____sq.ft.	49,702 _____sq.ft.	19,566 _____sq.ft.	83,071 _____sq.ft.

* If project will occur in more than one of these jurisdictions, provide the requested information for each area separately.

Box 3

Fill Information

("Fill" means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. Gov. Code Section 66632(a))

a. Complete this box if fill would be placed in any of these areas (check all those that apply):

- ☒ San Francisco Bay
 ☐ Salt pond
 ☐ Managed wetland
 ☐ "Certain waterway"
 ☐ Primary management area of the Suisun Marsh
 Other: _____

b. Surface area of tidal and subtidal property to be covered with fill: 808 square feet
 c. Total volume of solid fill to be placed in tidal and subtidal areas: 3.25 cubic yards

d. **Type of Fill.** Surface area of proposed:

Solid fill: 451 square feet
 Floating fill: 357 square feet
 Pile-supported fill: _____ square feet
 Cantilevered fill: _____ square feet
 Total area to be filled: 808 square feet

e. **Types of Areas to be Filled.** Of the total area to be filled, what is the footprint of fill that would be placed in:

Open water: 808 square feet
 Tidal marsh: _____ square feet
 Tidal flat: _____ square feet
 Salt pond: _____ square feet
 Managed wetlands in the primary management area of the
 of the Suisun Marsh: _____ square feet
 Other managed wetlands: _____ square feet

f. Area on new fill to be reserved for:

Private, commercial, or other non-public-access uses: 808 square feet
 Public access: _____ square feet

Box 4

Shoreline Band Information

("Shoreline band" means the land area lying between the Bay shoreline and a line drawn parallel to and 100 feet from the Bay shoreline. The Bay shoreline is the Mean High Water Line, or five feet above Mean Sea Level in marshlands.)

- a. Does the project involve development within the 100-foot shoreline band around San Francisco Bay?

☒ Yes ☐ No

If "Yes," complete this box.

- b. Types of activities to be undertaken or fill, materials or structures to be placed within the shoreline band:

Enhancement of public access shoreline path and connection to the Marin County bike path; ADA parking; signage; and striping

- c. Would the project be located within a priority use area designated in the San Francisco Bay Plan?

☐ Yes ☒ No

The Bay Plan and Maps that depict priority use areas can be viewed in the digital library at www.bcdc.ca.gov.

If "No," go to section (d). If "Yes," please indicate which priority use the area is reserved for: _____

Would the project use be consistent with the priority use for which the site is reserved?

☐ Yes ☐ No

If "Yes," go to section (d). If "No," attach an explanation of how the project can be approved despite this inconsistency.

- | | | | |
|-------------------------------|---|---------------|-------------|
| d. Total shoreline band area: | Within project site: | <u>49,488</u> | square feet |
| | To be reserved for private, non-public access uses: | <u>3,790</u> | square feet |
| | To be reserved for public access: | <u>5,009</u> | square feet |

- e. **INFORMATION ABOUT WORK PROPOSED IN THE SHORELINE BAND (PROVIDE IN AN ATTACHMENT):**

1. Provide dimensions of portions of all structures to be built within the shoreline band, including length, width, area, height, and number of stories.
2. Provide one or more photographs of existing conditions within the 100-foot shoreline band.

Box 5

Public Access Information (must be completed by all applicants)

a. PUBLIC ACCESS DETAILS:

1. Does public access to the shoreline or do views to the Bay presently exist at the project site, at a contiguous property, or from nearby roads or public access areas?

☒ Yes ☐ No

If "Yes" attach a description of the existing public access and views at these areas.

If "No," explain what is preventing public access to, or views of, the shoreline.

2. Describe how the project would or would not adversely impact present and future public access and views to the Bay. If so, describe how the proposed public access would offset the impact.
3. For most large projects, identify: (1) the existing number of people or employees using the site; and (2) the existing number of cars, bicycles, and pedestrians visiting the site and the level of service of all nearby roads leading to the site. Describe how the project would change these factors.
4. Identify the public's use of existing nearby parks, public access, public parking and other recreational areas on the shoreline and the roads leading to the site and describe the impact the project is expected to have on that use.
5. Do public safety considerations or significant use conflicts make it infeasible to provide new public access to the shoreline on the project site?

☐ Yes ☒ No

If "Yes," describe the public safety considerations or significant use conflicts that make it infeasible to provide public access at the project site and either: (1) identify an offsite area where public access to the shoreline is proposed as part of the project and describe the proposed public access area and improvements at that location; or (2) explain why no offsite public access is proposed as part of the project.

(Box 5, Public Access, continued)

6. Dimensions of the public access areas: ☐ None Proposed

	Existing		Proposed	
Total public access area including areas outside the Commission's jurisdiction:	<u>5039</u>	square feet	<u>5439 - enhanced</u>	square feet
Public access within Commission's shoreline band jurisdiction:	<u>5,039</u>	square feet	<u>5039</u>	square feet
	<u> </u>	linear feet	<u> </u>	linear feet
	<u> </u>	average width	<u> </u>	average width
Public access pathways, sidewalks in the shoreline band:	<u>5039</u>	square feet	<u>5039</u>	square feet
	<u> </u>	linear feet	<u> </u>	linear feet
	<u>12</u>	average width	<u>12</u>	average width
Public access area, landscaping in the shoreline band:	<u> </u>	square feet	<u> </u>	square feet
Public access on fill within Commission's Bay, certain waterway, and managed wetlands jurisdiction:	<u> </u>	square feet	<u> </u>	square feet
	<u> </u>	linear feet	<u> </u>	linear feet
	<u> </u>	average width	<u> </u>	average width
Public access on piers or decks over water/wetlands:	<u> </u>	square feet	<u> </u>	square feet
	<u> </u>	linear feet	<u> </u>	linear feet
	<u> </u>	average width	<u> </u>	average width
View Corridor(s):	<u> </u>	square feet	<u> </u>	square feet
	<u> </u>	linear feet	<u> </u>	linear feet
	<u> </u>	average width	<u> </u>	average width
Public Access Parking:	<u>0</u>	stalls	<u>2</u>	stalls

b. ADDITIONAL PUBLIC ACCESS INFORMATION (PROVIDE IN AN ATTACHMENT):

