

San Francisco Bay Conservation and Development Commission

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

**Commission Cease and Desist
and Civil Penalty Order:**

CCD2022.001.01

Effective Date:

[Pending Executive Director execution, following
Commission action proposed at its June 20, 2024 meeting]

Respondent:

Edward Dudensing

To Edward Dudensing:

I. Commission Cease and Desist Order

Pursuant to Government Code section 66638, Edward Dudensing (“Respondent”) is hereby ordered to:

- A. Remedy all extant violations of the McAteer-Petris Act and of the San Francisco Bay Plan at the property owned by Respondent and located at 224 Sea Cliff Avenue in the City and County of San Francisco (the “Property”), that are the subject of Enforcement Case No. ER2004.019 and Commission Cease and Desist and Civil Penalty Order (“CCD”) No. CCD2022.001.00 (collectively, the “Enforcement Case”).
- B. Within 100 days of the Commission’s approval of this Order, prepare for review and approval by BCDC’s Senior Staff Engineer, which review and approval shall occur within 30 days, studies reflecting a geotechnical engineer’s analysis as well as demolition plans for all unpermitted structures put into place at the Property since September 17, 1965.¹ Collectively, these studies and demolition plans shall be referred to as the “Project Proposal,” which Project Proposal may propose implementation in phases.
 1. The studies reflecting a geotechnical engineer’s analysis must contain the following elements:
 - a. Identification of each unpermitted structure that poses a significant risk with respect to stability of the cliffside if retained in place. The geotechnical analysis shall be stamped by a geotechnical engineer registered in the state of California and consider climate,

¹ Respondent may elect to include structures put into place at the Property prior to September 17, 1965 as part of the geotechnical analysis, in which case Sections I.B-D would also apply to such structures.



erosion, and earthquakes which could reasonably occur during the anticipated life of the structures being analyzed.

- b. A methodology, conveyed on a set of plan drawings, for removing such structures in a manner that would not pose an increased significant risk with respect to stability of the cliffside as compared to retention of said structures.
 - c. For any structures for which the removal is determined to pose an increased significant risk with respect to stability of the cliffside as compared to retention of said structures, identification of a solution for first removing as much of the structure as possible and then retaining any remainder of the structure in place in a manner that minimizes the risk with respect to stability of the cliffside and otherwise can be found consistent with BCDC's laws and policies, assuming retention of the structure.
2. The demolition plans must contain the following elements:
- a. Removal of:
 - i. All structures on any publicly-owned property, except to the extent any remnant portions on property owned by the City and County of San Francisco (the "City") cannot be reasonably removed due to infeasibility or increased significant risk with respect to stability of the City-owned property as compared to retention of the remnant portions, subject to concurrence by BCDC's Senior Staff Engineer based on consideration of the submitted studies required by Section I.B.1.c above as well as evidentiary proof that the City consents to retention of any remnant portions.
 - ii. Any structures on Respondent's privately-owned Property determined by BCDC's Senior Staff Engineer to pose a significant issue with respect to stability of the cliffside based on concurrence with the submitted studies required by Section I.B.1.a-.b above.
 - b. Clear identification on the plans which unpermitted structures (if any) on Respondent's privately-owned Property are proposed to remain in place because they will not pose a significant issue with respect to stability of the cliffside, subject to concurrence by BCDC's Senior Staff Engineer based on consideration of the submitted study or studies required by Section I.B.1 above, for which Respondent must seek after-the-fact authorization (legalization) from both the City and BCDC in order to implement. (See Sections I.C-.D below.)
 - i. Respondent acknowledges that seeking legalization of any such unpermitted structures is not a guarantee of their approval as-is or at all by the City or BCDC, which agencies must evaluate any such proposal for consistency with their

respective applicable laws and policies beyond solely geotechnical/structural stability.

- c. Renderings of any structures or portions to remain pursuant to Section I.B.1.c above to be as visually inconspicuous as possible, in a manner that allows the structures or portions of structures to blend in with the surrounding environment to the greatest extent feasible.
- C. Within 60 days of Respondent's compliance with Section I.B above, subject to concurrence by BCDC's Senior Staff Engineer, obtain all necessary local City discretionary approvals for each phase of the Project Proposal prior to undertaking each corresponding Project Proposal phase, including:
1. those local discretionary approvals identified in the Notice of Violation for Complaint No. 2022-001049ENF sent to Respondent by the City on April 12, 2024 (Exhibit A); and
 2. any necessary environmental review under the California Environmental Quality Act ("CEQA") conducted by the CEQA lead agency, presumed to be the City.
- D. Within 60 days of obtaining all necessary local City discretionary approvals and corresponding CEQA review for each phase of the Project Proposal required under Section I.C, submit to BCDC staff a complete permit application for that Project Proposal phase. The submitted permit application must comply with 14 CCR section 10310 and, as applicable, sections 10315 and 10316, and specifically include:
1. A property survey conducted by a licensed land surveyor that delineates BCDC's Bay and shoreline band jurisdictions as defined in Government Code section 66610(a)-(b), as well as the State, City, and private property boundaries applicable to the Property.
 2. A design plan prepared and stamped by a California-licensed geotechnical engineer or structural engineer.
 3. Proof of property interests, discretionary authorizations, or entitlements required, if any, from the State Lands Commission ("SLC") and/or the National Park Service ("NPS") to undertake any activities proposed upon public property leased by NPS from SLC.
 4. Copies of any local City discretionary approvals, as well as any additional government agency discretionary approvals, for that phase of the Project Proposal to proceed. Where Respondent represents that a particular governmental approval is not required, provide correspondence from the government agency corroborating Respondent's representation.

- E. While it is difficult to establish a date certain by which Respondent can guarantee compliance with and full satisfaction of Section I.A above due to the uncertainty in timing of obtaining all necessary local City discretionary approvals required under Section I.C as well as BCDC permit(s) following satisfaction of Section I.D above, BCDC recognizes Respondent's timely and good faith efforts to date in furtherance of resolving the Enforcement Case. Considering the above, BCDC staff and representatives for Respondent have worked in good faith to mutually identify October 15, 2025 as a conservative date by which Respondent is expected to fully comply with and satisfy Sections I.A through I.E above.² If Respondent has not fully complied with and satisfied Sections I.A through I.E by this date, the Commission reserves the discretion to take any further appropriate action necessary, taking into consideration Respondent's actions or inaction up to that date, including, for example, extension of any of the specified dates by which Respondent must comply with and satisfy Sections I.A through I.E, respectively, pursuant to Section IV.A of this Order below or request that the State Attorney General petition the Superior Court of California, County of San Francisco, for the issuance of a preliminary or permanent injunction to restrain Respondent from continuing any activity in violation of this Order pursuant to Government Code section 66640(a).

II. Civil Penalty Order

Pursuant to Government Code sections 66641.5 and 66641.6, Respondent is hereby ordered to:

- A. Within thirty (30) days of the Commission's issuance of this Order, pay to BCDC pursuant to Section II.B below the administrative civil liability of ninety thousand dollars (\$90,000) previously required of PSG Capital Partners, Inc. and PSG Mortgage Lending Corp. (collectively, "PSG"), the prior respondents to the Enforcement Case by virtue of their former ownership of the Property. In Respondent's declaration filed on January 5, 2024 In re PSG Mortgage Lending Corp., Case No. 23-30281-DM, in the United States Bankruptcy Court for the Northern District of California, San Francisco Division (the "Bankruptcy Case"), Respondent "agreed to assume responsibility and pay the \$90,000 lien in favor of [BCDC]" (Exhibit B, p. 2), which payment of the \$90,000 administrative civil liability (characterized as a "lien" in the Bankruptcy Case) was part of the purchase price of the Property. (Exhibit C, p. 2.)
- B. Payment shall be made out to BCDC by cashier's check made payable to the Bay Fill Clean-Up and Abatement Fund. The administrative civil liability consists of:

² October 15, 2025 is identified as a conservative date for full compliance with Sections I.A through I.E of this order because if the Project Proposal is planned into two phases (first immediate removal of unpermitted structures which should clearly be removed, then subsequent consideration of desired final site conditions), due to inability to perform work during the rainy season (generally October 15 each year) the first phase could potentially be realized by October 15, 2024 but the second phase likely would have to be delayed until 2025 after the end of the rainy season in 2024.

1. Thirty-thousand dollars (\$30,000) for the unpermitted deck and ancillary structures within the private Property boundaries and within BCDC's shoreline band jurisdiction.
 2. Thirty-thousand dollars (\$30,000) for unpermitted structures on City-owned property without its consent.
 3. Thirty-thousand dollars (\$30,000) for unpermitted structures on SLC-owned property leased by NPS without the consent of SLC or NPS.
- C. If Respondent does not pay the ninety-thousand dollars (\$90,000) administrative civil liability within thirty (30) days of the Commission's approval and issuance of this Order, the Commission reserves the discretion to request that the State Attorney General petition the Superior Court of California, County of San Francisco, to impose, assess, and recover such sums, as well as any further justified civil penalties pursuant to Government Code sections 66641 and/or 66641.5.

III. Findings

A. Factual Findings

This Order as amended incorporates by reference the full Factual Findings, including all referenced Exhibits, attachments, and other materials within the enforcement record, as set forth in CCD2022.001.00 (Exhibit D) as if fully set forth below.

The Factual Findings most salient to Respondent are set forth below:

1. A portion of the Property is within BCDC's shoreline band jurisdiction.
2. The cliffs below the Property are nearly entirely on land publicly owned by the City. The cliffs are also within BCDC's shoreline band jurisdiction.
3. The sandy beach below the City-owned cliffs is largely below the mean-high tide line and is on land leased by NPS from SLC as part of the Golden Gate National Recreation Area.³
4. A 1938 photo of this area indicates some structures existed on the cliffs below the Property, pre-dating BCDC's existence, but these structures are limited to retaining walls and lateral support structures. None of these pre-existing structures were or are within BCDC's Bay jurisdiction. (Exhibit E.)

³ The mean high tide line on the beach shifts seasonally and may appear lower on the beach (*i.e.*, below the stairwell landing) at certain times of the year.

5. A 2002 photo of the Property also shows no evidence of (unpermitted) structures currently situated on the Property such as a deck, promenade, or stairwell. (Exhibit F.)
6. Between 2002 and 2004 a former owner of the Property (“Brugnara”), without required review, authorization, or permits from the City or BCDC, constructed an unauthorized deck, promenade, and stairwell that descends from the Property’s rear boundary to the beach. (Exhibit A, p. 1.)
7. Brugnara misrepresented the unpermitted structures as an “existing condition” and located within his private Property boundaries on his building permit applications submitted to the City and thus did not receive legitimate authorization or approvals from the City prior to construction. (Exhibit A, p. 2.)
8. In 2004, the NPS, with support from the National Oceanic and Atmospheric Administration, determined that the stairwell landing was constructed below mean-high tide line, and therefore encroaches on to lands leased by NPS from SLC. (Exhibit G.)
9. NPS determined that it cannot issue special use permits for private projects on property it leases from SLC and that the concrete pad and stairs encroaching upon the land that it leases from SLC should be removed. (Exhibits G, H.)
10. BCDC Enforcement staff opened Enforcement Case No. ER2004.019 regarding the unpermitted structures. (Exhibit I.)
11. The property became the subject of multiple complex bankruptcy proceedings while owned by Brugnara, ultimately resulting in PSG Capital Partners, Inc, the then-holder of the fourth trust deed secured against the Property based upon a loan PSG Capital Partners Inc. made to Brugnara, foreclosing upon the Property on August 13, 2020. (Exhibit J, p. 9.)
12. On August 20, 2021 PSG Capital Partners, Inc. transferred title to the Property to PSG Mortgage Lending Corp. by grant deed. (Exhibit J, p. 10.)
13. On April 1, 2022 BCDC Enforcement Staff mailed a Violation Report/Compliant for Administrative Imposition of Civil Penalties to PSG to resolve Case ER2004.019. (Exhibit K.)
14. On April 4, 2022 the City mailed a Notice of Violation Complaint No. 202183822 to PSG Capital Partners, Inc. asserting as municipal code violations that the relevant building permit applications “appear to have mis-represented property lines on all plans submitted” as well as various specified unsafe conditions of the stairwell. (Exhibit L.)
15. On April 14, 2022 the City also mailed a Notice of Enforcement for Complaint No. 2022-001-049ENF to PSG Capital Partners, Inc. stating that: “The violation pertains to the construction

of stairs and platforms spanning both private property and public property, from the rear of the subject property down the cliff and to the beach, without required consent or authorizations from all public agencies” on the basis that “between 2002 and 2004, seven building permits were filed and issued for the construction of these stairs and platforms where property lines were misrepresented.” (Exhibit M, p. 1.)

16. On May 25, 2022 the Commission’s Enforcement Committee held a public hearing and vote on a Recommended Enforcement Decision by BCDC’s Executive Director and voted unanimously (4-0-0) to recommend that the full Commission issue proposed CCD No. 2022.001.00. (Exhibit N.)
17. On June 16, 2022 the Commission held a public hearing and vote on a Recommended Enforcement Decision by the Enforcement Committee and of the members present voted 15-0-1 to adopt CCD No. 2022.001.00. (Exhibit O, pp. 10-23.)
18. As of June 16, 2022, when the Commission adopted CCD No. 2022.001.00, former respondents PSG had “done nothing” to resolve the Enforcement Case. (Exhibit D, Section III.BB.)
19. On February 5, 2024 former respondents PSG closed sale of the Property to Respondent Edward Dudensing. (Exhibit P.)
20. Section IV.D of CCD No. 2022.001.00 states in relevant part: “If a sale of the property is consummated BCDC Staff will work with the buyer for 30 days to present a stipulated order to the Commission without civil administrative liability.”⁴ (Exhibit D.)
21. Respondent has cooperated with BCDC Staff and the City since before the sale of the Property to Respondent closed and has worked in good faith since then to abate the violations enumerated herein. (Exhibit A, p. 2-3.)
22. On April 12, 2024 the City issued a Notice of Violation for Complaint No. 2022-00104ENF ordering Respondent to “remove all unauthorized work on publicly-owned land and to legalize or remove all unauthorized work on the subject property.” (Exhibit A, pp. 3-4.)

⁴ While presentation of this revised stipulated CCD has occurred beyond the 30-day timeframe specified in Section IV.D of CCD No. 2022.001.00, this delay is not due to any fault of Respondent. In hindsight, specification of a 30-day timeframe to present a revised stipulated CCD to the Commission was both overly aggressive and overly optimistic. No further administrative civil penalty is proposed against Respondent for the additional time it has taken to present this revised stipulated CCD to the Commission beyond the 30-day timeframe specified in Section IV.D of CCD No. 2022.001.00.

B. Legal Findings

1. Because the City and NPS will not allow for the unpermitted structures that are the subject of the Enforcement Case to remain encroaching on their respective public properties (Section III.A.8-9, 22 above), the Commission finds that it cannot permit any portion of the unpermitted structures encroaching upon public property, for which the Respondent does not have the requisite property interest to use for the encroaching unpermitted structures, as consistent with BCDC's laws and policies.⁵ (Reference Government Code section 66605(g).)
2. Because the portion of the unpermitted structures encroaching onto public property is within a Waterfront Park, Beach Priority Use Area ("PUA") designation (reference Bay Plan Map 4), the Commission finds that it cannot permit this portion of the unpermitted structures, which solely serves a private purpose, consistent with the applicable Waterfront Park, Beach PUA designation.⁶ (Reference Government Code section 66602.)
3. Because a portion of the unpermitted structures (the concrete landing for the stairwell) is situated below mean-high tide line (Section III.A.8 above) and thus constitutes Bay fill (reference Government Code section 66632(a)), the Commission finds that it cannot permit this portion of the unpermitted structures, which is not a water-oriented use and for which there is an alternative upland location available for its purpose, as consistent with BCDC's laws and policies. (Reference Government Code section 66605(a)-(b).)
4. Furthermore, because a portion of the unpermitted structures (the concrete landing for the stairwell) is situated below mean-high tide line (Section III.A.8 above), the Commission finds that it cannot permit this portion of the unpermitted structures, which do not benefit the public's right to use and enjoy property held by SLC within the public trust, as consistent with the public trust doctrine. (Reference Bay Plan Public Trust Policy 1.)
5. In its adoption of CCD No. 2022.001.00 on June 16, 2022, the Commission found that the following unpermitted structures constituted violations of the McAteer-Petris Act because no permit from BCDC was obtained for their authorization:
 - a. A deck, walkway, and rear stairwell on private Property within the shoreline band. (Exhibit D, Section III.A.)

⁵ This finding is subject to the allowance for Respondent to retain any remnant portions of unpermitted structures on public property as specified in Section I.B.2.a.i above.

⁶ *Id.*

- b. A rear stairwell on City-owned property within the shoreline band. (Exhibit D, Section III.B.)
- c. A rear stairwell and landing on SLC-owned property leased to NPS within both the shoreline band and the Bay. (Exhibit D, Section III.C.)

The Commission finds that each of the unpermitted structures continues to constitute violations of the McAteer-Petris Act because no permit from BCDC has been obtained for their authorization as of the effective date of this Order.

- 6. Even though Respondent is a “bona fide purchaser” of the Property and did not thus himself put into place the unpermitted structures that are the subject of this Enforcement Case (reference Government Code section 66638(a)), as the current owner of the Property he is responsible for resolving the continuing violations of BCDC’s laws and policies on the Property. (Reference *Leslie Salt Co. v. San Francisco Bay Conservation and Development Commission* (1984) 153 Cal.App.3d 605, 617-18, 621-22.)
- 7. In its approval of CCD No. 2022.001.00 on June 16, 2022, the Commission found that the findings of BCDC’s then-Senior Engineer “are based on substantial evidence, and that his conclusions about the condition of the stairs are reasonable and supported by that evidence.” (Exhibit D, Section III.D.) In particular, BCDC’s then-Senior Engineer’s Findings were as follows:
 - a. “Nearly all of the structures, including the handrails and landings of the rear stairs, constructed between 2002-2004 may be removed without affecting cliff stability. This includes any part of the rear stairs painted pink, and the entire landing of the structure that comes into contact with BCDC Bay jurisdiction. Statements in [Gilpin Geosciences and Holmes Structures reports] that suggest significant effects on cliff stability if the rear stair structure is removed are not supported by adequate evidence.” (Exhibit D, Section III.T.)
 - b. “I [Rafael Montes] agree that the structures that were in place in 1938 cannot be removed without concerns about cliff stability. These structures are not being proposed for removal. The structures added between 2002-2004 do not add significant stability to the cliff, and in fact are potentially overloading the pre-existing retaining walls and structures at the site.” (Exhibit D, Section III.U.)
 - c. “Mr. Montes recommends that the Commission order Respondents [PSG] to retain a geotechnical & structural engineer and a landscape architect to create a plan consistent with this declaration to remove as much of the illegally placed fill as possible, mitigate the remaining fill by grinding or covering with architectural designed shotcrete, and restoring the visual condition of the site as much as possible. The plan should be

submitted to BCDC for review and approval, and then implemented by Respondents' engineers and landscape architect." (Exhibit D, Section III.V.)

The Commission finds that the findings of BCDC's then-Senior Engineer, and the evidence upon which the findings are based, continue to constitute substantial evidence that the unpermitted structures raise reasonable concerns whether such fill was "constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters" (reference Government Code section 66605(e)), such that the Commission is justified in imposing all of the requirements in Section I above in order to resolve this Enforcement Case consistent with BCDC's laws and policies.⁷

8. In its approval of CCD No. 2022.001.00 on June 16, 2022, the Commission found that the three violations that are the subject of this Enforcement Case are subject to a total maximum administrative civil liability of ninety-thousand dollars (\$90,000) based on the factors set forth in Government Code section 66641.9. (Exhibit D, Section III.E-N.) While Section IV.C of CCD No. 2022.001.00 states that "If a sale [of the Property] is consummated, Respondents PSG Mortgage Lending Corp. and PSG Capital Partners Inc. will remain jointly and severally liable for the Civil Penalty Order" (Exhibit D, Section IV.D), as stated in Section II.A of this Order, as a condition of sale of the Property Respondent agreed to pay the outstanding ninety thousand dollars (\$90,000) administrative civil liability, which was part of the purchase price of the Property. The Commission finds that it is justified in imposing all of the requirements in Section II.

IV. Terms

- A. The Executive Director may, in his discretion, grant an extension of time for demonstrated good cause to comply with any provision of this Order. The Executive Director shall inform the full Enforcement Committee and the Chair of the Commission of any extensions that are granted under this provision.
- B. The Executive Director, upon the advice of BCDC's Senior Engineer, may require that the studies reflecting a geotechnical engineer's analysis as well as demolition plans for all unpermitted structures required by Section I.B above be submitted for peer review. Respondent shall be responsible for all costs associated with said peer review.

⁷ The Commission finds that the requirements set forth in Section I above are not a substantial or material deviation from the requirements of Section I of CCD No. 2022.001.00, but rather, upon critical re-evaluation, a refinement of the proposed approach to resolve this Enforcement Case consistent with BCDC's laws and policies.

- C. Respondent must strictly conform to the express terms of this Order. Pursuant to Government Code section 66641(a), any person who intentionally or negligently violates any part of any cease and desist order issued by the Commission may be liable civilly in the sum of up to six thousand dollars (\$6,000) for each day in which such violations persist. Pursuant to Government Code section 66641(b), upon the request of the Commission, the State Attorney General shall petition the Superior Court of California, County of San Francisco, to impose, assess, and recover such sums. In addition, pursuant to Government Code section 66640(a), upon the failure of any person to comply with any cease-and-desist order issued by the Commission and upon the request of the Commission, the State Attorney General may petition the Superior Court of California, County of San Francisco, for the issuance of a preliminary or permanent injunction, or both, restraining the person(s) from continuing any activity in violation of the cease-and-desist order.
- D. This Order does not affect any duties, right, or obligations established under private agreements or by the laws and regulations of other public bodies.
- E. This Order does not constitute a recognition of property rights.
- F. This Order is effective upon the date of execution by the Executive Director below.

V. Judicial Review

- A. Under Government Code sections 66639 and 66641.7(a), within thirty (30) days after service of a copy of a cease-and-desist order and civil penalty order issued by the Commission, an aggrieved party may file with the Superior Court of California, County of San Francisco, a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission as of the date indicated below.

Lawrence J. Goldzband, BCDC Executive Director

Date

LJG/mn/mm

Exhibits

- A. City NOV 2022-001-049ENF
- B. Bankruptcy Court Declaration
- C. Bankruptcy Court Order
- D. BCDC CCD2022.001.00 (Executed)



- E. 1938 Photograph
- F. 2002 Photograph
- G. 2004 NPS Email
- H. 2012 NPS Email
- I. BCDC ER2004.019.00
- J. Bankruptcy Court Motion to Sell
- K. BCDC VR&C 2004.019.00
- L. City NOV 202183822
- M. City NOE 2022-001-049ENF
- N. May 25, 2022 BCDC EC Transcript
- O. June 16, 2022 BCDC Commission Minutes
- P. Bankruptcy Court Report of Sale

cc: Kelly Wong, Code Enforcement Manager, City and County of San Francisco
<kelly.wong@sfgov.org>
Carl Malchow, Senior Building Inspector, City and County of San Francisco
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Kristen Holder, Golden Gate National Recreation Area, National Park Service
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Devyn Romero, State Lands Commission <Devyn.Romero@slc.ca.gov>
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<brian.thompson@waterboards.ca.gov>
William M. Connor, Regulatory Program Manager, United States Army Corps of Engineers
<William.M.Connor@usace.army.mil>



NOTICE OF VIOLATION

April 12, 2024

Property Owner

Edward Dudensing
224 Seacliff Ave
San Francisco, CA 94121

Edward Dudensing
410 Crescent Heights Blvd
Los Angeles, CA 90048

Site Address: 224 Seacliff Avenue
Assessor's Block/Lot: 1307 / 001S
Zoning: RH-1(D) (Residential House – One Family, Detached) Zoning District
P (Public) Zoning District
40-X Height and Bulk District
Family Housing Opportunity Special Use District

Complaint Number: 2022-001049ENF
Code Violation: Section 175, Unauthorized Construction Work
Administrative Penalty: Up to \$1,000 per Day for Each Violation
Enforcement T & M Fee: \$3,534.79 (Current Fee for Confirmed Violation, Additional Charges May Apply)
Response Due: Within 15 Days from the Date of This Notice
Staff Contact: Vincent W. Page II | (628) 652-7396 | vincent.w.page.ii@sfgov.org

The Planning Department finds the above referenced property to be in violation of the Planning Code. As the owner of the subject property, you are a responsible party to bring the subject property into compliance with the Planning Code. Details of the violation are discussed below.

Description of Violation

The Planning Department's records reflect that the subject property is developed with a three-story over basement building authorized for Residential use with one Dwelling Unit. The violation pertains to the construction of several flights of steps, walkways and platforms that lead from the northern (rear) end of the subject property down to the publicly-owned beach which it abuts. The steps were constructed between 2002 and 2004 without required consent and authorization from the Planning Department or any of the other public agencies with jurisdiction over the public and private land which the unpermitted steps span. A permit to authorize this scope of construction would have been required to undergo review with multiple Departments of

the City and County of San Francisco, as well as the San Francisco Bay Conservation and Development Commission. Instead, the stairs, platforms and retaining walls were misrepresented as an “existing” condition in Building Permit Application No. 200211081046 and did not receive the required approvals prior to construction.

Pursuant to Planning Code Section 171, structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provision constitutes a violation of the Planning Code and is subject to an enforcement process, pursuant to Planning Code Section 176.

Timeline of Investigation

On February 3, 2022, Planning Complaint No. 2022-001049ENF was opened.

On February 17, 2022, Planning Department staff conducted a site visit and confirmed the violation.

On April 14, 2022, a Notice of Enforcement (NOE) was issued. In that notice, the prior property owner PSG Capital Partners Inc was advised to take corrective action and provide evidence of compliance to the Planning Department within fifteen (15) days. See enclosure.

Between May 4, 2022, and August 2, 2022, Planning staff (Kelly Wong) met and corresponded with the prior property owner and their team on multiple occasions to relay requirements to abate Planning Code violations.

On August 31, 2022, Building Permit Application No. 202208311654 was filed “To Comply with NOV# 202183822 & Planning Violation # 2022-001049ENF. Rockfall hazard mitigation, removal of all non-structural elements observed beyond currently presumed property lines. Mitigation of hazards presented by previously incorrectly scoped construction permits.” This submitted permit was incomplete and did not include all requirements outlined in the NOE.

Between August 31, 2022, and June 6, 2023, Planning staff (Kelly Wong) relayed to the prior property owner team on multiple occasions that the above filed permit application was incomplete and did not include all requirements outlined in the NOE. During this period, Planning staff also relayed the outstanding Enforcement Fee balance that had not yet been paid.

Between December 4, 2023, Planning staff (Kelly Wong) responded to an email from you inquiring about the active Planning enforcement case and the requirements to abate Planning Code violations.

On December 5, 2023, you met with Planning staff (Kelly Wong) to discuss the Planning Code violations at the subject property including the requirement to remove all unauthorized stairs and platforms at the rear of the property. During this meeting, you acknowledged this requirement.

On December 6, 2024, Planning staff (Kelly Wong) sent you a copy of the NOE.

Between December 9, 2023, and January 31, 2024, you provided a weekly update to the Planning Department on becoming the new property owner of the subject property.

On February 14, 2024, Planning staff (Kelly Wong) sent a copy of the NOE to your Contractor (Patrick O'Neill) outlining the requirement to remove all unauthorized stairs and platforms at the rear of the property, as well as all permit drawing requirements.

On March 26, 2024, your Contractor (Patrick O'Neill) submitted drawings to the Planning Department showing a proposed project to retain most of the rear stairs and platforms, contrary to the NOE requirement to remove the unauthorized construction work. These drawings were incomplete and did not include the required drawings and details for Planning's review, nor keynotes clarifying all proposed scopes of work.

On April 10, 2024, Planning staff (Kelly Wong and Vincent Page) along with the Department of Building Inspection (Jimmy Cheung, Carl Malchow, Kevin Birmingham, and Matt Greene), Department of Public Works (Raymond Lui, Reza Baradaran, Stephan Leung), Real Estate Division (Jeff Seuss), and the San Francisco Bay Conservation and Development Commission (SF BCDC) (Jennifer Hyman) and met with your Contractor (Patrick O'Neill), your Geotechnical Engineer (Frank Rollo of Rollo & Ridley, Inc.), your Architect (John Dorr and Ryann Marlowe of DomA Architects) to discuss the active enforcement case. During this meeting, your Patrick O'Neill presented new drawings showing a new proposed project to remove the rear stairs and platforms except for three retaining walls and some existing buttresses to remain. All City agencies including DBI, DPW, Planning, and Real Estate, as well as SF BCDC agreed that removal of as much unauthorized work was required to abate violations.

Additionally, Jennifer Hyman relayed SF BCDC's concerns with promenade structure and requested portions to be removed, as well as their requirement to review the upper concrete patio above the stairs. Planning staff relayed the requirement to provide all required drawings, details, and keynotes to clarify all proposed scopes of work including those required to meet DBI and DPW. Jimmy Cheung clarified that all drawings required by other City agencies including Planning would be required, and that annotated photos could not be submitted in-lieu of required permit drawings and instead would serve only as supplemental information.

To date, the Planning Department has not received any evidence to demonstrate that the above violation has been abated or a corrective action has been taken to bring the subject property into compliance with the Planning Code.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation by obtaining approval from the City and County of San Francisco's Departments of Planning, Building Inspections, Public Works, and Real Estate, and the San Francisco Bay Conservation and Development Commission (SF BCDC), of a development application to remove all unauthorized work on publicly-owned land and to legalize or remove all

unauthorized work on the subject property (Lot 001S in Assessor's Block 1307). The Planning Department will facilitate review of the application with SF BCDC to ensure their review is complete prior to the City's approval. Each submittal will be reviewed by SF BCDC and all applicable Departments of the City and County of San Francisco prior to approval. The required application must be accompanied by permit drawings (plans), which must include the following:

- (1) **Project Data (Cover Sheet).** In addition to listing the subject property's street address, block and lot numbers, zoning designation, and the name of the person/firm preparing the drawings, provide a narrative of the existing use and site conditions, as well as a description of the proposed project and all scopes of work. Include in the project description: Comply with Planning ENF case no. 2022-001049ENF.
- (2) **Three Conditions for All Architectural Drawings.** The drawings must document what work was undertaken without authorization, and must show how this work would be legalized, modified to comply with the Planning Code, or removed. Accordingly, the drawings must represent the subject property in three distinct, separate conditions: (1) Existing (prior to unauthorized construction) – showing no rear stairs or platforms, (2) As Built (as it is today), and (3) Proposed. For the site plan and for each floor plan, elevation, and section, the three conditions must be shown together.

If the proposal is to legalize all unpermitted work, then only two conditions would be required: (1) Existing (prior to unpermitted construction), and (2) As Built and Proposed. However, if any required changes are identified subsequent to submittal, then three conditions would be required, as noted above.

- (3) **Site Plans.** Show the subject property, adjacent properties, sidewalks, street trees, planted areas, and the location of all structures. Identify the address of each building and the number of stories. Show the rear yard requirement pursuant to Planning Code Section 134, any other information relevant to review by other government agencies, such as the average tide line, and the extent of BCDC's jurisdiction over the subject property.
- (4) **Floor and Roof Plans.** For all floor and roof plans, show partial outline of both adjacent properties. Show all rooms, walls, stairs, doors, windows, plumbing fixtures, and kitchen appliances. Identify operation type and/or opening direction of all windows and doors. Annotate the use of all rooms and label each unit number. If no work is proposed at the building interior under this permit, label clearly on each proposed floor plan - "No work."
- (5) **Exterior Elevations.** Indicate the type of building materials on all exterior wall surfaces and the roof. Identify and the operation type and construction material of all windows and doors. Annotated photos cannot be submitted in-lieu of elevation drawings. Photos can serve as supplemental information.
 - (i) **For side (east/west) elevations,** show the building as it relates to grade and the average grade plane to confirm if the lot slopes up or down. Show the height datum point (center point of lot, curb level). Show the entire length of the lot, with the front and rear lot lines, rear yard and front setbacks indicated as vertical lines. Show the outline/full profile of the adjacent building, as well as any window openings and/or light wells that face the project site.

- (ii) **For the rear (north) elevation,** show the entire area of the north cliff face, all the way down to the water, and any other information relevant to review by other government agencies, such as the average tide line, and the extent of BCDC's jurisdiction over the subject property.
- (6) **Sections.** At least two sections—one long and one lateral—are required. Show the building as it relates to grade, including foundation footings and grade slope, if any.
 - (i) **For longitudinal sections,** show the building as it relates to grade, and confirm if the lot slopes up or down. Show the rear property line and the extent of BCDC's jurisdiction.
 - (ii) **For lateral sections,** show the profile of both adjacent properties and whether the lot slopes laterally.
- (7) **Dimensions.** Provide dimensions for all significant measurements, including lot depth/width; setbacks; the distance of buildings (and building massings if of differing height) from each other and from property lines; the width of sidewalks and curb cuts; interior room dimensions; the existing/proposed maximum building height from the height datum point pursuant to Planning Code Section 160 (center point of lot, curb level); the height of individual building stories (to finished roof/floor); ceiling heights (clear); and the height of exterior building projections/cantilevers from grade.
- (8) **Photos.** Provide two photo surveys of the subject property showing its Existing and As-Built conditions. Please provide dates for all photos.
- (9) **Details and Notes.** Provide construction details and notes throughout the drawings, as required to show the scope of work. Include all details required for DPW and DBI review of this permit application including but not limited to any proposed reinforcement of existing walls and/or cliffsides, anchoring, and/or installation of mesh and shotcrete. Clearly show all relevant drawing markers for referenced details.

You will be responsible to comply with any requests for additional information, revisions, or additional applications. You will be required to pursue the corrective Building Permit Application such that it is approved, issued, and completed. The Planning Department reserves the right to determine whether you are demonstrating good faith toward addressing the violation. Your failure to demonstrate good faith, or to successfully abate the violation through the obtention of a Building Permit as noted above, will result in further enforcement action.

For questions regarding the Planning Code or any Planning Department review processes, you should first contact the staff noted on the cover page of this letter. If staff is not available, you may contact the Planning Information Center at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: (628) 652-7300
Email: pic@sfgov.org
Website: www.sfplanning.org

To obtain copies of approved Building Permit Applications or plans, please contact the Department of Building Inspection (“DBI”) – Records Management Division at:

49 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103
Phone: (628) 652-3420
Email: dbi.records3r@sfgov.org
Website: sf.gov/requestbuildingrecords

For questions regarding the building permit application process, please contact the Department of Building Inspection (“DBI”) at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: (628) 652-3200
Email: permitcenter@sfgov.org
Website: sf.gov/departments/departments-building-inspection

Timeline to Respond

The responsible party has **fifteen (15) days from the date of this notice** to either:

- (1) Take steps to correct the violation as noted above; or
- (2) Appeal this Notice of Violation as noted below.

The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation will result in assessment of administrative penalties at \$1,000 per day for each violation. The Department may also report any licensed professional responsible for the violation(s) to the appropriate local, state, or federal licensing boards.

Please contact the assigned Enforcement Planner noted above with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Appeal Processes

If the responsible party believes that this order to remove a violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available:

- (1) The responsible party may request a Zoning Administrator Hearing under Planning Code Section 176 within **thirty (30) days** from the date of this notice to show cause why this Notice of Violation is issued in error and should be rescinded by submitting the Request for Zoning Administrator Hearing Form and

supporting evidence to the Planning Department. The Zoning Administrator shall render a decision on the Notice of Violation within 30 days of such hearing. The responsible party may then appeal the Zoning Administrator's written decision to the Board of Appeals within 15 days from the date of the decision.

- (2) The responsible party or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation within **fifteen (15) days** from the date of this notice to the Board of Appeals located at:

49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: (628) 652-1150
Website: www.sfgov.org/bdappeal

If Board of Appeals upholds the Notice of Violation, it may not reduce the amount of penalty below \$200 per day for each day the violation continues unabated, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

No penalties are assessed during the period when the matter is pending either before the Zoning Administrator or before the Board of Appeals. However, if the Responsible Party requests continuance of the appeal without a reasonable cause with the Board of Appeals, the penalties may still be assessed during the continuation period.

Administrative Penalties

If a Responsible Party does not request any appeal process and does not take corrective action to abate the violation **within 30 days**, this Notice of Violation will become final. However, **administrative penalties will not begin to accrue until the 30-day period to respond expires**, as detailed above. Beginning on the following day, administrative penalties of up to **\$1,000 per day for each violation** to the Responsible Party will start to accrue for each day the violation continues unabated. If such penalties are assessed, the Planning Department will issue a Notice of Penalty and Fee, and the penalty amount shall be paid **within 30 days** from the issuance date of that notice. Please be advised that payment of penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until corrective action is taken to abate the violation.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for "Time and Materials" to recover the cost of correcting the Planning Code violations. Accordingly, the Responsible Party is currently subject to a fee of **\$3,534.79** for "Time and Materials" cost associated with the Code Enforcement investigation for confirmed violation. Additional fees will continue to accrue until the violation is abated. **This fee is separate from the administrative penalties described above and is not appealable.**

Failure to Pay Penalties and Fees

If the Responsible Party fails to pay the “Administrative Penalties” and “Time and Materials” fee to the Planning Department within 30 days of the issuance of Notice of Penalty and Fee, the Zoning Administrator may take such actions to collect the “Penalties” and any unpaid “Time and Materials” fee owed to the Department, including:

- (1) Referral of the matter to the Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the San Francisco Administrative Code. The BDR may apply a 25% surcharge for their collection services. Please note that such surcharge will be considered part of the cost of correcting the violation, and the Responsible Party will be responsible for such charges.
- (2) Initiation of lien proceedings under Chapter 10, Article XX, Section 10.230 et seq. of the San Francisco Administrative Code; and
- (3) Requesting the San Francisco Office of City Attorney to pursue collection of the “Administrative Penalties” and “Time and Materials” imposed against the Responsible Party in a civil action.

Recordation of Order of Abatement

Upon the expiration of 90 days following the finality of this Notice of Violation, an Order of Abatement may be recorded against the property's records in the Office of the Recorder of the City and County of San Francisco.

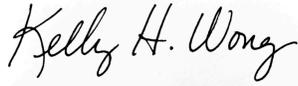
The obligation to correct the violation as set forth in the Order of Abatement shall be Planning Code conditions pursuant to Planning Code Section 174 that run with title to the property. Further, such recordation shall provide notice to each Responsible Party and any subsequent “successor” or “assign of title” to the property that the failure to perform such obligations is a violation of the Planning Code and may be enforced pursuant to Planning Code Section 176.

Any fees associated with recordation of an Order of Abatement will be assessed to the Responsible Party and added to the “Time and Materials” fee discussed above.

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Sincerely,



Kelly Wong
Acting Zoning Administrator

Attachments:

Notice of Enforcement dated April 14, 2022

CC: Jennifer Hyman, San Francisco Bay Conservation and Development Commission
Katharine Pan, San Francisco Bay Conservation and Development Commission
Michael Ng, San Francisco Bay Conservation and Development Commission
Jeff Seuss, Department of Real Estate
Matthew Greene, Department of Building Inspection
Carl Malchow, Department of Building Inspection
Raymond Lui, Department of Public Works
Reza Baradaran, Department of Public Works



NOTICE OF ENFORCEMENT

April 14, 2022

Property Owner

PSG Capital Partners Inc
16441 Scientific Way #250
Irvine, CA 92618

Site Address: 224 Seacliff Ave
Assessor’s Block/Lot: 1307/001S
Zoning District: RH-1(D), Residential- House, One Family- Detached, and P, Public
Complaint Number: 2022-001049ENF
Code Violation: Section 175: Unauthorized Construction, Building Permit Required
Administrative Penalty: Up to \$250 Each Day of Violation
Enforcement T & M Fee: \$4,953.36 (Current Fee for Confirmed Violation, Additional Charges May Apply)
Response Due: Within 15 days from the date of this Notice
Staff Contact: Kelly Wong, (628) 652-7397, kelly.wong@sfgov.org

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for single family residential use and to the rear of the property is public property. The violation pertains to the construction of stairs and platforms spanning both private property and public property, from the rear of the subject property down the cliff and to the beach, without required consent or authorizations from all public agencies including the City & County of San Francisco and its requisite Departments, State Lands Commission or its lessee the Golden Gate National Recreation Area, and the San Francisco Bay Conservation and Development Commission (SF BCDC).

Planning Department records show that between 2002 and 2004, seven building permits were filed and issued for the construction of these stairs and platforms where property lines were misrepresented. Four of these permits were issued without review and approval by the Planning Department and one was canceled by the Planning Department. No permits were obtained with required consent or authorization to build on any portion of the public property.

On November 8, 2002, Building Permit Application No. 200211081046 was filed and issued to “replace damaged concrete decks & walk way,” without required Planning Department review and approval. A 2002 photo of the property shows no evidence of existing concrete decks and walkway along the cliff and down to the beach. This permit also failed to show that the proposed work included construction on public property.

On June 27, 2003, Building Permit Application No. 200306278164 was filed to “amend PA 2002/11/08/1046, add remaining concrete deck to replace remaining damaged deck & stairs.” On February 23, 2004, the Planning Department sent a final letter to the applicant to request additional information including drawings for this permit. No response was provided. Thus, on July 12, 2004, this permit was canceled due to lack of response from the applicant.

On September 11, 2003, Building Permit Application No. 200309114438 was filed to “replace old access stairs area w/new concrete stairs and landing” and issued on November 14, 2003. However, the permit drawings show the proposed construction of new stairs down to the beach which did not exist previously. This permit also showed a new segment of stairs and platform not yet approved, which connected the proposed new stairs to the beach and the stairs previously shown under Building Permit Application No. 200211081046. This new connecting segment of stairs and platform is shown on the drawings as an “existing” condition, is clouded, and with handwritten note “Pending Permit,” however with no reference Building Permit Application number. Although the Planning Department approved this permit, the drawings misrepresent what was existing and new, and the permit failed to show that the proposed work included construction on public property.

On January 16, 2004, Building Permit Application No. 200401164227 was filed and issued for the “amendment to APPLN 200309114438. Add columns per plans,” without Planning Department review and approval. The drawings misrepresent what was existing and new, and the permit also failed to show that the proposed work included construction on public property.

On June 9, 2004, Building Permit Application No. 200406095884 was filed and issued to “replace existing retaining wall and walk way in backyard,” without required Planning Department review and approval. The drawings misrepresent what was existing and new and inaccurately show the location of property lines.