1. Describe the existing and proposed public access improvements, both on-site and off-site, including decks, piers, pathways, sidewalks, signs, benches, landscaping, parking, and any other proposed public improvements.
2. Describe how the public access area and facilities would be accessible to disabled persons.
3. Describe the proposed connections to existing public streets or offsite public pathways.
4. Specify how the public access areas would be permanently guaranteed (e.g., dedication, deed restriction, etc.) and how the areas and improvements would be maintained.
5. Describe the species present, wildlife use, and habitat conditions in and adjacent to the proposed public access areas and the likely type and degree of human use of the site (i.e., bicycling, dog walking, birding, frequency of use, etc.). Describe how any potential adverse effects on wildlife from public access would be avoided or minimized through the siting, design and management of the public access being proposed at the site.

Box 6

Dredging and Mining Information

- a. Complete this box if the project involves mining, dredging or the disposal of dredged material in any of the following areas.

☐ San Francisco Bay ☐ Salt pond ☐ Managed wetland ☐ "Certain waterway"
☐ Primary management area of the Suisun Marsh ☐ Other: _____

- b. Are you submitting a separate application to the Dredged Material Management Office (DMMO)?

☐ Yes ☐ No

If "Yes," attach a copy of that application; it is not necessary to complete this Box. If "No," complete this box.

- c. Type of activity: ☐ Maintenance Dredging New Dredging Mining

- d. Method of dredging or mining: _____

- e. Total volume and area of material to be dredged or mined from:

Open waters: _____ cubic yards _____ square feet

Tidal marshes: _____ cubic yards _____ square feet

Tidal flats: _____ cubic yards _____ square feet

Salt ponds: _____ cubic yards _____ square feet

Managed wetlands in the primary management area of the Suisun Marsh:

_____ cubic yards _____ square feet

Other managed wetlands: _____ cubic yards _____ square feet

Subtidal areas that are scarce or have an abundance and diversity of fish,
other aquatic organisms and wildlife, such as eelgrass beds and sandy deep water:

_____ cubic yards _____ square feet

Other (specify): _____ cubic yards _____ square feet

- f. Are knockdowns proposed as part of the dredging project?

☐ Yes ☐ No

Number of knockdowns: _____

Volume per knockdown event: _____ cubic yards

(Box 6, Dredging and Mining Information, continued)

g. Location(s) where dredged or mined material will be deposited: _____

h. Total volume of dredged material to be disposed: cubic yards

Beneficially re-used: cubic yards

i. Estimated future maintenance dredging required annually: _____ cubic yards

j. For dredging projects:

Proposed design depths (MLLW): (1) _____ (2) _____ (3) _____

Proposed over-depth dredging (+ feet): (1) _____ (2) _____ (3) _____

Number of dredging episodes: _____

k. Does this project have an annual average dredging average of 50,000 cubic yards or less?

☐ Yes ☐ No

I. ADDITIONAL INFORMATION (PROVIDE IN AN ATTACHMENT):

1. If the dredged material is to be disposed of in the Bay, explain why the material cannot feasibly be beneficially re-used or disposed of in the ocean, upland, or inland outside of the Commission's jurisdiction.
2. Provide the results of testing for biological, chemical or physical properties of the material to be dredged.
3. Provide a copy of a water quality certification or waste discharge requirements for the dredging or disposal of dredged material from the San Francisco Bay Regional Water Quality Control Board.
4. Identify local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic vegetation; and (e) the Bay's bathymetry.
5. For projects in subtidal areas that have an abundance and diversity of fish, other aquatic organisms and wildlife, or are scarce such as eelgrass beds and sandy deep water, identify feasible alternatives and public benefits associated with the project.

Box 7

Information on Government Approvals (must be completed by all applicants)

	Required YES NO	Type of Approval	Date Approval Expected/Received	Agency Contact and Phone Number
Local Government				
Discretionary Approval(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
State Lands Commission:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Regional Water Quality Control Board:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
			Regional Board Number:	
California Dept. of Toxic Substances Control:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
California Department of Fish and Game Streambed Alteration Permit:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
DF&G Take Authorization:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Other DF&G Permit:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
U.S. Army Corps Of Engineers:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
			Public Notice Number:	
U.S. Fish and Wildlife Service: Take Authorization	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Biological Opinion:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
NOAA Fisheries Service: Take Authorization	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Biological Opinion	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
U.S. Coast Guard:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Federal Funding:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Other Approval (Specify):				

Box 8

Environmental Impact Documentation (must be completed by all applicants)

- a. Is the project statutorily or categorically exempt from the need to prepare any environmental documentation?

☒

Yes

☐

No

If "Yes," please attach a statement that identifies and supports this statutory or categorical exemption.

- b. Has a government agency other than BCDC, serving as the lead agency, adopted a negative declaration or certified an environmental impact report or environmental impact statement on the project?

☐

Yes

☒

No

If "Yes," attach a copy of the document. If the environmental impact report or statement is longer than ten pages, also provide a summary of up to ten pages. If "No," provide sufficient information to allow the Commission to make the necessary findings regarding all applicable policies. The certified document must be submitted prior to action on the permit.

Box 9

Public Notice Information (must be completed by all applicants)

- a. Owners and residents of all properties located within 100 feet of the project site (if more than four, provide the information electronically):

North:

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

(415) 333-3333

East:

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

(415) 333-3333

South:

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

(415) 333-3333

West:

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

(415) 333-3333

- b. Other persons known to be interested in this project:
(if more than two, provide the information electronically).