On August 12, 2004, Building Permit Application No. 200408121368 was filed and issued to “renew APPL# 200211081046, 200309114438, 200401164227 for final inspection,” without Planning Department review and approval. No drawings were submitted as part of this permit.

On September 3, 2004, Building Permit Application No. 200409033343 was filed and issued to “replace deck access of concrete deck & stairs. See permit 200306278164.” Drawings submitted under this permit shows the proposed scope of work to legalize the already constructed new connecting segment of stairs and platform between the stairs previously shown under Building Permit Application No. 200211081046 and the new stairs down to the beach shown under Building Permit Application No. 200309114438. However, the drawings inaccurately show the location of property lines and that all proposed work is within private property. Although the Planning Department approved this permit, the drawings misrepresent the property lines and failed to show that the proposed work was on public property.

On November 16, 2021, a Department of Building Inspection (DBI) Notice of Violation (NOV) No. 202183822 was issued for the undermining of cliff slope and deterioration of stairway structure located to the north side rear of

property” at 224 Seacliff Avenue.

On February 1, 2022, the Planning Department received a referral from the Department of Building Inspection (DBI) regarding the construction of the stairway and platforms located on both private property and public property without Planning Department review and approval. On February 3, 2022, the Planning Department opened enforcement case no. 2022-001049ENF to investigate this DBI referral.

On February 17, 2022, Planning Department staff conducted a site visit with Planners Kimberly Durandet and Gretel Gunther and met with the owner’s representative Mark Levinson of Compass Real Estate, Carl Malchow of DBI, and Brent Plater of SF BCDC to review as-built conditions at the property. Staff observed that the constructed stairs and platforms spanned the rear of the subject building located on private property down the cliff and onto the beach on public property.

On April 1, 2022, the SF BCDC issued a Violation Report / Complaint for Administrative Imposition of Civil Penalties in BCDC Enforcement Case ER2004.019.00, which outlines the requirement to remove the stairway and platforms since these were constructed without consent from required public agencies.

On April 4, 2022, DBI NOV No. 202183822 was amended based on “new information provided by SF-BCDC regarding the stair structure built outside of property line. Permit Applicant of Permits #200211081046, 200309114438, 200401164227, 200406095884, 200408121368, and 200409033343 appears to have misrepresented property lines on all plans submitted. Letter and picture documents dated February 4, 2022, provided by SF-BCDC show evidence of large portion of structure built outside of 224 Seacliff property lines.”

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located. Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any of these provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. **Building Permit Application.** File a new Building Permit Application to remove the stairway and platforms located on public property constructed without proper consent and authorization from public agencies. Any work on private property at the rear of the property that was not reviewed and approved by the Planning Department, including scopes of work in permits that misrepresented property lines, must be included in this permit application for review and approval.

The permit should include a full set of drawings as outlined in our [Plan Submittal Guidelines](#). All scopes of work proposed will be reviewed for compliance with the Planning Codes and current Department

requirements. This permit must also be reviewed and approved by all required agencies having jurisdiction including, but not limited to, the Department of Building Inspection, the San Francisco Bay Conservation and Development Commission, and State Lands Commission or its lessee the Golden Gate National Recreation Area, if required. If additional drawings are required by other agencies, please include these in the permit set.

- a. **Site Survey.** Provide a site survey by a licensed surveyor registered in California for this property to accurately show the location of property lines. Submit a copy of this survey to the Planning Department.
 - b. **Drawings.** Submit a full set of drawings as outlined in our [Plan Submittal Guidelines](#). Additionally, please provide the following information and drawings, for our review. The Planning Department may require further information upon review of the submitted Building Permit Application.
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (including any new work required to bring this property back into compliance).
 - ii. Site plans –
 1. Clearly show the locations of private property and public property. For the public property, demarcate and label clearly which public agency has jurisdiction under which area.
 2. Provide dimensions and location of the required rear yard on plans.
 - iii. Photos – include one sheet after the cover sheet with the following photos. Label each clearly with dates of photos.
 1. 2002 Oblique Photograph from the Gilpin Geosciences, Inc. report, dated November 24, 2021, showing the cliff side of the property from the water.
 2. As-Built Conditions of the constructed stairway and platforms, as they currently exist today.
 - iv. Details – include any details required for the proposed scope of work.
2. **Completion of Abatement Work.** You are responsible for ensuring the completion of work outlined in the approved Building Permit Application. Below are the Planning enforcement steps upon permit issuance.
 - a. **Job Card.** Upon permit issuance, send the enforcement planner a photo of the "Issued Job Card" showing the building permit number.
 - b. **Construction Schedule.** Send the enforcement planner a proposed construction schedule within 15 days of the issued Job Card including both a start and end date, for the Planning Department's review and approval. If you require more time to submit this, please send a request by email with a new date for the Department's review.

- c. **Monthly Updates via Email.** If construction work will take more than 30 days, you are required to send the enforcement planner monthly updates via email with photos and description of completed work showing the progress of abatement. If there are any delays, please send an email with the reason for any delay and the proposed new revised date of completion.
- d. **Send Completed Photos to SF Planning.** Upon completion of work, send the enforcement planner photos of the completed work for review. The Planning Department will confirm if a follow-up site visit is warranted. Please note that the Planning Department must review/approve completed work prior to you contacting the DBI Inspector for permit sign off.
- e. **DBI Permit Sign Off.** Once the Planning Department confirms that completed work is consistent with Planning's approval, please proceed to contact the DBI Inspector for the permit sign off.

Please visit DBI website, <https://sf.gov/apply-building-permit> for information on the permit application process. **This permit must be diligently pursued and completed.**

The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. Please provide evidence including (such as dimensioned plans, photos, licenses, lease copies, etc.). A site visit may also be required to verify compliance. You may also need to obtain a building permit for any other alterations done at the property. The work approved under any permits to abate violation must commence promptly and be continued diligently to completion with a final inspection and/or issuance of certificate of final completion.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfgov.org/dbi

For questions regarding the planning permit review process, please contact the **Planning Department's Planning Information Center (PIC)** at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: 628.652.7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned enforcement planner as noted in the staff contact listed above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The timeline to respond to this Notice of Enforcement is fifteen (15) days. As such, we highly encourage you to immediately reach out to the assigned Enforcement Planner to discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Please contact the assigned Enforcement Planner with questions and/or to submit evidence of correction. Delays in abatement of the violation beyond the timeline outlined above will result in further enforcement action by the Planning Department, including issuance of Notice of Violation and assessment of administrative penalties at \$250 per day.

Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in issuance of a **Notice of Violation** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options.

1. Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
2. Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party is subject to an amount of **\$4,953.36** or more for "Time and Materials" cost associated with the Code Enforcement investigation. **This fee is separate from the administrative penalties described above and is not appealable.**

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

- Enc.: DBI Notice of Violation No. 202183822 (amended on 4/4/22), dated November 16, 2021.
BCDC Letter to DBI re: Complaint No. 202183822 (224 Sea Cliff Ave.); BCDC Enforcement Case ER2004.009, dated February 4, 2022.
2002 Oblique Photograph of 224 Sea Cliff Ave, from Gilpin Geosciences, Inc. engineering geologic and geotechnical evaluation report, dated November 24, 2021.
- cc: Mark Levinson, Compass Real Estate, mark@markallanlevinson.com (Owner's Representative)
Carl Malchow, San Francisco Department of Building Inspection, carl.malchow@sfgov.org
Brent Plater, San Francisco Bay Conservation & Development Commission, brent.plater@bcdc.ca.gov



NOTICE OF VIOLATION

of the San Francisco Municipal Codes Regarding Unsafe, Substandard or Noncomplying Structure or Land or Occupancy

DEPARTMENT OF BUILDING INSPECTION

City and County of San Francisco
49 South Van Ness Av Suite#400
San Francisco, CA 94103

- FIRST NOTICE
 SECOND NOTICE
 OTHER:

COMPLAINT NUMBER

202183822

ADDRESS

224 Seacliff Av

DATE **11/16/21**

OCCUPANCY/USE

R-3

BLOCK **1307** LOT **001S**

CONST. TYPE

5

STORIES **4** BASEMENT

If checked, this information is based upon site-observation only. Further research may indicate that legal use is different. If so, a revised Notice of Violation will be issued.

OWNER / AGENT:

PHONE#:

MAILING ADDRESS:

CITY

ZIP

PERSON CONTACTED @ SITE

PHONE#:

VIOLATION DESCRIPTION:

- WORK WITHOUT PERMIT (SFBC 103.A); ADDITIONAL WORK-PERMIT REQUIRED (SFBC 106.4.7);
 EXPIRED PERMIT (SFBC 106A.4.4) CANCELLED PERMIT (SFBC 106.3.7) PA#: _____;
 UNSAFE BUILDING (SFBC 102);A SEE ATTACHMENTS

To Amend C#202183822 Dated 11/16/21. New Information provided by SF-BCDC regarding stair structure built outside of property line. Permit Applicant of Permits #200211081046, 200309114438, 200401164227, 200406095884, 200408121368, and 200409033343 appear to have mis-represented property lines on all plans submitted. Letter and picture documents dated February 4, 2022 provided by SF-BCDC show evidence of large portion of structure built outside of 224 Seacliff property lines.

102A

A complaint investigation regarding north side of property has revealed erosion and undermining of cliff slope and stairway structure. Stairway and viewing platform are undermined in various locations with major rust corrosion of metal handrails and guardrail at bottom area. Spalling of concrete observed due to reinforcement corrosion.

MONTHLY MONITORING FEE Section 110A TABLE 1A-k

BC – Building Code HC – Housing Code PC – Plumbing Code [EC – Electrical Code] MC – Mechanical Code

CORRECTIVE ACTION:

STOP ALL WORK SFBC 104.2.4

- FILE BUILDING PERMIT APPLICATION WITHIN 30 DAYS WITH PLANS) A Copy of This Notice Must Accompany the Permit Application.
 OBTAIN PERMIT WITHIN 60 DAYS AND COMPLETE ALL WORK WITHIN 90 DAYS, INCLUDING FINAL INSPECTION AND SIGNOFF.
 CORRECTION VIOLATIONS WITHIN _____ DAYS. NO PERMIT REQUIRED.
 YOU FAILED TO COMPLY WITH THE NOTICE(S) DATED _____, THEREFORE THIS DEPT. HAS INITIATED ABATEMENT PROCEEDINGS.
 FAILURE TO COMPLY WITH THIS NOTICE WILL CAUSE ABATEMENT PROCEEDING TO BEGIN. SEE REVERSE SIDE FOR ADDITIONAL WARNINGS.

Obtain services of Licensed Structural Engineer and Licenced Surveyor to perform an evaluation of stairway and landing structures. Evaluation report must provide detailed summary of property line locations, damages, observations and corrective action to remove and restore to last known legal condition. Also obtain services of Licensed Goetechnical Engineer for evaluation of exposed rock slope areas. Evaluation report must provide detailed summary of damages, observations and corrective action to repair/rehabilitate entire slope area.

1. File for and obtain permit with Plans, with Planning Approval, and SF-BCDC Approval, for removal of stairway structures and restoration of all areas deemed outside of property lines.

2. File for and obtain permit based on recommendation under the evaluation report for repair/rehabilitation of remaining if any stairway, landings, and guardrails/handrails.

3. Also File for and obtain separate permit based on recommendation under the evaluation report for slope stabilization/protection for mitigation of of future rockfall, erosion, and undermining.

Exhibit A

INVESTIGATION FEE OR OTHER FEE WILL APPLY

See reverse side for further explanation

- 9x Fee (Work w/o Permit after 9/1/60) 2x Fee (Work Exceeding Scope of Permit)
 OTHER: _____ Re-inspection Fee\$ _____ No penalty (Work w/o permit prior to 9/1/60)

APPROX. DATE OF WORK W/O PERMIT _____ VALUE OF WORK PERFORMED W/O PERMITS \$ _____

BY ORDER OF THE DIRECTOR, DEPARTMENT OF BUILDING INSPECTION

CONTACT INSPECTOR **Carl Malchow** (carl.malchow@sfgov.org)
(Inspector – Print Name)

OFFICE HOURS 8:00 AM TO 9:00 AM AND 3:00 PM TO 4:00 PM

PHONE # 628-652-3438

- Building Inspection Division
49 S. Van Ness Av, Suite# 400 (628) 652-3450
- Housing Inspection Division
49 S. Van Ness Av, Suite# 400 (628) 652-3700
- Electrical Inspection Division
49 S. Van Ness Av, Suite# 400 (628) 652-3450
- Plumbing Inspection Division
49 S. Van Ness Av, Suite# 400 (628) 652-3450
- Code Enforcement Division
49 S. Van Ness Av, Suite# 400 (628) 652-3430

By:(Inspector's Signature) *Carl Malchow* DISTRICT # _____

CC: DCP EID PID BID HIS CED CPC DAD SFFD DPH RPC
M 9003 05 (Rev. 5/96)

Pursuant to SFBC 107.5 and 106.4.7 investigation fees are charged for work begun or performed without permits or for Work exceeding the scope of permits. Such fees may be appealed to the Board of Permit Appeals within 15 days of permit issuance, at 49 South Van Ness Ave., Suite 1475 (14th Floor). (628) 652-1150

WARNING: Failure to take immediate action as required to correct the above violations will result in abatement proceedings by the Department of Building Inspection. **If an Order of Abatement is recorded against this property, the owner will be billed or the property will be lien for all costs incurred in the code enforcement process from the posting of the first "Notice of Violation" until all costs are paid, SFBC 102.2 & 110.**

WARNING: Section 204 of the San Francisco Housing Code provides for immediate fines of \$100 for each instance of initial non-compliance, followed by \$200 fines per violation for the second instance of non-compliance, up to a maximum of \$7,500 per building. This section also provides for issuance of a criminal charge as a misdemeanor for each violation, resulting in fines of not less than \$1,000 per day or six months' imprisonment or both.

WARNING: Anyone who derives rental income from housing determined by the Department of Building Inspection to be substandard cannot deduct from state personal income tax and bank and corporate income tax interest, depreciation or taxes attributable to such substandard structure. If correction work is not completed or being diligently, expeditiously and continuously prosecuted after six (6) months from the date of this notice, notification will be sent to the Franchise Tax Board as provided in Section 17264(6) of the Revenue and Taxation Code.

WARNING: Section 103 of the San Francisco Building Code provides for civil fines of up to \$500 per day for any person who violates, disobeys, omits, neglects or refuses to comply with or opposes the execution of any provisions of this code. This section also provides for misdemeanor fines, if convicted, of up to \$500 and/or imprisonment up to six months for each separate offense for every day such offense occurs.

De acuerdo a las Secciones 107.5 y 106.4.7 de elCodigo de Construcción. de Edificios de San Francisco, gastos de investigación serán cobrados por trabajo empezado o realizado sin los debidos permisos o por trabajo que exceda el limite estipulado en los permisos. Dichos cobros pueden ser apelados ante la Junta de Apelaciones de Peimisos (Board of Permit Appeals) dentro de los primeros quince dias de haberse obtenido el permiso. Las apelaciones se hacen en el 49 South Van Ness Ave., Suite 1475 (14th Floor), telefono (628) 652-1150.

ADVERTENCIA: Si no cumple con las acciones inmediatas requeridas para corregir las infracciones, el Departamento de Inspección de Edificios tendra el derecho de iniciar el proceso de mitigación. Si una Orden de Mitigación es registrada contra dicha propiedad, los gastos incurridos durante el proceso de aplicación del código, desde la primera puesta del Aviso de Infracción hasta que todos los gastos esten pagados, se le cobraran al dueno del edificio o la propiedad sera embargada para recuperar dichos gastos. Referencia a la Sección 102.2 y 110 de el Código de Construcción de Edificios.

ADVERTENCIA: La Sección 204 de el Código de Vivienda de San Francisco permite que se multe inmediatamente \$100 por cada primer caso de inconformidad, seguida por una multa. de \$200 por cada segunda infracción de incanformidad, aumentando hasta un maximo de \$7,500 por cada edificio. Esta Sección tambien permite obtener cargos criminales como delito menor, resultando en multas de no menos de \$1,000 diarios ó 6 meses de encarcelamiento o ambas sanciones.

ADVERTENCIA: Cualquier persona que reciba renta:por una vivienda que haya sido declarada que no satisface las normas requeridas por el Departamento de Inspección de Edificios, no puede deducir del estado intereses personales, de banco o empresa, depreciación o taxes atribuidos sobre dicha estructura. Si el trabajo de reparación no se termina o esta diligentemente, rapidamente y contua.mente acusado despues de seis(c) meses de la fecha de este aviso, se le enviara una notificación a la Junta de Concesi6n de Impuestos (Franchise Tax Board) de acuerdo a la Sección 1264(c) del Código de Ingresos e Impuestos (Revenue and Taxation Code).

ADVERTENCIA: La Sección 103 de el Código de Edicios de San Francisco impone multas civiles hasta de \$500 porcada dia a cualquier persona que infrinja, desobedezca, omite, descuide, rehusa cumplir, resiste o se opone a la ejecución de las provisiones de este código. Esta sección tambien impone multas per delito menor, si es declarado culpable, de hasta \$500 o encarcelamiento de hasta 6 meses, o ambas sanciones, por cada una de Jas ofensas y por cada dfa que dicha ofensa ocurre.

BABALA: Ang kabiguan na gumawa ng aksiyon tulad ng kinakailangan upang iwasto ang mga nasabing paglabag ay magreresulta sa paglilitis ng abatement ng Kagawaran ng Inspeksyon ng Gusali. Kung meron Order of Abatement ang naitala laban sa isang ari-arian, ang may-ari ay sisingilin o di

Exhibit A

kaya ang ari-arian ay gagamitin na lien sa lahat ng mga gastos na natamo sa proseso ng pagpapatupad mula sa unang "Paunawa sa Paglabag" hanggang sa lahat ng gastos ay mabayaran, SFBC 102A.2 & 110A.

BABALA: Ang Seksyon 204 ng Housing Code ng San Francisco ay nagtatakda ng agad-agad na multa na \$100 sa bawat halimbawa ng unang hindi pagsunod, at susundan ng multa na \$200 sa bawat paglabag sa pangalawang hindi pagsunod, hanggang sa sukdlan na \$7,500 sa bawat gusali. Ang seksyon na ito ay itinatakdang na magsasampa rin ng kasong kriminal bilang isang misdemeanor sa bawat paglabag at magreresulta sa multa na hindi bababa ng \$1,000 sa bawat araw o di kaya sa anim na buwan na pagkabilanggo o parehong ipapataw.

BABALA: Sinumang kumikita sa pag-upa ng pabahay na tinukoy ng Kagawaran ng Inspeksyon ng Gusali na substandard, ay hindi maaring ibawas ang ganoong kita sa buwis sa estado ng kitang personal, at gayundin sa buwis na kita sa interes sa bangko at korporasyon, at sa depresasyon o mga buwis na maiiugnay sa gusaling substandard. Kung ang Gawain sa pagwawasto ay hindi nakumpleto o hindi masigasig, mabilis at tuloy-tuloy ang paggawa matapos ang anim (6) na buwan mula sa petsa nitong paunawa, ay magpapadala ng abiso sa Franchise Tax Board na itinakda sa Seksyon 17264(6) ng Revenue and Taxation code.

BABALA: Ang Seksyon 103A ng Building Code ng San Francisco ay nagtatakda ng mga multang sibil hanggang sa \$500 sa bawat araw sa sinumang lumabag, sumuway, magtanggali, magpabaya o tumangging sumunod o di kaya sumalungat sa pagpapatupad ng mga probisyon nitong code. Nagpapataw din itong seksyon ng multang misdemeanor kapag nahatulan, ng hanggang sa \$500 at o di kaya anim na buwan na pagkabilanggo sa bawat magkahiwalay na pagkasala para sa bawat araw na nangyari ang ganoong pagkasala.

根據《三藩市建築法規》(簡稱 SFBC) 第 107.5 項和第 106.4.7 項條款的規定，對沒有許可證便已開始的工程和或正在進行的工程、或者超越許可範圍的工程，將收取調查費。當舉人可以在此許可證發出日起 15 天之內，向調查費可以向許可上訴委員會提出上訴。該委員會地址在 South Van Ness 街 49 號 14 樓，電話：(628) 652-1150。

警告：如不按照要求立即採取行動、以糾正上述違章行為，將導致建築檢查局付諸強制糾正程序的執行。倘對此房地產頒發的強制糾正程序令一經在市府備案，則自通知張貼日起的各項與此糾正程序令有關的費用，將向房地產主索取，或將房地產扣押，直至付清各項費用。請參閱《三藩市建築法規》第 102.2 項和第 110 項條款。

警告：《三藩市房屋法規》(即 SFHC) 第 204(b) 項條款規定：對每一違章初犯者立即將被罰款 100 元，二次重犯者罰款 200 元，每檔樓宇的最高罰款可達 7,500 元。此項法規還規定對每一違章輕罪者可提出刑事控告，每日最高罰款可達 1,000 元，或/和監禁六個月。

警告：任何人通過出租房屋獲得收入，而該房屋已被建築審查局定為低於規定標準者，不能從加州個人所得稅、銀行和公司所得稅利息、以及與該低於規定標準的建築有關的折舊或稅款中扣除稅費。如果在此通告公布六個月後，改正工程沒有完成，或者沒有積極、迅速有效地繼續進行，我們將根據《國家稅收法規》(即 Revenue & Taxation Code) 第 1264(c) 項條款，通知加州稅務委員會 (The Franchise Tax Board)。

警告：《三藩市建築法規》第 103 項條款規定：對於任何違反、不服從、疏忽、忽視、或拒絕遵照此法規者，或者抵制、反對實施此法規中的任何條款的個人，將付最高 500 元的民事罰款。此法規還規定對違法者，如果被定罪，對每天所發生的、每一單獨的犯法行為，將付予高達 500 元的罰款，和/或者監禁六個月。

Exhibit A 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

February 4, 2022

Joseph Duffy
Deputy Director, Inspection Services
San Francisco Department of Building Inspection
49 South Van Ness Avenue
San Francisco, CA 94103

RE: Complaint No. 202183822 (224 Sea Cliff Ave.); BCDC Enforcement Case ER2004.009

Dear Mr. Duffy:

The San Francisco Bay Conservation & Development Commission is prosecuting an enforcement matter at 224 Sea Cliff Ave. in San Francisco regarding a stairwell constructed within our jurisdiction but without the requisite BCDC permit. Recently we learned that the Department of Building Inspection has an active investigation about the same stairwell. I am writing to share evidence obtained through our enforcement investigation, evidence that is relevant to DBI's investigation and the order it may ultimately issue.

In the Fall of 2021 DBI shared with BCDC the original permit applications and plans submitted for the stairwell project.¹ BCDC reviewed these documents and compared them to parcel information available through publicly accessible databases and to the Sanborn map for this location. Through this work we determined that the original applications contained inaccurate information about the stairwell's location.

Attached to this letter you will find the construction plans originally submitted to DBI for the project. On the last page of this attachment you will find a site plan that presents the entire stairwell *within* 224 Sea Cliff Avenue's private property boundaries. I've also attached a screenshot from SFGIS EagleView IPA that shows 224 Sea Cliff Avenue's property boundaries in blue. These boundaries are consistent with those represented by the Sanborn map and parcel maps obtained through RealQuest. You'll note that much of the stairwell is in fact constructed *outside* of 224 Sea Cliff's property. Comparing the two attachments it is clear that the site plan's property boundaries were drawn inaccurately in obtaining the requisite permits from DBI.

I've annotated the attached screen shot with a rough approximation of the landward limit of BCDC's permitting jurisdiction for this location. If any part of a project is within our permitting jurisdiction, we consider the entirety of the project for consistency with Bay Plan policies. Those policies include public access opportunities to the Bay, and the safety of fill placed in the Bay and in our shoreline band. However, no permit application was ever submitted to BCDC for this project. Even if one had been submitted, we cannot permit an applicant's project if it is constructed on another's property without evidence of consent, typically by legal instrument providing dedicated access to the applicant.

In this case, nearly every step of the stairwell is constructed on lands owned by the City and County of San Francisco, and the landing at the beach is on State Lands Commission lands leased by the Golden Gate National Recreation Area. As part of our enforcement investigation the GGNRA has stated that it

¹ Application Nos. 200211081046, 200309114438, 200401164227, 200409033343, & 200406095884.



does not consent to the construction of these stairs on the lands it leases from the State Lands Commission, and the lease itself suggests that it could never provide such consent. San Francisco's Real Estate Division is currently investigating its portion of the cliffs, but to date no evidence of any consent to this trespass on public property has been identified. For these reasons it is highly unlikely that BCDC could ever permit this stairwell as constructed.² Even if consent from the GGNRA, the SLC, and the City of San Francisco were obtained, this structure would be difficult to reconcile with Bay Plan policies.

Our Senior Engineer has reviewed the technical reports submitted by the current owners and determined that much of the stairwell can be removed without destabilizing the site. His proposal includes restoring the site as much as possible to its original condition. Based on this recommendation and the evidence we have obtained to date, BCDC will hold a public hearing before its Enforcement Committee in April 2022. Staff will recommend that the Commission issue an order requiring the owners of 224 Sea Cliff Ave. to remove the structure and restore the site pursuant to plans created by the appropriate professionals and approved by BCDC.

BCDC understands that DBI has the power to order removal of this stairwell when, for example, it determines that false information was submitted during the permit application process. We believe this letter provides such evidence.

We look forward to coordinating with DBI to make sure that the appropriate actions are taken to remedy the hazardous conditions at the site and remove the structures built public property. Please keep us informed of the proceedings of your investigation, and when possible, afford us an opportunity to present our concerns at any hearings held during your investigation. If you have any questions about our enforcement case please feel free to contact me at the number below.

Thank you,



Brent Plater
Lead Enforcement Attorney
SF Bay Conservation & Development Commission
375 Beale St., Suite 510
San Francisco, CA 94105
Phone: (415) 352-3628
Email: brent.plater@bcdc.ca.gov

Enclosures

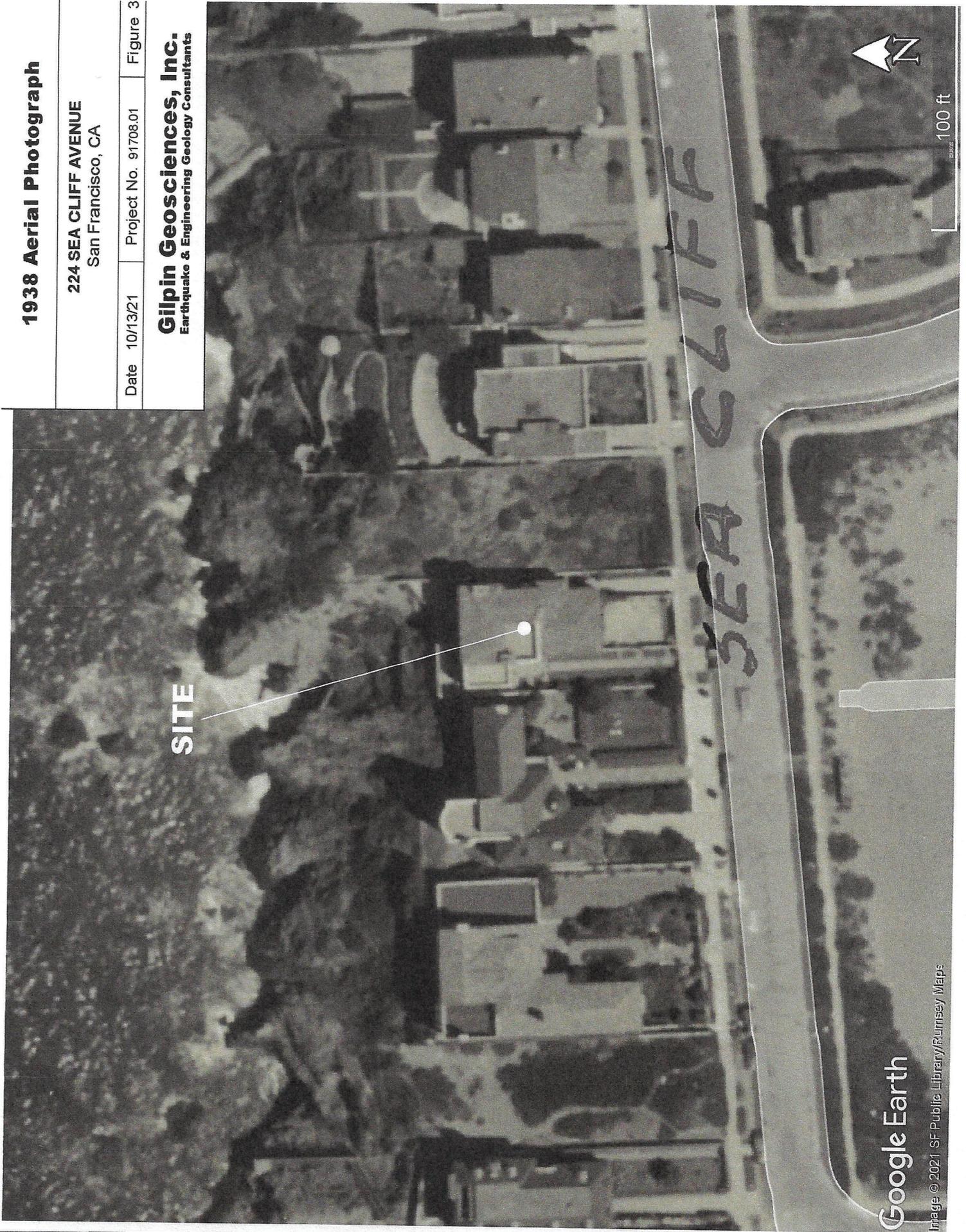
² However, BCDC may be able to permit the deck and landing area at the top of the cliffs that were constructed as part of the stairwell project after-the-fact.

1938 Aerial Photograph

224 SEA CLIFF AVENUE
San Francisco, CA

Date 10/13/21 Project No. 91708.01 Figure 3

Gilpin Geosciences, Inc.
Earthquake & Engineering Geology Consultants



SITE

Google Earth

Image © 2021 SF Public Library/Rumsey Maps

100 ft





2002 Oblique Photograph

224 SEA CLIFF AVENUE
San Francisco, CA

Date 10/13/21

Project No. 91708.01

Figure 4

Reference: CA Coastal Project, 2002



Gilpin Geosciences, Inc.
Earthquake & Engineering Geology Consultants

1 Robert J. Pfister (State Bar No. 241370)
PFISTER & SASO, LLP
2 10250 Constellation Boulevard, Suite 100
Los Angeles, California 90067
3 Telephone: (310) 414-4901
Email: rpfister@pslawllp.com
4

5 *Attorneys for Proposed Purchaser Edward Dudensing*

6 **UNITED STATES BANKRUPTCY COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**

9 In re

Case No. 23-30281-DM

10 PSG MORTGAGE LENDING CORP., a
Delaware corporation,

Chapter 11

11 Debtor.

12 **DECLARATION OF EDWARD**
13 **DUDENSING IN SUPPORT OF**
14 **DEBTOR’S MOTION TO: (1) SELL REAL**
15 **PROPERTY FREE AND CLEAR OF**
16 **LIENS AND INTERESTS; AND (2) PAY**
17 **REAL ESTATE COMMISSIONS, DEED**
18 **OF TRUST AND STANDARD CLOSING**
19 **COSTS OUT OF ESCROW**

20 Date: TBD
Time: TBD
Place: Zoom Webinar/AT&T Teleconference
Courtroom 17
Phillip Burton Federal Building|
450 Golden Gate Avenue, 16th Floor
San Francisco, CA 94102

Hon. Dennis Montali

21 I, Edward Dudensing, declare as follows:

22 1. This declaration is made in support of *Debtor’s Motion to: (1) Sell Real Property and*
23 *Free and Clear of Liens and Interests; and (2) Pay Real Estate Commissions, Deed of Trust and*
24 *Standard Closing Costs Out of Escrow* (the “**Sale Motion**”), which concerns the real property located
25 at 224 Sea Cliff Avenue in San Francisco, California (the “**Property**”), of which I am the proposed
26 purchaser. Capitalized terms used but not otherwise defined herein have the meanings ascribed to
27 them in the Sale Motion. The matters set forth herein are based on my personal knowledge and, if
28 called as a witness, I could and would testify competently thereto.



Exhibit B

1 2. I made a written, all-cash offer to purchase the Property on November 10, 2023. After
2 multiple rounds of negotiations, including the seller's consideration of alternative offers, the
3 agreement now before the Court for approval was reached. I made the initial deposit of \$195,000 on
4 November 30, 2023, and I removed all buyer contingencies seven days thereafter. I will be prepared
5 to close with immediately available and non-contingent cash within five days of this Court's approval
6 of the Sale Motion, as provided in the contract. I previously provided proof of funds to the seller's
7 agent and could do the same for the Court if requested. As part of the sale, I also have agreed to
8 assume responsibility and pay the \$90,000 lien in favor of the San Francisco Bay Conservation and
9 Development Commission ("BCDC").

10 3. I have no prior connection to the Property or any of its prior owners. I have no prior
11 connection to the debtor or any of its affiliates. I have no prior connection to any of the lienholders.
12 My offer to purchase the Property is an all-cash offer and the funds are my own.

13 4. I am being independently represented by real estate agent Marianne Schier of
14 Compass. Negotiations with the seller were at arms' length. Ms. Schier represents no other party in
15 connection with this transaction. I selected her as my real estate agent based on her 20 years of
16 experience in the San Francisco market and her extensive knowledge of and experience with the Sea
17 Cliff neighborhood. From her and my own personal observations as a current resident in the Sea
18 Cliff area, the Property is one of the most well-known properties in the neighborhood, and one of the
19 rare properties on the "cliff" of Sea Cliff. When the Property was initially listed on the MLS at
20 \$10 million, word spread within hours of its listing. As an example, I learned of the property within a
21 few hours of it being posted from another neighbor within Sea Cliff. During my many visits to the
22 home I have seen numerous business cards of agents who have toured the property. From my own
23 personal observations and conversations with multiple real estate agents, I have no doubt whatsoever
24 that the Property has been robustly marketed and is well known to potential purchasers. I find it
25 telling that the one potential buyer who had offered \$6.9 million for the property did not in the end
26 deem it financially viable to go through with the transaction. Thus, my offer is on the razor's edge of
27 what is financially workable, all things considered, for the acquisition of the Property.

28

Pfister
&Saso, LLP

Exhibit B

1 5. A key challenge with respect to this Property is the long history of prior violations and
2 enforcement actions, including construction activity by the prior owner that is alleged to be illegal or
3 otherwise improper. To address these matters, I have been in frequent and continuous
4 communication with the San Francisco Planning Department (“**City Planning**”) and separately have
5 had multiple communications with BCDC. Indeed, City Planning has asked for weekly updates
6 regarding the status of the sale transaction, which I have provided. I have retained counsel (Reuben,
7 Junius & Rose, LLP) with substantial experience and expertise in engaging with City Planning and
8 BCDC. I have also retained bankruptcy counsel (Pfister & Saso, LLP) to represent me in connection
9 with the Sale Motion.

10 6. As it relates to my personal circumstances, it is critical that the Sale Motion be heard
11 and determined promptly. The contract requires the Sale Motion to be filed by January 5, 2024, and
12 the hearing to take place on or before January 31, 2024. This is necessary because City Planning has
13 indicated that absent prompt remedial action, a Notice of Violation will be issued that imposes fines
14 of \$1,000 per day until the prior owner’s unpermitted stairway is removed. Similarly, with the
15 passage of a December 31, 2023 deadline, there was the potential for BCDC to move forward with
16 fines of \$6,000 per day. My counsel is working closely with BCDC, with the understanding that if a
17 sale of the Property is consummated BCDC staff will work with me for 30 days to present a
18 stipulated order to the Commission without civil administrative liability. My understanding is that
19 both City Planning and BCDC are taking into account the fact that I am a new buyer with no prior
20 connection to the Property; that I am ready, willing, and able to address persistent past violations and
21 non-compliance; and that I and my counsel and professionals are working as fast as possible to
22 complete this transaction. Delay past January 31, 2024 threatens the progress that has been made
23 with City Planning and BCDC.

24 7. I have interviewed multiple contractors for renovations and plan to retain Patrick
25 O’Neill of O’Neill Construction to perform necessary remediation and improvements on the
26 Property, including removal of the stairway and related structures. Mr. O’Neill has substantial
27 experience with properties located on the cliff of Sea Cliff, including at least six separate remodel
28 projects over the past 20 years on the cliff. Mr. O’Neill told me that he is ready to begin work on



1 March 15, 2024. Prior to him doing so, however, the sale must close and I must secure a construction
2 loan to finance the multi-million-dollar cost of remediation, which includes not only removal of the
3 stairway but also renovation and repair of extensive damage – including substantial fire damage – to
4 the Property.

5 8. To be clear, I do not require any new financing to close the sale transaction. My offer
6 was an all-cash offer and I am ready, willing, and able to close the sale. To the extent there is any
7 objection or question on this point, I am prepared to provide proof of non-contingent ready funds at
8 the hearing on the Sale Motion. After the sale closes, I will need to secure construction financing
9 prior to Mr. O’Neill beginning work. To secure that financing, I have contacted three lenders, and
10 each has indicated that the loan process will take from 30 to 60 days after the sale closing to
11 complete. Given this timing, it is critical that the sale be approved by no later than January 31, 2024,
12 and that closing occur within five days thereafter. This will keep the contractor on schedule, which is
13 the best possible path to bringing the Property into compliance with applicable law and to avoid or
14 abate fines by City Planning and BCDC.

15 9. I have already made a substantial investment of time, effort, and expense in the
16 purchase of this Property, including the engagement of multiple law firms and other professionals. I
17 cannot and in all likelihood will not accept the additional risk of ongoing daily fines that would be
18 precipitated by a continuance of the Sale Motion into February or beyond. Based on my interactions
19 with the City Planning and BCDC, I feel that if this sale is not approved daily fines will begin which
20 will substantially decrease the value of the property below what is now being proposed.

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct. Executed this 5th day of January, 2024, at Los Angeles, California.

Edward P. Dudensing

Edward Dudensing



Signed and Filed: January 29, 2024

1 MATTHEW D. METZGER (#240437)
2 mmetzger@belvederelegal.com
3 **BELVEDERE LEGAL, PC**
4 1777 Borel Place, Ste 314
5 San Mateo, CA 94402
6 t. (415) 513-5980
7 f. (415) 513-5985
8 e. mmetzger@belvederelegal.com

Exhibit C

DENNIS MONTALI
U.S. Bankruptcy Judge

Attorney for Debtor-in-Possession
PSG Mortgage Lending Corp

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

10 In re)
11)
12 PSG MORTGAGE LENDING CORP.,)
a Delaware Corporation,)

Case No. 23-30281 DM 11
Chapter 11

13 Debtor.)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)

**ORDER GRANTING DEBTOR'S
MOTION TO: (1) SELL REAL
PROPERTY FREE AND CLEAR OF
LIENS AND INTERESTS; AND (2) PAY
REAL ESTATE COMMISSIONS, DEED
OF TRUST AND STANDARD CLOSING
COSTS OUT OF ESCROW**

Date: January 26, 2024
Time: 10:00 a.m.
Room: Via Tele/Videoconference
Courtroom 17
Phillip Burton Federal Building
450 Golden Gate Avenue
16th Floor
San Francisco, CA 94102

Hon. Dennis Montali

25
26 The Debtor's Motion to: (1) Sell Real Property Free and Clear of Liens and Interests; and
27 (2) Pay Real Estate Commissions, Deed of Trust and Standard Closing Costs Out of Escrow
28 [Docket No. 71] (the "Sale Motion") filed by PSG Mortgage Lending Corp. (the "Debtor") came

Exhibit C

1 on for hearing before the Hon. Dennis Montali at the above-referenced date and time. Due and
2 proper notice of the Sale Motion was provided. Appearances were noted on the record. A timely-
3 filed statement of conditional non-opposition [Docket No. 70] was filed by Wells Fargo Bank,
4 N.A. (“**Wells Fargo**”) but was resolved by stipulation [Docket No. 85]. An untimely objection
5 [Docket No. 81] (the “**Objection**”) was filed by Paul Greenfield and Dakota Note, LLC (together,
6 the “**Objectors**”). The Court heard argument on the Sale Motion and the Objection, and for the
7 reasons set forth on the record, overruled the Objection and granted the Sale Motion.

8 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- 9 1. The Sale Motion is GRANTED.
- 10 2. The Objection is OVERRULED.
- 11 3. The Debtor is authorized and directed to consummate the sale of the real property
12 known as 224 Sea Cliff Avenue in San Francisco, APN 1307-001S (the “**Subject Property**”) to
13 Edward Dudensing (the “**Buyer**”) for \$6,500,000 (six million five hundred thousand dollars) plus
14 the agreement of the Buyer to assume responsibility and pay the \$90,000 (ninety thousand dollars)
15 BCDC lien (collectively, the “**Purchase Price**”).
- 16 4. Pursuant to Bankruptcy Code sections 363(b) and 506(a) as well as Fed. R. Bankr. P.
17 3012, the sale is free and clear of the following liens, claims of lien, and claims of interest:

No.	Claimant / Security Interest	Amount
1.	WORLD SAVINGS BANK, FSB, ITS SUCCESSORS AND/OR ASSIGNEES, WELLS FARGO BANK, N.A. A deed of trust to secure an original indebtedness of \$6,000,000.00 recorded April 12, 2007 as Document No. 2007-368040, Book/Reel J368, Page/Image 0206 of Official Records	\$6,548,362.49 (Claim 3-1)
2.	DAKOTA NOTE, LLC A deed of trust to secure an original indebtedness of \$1,200,000 recorded July 21, 2015 as Document No. 2015-093637 of Official Records According to the public records, the beneficial interest of Silicon Valley Funding Group, Inc. under the deed of trust was assigned to Dakota Note, LLC by assignment recorded April 8, 2016 as Document No. 2016- 227749 of Official Records	\$3,000,000.00

Exhibit C

No.	Claimant / Security Interest	Amount
3.	<p>NATURAL SOFTWARE SYSTEMS INC., MONEY PURCHASE PENSION PLAN AS TO AN UNDIVIDED 65% INTEREST AND TANYA WALTMYER, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY AS TO AN UNDIVIDED 35% INTEREST, AS ASSIGNEES OF SAXE MORTGAGE, ET AL AND ALSO PAUL GREENFIELD, AS AN INDIVIDUAL, TO THE EXTENT ANY INTERESTS ARE CLAIMED IN THE ABOVE-REFERENCED DEED OF TRUST</p> <p>Document No. 2013-705008, recorded July 12, 2013. According to the public records, the beneficial interest under the deed of trust was assigned to Natural Software Systems, Inc., Money Purchase Pension Plan 65.00% and Tanya Waltmyer, a married woman as her sole and separate property 35.00% by assignment recorded December 15, 2016 as Document No. 2016-375516 of Official Records</p>	\$4,500,000.00
4.	<p>PSG CAPITAL PARTNERS, INC.</p> <p>A deed of trust to secure an original indebtedness of \$1,500,000.00 recorded November 16, 2016 as Document No. 2016-358201 of Official Records</p>	\$1,500,000.00
5.	<p>PSG CAPITAL PARTNERS, INC.</p> <p>A deed of trust to secure an original indebtedness of \$300,000.00 recorded November 16December 1, 2016 as Document No. 2016-365937of Official Records</p>	\$300,000.00
6.	<p>PSG MORTGAGE LENDING CORP</p> <p>On August 25, 2021, PSG Capital Partners, Inc. transferred title of the Property to PSG Mortgage Lending Corp via a Corporation Grant Deed recorded as Document No. 2021136349 of Official Records</p>	
7.	<p>FRANCHISE TAX BOARD</p> <p>A lien in favor of the State of California, evidenced by a Certificate issued by the Franchise Tax Board, recorded January 26, 2017 as Document No. 2017-401460 of Official Records</p>	\$6,158,657.63
8.	<p>FRANCHISE TAX BOARD</p> <p>A lien in favor of the State of California, evidenced by a Certificate issued by the Franchise Tax Board, recorded January 26, 2017 as Document No. 2017-401461 of Official Records</p>	\$189,930.12
9.	<p>CITY AND COUNTY OF SAN FRANCISCO DEPT. OF BUILDING INSPECTION</p> <p>Any lien, assessment, and/or violation or enforcement of any law, ordinance, permit or governmental regulation arising from the document entitled Order of Abatement recorded September 21, 2023, as Document No. 2023068558 of Official Records</p>	
10.	<p>KAY BRUGNARA AND FAMILY / LUKE BRUGNARA / INDIVIDUALLY OR AS OFFICER(S)/DIRECTOR(S)/SHAREHOLDER(S) OF BRUGNARA CORPORATION VI, A CALIFORNIA CORPORATION / BRUGNARA PROPERTIES VI (THE "BRUGNARA PARTIES")</p>	

Exhibit C

5. The Debtor is authorized to pay any and all closing costs, and all related escrow fees upon the close of escrow from the sale proceeds.

6. From the sale proceeds, the Debtor is authorized to make the following disbursements:

Order & Claimant	Interest	Debit Amount	Credit Amount
			\$6,500,000.00
			\$60,463.85
1. San Francisco Assessor Recorder – County Documentary Transfer Tax	Statutory	\$146,250.00	
2. Estimated Notary Fees		\$200.00	
3. Seller’s Broker – 2.5 percent (2.5%)		\$162,500.00	
4. Buyer’s Broker – 2.5 percent (2.5%)		\$162,500.00	
5. Wells Fargo	Senior Lienholder	\$5,990,000.00	
6. Seller’s Broker for Repairs to Woody’s Fire/Hazard Remediation		\$13,109.17	
7. Seller’s Broker for Pre and Pre Inspections to Mark Vasquez		\$2,236.25	
8. Debtor-in-Possession (Stipulate Carve-out for Chapter 11 Administrative Expenses)		\$30,000.00	

Exhibit C

Order & Claimant	Interest	Debit Amount	Credit Amount
9. Debtor-in-Possession (Stipulate Carve-out for Chapter 11 US Trustee Fees)		Est. \$52,000.00	
		Total	
		\$6,558,795.42	\$6,560,463.85
		Balance to Debtor	
			\$1,668.43

7. The Debtor is not authorized to make any additional disbursements from the sale proceeds absent Court order.

8. Upon the closing of escrow, all remaining proceeds (“**Sale Proceeds**”) shall be wired for deposit in the trust account with Debtor’s counsel. All Sale Proceeds shall remain in the trust account with Debtor’s counsel until such time as a subsequent order of the Court authorizes further disbursements.

9. The Court makes a factual finding that the sale and the Buyer are both in good faith per 11 U.S.C. § 363(m), and that the Purchase Price less the costs of sale constitutes the value of the Property; *see* 11 U.S.C. § 506(a); Fed. R. Bankr. P. 3012. Hence, all liens and claims of liens and claims of interest are unsupported by any value.

10. Any stay of the effectiveness of this Order that would otherwise be required by Bankruptcy Rule 6004 is waived and this Order is effective on entry.

11. The Debtor is authorized to execute any and all documents, and to take any and all reasonable and necessary steps to conclude the foregoing sale consistent with the relief sought in the Sale Motion and granted by this Order.

**** END OF ORDER ****

APPROVED AS TO FORM:
[SIGNATURES FOLLOW ON NEXT PAGE]

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Dated: January 29, 2024

**BARRETT DAFFIN FRAPPIER
TREDER & WEISS, LLP**

/s/ Edward Treder
Edward Treder
Attorneys for Wells Fargo Bank, N.A.

Dated: January 29, 2024

BELVEDERE LEGAL, P.C.

/s/ Matthew D. Metzger
Matthew D. Metzger
Attorney for Debtor-in-Possession
PSG Mortgage Lending Corp

Dated: January 29, 2024

PFISTER & SASO, LLP

/s/ Robert J. Pfister
Robert J. Pfister
Counsel to Buyer

Dated: January 29, 2024

MEYER LAW GROUP LLP

/s/ Brent D. Meyer
Brent D. Meyer
Attorneys for Secured Creditors
Paul Greenfield and Dakota Note, LLC

COURT SERVICE LIST

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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

**Commission Cease and Desist
and Civil Penalty Order:**

CCD2022.001.00

Effective Date:

ISSUED BCDC
June 17, 2022

Respondents:

PSG Mortgage Lending Corp. & PSG Capital
Partners Inc.

To PSG Mortgage Lending Corp. & PSG Capital Partners Inc.:

I. Commission Cease and Desist Order

Pursuant to Cal. Gov. Code § 66638, PSG Mortgage Lending Corp. & PSG Capital Partners Inc. (“Respondents”) are hereby ordered to:

- A. Cease and desist from violating the McAteer-Petris Act (MPA) and applicable policies of the San Francisco Bay Plan.
- B. By July 1, 2022, submit to BCDC a property survey conducted by a licensed surveyor that delineates BCDC’s Bay and Shoreline Band jurisdiction, as well as the state, city, and private property boundaries adjacent to 224 Sea Cliff Avenue in San Francisco, CA.
- C. By July 1, 2022, submit for review and approval by BCDC staff a design plan prepared by a geotechnical engineer, a structural engineer, and a landscape architect to remove structures placed on the cliffs below 224 Sea Cliff Avenue between 2002-2004; mitigate any such structures that cannot be removed without adversely affecting the stability of the cliffs by grinding them down to the contour of the cliff face and/or covering them with contoured shotcrete; and restoring the visual condition of the site. The submission must comply with the requirements established at Cal. Code Regs. tit. 14, §§ 10315(1)-(3) & 10316.
- D. By December 31, 2022, obtain all local discretionary approvals necessary to comply with this Order, including those identified in the April 14, 2022, Notice of Enforcement sent to Respondents by San Francisco Planning (Complaint No. 2022-001049ENF). Exhibit A.
- E. By December 31, 2023, complete all removal, mitigation, and restoration activities described in the BCDC approved design plan.
- F. By December 31, 2023, resolve all violations on private property within BCDC’s shoreline band jurisdiction through removal or after-the-fact authorization.



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CCD2022.001.00, ER2004.019

- G. Fully comply with the Requirements of Sections II, IV, and V of this Cease and Desist and Civil Penalty Order (“Order”).

II. Civil Penalty Order

Pursuant to Cal. Gov. Code § 66641.6, Respondents are hereby ordered to:

- A. Pay administrative civil liability of ninety thousand dollars (\$90,000) to BCDC by cashier’s check made payable to the Bay Fill Clean-up and Abatement Fund within 30 days of issuance of this Order. The administrative civil liability consists of:
1. Thirty thousand dollars (\$30,000) for the unpermitted deck and ancillary structures within the private property boundaries of 224 Sea Cliff Ave. in San Francisco, CA, and within BCDC’s shoreline band jurisdiction.
 2. Thirty thousand dollars (\$30,000) for unpermittable structures on property owned by the City and County of San Francisco, without its consent.
 3. Thirty thousand dollars (\$30,000) for unpermittable structures on property owned by the State Lands Commission and leased by the National Park Service, without the consent of the owner or the lessee.
- B. If administrative civil liability is not paid within 30 days of issuance of this Order the Executive Director is authorized to refer the matter to the Attorney General pursuant to Cal. Gov. Code § 66641.7(b), Cal. Gov. Code § 66641.5, and/or Cal. Gov. Code § 66641.

III. Findings

Factual Findings.

This Commission Cease and Desist and Civil Penalty Order is based on the findings set forth below. The enforcement record in support of these findings includes all documents cited herein and all documents identified at Cal. Code Regs. tit. 14, § 11370.

- A. A portion of the private parcel located at 224 Sea Cliff Avenue in San Francisco is within BCDC’s shoreline band jurisdiction.
- B. The cliffs below the private parcel are owned by the City and County of San Francisco. The cliffs are also within BCDC’s shoreline band jurisdiction.
- C. The lands below the City-owned cliffs are largely below mean-high tide and leased to the National Park Service as part of the Golden Gate National Recreation Area by the California State Lands Commission.
- D. A 1938 photo of this area indicates some structures existed on the cliffs below 224 Sea Cliff Avenue, pre-dating BCDC. Exhibit B, p. 2. These structures were limited to retaining walls and lateral support structures. None of the pre-existing structures were in BCDC’s Bay jurisdiction. A 2002 photo of the property also shows no evidence of structures such as a deck, promenade, or stairwell. Exhibit B, p. 5.



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- E. Between 2002-2004, Luke Brugnara, who then owned 224 Sea Cliff Avenue, submitted plans and permit applications to the City and County of San Francisco to construct a deck, a promenade, and a stairwell that descends from the property's rear boundary to a beach. Declaration of Rafael Montes, P.E., Exhibit C.
- F. The City and County of San Francisco relied on these permit applications and plans, ultimately issuing building permits for this project. The project was completed around 2004.
- G. However, the plans submitted to the City mischaracterized the property boundaries of 224 Sea Cliff Avenue, making it appear as if the entire stairwell would be constructed on land owned by the applicant. In fact, most of the project is built on public lands adjacent to and below 224 Sea Cliff Avenue. Exhibit C.
- H. The permit applications also mischaracterize the structures that existed at the time the application was filed. Exhibit A.
- I. As constructed, the stairwell lands on state trust lands leased by the State Lands Commission to the National Park Service. Exhibit D. In 2004, the National Park Service, with support from the National Oceanic & Atmospheric Administration, determined that the stairwell landing was constructed below mean high tide, and therefore encroaches on public trust lands. Exhibit E. The National Park Service also determined that the construction destroyed a tidal pool. Exhibit F.
- J. That same year the National Park Service wrote to the owners of 224 Sea Cliff Avenue notifying them of the encroachment, but Mr. Brugnara responded by denying any wrongdoing and suggested that National Park Service law enforcement officials were trespassing on property Mr. Brugnara owned. Exhibit G.
- K. The National Park Service determined that it cannot issue special use permits for private projects on property it leases from the State Lands Commission. Exhibit H. It therefore cannot authorize the encroachment caused by the stairwell.
- L. No BCDC permit was ever applied for or received for this project. However, BCDC coordinated with the National Park Service's enforcement efforts and opened its own enforcement action against the project in 2004.
- M. Mr. Brugnara was subsequently charged and convicted of several criminal acts—filing false tax returns, poaching imperiled species, and art fraud—resulting in his incarceration. Exhibit I. Complex bankruptcy proceedings against Mr. Brugnara, his companies, and his estate ensued, leaving ownership of 224 Sea Cliff Avenue unclear for many years.
- N. However, the bankruptcy court allowed Respondent PSG Capital Partners Inc.—the holder of the fourth trust deed secured against 224 Sea Cliff Avenue based upon a loan



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it made—to foreclose upon 224 Sea Cliff Avenue, which it did on August 13, 2020. Exhibit J, p. 17.

- O. On August 21, 2021, PSG Capital Partners Inc. transferred its interests in 224 Sea Cliff Avenue to Respondent PSG Mortgage Lending Corp. by grant deed. Exhibit J, p. 18. The purpose of the transfer is to facilitate the sale of 224 Sea Cliff Avenue at a higher price, increasing the probability the three trust deeds ahead of Respondent PSG Capital Partners, Inc. would not deplete remaining assets, preventing Respondents from collecting.
- P. The foreclosure clarified title for purposes of this enforcement action, and BCDC enforcement staff returned to prosecuting it. Recognizing that Respondents, other debtors, BCDC, and the public had all been harmed by the illegal acts of Mr. Brugnara, BCDC enforcement staff worked with Respondents to resolve the MPA violations at 224 Sea Cliff Avenue and the lands adjacent and below it without enforcement proceedings.
- Q. However, the offer was rejected by Respondents' licensed real estate agent, Mark Allan Levinson. Mr. Levinson expressed concern that buyers would reduce their offers if informed of the costs associated with remedying the MPA violations. Subsequently, and without notifying BCDC staff, Mr. Levinson published BCDC's written settlement communications in the property's disclosure packet. Exhibit K.
- R. Respondents also added a Coastal Bluff Evaluation and Structural Evaluation of the Rear Stairs prepared by Gilpin Geosciences and Holmes Structures, respectively, to the property disclosure packet shortly after rejecting BCDC's offer. Declaration of Rafael Montes, P.E., Exhibits A & B.
- S. BCDC Senior Engineer Rafael Montes reviewed these disclosures. Declaration of Rafael Montes, P.E., ¶ 7. He also reviewed the permits and plans submitted for the project between 2002-2004, as well as the site visit photos and videos created during BCDC staff inspections of 224 Sea Cliff Avenue. *Id.*
- T. Mr. Montes explains that “Nearly all of the structures, including the handrails and landings of the rear stairs, constructed between 2002-2004 may be removed without affecting cliff stability. This includes any part of the rear stairs painted pink, and the entire landing of the structure that comes into contact with BCDC Bay jurisdiction. Statements in [Gilpin Geosciences and Holmes Structures reports] that suggest significant effects on cliff stability if the rear stair structure is removed are not supported by adequate evidence.” Declaration of Rafael Montes, P.E., ¶ 9.
- U. Mr. Montes goes on to explain that “I agree that the structures that were in place in 1938 cannot be removed without concerns about cliff stability. These structures are not being proposed for removal. The structures added between 2002-2004 do not add significant stability to the cliff, and in fact are potentially overloading the pre-existing retaining walls and structures at the site.” Declaration of Rafael Montes, P.E., ¶ 9.



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- V. However, out of an abundance of caution Mr. Montes recommends that the Commission “order Respondents to retain a geotechnical & structural engineer and a landscape architect to create a plan consistent with this declaration to remove as much of the illegally placed fill as possible, mitigate the remaining fill by grinding or covering with architecturally designed shotcrete, and restoring the visual condition of the site as much as possible. The plan should be submitted to BCDC for review and approval, and then implemented by Respondents’ engineers and landscape architect.” Declaration of Rafael Montes, P.E., ¶ 11.
- W. Because the City and County of San Francisco and the National Park Service have not and will not consent to the encroachment on public property, it cannot be permitted by BCDC. The fill on public lands within BCDC’s jurisdiction must therefore be removed at Respondents’ expense.
- X. On April 14, 2022, San Francisco Planning issued a Notice of Enforcement to Respondents stating “Planning Department records show that between 2002 and 2004, seven building permits were filed and issued for the construction of these stairs and platforms where property lines were misrepresented. Four of these permits were issued without review and approval by the Planning Department and one was canceled by the Planning Department. No permits were obtained with required consent or authorization to build on any portion of the public property. Exhibit A.
- Y. San Francisco Planning determined the misrepresentations constituted violations of San Francisco’s planning code, and thus ordered Respondents to file a permit application to abate the violations by removing the unauthorized structures by April 29, 2022. Exhibit A.
- Z. Respondents did not meet this deadline. Exhibit L.
- AA. Nor did Respondents file a Statement of Defense in this proceeding.
- BB. To date Respondents have done nothing to abate the planning code and MPA violations at the property.

Legal Findings.

- A. The Commission finds that Respondents violated and are violating the McAteer-Petris Act (MPA) at 224 Sea Cliff Avenue in San Francisco, CA by maintaining a deck, walkway, and rear stairwell on private property within the shoreline band of San Francisco Bay without first obtaining a permit from BCDC. Respondents’ violations began on or about August 13, 2020, and are ongoing.
- B. The Commission finds that Respondents violated and are violating the MPA adjacent and below 224 Sea Cliff Avenue in San Francisco, CA by maintaining a rear stairwell within the shoreline band of San Francisco Bay on public property owned by the City and County of San Francisco without its consent and without first obtaining a permit from



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BCDC. Because the public property owner has not and will not provide consent to this trespass these structures cannot be permitted by BCDC. Respondents' violations began on or about August 13, 2020, and are ongoing.

- C. The Commission finds that Respondents violated and are violating the MPA on public trust lands below 224 Sea Cliff Avenue in San Francisco, CA, by maintaining a rear stairwell and landing within San Francisco Bay and its shoreline band without the consent of the State Lands Commission or its lessee, the National Park Service's Golden Gate National Recreation Area. Because the public property owners have not, will not, and cannot provide consent to this trespass this fill cannot be permitted by BCDC. Respondents' violations began on or about August 13, 2020, and are ongoing.
- D. The Commission finds that BCDC's Senior Engineer's findings are based on substantial evidence, and that his conclusions about the condition of the stairs are reasonable and supported by that evidence. The Commission also find that his proposed design plan for the removal of the unpermittable structures is reasonable and based on substantial evidence in the record of this proceeding.
- E. The Commission finds that BCDC staff correctly identified three distinct violations of the MPA in this matter based on the three distinct parcels—each with different owners—that the unpermitted structures cross. Reducing the number of violations to two or one would make resolution more challenging and afford the Respondents fewer opportunities to ameliorate violations had they chosen to cooperate with BCDC, the City of San Francisco, or the State Lands Commission through the National Park Service.
- F. The Commission also finds that based on the factors provided by MPA Section 66641.9, a \$30,000 penalty for each violation is appropriate.
- G. Specifically, the Commission finds that the nature and extent of harm caused by the legal violations are extensive. The structures are massive: one of the largest and most noticeable shoreline structures west of the Golden Gate. Their construction destroyed a tidepool, and each day the structures remain standing prevent efforts to restore the site. The structures also impair the public's access to a during low-tide beach between China Beach and Baker Beach, all of which is designated as a Waterfront Park-Beach Priority Use Area in the Bay Plan.
- H. The Commission also finds that while the violations are susceptible to removal to some degree, it is likely that some of the damage to the public cliffs will be permanent, although the visual impacts may be ameliorated.
- I. The Commission also finds the cost to the state in pursuing this case since 2004 was high, and not only due to its duration: the misrepresentations made when the project was constructed and the complex legal proceedings that followed required far more effort to resolve this violation compared to a typical enforcement investigation.
- J. The Commission finds that Respondents are also culpable for the violation due to their refusal to cooperate with this investigation, which itself stems from an expressed desire to obtain economic benefits. When Respondents rejected enforcement staff's offer to



PSG Capital Partners Inc. et al.
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resolve this matter without enforcement proceedings, Respondents' agent expressed concern that potential buyers would produce lower bids if they had knowledge of the costs associated with resolving the MPA violations. Moreover, Respondents did not file a timely Statement of Defense, nor did they submit a timely permit application to abate violations identified by the City.

- K. The Commission also finds the Respondents' ability to pay is not in question: the 224 Sea Cliff Avenue property is proposed for sale at \$12,000,000, and Respondents have other assets as well.
- L. Based on these penalty factors the Commission finds that an \$800 penalty per day for the unauthorized fill on the 224 Sea Cliff Avenue private parcel is appropriate, and a \$2,000 penalty per day for the unauthorizable fill on both public parcels is appropriate.
- M. The Commission finds that Respondents have been responsible for these three violations since at least August 13, 2020, or over 630 days.
- N. The Commission thus finds that each violation is subject to the maximum penalty allowed by the MPA: \$30,000 for each violation, for a total administrative civil liability of \$90,000.

IV. Terms

- A. The Executive Director may, in his discretion, grant an extension of time for demonstrated good cause to comply with any provision of this Order. The Executive Director shall inform the Enforcement Committee Chair and the Commissioners of any extensions that are granted under this provision.
- B. As needed the Executive Director may submit the design plan prepared by a geotechnical engineer, a structural engineer, and a landscape architect for peer review. Respondents are responsible for all costs associated with peer review.
- C. A sale of 224 Sea Cliff Ave. to Ali Moayed, General Partner of Silicon Valley Properties, LP, for \$12,000,000 has been proposed. If a sale is consummated, Respondents PSG Mortgage Lending Corp. and PSG Capital Partners Inc. will remain jointly and severally liable for the Civil Penalty Order.
- D. If a sale of the property is consummated BCDC Staff will work with the buyer for 30 days to present a stipulated order to the Commission without civil administrative liability. If a stipulated order cannot be agreed upon in that time BCDC staff will issue a Violation Report and Complaint to the buyer, and seek relief consistent with this Order.
- E. PSG Mortgage Lending Corp., PSG Capital Partners Inc., and Philip Fusco must strictly conform to the express terms of this Order. Under Cal. Gov. Code § 66641, any person who intentionally or negligently violates any part of any cease-and-desist order issued by the Commission may be liable civilly in the sum of up to \$6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease-and-desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior



PSG Capital Partners Inc. et al.
CCD2022.001.00, ER2004.019

court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease-and-desist order.

- F. This Order does not affect any duties, right, or obligations established under private agreements or by the laws and regulations of other public bodies.
- G. This Order does not constitute a recognition of property rights.
- H. This Order is effective upon issuance thereof.

IV. Judicial Review

- A. Under Cal. Gov. Code §§ 66639 & 66641.7(a), within thirty days after service of a copy of a cease-and-desist order and civil penalty order issued by the Commission, an aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

Larry Goldzband

 Lawrence J. Goldzband, BCDC Executive Director

6/17/2022 | 12:50:26 PM PDT

 Date

LJG/bp/mm

- cc: Kelly Wong, Senior Enforcement Planner, Preservation Specialist, Code Enforcement Team, Planning Division, City and County of San Francisco <kelly.wong@sfgov.org>
 Carl Malchow, Senior Building Inspector, Department of Building Inspection, City and County of San Francisco <carl.malchow@sfgov.org>
 Kristen Holder, GGNRA <kirsten_holder@nps.gov>
 Vicki Caldwell, State Lands Commission <Vicki.Caldwell@slc.ca.gov>
 Brian Thompson, San Francisco Regional Water Quality Control Board, Region 2, <brian.thompson@waterboards.ca.gov>
 William M. Connor, Regulatory Program Manager, United States Army Corps of Engineers <William.M.Connor@usace.army.mil>



Exhibit E

1938 Aerial Photograph

224 SEA CLIFF AVENUE
San Francisco, CA

Date 10/13/21

Project No. 91708.01

Figure 3

Gilpin Geosciences, Inc.
Earthquake & Engineering Geology Consultants

SITE

SEA CLIFF

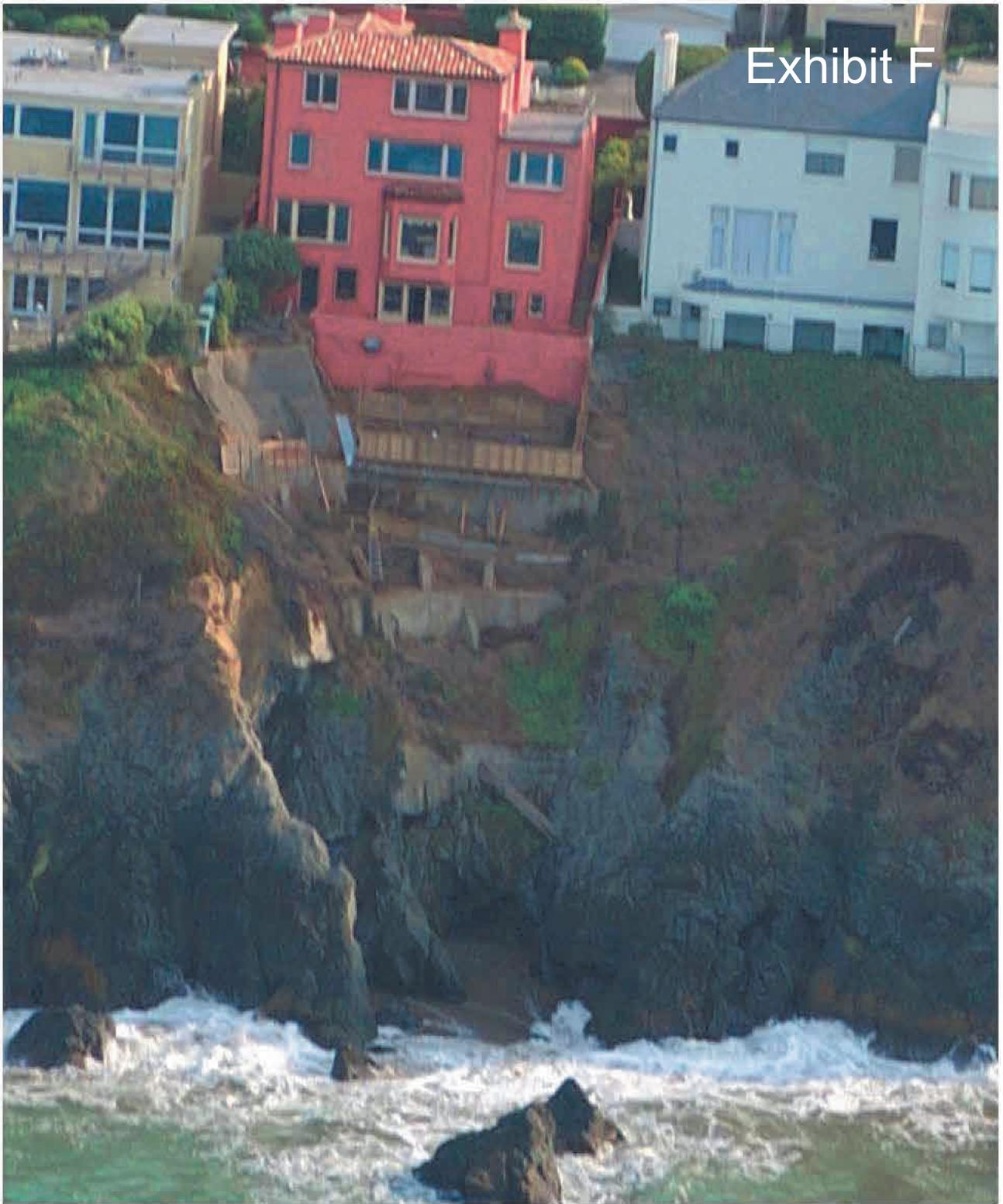
Google Earth

Image © 2021 SF Public Library/Rurnsey Maps



100 ft

Exhibit F



2002 Oblique Photograph

224 SEA CLIFF AVENUE
San Francisco, CA

Date 10/13/21

Project No. 91708.01

Figure 4

Reference: CA Coastal Project, 2002



Gilpin Geosciences, Inc.
Earthquake & Engineering Geology Consultants

Mon, Nov 8, 2004 11:53 AM

Subject: Baker Beach Encroachments - 190 and 224 Seacliff Avenue - Update and Next Steps**Date:** Friday, November 5, 2004 11:22 AM**From:** Paul_Batlan@nps.gov**To:** Ande Bennett <andeb@bcdca.gov>**Cc:** <Karen_Cantwell@nps.gov>, <Ed_Ueber@partner.nps.gov>, <Nancy_Hornor@nps.gov>, <Lee_Shenk@nps.gov>, <carlsondoi@yahoo.com>, <Brian_O'Neill@nps.gov>, <Greg_Gress@nps.gov>, <Mai-Liis_Bartling@nps.gov>, <Eric_Beckert@nps.gov>, <ncave@coastal.ca.gov>

Ande:

Here is an NPS update and next steps for the two encroachments in the Sea Cliff properties at 190 and 224 Seacliff Avenue, San Francisco, CA bordering NPS properties at Baker Beach:

(1) Ed Ueber, NOAA conducted a line of site survey measurement of the Mean High Tide of the Brugnara improvements at Baker Beach and found the poured concrete footing is below the MHT and therefore an encroachment on NPS leasehold property owned by the State Lands Commission. This improvement is an should be removed. NPS will advise the property owner, the California Lands Commission about this encroachment and request their assistance in notifying the owner to arrange its removal.

(See attached file: Tidal Observations - Brugnara Property 8-04)

(2) Luke Brugnara, property owner at 224 Seacliff Avenue completed additional improvements to including reinforced steel fencing and a locked gate from his house backyard down to the encroachment, despite NPS law enforcement efforts and coordination with SF Building department to suspend the work.

(3) Mr. Brugnara violated his building approvals and was cited by the City of SF Planning Dept. for having not competed a structural engineering report and test with the City as required by applicable codes and permits. City inspectors for the project are supervisor Joe Duffy at 558-6656 and Ed Sweeney at 558-6272.

(4) DOI-Solicitor Walthall conferred with Brian O'Neill, Law Enforcement Ranger Evans and myself in the early summer to review NPS authority to enter into a special use permit with Baker Beach neighbors to permit such improvements and encroachments. Although NPS has authority to regulate and make efforts to prevent such improvements, according to the Solicitor, NPS does not have the authority to execute Special Use Permits under our lease with the State Lands Commission. Therefore NPS will notify the State lands Commission regarding the encroachments and request direction regarding next steps to resolve this matter.

NPS would like to acknowledge and distinguish the Stantons at 190 Seacliff for their cooperation with NPS in confirming the encroachment and providing property boundary information and in seeking a resolution to the encroachment. In contrast, Mr. Brugnara at 224 Seacliff has refused to

acknowledge the encroachment or cooperate with NPS by failing to provide property information including applicable surveys and by continuing to construct after being noticed by NPS law enforcement staff to suspend activities until the property boundaries could be verified. I apologize for the lateness of this response and communication with BCDC and the State Lands Commission, but like BCDC, NPS resources are being prioritized currently for critical life-safety work. I will draft our communication to the State Lands Commission in November and commit to follow-up with them in the resolution of these two encroachments.

Please feel free to contact me at 415 561-4471.

Paul Batlan
Project Manager, Fort Baker Team
NPS - Golden Gate National Recreation Area
Fort Mason, Building 201
San Francisco, CA 94123
(415) 561-4471 voice
(415) 561-4410 fax

Ande Bennett
<andeb@bcdc.ca.go
v>

To: <Paul_Batlan@nps.gov>
cc:
Subject: Re: 190 Seacliff Avenue

11/04/2004 02:49
PM PST

PAUL,
Sorry, I forgot that you were assigned the project. Please give me an update on permitting the stairs.
Thanks,
Ande

On 11/4/04 1:26 PM, "Karen_Cantwell@nps.gov" <Karen_Cantwell@nps.gov> wrote:

> Hi Ande,
>
> Nice to hear from you, I'm you're still on board and that the state hasn't
> eliminated your position. I'm now out of the loop with this project, as
> Paul Batlan, our park's Reality Specialist, was working with our DOI
> Solicitors on the issue, and I think that the Solicitiors have taken up
> working things out with the Stantons' attorney. Maybe Paul has some
> additional insight.

Subject: FW: Baker Beach Encroachment - 224 Seacliff Avenue - Update and Next Steps

Date: Friday, January 27, 2012 12:07 PM

From: Ande Bennett <andeb@bcdc.ca.gov>

To: Ande Bennett <andeb@bcdc.ca.gov>

----- Forwarded Message

From: <Paul_Batlan@nps.gov>

Date: Fri, 27 Jan 2012 12:00:40 -0500

To: Ande Bennett <andeb@bcdc.ca.gov>

Cc: Adrienne Klein <adriennek@bcdc.ca.gov>, John Bowers <johnb@bcdc.ca.gov>, "Katharine_Arrow@nps.gov" <Katharine_Arrow@nps.gov>, <suzanne.carlson@sol.doi.gov>, <Janette_Ferguson@nps.gov>

Subject: Re: Baker Beach Encroachment - 224 Seacliff Avenue - Update and Next Steps

Ande:

Retired DOI-Solicitor Nicole Walthall advised us at the time of the installation that NPS does not have standing under our lease to issue permits for private improvements. NPS may only permit for purposes related to the leasehold e.g. public access, recreation, law enforcement, and environmental stewardship projects.

I suggest we not permit this activity at all, and seek remediation and restoration of the concrete pad and the stairs within State Lands Commission held property, that would need to be confirmed through a maritime survey, hopefully performed by the trespassing party or recovered a part of the damages once the property line is established.

Suzanne Boyce Carlson is the current DOI-Solicitor and Janette Ferguson is PWR Lands assisting GGNRA in this matter.

Thanks: PB

Paul Batlan
Acting Chief
Partnerships and Concessions
National Mall and Memorial Parks
900 Ohio Drive, SW
Washington, DC 20024
202-245-4710 voice
(415) 307-5260 cell

NPS draft - assertion

Grace Kato - call

*annual paragraph
letter of encroachment*

Ande Bennett
<andeb@bcdc.ca.gov>

v> To

BCDC Enforcement

Submitted by: bayrat_BCDC

Submitted time: Apr 11, 2020, 3:39:36 PM

ER#

ER2004.019

Permittee or Respondent

Luke Brugnara

Score

66

Priority

Yes

Status

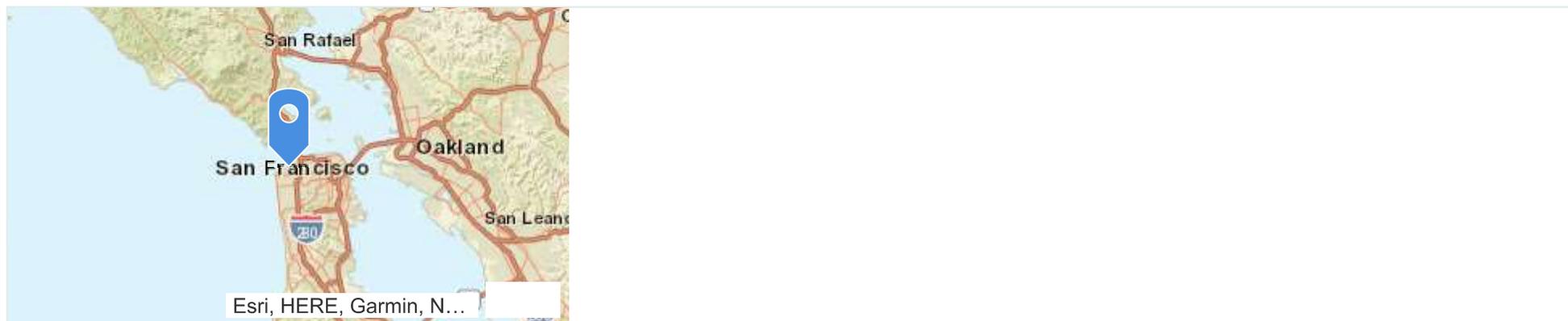
D. Investigation

Address of the Alleged Violation

224 Sea Cliff Ave San Francisco

Location of the Alleged Violation

Lat: 37.78872 Lon: -122.48842



County

Description of the Alleged Violation

Unauthorized stairs placed below MHW

Date Report Submitted

Dec 29, 1899

Staff Notes

Encroachment on GGNRA and SLC property, neither of agency interested in addressing the encroachment as of 2011(John Bowers confirmed with G. Kato in 2012.) May 2014- article re Brugnera being indicted for art theft. Discussed case w Federal prosecutor, Brugnera going to Jail; AK agreed that this should be moved to La Bin indefinitely December 26 2014, contact info for federal prosecutor for a new case against Brugnera; was told the he might work with GGNRA solicitor on this matter: Doug Sprague, see email on top of ER file. PN 12/31/19 Property listed for sale 10/19 has pending offer listing agent Anne Herrera Sotheby's International Realty - San Francisco Brokerage

Date ER Case Opened

Mar 22, 2004

Total Civil Penatly Owed

0

Total Civil Penalty Paid

0

1 JULIAN BACH, ESQ., STATE BAR NO. 162421
2 LAW OFFICE OF JULIAN BACH
3 7911 Warner Avenue
4 Huntington Beach, California 92647
5 Telephone: (714) 848-5085
6 Facsimile: (714) 596-6331

7 Attorney for Debtor-In-Possession,
8 PSG MORTGAGE LENDING CORP., a Delaware
9 Corporation

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re)
14 PSG MORTGAGE LENDING CORP., a Delaware)
15 Corporation,)
16 Debtor and Debtor-In-Possession.)

Case No. 21-30592-DM

Chapter 11

**AMENDED MOTION TO SELL REAL
PROPERTY AND TO: (1) SELL REAL
PROPERTY FREE AND CLEAR OF
LIENS AND INTERESTS; AND (2) PAY
REAL ESTATE COMMISSION, DEED
OF TRUST AND STANDARD CLOSING
COSTS OUT OF ESCROW**

Date: April 1, 2022
Time: 10:30 a.m.
Place: VIA ZOOM/AT&T TELE
Courtroom 17
U.S. Bankruptcy Court
450 Golden Gate Avenue
San Francisco, CA 94102

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1 **TO AFFECTED LIENHOLDERS/INTEREST HOLDERS/PURPORTED/DISPUTED**
2 **INTEREST HOLDERS:**

3 **A. Non-Governmental Individuals/Entities:**

- 4 1. World Savings Bank, FSB, its successors and/or assigns, including but not
5 limited to Wells Fargo Bank (*see* Section VI. 1);
- 6 2. Natural Software Systems Inc., Money Purchase Pension Plan as to an undivided
7 65% interest and Tanya Waltmyer, a married woman as her sole and separate
8 property as to an undivided 35% interest, as assignees of Saxe Mortgage, et al;
- 9 3. Paul Greenfield, as an individual, to the extent any interests are claimed in the
10 above-referenced deed of trust (*see* Section VI. 2);
- 11 4. Dakota Note, LLC (*see* Section VI. 3); and
- 12 5. PSG Capital Partners, Inc. and Debtor PSG Mortgage Lending Corp. (*see*
13 Section VI. 5).

14 **B. Governmental Lienholders/Entities:**

- 15 1. San Francisco Department of Public Health/Public Utilities Commission (*see*
16 Section VI. 4).

17 **C. Purported/Disputed Interest Holders:¹**

- 18 1. Kay Brugnara and Family/Luke Brugnara/individually or as
19 Officer(s)/Director(s)/Shareholder(s) of Brugnara Properties VI (the “Brugnara
20 Parties”) (*see* Section VII).²

25
26 ¹ *See* Adversary Proceeding Case No. 21-03065-DM pending before this Court, which is an
27 action removed from State Court that includes a claim by Luke Brugnara of some sort of interest in the
Sea Cliff Avenue Property.

28 ² The Court should note that there was a Claims Bar Deadline in this case of December 27, 2021
and that none of the Brugnara Parties timely filed a claim in this proceeding.

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1 This Amended Motion to Sell Real Property and to: (1) Sell Real Property Free and
2 Clear of Liens and Interests; and (2) Pay Real Estate Commissions, Deeds of Trust and Standard
3 Closing Costs Out of Escrow; Memorandum of Points and Authorities (224 Sea Cliff Avenue, San
4 Francisco, California [11 U.S.C. §363(b); 11 U.S.C. §363(f)(1), (2), (3), (4) and (5); 11 U.S.C.
5 §363(m); 11 U.S.C. §724; 11 U.S.C. §726(a)(4); 11 U.S.C. §551; F.R.B.P. 6004(a); B.L.R. 6004-
6 1] (“Motion”) is filed by Debtor PSG Mortgage Lending Corp. (the “Debtor”) and respectfully
7 represents as follows:

8 **I. JURISDICTION/RELIEF REQUESTED**

9 This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334(a) and 157.
10 Venue is proper under 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant
11 to 28 U.S.C. §157(b)(2)(M). The Motion requests Court authorization for sale of real property of
12 the estate free and clear of liens and interests.

13 **II. MOTION TO SELL REAL PROPERTY**

14 Annexed to the Declaration of Philip Fusco in Support of this Amended Motion to Sell
15 Real Property and to (1) Sell Real Property Free and Clear of Liens and Interests; and (2) Pay Real
16 Estate Commissions, Deeds of Trust and Standard Closing Costs Out of Escrow (224 Sea Cliff
17 Avenue, San Francisco, CA (the “Fusco Decl.”) as Exhibit A is a copy of the San Francisco
18 Purchase Agreement (the “Sale Agreement”).³

19 Under the Sale Agreement, the Debtor has accepted a sales price for the Sea Cliff
20 Avenue Property of \$13,000,000.00 from a buyer (the “Buyer”), with some of the secured
21 lienholders agreeing to reduce their payoff to pay the transfer tax which will be owed to the City
22 and County of San Francisco upon the closing of the transaction in the approximate sum of
23

24 ³ Out of valid concerns based upon the past and current ongoing actions and efforts of the former
25 owner of the Sea Cliff Avenue Property (Brugnara) to interfere with and disrupt any sale of the property
26 to anyone but him or his cohorts, the identities of the Buyer and the Title Company involved in this
27 transaction have been reacted and filed under seal per Court Order (Doc #112). As is set forth in Section
28 IX herein, the Buyer will be present at the sale hearing to testify and provide evidence to the Court in
support of the request for a good faith finding by the Buyer under Bankruptcy Code §363(m).

1 \$780,000.000. The Buyer will make an initial deposit of 3% into Escrow upon receipt and
2 approval of the seller's lawyer's disclosure of the status of the oceanside stairs, with Escrow to
3 close within 30 days or sooner of a Court Order approving of the transaction. By Amendment of
4 the parties, the expiration of the Agreement was extended to February 11, 2022. On February 11,
5 2022, the Debtor accepted the offer and signed the Agreement.

6 The Sale Agreement is subject to Bankruptcy Court approval and higher and better bids.

7 The sale of the Sea Cliff Avenue Property free and clear of any liens or interests is on
8 an "as-is, where is" basis, with no warranties or representations. This includes an acceptance by
9 the Buyer of all responsibility for permits and work on the cliff side and the staircase to the beach.