☐

None

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

(415) 333-3333

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

(415) 333-3333

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 6, 2023

EXHIBIT B

SHORELINE IMPROVEMENTS PLAN PROVIDED IN SEPTEMBER 1, 2022 STATEMENT OF DEFENSE

SITE INFORMATION

CODE SUMMARY:

ACCESSOR PARCEL NUMBER: 052 - 247 - 01 / 052 - 247 - 02

2019 CBC
2019 CEC
2019 CMC
2019 CPC
2019 CEnC
2019 CFC
2019 CGC

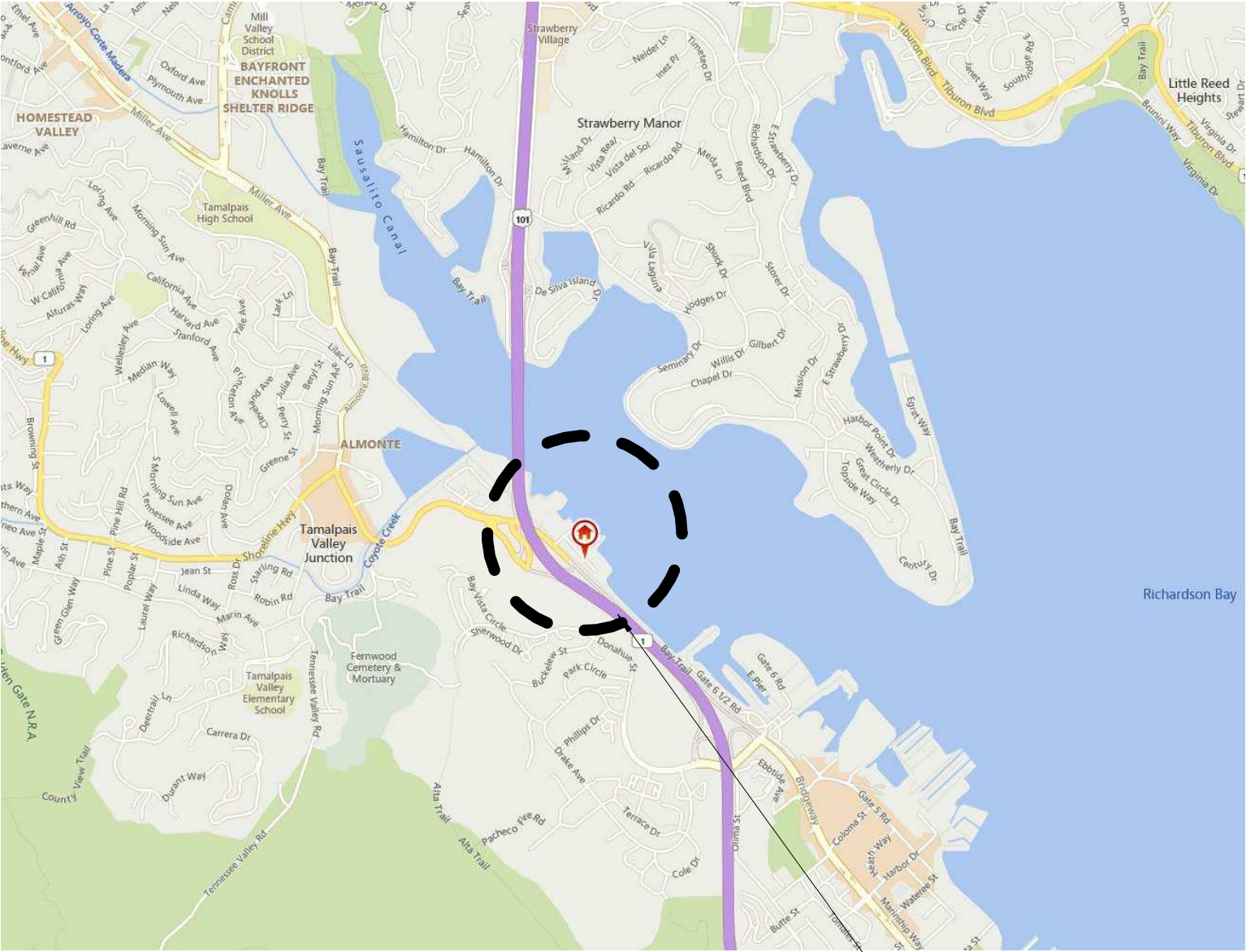
CALIFORNIA BUILDING CODE
CALIFORNIA ELECTRIC CODE
CALIFORNIA MECHANICAL CODE
CALIFORNIA PLUMBING CODE
CALIFORNIA ENERGY CODE
CALIFORNIA FIRE CODE
CALIFORNIA GREEN BUILDING STANDARDS

2019 CBC, CMC, CEC, CPC, CFC (based on the 2018 IBC, 2018 UMC, 2018 UPC, 2018 IFC and 2017 NEC-NFPA 70) 2019 California Green Building Standards Code (also known as the CAL Green Code) and 2019 Energy Standards, and as amended by State of California and local jurisdictional code amendments that are applicable to this project.

INDEX:

SHEET NO.	SHEET NAME
GENERAL	
G0-00	PROJECT INFORMATION
G0-01	SITE PLAN
G0-02	ACCESSIBILITY DETAILS

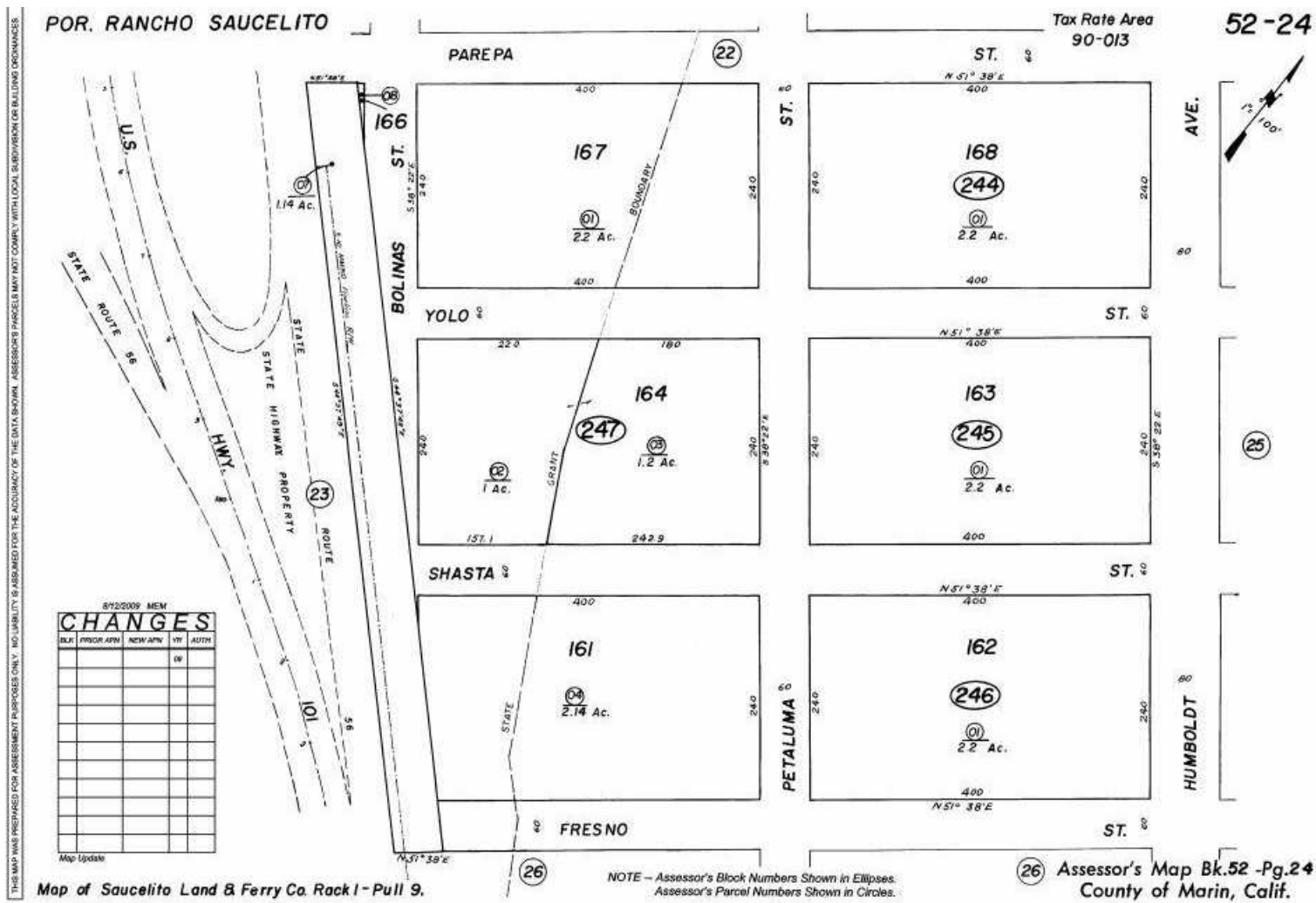
LOCATION AND VICINITY:



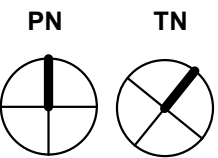
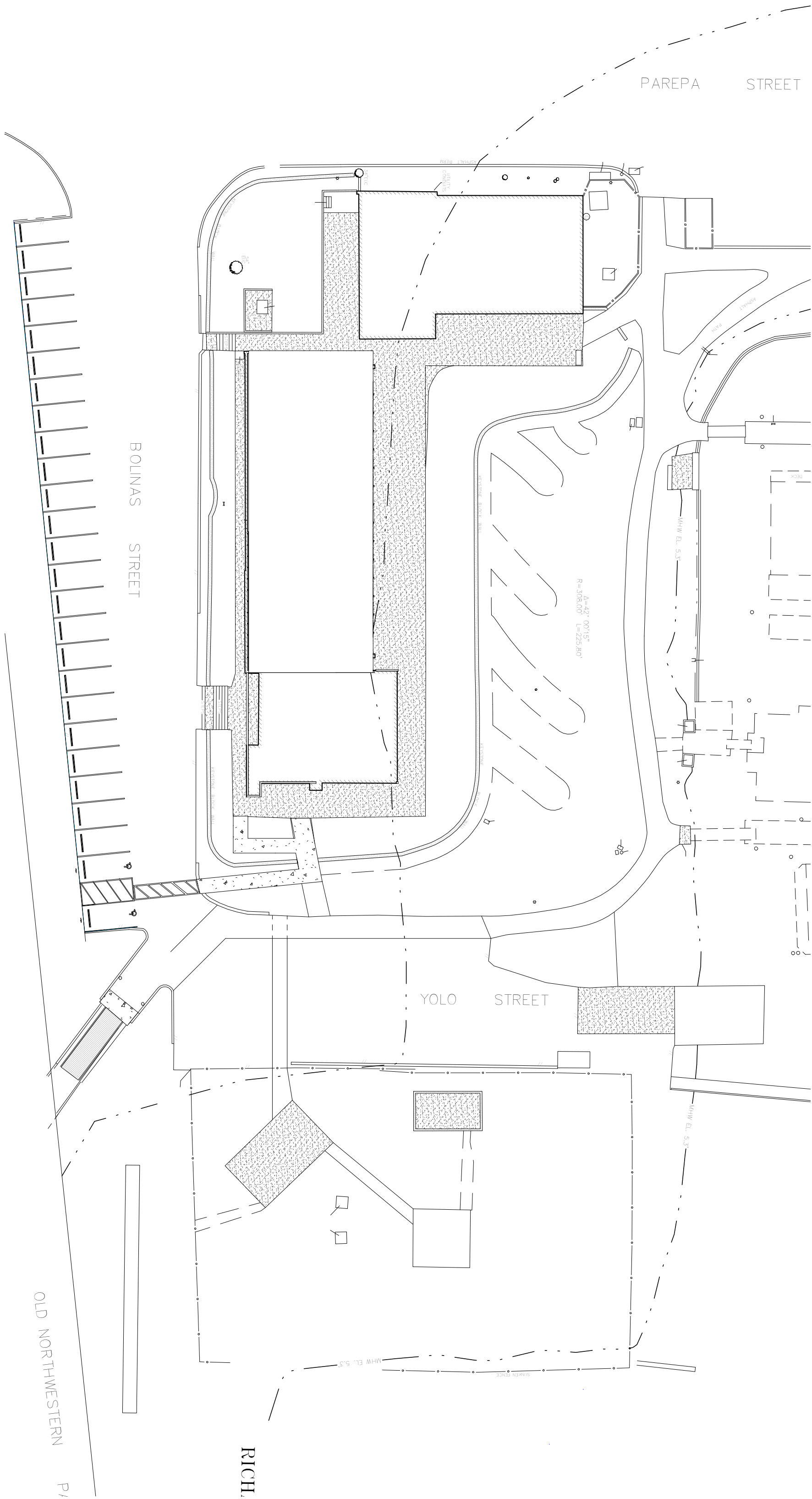
242 REDWOOD HWY MILL VALLEY
CA, 94941
APN.: 052 - 247 - 01 / 052 - 247 - 02