10 **III. OVERBIDS**

11 As is set forth in the accompanying Declaration of Mark Levinson of Compass, with
12 respect to advertising the overbid procedures, the following efforts were and are being made:

- 13 ● A description and notice of overbidding procedures and possibilities is listed on
14 the Multiple Listing Service (MLS), which is the most effective and relied upon
15 service to give notice to potential buyers, brokers and/or agents;
- 16 ● A description and notice of overbidding procedures and possibilities is set forth
17 on the private web site created for marketing the sale of the property -
18 224seacliffavenue.com and Disclosures.IO; and
- 19 ● The overbid process and procedure is disclosed and discussed with buyers and
20 their agents as well as agent previews if/when they express interest in the
21 property.

22 The minimum starting overbid is \$13,500,000.00 (together with payment of the transfer
23 tax, as noted), with minimum increments thereafter of \$50,000.00. **The deadline for submitting**
24 **qualified overbids in writing is 12 noon on March 25, 2022.** The Debtor will only consider
25 overbids from qualified buyers. Prior to overbidding, an overbidder must demonstrate the ability
26 to close the transaction to sole and complete satisfaction of the Debtor and provide a non-
27 refundable deposit (if the successful bidder) of \$390,000.00. In the event a qualified overbidder

1 or overbidders is obtained, an auction will be held on April 1, 2022. Qualified overbidders may
2 participate by Zoom video or telephone.

3 Overbids must be submitted in writing on terms equal to or better than the proposal from
4 the Buyer (see Exhibit A to the accompanying Declaration of Philip Fusco (the "Fusco Decl."),
5 e.g., all cash and close of escrow within 30 days of a Court Order approving the sale, on an "as-is,
6 where is" basis, with no warranties or representations. This includes an acceptance by the Buyer
7 of all responsibility for permits and work on the cliff side and the staircase to the beach along
8 with any remaining issues with the City/County of San Francisco. Any overbidder should contact
9 Julian Bach, Counsel for the Debtor, at (714) 848-5085 or by email (Julian@jbachlaw.com) or
10 the Estate's real estate broker, Mark Allan Levinson, COMPASS
11 (mark@markallanlevinson.com); (415) 441-5500.

12 **IV. PAYMENT OF REAL ESTATE COMMISSION AND OTHER STANDARD**
13 **CLOSING COSTS**

14 Pursuant to an agreement between the Debtor and its Broker, the Estate agreed to pay
15 a 4.0% real estate commission upon the closing of sale of the Sea Cliff Avenue Property. The
16 Buyer is representing himself. Compass, which is the brokerage firm that represents the Estate,
17 has agreed to a reduced sales commission of 2.5%.

18 After extensive marketing under adverse conditions and the exchange of offers and
19 counter-offers, the Debtor has brought the best offer to the table, subject to higher and better bids.
20 The Debtor believes this is a unique property being sold under very adverse conditions and with
21 a long history of problems and issues. Accordingly, the sale should go forward as contemplated
22 and subject to overbid.

23 **MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES**
24 **IN SUPPORT OF MOTION TO SELL FREE AND CLEAR OF LIENS**

25 **V. BACKGROUND**

26 The Sea Cliff Avenue Property has been the subject of multiple prior bankruptcy filings
27 by its former owner, Brugnara Properties VI. The most recent bankruptcy by the former owner is
28 Chapter 7 Case No. 17-30501, which was commenced by Brugnara Properties VI on May 22,

Exhibit J

1 2017 as a Chapter 11 proceeding, converted to a Chapter 7 proceeding on April 4, 2018, and
2 remains open and pending before this Court as of this date (the “Brugnara Properties VI
3 Bankruptcy Proceeding”).

4 Debtor PSG Mortgage Lending Corp.’s (the “Debtor”) predecessor in interest, PSG
5 Capital Partners, Inc., was the holder of the fourth trust deed secured against the Sea Cliff Avenue
6 Property based upon a loan it made to Brugnara Properties VI in the original principal amount of
7 \$1,000,000.00. (Fusco Decl., ¶6). There were also three trust deeds secured by the Sea Cliff
8 Avenue Property ahead of the 4th trust deed based upon loans made to Brugnara Properties VI: a
9 1st trust deed in favor of Wells Fargo recorded on April 12, 2007 with an original principal
10 balance in the amount of \$7,500,000; a 2nd trust deed in favor of Natural Software Systems, Inc.
11 et al recorded on July 12, 2013 in the original principal balance due of \$1,700,000; and a 3rd trust
12 deed in favor of Dakota Note, LLC recorded on July 21, 2015 in the original principal balance of
13 \$1,200,000. (Fusco Decl., ¶7).

14 Efforts by the Chapter 7 Trustee in the Brugnara Properties VI Bankruptcy Proceeding
15 to sell the Sea Cliff Avenue Property could not come to fruition due to various delays, including
16 tax liens that were asserted to be secured by the real property. Because the Sea Cliff Avenue
17 Property was not sold by the Chapter 7 Trustee, on May 20, 2020, this Court entered an Order
18 Granting Stipulated Relief From the Automatic Stay in the Brugnara Properties VI Bankruptcy
19 Proceeding (the “Stay Relief Order”) such that deed of trust holders Greenfield, Dakota Note,
20 LLC and/or PSG Capital Partners, Inc. could proceed with nonjudicial foreclosure of the Sea Cliff
21 Avenue Property. (Fusco Decl., ¶10).

22 Of the deed of trust holders granted relief from the automatic stay, only PSG Capital
23 Partners, Inc. opted to immediately proceed with foreclosure upon entry of the Stay Relief Order.
24 On August 13, 2020, a nonjudicial foreclosure sale of the Sea Cliff Avenue Property took place
25 under a Deed of Trust held by PSG Capital Partners, Inc., with title to the Sea Cliff Avenue
26 Property reverting back to PSG Capital Partners, Inc. The Trustee’s Deed Upon Sale was recorded
27 on October 9, 2020 as document no. 2020028282. (Fusco Decl., ¶11, Exh C). Thereafter, on
28

1 August 20, 2021, title to the Sea Cliff Avenue Property was transferred by PSG Capital Partners,
2 Inc. to the Debtor by Grant Deed recorded on August 25, 2021, document no. 2021136349. (Fusco
3 Decl., ¶12, Exh D).

4 In this bankruptcy, by ruling of this Court on October 1, 2021 in resolution of a Motion
5 to Dismiss filed by secured creditor Dakota Note, LLC (Doc #20), the Debtor was to have a
6 Motion to Sell on file with this Court by no later than November 1, 2021 or Dakota Note, LLC
7 may submit an Order Dismissing this case in its discretion at any time thereafter. No dismissal
8 Order has been submitted as of this date because of ongoing joint efforts by the Debtor and
9 Secured Creditors to have the Sea Cliff Avenue Property sold through this proceeding.

10 The Debtor has filed this Motion to sell the Sea Cliff Avenue Property free and clear of
11 liens for various reasons as described herein. Notwithstanding the short leash given to the Debtor
12 in this case, the Debtor, through its real estate broker Compass, has marketed the Sea Cliff
13 Avenue Property extensively and obtained a qualified buyer, subject to higher and better bids. The
14 Debtor believes that it and its broker have done all they can to market the Sea Cliff Avenue
15 Property and that the results of an auction will determine the highest and best price available for
16 the property.

17 **VI. SALE FREE AND CLEAR OF LIENS AND INTERESTS**

18 As will be explained more thoroughly, specifically as to each lien set forth herein below,
19 the Debtor is proposing to sell the Sea Cliff Avenue Property free and clear of liens, with the liens
20 to be paid off in full through Escrow to the extent there is available cash. Liens or potential
21 interests will be treated as noted below.

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2. Natural Software Systems Inc., Money Purchase Pension Plan as to an undivided 65% interest and Tanya Waltmyer, a married woman as her sole and separate property as to an undivided 35% interest, as assignees of Saxe Mortgage, et al.

A deed of trust to secure an original indebtedness of \$1,700,000 recorded July 12, 2013 as document no. 2013-705008, Book/Reel K937, Page/Image 0178 of Official Records.

Dated:	June 25, 2013
Trustor:	Brugnara Properties VI, a California corporation
Trustee:	Yeva, Inc. dba Saxe Mortgage Company
Beneficiary	Theodore J. Gradman Ph.D. 401k Plan, 300,000.00/1,700,000.00, Umberto C. Von Hofen and Kathleen A. Von Hofen, Trustees Udt Dtd 4/6/2000, 170,000.00/1,700,000.00, Robert J. Malone Trustee of The Robert J. Malone Agreement of Trust Dtd 9/28/07, 170,000.00/1,700,000.00, Lynne S. Tilsen, Trustee of Lynne S. Tilsen Living Trust Established 11/8/1990, 170,000.00/1,700,000.00, Oksana Borzina, a single woman, 170,000.00/1,700,000.00, Jeff Mogalian, a single man, 170,000.00/1,700,000.00, Jhoanne Loube, 160,000.00/1,700,000.00, Rachel Gishkin, a married woman as her sole and separate property, 150,000.00/1,700,000.00, Arkvest LLC by Kathryn Gachwiler, Managing Member, 140,000.00/1,700,000.00, Hilary A. Perr, a married woman as her sole and separate property, 100,000.00/1,700,000.00

(a) According to the public records, the beneficial interest under the deed of trust was assigned to Natural Software Systems, Inc., Money Purchase Pension Plan 65.00% and Tanya Waltmyer, a married woman as her sole and separate property 35.00% by assignment recorded December 15, 2016 as document no. 2016-375516 of Official Records.

As of the time of the filing of this Motion it is unclear the extent of any overbids that may occur. Nevertheless, the Debtor believes that it may sell free and clear of this lien under Bankruptcy Code §363(f)(1) since it will either be paid off in full from Escrow or in an amount consented to by the lienholder. Otherwise, as will be explained below, the Debtor asserts that the Sea Cliff Avenue Property may be sold in conformity with Bankruptcy Code §363(f)(5), as will be explained herein below.

4. San Francisco Department of Public Health/Public Utilities Commission

Lien for delinquent Water, Utility Tax and Wastewater Charges in favor of San Francisco Water, Power and Sewer Services of the San Francisco Public Utilities Commission

Against:	Brugnara Properties VI
Amount:	\$1,411.80
Recorded:	August 16, 2017 as Instrument No. 2017-K494971 of Official Records

This lien is to be paid from Escrow.

5. PSG Capital Partners, Inc. and Debtor PSG Mortgage Lending Corp.

As mentioned herein above, on August 13, 2020, a nonjudicial foreclosure sale of the Sea Cliff Avenue Property took place under a Deed of Trust held by PSG Capital Partners, Inc., with title to the Sea Cliff Avenue Property reverting back to PSG Capital Partners, Inc. The Trustee's Deed Upon Sale was recorded on October 9, 2020 as document no. 2020028282. (Fusco Decl., ¶11, Exh C). Thereafter, on August 20, 2021, title to the Sea Cliff Avenue Property was transferred by PSG Capital Partners, Inc. to the Debtor by Grant Deed recorded on August 25, 2021, document no. 2021136349. (Fusco Decl., ¶12, Exh D).

As of the time of the filing of this Motion it is unclear the extent of any overbids that may occur. To the extent any sales excess proceeds remain *after* the payoffs referenced herein above, including the broker commissions and costs of sale, said remaining proceeds shall go into the Debtor In Possession Account established in this proceeding for payoff first in full of any

1 allowed unsecured claims and any remaining amounts owed to the Office of the U.S. Trustee.
2 Further, upon closing of the sale and payoff of creditors, it is anticipated by the Debtor that this
3 case shall be dismissed either by submission of a dismissal Order by Dakota Note or a Motion to
4 Dismiss filed by the Debtor.

5 **VII. KAY BRUGNARA AND FAMILY/LUKE BRUGNARA/INDIVIDUALLY OR AS**
6 **OFFICER(S)/DIRECTOR(S)/SHAREHOLDER(S) OF BRUGNARA**
7 **PROPERTIES VI.**

8 In addition to the liens and interests described herein above, on September 29, 2020,
9 Luke Brugnara filed a lawsuit entitled Luke Brugnara v. Paul Greenfield, Dakota LP, CHL, PSG
10 Capital et al in the Superior Court of the State of California for the County of San Francisco, Case
11 No. CGC-20-586853 (the "State Court Action"). The State Court Action names a number of
12 Defendants, including Secured Creditors Paul Greenfield ("Greenfield") and Dakota Note LLC,
13 and sets forth several causes of action, including but not limited to seeking to Quiet Title to the
14 Sea Cliff Avenue Property in favor of Brugnara along with allegations that the loans of Greenfield
15 and Dakota Note LLC as secured by deeds of trust against the Sea Cliff Avenue Property are
16 "fraudulent."

17 Brugnara's State Court Action was removed to this Court by the Debtor on December
18 3, 2021 in furtherance of the Debtor's goal of selling the Sea Cliff Avenue Property free and clear
19 of all claims, liens and encumbrances. *See* Adversary Proceeding Case No. 21-03065-DM pending
20 before this Court, which includes a full copy of Brugnara's Complaint.

21 As noted herein above, on August 13, 2020, a nonjudicial foreclosure sale of the Sea
22 Cliff Avenue Property took place under a Deed of Trust held by PSG Capital Partners, Inc., with
23 title to the Sea Cliff Avenue Property reverting back to PSG Capital Partners, Inc. The Trustee's
24 Deed Upon Sale was recorded on October 9, 2020 as document no. 2020028282. (Fusco Decl.,
25 ¶11, Exh C). Under California law, the completion of a nonjudicial foreclosure sale of real
26 property extinguishes all rights and interests to the real property of the junior lienholders and the
27 borrower-trustor (or his or her successor in interest). (*See Cadlerock Joint Venture, L.P. v. Lobel*
28 (2012) 206 Cal.App.4th 1531, 1536, 143 Cal.Rptr.3d 96.)

1 Further, as discussed herein below, a sale free and clear of certain disputed liens is
2 authorized under the terms of the Bankruptcy Code §363(f)(4)).

3 Simply put, any interest that Kay Brugnara and Family/Luke Brugnara/individually or
4 as Officer(s)/Director(s)/Shareholder(s) of Brugnara Properties VI (the “Brugnara Parties”) still
5 claim in the Sea Cliff Avenue Property, to the extent it ever existed, was extinguished under
6 California law.

7 **VIII. SALE FREE AND CLEAR OF LIENS AND INTERESTS - BANKRUPTCY**
8 **CODE §363(f)**

9 As described above, the Debtor has presented the best offer it has received (subject to
10 higher and better bids).

11 Under §363(f), “[t]he trustee may sell property . . . free and clear of any interest in such
12 property of an entity other than the estate, only if– (1) applicable nonbankruptcy law permits sale
13 of such property free and clear of such interest; (2) such interest consents; (3) such interest is a
14 lien and the price at which such property is to be sold is greater than the aggregate value of all
15 liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be
16 compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.” 11
17 U.S.C. §363(f).

18 Wells Fargo Bank, which is the holder of the first trust deed, will be paid off in full
19 through escrow at the close of the sale. Regarding lienholders (a) Natural Software Systems Inc.,
20 Money Purchase Pension Plan as to an undivided 65% interest and Tanya Waltmyer, a married
21 woman as her sole and separate property as to an undivided 35% interest, as assignees of Saxe
22 Mortgage, et al. [Second Trust Deed], and/or Paul Greenfield, as an individual, to the extent any
23 interests are claimed in the above-referenced deed of trust; (b) Dakota Note, LLC [Third Trust
24 Deed], and (c) the Debtor, all such claims and interests will consent to the sale and accept an
25 agreed upon (reduced) amount in full satisfaction of their respective claims and interests.
26 (§363(f)(2)).

Exhibit J

1 As for any purported claims of interest in the Sea Cliff Avenue Property by Luke
2 Brugnara or Katherine Brugnara⁵, Bankruptcy Code section 363(f)(4) provides that, “[t]he trustee
3 may sell property under subsection (b) or (c) of this section free and clear of any interest in such
4 property of an entity other than the estate, only if - “one of at least several independent
5 circumstances exist including “. . . (4) such interest is in bona fide dispute; . . .” The Ninth Circuit
6 Bankruptcy Appellate Panel has stated that, “[t]he purpose of §363(f)(4) is to permit property of
7 the estate to be sold free and clear of interests that are disputed by the representative of the estate
8 so that liquidation of the estate’s assets need not be delayed while such disputes are being
9 litigated.” Moldo v. Clark (In re Clark), 266 B.R. 163, 171 (9th Cir. BAP 2001). “Typically, the
10 proceeds of sale are held subject to the disputed interest and then distributed as dictated by the
11 resolution of the dispute; such procedure preserves all parties’ rights by simply transferring
12 interests from property to dollars that represent its value.” Id.

13 A “bona fide dispute” exists if there is an “objective basis for either a factual or a legal
14 dispute as to the validity of the [claim].” In re Vortex Fishing Systems, Inc., 277 F.3d 1057, 1065
15 (9th Cir. 2002)(quotations omitted). The “mere existence of pending litigation or the filing of an
16 answer is insufficient to establish the existence of a bona fide dispute.” Id. at 1066. The Trustee
17 has the burden of demonstrating that a “bona fide dispute” exists. In re Terrace Chalet
18 Apartments, Ltd., 159 B.R. 821, 828 (N.D.Ill. 1993).

19 Here, on September 29, 2020, Luke Brugnara filed his State Court Action against
20 Secured Creditors Greenfield and Dakota Note LLC, asserting several causes of action, including
21 but not limited to seeking to Quiet Title to the Sea Cliff Avenue Property in favor of Brugnara,
22 along with allegations that the loans of Greenfield and Dakota Note LLC as secured by deeds of
23 trust against the Sea Cliff Avenue Property are “fraudulent.” Brugnara’s State Court Action was

24
25 ⁵ As mentioned herein above, Brugnara Properties VI remains in a pending Chapter 7 bankruptcy
26 proceeding before this Court. There is no indication that the bankruptcy estate claims any further interest
27 in the Sea Cliff Avenue Property due to the completed foreclosure. Further, neither Luke Brugnara nor
28 Katherine Brugnara represent that bankruptcy estate and have no authority to act on behalf of that estate
to either assert such an interest and/or challenge the completed foreclosure sale.

1 removed to this Court by the Debtor on December 3, 2021 in furtherance of the Debtor's goal of
2 selling the Sea Cliff Avenue Property free and clear of all claims, liens and encumbrances. *See*
3 Adversary Proceeding Case No. 21-03065-DM pending before this Court, which includes a full
4 copy of Brugnara's Complaint.

5 Likewise, the Debtor has commenced an Adversary Proceeding in this Court seeking a
6 Declaratory Judgment confirming that neither Luke Brugnara nor Katherine Brugnara have any
7 valid lien, claim or interest in the Sea Cliff Avenue Property. *See* Adversary Proceeding Case No.
8 22-03007-DM pending before this Court, which includes a full copy of the Debtor's Complaint.

9 As noted herein above, on August 13, 2020, a nonjudicial foreclosure sale of the Sea
10 Cliff Avenue Property took place under a Deed of Trust held by PSG Capital Partners, Inc., with
11 title to the Sea Cliff Avenue Property reverting back to PSG Capital Partners, Inc. The Trustee's
12 Deed Upon Sale was recorded on October 9, 2020 as document no. 2020028282. (Fusco Decl.,
13 ¶11, Exh C). Under California law, the completion of a nonjudicial foreclosure sale of real
14 property extinguishes all rights and interests to the real property of the junior lienholders and the
15 borrower-trustor (or his or her successor in interest). (*See Cadlerock Joint Venture, L.P. v. Lobel*
16 (2012) 206 Cal.App.4th 1531, 1536, 143 Cal.Rptr.3d 96.) Clearly a bona fide dispute exists as to
17 any interest that Luke Brugnara or Kay Brugnara claim to still have in the Sea Cliff Avenue
18 Property.

19 Finally, it should be noted that it is not a requirement for an application of section
20 363(f)(4) that the remaining sales proceeds be sufficient to satisfy all disputed liens. The five
21 different grounds for selling "free and clear of liens" under Section 363(f) are in the alternative,
22 as is shown by the use of the word "or" at the end of section 363(f)(4) which is contrasted with
23 the use of the word "and" at the end of section 363(h)(3) which establishes that all four conditions
24 set forth in 363(h) for the sale of jointly owned property must be satisfied. See, e.g. In re Patriot
25 Place, Ltd., 486 B.R. 773, 796, ft. 6, (Bkrtcy E.D. Tex 2013); In re U.S.A. United Fleet, Inc., 496
26 B.R. 79, 83 (Bkrtcy E.D.N.Y. 2013). Section 363(f)(3) independently provides that there can be
27 a sale free and clear of liens if "such interest is a lien and the price at which such property to be
28

1 sold is greater than the aggregate value of all liens on such property.” If satisfying the conditions
2 of subsection (f)(3) were a condition for satisfying the condition of (f)(4), they would not be in
3 the alternative and there would be no point to having (f)(4) at all.

4 Simply put, the Debtor asserts that it may sell the Sea Cliff Avenue Property free and
5 clear of any and all interest(s) claimed in the Sea Cliff Avenue Property by the Brugnara Parties
6 and that this Court should enter an Order authorizing the same.

7 **IX. GOOD FAITH FINDING**

8 Under the terms of Bankruptcy Code Section 363(m), the reversal or modification on
9 appeal of an authorization under §363(b) of this section of a sale does not affect the validity of
10 the sale to an entity that purchased a property in good faith. The Buyer will be present at the
11 hearing to testify and provide evidence in support of the request for a good faith finding by the
12 Buyer under Bankruptcy Code §363(m).

13 **X. RULE 62(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND/OR**
14 **BANKRUPTCY RULE 6004(h)**

15 The Debtor requests that the order approving the proposed sale of the Sea Cliff Avenue
16 Property provide as follows: “This order is effective upon entry, and the stay otherwise imposed
17 by Rule 62(a) of the Federal Rules of Civil Procedure and/or Bankruptcy Rule 6004(h) shall not
18 apply.”

19 **XI. LIEN RECORDINGS SINCE LAST TITLE REPORT**

20 Exhibit B attached to the Fusco Decl. is a “Preliminary Report Dated as of January 21,
21 2022” title report issued by the Title Company. The Buyer has requested and the Debtor has
22 agreed to seek an order selling free and clear of any liens that are recorded after the January 21,
23 2022 date of the title report until and including the date of closing. Any liens asserted against the
24 Sea Cliff Avenue Property would be asserted in violation of Bankruptcy Code §362(a)(4) (11
25 U.S.C. §362(a)(4)). Accordingly, the Debtor will request that the sale order include such a
26 provision, if necessary.

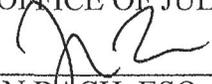
1 **XII. CONCLUSION**

2 Given all of the above, the Debtor asserts that the sale should be approved, either with
3 the consent of junior lienholders or as explained above.

4 **WHEREFORE**, the Debtor respectfully requests that the Court grant the Amended
5 Motion in its entirety.

6 Dated: March 9, 2022

Respectfully submitted,
LAW OFFICE OF JULIAN BACH

7
8 By:  _____

JULIAN BACH, ESQ.
Attorney for Debtor
PSG MORTGAGE LENDING CORP., a
Delaware Corporation

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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

Sent Via Certified and Electronic Mail

PSG Mortgage Lending Corp.
PSG Capital Partners Inc.
16441 Scientific, #250
Irvine, CA 92618
c/o David Tillotson
Email: DTillotson@lpslaw.com

“Buyer”
224 Sea Cliff Avenue
San Francisco, CA 94121
c/o Mark Allen Levinson
Email: mark@markallanlevinson.com

SUBJECT: Notice of Violation of the McAteer-Petris Act: Unauthorized Activity in BCDC’s San Francisco Bay & Shoreline Band Jurisdiction

BCDC Case Number: ER2004.019.00

Permit Number: N/A

Date Mailed: April 1, 2022

35th Day after Mailing: May 6, 2022

60th Day after Mailing: May 31, 2022

Enforcement Committee Hearing Date: May 25, 2022

**VIOLATION REPORT/COMPLAINT FOR ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES
ENFORCEMENT CASE ER2004.019.00**

PSG Mortgage Lending Corp., PSG Capital Partners Inc., and “Buyer” (Respondents)

**Guidance to
Respondents**

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

The San Francisco Bay Conservation and Development Commission is issuing this Violation Report/Complaint for the administrative imposition of civil penalties and the enclosed statement of defense form because the Commission’s staff believes that you may be responsible for or involved with a possible violation of either the Commission’s laws or a Commission permit. The Violation Report/Complaint contains a brief summary of all the



pertinent information that staff currently has concerning the possible violation and refers to all pertinent evidence that the staff currently relies on. All the evidence that this report refers to is available in the enforcement file for this matter located at the Commission's office. To view the enforcement file and/or to have copies made at your expense, contact Brent Plater of the Commission's staff at 415-352-3628 or brent.plater@bcd.ca.gov.

The staff also intends that the Violation Report/Complaint inform you of the nature of the possible violation so that you can fill out the enclosed Statement of Defense form and otherwise be prepared for Commission enforcement proceedings.

Receipt of the Violation Report/Complaint and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold an enforcement hearing, and the Commission will ultimately determine what, if any, enforcement action to take.

Careful reading and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the violation report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact as quickly as possible Brent Plater of the Commission's staff at 415-352-3628 or brent.plater@bcd.ca.gov. Thank you for your cooperation.

Violation Report and Complaint for Administrative Imposition of Civil Penalties

I. Person or persons believed responsible for illegal activity:

Respondent PSG Capital Partners Inc., 16441 Scientific, #250, Irvine, CA 92618.

Philip Fusco is the CEO of PSG Capital Partners Inc. RealQuest property reports list PSG Capital Partners Inc. and Mr. Fusco as the owners of 224 Sea Cliff Avenue in San Francisco, CA. Exhibit A.

Respondent PSG Mortgage Lending Corp., 16441 Scientific, #250, Irvine, CA 92618.

Philip Fusco is the CEO of PSG Mortgage Lending Corp. PSG Capital Partners Inc. claims to have transferred its interests in 224 Sea Cliff Avenue to PSG Mortgage Lending Corp by grant deed. Exhibit B, ¶ 12. Mr. Fusco has authorized Paul Greenfield to take all action necessary to address this violation. Exhibit C, p. 5. Mr. Greenfield has retained Mr. David Tillotson as counsel. Exhibit C, p. 1.



Respondent “Buyer,” 224 Sea Cliff Avenue, San Francisco, CA 94121.

On March 9, 2022, PSG Mortgage Lending Corp. filed an amended Motion to Sell Real Property in *In re PSG Mortgage Lending Corp.*, Case No. 21-30592-DM, a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Northern District of California. Exhibit D. The motion explains that PSG Mortgage Lending Corp. has received a purchase offer for 224 Sea Cliff Avenue. However, the identity of the proposed buyer is not disclosed “[o]ut of valid concerns based upon the past and current ongoing actions and efforts of the former owner of the Sea Cliff Avenue Property (Brugnara) to interfere with and disrupt any sale of the property to anyone but him or his cohorts...” Exhibit D, fn. 3. The motion goes on to explain that the buyer’s identity will be revealed at a hearing on the motion, currently set for April 22, 2022, and that the buyer is represented in the transaction by Mark Allen Levinson. Exhibit D, p. 8.

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

- A. Respondents violated and are violating the McAteer-Petris Act (MPA) at 224 Sea Cliff Avenue in San Francisco, CA by maintaining a deck, walkway, and rear stairwell on private property within the shoreline band of San Francisco Bay without first obtaining a permit from the San Francisco Bay Conservation and Development Commission (BCDC).
- B. Respondents violated and are violating the MPA adjacent and below 224 Sea Cliff Avenue in San Francisco, CA by maintaining a rear stairwell within the shoreline band of San Francisco Bay on public property owned by the City and County of San Francisco without its consent and without first obtaining a permit from BCDC. Because the public property owner has not and will not provide consent these structures cannot be permitted by BCDC.
- C. Respondents violated and are violating the MPA on public trust lands below 224 Sea Cliff Avenue in San Francisco, CA, by maintaining a rear stairwell and landing within San Francisco Bay and its shoreline band without the consent of the State Lands Commission or its lessee the Golden Gate National Recreation Area. Because the public property owners have not, will not, and cannot provide consent to this trespass this fill cannot be permitted by BCDC.

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

The violations occurred in the Sea Cliff neighborhood of San Francisco at, adjacent to, and below 224 Sea Cliff Avenue, Assessor’s Parcel No. 1307-001S. The parcel abuts cliffs defining the northwestern edge of the City and County of San Francisco. All land north of the private parcel is owned by public agencies. BCDC has designated these public lands as a “Waterfront Park, Beach” Priority Use Area in the San Francisco Bay Plan.

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

PSG Capital Partners Inc.; Philip Fusco; PSG Mortgage Lending Corp.; “Buyer”.



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

The violations summarized in Section II and described in further detail in Section VI began in 2002 and persist to the present day.

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

- A. Between 2002-2004, Luke Brugnara, who then owned 224 Sea Cliff Avenue, submitted plans and permit applications to the City and County of San Francisco to construct a massive deck, promenade, and stairwell that descends from the property's rear boundary down to a beach below. Declaration of Rafael Montes, P.E., Exhibit D.
- B. The permit application suggested that the project would "replace old access stairs." *Id.* at 5. The City's initial review of the application stated "as per application and plans, repair/replace existing rear stairs at rear of property leading down to beach. No other work." *Id.* at 6. Subsequent updated and amended applications contained similar statements.
- C. A 1938 photo indicates structures on the cliffs below 224 Sea Cliff Avenue. Exhibit E, p. 2. These structures were limited to retaining walls and lateral support structures until the time of project construction. Exhibit E, pp. 4-5.
- D. Therefore, the permit application appears to contain an inaccurate project description.
- E. Furthermore, the plans submitted to the City mischaracterized the property boundaries of 224 Sea Cliff Avenue, making it appear as if the entire stairwell would be constructed on land owned by the applicant. In fact, most of the project is built on public lands adjacent to and below 224 Sea Cliff Avenue. Exhibit F.
- F. The City and County of San Francisco relied on these inaccurate permit applications and plans, ultimately issuing permits for this project. However, San Francisco Planning staff informed BCDC that "[b]ased on my review of records we currently have access to including building permit applications, photos, and conversations with our Real Estate Division, it appears the City has never provided consent to the prior property owner to build on the City property (located behind 224 Seacliff Ave), nor is there an intention to legalize the constructed stairs and platforms." Exhibit G.
- G. The stairwell landing is on state trust lands leased by the State Lands Commission to the National Park Service. Exhibit H. In 2004, the National Park Service, with support from the National Oceanic & Atmospheric Administration, determined that the stairwell landing was constructed below mean high tide, and therefore encroaches on public



- trust lands. Exhibit I. It also determined that the construction destroyed a tidal pool. Exhibit J.
- H. The National Park Service wrote to the owners of 224 Sea Cliff Avenue notifying them of the encroachment, but Mr. Brugnara denied any wrongdoing and suggested that Park Service law enforcement officials were trespassing on property Mr. Brugnara owned. Exhibit K.
- I. The National Park Service determined that it cannot issue special use permits for private projects on property it leases from the State Lands Commission. Exhibit L. It therefore cannot authorize the encroachment caused by the stairwell.
- J. No BCDC permit was ever applied for or received for this project. However, BCDC coordinated with the National Park Service's enforcement efforts and opened its own enforcement action against the project in 2004.
- K. Project construction was nonetheless completed around 2004. Besides the Golden Gate Bridge the project has been the most visible structure to those entering San Francisco Bay through the Golden Gate ever since.



*Violation Report & Complaint, Exhibit E, p. 6:
Stairwell & Promenade Viewed from the North.*

*Violation Report & Complaint, Exhibit E, p. 7:
Stairwell, Promenade & Deck from Above.*

- L. Mr. Brugnara was subsequently charged and convicted of several criminal acts—filing false tax returns, poaching imperiled species, and fraud—resulting in his incarceration. Exhibit M. Complex bankruptcy proceedings ensued, leaving ownership of 224 Sea Cliff Avenue unclear. In 2020 PSG Capital Partners, Inc. foreclosed on the property, clarifying title for purposes of this enforcement action.
- M. Recognizing that PSG Capital Partners Inc., other debtors, BCDC, and the public had all been harmed by the illegal acts of Mr. Brugnara, in 2021 BCDC enforcement staff offered existing property owners an opportunity to remedy the MPA violations at 224 Sea Cliff Avenue and the lands adjacent and below it without enforcement proceedings. However, the offer was rejected by Mark Allan Levinson. Subsequently, and without notifying BCDC staff, Mr. Levinson published BCDC's written settlement communications in the property's disclosure packet. Exhibit N.

- N. Because the City and County of San Francisco and the National Park Service have not and will not consent to the project's encroachment on public property, it cannot be permitted by BCDC. The project's fill on public lands within BCDC's jurisdiction must therefore be removed.
- O. BCDC Senior Engineer Rafael Montes has reviewed the Coastal Bluff Evaluation and Structural Evaluation of the Rear Stairs prepared by Gilpin Geosciences and Holmes Structures, respectively. Declaration of Rafael Montes, P.E., ¶ 7. He has also reviewed the permits and plans for the project, as well as the site visit photos and videos created during BCDC staff inspections of 224 Sea Cliff Avenue. *Id.*
- P. Mr. Montes explains that "Nearly all of the structures, including the handrails and landings of the rear stairs, constructed between 2002-2004 may be removed without affecting cliff stability. This includes any part of the rear stairs painted pink, and the entire landing of the structure that comes into contact with BCDC Bay jurisdiction. Statements in [Gilpin Geosciences and Holmes Structures reports] that suggest significant effects on cliff stability if the rear stair structure is removed are not supported by adequate evidence." Declaration of Rafael Montes, P.E., ¶ 9.
- Q. Mr. Montes goes on to explain that "I agree that the structures that were in place in 1938 cannot be removed without concerns about cliff stability. These structures are not being proposed for removal. The structures added between 2002-2004 do not add significant stability to the cliff, and in fact are potentially overloading the pre-existing retaining walls and structures at the site." Declaration of Rafael Montes, P.E., ¶ 9.
- R. Mr. Montes recommends that the Commission "order Respondents to retain a geotechnical & structural engineer and a landscape architect to create a plan consistent with this declaration to remove as much of the illegally placed fill as possible, mitigate the remaining fill by grinding or covering with architecturally designed shotcrete, and restoring the visual condition of the site as much as possible. The plan should be submitted to BCDC for review and approval, and then implemented by Respondents' engineers and landscape architect." Declaration of Rafael Montes, P.E., ¶ 11.
- S. Such an order should also require Respondents to conduct a professional property survey to delineate BCDC's Bay and Shoreline Band jurisdiction with precision, as well as the state, city, and private property boundaries. The order should also ensure that all discretionary approvals for the fill removal plan are obtained before BCDC approval and ultimate implementation of the plan. Mandatory deadlines to submit the plan to BCDC and implement the plan once approved should be required.
- T. Mr. Montes further states that "I estimate it will cost approximately \$50,000 to remove the stair walls and metal handrails. Grinding the steps to blend-in to the existing cliff topography is estimated to cost an additional \$100,000, for a total approximate cost estimate of \$150,000." Declaration of Rafael Montes, P.E., ¶ 12.

- U. Even if consent from the public property owners were obtained making BCDC permitting theoretically possible, the project could not be reconciled with Bay Plan policies as constructed.
- V. Portions of the project on 224 Sea Cliff Avenue's private property, primarily the deck and possibly the promenade, may be amenable to BCDC after-the-fact permitting once all local discretionary approvals are completed. It is not clear when those approvals will be provided: the City and County of San Francisco has informed BCDC staff that it has issued a Notice of Violation regarding this project, Exhibit O, and expects to initiate proceedings to revoke and rescind the previously issued permits due to the inaccurate information initially provided in the project's permit applications and plans.

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

MPA Section 66632(a):

Any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission and, if required by law or by ordinance, from any city or county within which any part of the work is to be performed. For purposes of this title, "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. For the purposes of this section "materials" means items exceeding twenty dollars (\$20) in value.

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

Civil liability may be administratively imposed by the Commission on any person or entity for any violation of this title, or any term or condition of a permit issued by or on behalf of the Commission, in an amount which shall be not less than ten dollars (\$10), nor more than two thousand dollars (\$2,000), for each day in which that violation occurs or persists. The Commission may not administratively impose a fine of more than thirty thousand dollars (\$30,000) for a single violation.

Commission staff proposes a penalty of \$90,000 for the following three violations of the MPA. In determining the amount of administrative civil liability (penalty), staff has considered: (1) with respect to each violation, (A) the nature, circumstance, extent, and gravity of the violation, (B) whether the violation is susceptible to removal or resolution, and (C) the cost to the State of California in pursuing enforcement action; and (2) with respect to the violators, (A) the ability to pay, (B) the effect on their ability to continue in business, (C) any voluntary removal or



resolution efforts and any prior history of violations, (D) the degree of culpability, (E) the economic savings, if any, resulting from the violation, and (F) such matters as justice may require.

Prohibited Activity	McAteer-Petris Act Provision Violated	Total Days	Proposed Daily Penalty Amount	Proposed Total Penalty
Placement of fill on private property within BCDC's Shoreline Band jurisdiction	MPA § 66632(a)	> 3,000	\$800	\$30,000
Placement of fill on public property within BCDC's Shoreline Band jurisdiction	MPA § 66632(a)	> 3,000	\$2,000	\$30,000
Placement of fill on public property within BCDC's Bay jurisdiction	MPA § 66632(a)	> 3,000	\$2,000	\$30,000
			Total Penalty	\$90,000

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

In addition to the civil penalty order mentioned in Section VIII, above, the Commission's staff will also recommend a cease and desist order that will require Respondents to:

1. Cease any further construction or placement of fill within BCDC jurisdiction; and
2. Conduct a professional property survey that delineates BCDC jurisdiction and all public and private land boundaries by a date certain;
3. In consultation with requisite experts, by a date certain prepare a plan to remove all fill placed on public property and restore the site as much as possible to its initial condition;
4. Obtain all requisite local discretionary approvals and prepare all necessary environmental review documents by a date certain; and
5. Submit the plan for BCDC review, revise the plan pursuant to BCDC direction, and implement the plan by a date certain upon BCDC approval.

X. List of staff exhibits:

- Exhibit A: 224 Sea Cliff Avenue RealQuest Report
- Exhibit B: Fusco Declaration, in *In re PSG Mortgage Lending Corp.*
- Exhibit C: Letter Authorizing Paul Greenfield to Represent PSG through David Tillotson
- Exhibit D: Motion to Sell Property, *In re PSG Mortgage Lending Corp.*
- Exhibit E: Site Photos, 1924-2021
- Exhibit F: BCDC Letter to San Francisco Identifying Misrepresentations in Project Plans
- Exhibit G: SF Planning Letter
- Exhibit H: National Park Service Lease of Trust Lands from State Lands Commission



- Exhibit I: National Park Service Encroachment Finding
- Exhibit J: National Park Service Identifies Tidal Pool Destruction
- Exhibit K: National Park Service Enforcement Letter
- Exhibit L: National Park Service Determines Project No Permittable
- Exhibit M: Luke Brugnara News
- Exhibit N: BCDC Settlement Communication Disclosure
- Exhibit O: San Francisco Notice of Violation

XI. Additional Administrative Record Documents

Description
Enforcement File ER2004.019
Declaration of Rafael Montes, P.E.
Video from February 17, 2022, BCDC Site Visit, 224 Sea Cliff Avenue
Videos from June 18, 2021, BCDC Site Visit, 224 Sea Cliff Avenue
San Francisco Bay Plan



NOTICE OF VIOLATION

of the San Francisco Municipal Codes Regarding Unsafe, Substandard or Noncomplying Structure or Land or Occupancy

DEPARTMENT OF BUILDING INSPECTION
City and County of San Francisco
49 South Van Ness Ave, Suite 400 San Francisco, CA

Notice: 1 COMPLAINT NUMBER:
202183822
DATE:
04/04/2022

ADDRESS : 224 SEACLIFF AV

BLOCK : 1307 LOT : 001S

OCCUPANCY/USE : R-3 | RESIDENTIAL- 1 & 2 UNIT DWELLINGS,TOWNHOUSES LESS THAN 3 STORIES

If checked, this information is based upon site-observation only. Further research may indicate that legal use is different. If so, a revised Notice of Violation will be issued.

ON SITE CONTACT : PSG CAPITAL PARTNERS INC

VIOLATION DESCRIPTION:

<input type="checkbox"/> WORK WITHOUT PERMIT	103A
<input type="checkbox"/> ADDITIONAL WORK-PERMIT REQUIRED	106A.4.7
<input type="checkbox"/> EXPIRED PERMIT	106A.4.4
<input type="checkbox"/> CANCELLED PERMIT PA#:	106A.3.7
<input checked="" type="checkbox"/> UNSAFE BUILDING	102A
<input type="checkbox"/> SEE ATTACHMENTS	

CODE VIOLATION DESC : To Amend C#202183822 Dated 11/16/21. New Information provided by SF-BCDC regarding stair structure built outside of property line. Permit Applicant of Permits #200211081046, 200309114438, 200401164227, 200406095884, 200408121368, and 200409033343 appear to have mis-represented property lines on all plans submitted. Letter and picture documents dated February 4, 2022 provided by SF-BCDC show evidence of large portion of structure built outside of 224 Seacliff property lines. A complaint investigation regarding north side of property has revealed erosion and undermining of cliff slope and stairway structure. Stairway and viewing platform are undermined in various locations with major rust corrosion of metal handrails and guardrail at bottom area. Spalling of concrete observed due to reinforcement corrosion. Code/Section: 102A Monthly monitoring fee applies. Code/Section: SFBC 110A, Table 1A-K

CORRECTIVE ACTION::

- STOP ALL WORK SFBC 104.2.4
- FILE BUILDING PERMIT WITHIN **30 DAYS**
- (WITH PLANS) A copy of this notice must accompany the permit application
- OBTAIN PERMIT WITHIN **60 DAYS AND COMPLETE ALL WORK WITHIN 90 DAYS, INCLUDING FINAL INSPECTION SIGNOFF.**
- CORRECT VIOLATIONS WITHIN DAYS.
- NO PERMIT REQUIRED
- YOU FAILED TO COMPLY WITH THE NOTICE(S) DATED, THEREFORE THIS DEPT. HAS INITIATED ABATEMENT PROCEEDINGS.