AREAL VIEW



SITE :



PROJECT:

242 REDWOOD HWY
MILL VALLEY CA 94941
APN.: 052-247-01 / 052-247-02

OWNER:

SEAPLANE INVESTMENTS LLC
loring@bldsf.com
415.298.5331

TENANT:

SEAPLANE ADVENTURES
aaron@seaplane.com
415.272.6540

Stamp:

No.	Description	Date
		09/02/2022

Keyplan:

Title:

PROJECT
INFORMATION

Checked by: Checker Scale: 1" = 30'-0"

Sheet no:

G0-00

PAREPA STREET

YOLO STREET

BOLINAS STREET

RICHARDSON BAY

OLD NORTHWESTERN PACIFIC RAILROAD

LEGEND

- EXISTING MULTI-USE ASPHALT PUBLIC PATH
- NEW ADA PARKING SPACES (SEE SHEET G0-02 FOR DETAIL)
- SHORELINE ACCESS PATH / NEW EXTERIOR COMPOSITE BOARD TO BE USED AT BOARDWALK
- NEW BOARDWALK WITH ASPHALT TRANSITIONS TO EXISTING GRADES (SEE SHEET G0-02 FOR DETAIL)
- NEW POLE-MOUNTED SHORELINE ACCESS SIGNAGE
- EXISTING ELEVATED ASPHALT PATH APPX. 8" HIGH SEE "INTERIM SHORELINE ACCESS IMPROVEMENTS PLAN" FOR MORE DETAILS
- EXISTING 10'-8"x5'-4"Wx4'-0"H ABOVE SURFACE CONCRETE FUEL TANK
- EXISTING FUEL TANK IN CONCRETE CONTAINMENT BCDC PERMIT M1985-030-01
- EXISTING SEAPLANE LAUNCH RAMP 20'Wx35'L
- EXISTING BOAT DOCK ADDITIONS TO THE EXISTING SEAPLANE DOCK
- N/A
- EXISTING PARKING & REPAIR AREA
- N/A
- N/A
- 5% SLOPE MAX.
- SHORELINE ACCESS PATH
- MID-LEVEL LANDING 1:48 SLOPE MAX.

← PATH OF TRAVEL

PROJECT:

242 REDWOOD HWY
MILL VALLEY CA 94941
APN.: 052-247-01 / 052-247-02

OWNER:

SEAPLANE INVESTMENTS LLC
loring@bldsf.com
415.298.5331

TENANT:

SEAPLANE ADVENTURES
aaron@seaplane.com
415.272.6540

Stamp:

No.	Description	Date
		09/02/2022

Title:
SITE PLAN

Checked by: Checker Scale: As indicated

Sheet no:

G0-01

SITE PLAN

1" = 20'-0"

1

G0-01

9/2/2022 3:50:42 PM

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 6, 2023

EXHIBIT C

**VICINITY MAP & SITE PLAN
SHOWING ALL FEATURES AND PUBLIC ACCESS
UPDATED MARCH 2023**

Attached separately due to file size

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 6, 2023

EXHIBIT D

BCDC'S EXHIBITS 8, 12-14 FROM JULY 28, 2022 VIOLATION REPORT

Exhibit 8. December 2003. **Orange Arrow** – Unauthorized Seaplane fuel tank.
Blue Circle – Single heli-port landing pad and helicopter fuel tank, authorized by BCDC in 1985. U-shape dock, authorized by BCDC in 1973.



Exhibit 12. November 2011. First unauthorized dock expansion (“cross beam”).



Exhibit 13. February 2018. Second unauthorized dock expansion (single, long finger and “cross beam” replacement).



Exhibit 14. June 2019. Third unauthorized dock expansion (two short fingers).



Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 6, 2023

EXHIBIT E

AERIAL SHOWING THE SITE CIRCA 1957

(See in particular, substantial helipad and location of original concrete seaplane ramp)



The Commodore Seaplane Base near Sausalito was the center for private seaplane activity in the Bay Area for many years. This aerial photograph shows eight Republic Seabees as well as a Luscombe, a Grumman Widgeon, and a rare Grumman J2F-6. (LC.) Circa 1957

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 6, 2023

EXHIBIT F

GRANT DEED

(Removed to
reduce file size)

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 6, 2023

EXHIBIT G

LETTER FROM MARINE ENGINEER CONFIRMING THE NEED FOR CONCRETE RAMP

*From the Desk of Luis Valencia
Valenciana, Inc.
12879 San Pablo Ave.
Richmond, CA 94805
CA License #1085668*

To Whom It May Concern:

The seaplane ramp design described in the February 28, 2022 application, specifically the 20'W x 35'L x 1.5"D SEAPLANE LAUNCH RAMP MADE OF 2X6 COMPOSITE LUMBER PLACED ON GRADE, was found to be insufficient to allow for the safe operation of private seaplane base, as required to be in compliance with FAA regulations.