FAILURE COMMENT DESCRIPTION : Obtain services of Licensed Structural Engineer and Licenced Surveyor to perform an evaluation of stairway and landing structures. Evaluation report must provide detailed summary of property line locations, damages, observations and corrective action to remove and restore to last known legal condition. Also obtain services of Licensed Goetechnical Engineer for evaluation of exposed rock slope areas. Evaluation report must provide detailed summary of damages, observations and corrective action to repair/rehabilitate entire slope area. 1. File for and obtain permit with Plans, with Planning Approval, and SF-BCDC Approval, for removal of stairway structures and restoration of all areas deemed outside of property lines. 2.File for and obtain permit based on recommendation under the evaluation report for repair/rehabilitation of remaining if any stairway, landings, and guardrails/handrails. 3.Also File for and obtain separate permit based on recommendation under the evaluation report for slope stabilization/protection for mitigation of of future rockfall, erosion, and undermining.

INVESTIGATION FEE OR OTHER FEE WILL APPLY

- 9x Permit Fee (Work w/o Permit after 9/1/60)
- Other
- Reinspection Fee \$
- approx. date of work w/o permit
- value of work performed without permits \$
- 2x Permit Fee (Work Exceeding Scope of Permit)
- NO penalty (Work w/o permit prior to 9/1/60)

CONTACT INSPECTOR : Carl E Malchow BID / 628-652-3438



NOTICE OF VIOLATION of the San Francisco Municipal Codes Regarding Unsafe, Substandard or Noncomplying Structure or Land or Occupancy

Pursuant to SFBC 107.5 and 106.4.7 investigation fees are charged for work begun or performed without permits or for Work exceeding the scope of permits. Such fees may be appealed to the Board of Permit Appeals within 15 days of permit issuance, at 49 South Van Ness Ave., Suite 1475 (14th Floor). (628) 652-1150

WARNING: Failure to take immediate action as required to correct the above violations will result in abatement proceedings by the Department of Building Inspection. If an Order of Abatement is recorded against this property, the owner will be billed or the property will be liened for all costs incurred in the code enforcement process from the posting of the first "Notice of Violation" until all costs are paid, SFBC 102.2 & 110.

WARNING: Section 204 of the San Francisco Housing Code provides for immediate fines of \$100 for each instance of initial non-compliance, followed by \$200 fines per violation for the second instance of non-compliance, up to a maximum of \$7,500 per building. This section also provides for issuance of a criminal charge as a misdemeanor for each violation, resulting in fines of not less than \$1,000 per day or six months' imprisonment or both.

WARNING: Anyone who derives rental income from housing determined by the Department of Building Inspection to be substandard cannot deduct from state personal income tax and bank and corporate income tax interest, depreciation or taxes attributable to such substandard structure. If correction work is not completed or being diligently, expeditiously and continuously prosecuted after six (6) months from the date of this notice, notification will be sent to the Franchise Tax Board as provided in Section 17264(6) of the Revenue and Taxation Code.

WARNING: Section 103 of the San Francisco Building Code provides for civil fines of up to \$500 per day for any person who violates, disobeys, omits, neglects or refuses to comply with or opposes the execution of any provisions of this code. This section also provides for misdemeanor fines, if convicted, of up to \$500 and/or imprisonment up to six months for each separate offense for every day such offense occurs.

De acuerdo a las Secciones 107.5 y 106.4.7 de el Código de Construcción de Edificios de San Francisco, gastos de investigación serán cobrados por trabajo empezado o realizado sin los debidos permisos o por trabajo que exceda el limite estipulado en los permisos. Dichos cobros pueden ser apelados ante la Junta de Apelaciones de Permisos (Board of Permit Appeals) dentro de los primeros quince dias de haberse obtenido el permiso. Las apelaciones se hacen en el 49 South Van Ness Ave., Suite 1475 (14th Floor), telefono (628) 652-1150.

ADVERTENCIA: Si no cumple con las acciones inmediatas requeridas para corregir las infracciones, el Departamento de Inspección de Edificios tendra el derecho de iniciar el proceso de mitigación. Si una Orden de Mitigación es registrada contra dicha propiedad, los gastos incurridos durante el proceso de aplicación del código, desde la primera puesta del Aviso de Infracción hasta que todos los gastos estén pagados, se le cobrarán al dueño del edificio o la propiedad sera embargada para recuperar dichos gastos. Referencia a la Sección 102.2 y 110 de el Código de Construcción de Edificios.

ADVERTENCIA: La Sección 204 de el Código de Vivienda de San Francisco permite que se multe inmediatamente \$100 por cada primer caso de inconformidad, seguida por una multa de \$200 por cada segunda infracción de inconformidad, aumentando hasta un maximo de \$7,500 por cada edificio. Esta Sección tambien permite obtener cargos criminales como delito menor, resultando en multas de no menos de \$1,000 diarios ó 6 meses de encarcelamiento o ambas sanciones.

ADVERTENCIA: Cualquier persona que reciba renta por una vivienda que haya sido declarada que no satisface las normas requeridas por el Departamento de Inspección de Edificios, no puede deducir del estado intereses personales, de banco o empresa, depreciación o taxes atribuidos sobre dicha estructura. Si el trabajo de reparación no se termina o esta diligentemente, rapidamente y contiuamente acusado despues de seis(c) meses de la fecha de este aviso, se le enviara una notificación a la Junta de Concesión de Impuestos (Franchise Tax Board) de acuerdo a la Sección 1264(c) del Código de Ingresos e Impuestos (Revenue and Taxation Code).

ADVERTENCIA: La Sección 103 de el Código de Edificios de San Francisco impone multas civiles hasta de \$500 porcada día a cualquier persona que infrinja, desobedezca, omita, descuide, rehusa cumplir, resiste o se opone a la ejecución de las provisiones de este código. Esta sección tambien impone multas por delito menor, si es declarado culpable, de hasta \$500 o encarcelamiento de hasta 6 meses, o ambas sanciones, por cada una de las ofensas y por cada día que dicha ofensa ocurra.

根據《三藩市建築法規》(即 SFBC) 第 107.5 項和 106.4.7 項條款規定：對沒有許可證便已開始的工程或正在進行的工程，或者超許可範圍的工程，將收取調查費。當事人可以在許可證發出日起 15 天之內，向委員會以內許可上訴委員會提出上訴。該委員會地址在 South Van Ness 街 49 號 14 樓，電話：(628) 652-1150。

警告：任何人通過出租房屋獲得收入，而該房屋已被建築檢查局判定為低於規定標準者，不能從加州個人所得稅、銀行和公司所得稅和利息，以及與該住宅規定標準的建築有關的折舊或貸款中扣除稅款。如果在此通告公布六個月後，改正工程沒有完成，或者沒有積極、迅速有效地進行，我們將根據《國家稅收法規》(即 Revenue & Taxation Code) 第 1264 (c) 項條款，通知加州稅務委員會 (The Franchise Tax Board)。

警告：如不按照要求立即採取行動，以糾正上述違規行為，將導致建築檢查局強制執行正程序的執行。針對此房地產頒發的強制糾正程序令一般在市府備案，則自這通知張貼日起的各項與此糾正程序令有關的費用，將向房地產主索取，或將房地產扣押，直至付清各項費用。請參閱《三藩市建築法規》第 102.2 項和 110 項條款。

警告：《三藩市建築法規》第 103 項條款規定：對於任何違反、不聽從、忽視、忽視、或拒絕照此法規者，或者抵制、反對實施此法規中的任何條款的個人，將付最高 500 元的民事罰款。此法規還規定對違法者，如果被判罪，對每天所發生的、每一單獨的犯法行為，將付不超過 500 元的罰款，和/或監禁六個月。

警告：《三藩市房屋法規》(即 SFHC) 第 204(b) 項條款規定：對每一違章初犯者立即將被罰款 100 元，二次違章者罰款 200 元，每幢樓宇的最高罰款可達 7,500 元。此項法規還規定對每一違章罪者可提出刑事控告，每日最高罰款可達 1,000 元，或/或監禁六個月。

Online Permit and Complaint Tracking home page.

Technical Support for Online Services

If you need help or have a question about this service, please visit our FAQ area.

Contact SFGov Accessibility Policies City and County of San Francisco © 2014



NOTICE OF ENFORCEMENT

April 14, 2022

Property Owner

PSG Capital Partners Inc
16441 Scientific Way #250
Irvine, CA 92618

Site Address: 224 Seacliff Ave
Assessor’s Block/Lot: 1307/001S
Zoning District: RH-1(D), Residential- House, One Family- Detached, and P, Public
Complaint Number: 2022-001049ENF
Code Violation: Section 175: Unauthorized Construction, Building Permit Required
Administrative Penalty: Up to \$250 Each Day of Violation
Enforcement T & M Fee: \$4,953.36 (Current Fee for Confirmed Violation, Additional Charges May Apply)
Response Due: Within 15 days from the date of this Notice
Staff Contact: Kelly Wong, (628) 652-7397, kelly.wong@sfgov.org

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for single family residential use and to the rear of the property is public property. The violation pertains to the construction of stairs and platforms spanning both private property and public property, from the rear of the subject property down the cliff and to the beach, without required consent or authorizations from all public agencies including the City & County of San Francisco and its requisite Departments, State Lands Commission or its lessee the Golden Gate National Recreation Area, and the San Francisco Bay Conservation and Development Commission (SF BCDC).

Planning Department records show that between 2002 and 2004, seven building permits were filed and issued for the construction of these stairs and platforms where property lines were misrepresented. Four of these permits were issued without review and approval by the Planning Department and one was canceled by the Planning Department. No permits were obtained with required consent or authorization to build on any portion of the public property.

On November 8, 2002, Building Permit Application No. 200211081046 was filed and issued to “replace damaged concrete decks & walk way,” without required Planning Department review and approval. A 2002 photo of the property shows no evidence of existing concrete decks and walkway along the cliff and down to the beach. This permit also failed to show that the proposed work included construction on public property.

On June 27, 2003, Building Permit Application No. 200306278164 was filed to “amend PA 2002/11/08/1046, add remaining concrete deck to replace remaining damaged deck & stairs.” On February 23, 2004, the Planning Department sent a final letter to the applicant to request additional information including drawings for this permit. No response was provided. Thus, on July 12, 2004, this permit was canceled due to lack of response from the applicant.

On September 11, 2003, Building Permit Application No. 200309114438 was filed to “replace old access stairs area w/new concrete stairs and landing” and issued on November 14, 2003. However, the permit drawings show the proposed construction of new stairs down to the beach which did not exist previously. This permit also showed a new segment of stairs and platform not yet approved, which connected the proposed new stairs to the beach and the stairs previously shown under Building Permit Application No. 200211081046. This new connecting segment of stairs and platform is shown on the drawings as an “existing” condition, is clouded, and with handwritten note “Pending Permit,” however with no reference Building Permit Application number. Although the Planning Department approved this permit, the drawings misrepresent what was existing and new, and the permit failed to show that the proposed work included construction on public property.

On January 16, 2004, Building Permit Application No. 200401164227 was filed and issued for the “amendment to APPLN 200309114438. Add columns per plans,” without Planning Department review and approval. The drawings misrepresent what was existing and new, and the permit also failed to show that the proposed work included construction on public property.

On June 9, 2004, Building Permit Application No. 200406095884 was filed and issued to “replace existing retaining wall and walk way in backyard,” without required Planning Department review and approval. The drawings misrepresent what was existing and new and inaccurately show the location of property lines.

On August 12, 2004, Building Permit Application No. 200408121368 was filed and issued to “renew APPL# 200211081046, 200309114438, 200401164227 for final inspection,” without Planning Department review and approval. No drawings were submitted as part of this permit.

On September 3, 2004, Building Permit Application No. 200409033343 was filed and issued to “replace deck access of concrete deck & stairs. See permit 200306278164.” Drawings submitted under this permit shows the proposed scope of work to legalize the already constructed new connecting segment of stairs and platform between the stairs previously shown under Building Permit Application No. 200211081046 and the new stairs down to the beach shown under Building Permit Application No. 200309114438. However, the drawings inaccurately show the location of property lines and that all proposed work is within private property. Although the Planning Department approved this permit, the drawings misrepresent the property lines and failed to show that the proposed work was on public property.

On November 16, 2021, a Department of Building Inspection (DBI) Notice of Violation (NOV) No. 202183822 was issued for the undermining of cliff slope and deterioration of stairway structure located to the north side rear of

property” at 224 Seacliff Avenue.

On February 1, 2022, the Planning Department received a referral from the Department of Building Inspection (DBI) regarding the construction of the stairway and platforms located on both private property and public property without Planning Department review and approval. On February 3, 2022, the Planning Department opened enforcement case no. 2022-001049ENF to investigate this DBI referral.

On February 17, 2022, Planning Department staff conducted a site visit with Planners Kimberly Durandet and Gretel Gunther and met with the owner’s representative Mark Levinson of Compass Real Estate, Carl Malchow of DBI, and Brent Plater of SF BCDC to review as-built conditions at the property. Staff observed that the constructed stairs and platforms spanned the rear of the subject building located on private property down the cliff and onto the beach on public property.

On April 1, 2022, the SF BCDC issued a Violation Report / Complaint for Administrative Imposition of Civil Penalties in BCDC Enforcement Case ER2004.019.00, which outlines the requirement to remove the stairway and platforms since these were constructed without consent from required public agencies.

On April 4, 2022, DBI NOV No. 202183822 was amended based on “new information provided by SF-BCDC regarding the stair structure built outside of property line. Permit Applicant of Permits #200211081046, 200309114438, 200401164227, 200406095884, 200408121368, and 200409033343 appears to have misrepresented property lines on all plans submitted. Letter and picture documents dated February 4, 2022, provided by SF-BCDC show evidence of large portion of structure built outside of 224 Seacliff property lines.”

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located. Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any of these provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. **Building Permit Application.** File a new Building Permit Application to remove the stairway and platforms located on public property constructed without proper consent and authorization from public agencies. Any work on private property at the rear of the property that was not reviewed and approved by the Planning Department, including scopes of work in permits that misrepresented property lines, must be included in this permit application for review and approval.

The permit should include a full set of drawings as outlined in our [Plan Submittal Guidelines](#). All scopes of work proposed will be reviewed for compliance with the Planning Codes and current Department

requirements. This permit must also be reviewed and approved by all required agencies having jurisdiction including, but not limited to, the Department of Building Inspection, the San Francisco Bay Conservation and Development Commission, and State Lands Commission or its lessee the Golden Gate National Recreation Area, if required. If additional drawings are required by other agencies, please include these in the permit set.

- a. **Site Survey.** Provide a site survey by a licensed surveyor registered in California for this property to accurately show the location of property lines. Submit a copy of this survey to the Planning Department.
 - b. **Drawings.** Submit a full set of drawings as outlined in our [Plan Submittal Guidelines](#). Additionally, please provide the following information and drawings, for our review. The Planning Department may require further information upon review of the submitted Building Permit Application.
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (including any new work required to bring this property back into compliance).
 - ii. Site plans –
 1. Clearly show the locations of private property and public property. For the public property, demarcate and label clearly which public agency has jurisdiction under which area.
 2. Provide dimensions and location of the required rear yard on plans.
 - iii. Photos – include one sheet after the cover sheet with the following photos. Label each clearly with dates of photos.
 1. 2002 Oblique Photograph from the Gilpin Geosciences, Inc. report, dated November 24, 2021, showing the cliff side of the property from the water.
 2. As-Built Conditions of the constructed stairway and platforms, as they currently exist today.
 - iv. Details – include any details required for the proposed scope of work.
2. **Completion of Abatement Work.** You are responsible for ensuring the completion of work outlined in the approved Building Permit Application. Below are the Planning enforcement steps upon permit issuance.
 - a. **Job Card.** Upon permit issuance, send the enforcement planner a photo of the "Issued Job Card" showing the building permit number.
 - b. **Construction Schedule.** Send the enforcement planner a proposed construction schedule within 15 days of the issued Job Card including both a start and end date, for the Planning Department's review and approval. If you require more time to submit this, please send a request by email with a new date for the Department's review.

- c. **Monthly Updates via Email.** If construction work will take more than 30 days, you are required to send the enforcement planner monthly updates via email with photos and description of completed work showing the progress of abatement. If there are any delays, please send an email with the reason for any delay and the proposed new revised date of completion.
- d. **Send Completed Photos to SF Planning.** Upon completion of work, send the enforcement planner photos of the completed work for review. The Planning Department will confirm if a follow-up site visit is warranted. Please note that the Planning Department must review/approve completed work prior to you contacting the DBI Inspector for permit sign off.
- e. **DBI Permit Sign Off.** Once the Planning Department confirms that completed work is consistent with Planning's approval, please proceed to contact the DBI Inspector for the permit sign off.

Please visit DBI website, <https://sf.gov/apply-building-permit> for information on the permit application process. **This permit must be diligently pursued and completed.**

The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. Please provide evidence including (such as dimensioned plans, photos, licenses, lease copies, etc.). A site visit may also be required to verify compliance. You may also need to obtain a building permit for any other alterations done at the property. The work approved under any permits to abate violation must commence promptly and be continued diligently to completion with a final inspection and/or issuance of certificate of final completion.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfgov.org/dbi

For questions regarding the planning permit review process, please contact the **Planning Department's Planning Information Center (PIC)** at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: 628.652.7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned enforcement planner as noted in the staff contact listed above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The timeline to respond to this Notice of Enforcement is fifteen (15) days. As such, we highly encourage you to immediately reach out to the assigned Enforcement Planner to discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Please contact the assigned Enforcement Planner with questions and/or to submit evidence of correction. Delays in abatement of the violation beyond the timeline outlined above will result in further enforcement action by the Planning Department, including issuance of Notice of Violation and assessment of administrative penalties at \$250 per day.

Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in issuance of a **Notice of Violation** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options.

1. Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
2. Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party is subject to an amount of **\$4,953.36** or more for "Time and Materials" cost associated with the Code Enforcement investigation. **This fee is separate from the administrative penalties described above and is not appealable.**

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

224 Seacliff Ave
Complaint No.: 2022-001049ENF

- Enc.: DBI Notice of Violation No. 202183822 (amended on 4/4/22), dated November 16, 2021.
BCDC Letter to DBI re: Complaint No. 202183822 (224 Sea Cliff Ave.); BCDC Enforcement Case ER2004.009, dated February 4, 2022.
2002 Oblique Photograph of 224 Sea Cliff Ave, from Gilpin Geosciences, Inc. engineering geologic and geotechnical evaluation report, dated November 24, 2021.
- cc: Mark Levinson, Compass Real Estate, mark@markallanlevinson.com (Owner's Representative)
Carl Malchow, San Francisco Department of Building Inspection, carl.malchow@sfgov.org
Brent Plater, San Francisco Bay Conservation & Development Commission, brent.plater@bcdc.ca.gov



NOTICE OF VIOLATION

of the San Francisco Municipal Codes Regarding Unsafe, Substandard or Noncomplying Structure or Land or Occupancy

DEPARTMENT OF BUILDING INSPECTION

City and County of San Francisco
49 South Van Ness Av Suite#400
San Francisco, CA 94103

- FIRST NOTICE
- SECOND NOTICE
- OTHER:

COMPLAINT NUMBER

202183822

ADDRESS 224 Seacliff Av

DATE 11/16/21

OCCUPANCY/USE R-3

BLOCK 1307 **LOT** 001S

CONST. TYPE 5

STORIES 4 BASEMENT

If checked, this information is based upon site-observation only. Further research may indicate that legal use is different. If so, a revised Notice of Violation will be issued.

OWNER / AGENT: _____

PHONE#: _____

MAILING ADDRESS: _____

CITY _____

ZIP _____

PERSON CONTACTED @ SITE _____

PHONE#: _____

VIOLATION DESCRIPTION:

- WORK WITHOUT PERMIT (SFBC 103.A); ADDITIONAL WORK-PERMIT REQUIRED (SFBC 106.4.7);
- EXPIRED PERMIT (SFBC 106A.4.4) CANCELLED PERMIT (SFBC 106.3.7) **PA#:** _____;
- UNSAFE BUILDING (SFBC 102);A SEE ATTACHMENTS

To Amend C#202183822 Dated 11/16/21. New Information provided by SF-BCDC regarding stair structure built outside of property line. Permit Applicant of Permits #200211081046, 200309114438, 200401164227, 200406095884, 200408121368, and 200409033343 appear to have mis-represented property lines on all plans submitted. Letter and picture documents dated February 4, 2022 provided by SF-BCDC show evidence of large portion of structure built outside of 224 Seacliff property lines.

102A

A complaint investigation regarding north side of property has revealed erosion and undermining of cliff slope and stairway structure. Stairway and viewing platform are undermined in various locations with major rust corrosion of metal handrails and guardrail at bottom area. Spalling of concrete observed due to reinforcement corrosion.

MONTHLY MONITORING FEE Section 110A TABLE 1A-k

BC – Building Code HC – Housing Code PC – Plumbing Code [EC – Electrical Code] MC – Mechanical Code

CORRECTIVE ACTION:

STOP ALL WORK SFBC 104.2.4

- FILE BUILDING PERMIT APPLICATION WITHIN 30 DAYS WITH PLANS) A Copy of This Notice Must Accompany the Permit Application.
- OBTAIN PERMIT WITHIN 60 DAYS AND COMPLETE ALL WORK WITHIN 90 DAYS, INCLUDING FINAL INSPECTION AND SIGNOFF.
- CORRECTION VIOLATIONS WITHIN _____ DAYS. NO PERMIT REQUIRED.
- YOU FAILED TO COMPLY WITH THE NOTICE(S) DATED _____, THEREFORE THIS DEPT. HAS INITIATED ABATEMENT PROCEEDINGS.
- FAILURE TO COMPLY WITH THIS NOTICE WILL CAUSE ABATEMENT PROCEEDING TO BEGIN. SEE REVERSE SIDE FOR ADDITIONAL WARNINGS.

Obtain services of Licensed Structural Engineer and Licenced Surveyor to perform an evaluation of stairway and landing structures. Evaluation report must provide detailed summary of property line locations, damages, observations and corrective action to remove and restore to last known legal condition. Also obtain services of Licensed Goetechnical Engineer for evaluation of exposed rock slope areas. Evaluation report must provide detailed summary of damages, observations and corrective action to repair/rehabilitate entire slope area.

1. File for and obtain permit with Plans, with Planning Approval, and SF-BCDC Approval, for removal of stairway structures and restoration of all areas deemed outside of property lines.
2. File for and obtain permit based on recommendation under the evaluation report for repair/rehabilitation of remaining if any stairway, landings, and guardrails/handrails.
3. Also File for and obtain separate permit based on recommendation under the evaluation report for slope stabilization/protection for mitigation of of future rockfall, erosion, and undermining.

INVESTIGATION FEE OR OTHER FEE WILL APPLY

See reverse side for further explanation

- 9x Fee (Work w/o Permit after 9/1/60) 2x Fee (Work Exceeding Scope of Permit)
 OTHER: _____ Re-inspection Fee\$ _____ No penalty (Work w/o permit prior to 9/1/60)

APPROX. DATE OF WORK W/O PERMIT _____ VALUE OF WORK PERFORMED W/O PERMITS \$ _____

BY ORDER OF THE DIRECTOR, DEPARTMENT OF BUILDING INSPECTIONCONTACT INSPECTOR **Carl Malchow** (carl.malchow@sfgov.org)
(Inspector – Print Name)OFFICE HOURS 8:00 AM TO 9:00 AM AND 3:00 PM TO 4:00 PM

PHONE # 628-652-3438

- Building Inspection Division
49 S. Van Ness Av, Suite# 400 (628) 652-3450
 Housing Inspection Division
49 S. Van Ness Av, Suite# 400 (628) 652-3700
 Electrical Inspection Division
49 S. Van Ness Av, Suite# 400 (628) 652-3450
 Plumbing Inspection Division
49 S. Van Ness Av, Suite# 400 (628) 652-3450
 Code Enforcement Division
49 S. Van Ness Av, Suite# 400 (628) 652-3430

By:(Inspector's Signature) *Carl Malchow* DISTRICT # _____CC: DCP EID PID BID HIS CED CPC DAD SFFD DPH RPC
M 9003 05 (Rev. 5/96)

Pursuant to SFBC 107.5 and 106.4.7 investigation fees are charged for work begun or performed without permits or for Work exceeding the scope of permits. Such fees may be appealed to the Board of Permit Appeals within 15 days of permit issuance, at 49 South Van Ness Ave., Suite 1475 (14th Floor). (628) 652-1150

WARNING: Failure to take immediate action as required to correct the above violations will result in abatement proceedings by the Department of Building Inspection. **If an Order of Abatement is recorded against this property, the owner will be billed or the property will be lien for all costs incurred in the code enforcement process from the posting of the first "Notice of Violation" until all costs are paid, SFBC 102.2 & 110.**

WARNING: Section 204 of the San Francisco Housing Code provides for immediate fines of \$100 for each instance of initial non-compliance, followed by \$200 fines per violation for the second instance of non-compliance, up to a maximum of \$7,500 per building. This section also provides for issuance of a criminal charge as a misdemeanor for each violation, resulting in fines of not less than \$1,000 per day or six months' imprisonment or both.

WARNING: Anyone who derives rental income from housing determined by the Department of Building Inspection to be substandard cannot deduct from state personal income tax and bank and corporate income tax interest, depreciation or taxes attributable to such substandard structure. If correction work is not completed or being diligently, expeditiously and continuously prosecuted after six (6) months from the date of this notice, notification will be sent to the Franchise Tax Board as provided in Section 17264(6) of the Revenue and Taxation Code.

WARNING: Section 103 of the San Francisco Building Code provides for civil fines of up to \$500 per day for any person who violates, disobeys, omits, neglects or refuses to comply with or opposes the execution of any provisions of this code. This section also provides for misdemeanor fines, if convicted, of up to \$500 and/or imprisonment up to six months for each separate offense for every day such offense occurs.

De acuerdo a las Secciones 107.5 y 106.4.7 de el Código de Construcción. de Edificios de San Francisco, gastos de investigación serán cobrados por trabajo empezado o realizado sin los debidos permisos o por trabajo que exceda el limite estipulado en los permisos. Dichos cobros pueden ser apelados ante la Junta de Apelaciones de Peimisos (Board of Permit Appeals) dentro de los primeros quince dias de haberse obtenido el permiso. Las apelaciones se hacen en el 49 South Van Ness Ave., Suite 1475 (14th Floor), telefono (628) 652-1150.

ADVERTENCIA: Si no cumple con las acciones inmediatas requeridas para corregir las infracciones, el Departamento de Inspección de Edificios tendra el derecho de iniciar el proceso de mitigación. Si una Orden de Mitigación es registrada contra dicha propiedad, los gastos incurridos durante el proceso de aplicación del código, desde la primera puesta del Aviso de Infracción hasta que todos los gastos esten pagados, se le cobraran al dueno del edificio o la propiedad sera embargada para recuperar dichos gastos. Referencia a la Sección 102.2 y 110 de el Código de Construcción de Edificios.

ADVERTENCIA: La Sección 204 de el Código de Vivienda de San Francisco permite que se multe inmediatamente \$100 por cada primer caso de inconformidad, seguida por una multa. de \$200 por cada segunda infracción de incanformidad, aumentando hasta un maximo de \$7,500 por cada edificio. Esta Sección tambien permite obtener cargos criminales como delito menor, resultando en multas de no menos de \$1,000 diarios ó 6 meses de encarcelamiento o ambas sanciones.

ADVERTENCIA: Cualquier persona que reciba renta:por una vivienda que haya sido declarada que no satisface las normas requeridas por el Departamento de Inspección de Edificios, no puede deducir del estado intereses personales, de banco o empresa, depreciación o taxes atribuidos sobre dicha estructura. Si el trabajo de reparación no se termina o esta diligentemente, rapidamente y contua.mente acusado despues de seis(c) meses de la fecha de este aviso, se le enviara una notificación a la Junta de Concesi6n de Impuestos (Franchise Tax Board) de acuerdo a la Sección 1264(c) del Código de Ingresos e Impuestos (Revenue and Taxation Code).

ADVERTENCIA: La Sección 103 de el Código de Edicios de San Francisco impone multas civiles hasta de \$500 porcada dia a cualquier persona que infrinja, desobedezca, omite, descuide, rehusa cumplir, resiste o se opone a la ejecución de las provisiones de este código. Esta sección tambien impone multas per delito menor, si es declarado culpable, de hasta \$500 o encarcelamiento de hasta 6 meses, o ambas sanciones, por cada una de Jas ofensas y por cada dfa que dicha ofensa ocurre.

BABALA: Ang kabiguan na gumawa ng aksiyon tulad ng kinakailangan upang iwasto ang mga nasabing paglabag ay magreresulta sa paglilitis ng abatement ng Kagawaran ng Inspeksyon ng Gusali. Kung meron Order of Abatement ang naitala laban sa isang ari-arian, ang may-ari ay sisingilin o di

kaya ang ari-arian ay gagamitin na lien sa lahat ng mga gastos na natamo sa proseso ng pagpapatupad mula sa unang "Paunawa sa Paglabag" hanggang sa lahat ng gastos ay mabayaran, SFBC 102A.2 & 110A.

BABALA: Ang Seksyon 204 ng Housing Code ng San Francisco ay nagtatakda ng agad-agad na multa na \$100 sa bawat halimbawa ng unang hindi pagsunod, at susundan ng multa na \$200 sa bawat paglabag sa pangalawang hindi pagsunod, hanggang sa sukdulan na \$7,500 sa bawat gusali. Ang seksyon na ito ay itinataksa na magsasampa rin ng kasong kriminal bilang isang misdemeanor sa bawat paglabag at magreresulta sa multa na hindi bababa ng \$1,000 sa bawat araw o di kaya sa anim na buwan na pagkabilanggo o parehong ipapataw.

BABALA: Sinumang kumikita sa pag-upa ng pabahay na tinukoy ng Kagawaran ng Inspeksyon ng Gusali na substandard, ay hindi maaring ibawas ang ganoong kita sa buwis sa estado ng kitang personal, at gayundin sa buwis na kita sa interes sa bangko at korporasyon, at sa depresasyon o mga buwis na maiiugnay sa gusaling substandard. Kung ang Gawain sa pagwawasto ay hindi nakumpleto o hindi masigasig, mabilis at tuloy-tuloy ang paggawa matapos ang anim (6) na buwan mula sa petsa nitong paunawa, ay magpapadala ng abiso sa Franchise Tax Board na itinakda sa Seksyon 17264(6) ng Revenue and Taxation code.

BABALA: Ang Seksyon 103A ng Building Code ng San Francisco ay nagtatakda ng mga multang sibil hanggang sa \$500 sa bawat araw sa sinumang lumabag, sumuway, magtanggap, magpabaya o tumangging sumunod o di kaya sumalungat sa pagpapatupad ng mga probisyon nitong code. Nagpapataw din itong seksyon ng multang misdemeanor kapag nahatulan, ng hanggang sa \$500 at o di kaya anim na buwan na pagkabilanggo sa bawat magkahiwalay na pagkasala para sa bawat araw na nangyari ang ganoong pagkasala.

根據《三藩市建築法規》(簡稱 SFBC) 第 107.5 項和第 106.4.7 項條款的規定，對沒有許可證便已開始的工程和或正在進行的工程、或者超越許可範圍的工程，將收取調查費。當舉人可以在此許可證發出日起 15 天之內，向調查費可以向許可上訴委員會提出上訴。該委員會地址在 South Van Ness 街 49 號 14 樓，電話：(628) 652-1150。

警告：如不按照要求立即採取行動、以糾正上述違章行為，將導致建築檢查局付諸強制糾正程序的執行。倘對此房地產頒發的強制糾正程序令一經在市府備案，則自通知張貼日起的各項與此糾正程序令有關的費用，將向房地產主索取，或將房地產扣押，直至付清各項費用。請參閱《三藩市建築法規》第 102.2 項和第 110 項條款。

警告：《三藩市房屋法規》(即 SFHC) 第 204(b) 項條款規定：對每一違章初犯者立即將被罰款 100 元，二次重犯者罰款 200 元，每檔檔宇的最高罰款可達 7,500 元。此項法規還規定對每一違章輕罪者可提出刑事控告，每日最高罰款可達 1,000 元，或/和監禁六個月。

警告：任何人通過出租房屋獲得收入，而該房屋已被建築審查局定為低於規定標準者，不能從加州個人所得稅、銀行和公司所得稅利息、以及與該低於規定標準的建築有關的折舊或稅款中扣除稅費。如果在此通告公布六個月後，改正工程沒有完成，或者沒有積極、迅速有效地繼續進行，我們將根據《國家稅收法規》(即 Revenue & Taxation Code) 第 1264 (c) 項條款，通知加州稅務委員會 (The Franchise Tax Board)。

警告：《三藩市建築法規》第 103 項條款規定：對於任何違反、不服從、疏忽、忽視、或拒絕遵照此法規者，或者抵制、反對實施此法規中的任何條款的個人，將付最高 500 元的民事罰款。此法規還規定對違法者，如果被定罪，對每天所發生的、每一單獨的犯法行為，將付予高達 500 元的罰款，和/或者監禁六個月。

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

February 4, 2022

Joseph Duffy
Deputy Director, Inspection Services
San Francisco Department of Building Inspection
49 South Van Ness Avenue
San Francisco, CA 94103

RE: Complaint No. 202183822 (224 Sea Cliff Ave.); BCDC Enforcement Case ER2004.009

Dear Mr. Duffy:

The San Francisco Bay Conservation & Development Commission is prosecuting an enforcement matter at 224 Sea Cliff Ave. in San Francisco regarding a stairwell constructed within our jurisdiction but without the requisite BCDC permit. Recently we learned that the Department of Building Inspection has an active investigation about the same stairwell. I am writing to share evidence obtained through our enforcement investigation, evidence that is relevant to DBI's investigation and the order it may ultimately issue.

In the Fall of 2021 DBI shared with BCDC the original permit applications and plans submitted for the stairwell project.¹ BCDC reviewed these documents and compared them to parcel information available through publicly accessible databases and to the Sanborn map for this location. Through this work we determined that the original applications contained inaccurate information about the stairwell's location.

Attached to this letter you will find the construction plans originally submitted to DBI for the project. On the last page of this attachment you will find a site plan that presents the entire stairwell *within* 224 Sea Cliff Avenue's private property boundaries. I've also attached a screenshot from SFGIS EagleView IPA that shows 224 Sea Cliff Avenue's property boundaries in blue. These boundaries are consistent with those represented by the Sanborn map and parcel maps obtained through RealQuest. You'll note that much of the stairwell is in fact constructed *outside* of 224 Sea Cliff's property. Comparing the two attachments it is clear that the site plan's property boundaries were drawn inaccurately in obtaining the requisite permits from DBI.

I've annotated the attached screen shot with a rough approximation of the landward limit of BCDC's permitting jurisdiction for this location. If any part of a project is within our permitting jurisdiction, we consider the entirety of the project for consistency with Bay Plan policies. Those policies include public access opportunities to the Bay, and the safety of fill placed in the Bay and in our shoreline band. However, no permit application was ever submitted to BCDC for this project. Even if one had been submitted, we cannot permit an applicant's project if it is constructed on another's property without evidence of consent, typically by legal instrument providing dedicated access to the applicant.

In this case, nearly every step of the stairwell is constructed on lands owned by the City and County of San Francisco, and the landing at the beach is on State Lands Commission lands leased by the Golden Gate National Recreation Area. As part of our enforcement investigation the GGNRA has stated that it

¹ Application Nos. 200211081046, 200309114438, 200401164227, 200409033343, & 200406095884.



does not consent to the construction of these stairs on the lands it leases from the State Lands Commission, and the lease itself suggests that it could never provide such consent. San Francisco's Real Estate Division is currently investigating its portion of the cliffs, but to date no evidence of any consent to this trespass on public property has been identified. For these reasons it is highly unlikely that BCDC could ever permit this stairwell as constructed.² Even if consent from the GGNRA, the SLC, and the City of San Francisco were obtained, this structure would be difficult to reconcile with Bay Plan policies.

Our Senior Engineer has reviewed the technical reports submitted by the current owners and determined that much of the stairwell can be removed without destabilizing the site. His proposal includes restoring the site as much as possible to its original condition. Based on this recommendation and the evidence we have obtained to date, BCDC will hold a public hearing before its Enforcement Committee in April 2022. Staff will recommend that the Commission issue an order requiring the owners of 224 Sea Cliff Ave. to remove the structure and restore the site pursuant to plans created by the appropriate professionals and approved by BCDC.

BCDC understands that DBI has the power to order removal of this stairwell when, for example, it determines that false information was submitted during the permit application process. We believe this letter provides such evidence.

We look forward to coordinating with DBI to make sure that the appropriate actions are taken to remedy the hazardous conditions at the site and remove the structures built public property. Please keep us informed of the proceedings of your investigation, and when possible, afford us an opportunity to present our concerns at any hearings held during your investigation. If you have any questions about our enforcement case please feel free to contact me at the number below.

Thank you,



Brent Plater
Lead Enforcement Attorney
SF Bay Conservation & Development Commission
375 Beale St., Suite 510
San Francisco, CA 94105
Phone: (415) 352-3628
Email: brent.plater@bcdc.ca.gov

Enclosures

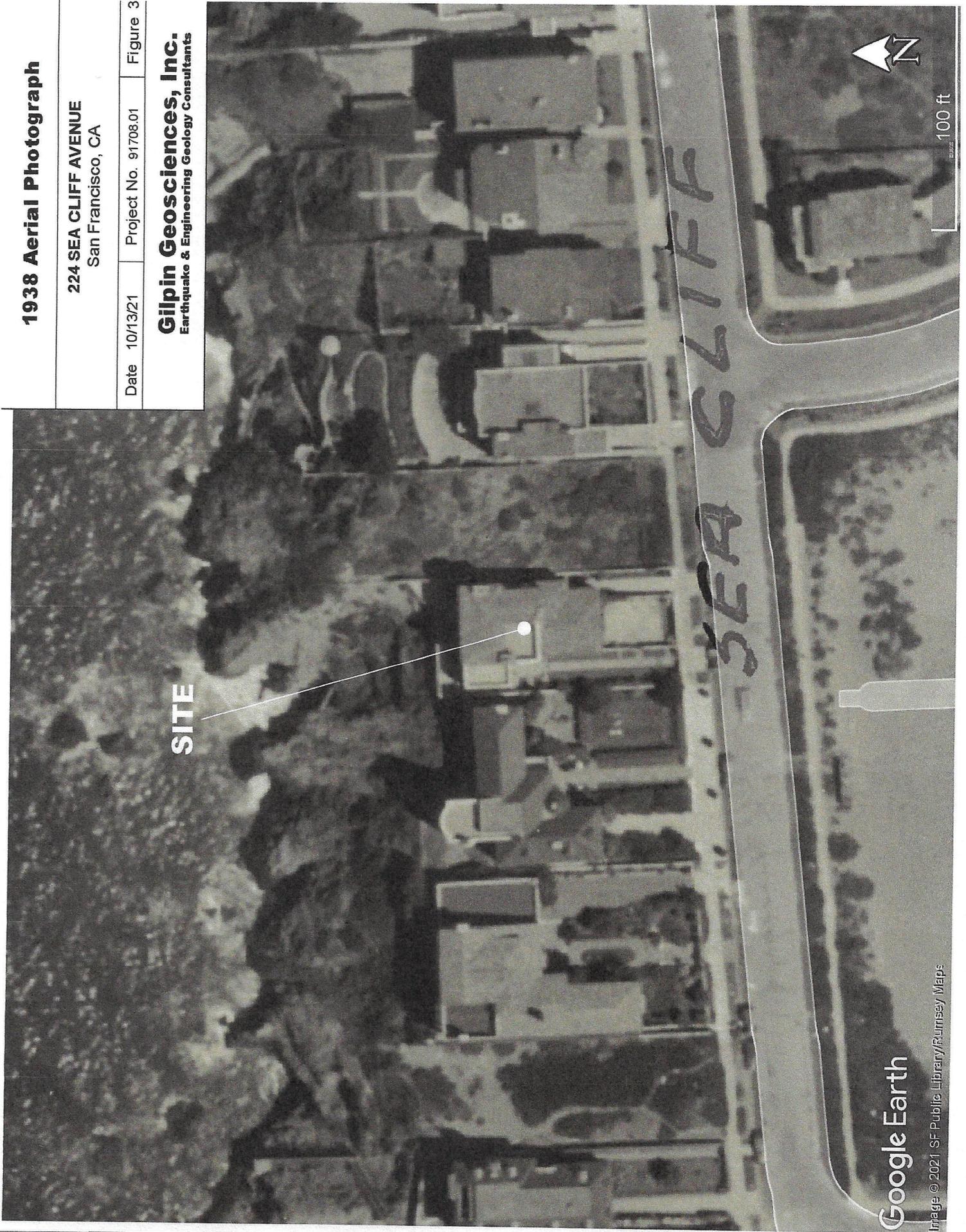
² However, BCDC may be able to permit the deck and landing area at the top of the cliffs that were constructed as part of the stairwell project after-the-fact.

1938 Aerial Photograph

224 SEA CLIFF AVENUE
San Francisco, CA

Date 10/13/21 Project No. 91708.01 Figure 3

Gilpin Geosciences, Inc.
Earthquake & Engineering Geology Consultants



Google Earth

Image © 2021 SF Public Library/Rumsey Maps

100 ft



2002 Oblique Photograph

224 SEA CLIFF AVENUE
San Francisco, CA

Date 10/13/21

Project No. 91708.01

Figure 4

Reference: CA Coastal Project, 2002



Gilpin Geosciences, Inc.
Earthquake & Engineering Geology Consultants

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING
PARTIAL TRANSCRIPT - ITEM 7

HYBRID/ONLINE/TELECONFERENCE MEETING
BAY AREA METRO CENTER
375 BEALE STREET
SAN FRANCISCO, CALIFORNIA

THURSDAY, MAY 25, 2022

9:30 A.M.

A P P E A R A N C E S

Enforcement Committee

Marie Gilmore, Chair

Rebecca Eisen

John Vasquez

Brad Wagenknecht

Counsel to the Committee

Nicholas Tsukamaki, Deputy Attorney General
Office of the Attorney General

BCDC Staff

Adrienne Klein, Principal Enforcement Analyst

Margie Malan, Legal Secretary

Brent Plater, Lead Enforcement Attorney

Matthew Trujillo, Enforcement Policy Manager

Respondent PSG Mortgage

Lawrence S. Bazel
Briscoe Ivester & Bazel LLP

Paul Greenfield
PSG Mortgage

Public Speakers

Luke Brugnara

John Wallace
Cotton, Shires and Associates

I N D E X

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1 the owner of the property, PSG Mortgage, so I am here to
2 speak on behalf of Respondent PSG Mortgage.