Emergency repairs became necessary on March 12, 2022 when a seaplane was damaged while exiting the water. To avoid further damage to any existing seaplanes and to comply with FAA requirements, we determined that the seaplane ramp needed to be repaired with concrete and rebar and not composite materials which failed in the previous ramp., and that lumber would not suffice. We repaired the ramp using concrete and rebar within the existing footprint to make the minimum repairs necessary to allow for the safe continued operations of the seaplane private airbase.

Thank you,



12/16/2022

Luis Valencia
Owner & General Contractor

Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 6, 2023

EXHIBIT H

PHOTOS OF DAMAGE TO SEAPLANES FROM TREX BOARD- MARCH 2022

EXHIBIT H
PHOTOS OF SEAPLANE DAMAGE







Permit Amendment Request, Permit No 1973.014.05
Seaplane Investments, LLC ATF and Public Improvements
April 6, 2023

EXHIBIT I

LETTER FROM JOHN SHARP TO BCDC, JULY 14, 2022

(Describes the emergency nature of seaplane ramp repairs)

Law Offices of
JOHN E. SHARP
24 Professional Center Parkway, Suite 110
San Rafael, CA 94903

Exhibit 28

John E. Sharp
john@johnsharpplaw.com

Telephone: (415) 479-1645
Facsimile: (415) 295-7020

July 14, 2022

VIA EMAIL AND U.S. MAIL

Brent Plater
Lead Enforcement Attorney
San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105
Tel: 415-352-3628
Email: brent.plater@bcdcc.ca.gov



SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Re: *Seaplane Investment, LLC*

Dear Mr. Plater:

This is in response to your letter of June 14, 2022 and the Cease and Desist Order enclosed therewith. Reference is also made to your letter of March 15, 2022 and the letter of March 30, 2022 from Mr. Fielding. Please include this letter in the administrative record.

As you know, Seaplane Investment, LLC. (hereinafter "Seaplane") is in the process of bringing current its applications/permits with BCDC and other entities. Those permits date back to 1953, and some of the improvements for the sea base, including the ramp in question, predate both BCDC and county ordinances. Nevertheless, Seaplane does intend to include the ramp in its applications. Seaplane undertook the process of updating permits on or about September 15, 2020. During that time, Seaplane, as is the case with many entities, struggled with the impacts of Covid 19, including the aftermath of having been closed during its peak revenue-producing months.

Seaplane observes that, as a matter of case law and common law, it has the right and duty to repair improvements to the property. In fact, with reference to the ramp, upon which a previous owner installed an incorrect and untenable solution in the form of installing trex decking to attempt to repair the ramp, Seaplane, according to, without limitation, Part 135 of the Federal Aviation Act must provide safe and adequate ingress and egress for the aircraft to the water.

Brent Plater
Page 2
July 14, 2022

Without entering into an exhaustive examination of the law of preemption, Seaplane is an airline business operating in Marin County, California, as an air carrier, certified pursuant to 14 CFR Part 135 and Part 91 of the Federal Aviation Administration ("FAA") regulations. The FAA grants the authority to operate on-demand, unscheduled air service (also known as charter-type services) in the form of Part 135 certificate. Seaplane and its facilities are strictly controlled by the FAA. Attached please find Seaplane's Airport Master Record with the FAA, as one example. Also see Declarations of Lauralyn J. Remo Temprosa, Dennis M. Thorpe, included herewith.

In addition to placing Seaplane at jeopardy with its duties to the FAA, the literal effect of causing Seaplane to restore the ramp to its condition prior to your letter of March 15, 2022 would be to cause damage to the Bay, hinder public access, and damage Seaplane's aircraft, (which was occurring prior to the repair). Such an interpretation would operate contrary to the spirit and letter of the multitude of laws regulating airports. Moreover, putting back in place a broken ramp falls within the provisions of, without limitation, CA Civil Code Section 1638, which provides that documents should be interpreted to avoid an absurd result. It would, in short, put this airport out of business.

We are aware of the ongoing complaints of a few residents of the Richardson Bay area. These complaints were addressed at the Marin County Planning Commission in 2017. Despite those complaints having been rejected by the Marin County Planning Commission, Seaplane nevertheless seeks to continue to work collaboratively with BCDC, the County and its Neighbors along the Bay, to assure compliance with its permits.

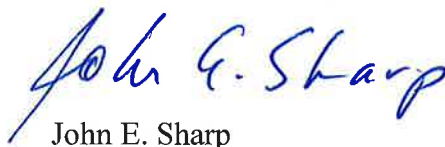
We believe the above points establish that no penalties or fines should be ordered. We understand that penalties and fines are intended to assure compliance. We further believe that, given the circumstances and conditions that have evolved during a period in excess of 70 years, compliance is, at least in part, assured by the ramp being repaired.

Seaplane is acting reasonably as a steward of the portion of the Bay where it lies, while taking care of the unique characteristics of being the only private sea base in California. We look forward to continuing to work with BCDC and will respond to the March 30 letter from Mr. Fielding as soon as reasonably possible.