3 CHAIR GILMORE: Larry Bazel, attorney, speaking on
4 behalf of PSG Mortgage; is that correct?

5 MR. BAZEL: Yes.

6 CHAIR GILMORE: Okay. Thank you very much, sir.

7 Okay. So, Brent, I am going to hand this over to you
8 for your presentation. I ask that you limit your comments
9 to a summarization of the violation report and recommended
10 enforcement decision, with particular attention to
11 presenting any issues of controversy in accordance with
12 Section 11327 of BCDC's regulations.

13 After Brent's presentation the respondent and/or their
14 representative will be allowed to summarize their position
15 on matters relevant to the three violations listed in the
16 violation report, or relevant to the proposed Order, with
17 particular attention to those issues where an actual
18 controversy exists between the staff and the reported party.

19 All speakers on this matter, including staff, the
20 respondents or their representative, and the general public,
21 please be mindful to limit your comments to addressing the
22 evidence that has already been made part of the enforcement
23 record and/or the policy implications of said evidence. New
24 evidence and oral testimony shall not be permitted. Any
25 person who violates this rule shall be cut off immediately

1 at my discretion and may not be allowed to speak again
2 during the hearing of this matter.

3 MR. PLATER: Well, thank you very much, Chair Gilmore.
4 Good morning, Commissioners. Thank you for giving us this
5 opportunity to present this, this case.

6 The case before you is one of our oldest cases. It has
7 been on the enforcement docket since 2004 and is certainly
8 one of the most visible along the Bay and the shoreline band
9 and today is an opportune time for us to finally address it
10 and get these violations resolved.

11 The property involved is at 224 Sea Cliff in San
12 Francisco. This is a photograph of the site. It is in a
13 particularly important part of our Bay and shoreline band.
14 On one side of the property you can see Baker Beach, on the
15 other side just out of view is China Beach. The entire area
16 between these two beaches is considered part of our beach
17 and waterfront priority use areas and is supposed to be
18 reserved for those purposes.

19 And this pink or salmon colored house that you see with
20 this large structure extending down to the Bay, that is 224
21 Sea Cliff Avenue. That structure is built across some
22 private property in an area that we refer to as the deck up
23 here, that is on private property. And this, part of this
24 walkway and promenade that goes out to this overview here,
25 this is also part of property, part of a private property

1 parcel. This was, has never received any permit
2 applications at BCDC.

3 There were some permits applied for it with the City
4 and County of San Francisco and I will address the problems
5 with those permits and plans a little bit later.

6 But as this structure moves down towards the shoreline
7 band and into the Bay it leaves the private property of 224
8 Sea Cliff and crosses first City and County of San Francisco
9 property down these, down the cliffs. The City and County
10 of San Francisco has not ever and has expressed that it
11 never will authorize this trespass on its property and
12 therefore these structures are not permittable by BCDC, we
13 are not authorized permit structures on a third party's
14 property without their consent.

15 And then at the very bottom of this structure where the
16 stairwell lands right at the, right below the mean high tide
17 line, it crosses into a third jurisdiction. It crosses into
18 lands owned by the State Lands Commission and leased to the
19 National Park Service to the Golden Gate National Recreation
20 Area. They too have determined that it is not possible for
21 them to provide permission for the structures that are found
22 in the, in the Bay itself; and without their authorization
23 for this trespass that structure below cannot be authorized
24 by BCDC either.

25 So we have identified three violations at the

1 structure. One is for the non-permitted structures that
2 would be potentially permittable within the private property
3 structure; a second violation for the portions of the stairs
4 that go down City and County of San Francisco property; and
5 a third violation for the structures that were built on
6 State Lands Commission's property owned -- leased by the
7 National Park Service.

8 And our recommendation for you today will have three
9 parts to it. This is another view of the structure from
10 the, from the Bay and also from overhead where you can see
11 more clearly the deck and part of this promenade which is
12 part of the private property parcel, the stairs that that go
13 down towards the shoreline band and the Bay and the landing
14 down here at the, near the high tide line.

15 The staff recommendation in this matter is first and
16 foremost to not delay this enforcement proceeding any
17 further. Non-respondent Paul Greenfield has made several
18 suggestions that delay should be appropriate to allow them
19 to come into some sort of compliance with the proposed Order
20 as drafted.

21 Staff have been working with the respondents directly
22 since almost, almost 9 to 10 months and the only thing that
23 has prompted any response from them has been this formal
24 enforcement process, in particular, this hearing. If that
25 hearing and this Order goes away it is not clear that there

1 will be any movement from the respondents any further to
2 address this long-standing violation.

3 The staff recommendation also suggests ordering the
4 respondents to remove as much of the illegally built
5 structure as technically feasible, mitigate the structures
6 that cannot be removed, and then restore the visual
7 condition of the site, all by December 31, 2023. There are
8 some interim deadlines before that to make sure that they
9 remain on pace but that is the final deadline that they will
10 need to meet.

11 And because of the longstanding nature of all three of
12 these violations they are subject to the maximum
13 administrative civil liability that we are capable of
14 enforcing here at BCDC, \$30,000 per violation for a total of
15 \$90,000; and the staff recommendation is to order
16 respondents to pay the \$90,000 in administrative civil
17 liability for these three violations.

18 Now, just to give you a little bit of background on the
19 structure. This is a photograph from the, from 1987 that
20 shows 224 Sea Cliff highlighted in this red oval. And you
21 can see in this photograph that there were some structures
22 that predate BCDC's jurisdiction, they have been there since
23 the '30s, to provide some support to the cliff. But there
24 was no stairwell, no structures leading down to the beach at
25 all.

1 And then just before these stairs started to be
2 constructed in 2002, this is a 2002 photo, you can see this
3 again, that there was no stairwell there in place, just
4 these lateral support structures to keep the cliff face
5 supporting the building above it. The deck was predating,
6 does predate BCDC jurisdiction but none of the promenade or
7 that walkway or any of the stairwells or the landing below
8 predate BCDC jurisdiction.

9 What did happen between 2002 and 2004 when these
10 structures were built is that the then-owner, Mr. Brugnara,
11 submitted permits, applications and plans to the City and
12 County of San Francisco that indicated, as you can see in
13 this image the dotted line, indicated that the private
14 property boundary of the site extended far beyond the
15 promenade and included all of the stairwell. All of this is
16 suggested by these plans and also in the written comments of
17 the permits that this will all be within the private
18 property boundaries of the parcel. And the permits also
19 suggested that there would be a, that this was a replacement
20 project replacing a stairwell down to the down, to the
21 shoreline that pre-existed.

22 However, what BCDC staff have determined in
23 investigating this, this case in the past year is that these
24 plans misrepresented the actual property line of the
25 property. On the right here, this colored line in blue is

1 the actual private property boundary for the parcel as
2 determined by the San Francisco property information map and
3 service; and this red line indicates roughly BCDC's 100 foot
4 jurisdictional shoreline band. From here to the mean high
5 tide line is 100 feet. The mean high tide line roughly is
6 around here and then that is Bay jurisdiction for the rest.
7 So all of this structure was not only built on another's
8 property but based on fraudulent information submitted to
9 the City and County of San Francisco.

10 When we informed the City and County of this
11 misrepresentation they, which was just in this past year,
12 they initiated their own enforcement proceedings and right
13 now are pursuing through the planning department a parallel
14 procedure to require permits to remove these illegally
15 constructed structures, parallel with our BCDC proceeding.
16 Which is another reason why this opportune time to move
17 forward with this case should continue. All of the
18 government agencies that oversee this area agree that the
19 structures were built illegally, need to be removed. They
20 are all moving forward simultaneously so we have, we have
21 contemporaneous orders that do not conflict with each other
22 and we want to keep that on pace.

23 Just want to talk a little bit about the statement of
24 defense that was submitted by the non-party Paul Greenfield.
25 That statement, we recognize that Paul Greenfield has been

1 given the authority to hire counsel, retain experts, do
2 whatever it takes to address the illegal actions that
3 occurred here in our shoreline band, both before the City
4 and County of San Francisco but also here before us with
5 BCDC. The problem was that at the time the statement of
6 defense was filed he hadn't done that. Even though he had
7 the authority he submitted the statement on his own behalf,
8 retained attorneys to represent him alone, and presented the
9 statement only for himself.

10 None of the respondents provided any statement of
11 defense by the deadline specified by our regulations. Mr.
12 Bazel contacted me a couple of days in advance of that
13 deadline and requested an extension of time but didn't
14 provide the statutory requirement to demonstrate good cause
15 for that extension. And it also seemed unlikely to be
16 warranted, given all of the effort that I personally and the
17 rest of staff had been invested with, investing with the
18 respondent to try and resolve this case without formal
19 enforcement proceedings for the better part of nine months,
20 all of our attempts which were rejected.

21 In the absence of providing a statement of defense by
22 the deadline required our regulations forbid any additional
23 evidence being presented subsequent to that statement of
24 defense. Now that Mr. Bazel seems to have the authority to
25 speak directly on behalf of the, one of the respondents, he

1 may present to you today and discuss some of the issues that
2 are most pertinent to his clients. But he cannot introduce
3 new evidence, he is not allowed to request cross-examination
4 of staff, none of these other, all of those sort of requests
5 were required to have been conducted by the deadline
6 specified by our regulations, which would have been May 6th.

7 Now, the only other point that I would like to make
8 about the case before you is this is one of the most
9 visible, and as I mentioned, long-standing, illegally
10 constructed structures in our shoreline band. We get calls
11 about these or questions about this structure somewhat,
12 somewhat regularly.

13 And this time is the moment that we have been waiting
14 for to address this case. Shortly after the structures were
15 built, Mr. Brugnara was incarcerated. There were complex
16 bankruptcy proceedings that are continuing to this day to
17 address the assets that he and his companies held and that
18 created a cloud over the ownership of this site and made it
19 difficult for the enforcement proceedings to move forward.
20 This is why it has taken so many years for us to arrive at a
21 moment when there was enough of an ownership interest in a
22 party to, first, put the property up for sale, which the
23 respondents have currently done, and also to initiate some
24 sort of contact so we could try and resolve this matter
25 informally.

1 After investing a lot of time in that effort and having
2 the respondents tell us that they were not interested
3 because they were concerned the price of the sale might go
4 down and reduce their ability to recover monies through the
5 bankruptcy process we were left with no other choice but to
6 initiate a formal enforcement action and move forward with
7 these proceedings in lockstep with the City and County of
8 San Francisco.

9 Now we have this opportunity to finally address these
10 issues. We have seen in some late submissions that
11 Mr. Bazel has provided just in the past few days that they
12 are making, the respondents are finally making some attempts
13 to provide some of the, some of the steps that we are
14 requesting the Commission to order respondents to take. To
15 design a plan to remove these stairs, mitigate whatever
16 can't be eliminated or removed and re-landscape the site.

17 But those plans still are preliminary, they do not meet
18 the requirements of the Order. For example, they don't have
19 a landscape architect using shotcrete or other structures to
20 try and contour the cliff face back into a more naturalistic
21 condition. They are positive steps, but in the absence of
22 an order from the Commission it is very likely that those
23 steps will halt.

24 There is a proposed sale in the bankruptcy case that is
25 likely to be approved by the court in just a few days to

1 another party. And if that sale occurs without an Order in
2 place to ensure that these plans move forward, they may not.
3 There will be no obligation in the absence of some order for
4 the respondents to continue that, that, those -- continue
5 with those plans and move forward with the things we need to
6 occur on this site.

7 Although it does appear that in that bankruptcy process
8 the respondents are trying to negotiate the responsibility
9 of dealing with this issue with this buyer, they have
10 dropped the price by a million dollars. In order to address
11 these stairwells the price is now \$12 million for this site
12 instead of \$13 million. But the bankruptcy filings also
13 clearly state that they are designed, that this drop in
14 price is designed to address solely the issues of the stairs
15 they face with the City and County of San Francisco, it
16 makes no mention of BCDC. So we fully expect that by hook
17 or by crook either the respondents or this buyer will end up
18 having to remediate this site.

19 But in the absence of an order from the Committee to
20 make sure that either the respondents, and at some point if
21 this sale closes, against the buyer as well, this process
22 could be halted again and we could be in a position where we
23 won't be having an opportunity to address it for another few
24 decades.

25 So that's what, that's all I have to say on this

1 matter. Thank you for listening to the presentation and I
2 look forward to taking any questions you may have.

3 CHAIR GILMORE: Thank you. I think probably the better
4 way to proceed with this is we will have the respondent's
5 representative come up and then we will take questions for
6 both, both the respondents and staff.

7 MR. BAZEL: Can you hear me?

8 CHAIR GILMORE: Yes.

9 MR. BAZEL: Thank you, Larry Bazel again. I would like
10 to make three points and I hope to keep them brief.

11 The first point is a request to postpone this hearing
12 for a month or two. This case is eminently settleable and
13 in the few weeks that I have been involved I have been
14 trying to settle it. We have gotten a proposal just this
15 week into staff that we think fully complies with the
16 essence of the proposed Order. Yes, it doesn't have a
17 landscape architect, we couldn't get a landscape architect
18 in time; but we certainly have talked about landscaping the
19 cliff and I'll get to that in a bit.

20 I have been forced into an adversarial position that I
21 don't want to be in. If the Commission issues an Order we
22 will have to go to court and all that. I just don't see
23 that being good for anyone. The best thing now is for us to
24 meet with staff and work out the details. Some of the
25 staff, no doubt, wants to know more about how the slope is

1 going to be visually restored. That's what I heard part of
2 Mr. Plater say. And fine, we need to walk the property, not
3 only with a landscape architect but with a contractor who
4 will provide more information about actually how you do
5 remove these steps, what is actually going to happen, what
6 are they going to do. We need some more time for that.

7 Rather than issuing an order that has got problems and
8 that will obstruct and certainly not help the settlement
9 just let us talk for a month or two and see if we can work
10 it all out. If we get an agreement that can be, you know,
11 that can be a stipulated order that solves Mr. Plater's
12 problems. We are not talking about a delay of a decade.

13 This is a problem that the current owner and
14 Mr. Greenfield did not create. It was created 20 years ago,
15 I gather, by Mr. Brugnara. If staff had responded then the
16 person who caused the problem would have had to pay for it
17 and the current owner wouldn't have the problem of solving
18 it. If this has sat around or 20 years, and it sounds like
19 enforcement activities just picked up last fall, then it can
20 certainly wait another month or two.

21 Obviously, Mr. Greenfield sees it differently. He
22 didn't hire me to fight here. I am telling you that I am
23 trying to settle this, I told that to Mr. Plater. I don't
24 want to be acting adversarially but I feel that I must to
25 protect my client's interests. We need to get resolution on

1 exactly what staff needs to, wants to get done. The best
2 way to do that is sit down and talk. If not, we have to
3 protect ourselves in case there is something that staff
4 thinks is in the Order that is problematical. So that is
5 point number one.

6 Point number two. The order is too specific. If the
7 Committee thinks, decides not to postpone this hearing, goes
8 ahead and issues the Order anyway, then on item I.C please
9 include the language, or provide an equivalent solution.
10 Again, the Order talks about things like shotcrete. The
11 shotcrete is used to make the cliff look more like rock but
12 shotcrete will look like fake rock. Our proposal suggests
13 adding more vegetation. There's vegetation now on both
14 sides of the stairs, that can be extended across the stairs.
15 Vegetation will look natural, visually it is the better
16 solution. We don't want to be stuck with an Order that
17 seems to say you can't use a better solution. Let us talk
18 with staff, see whether we can persuade staff.

19 Our proposal only was in on, only came in on Monday so
20 they haven't had much time to look at it. It does do the
21 key thing they wanted which is remove the stairs going down
22 from the, from the patio and promenade level, I think that's
23 the appropriate name, down to the water.

24 Again, I think the Order should not be issued at this
25 time, but if it is the phrase, or provide an equivalent

1 solution, would let us, I think, work more with staff to
2 come up with the best solution, one that will actually work
3 here. And again, the current owner has no assets other than
4 the property so getting this done involves its own special
5 complexities. Mr. Greenfield has stepped in and he is
6 trying hard to make this work. The buyer, I haven't spoken
7 with the buyer but the buyer appears to be willing to go
8 along with this and implement that.

9 There are complexities here that are best resolved by
10 getting people to sit down and agree to everything, not by
11 issuing an Order and fighting. And I think we are close.
12 The proposal may not be perfect in staff's eyes but I think
13 they are going to have to agree, it removes the stairs.

14 What staff, what Mr. Plater said in papers was that he
15 was concerned that nothing would happen, that the buyers
16 were trying to -- the current owner, and maybe the buyer was
17 trying to avoid doing anything at all. That is not the
18 situation here. We have got in a proposal to remove the
19 steps, let us get it to the end.

20 Third point. If the Committee decides to issue the
21 Order, the penalty should be removed. There were three
22 reasons for that. One reason is that the real violator here
23 committed the violation 20 years ago. The current owner has
24 not, didn't put the stairs in and has not been obstructing
25 their removal, it has been trying to move ahead and make

1 this all happen. Maybe not quickly enough for staff's
2 desires but we are moving ahead.

3 There is also a good, strong defense on penalties.
4 There is a one year statute of limitations. Although courts
5 don't strictly apply statutes of limitations they apply them
6 almost strictly through a legal doctrine called laches. So
7 penalties should have been brought within one year, it is 20
8 years, so if that ever goes to court we should win that.

9 But the third thing here is that staff has struggled to
10 make this into three violations. It is one stairway, it is
11 one event, it is really one violation. They have made it
12 three violations on the idea that it is three properties.
13 If the Committee thinks some violation should be imposed
14 than it should be \$30,000, not \$90,000, just because there
15 really aren't three violations here, there are only, there
16 is only one.

17 So those are my three points and I think we are close.
18 We have a proposal in. We can sit down and meet with, with
19 staff to work out the details. We can get a contractor
20 there, we can get a landscape architect. We can make this
21 happen to everyone's satisfaction, especially if the buyer
22 comes along and isn't scared off by all these proceedings
23 and all the difficulties we have had here. We want the
24 buyer in place. The buyer has the money to implement the
25 solution and make it happen. That's what I'd like to see.

1 I think that is what is really in the Committee's interest,
2 it is what is in staffs interest.

3 And thank you. By the way, I have Mr. Greenfield here
4 to answer any questions if you would like to ask him any.
5 And our expert consultant John Wallace may be on the line, I
6 can't tell. Thank you.

7 CHAIR GILMORE: Thank you. I am going to open it up
8 for Commission questions so I would like it if both you and
9 Mr. Greenfield remain available in case Commissioners have
10 any questions. Okay, thank you.

11 Okay, Commissioners. Does anybody have any questions
12 for either staff or the respondents?

13 MS. MALAN: Commissioner Vasquez.

14 CHAIR GILMORE: John.

15 COMMISSIONER VASQUEZ: Thank you, Marie. Do we have
16 our attorney on?

17 MR. TSUKAMAKI: Yes, Commissioner. This is Nicholas
18 Tsukamaki from the Attorney General's Office.

19 COMMISSIONER VASQUEZ: Thank you very much. Our role
20 right now is to see, is to determine whether violations have
21 occurred and to forward our recommendation to the entire
22 Commission; is that right? Where essentially the
23 individuals that the Order is being placed upon have an
24 opportunity to speak to the entire Commission.

25 MR. TSUKAMAKI: That's one of the issues, Commissioner,

1 yes.

2 COMMISSIONER VASQUEZ: But that's one of -- so this is
3 not the last time we will hear it, I guess is what I am
4 saying. That the entire Commission will hear it because
5 this Committee will make its recommendation to the entire
6 Commission whether to move forward with the Cease and Desist
7 Order or whatever we are recommending.

8 MR. TSUKAMAKI: Correct.

9 COMMISSIONER VASQUEZ: So whatever action we took today
10 there is still opportunity for the, in this case, the
11 attorney to work with his client to come up with a solution
12 before it came before the entire Commission. I think what
13 we have in front of us is the conditions that exist right
14 now and our responsibility is, is it an action the
15 Enforcement Committee wants to proceed with. And whether it
16 happened in the past, I would say to the individual that
17 bought it, maybe you didn't do your due diligence and find
18 out and make sure that everything was permitted. I mean,
19 you know, I am not an attorney and I am not a real estate
20 person but that is pretty basic stuff to me. You want to
21 find out that everything that is there has been permitted,
22 that you have not crossed over on that somebody else's
23 property. So I don't think it is a very compelling
24 argument, because we didn't know. Anyway, those are just my
25 thoughts for right now.

1 CHAIR GILMORE: Thank you. Commissioner Eisen, I
2 believe.

3 COMMISSIONER EISEN: Thank you. Where to begin? In
4 the staff presentation we talked about the owner being
5 required to remove as much as possible of this stairwell.
6 Is there some issue about whether or not it can be removed?
7 I can take these questions sort of one at a time or we can
8 just note them.

9 In terms of the cloud over the ownership interest that
10 was referenced. Do we now feel as if that cloud has been
11 removed and we have a clear understanding of who owns this
12 property?

13 Another question, a third question has to do with the
14 Cease and Desist Order if it is issued and the property is
15 sold? Is the new owner obligated to abide by that Cease and
16 Desist Order or would we then have to institute some new
17 action against the buyer?

18 I am interested in asking Mr. Bazel, and I should
19 probably reference that Mr. Bazel told me this morning when
20 we, before we began that he and I worked at the same law
21 firm some 38 years ago. I barely remember it but apparently
22 he did and referenced that to me. That law firm also went
23 bankrupt. There is no more of it. But you said in your
24 presentation that if we don't get this resolved and if the
25 Cease and Desist Order issues that you would then have to go

1 to court. And I am not really sure what you are referencing
2 there as why you would have to go to court rather than
3 simply comply with the order.

4 The penalty laches, three violations issue. I am
5 assuming that we have looked into that and have some
6 precedent or reason to believe that it is, in fact, three
7 violations. But if you might address that, Mr. Plater, very
8 briefly. Those are the questions I have so far.

9 CHAIR GILMORE: Okay. I was trying to listen very
10 carefully and it sounded like most of the questions were for
11 Brent, but did I hear a couple for --

12 COMMISSIONER EISEN: Just one, yes.

13 CHAIR GILMORE: Okay. So Brent, why don't you start.

14 MR. PLATER: thank you for the questions, Commissioner
15 Eisen. There is some uncertainty about how much of the
16 structure can be removed without causing some cliff
17 instability and this is why our staff senior engineer has
18 recommended in his declaration that we hire the appropriate
19 experts, which would be an engineer, a geotechnical engineer
20 specifically, and a landscape architect to put together a
21 proposed plan that will include all of the necessary
22 calculations about weight and load and the process of
23 removing the stairs to ensure that even the deconstruction
24 itself doesn't cause any cliff instability. It has to be
25 done correctly. It is most likely that nearly all of the

1 structures that were built between 2002 and 2004 are not
2 structural for the purposes of upholding the cliff, but we
3 won't know that for sure until that plan is presented and
4 the calculations are reviewed.

5 The second question was about the cloud over title. So
6 yes, at the moment the bankruptcy court has authorized these
7 PSG companies, PSG Capital specifically who then transferred
8 the property to PSG Mortgage Lending Corporation, to
9 foreclose on the property, a non-judicial foreclosure, to
10 obtain title and try and market the property for sale and
11 raise the amount of monies that would be able to be, to
12 spend on the other debtors that are ahead of Mr. Greenberg.
13 Mr. Greenberg, as I understand it stands fourth in line.
14 I'm sorry, Mr. Greenfield stands fourth in line amongst the
15 debtors and this was an attempt to try and ensure that he
16 was able to recover at least some money from the bankruptcy
17 process after the first three debtors were paid off. So he
18 has -- the PSG companies, the respondents, do have control
19 over the title of this property. It is, it is very clear
20 that they, that they retain ownership over it.

21 I believe the third question was what happens to the
22 ease and Desist Order if the property is sold, if the sale
23 does go through? From our perspective, the deal that the
24 seller and the buyer makes out between them is of no
25 consequence to us. From our perspective, the Cease and

1 Desist Order will apply to the respondents even after the
2 sale. They will be responsible for removing this illegal
3 fill even after they sell it. We will be willing to work
4 with the buyer for a while if they have some agreement
5 between them and see if some progress is being made. But in
6 the absence of having some potentially court-enforceable
7 order against the buyer we don't know if they will be moving
8 forward with the removal process.

9 If that were to occur we could also pursue a Cease and
10 Desist Order against the then-owner, the proposed buyer, and
11 from our perspective it would be joint several liability.
12 They need to clean it up, they can fight amongst themselves
13 about who pays for it. But there is no concern that we have
14 to redo a process against the respondents because these
15 orders, unlike our permits, the orders are specific to the
16 respondents, to the violator. Permits run with the land so
17 you do sometimes need to address the change in permittees
18 when ownership changes that way through the permitting
19 process, but not the Cease and Desist Orders. Those will
20 run, those will stay with the respondents.

21 And the reason we came up with three violations. It
22 was based on some of the violation guidance that we have
23 received from the Commission. When we were working with the
24 respondents very closely for a very long time and trying to
25 create a process where they could resolve these violations

1 without formal enforcement proceedings the idea was that
2 they could, that each of the, each of the three violations
3 have different entities that need to be consulted to resolve
4 them.

5 One is very simple, it is the private property owner
6 and the City and County of San Francisco, that is something
7 that we might be able to permit so we wanted to keep that in
8 one box so that could be resolved potentially with an after-
9 the-fact permit or something like that.

10 The second one involves getting consent from the City
11 and County of San Francisco as the owner of that property
12 where the trespass occurs. That was going to be a much
13 harder thing for them to resolve and obtain and we didn't
14 want to hold up the resolution of the first part of the, of
15 the structure while we waited for this consent to occur from
16 the City and County of San Francisco for the trespass over
17 the property it owned.

18 And similarly we thought it was going to be an even
19 tougher haul to get consent from either the State Lands
20 Commission and/or the federal government to resolve the
21 portion of the violation that lands below mean high tide.
22 That would involve even more parties, additional complexity,
23 and we wanted to give them the opportunity to try and
24 resolve what they could as quickly as they, as quickly as
25 they could and then tackle the more difficult violations as

1 they, as they required additional time.

2 Unfortunately, none of those efforts to try and resolve
3 it informally for many, many months were accepted by the
4 respondents, they just turned us down completely. And so
5 the structure was initially designed to help them resolve it
6 and we think that was the right call.

7 CHAIR GILMORE: And then you had a question for
8 Mr. Bazel?

9 COMMISSIONER EISEN: Yes. Did you, did you hear the
10 question that I asked?

11 MR. BAZEL: I did, actually and several of those
12 questions I think relate to my testimony.

13 The first has to do with removing all of the
14 structures. That's one of the issues that we need to talk
15 with staff. In our proposal, our geologist and structural
16 engineer recommend keeping a post and a strut. We are going
17 to have to talk with staff to make sure they are comfortable
18 with that and see what they think. They haven't responded
19 specifically but that kind of thing creates a problem with
20 the Order which talks about removing everything. Well,
21 actually it talks, it may have some language in there that
22 would allow for that.

23 On the cloud over title, BCDC can take actions against
24 property owners regardless of whether there's a cloud on
25 title. BCDC could have moved against Mr. Brugnara 20 years

1 ago.

2 On the question about whether the Cease and Desist
3 Order would run with the land or whether there would need to
4 be another hearing. There would need to be another hearing.
5 The buyer is not subject to the jurisdiction, it is not a
6 respondent here. You may very well be able to hold the
7 hearing and say, you have got to comply with this Order but
8 it is another hearing. Of course, the buyer may comply,
9 that's what I want to accomplish, but the Order won't help
10 that.

11 Now, what Mr. Plater said is the threat of this hearing
12 may help. I am not disagreeing with that. But the threat
13 of a hearing is sometimes more valuable than an actual
14 order.

15 And as far as getting -- and Mr. Plater identified
16 another problem with the Order. As he said, getting
17 approval from State Lands, sorry, or the feds will be a long
18 haul. We have got until December 31st of this year under
19 the Order to get approvals from all agencies. Even if we
20 got in plans and specs tomorrow there is no guarantee that
21 the feds would have any kind of approval, maybe not even any
22 kind of response by then. So it is useful for us to try to
23 get people to work together on this and it is also useful
24 for BCDC.

25 Why would I need to go to court? Why not just comply?

1 The answer to that is the Order is very specific, too
2 specific. And it is entirely possible that staff will dig
3 their heels in on some aspect where we will have a
4 disagreement, which actually leads to a question I have for
5 the Committee. If there is a disagreement with staff over
6 the substance of our compliance how do we bring it to the
7 Committee to resolve it? How do we get that resolved?

8 But once the Commission issues the Order we have 30
9 days to go to court, if not we lose any ability to challenge
10 it. And then our only defense would be, well the Order says
11 X but what we want to do is okay. We are much better off,
12 if we ever get into a fight, to say, the Order never should
13 have been issued in the first place, it doesn't matter what
14 it says. So we would want to preserve all of our defenses.
15 Again, that's not what I want to do. I want to settle this,
16 I want to solve it, It's very solvable, I think we are
17 close.

18 As far as the number of violations, Mr. Plater said
19 more or less we will need approvals from three different
20 entities for the three properties. But even if that is the
21 case, that means we will need three different remedies. Not
22 that there were three violations. There was only one
23 violation, the construction of the stairs by one person, at
24 one time, 20 years ago. That's a single violation.

25 So I think I have covered your questions.

1 CHAIR GILMORE: Thank you. Brad, I see your hand up.

2 COMMISSIONER WAGENKNECHT: Thank you. And I don't
3 want, I don't want all the bloody history of this but this
4 was found in 2004. Just the quick and dirty of what
5 happened from 2004 to the 18 years to when they started,
6 when we started really getting, trying to get any traction
7 on this.

8 MR. PLATER: Shortly after construction was completed
9 Mr. Brugnara was convicted of several federal crimes and
10 imprisoned and his assets were put into a very complicated
11 multi, multiple different bankruptcy proceedings and so it
12 just wasn't clear to anybody who could be held responsible
13 at the time for resolving this violation. As far as we knew
14 Mr. Brugnara was not only in prison but also had no assets
15 to his name. So asking him to undertake a project on the
16 site which could cost, according to our expert, at the high
17 end a million dollars or more to remediate, seemed like not
18 a very fruitful path for the enforcement team to travel.

19 COMMISSIONER WAGENKNECHT: Thank you.

20 CHAIR GILMORE: Are there any other questions from
21 Commission Members?

22 I just had one. I think you mentioned that you are,
23 there is a potential buyer out there. The question for you,
24 are you in contract and when do you expect the sale to
25 close?

1 I would Like Mr. Greenfield to answer that, if he
2 could. We are in contract? I think the answer is that yes,
3 we are in contract and the sale could close any day now.
4 Correct me if I am wrong. There have been a few title
5 issues.

6 MR. GREENFIELD (OFF MIC): (Inaudible) the sale is
7 going to fall apart.

8 CHAIR GILMORE: Can you please speak into the
9 microphone because we are recording this?

10 MR. GREENFIELD: Yes, Paul Greenfield. We are under
11 contract but, you know, there's, right, there are some title
12 issues and maybe plus this issue. So I would say we don't
13 know which way it is going to go at this point.

14 CHAIR GILMORE: And the timeline? The timeline?

15 MR. GREENFIELD: We will probably know sometime this
16 week, I suspect.

17 CHAIR GILMORE: Okay, thank you.

18 MR. BAZEL: Did you hear his initial comment, which is
19 that the deal may fall apart?

20 CHAIR GILMORE: Yes, I did hear that, thank you. Okay,
21 so if there are no other Commissioner questions or comments
22 I am going to open it up to the public. Do we have any
23 public speakers?

24 MS. MALAN: Chair Gilmore, yes, we have Luke Brugnara.

25 CHAIR GILMORE: Okay. Mr. Brugnara, before we unmute

1 you I want you to understand that you are limited to three
2 minutes so please try to keep your comments brief. Thank
3 you.

4 MR. BRUGNARA: All right. Can you hear? Can you hear
5 me? Hello.

6 CHAIR GILMORE: Yes we can. Yes, we can hear you.

7 MR. BRUGNARA: Okay, so I want to start off by saying
8 it was -- the stairs were built completely compliant with
9 all of the rules of the state, federal and local governing
10 agencies 18 years ago. What you continue to refer to as
11 stairs are actually the main implement of the structural
12 reinforcement. What's really telltale in this matter is the
13 two retaining walls that preexisted there since the 1930s
14 that are part of that property.

15 You don't have a survey. We never went beyond the
16 boundaries of our property line. We had a survey done. We
17 already dealt with your agency 20 years ago, me and my
18 attorneys. I have done \$3 billion of transactions. I am
19 not destitute, okay. We had the top attorneys deal with
20 your attorneys and your agency 20 years ago. That's why you
21 guys closed the case. I also have a law degree. You have
22 equitable estoppel.

23 You cannot reopen a case 20 years later. This was not
24 an ongoing case where you were sending me letters or dealing
25 with my attorneys. Okay, my legal matters were just a few

1 years ago, you went for a dozen years because the case was
2 closed. Your predecessors were not incompetent. They
3 closed the case based on all the information I provided and
4 my attorneys provided. I am happy to give that to you.

5 We have the surveys. It was built by the top
6 contractors in the city who built the San Francisco Airport,
7 the Chinatown Garage, the PG&E substation, these were top
8 commercial contractors, okay. And they built that because
9 the cliff was failing. Both the retaining walls from the
10 1930s failed and the house was going to fall in the water,
11 okay. Tuan and Robinson, the top engineering firm in San
12 Francisco, did those drawings. They did the San Francisco
13 Airport. I own a high rise office building. We hired the
14 top commercial engineering firm. The house was going to, is
15 already slanted when we had these stairs put it on an
16 emergency basis. They are not stairs. Those are utility
17 access to the retaining structure itself. They are not
18 stairs to access the beach for recreational uses and they
19 must remain intact or that house will collapse. And if you
20 try to remove anything, including the lower portion at the
21 very, very bottom, the house will, the entire structure will
22 fail, okay, so that, that --

23 CHAIR GILMORE: You have one minute.

24 MR. BRUGARA: Yeah. That entire structure is a self-
25 contained structure. It is a marvel, really. It is an

1 engineering marvel by the top engineering firm in the city
2 and it's not even used for recreational purposes. It is a
3 structural implement that the building owner is legally
4 allowed to have to maintain its property.

5 And, you know, you put on a superimposed property
6 aerial view saying this is going beyond the scope;
7 completely false.

8 CHAIR GILMORE: You have 30 seconds

9 MR. BRUGNARA: It goes to the high line tide of the
10 water and that's where it went to and it was already
11 approved by all the city planning agencies and is consistent
12 with the other retaining walls that were built in 1930. So
13 you are completely off base and you don't even have legal
14 grounds under, equitable estoppel. You know, I have a whole
15 box full of information that I can pull out if you want to
16 go down that route. Let's have another hearing.

17 CHAIR GILMORE: Thank you very much, sir.

18 MR. BRUGNARA: Okay.

19 CHAIR GILMORE: Thank you very much.

20 Do we have any other public speakers?

21 COMMISSIONER VASQUEZ: Marie.

22 MS. MALAN: We have Mr. John Wallace. You have three
23 minutes.

24 CHAIR GILMORE: Thank you.

25 COMMISSIONER VASQUEZ: Marie, before we leave this last

1 speaker. Again, what is his, WHAT IS his role in this? Is
2 he the property owner? I didn't get that.

3 CHAIR GILMORE: He is --

4 COMMISSIONER VASQUEZ: Can we bring him back?

5 CHAIR GILMORE: Hold on, John.

6 MR. BAZEL: Let me introduce Mr. Wallace. The --

7 COMMISSIONER VASQUEZ: No, I want to -- excuse me.

8 CHAIR GILMORE: Hold on, hold on, stop. So --

9 COMMISSIONER VASQUEZ: I have a question on the last
10 speaker.

11 CHAIR GILMORE: Okay, John, to answer your question.
12 He was the owner of the property who had the stairs built.
13 And then he had some legal issues and --

14 COMMISSIONER VASQUEZ: Okay.

15 CHAIR GILMORE: -- ended up being incarcerated.

16 COMMISSIONER VASQUEZ: But he has no standing in this
17 particular case other than information?

18 CHAIR GILMORE: No, he is not a respondent in this
19 case.

20 COMMISSIONER VASQUEZ: All right, thank you.

21 CHAIR GILMORE: He is a member of the public.

22 MR. BAZEL: Thank you. I would like to introduce John
23 Wallace who is on the line just so the Committee will be
24 clear. When I got involved the owners, existing consultants
25 and BCDC staff didn't see eye to eye. Mr. Wallace is a new

1 consultant that has just been brought on. He has excellent
2 credentials, he can tell you about them. He is the one who
3 prepared the report that we submitted to staff and to the
4 Committee on Monday. Thank you.

5 CHAIR GILMORE: Thank you. Mr. Wallace, go ahead.

6 MR. WALLACE: Hi, good morning. My name is John
7 Wallace; I am an engineering geologist with Cotton, Shires
8 and Associates. Our company has, and me personally, have
9 over 30 years of experience in the Bay Area. I am currently
10 an engineering geologic member of the Structural Advisory
11 Committee for San Francisco and have been for three years.

12 So I was retained a couple of weeks ago to look at this
13 and so I essentially looked at it from a peer review
14 standpoint. I looked at the documents that were available.
15 Some of them still aren't available so my work is still
16 ongoing. However, I did prepare report. I don't know if
17 you folks have received that or not but just a summary of
18 kind of our, our findings. And when I say our it is Pat
19 shires is our lead geotechnical engineer. He has 45 years
20 of experience in the Bay Area so we are imminently qualified
21 and have performed many, many projects in and around San
22 Francisco.

23 So I am here to answer any questions, first of all, but
24 I did review the available documents and am in general
25 agreement with both Lu Gilpin as a geologist on his findings

1 and Rafael Montes on his basic engineering assessment of the
2 site. I don't have any real arguments there. And, and we
3 looked at the plans. There are no deep tiebacks that were
4 associated with that stairway. And if there were cliff-side
5 stability issues and that stairway was intended to be a
6 stabilizing force it would have deep tie backs and it
7 doesn't have those. So it appears that, you know, the
8 stairway was not intended to be a stabilization device.

9 MS. MALAN: You have one minute.

10 MR. WALLACE: As such, we think that most of it can be
11 removed. We agree with Rafael that it could be loading up
12 those older walls and it would be prudent to unload them and
13 get rid of that extra weight. So we think certainly this,
14 this stairway can be removed, mostly. There are certain
15 areas that, that present stability issues if you removed
16 certain areas, as well as safety issues, and in my report I
17 have a few photos illustrating that. But in general I think
18 there is some agreement between us and the BCDC staff.

19 MS. MALAN: Thirty seconds.

20 MR. WALLACE: And again, we have been only onboard for
21 a couple of weeks so our next step is to retain a contractor
22 and a landscape architect and put a set of design plans
23 together. Thank you.

24 CHAIR GILMORE: Thank you.

25 Are there any other members of the public who wish to

1 speak?

2 MS. MALAN: Yes, we have Luke Brugnara.

3 CHAIR GILMORE: He has already spoken.

4 MS. MALAN: All right. That's all we have.

5 CHAIR GILMORE: Thank you.

6 MR. PLATER: Chair Gilmore.

7 CHAIR GILMORE: Brent.

8 MR. PLATER: I just need to note that we object to the
9 introduction of this late evidence presented by Mr. Wallace.
10 It was not submitted in time as required by our regulations
11 so just want to note that we object to consideration of that
12 evidence, for the record.

13 CHAIR GILMORE: Thank you.

14 I am going to need a motion to close the public comment
15 period.

16 COMMISSIONER EISEN: So moved.

17 COMMISSIONER VASQUEZ: Second.

18 CHAIR GILMORE: Okay, okay. Moved by Eisen and
19 seconded by Vasquez. Okay, so we have closed the public
20 comment.

21 Are there any other questions or comments from
22 Commissioners before we proceed?

23 MS. MALAN: I don't see any. Oh, Commissioner
24 Wagenknecht.

25 COMMISSIONER WAGENKNECHT: Just quickly before we, you

1 know. I would, I would like to have the recommendation, the
2 staff recommendation restated for us.

3 CHAIR GILMORE: That was actually the next step, thank
4 you.

5 MR. PLATER: Chair Gilmore, would you like me to do
6 that or would you like to restate it?

7 CHAIR GILMORE: I would like you to do it please.

8 MR. PLATER: The staff recommendation is to adopt the
9 staff recommendation as the Committee's recommendation to
10 the full Commission. The recommendation includes issuing
11 proposed Cease and Desist and Civil Penalty Order
12 CCD2022.001.00, which requires the respondent to submit a
13 plan for review and approval by BCDC staff to remove by
14 December 31, 2023 all unauthorized structures on the cliffs
15 below 224 Sea Cliff Avenue in San Francisco and pay \$90,000
16 in administrative civil liability.

17 CHAIR GILMORE: Thank you. Are there -- if there are
18 no other questions I would accept a motion and a second on
19 this. Commissioner Eisen.

20 COMMISSIONER EISEN: Brent, I just want to be sure that
21 I heard correctly because I think I heard a different date
22 earlier. The date by which this needs to be done is
23 December 2023, right? Not this year but next?

24 MR. PLATER: That is correct. That is the final date
25 for the completion of everything. There are interim

1 deadlines in the proposed Order that would require them to
2 submit plans sooner than that.

3 COMMISSIONER EISEN: (Inaudible.)

4 COMMISSIONER VASQUEZ: Can't hear you.

5 COMMISSIONER EISEN: I am moving to accept the
6 recommendation.

7 COMMISSIONER WAGENKNECHT: Wagenknecht would second.

8 CHAIR GILMORE: Okay, Commissioner Eisen moves and
9 Commissioner Wagenknecht seconds. Can we please take a roll
10 call vote?

11 MR. TRUJILLO: Commissioner Eisen?

12 COMMISSIONER EISEN: (Inaudible.)

13 MR. TRUJILLO: I'm sorry, I didn't catch that.

14 COMMISSIONER EISEN: Yes.

15 MR. TRUJILLO: Commissioner Wagenknecht?

16 COMMISSIONER WAGENKNECHT: Yes.

17 MR. TRUJILLO: Commissioner Vasquez?

18 COMMISSIONER VASQUEZ: Yes.

19 MR. TRUJILLO: Chair Gilmore?

20 CHAIR GILMORE: Yes.

21 Thank you very much, everyone; we have a unanimous
22 decision.

23 (Thereupon, the Enforcement Committee meeting
24 continued to adjournment.)

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CERTIFICATE OF REPORTER

I, Ramona Cota, a Certified Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I transcribed the foregoing, prerecorded San Francisco Bay Conservation and Development Commission Enforcement Committee meeting audio file to the best of my ability.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of May, 2022



RAMONA COTA, CERT**478

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

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Peggy Atwell, Director, Administrative & Technology Services (415/352-3638; peggy.atwell@bcdc.ca.gov)

SUBJECT: Approved Minutes of June 16, 2022 Virtual Commission Meeting

1. **Call to Order.** The hybrid meeting was called to order by Chair Wasserman at 1:05 p.m. The meeting was held with a principal physical location of 375 Beale Street, San Francisco, California, and online via Zoom and teleconference.

Chair Wasserman stated: I am the Chair of BCDC. Several of us are here at the Metro Center, our headquarters building at 375 Beale Street. Other Commissioners are participating from other locations. Each of those locations has been identified on our Meeting Notice.

Chair Wasserman gave instructions to all attendees on procedures for participating in the meeting. He asked Mr. Atwell to proceed with Agenda Item 2, Roll Call.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Eisen, Commissioners Ahn, Beach, Brown (represented by Alternate Gilmore), Eckerle, Eklund, El-Tawansy, Gioia, Gunther, Lucchesi (represented by Alternate Pemberton), Moulton-Peters, Peskin, Ranchod (represented by Alternate Nelson), Showalter, Spering (represented by Alternate Vasquez) and Wagenknecht. Senator Skinner, (represented by Alternate McCoy) was also present.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Addiego, Burt, and Butt), Department of Finance (Almy), Sonoma County (Gorin), Governor (Hasz, Randolph), Santa Clara County (Lee), San Mateo County (Pine) and U.S. Environmental Protection Agency (Vacant)

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the Agenda.

Chair Wasserman gave instructions for participating in the hybrid meeting. He emphasized the following: Commissioners must have their cameras on, instruction for public attendees was given, those in attendance at 375 Beale Street were socially distanced, comments must be focused and respectful and emails received were noted.

Chair Wasserman stated: I do want to note that we are not going to hear in Public Comment today anybody who wishes to speak on Howard Terminal because we have had a public hearing on that matter. And there will be public comment available to some extent at our June 30 meeting when we take a vote.

Peggy, do we have any public comment?

Ms. Atwell replied: Yes, we have one hand raised. YiTong Wen I'm going to unmute you. Go ahead and unmute yourself and then you have three minutes.

Ms. YiTong Wen addressed the Commission: Okay. My name is YiTong Wen and I am an interested party to this matter, the sea cliff case off 224 Sea Cliff.

I was hit by rocks when I was on the public beach –

Chair Wasserman interjected: Excuse me, ma'am

Chair Wasserman continued: - but ma'am, please stop. Please stop, thank you. This is not Public Comment. This matter is on the Agenda, Item 9. So when we get to Item 9 we will recognize you.

Ms. Wen replied: Okay, that's fine.

Chair Wasserman acknowledged: Thank you very much. And I assume no Commissioners have people at their remote locations who wish to address us.

Ms. Atwell noted: I see no hands raised.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the June 2, 2022 Meeting.** Chair Wasserman asked for a motion and a second to adopt the Minutes of June 2, 2022.

MOTION: Commissioner Gilmore moved approval of the Minutes, seconded by Commissioner Nelson.

The motion carried by a voice vote with Commissioners Beach, El-Tawansy and Peskin voting "ABSTAIN".

5. **Report of the Chair.** Chair Wasserman reported on the following:

a. **New Commissioners.** I have three new members of the Commission to announce. First, I would like to welcome Stephan Lefkovits, who has been appointed by the Senate Rules Committee to serve as Alternate to Commissioner Pat Showalter. Next, I would like to welcome Matt Almy, who has been appointed by the Department of Finance as its new Commissioner. And finally, I would like to welcome Sunnyvale Mayor Larry Klein who has been appointed as Mayor Pat Burt's Alternate by ABAG Chair Mayor Jessie Arreguin.

We did have this meeting this morning. It was the first meeting of the Strategic Planning Working Group led by Bluepoint Planning. We had a good interactive discussion based on some input from staff that Commissioners added it to and discussed to some extent. We will move the Strategic Plan forward.

A number of us observed that in certain respects this Strategic Plan is more challenging than our previous ones have been because our responsibilities for planning for rising sea level have become more and more important and are a more critical part of our activities.

At the same time our permitting, regulatory and enforcement activities continue as our responsibilities under McAteer-Petris. And we most certainly don't want to neglect those nor do we want to neglect attention to very important staff issues including succession, attraction, retention; the fact that state salaries are too low and the overall concerns of staff that relate to some of those.

So it is going to be a careful balancing here that is a little more difficult than we have done in the past. I have no doubt that we will succeed well.

And I will repeat one comment I made it was echoed by others as well. Five years ago when we talked about adaptation most of the focus statewide in our region focused on mitigation for climate change and there was a real struggle to bring adaptation in.

Today I know that there are a number of people concerned about mitigation who feel it switched. I don't think that is the case but certainly adaptation is much more in the forefront of the public's mind and the elected official's minds and staff's mind.

I think that is a good thing. I think it is a token of our success with the help of many others including our best PR person, John King of *The Chronicle*.

b. Next BCDC Meeting. Our next Commission meeting will be held on June 30, 2022. Each Commissioner and Alternate has received an e-mail from me in which I have called for a special hybrid meeting of the Commission, pursuant to our regulations. That announcement is also on the BCDC website.

At that meeting we will hear the Final Staff Recommendation on the Oakland Athletics' proposed Seaport Plan Amendment for the Howard Terminal at the Port of Oakland.

We will request public comment as we are required to do so recognizing we've had a full public hearing on the issue.

And there will be vigorous Commission discussion and a vote on the Staff Recommendation.

I want to remind the Commissioners and the public that the meeting will start at 9:00 A.M. in the Board Room here at the Metro Center as a hybrid meeting with people participating remotely. I will repeat that – our next meeting on June 30th will start at 9:00 A.M.

Please make sure that you are in the Board Room or at a noticed ZOOM location no later than 8:45 A.M. so that we can all get set up and start promptly at 9:00 A.M.

There is the potential that the meeting will run through the day and perhaps into the evening depending on the extent of public comment and the extent of discussion and debate amongst the Commissioners. So please arrange your schedules to be here on time and to stay throughout the meeting. This is an important decision for the Commission.

I also want to ensure that Commissioners and the public know that Commissioners who were unable to attend the public hearing on the proposed amendment on June 2 will be able to participate and vote on the item, provided that each has thoroughly reviewed the Minutes and all materials associated with and considered by the Commission at the public hearing on BPA No. 2-19 on that day.

Commissioner Showalter was recognized: I just wanted to take this opportunity to offer a warm welcome to my Alternate, Steve Lefkovits and thank him so much for applying and agreeing to being appointed by the Senate Rules Committee.

As you know, I've been on this Commission for quite a while and without an Alternate, so this will add some extra manpower to BCDC which is always good and give me a little bit of cushion which I appreciate.

Steve brings to us a very strong policy background being a graduate of the Woodrow Wilson School at Princeton University. He spend a career locally in real estate particularly affordable housing but also has served on the San Francisco Regional Board which was a major education in California and especially local water policy that is very germane to what BCDC does.

I just wanted to offer a warm welcome to Steve. Thank you.

c. **Ex Parte Communications.** That does bring us to Ex Parte Communications. If you have had ex parte communications on an adjudicatory matter which does not include the Seaport Plan Amendment application you are required to report that. You are required to report it in writing. You may do so verbally as well.

If you have had contacts on that Howard Plan you may do that although I would encourage you to do that at our next meeting since it is more relevant to that meeting than today.

And the point of reporting the ex parte communication is so that everybody who is concerned knows that you have received additional information of one kind or another.

So I would suggest that on Howard Terminal you hold that, as I will do, but if there is anybody who wants to make a verbal ex parte communication briefly, now is the time to do it. (No comments were voiced)

That brings us to Item 6, The Report of the Executive Director. Take it away, Larry.

6. Report of the Executive Director. Executive Director Goldzband reported: Thank you very much, Chair Wasserman.

The big news today is that I am reversing course on my decision to bring our staff back into our office on a hybrid basis this July.

While the current COVID surge is not as dangerous as its predecessors due to the vaccines, we all know that it is very contagious. So, it seems like an appropriate and prudent course of action to delay our return to this building until September.

It is also appropriate to announce this decision today, for exactly 138 years ago in 1884, the amusement park at Coney Island in Brooklyn opened the Nation's first roller coaster. It was modeled on the individual railroad cars used by coal miners and its occupants moved at an astonishing six miles per hour on the bumpy track.

Here at BCDC we have been on a bumpy figurative roller coaster track trying to determine when we can get back into the office – perhaps in September. We'll keep you informed of our progress during the summer.

a. **Budget And Staffing.** First off, I want to thank Commissioner Eckerle and the Ocean Protection Council members for unanimously approving BCDC's funding agreement with the OPC Tuesday. The OPC was able to step forward and will be providing a little over \$2 million to BCDC over the next few years to help implement our Bay Adapt Program which you will hear about later during this meeting as well as our Beneficial Reuse Program. I want to specifically thank OPC Director Mark Gold, Commissioner Eckerle and staff member, Ella McDougall. Commissioner Eckerle, would you like to say a few words?

Commissioner Eckerle spoke: Thank you, Larry. Just to put a little more detail on that announcement; our Council enthusiastically supported this project which really builds on the progress and the success of BCDC's Adapting to Rising Sea Tides Program and the Bay Adapt Joint Platform.

OPC and BCDC staff worked closely together for many months to develop a project that is going to further catalyze coordinated sea level rise adaptations across the Bay Area and meaningfully advance implementation of the Joint Platform.

I want to extend a big thank you to Jessica and Dina for their ongoing partnership on this project.

At its core the goal of this funding is to develop a regional sea level rise adaptation guidance for San Francisco Bay which will include criteria and minimum standards for resilient planning and provide a framework for Bay Area jurisdictions to create protective, equitable and standardized sea level rise adaptation implementation plans.

The project will include establishment of a task force of regional leaders including elected officials and representatives from local agencies and communities to champion the regional sea level rise planning process and guide the development of the Regional Guidance.

Most critically, this Guidance will include a shared set of criteria, minimum standards and a framework for local jurisdictions to standardize their implementation plans building off of Bay Adapt/One Bay Vision.

The Guidance will include considerations such as approaches and methods to determining and addressing cross-jurisdictional impacts, evaluation of regional and local trade-offs, new and redevelopments, habitat, transit, critical infrastructure, contaminated sites, environmental justice communities, standards for engagement outreach and equities, priority planning and project areas and design standards.

Following the development of the Guidance BCDC will scope an incentive structure to encourage local jurisdictions to develop sea level rise implementation plans that are consistent with the criteria and the standards in the Final Guidance.

So these incentives could include prioritized funding for project implementation so local jurisdictions that develop plans that are consistent with the Guidance.

This project also allows for increased BCDC staff capacity to help communities utilize the criteria and the standards for their sea level rise planning efforts.

And as we all know, this piece is really critical to support communities that are under-resourced or have been historically or are currently burdened by environmental injustice and are most vulnerable to the impacts of sea level rise.

Finally, the funding will also support the expansion of eco-outlets to integrate the progress and status of adaptation planning and projects within the Bay Area. This will facilitate increased accessibility of resources and knowledge sharing across the Bay communities and organizations.

And we really look forward to continuing to work with BCDC staff on this effort. So thank you.

Executive Director Goldzband acknowledged: And thanks again to the OPC.

More good news! I am very pleased to let you know that our cohort of summer interns arrived in our office for onboarding on Monday.

Like last year, we have selected three undergraduate interns from a very diverse and remarkably qualified group of applicants. This year we also have a COAST Intern – COAST is an acronym that the California State University’s Council on Ocean Affairs, Science & Technology. The three summer interns we selected through our diversity interview process are:

(1) Justina Lee, an Earth Science major at Stanford, who will work with our Racial Equity Team and the Planning Division;

(2) Gilbert Yu, who will start at the Bren School at UC Irvine in the Fall, will work with our GIS team; and,

(3) Sayli Limaye, an Ecology, Behavior, and Evolution major at U.C. San Diego, who will be part of our Sediment Unit.

And, Amelia Stonkus, who is double majoring in Biological Sciences and Environmental Earth and Soil Sciences at Cal Poly San Luis Obispo, is our COAST intern this summer. And, yes, the interns will make a presentation in August describing their summers, just as they did last year.

I also want to let you know that one of our Sea Grant Fellows, Jaime Lopez, was recently awarded the Outstanding Student Leader Award for the College of Natural Sciences at Chico State University from which he earned his Master’s degree.

b. **Policy Issues.** While I’m done kvelling, I do have even more good news. On June 2nd, the Office of Administrative Law approved the amendments to the Commission’s CEQA regulations that you adopted last February.

Five days later, OAL approved the revised regulations concerning the Commission’s enforcement procedures that you adopted in April.

Both sets of approved amendments are posted on our website and will go into effect on the first of October.

I hope to let you know in a few weeks that OAL has finished its review of our administrative/procedural, permitting, and planning regulations that you adopted in early May – keep your fingers crossed.

Finally, I would like each of our Commissioners and Alternates to pay careful attention to this request. As the State’s fiscal year ends in fourteen days, please make sure to complete and sign any expense reports as soon as possible.

That concludes my Report Chair Wasserman and I am happy to answer any questions.

Chair Wasserman asked: Are there any questions for the Executive Director? (No questions were voiced)

7. **Consideration of Administrative Matters.** Chair Wasserman stated: Due to various issues that have come up regarding this Administrative Matter we have decided to submit this to further review. We will move directly to Item 8 and not take this matter up today.

8. **Commission Consideration of a Contract for Workshop Facilitation Services.** Chair Wasserman stated: Item 8 is Consideration of a Contract to Provide Facilitation Services for a Commission Workshop that will help create the Commission's Racial Equity Action Plan. Katharine Pan of our Racial Equity Team will present the Item.

Principal Shoreline Development Analyst Pan presented the following: Good afternoon, Commissioners. I am Katharine Pan and I am a Principal Shoreline Development Analyst with the Permits Team at BCDC, as well as a member of our Racial Equity Team. Today I am pleased to be presenting you with this Staff Recommendation.

That Recommendation is for the Commission to authorize the Executive Director to execute a contract with Ferdman Consulting for \$24,972.50 to provide workshop facilitation services associated with developing BCDC's first Racial Equity Action Plan.

And to authorize the Executive Director to amend the contract as long as the amendment does not involve substantial changes in scope or exceed 10 percent of the total amount of the contract.

On June 3 you were provided with a Staff Report that provides some background on the proposed workshop and the Racial Equity Action Plan.

As you have heard in previous briefings, BCDC staff has been working for the past two years on a Racial Equity Action Plan for the Agency.

The purpose of the Plan is to advance racial equity in BCDC's operations and activities by establishing agency-wide goals and objectives related to equity in areas such as staffing and communications, and in our planning, permitting and enforcement programs over a five year period.

When it is finished, this Plan will be our roadmap for meaningful change describing where we want to go as an agency and how we can get there through concrete actions with clear responsibilities and metrics.

As part of this process, the Racial Equity Team is organizing a workshop for the Commission and the public to interact and provide input on the Racial Equity Action Plan as stakeholders.

To date, the Team has done a lot of work internally to identify issues to be addressed in the Plan. Now we are in the process of preparing a working draft of a vision and goals, a framework for how the actions in the Plan will be organized and presented, and a preliminary set of actions and approaches to potentially include.

This workshop will be a forum where the Commission and the public can review and react to the Racial Equity Team's work by identifying their priorities for racial equity at the Agency, tradeoffs and preferences among different strategies, gaps that have yet to be addressed, ideas for Plan actions and so on.

In April, the Racial Equity Team issued a request for proposals for a consultant to help us plan and facilitate this workshop. We were looking for a consultant with a successful track record facilitating multi-stakeholder workshops, particularly in relation to racial equity work on behalf of public agencies.

We received four bids in total and evaluated them according to state law and established scoring protocol. As a result we have selected Ferdman Consulting, a boutique consulting practice focused on diversity, equity and inclusion, with over 38 years of experience in the field.

Ferdman will be partnering with Bridges Intergroup Relations Consulting which supports organizations and communities in actively and productively exploring their differences in building resilient relationships.

Past projects for Ferdman and Bridges, both together and separately, include racial equity listening sessions for the California Water Resources Control Boards; California Speaks, a statewide town hall on health care reform; working with San Diego County on building inclusive leadership and diversity and inclusion capacity; working with the City of Los Angeles on a homelessness street engagement strategy; and work with various cities to facilitate community dialogues on policing.

We believe their expertise will be extremely valuable as we work to prepare content for this workshop and activities that will promote a creative and productive discussion, and that their experience in facilitation will be key to a successful workshop.

That concludes my presentation and the Recommendation is up on the screen. I am happy to take any questions if you have any.

Chair Wasserman asked: Do we have any public comment on this item?

Ms. Atwell noted: We have one hand raised, Mr. Brugnara. Are you looking to comment on this Item?

Mr. Brugnara answered: Yes. I actually wasn't going to comment on this matter but I am now because it's a public hearing. And I think it's great to have racial inclusion as being a major business owner for 30 years.

But, you know, just the inference that there is exclusionary practices going on at this Agency, just by needing to have these workshops, I think is counterproductive to the limited amount of time that this Agency has to work on and investigate very serious matters that involve the environment.

Unless there is some sort of track record of litigation occurring at the BCDC of being exclusionary and racially insensitive I think it is not prudent to spend any money on any workshops, certainly not \$24,000, which is a significant amount of money. But moreover, what it does is it takes away from the time and the energy of this Commission on social issues that are not the focus of this Agency. Thank you.

Ms. Atwell announced: There are no more public comments.

Chair Wasserman continued: Are there any comments or questions from Commissioners? (No comments were voiced)

I am going to make a very brief comment. This Commission has adopted an amendment to the Bay Plan to address social equity and environmental justice. Both of those issues are ones that our government agencies, in general, have not paid enough attention to in many respects. And that was clearly a decision of this Commission in adopting that amendment.

So while I appreciate your comment, sir, and I do not think there are specific instances of discrimination, we, as an institution of our government, have the responsibility to change course on these issues and this workshop is an important step in doing so.

Commissioner Ahn chimed in: Thanks for those comments, Chair Wasserman, I couldn't agree more. The only addition I would have is I really do not want any racial equity issues that we might be addressing at this Commission to rise to the level of litigation, of all things.

I think generally the Commission, and the environmental movement more generally, should be doing everything they can to increase its efforts at addressing diversity, racial equity, and just generally making itself more accessible to communities across the United States. Thank you.

Chair Wasserman acknowledged and recognized Commissioner Nelson: Thank you. Commissioner Nelson.

Commissioner Nelson spoke: A similar comment. I just realized with a small amount of horror that I first appeared before this Commission 38 years ago, almost exactly to the date. And for the vast majority of that time the Commission did not address equity issues. I cannot think of any examples of for decades when the Commission addressed those issues.

I think the new policy that the Chair referred to has changed the way our staff looks at applications, changes the way staff presentations are made to us and changes the way the Commission discusses equity issues that we previously did not discuss when we consider permits. I think that is an enormously constructive change and when the time is right I would be happy to support the motion.

Chair Wasserman continued: I do not see any other hands and Peggy is not nudging me. Katharine, will you present the Recommendation.

Ms. Pan read the following into the record: Staff recommends that the Commission authorize the Executive Director to execute a contract with Ferdman Consulting for \$24,972.50 for workshop facilitation services for a public workshop associated with the development of BCDC's Racial Equity Action Plan, and to authorize the Executive Director to amend the contract as long as the amendment does not involve substantial changes in scope or exceed 10 percent of the total amount of the contract.

MOTION: Commissioner Ahn moved approval of the Staff Recommendation, seconded by Commissioner Nelson.

VOTE: The motion carried with a vote of 15-0-1 with Commissioners Ahn, Eckerle, Eklund, El-Tawansy, Gunther, Moulton-Peters, Peskin, Showalter, Wagenknecht, Gilmore, Pemberton, Nelson, Vasquez, Vice Chair Eisen and Chair Wasserman voting, "YES", no "NO" votes, and Commissioner Beach voting "ABSTAIN".

Chair Wasserman announced: The motion passes. Thank you very much. We look forward to this workshop and related efforts.

Ms. Pan acknowledged: Thank you.

9. Public Hearing and Vote on Recommended Enforcement Decision and Proposed Cease and Desist and Civil Penalty Order No. 2022.001.00. Chair Wasserman stated: That brings us to Item 9 on the Agenda, a Hearing and Vote on the Enforcement Committee's Recommendation for the Commission to Issue a Proposed Cease and Desist and Civil Penalty Order Number 2022.001.00.

I ask now that any representatives of the respondents, PSG Mortgage Lending Corporation and PSG Capital Partners, Inc. who wish to present today come forward and identify yourself by name and identify the respondent you represent for the record. This is only identification, not presentation yet.

Mr. Bazel: Mr. Chair, Members of the Commission, good afternoon. My name is Larry Bazel and I am here representing Paul Greenfield, agent for the owner of the property, PSG Mortgage. I am here to speak on behalf of Mr. Greenfield and the owner, PSG Mortgage.

Chair Wasserman acknowledged: Thank you.

BCDC enforcement staff and the respondents will each be provided no more than 15 minutes to make a statement on this matter. All speakers must limit their presentations and comments to the evidence already made as part of the enforcement record that has been published online with this meeting's Agenda and the policy implications of such evidence. The Commission will not entertain the presentation of any oral testimony.

I would ask Commissioner Gilmore, the Chair of the Enforcement Committee, for which we thank you, to give a brief summary of the Committee's public hearing on this matter that took place on May 25. Chair Gilmore, you have the floor.

Commissioner Gilmore addressed the Commission: Thank you, Chair Wasserman. On May 25 the Enforcement Committee held a public hearing and voted on this proposed Order to mandate the removal of an unpermitted staircase that was constructed to provide access from the private residence at 224 Sea Cliff Avenue in San Francisco, down the cliff face adjacent to the residence to the beach below. The staircase was built without any BCDC permits.

After hearing presentations by Commission staff and by representatives of the respondents the Enforcement Committee voted unanimously to adopt the Executive Director's Recommendation as the Committee's Recommendation to the full Commission.

The Order requires the respondents to remove the unpermittable fill and to restore the cliff face and beach as much as possible to their original states no later than December 31, 2023, and imposes a \$90,000 administrative civil penalty.

Pursuant to BCDC regulations Section 11332 entitled "Commission Action on Recommended Enforcement Decision," I want to remind the Commissioners that the Commission is limited to one of the following options when the Commission acts on an Enforcement Committee's recommended enforcement decision:

One: The Commission may adopt the recommended enforcement decision without any change to the proposed Cease and Desist and/or Civil Penalty Order. This is the Enforcement Committee's Recommendation.

Two: The Commission may dismiss the entire matter by voting not to issue any proposed Cease and Desist order and Civil Penalty Order;

Three: The Commission may remand the matter back to the Enforcement Committee for further action as the Commission directs;

Or Four: The Commission may reject the recommended enforcement decision and decide to consider the entire matter de novo. In that event, the Commission shall continue the public hearing to the next available Commission meeting when it shall proceed in accordance with the same procedural requirements as the Commission must follow under Regulation Section 11327.

At this time, Chair Wasserman, I would ask you to open the public hearing on this matter.

Chair Wasserman stated: Thank you very much. We will now open the public hearing on this matter.

Ms. Atwell informed the Chair: We have two hands raised. First will be –

Chair Wasserman interjected: Wait, wait, no, no, no, no, no; good try. We will take public comment but not first.

We are going to start with the staff presentation. This will be made by attorney Brent Plater.

Mr. Plater presented the following: Thank you very much, Chair Wasserman. Thank you very much, Commissioner Gilmore and the Enforcement Committee.

Commissioners, today you have an opportunity to resolve one of BCDC's oldest, most visible and most vexing cases on its enforcement docket. As Commissioner Gilmore mentioned, it involves a very large project sprawling down the cliffs at a property in San Francisco called 224 Sea Cliff Avenue. I would like to just share a few highlights from the photos that we presented on May 25 to the Committee so that you can see exactly what we are talking about.

This is 224 Sea Cliff Avenue in San Francisco. You can see in the distance here this is Baker Beach. Baker Beach and this entire cliff face across which the staircase descends down to the beach below, is described in our Bay Plan as a priority use area for public parks and beaches.

But in 2002 through 2004 the then-owner of this property initiated a project to build this secondary deck. What we call a walkway or promenade that comes out to this point here at the cliff face and this massive stairwell that just extends down to the beach below and just crosses the mean high tide line. So it crosses BCDC's 100-foot shoreline band jurisdiction and also its Bay jurisdiction.

However, the permits it submitted to the City and County of San Francisco and the plans that they submitted to the City and County of San Francisco were based on fraudulent information presented to the City. I will get to that in a minute to show you exactly how that occurred. And no permits were ever applied to BCDC for this project within our jurisdiction.

In 2004 BCDC enforcement staff started an enforcement action to investigate this project. However, shortly after that investigation was started the then-owner of the property, Mr. Brugnara, was accused and convicted and ultimately incarcerated for several crimes. Subsequent to that his assets, including this home, became embroiled in some very complicated bankruptcy proceedings that continue to this day.

With ownership of this property no longer certain the enforcement case was hampered and stalled for a number of years. But staff continued to keep an eye on the bankruptcy process and tried to determine when ownership might become clarified enough for the enforcement process to proceed.

That occurred in 2020. In 2020 the respondents were able to convince the bankruptcy court to authorize them to have a non-judicial foreclosure of the property, take ownership of it and try to market it at a higher price for sale so there would be additional assets to distribute through the bankruptcy proceeding and increase the probability that the respondents would get some recovery of the money that Mr. Brugnara apparently owed to them.

Shortly after that BCDC enforcement staff approached them. And recognizing that the acts of Mr. Brugnara harmed all of us, including the public and the folks involved in the bankruptcy proceeding, we offered to resolve this matter without any formal enforcement through a permitting process that would require any subsequent purchaser of the property to initiate some kind of removal process for this illegally constructed stairwell.

Unfortunately, the respondents rejected that offer and did not engage in any further negotiations with us.

We then investigated some of the permits and plans a little further at that point and we realized that the permits and plans that were initially submitted to the City and County of San Francisco back in 2002 through 2004 contained some fraudulent information. What we saw, and you can see in the black and white portion of your screen, is that the property boundary for 224 Sea Cliff on the plans submitted to the City actually drew the property line extensively extending out into the Bay to make it appear like the entire construction would occur within the private property boundaries of the 224 Sea Cliff parcel.

In fact, as you can see in color next to it, the private property parcel as defined by the City and County of San Francisco in their property information map is much more closely hewn to the cliff face and almost all of the stairwell construction is, in fact, outside of the private property boundary. These lands are mostly owned by the City and County of San Francisco; most of the cliff face is owned by the City and County of San Francisco.

And then at the base where the landing for the stairway hits the beach, a portion of it crosses just below the mean high tide line and so that area is owned by the State Lands Commission and currently leased to the National Park Service and managed by the Golden Gate National Recreation Area. So there are in fact three different jurisdictions that this project crosses.

At the time when we were trying to negotiate some sort of non-formal enforcement process with the respondents to try and resolve this matter we determined that we would break this into three distinct violations.

One's the unpermitted but permissible construction that occurred within the private property boundary.

A second that involved the encroachment on the property owned by the City and County of San Francisco.

And a third violation that involved the encroachment on the State Lands Commission property that is now leased to the federal government.

Our idea in doing so was to try and make these violations easily resolvable by the respondent. We presumed that the portion on private property could be resolved very quickly. And then if they were to obtain consent from the City and County of San Francisco, perhaps

resolve that violation relatively quickly. And then tackle the more complicated elements of the State Lands Commission and federal government authorizations at a later time. So that these violations could get resolved; that none of the violations would hold up any of the others from getting resolved. Unfortunately, as I mentioned, they decided to reject any of those opportunities.

So what we have before you then is a stairwell. These are some more views of this project that is unpermitted; largely unpermittable because there is no authorization from the State Lands Commission, the federal government or the City and County of San Francisco for this trespass.

And we have subsequently learned from the federal government the State Lands Commission and the City and County of San Francisco that they have no intention of ever...ever authorizing these encroachments.

So the proposed Order that is before you today will order the respondents to remove these portions that are off of its property as much as possible without endangering any stability of the cliffs, restoring the landscape to as much as possible a naturalistic condition so that the visual appearance of it is no longer hampered by this large structure.

The Order also fines the respondents a maximum administrative civil liability of \$30,000 per violation. It is only for the days in which they have owned the property. The penalties go back only until 2020. But because of the scale of this violation, the per-day violation amounts are at their maximum levels, \$2,000 per violation, so that the total of the violations and penalties that are proposed sum to \$90,000.

Now, there are a couple of things to note. The essential allegations of this complaint have not been contested by the respondents.

They have raised a series of affirmative defenses and procedural arguments that are very similar to the arguments raised by Mr. Sweeney in the cases that were resolved in favor of BCDC very recently in the Sweeney manner. They are addressed in the submissions that staff have put before you but I do not believe require much further discussion today because they have already all been dismissed by courts before.

There is also the potential for a sale of this property being approved by the bankruptcy court to another owner, a new party. If that sale is approved by the bankruptcy court and is actually ultimately concluded, the Order that you issue today will still hold against the respondents. They will still be required to comply with the Order, pay the penalties and remove the structures that were illegally built here along this cliff face.

The bankruptcy sale as proposed has already incorporated within it a decrease in the sale price of a million dollars specifically to address the requirement to remove these stairwells, so they are budgeting in those negotiations to address these, the costs that are associated with resolving this violation.

And if that sale does conclude we will be, of course, willing to work with the new owner to help implement any plans that they hammer out between themselves, the current respondents, the current owners, and the new owner.

But if those for some reason are bogged down we will always retain the option of coming back to the Enforcement Committee or the full Commission and having an Order issued against the new owner of the property.

So in conclusion I just want to note that this has been a very vexing, long-running case that has been on our docket for many years. We feel like this is the most opportune time in decades to finally resolve this outstanding enforcement matter and bring some restoration to this site after many years of the structure standing there without anything, any opportunity to address it. And we look forward to answering any questions you may have about our enforcement matter today. Thank you very much.

Chair Wasserman continued: Thank you.

Mr. Bazel, you have 15 minutes to make your presentation.

Mr. Bazel stated the following: Thank you. There are two respondents on this proposed Order. One is the current owner of the property. Paul Greenfield has been given authority to act as the agent for the owner in this matter so that is why I am here.

The immediately previous owner of the property is named as a respondent on this Order. But not Mr. Brugnara or any of his corporations. Not any of the people who caused the problem.

The fraudster is not here. So whatever problems the fraudster caused, the current owner, and as a matter of fact, the immediately previous owner are not responsible for it and should not be penalized for his acts.

What I am asking for today are two things. One is to postpone the decision for a month or two just to continue this hearing, for reasons that I will explain. And the other is to drop the penalties.

The history, as we understand it, and we do not have any personal knowledge but this is what staff has said and we are not contesting it. The staircase was constructed starting about 20 years ago. And there is no dispute that in 2004 BCDC opened the enforcement case but did not do anything for 18 years.

By not prosecuting staff created a problem for, not just for itself but for everyone out there that bought the property or that lent money on the property because there was not any record of any problem here, there was not any disclosure to be made.

Now the reason that staff says, bankruptcy, maybe ownership was complicated. It was not that complicated. You could go down to the county recorder's office and figure out who owned the property. Bankruptcy cannot be the only problem because the property is still in bankruptcy. The current owner is in bankruptcy.

For whatever reason BCDC staff did not act for nearly 20 years and we should not bear the brunt of its suddenly saying, oh my God, we need to deal with this.

The owner has no cash. It has no assets other than the property. It is in bankruptcy. It has been trying to sell the property, as Mr. Plater said. It is in contract but the sale has not closed.

Paul Greenfield has been stepping up to pay the costs that need to be paid to get this thing moving along.

I have been involved for several weeks and I have been trying to get this into a situation where we can settle it amicably.

We have retained new consultants, an engineering geologist and a geotechnical engineer. The previous consultants that had been retained did not see eye to eye with BCDC staff.

On May 23 we sent in a conceptual removal report. Next slide, please. And this was the basic concept. At that point we had just brought on the consultants; the consultants had been to the property. And the main question that needed to be worked out was, okay, if we agree, we take out the stairs and we keep the old walls that were there. They were not subject to the permitting requirement. And the things that need to remain for structural reasons. What do you remove? So our consultants came in and they said, okay, here is what we keep, here is what goes.

Since then we have retained a surveyor. The surveyor, they are preparing a topo map. This is a steep cliff.

A removal expert. It is one thing to say we will take out the stairs; it is another thing to figure out exactly how you cut up the pieces and haul them away.

On June 14 we submitted a revised figure to staff.

This is not in the record and it is just for the Commission's information. We provided more detail on exactly where we would cut and what we would remove.

On Tuesday we had a video call and I would say we are very close. I think there was conceptual agreement on at least most of the removal. Both sides are still talking about whether certain things stay or go but that's in the details. We are awaiting additional comments from staff.

We will be retaining a landscape architect.

And we are preparing a submittal for July 1, which is the first date in the Order. Whether or not the Order gets issued we plan to get something in.

So why am I asking for postponements of a month or two?

Final agreement is still needed. There is always a possibility that our experts and staff will disagree on something.

We can agree to a stipulated order here. Once we get the details on the removal work I do not see any problem in writing this up and bringing this back.

What that does is it avoids litigation, it avoids the adversarial position that we are now forced to be in. If I had my druthers I would not be here, I would not be making this argument. I certainly would not be filing suit within 30 days but that is what you are making me do. Because if this Order is issued we have got to file suit within 30 days or we lose all rights to challenge it forever, so we file suit.

And we try not to prosecute the suit because we want to work this out. This is extremely settle-able and I think we are very close to being there.

The other problem with all this is that it has the potential, at least, to scare the buyer away. The buyer is not closing, has not closed yet.

Now, the one comment I would like to make on something that Mr. Plater said is that the price was reduced by a million dollars so that the buyer could take responsibility for doing all this.

But you are now making the seller do all this and that is not helping everything go through and get resolved. That is just another bump in the road. Maybe we will get past that. I sure hope so.

But it doesn't need to be that way. There is no reason, especially now. Whatever staff may have thought last fall when, let's say before I was involved with this. Now we are here, we are ready, willing, able. And that deadline, the pressure of solving this rather than coming back to you is, will move things along better than actually issuing the Order, which has one deadline and then no additional deadlines on negotiation. Well, the next deadline is at the end of the year, let's put it that way.

From our point of view, the Order is imperfect. The key language is both too specific and too vague.

We would like if you do issue the Orders add the phrase "or equivalent" to paragraph 1.C. Paragraph 1.C says essentially that we take out that part that should not be left there and we would like a little flexibility in there.

The penalties are inappropriate here because the owner did not cause the problem. The owner's agent is solving the problem. Nearly 20 years passed when staff did not prosecute.

Luke Brugnara, who caused the problem, is not here, another legal issue.

Although current owners can be held liable in nuisance, there is case law that makes clear that the current owner needs notice and an opportunity to respond to resolve the nuisance.

What's notice and a reasonable time? Here certainly after 20 years of staff inaction, and an owner with no assets other than the property, what we are doing is within a reasonable time.

The penalties are excessive here. This is really only one violation. There is one construction without a permit. Three properties are not three violations. Ownership of property is not a violation. If a penalty is imposed it should be reduced to \$30,000.

There is no Enforcement Committee report. There used to be. Nowadays it seems that staff has suggested, and I do not know whether there is a previous history on this, but a box-checking exercise.

Anyway, among other issues in here the proposed Order would hold the previous owner liable and I do not see any grounds to do that. The previous owner has no ownership interest; it did not do anything so I do not see any liability there.

Our conclusion is to postpone the decision for a month or two. Give us time to try to reach agreement on this try to avoid litigation. There are, incidentally, many legal issues that we have raised.

Mr. Plater says they were all resolved by the Sweeney case, we disagree. I drafted them to go beyond the Sweeney case, which I know something about. If you are going to issue the Order and/or equivalent in paragraph 1.C, then please drop the penalties against the owner.

Let me say, not only are they different from Sweeney but given the short time here and the Commission's interest, I am sure the Commission doesn't want me to go into all the details of those legal arguments. I do not want to go into those legal arguments. I would like to resolve this. We are close. Let us resolve it. Let us negotiate a penalty if one needs to be imposed.

I think picking up on one phrase that Mr. Plater finished with, he said this is an opportune time. I think this is an opportune time for settlement, not for issuing an Order. Thank you. Any questions?

Chair Wasserman responded: We will see. Thank you, sir.

Now I think it is appropriate to hear from the public.

Ms. Wen commented: My name is YiTong Wen. I am an interested party to this matter and the BK matter.

I was hit by rocks down in the public beach. And the rock that hit my, almost hit my head but it missed and hit my arm.

And I have photos of evidence and complaint with the building department and the BK court. And also I have an engineer to report this with the building department.

And the engineering said the northeast; the northeast cliff wall is failing. The reason is the pressure and the weight from the stairs went to the opposite side to the north east wall and it needs pinning and shotcrete to fix this.

This is also with the BK court in a declaration. And too, the photo that I presented, it shows that at least two to three truckloads of rocks in one day. And the size of the rocks are baseball size to a basketball size.

There is another top contractor went over to inspect. It is called, the company is called Van Acker. His name is Van Acker. He also has a declaration with the BK court and with the building department. Shows that he was there for at least three hours and minutes away he almost got hit by rocks. And he has to direct two families away from the public beach to stay away from the danger. I was injured. And there is another person also filed complaint on this property.

And also I showed this to the property owner PSG and Paul Greenfield. Paul Greenfield has \$800 million in his software company and he just lied to you guys that he has no money.

Also I spoke to the buyer yesterday. His name is Ali Moayed. And he is not buying the cliff. Excuse me; he is not buying the property. He has already moved on. He used his money on a different property and now he is trying to get his money from them, the deposit.

So I was asking him is he buying it because I want him to fix the cliff so that other people won't get killed. Because I almost got killed and I do not want this BCDC to keep dragging on, depend on the property owner lies.

They laughed at me and said, this no big deal, what are you talking about? This is, they never even brought it up the BK court when I brought it up with declaration and engineer report.

Ms. Atwell interjected: Thank you, Ms. Wen.

Ms. Wen continued: And I am not the only one.

Ms. Atwell repeated: Thank you very much.

Ms. Wen continued: I am not the only one who got hit, who got injured. And they are not even from San Francisco. They are down in Los Angeles and San Jose.

Chair Wasserman interjected: Thank you, ma'am. We are sorry for your injury.

Mr. Brugnara was recognized: I want to touch on what YiTong Wen said. There is no buyer for this property, let's make this clear; this guy Moyet.

And there was a bankruptcy hearing last week with Judge Montali where the case is dismissed on Friday. He already issued an order last week where this case is dismissed. Moyet is trying to get his deposit back. There's no buyer for this property.

It lies with Greenfield who is the note holder. He is using PSG basically as a pawn because it is a shell entity and Greenfield is worth probably a billion dollars and they are just trying to, you know, sweet talk you to not do anything.

The reality though is, you know, I built this, these decks and this cliff with permits. And I am not going to get into the details, now is not the time. I am not going to do it in three minutes, you know.

But I will tell you that the northeast cliff, and I even said this on the BK record, is an extreme danger to the public. Someone is going to get killed there and that is adjacent to the stairs underneath the promenade. The entire cliff wall is failing.

The three engineers and contractors, Nitti Construction who did the Cliff House and Alcatraz and Van Acker, they both said it needs to be shotcreted and pinned.

And that's right underneath the promenade because huge amounts of rocks are falling and have been for 20 years.

I was supposed to get that done when the stairs were put in because the load is being transferred from the stairs and the decks to that northeastern wall and it has basically made that northeastern wall collapse.

I mean, my position is what you really need to do is you need to go in and shotcrete and pin that entire northeastern wall and finish the project so that that northeastern wall doesn't collapse in totality.

But you know, in the BK filing there's three truckloads of rocks that fell onto the stairs. You know, the size like Wen said, of basketballs. And that has happened for years. The whole cliff is deteriorating from the weight load because it needs to be shotcreted and pinned, okay. So you know, either the entire thing needs to be removed in totality to preserve the northeastern cliff wall or the northeastern cliff wall needs to be shotcreted and pinned. That's the resolution. But, you know, you can't delay.

And here is the issue. With Greenfield and PSU, they don't give a shit. I am a lifelong San Franciscan, fifth generation San Franciscan. And, you know, I got this group that was willing to shotcrete and pin that wall and they just simply don't want to do it. Greenfield doesn't want to do it. PSG doesn't want to do it. The wall needs to be shotcreted and pinned. Someone is going to get killed out there.

Van Acker put in a declaration. I put in a declaration. The people that got injured put in a declaration. And basically to get that wall and it is relevant to the BCDC because it is part of this entire structure and it is underneath the promenade there. And, you know, it is expensive, you know. We are not talking a million.

Chair Wasserman chimed in: Your time is up, sir. Thank you.

Mr. Brugnara stated: It is \$10 million.

Chair Wasserman acknowledged: Thank you.

Mr. Brugnara reiterated: It is \$10 million or more. All right.

Mr. Greenfield spoke: Paul Greenfield. Just to tidy up a few loose ends. This thing was a BK, the first BK stems from 2018. So it was pretty clear, as I am following up with what Larry the lawyer said, that it was pretty clear who had the ownership of it. It was sitting there for years. It was a trustee there. It would have made it real easy to clean this thing up. But it didn't happen.

With regard to working with BCDC. As soon as we saw, saw that letter from Brent Plater we already hired a geotechnical guy, structural people and everything, and some lawyers for land use. And their decision was, let's go to the City. Because at that point it wasn't the whole stair, it was just the rails and the walkway out there. And, you know, let's go talk to the City. Let's get that issue resolved. And we already had quotes for that.

And then what happened when YiTong and Luke Brugnara decided to have some go out there and file this false report, then that's when this whole thing blew up. Not that it matters much. Whoever filed the report, they didn't call up their doctor, didn't get the lawyer or the insurance company, they called up the city and said, hey, can you please issue a red tag. Who does that? Some part of the public just casually walking along the cliff face and says oh, let me get a red tag on this.

And furthermore, YiTong never filed anything with the City. It was some other person they enlisted, you know, to do that.

And furthermore, I am not worth \$800 million, not even close. I certainly wish I was but that that is not the case.