If you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,

LAW OFFICES OF JOHN E SHARP



John E. Sharp

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

ATTACHMENT B

Transmitted Via Email

May 8, 2023

Seaplane Investment, LLC
242 Redwood Highway
Mill Valley, CA 94941
ATTN: Lou Vasquez, <lou@bldsf.com>

SUBJECT: 240-242 Redwood Highway Seaplane Improvements; (BCDC Permit Application No. 1973.014.05, Enforcement Case ER2019.063.00)

Dear Mr. Vasquez:

Thank you for your supplemental information received in this office on April 7, 2023, for new shoreline access improvements and after-the-fact authorization of boat docks, fuel tank, and seaplane storage at 242 Redwood Highway, Mill Valley in Marin County. Our review of the application has determined that it is incomplete pending the submittal of the following items:

1. **Total Project and Site Information**

From reviewing your application, it appears that the proposed project would involve the following activities:

- a. Installing improvements to enable required shoreline access. The improvements would consist of:
 1. A 28-foot-long by 10-foot-wide, 280-square-foot wooden boardwalk, supported by eight 12-inch **[material]** piles;
 2. One approximately 6.5-foot-long by 10-foot-wide, square asphalt ramp connecting the wooden boardwalk to the Marin County bike path and one 7-foot-long by 12-foot-wide asphalt ramp connecting to the seaplane parking lot and shoreline access path; and
 3. Modifying existing parking spaces for three vehicles to accommodate two 9-foot-wide by 18-foot-long ADA parking spaces along Bolinas Street;



- b. The project additionally proposes after-the-fact authorization of the following components:
1. A 63-square-foot concrete seaplane fuel tank and fueling pumps;
 2. A 19-foot, 10-inch-wide by 30-foot and 3-inch-long concrete seaplane launch ramp, installed in 2022, and to its original 1957 concrete footprint;
 3. A 357-square-foot floating seaplane dock;
 4. Storage of, and repairs to, a maximum of 5 seaplanes; and
 5. Existing helipad and two walkways.

Please verify whether the proposed project has been described in full; if not, please provide any missing details including the information in **[brackets]**.

2. Project Plans

Thanks you for providing the set of project plans entitled “242 Redwood Hwy, Mill Valley, CA 94941”, dated September 2, 2022. Our staff engineer will be reviewing the plan set and we will let you know if any additional information is required.

Please note that BCDC jurisdiction where marsh vegetation is present is defined as extending to five feet above mean sea level. Please provide an updated map that indicates the extent of tidal marsh present in the area, as well as the corresponding BCDC jurisdiction line five feet above mean sea level.

Please also provide clarification on the excavation depth and dimensions of the boat launch ramp, and associated Bay fill.

Please further provide clarification as to whether any construction activities were conducted on the buildings on site and if any improvements were made to Yolo Street. Please note that any such work requires BCDC approval.

3. Processing Fee

Your application appears to qualify for a nonmaterial amendment to a major permit. Therefore, the associated permit application fee will be dependent on the total project cost. As this work is the result of an enforcement action, it is subject to double the standard application processing fee. Please provide an estimate of your total project cost when it is available, and we will determine the application fee to ensure the continued processing of your application.



4. Proof of Adequate Property Interest

Thank you for providing a copy of the grant deed for the Seaplane Investment property.

Please note that any after-the-fact authorization for activities that are occurring on Yolo Street, such as the second fuel tank, seaplane storage and repairs, water access ramp, as well as on the Parepa and Bolinas Streets, will require further evidence of legal interest for these properties.

5. Other Governmental Approvals

Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. If applicable to the proposed project, we will also need to receive project approval(s) and all “take” authorizations from the state and federal resource agencies. Our regulations prohibit us from filing an application prior to receiving this documentation.

6. Public Access

Thank you for providing additional details on public access associated with this project. The Commission’s law and policies require that proposed development provide the maximum feasible public access consistent with the project. Your proposal appears to include some public access improvements, such as parking modifications and signage to make the already required public access areas in the existing permit more functional/usable as required by the San Francisco Bay Plan public access policies.

Please provide a copy of the Sea Level Risk Assessment referred to in your April 7, 2023 response letter when available. Please ensure that the estimated life of the project and the effect of a mid- and end-of-century sea level rise based on the 100-year flood projected for the proposed access area is assessed. If the assessment shows that potential flooding at the site would threaten public access viability, the access should be designed to be resilient to a mid-century sea level rise projection. If the proposed project and access would remain in place beyond mid-century, an adaptive management plan to address impacts of sea level rise at end of century should be prepared or alternative, equivalent access should be proposed. BCDC will further review the proposed public access improvements and can provide input as needed on project specifics.

7. Environmental Documentation

Please provide environmental documentation, as required under the California Environmental Quality Act (CEQA), in the form of a categorical or statutory exemption, negative declaration, or other certified environmental impact document.

8. Water Quality

Please provide a copy of the Spill Containment and Response Plan referred to in your April 7, 2022 response if available, including specific minimization measures for the use of fuel on the site.



Seaplane Investment, LLC
Permit Application No. 1973.014.05

May 8, 2023
Page 4


Other Issues. In addition to the issues cited above, the following matters should be considered in submitting additional materials to us as part of the application process.

9. Enforcement Case

The project site is currently subject to an ongoing BCDC Enforcement Case, No. ER2019.063.00. Please ensure that efforts are coordinated with that case and the present BCDC application. You can expect further instruction on this issue through the formal enforcement process.

If you have any questions, please do not hesitate to contact me at 415-352-3665 or sam.fielding@bcdc.ca.gov.

Sincerely,

DocuSigned by:

2AA0DD5043E4453...

SAM FIELDING
Coastal Program Analyst

SF/ra

cc: Jenna Brady, County Counsel, Marin County <JBrady@marincounty.org>
Jillian Blanchard, Rudder Law Group, <jblanchard@rudderlawgroup.com>
Adrienne Klein, SFBCDC <adrienne.klein@bcdc.ca.gov>





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ATTACHMENT C

January 18, 2023

Lou Vasquez, Founder and Principal
Build SF
315 Linden Street,
San Francisco, CA 94102

via e-mail: lou@bldsf.com
c.c.: jblanchard@rudderlawgroup.com

Subj: Proposal for Sea-Level Rise Risk Assessment, Mill Valley Seaplane

Dear Lou and Jillian:

As discussed, we would be delighted to assist you with preparation of a sea-level rise (SLR) risk assessment for the Mill Valley Seaplane location. The SLR risk assessment will be developed per the San Francisco Bay Conservation and Development Commission (BCDC) guidelines.

BCDC requires projects to address flood hazards and SLR levels expected by mid-century. If it is likely that the project will remain in place longer than mid-century, BCDC requires projects to provide a plan to address flood risks expected with sea-level rise at the end of the century.

BCDC specifically requires that SLR risk assessments address the following:

- SLR projections based on the OPC (2018) projections provided in the State of California Sea-Level Rise Guidance Document (www.opc.ca.gov/updating-californias-sea-level-rise-guidance).
- Take into account current and planned flood protection at the project site.
- Include inundation maps of the project site depicting projected flooding scenarios and reflecting the proposed project improvements.
- Discuss degrees of uncertainty and consequences of defense failure.
- If relevant, identify risks to existing habitat from proposed flood protection devices (not applicable to the Seaplane location).
- Identify risks posed by groundwater flooding.

In addition to assessing the project site's overall resilience to flooding and capacity for adapting to potential flood impacts, the assessment should also describe the public benefits associated with the project, e.g. improved safety, bay fill minimization, and public access improvements.

We will provide an assessment of flood and SLR hazards for the project site, focusing on the shoreline trail and public access requirements as defined in the existing permit. The assessment will quantify to what extent public access along the shoreline trail is impacted by potential flood

and SLR hazards. Based on our findings, the assessment will outline improvements to the shoreline trail that can be incorporated to enable public access to meet BCDC requirements to address sea-level rise by mid-century and adapt to sea-level rise projected by the end of the century.

The proposed enhancements to the public trail will include (for proposed new public access for after-the-fact permitting):

1. Raising the shoreline trail with engineered fill to provide an 8-foot wide trail with a crest elevation that can accommodate sea-level rise projected by mid-century.
2. Focus on maintaining the trail alignment along the shoreline as it is today, with an option to incorporate a trail alignment that runs between the building and property line on the southeast side of the lot, terminating at grade at the south corner of the lot.
3. Outline options for future adaptation to SLR for items 1 and 2 above.

In discussion with you, outline proposed enhancements to provide additional public access elements at the site, including:

4. Incorporation of a picnic area and/or open space adjacent to the shoreline trail.
5. Option to connect the trail to the Mill Valley-Sausalito Path, approximately 100 feet south of the lot. Options would center on raising the grade and/or incorporation of a bridging element over the ditch running along the Mill Valley-Sausalito Path¹.

We have prepared a scope of work for your review and consideration as described in the following.

PROPOSED SCOPE OF WORK

Task 1: SLR Risk Assessment

The first part of the SLR risk assessment will include review of relevant documents, including requirements of the existing permit, site layout and topography, and maps defining the public access areas, paths, entry and exit points established under the permit. A site visit will be conducted to assess and document site conditions.

We will develop a SLR risk assessment that evaluates potential hazards associated with groundwater rise, mean high tides, king tides, and the 100-year flood elevation at the project location as defined by FEMA, accounting for future sea-levels projected by 2050 per the BCDC requirements of the San Francisco Bay Plan.

¹ Note: these improvements would be outside of the project property line and would need to be coordinated with the County and other stakeholders if pursued.

The SLR risk assessment will summarize relevant sea-level rise policies and evaluate the vulnerability of the project location and public access to coastal flooding. The flood risk potential is primarily dependent on site grades in relation to extreme water levels and wave action in combination with future sea-level rise. The risk assessment will go over these elements and provide guidance on monitoring of SLR hazards and outline potential adaptive measures.

Sea-level rise and flood hazard inundation maps will be prepared for the existing site, and for the site with public access improvements for sea-level rise projected by mid-century and by the end of the century.

The deliverable for this task will be a SLR Risk Assessment Report.

Budget allocated to this task includes review of project information, technical analysis, report preparation, quality control and internal reviews.

Task 2: Meetings and Coordination

Budget under this task is intended for project coordination, and meetings and interaction with BCDC. We have assumed a total of 30 hours for meetings, interaction with BCDC, and project coordination.

FEE & SCHEDULE

Our fee to cover the proposed scope of work is \$48,518 per the attached fee proposal worksheet. Our billing is monthly, on a time and materials basis using the attached Rate Schedule for Professional Services.

In terms of staffing and availability, we have the required technical and support staff available. Our proposed project manager Mads Jorgensen is available to start the assessment. We anticipate that a draft of the SLR Risk Assessment report can be completed within approximately four weeks from receipt of a fully executed agreement and Notice-To-Proceed.

Sincerely,
Moffatt & Nichol



Mads Jorgensen, PE

Project Manager, Sr. Coastal Engineer

Dilip Trivedi, Dr.Eng., PE
Coastal Engineer/Vice President



moffatt & nichol

RATE SCHEDULE FOR PROFESSIONAL SERVICES

Effective February 1, 2022, Until Revised

	<u>CLASSIFICATION</u>	<u>HOURLY RATES</u>
PROFESSIONALS	Supervisory Engineer/Scientist	\$ 306.00
	Senior Engineer/Scientist	\$ 286.00
	Engineer/Scientist III	\$ 271.00
	Engineer/Scientist II	\$ 237.00
	Engineer/Scientist I	\$ 213.00
	Staff Engineer/Scientist	\$ 171.00
TECHNICIANS	Senior Technician	\$ 231.00
	Designer	\$ 218.00
	CADD II	\$ 187.00
	CADD I	\$ 139.00
CLERICAL	Project Controls/Word Processing	\$ 139.00
	General Clerical	\$ 109.00
SPECIAL	Principal Engineer/Scientist	\$ 321.00
	Deposition & Trial Testimony	\$ 574.00

REIMBURSABLE EXPENSES (Unless Otherwise Provided in Written Agreement)

Subcontracts or Outside Services		Cost +10%
Reproductions	-In House	
	Mylar Plots (B/W)	\$2.50/SF
	Color Plots	\$4.50/SF
	Vellum Plots (B/W)	\$1.50/SF
	Bond Plots (B/W)	\$1.00/SF
	Drawing Reproduction	Cost +10%
	Document Reproduction	\$0.15/sheet
	-Outside Reproduction	Cost +10%
Travel	Company Auto	Prevailing IRS
	Rental Vehicle	Cost
	Airfare	Cost
	Meals and Lodging	Cost