So anyway, we were moving forward on this thing long between, long before it became messy. It is just that the lawyers decided to wait and go down there to talk to Brent Plater once we had, you know, gotten things squared away with the City to repair what was, what was already there.

So anyway, that's just trying to clarify a few things.

Oh, one last thing. Luke Brugnara and YiTong have been trying to buy this place with, you know, all kinds of threats and everything else and it has been, it is, you know, ongoing.

The last text I got from Luke was the tail end of it, you know. If you want, you know, need to do something so you can save your investment, otherwise, we will be bitter enemies fighting in litigation until the day you die. You decide.

Ms. Atwell interjected: Thank you, sir. Thank you.

Mr. Greenberg acknowledged: Okay.

Chair Wasserman continued: Thank you.

I know that Brent wants to say something. Mr. Bazel, I will give you a moment. Brent, go ahead.

Mr. Plater stated: I just want to object for the record in case this does go to litigation that all evidence needed to be submitted for review by May 6 and so some of the slides, including the slides of the more recent engineering evaluations that Mr. Bazel put in front of the Commission, cannot be considered in their ruling.

Chair Wasserman acknowledged: Thank you.

Mr. Bazel chimed in: I will join that objection with respect to the evidence submitted by the public speakers other than Mr. Greenfield.

Chair Wasserman asked: Not your own?

Mr. Bazel answered: Not my own, thank you.

Chair Wasserman continued: Questions, comments from Commissioners?

Commissioner Eklund chimed in: Thank you, thank you very much. I wanted to ask a couple of questions and then I had some preliminary thoughts.

The first question is my understanding that all of the stairs and the retaining walls are to be removed? So is all of the stairs and the wall supposed to be removed and the cliff put back into a form so that we can make sure that there is going to be no more crumbling of the cliff? Is that part of the enforcement action today?

Mr. Plater responded: Yes, thank you for that question, Commissioner Eklund. The enforcement action and the proposed Order recommends to remove as much of the unpermitted fill as possible without affecting the structural integrity of the cliff face.

So we have, the way the Order is structured it will require the respondents to prepare a plan with a geotechnical engineer, an engineer and a landscape architect, for review and approval by BCDC.

And if there are any disputes it will go to a peer review process to ensure that the calculations are done properly. And there will be no effects to the public down below at this very small but important recreational beach that is now being obscured by this illegally constructed stairwell.

Commissioner Eklund asked: And what role is the city of San Francisco going to be playing in this enforcement action?

Mr. Plater explained: The city of San Francisco has initiated its own enforcement action, both through the planning department and through their building department, to require a permit to be obtained to remove the stairwell.

So there will be a local discretionary approval for the removal of the stairwell that will be, that will most likely end up going through both the planning and the building departments at the City and County of San Francisco.

Commissioner Eklund continued: Great. If you don't mind, I am probably one of the newer Commissioners, but having done enforcement for US EPA for a long time I definitely have, and I read all the documentation in the report and I actually attended the Enforcement Committee's meeting when this was discussed. I was not part of the Committee. I am not part of the Committee but I wanted to learn about this issue.

My feeling is that we should go ahead with this enforcement action. In fact, my feeling is that all of the stairs and the walls should be removed and it should be brought back to where the cliff was in terms of what it looks like and also safety.

If in fact that cliff, because of the weight up on top is getting weakened, then I think the current owner, and to some degree BCDC and the city of San Francisco, really need to work promptly to make sure that a plan is developed and that it is aggressively maintained.

I do not agree with the suggestion to delay for a couple of months because whether or not there is a buyer, in my opinion, does not make a difference. The current owner is responsible.

And so I, when it is appropriate, I will be glad to make a motion to that effect.

But in my opinion, we have got some major issues with this. And this has all been done without permits and without approval. And frankly, if we do not start taking action, BCDC, since it has not been enforcing on this, would just perpetuate its -

Chair Wasserman interjected: Pat, I am going to ask you to stop at the moment, please.

Commissioner Eklund acknowledged: Okay. Okay.

Chair Wasserman continued: Thank you.

Commissioner Eklund stated: Sorry.

Chair Wasserman responded and asked: That's okay. Other Commissioners?

Commissioner Nelson commented: A question for Mr. Bazel and then a couple of questions for staff.

As our Committee explained, there are limitations on our ability to simply modify this Order, proposed Order. But I do want to understand the request you are making.

You stated that you are requesting that the phrase "or equivalent" be added to paragraph 1.C. I am looking at paragraph 1.C. There are a number of different requirements in paragraph 1.C so I am trying to understand what you are requesting so that we can understand what that would mean.

Mr. Bazel replied: Thank you. This is Larry Bazel. In 1.C in the middle of the paragraph there is language:

"by grinding them down to the contour of the cliff face and/or covering them with contoured shotcrete;"

I think our experts will be suggesting in some places taking the stairs out entirely, in other places maybe using shotcrete, and maybe in still other places using them to hold dirt, for example, to try to get vegetation there to make it look more like a natural cliff face rather than a shotcreted Disneyland cliff face. The "or equivalent" is intended to give us some flexibility here.

The concern that I have is that there is still the potential here of not reaching agreement with staff. What I would like to do is reach agreement with staff. We say okay, here is the plan that we think is best, they think is best. It is structurally sound. It will do what needs to be done. We wrap it up. We package it for the Commission, and that's that. So that's what I am looking for.

Commissioner Nelson acknowledged: Okay. Two other quick questions for staff. First, Mr. Bazel said that he believes we are close to a settlement. I am wondering what the staff and the Committee think about that?

Mr. Plater responded: Thank you, Commissioner. I would say that we agree that the legal violations themselves are largely correct.

But whether or not we are close to a settlement, I would not say that is the case. Because what we need to see is not simply a slide or a conceptual idea about how these stairs will be removed but an actual plan that has been reviewed by experts, potentially submitted for peer review to ensure that they are correct, before we will be able to reach any agreement on the substance of the removal.

And I will also note that because we have in the terms, Section IV of the of the proposed Order Term B, where if there is any dispute down the road between the respondents and BCDC over the content of this plan, we do have a provision in there to submit it for peer review to help resolve these questions about whether another treatment might be equivalent to the shotcrete or if the engineering calculations are accurate or not.

So we do have a process built into this proposed Order to make sure that any bumps in the road will be addressed administratively without having to involve further Commission time.

Commissioner Nelson continued his questioning: Thanks. One more question. And that is just to make sure I understand what exactly the proposal would require to be removed.

You talked at the start of the presentation about removal of fill. So would this remove fill that was below the mean tide line or everything within our 100-foot shoreline band jurisdiction?

Mr. Plater explained: So there was some of the fill within our 100-foot shoreline band jurisdiction that is on the private property parcel owned by the respondents at 224 Sea Cliff. And those portions could be approved through a permitting process by BCDC. So that part may not be removed.

But for the part of the fill that is on a third party's property, public property by the City and County of San Francisco and the State Lands Commission, who have both objected to those trespasses, those are unpermittable. We cannot permit that fill ever.

If there is, if there does become, as the engineering reports are submitted, evidence that removing them might create safety hazards, we would of course then work with the City and County of San Francisco, the State Lands Commission, to try and figure out how to address those and as necessary go through peer review to make sure it is done properly. But the basic plan is to remove all of that fill because we simply could never permit it.

Commissioner Nelson acknowledged: Thank you.

Chair Wasserman chimed in: I would entertain a motion to close the public hearing.

MOTION: Commissioner Peskin moved to close the public hearing, seconded by Commissioner Ahn. The motion carried by a voice vote with no abstentions or objections.

Chair Wasserman announced: The hearing is closed, thank you.

Before I recognize you, Mr. Bazel, any other questions from Commissioners? (No questions were voiced)

Give you one last shot, sir.

Mr. Bazel commented: Thank you. I just wanted to respond that we have not discussed the credentials of our experts. They are excellent; I do not think there is any doubt.

The documents that we are going to submit will be expert plans that have the proper calculations and will pass peer review.

Before preparing them we have needed to talk with staff to see conceptually what do they think about this, that and the other and I think we have gotten maybe as far as we can get there. We are still expecting a few comments back from our discussion this week.

But then we will submit all those plans. I do not see that as being an issue. I think the issue is reaching conceptual agreement and I think we are very close to there already. Thank you.

Chair Wasserman acknowledged: Thank you, sir.

Seeing no other comments from Commissioners, Commissioner Gilmore, will you present the Recommendation; and I would allow you to make the motion for it.

Commissioner Gilmore read the following into the record: Thank you, Chair. By unanimous approval of the Enforcement Committee members present at the meeting on May 25, the Enforcement Committee recommends that the Commission vote in favor of the adoption of the proposed Executive Director's Enforcement Decision and Cease and Desist and Civil Penalty Order CCD 2022.001.00 to resolve this enforcement matter. And I would be happy to make a motion to that effect.

Commissioner Eklund chimed in: And I will second that motion.

Chair Wasserman acknowledged: Commissioner Eklund seconds. Any discussion on the motion? Peggy, call the roll please.

MOTION: Commissioner Gilmore moved adoption of the proposed Executive Director's Enforcement Decision and Cease and Desist and Civil Penalty Order CCD 2022.001.00, seconded by Commissioner Eklund.

VOTE: The motion carried with a vote of 15-0-1 with Commissioners Ahn, Eckerle, Eklund, El-Tawansy, Gunther, Moulton-Peters, Peskin, Showalter, Wagenknecht, Gilmore, Pemberton, Nelson, Vasquez, Vice Chair Eisen and Chair Wasserman voting, "YES", no "NO" votes, and Commissioner Beach voting "ABSTAIN".

Chair Wasserman stated: The Recommendation of the Enforcement Committee is approved. Thank you for your efforts, as always.

10. Commission Consideration of Legislation. Chair Wasserman stated: That brings us to Item 10, Commission Consideration of Legislation. Deputy Director Steve Goldbeck will make the presentation.

Deputy Director Goldbeck presented the following: Thank you, Chair Wasserman. You have before you a Staff Report on legislation dated June 10. There are five bills pending in the legislature for which we have recommended support. There is also proposed budget bill legislation that we recommend you oppose unless amended. Let me quickly walk you through these bills.

The first is Senate Bill 867. *Sea level rise: planning and adaptation*. It is introduced by Senator John Laird. The bill requires local governments within BCDC's and the Coastal Commission's jurisdiction to address rising sea level planning and adaptation through either a San Francisco Bay Shoreline Coastal Resiliency Plan or a Coastal Commission Local Coastal Plan.

These plans are required to be submitted by 2026 and comprehensively updated every 10 years, with technical adjustments every 5 years to reflect updated sea level rise modeling.

BCDC and the Coastal Commission, in close coordination with the Ocean Protection Council, and the California Sea Level Rise State and Regional Support Collaborative (created in SB 1, passed in last year's legislative session), would establish guidelines by the end of 2023 for the preparation of the plans.

Plans would include, at a minimum, vulnerability assessments, economic analyses, adaptation measures, implementation approaches, efforts to ensure equity for at-risk communities, and identification of lead planning and implementation agencies.

The Commission understands well the need for local planning for rising sea level and that is consistent across the region. BCDC's Bay Adapt Program has moved forward successfully by using a voluntary and collaborative approach to adaptation and towards a regional shoreline adaptation resilience plan.

This bill would require local governments to prepare their adaptation plans by 2026. Commission staff made clear to the bill's author that this mandate would require adequate funding for BCDC and for local governments and stakeholders to enable them to work collaboratively under the Bay Adapt Program.

While a policy bill cannot directly provide funding, the author did subsequently amend the bill to state that enactment of the bill is subject to appropriation by the legislature for this purpose. That means that if state funds are not made available the local governments are not subject to the bill's provisions.

The San Francisco Bay Shoreline Resiliency Plan referred to in the bill is a new construct. So BCDC would need to provide definition and parameters for preparing these plans. BCDC would use the Bay Adapt Program to work with stakeholders as it prepares the guidelines with the other entities named in the bill.

Staff believes that the bill would provide for consistency, not only between and among Bay local, regional and state government bodies, but across the state. The bill's requirements would only be binding if state funds are provided and hopefully this bill could be used to focus climate funds in the state budget on preparing these adaptation plans.

Staff recommends that the Commission support SB 867 on the condition that adequate additional funding is provided. Staff will work with the author to further improve and refine the bill language.

The next bill is SB 1065, *California Abandoned and Derelict Commercial Vessel Program*. The bill was introduced by Senator Susan Talamantes Eggman.

The bill would prohibit from state waters commercial vessels at risk of becoming derelict; and authorize a peace officer to find that a commercial vessel is at risk of becoming derelict.

The bill would subject violations to a civil penalty of not less than \$1,000 and not more than \$5,000 per violation, per day, and would prescribe other related requirements.

The bill would also authorize a peace officer to order the removal of or to seize a commercial vessel that is risk of becoming derelict.

Further, the bill would establish a program within the Natural Resources Agency, and administered by the State Lands Commission, to bring federal, state and local agencies together to identify, prioritize and remove abandoned and derelict commercial vessels subject to available funding.

The bill would establish a trust fund for the removal of such vessels. The bill would require the State Lands Commission to identify abandoned and derelict commercial vessels on the waters of the state and develop a plan to reduce or prevent them.

Lastly, the bill would establish a Coordinating Council with seven voting members and four nonvoting members to oversee and provide policy direction for the program, develop a system for prioritizing removal and coordinate the removal of such vessels.

This bill would provide critically needed sanctions and a funding mechanism to abate these vessels.

Staff recommends that the Coordinating Council, which is mainly composed of statewide or federal agencies but includes one member from the Delta Protection Commission, also include a BCDC representative.

Staff recommends that the Commission support the bill and request that the bill be amended to include a BCDC rep.

Our next bill is SB 1078. *Sea Level Rise Revolving Loan Pilot Program* introduced by Senator Ben Allen.

The bill would require the Ocean Protection Council, in consultation with the Coastal Conservancy, to develop the Sea Level Rise Revolving Loan Pilot Program to provide local jurisdictions low interest loans to purchase vulnerable coastal properties at risk to rising sea level and focusing on low-income communities.

The bill would require the OPC before 2024, in consultation with other state planning and coastal management agencies, to adopt guidelines and eligibility criteria for the program.

The bill would authorize local jurisdictions to apply for these low interest loans from the Coastal Conservancy, but only if they first prepared a vulnerable coastal property plan; and that plan has been approved by the Coastal Conservancy in consultation with OPC.

The bill would establish a fund administered by the Coastal Conservancy with the OPC to provide the low-interest loans upon appropriations by the legislature. Loan repayments, fees, interest and penalties would be deposited back in the fund.

While adaptation planning can protect communities around the bay from flooding, it is prudent to provide for properties at high risk from rising sea level, particularly in low-income communities. Staff recommends that the Commission support SB 1078.

Our next bill, is Assembly Bill AB 1640. *Office of Planning and Research: regional climate networks*, which was introduced by Assemblymember Christopher M. Ward and would authorize establishment of regional climate networks for adaptation, with eligible entities including local governments, regional agencies, nonprofits and community based organizations.

These regional climate networks could engage in a range of activities to address climate change such as preparing action plans, strategies and programs, receiving and providing grants, and contracting and forming special districts.

The bill would require the Governor's Office of Planning and Research to establish guidelines for the networks, provide technical assistance, and facilitate coordination between regions.

This bill is similar to AB 897 by Assemblymember Kevin Mullin in last year's session and he is a cosponsor to the bill. You will remember that the Commission had supported that bill, which was held in the Senate Appropriations Committee.

AB 1640 would enable collaborative climate adaptation networks to be created across the state that recognizes the state's diversity and does not mandate the specific makeup of such networks. We recommend support.

Speaking of Assemblymember Mullin, he has introduced in the current session AB 2362. *Publicly and environmentally beneficial projects*.

We recommended a support position in the Staff Report. However, staff has just found that the bill has been significantly amended. While at first look the amendments do not appear problematic, they differ from what we provided and analyzed to you. And we would like to take a more careful analysis so we will bring this bill back to you at the July 7 meeting.

And finally, staff recently became aware of proposed budget trailer bill language regarding alternative energy.

Now, budget trailer bills are different from other bills. They are only heard in the budget committees and they take effect immediately after passing the legislature and being signed by the governor. They typically provide statute to implement funding pursuant to the state budget.

But this proposed trailer bill language would strip BCDC of its statutory permitting authority over large, alternative energy projects, by reserving to the Energy Commission approval for such projects, which would be in lieu of any other approval and supersede any applicable state ordinance or regulation of any local, regional or state agency.

Excluded facilities include solar photovoltaic or terrestrial wind electrical generating power plants with a generating capacity of 50 megawatts or more, an energy storage system capable of storing over 200 megawatts of electrical energy, a project for the manufacture, production or assembly of products, components, integral to these renewable energy projects, and an electrical power transmission line carrying electricity from the generation and storage facilities to an interconnected transmission system.

BCDC, instead of permitting, would be required to provide a report to the Energy Commission on the suitability of such facilities within 60 days of issuance of a notice of preparation of an environmental impact report.

BCDC could only block the Energy Commission approval of the facility if BCDC finds that the site and related facilities are inconsistent with the primary uses of the land and there would be substantial unmitigated adverse environmental impacts.

This removal of BCDC's authority could have tremendous adverse impacts on the Bay and shoreline and preclude public access.

As you know, BCDC approves major projects with conditions that protect the Bay, maximize public access and views, and are tailored to the project's needs. If this bill were to pass, you would instead be faced only with a binary decision to allow or block a project based on standards other than BCDC's law and policy.

While staff understands the need to expeditiously provide alternative energy sources, BCDC already must grant or deny permit applications that are filed within 90 days, and staff is unaware of any such planned or proposed project in its jurisdiction.

Rather than stripping BCDC authority, the bill should provide for close cooperation between BCDC and the Energy Commission.

And that should be modeled after the Dredged Material Management Office and the San Francisco Bay Restoration Regulatory Integration Team.

This consequential proposal needs to be considered as a policy bill and heard in appropriate policy committees with adequate time for input by interested parties and the public. Staff is currently reaching out to better understand the context and need for the proposal and engage with proposal sponsors.

Staff recommends that you oppose this trailer bill language unless it is amended to maintain BCDC's permitting authority.

That was a lot to cover and I would be happy to answer any questions.

Chair Wasserman responded, "Thank you" and asked:

Do we have any public speakers on this item?

Ms. Atwell replied: Yes, we have one hand raised.

Mr. Quigley was recognized: Thank you. My name is Josh Quigley; I am the Policy Manager for Save the Bay. I just wanted to briefly encourage you all to accept the Staff Recommendation to support SB 867, *sea level rise planning and adaptation* by Senator Laird.

As you all know, sea level rise directly jeopardizes billions of dollars of infrastructure and economic assets and puts hundreds of thousands of Bay Area residents in harm's way if action isn't taken.

Specifically, an estimated 350,000 Bay Area residents live in the current 100-year floodplain. That also includes over \$46 billion in structures, highways, critical rail lines, wastewater treatment plants, schools and hospitals.

The state's own guidance anticipates more than a foot of sea level rise by 2050 with increasing levels in the decades that follow. If action isn't taken now at current projections there will be significant flooding throughout the Bay Area, where more than two-thirds of the state's socioeconomic impacts from sea level rise are expected to occur.

While BCDC has taken steps to begin coordinating sea level rise planning through the Bay Adapt process; as the Staff Report notes, that process is voluntary and collaborative. We know that much more needs to be happening now to minimize inconsistency and delay around the Bay Area.

Under this legislation BCDC would be empowered to set sea level rise guidance and require cities to submit a shoreline resilience plan to address risk, establish implementation strategies, including identifying lead agencies to coordinate projects, and identifying funding sources.

The bill would address some of the shortcomings that we see in current sea level rise planning efforts by requiring essential planning from cities along the shoreline based on consistent guidance and with fixed deadlines.

We can't rely on cities acting independently and inconsistently in the face of a predictable region-wide risk for our shoreline communities and we can't allow cities with fewer resources to be left behind.

SB 867 represents the best way forward and it is a needed step towards real sea level rise resilience by empowering BCDC to be more directive, central and effective in this effort. So we encourage you all to support this legislation and continue to work with the author to address any remaining questions. Thank you.

Ms. Atwell informed the Chair: Chair, no more hands raised.

Chair Wasserman continued: Comments or questions from Commissioners?
Commissioner Nelson.

Commissioner Nelson had questions: A couple of questions for staff and then one suggestion. Some questions regarding the budget trailer bill language. This has me a little baffled so two questions. Is this trailer bill solely targeted at BCDC or is it a trailer bill that would strip authority from a host of agencies?

Mr. Goldbeck answered: Thanks for the question. As I mentioned, the bill would not only affect BCDC, it would reserve all authority for approving such projects to the Energy Commission. So that would include local governments, regional agencies, and even under the language, federal agencies, as allowed by federal law.

Commissioner Nelson continued: And second, I just wondered, you mentioned this briefly I think in your comments. Are there any large renewable energy projects in the Bay Area that you can definitely think of that would be subject to this?

Mr. Goldbeck stated: No, we do not know of any at this time.

Commissioner Nelson continued: It does not seem wise but it also seems entirely theoretical

The comments with regard to Mr. Laird's bill, SB 867. I am really excited to see this bill and this is exactly the sort of stuff we need to do to start accelerating our work to finalize adaptation planning. I am thrilled with what is in it.

Two thoughts about what is not in it. The staff already mentioned funding. Funding is clearly going to be a major issue both for the Commission but especially for local governments to get the job done.

The second thing that is missing is an additional mechanism to make sure that adaptation planning is completed in an adequate way and in a timely way in particular.

We have talked in the past about the idea of creating some sort of either an approval mechanism or a backstop mechanism for the Commission. I am sure there are other options.

I recognize that staff did not write this bill. Staff is not sponsoring this bill. The Commission is not sponsoring this bill but I would urge staff in their discussions with Mr. Laird to discuss those two issues. And thank him for introducing the bill.

Commissioner Eklund was recognized: Thank you very much, Chair Wasserman.

First of all I wanted to compliment staff on an outstanding briefing on each of the pieces of legislation and also the trailer bill.

I serve on the Environmental Quality Committee for the League of California Cities and have ever since I was elected in 1995. We had a discussion about this along with CSAC and so the League of California Cities and CSAC submitted joint comments on SB 867.

I was really glad to hear that the bill was amended to reflect that if local governments do not get the funding to implement this bill that it would not be required.

If that is wrong I would sure love to have staff correct me on that. Especially given the economic analysis that is required of local governments; we do not have an economist on staff so we would definitely need to contract that out. So we really do not have the funding to implement this at all and we have a lot of unfunded state mandates already.

The one question I had was that this bill apparently requires the use of the Ocean Protection Council Guidance documents and that was a question that the League and CSAC had.

Can you help me to understand because apparently there are some issues as to whether the local governments really had an opportunity to really comment on this or not. I really do not know anything about these Guidance documents so I am hoping staff can help me understand it a little bit more.

Mr. Goldbeck explained: The Ocean Protection Council provides statewide guidance on sea level rise planning and they work to look at the national modeling through the climate assessments and the state climate assessments and come out with modeling and best available science on rising sea level and what we may be looking at.

Your staff uses that best available science when we look at projects coming before you to see if they are going to be resilient to the rising sea level projected. So we now look to the Ocean Protection Council for that guidance but I would defer to Commissioner Eckerle to talk more about that and the specifics of the CSAC letter.

We just got the CSAC letter today so we have not really had a chance to review it in detail.

Commissioner Eklund stated: Right. I apologize for that. I should have sent it to Larry earlier. But I did want to make sure that you guys got a copy of it so that at least you know what the local governments have been sending to the author of the bill.

Mr. Goldbeck acknowledged: Thank you for that, for providing that.

Commissioner Eklund replied: Definitely. So thank you and I look forward to hearing from Jenn a little bit more about the guidance.

Commissioner Eckerle chimed in: Yes. Thank you, Commissioner Eklund. I have not had the benefit of seeing the letter so I look forward to getting a copy of that.

Just to kind of put a finer point on what Steve mentioned, the Ocean Protection Council is the lead for updating the state's Sea Level Rise Guidance. The last update was conducted in 2018 and as we all know the science of sea level rise is evolving; it almost feels like on a daily basis. We have a commitment in our Strategic Plan to update that science every five years.

In fact, at our Council meeting this Tuesday they just approved funding for a kind of a dream team of scientific experts to help us update the Guidance. The update is due next year in 2023.

We are relying on a national report that came out just a few months ago that has updated projections for sea level rise. We have more clarity and certainty around what is going to happen through 2050 and some more refined projections through the end of the century.

The 2018 Guidance has an H+++ scenario, which is really extreme and the national report that came out really kind of scales that back and says, as far as we know right now that is not going to happen by end of century. So we are getting better at really refining what those projections are and narrowing the range of uncertainty, certainly over the next 30 years.

And we want to make sure that the plans, local plans are based on the best available science. So that is why there is, we understand that updating these plans is a huge lift for local jurisdictions but we also want to make sure that they are based on the best available science. So we are trying to find that balance where we can integrate that without making it be this whole overhaul every five years.

Commissioner Eklund acknowledged: Great. And are those revisions going to be available for public comment, one more round, before they are adopted?

Commissioner Eckerle asked: For the Sea Level Rise Guidance?

Commissioner Eklund replied: Yes.

Commissioner Eckerle stated: We anticipate, I believe, bringing that to our Council in September of 2023. So there will be a public draft available.

And one of the things, in addition to updating the science, is really providing guidance on how to translate that science into adaptation planning and implementation projects.

We have a colleague working with California Sea Grant, Laura Engeman, who has been really leading some of these efforts to have that integration with local jurisdictions and communities so we are going to lean on that expertise.

And certainly the partnership that we have with the state's Sea Level Rise Leadership Team. So we are going to have discussions about what was working in the 2018 Guidance? What do you want to see improved? What is really challenging? We tried to, in that Guidance, navigate the range of uncertainty and what we learned is we might have provided too many options. And so it was difficult to hone in.

We gave everybody options on how to think about their level of risk tolerance and how you consider a wastewater treatment plant as compared to a public access trail. But we really think there is room for improvement in how we inform folks on how to apply that Guidance to the actual on-the-ground planning and projects.

Commissioner Eklund stated: So I will send you this comment letter along with Derek and Catherine's contact information. It also includes a joint statement that we developed on the principles of sea level rise planning that both CSAC and the League Board both adopted in December of 2021. So that way you will have a better understanding of what those two organizations feel. But I will send this to you today.

Commissioner Eckerle acknowledged: Thank you, Commissioner Eklund.

Commissioner Eklund replied: Thank you.

Chair Wasserman continued: Thank you. I do not see any other hands. I want to make a brief comment, particularly of the Laird bill.

I want to echo Commissioner Nelson's comments in a couple of ways. We did not ask for this. We could debate whether we should have and we have been told by some speakers from time to time that we should have done something like this. I think there is good reason why we did not.

Having said that, I think this is a very important bill to move us forward to potentially escalate the speed at which we are dealing with things, provided there is the money in there to do it. In this area in particular, mandates without money will be an absolute failure. But I think the author recognizes that, has put in some language. Maybe it needs to be beefed up but it is certainly moving in the right direction.

Steve, do you want to make the Staff Recommendation?

Mr. Goldbeck read the following into the record: Yes, thank you. Staff recommends that the Commission support SB 867, SB 1065, AB 1640; and the staff recommends the Commission oppose, unless amended to preserve the Commission's permitting authority, proposed trailer bill language that would strip BCDC's permitting authority for major alternative energy projects.

MOTION: Commissioner Showalter moved approval of the Staff Recommendation, seconded by Commissioner Nelson.

VOTE: The motion carried with a vote of 12-0-3 with Commissioners Ahn, Eklund, Gunther, Moulton-Peters, Peskin, Showalter, Wagenknecht, Gilmore, Nelson, Vasquez, Vice Chair Eisen and Chair Wasserman voting, “YES”, no “NO” votes, and Commissioners Beach, Eckerle and Pemberton voting “ABSTAIN”.

Mr. Goldbeck acknowledged: Thank you.

11. Briefing on Bay Adapt Status. Chair Wasserman stated: That brings us to Item 11, which is a staff briefing to update us on the progress of the Bay Adapt Program. This briefing is particularly appropriate following that legislative briefing, given the link between the points made by Steve and others. Dana Brechwald, Manager of the Adapting to Rising Tides and Bay Adapt Team will present the item.

Adapting to Rising Tides Manager Brechwald addressed the Commission: Good afternoon, Commissioners. I am here today to provide you with an update on Bay Adapt, our regional strategy for a rising Bay.

But first I really want to take a pause and thank the Ocean Protection Council for voting to approve the \$2.1 million in funding to BCDC to advance critical aspects of Bay Adapt and thank Commissioner Eckerle also for her comments.

We last spoke to you about Bay Adapt in January. I am going to update you on what has happened since then and then I am going to walk you through what we have planned through the end of 2023.

Since we last spoke in January, a lot of work has been underway. You will recognize here the five categories and nine actions outlined in the Joint Platform.

When you voted to adopt the Joint Platform last October you also approved some priority tasks for BCDC based on our expertise and what was deemed as urgent or already had some momentum.

These priority tasks include creating a long-term regional vision rooted in community, Bay habitats and the economy, making scientific data information and guidance easier to use, expanding understanding of the financial costs and revenues for adaptation and establishing a funding framework, accelerating permitting for equitable multi-benefit projects and assessing environmental regulations and policies that slow down progress on projects, and measuring regional progress using metrics and sharing those results.

We also said that we would participate or advise on nearly every other task in the Joint Platform and continue to serve as the backbone agency for Bay Adapt, including convening Bay Adapt’s leadership, tracking accomplishments, and overall project management.

And lastly, we said that we would continue to work with our state partners to ensure continued BCDC capacity and leadership.

So I am pleased to say that we have advanced or completed many projects in the last several months. In December you heard many status updates from multiple projects underway by the ART Team.

In April you heard from Jaclyn Mandoske about the publication of the Adaptation Roadmap. In May you heard updates from Todd Hallenbeck and Viktoria Kuehn on the Shoreline Adaptation Mapping Program and also from Allison Brooks on the BARC Shared Work Plan.

So you may have wondered how they all fit into advancing the Joint Platform. But each of these projects has been designed to provide a building block for a Joint Platform task and get us closer to completion of our bigger goals, even before a formal kickoff of the Bay Adapt implementation phase.

In addition to progress on many tasks, we have also had many other notable successes.

We have received more endorsements from cities, counties, agencies and other stakeholders. We are nearing 60 endorsements to date.

As you have heard multiple times today so far, we have been successful at securing more resources to expand BCDC's capacity to lead as a backbone agency and implement tasks. The \$2 million from OPC you have already heard about.

And we are anticipating approval of another approximately \$3 million from the State Coastal Conservancy at their September meeting.

We have had many conversations with our EJ partners to better understand how we can ensure that Bay Adapt serves as an equity builder in all of its phases.

And we worked with partners to communicate to the state how to best meet the region's adaptation funding needs. In February you contributed projects from your counties to our project list that was conveyed to Assembly Member Ting. And we have talked to many other state partners about using the Joint Platform to help tasks to help direct funding and capitalize on the state's historic resilience budget.

So now that we have more resources secured, this is a great time to create some clear goals that will provide measurable progress for Bay Adapt, BCDC and our funding partners.

As we have worked with our funding partners, some clear short term goals have emerged. I want to emphasize that these goals do not change even if the Laird bill passes. We are prepared to meet these goals whether they are legislatively mandated or not.

First, it is critical to direct a first flush of funding to communities and jurisdictions focused on community capacity building. BCDC has been helping to identify the most urgent community needs and we are primed to facilitate swift partnerships to infuse funding where it needs to go.

We also aim to complete the first phase of the Regional Shoreline Adaptation Plan.

We would like to have clear answers about how BCDC can rise to meet a changing shoreline through our permitting process and policy tools.

And lastly, we aim to expand and secure our role as the Bay Adapt backbone agency to provide solid leadership and management for implementing tasks.

So let's dig into each one of these goals a little bit more.

First, it is critical to direct funding to frontline communities to increase capacity to participate in adaptation planning. Why do we think it is important for BCDC to play a role in community capacity building? After all, we are not a funding agency and it is challenging to engage with communities directly from this scale.

However, BCDC remains committed to continuing to advance community and local planning and project capacity building. It is something we heard repeatedly in developing the Joint Platform as a really high priority and it is something that we believe will create the best outcomes for the shoreline in the future.

So the role we are aiming for here is to serve as a connector or a bridge between the EJ community and funders. That is why our first task, which we are partnering with the Coastal Conservancy on, is to provide initial funding to critical communities we have identified through Bay Adapt, ART Bay Area, our CBO database and our EJ advisors.

This funding can be used to support community-led programs like the West Oakland Environmental Indicators Projects, Shoreline Leadership Academy, which is seen here in this photo, which helps to prepare community members to actively participate in the development of local adaptation plans and projects.

We also think it is really important to capture lessons learned through community-led planning so we can incorporate these lessons back into regional adaptation planning processes, like the Regional Shoreline Adaptation Plan.

So what are we envisioning in this Regional Shoreline Adaptation Plan? You already got an overview earlier from Commissioner Eckerle but I will revisit the ideas here.

You may have noticed that the Plan is not specifically called out for in the Joint Platform but all of the elements that are within the Plan were.

Through our conversations from OPC and the legislation that we have heard about today, it is clear that a regional plan with aligning local plans is a high priority for the state.

So the funding recently approved by OPC is really directed towards the creation of this Plan. While it was originally envisioned as a voluntary incentive-driven plan, if the Laird bill passes the elements would remain the same but become mandatory instead of voluntary.

So the first element is by the end of 2023, we plan on developing guidance for what we think all adaptation plans in the region should contain. This will help us meet common goals and ensure that plans are considering impacts to neighbors in the region.

During this time we will establish a task force in partnership with OPC comprised of elected officials and a steering committee of regional and local agencies to help guide the project. We will also identify incentives needed to link to the guidelines and hopefully look towards the state for additional funding for the development of plans.

Second, using the guidelines and incentives developed through the first phase we will assist in the completion of sub-regional plans throughout the Bay Area by the end of 2026.

BCDC's role will be to provide technical support to help these plans move along. I want to note here also that we are aware that some plans already exist and others will be done before 2026. This is good. We do not want to hold anyone back. But we do need to figure out how to give credit to these plans that may not meet the guidelines that have not been developed yet because they are done earlier.

And third, we will be continuing to build on our project tracking in EcoAtlas. While this is already underway, this task will layer in additional information about vulnerability, adaptation and prioritization. That can help in the creation of plans and will also update and expand project tracking and track planning initiatives as well.

Though the scope of this plan has been tied to our funding from OPC, we have also worked and will continue to work to ensure that this plan provides the most benefit to local jurisdictions with minimal additional burden.

Last week, we held an initial focus group with city and county staff to test out their initial response to this plan idea. While they see the benefit of a regional approach and welcome the guidance and assistance, it will be critical to align this project with existing planning tools like SB 379 and local hazard mitigation plans to ensure seamless planning to make sure we are rewarding, not punishing, early adopters and to develop a means of funding jurisdictions to do this planning.

Our third major project is to turn our attention inward and develop an approach to refine both our regulatory approvals process and assess our own policies and tools to respond to a changing shoreline.

There are several components to this. First, we propose doing a thorough assessment of existing permitting improvement studies. We are aware that many people are thinking about this idea but most studies have been narrow in scope and we would like to get a complete look at what already has been assessed and how it can apply to BCDC.

We also envision developing a permitting guidance document for permit applicants to help streamline the overall process.

We will do an internal assessment of BCDC's regulatory and policy tools and how they might be better applied to promote adaptation projects and identify any potential changes that BCDC should consider.

This task will be done in coordination with plan improvement work you have already seen and approved such as reviewing and revising dredging policies led by Brenda Goeden and assessing public access in light of habitat restoration and sea level rise as led by Erik Buehmann. This will also be a task that we will be working closely with you on to ensure we are capturing your long-term vision for BCDC.

We are also very interested in exploring models for multi-agency permitting coordination. The BRRIT has been a great model that BCDC staff has participated in, but it only covers certain project types.

We will need to handle a wider variety of projects to stay ahead of sea level rise. So what does that process look like? And lastly, we are proposing new staff to help support upcoming complex projects and assess and amend existing tools.

And lastly, BCDC will continue to lead by serving as a backbone agency for Bay Adapt. This includes updating the leadership structure for Bay Adapt by engaging with you, BCDC Commissioners, perhaps by utilizing a Commission working group for the elected official task force for the Regional Shoreline Adaptation Plan.

We will continue to brief elected officials throughout the region to serve as local and state champions.

We are considering reorienting our Leadership Advisory Group to serve as a targeted Bay Adapt Implementation Committee representing lead agencies. This may be where the Shoreline Adaptation Plan Steering Committee could live facilitating working groups to advance tasks on an as-needed basis and potentially hosting annual or biannual regional forums for bringing together a wide variety of stakeholders and viewpoints.

We will come back to you when these ideas are a little bit more worked out. This is just a preview of where we think we might be going.

We will also be tracking progress via metrics, not just how tasks are advancing but what outcomes we are achieving.

Maintaining strong communication and branding so that Bay Adapt can serve as an umbrella for a wide variety of tasks occurring throughout the region and building equity into every step of the process.

What does this mean to build equity into Bay Adapt?

One way we are envisioning this is through adopting an equity strategy that captures the key points we have heard throughout this process. These are things like ensuring guaranteed seats in leadership positions for CBO or NGO representatives, providing funding training and support so these individuals feel valued and prepared to participate in complex conversations, expanding EJ-focused staff within BCDC and maintaining commitment to transparency about our equity practices.

So to summarize, we have a lot of goals we are hoping to achieve by the end of 2023 and this slide just illustrates some of the major milestones that would get us there such as beginning our Community Capacity Funding Program, completing Regional Shoreline Adaptation Plan Guidelines, beginning several tasks under our Regulatory Improvements Program and relaunching Bay Adapt leadership and adopting an equity strategy.

So this is a lot. How are we going to achieve all of this? Thanks to our state partners, BCDC's capacity will be growing significantly. As I have mentioned, we are expecting a little over \$2 million from the Ocean Protection Council and later in the fall \$3 million from the Conservancy.

This will fund three years of a five year work plan. This funding will be used for six new hires, including two new director level positions, one in Planning, one in Regulatory, a new EJ Lead focused on Bay Adapt, the other will remain focused on implementing EJ policies a new Data and Mapping Lead, a Senior Planner and an Adaptation Analyst focused on adaptation permitting.

We also envision some contracts and consultant support such as continuing to support our EJ Advisors, a planning and engagement and mapping consultant to support the Regional Shoreline Adaptation Plan, and communications and graphics and facilitation support for backbone tasks.

Yet, despite all this increase in capacity we still have a gap of about \$5 million to complete the last years of our work plan and fully complete these projects.

So to recap, we are planning on kicking off three major new Bay Adapt implementation tasks thanks to funding from OPC and the Conservancy, anticipated funding from the Conservancy.

We will also continue to expand our leadership via backbone tasks, highlighting equity, leadership, tracking successes and ongoing communication.

And lastly, despite our significant increase in resources, we are still seeking to fill a gap in funding to complete this work.

So thank you today for your time. I will turn it back over to Zack now.

Chair Wasserman asked: Peggy, do we have anybody from the public? No.

Questions, comments from Commissioners? Commissioner Nelson.

Commissioner Nelson commented: First, Dana, thank you for a thorough briefing. I will admit that I always find it hard to keep track of all the moving parts in our adaptation planning. So these regular briefings are helpful to try to keep all of those activities in the front of our minds, so thank you.

Second is just a request for the next briefing. Mr. Laird's bill has not passed, but it is wise. So for the next briefing, I hope that it will, but next time we have this briefing hoping staff can think about ways to present to us a summary and update of how that sub-regional adaptation planning is going.

I will admit, I do not have a really good sense of how many of those efforts are underway, how many of them are on track, how many of them are nearing completion, how many of them might be behind. As we start to get a sense of how the Commission can help weave all those sub-regional adaptation plans into a real region wide adaptation effort it would be helpful to get a sense of the progress that is being made in all of those different parts. Does that make sense?

Commissioner Showalter chimed in: Yes, thank you, Dana. It is really inspiring to see all the work that has been accomplished in such a short time. And particularly to see that there is some real money coming forward to continue what needs to be done, because there's a lot more to be done.

One of the things I am always glad to see is the line about technical support for local plans. I would also add actions because in some cases we are in the action phase and technical support for those actions is going to be needed and hopefully there will be a lot more actions that will need them.

One of the things that I feel is a gap is modeling capability. I think that we need to get a modeling group set up that will model the whole San Francisco Bay and test the impact of all new projects that are proposed on the rest of the Bay.

I think this is sort of outside of the ability of the local jurisdictions and should be done by either a state agency or a consulting forum or somebody. But I just would like to have this regional monitoring to check the projects that are being proposed added to the mix of things that we work on. Thank you. Keep up the good work.

Commissioner Gunther was recognized: Thank you, Mr. Chairman. So congratulations to Dana, to Larry and everybody else who was involved in getting this funding. That's an incredible shot in the arm and you should all be very proud. I know it is going to make a big difference in what we are able to accomplish in the next couple years.

Dana, does end of 2023 mean calendar year or fiscal year?

Ms. Brechwald replied: That's calendar year.

Commissioner Gunther continued: Okay, thanks. So just a couple of questions. I am not sure you can answer them now; maybe they are just things to keep in mind. But this idea of regional plan and sub-regional plans? In terms of sub-regional plans, is that by OLU?

Ms. Brechwald stated: We have not defined the sub-regional plan jurisdiction yet. I see Commissioner Eckerle has her hand up and maybe she has some thoughts on this. But I think that is one of the things that we would like to decide is what is the appropriate scale for sub-regional planning? It is just not determined quite yet.

Commissioner Gunther opined: Okay. I think it is really important that we think about the integrating from the OLU scale up. And to really try and drive home the fact that there are these physical features of our landscape that are going to be driving project design and implementation. And that we have to let go of our classic political boundaries in order to really find the right solution so I would really encourage that.

There is also for me a sense that there is an awful lot of planning already underway in our region and there are people working at a variety of different scales. I have always seen the regional plan as something that is going to be more emergent than something that is going to be created from the top down.

I think that there are going to be real, substantive questions asked by a variety of stakeholders about what exactly is in it for me in a regional plan. I have a specific local problem, a specific local geography, a specific set of assets that need to be protected. And those are going to be very reasonable questions that people have; reasonable motivations.

And I like the idea of incentives. But I think that there is in reality going to be a limited number of regional issues that that we need to think about and I would just encourage you to put some thought into how you create that tapestry from the work that is already happening.

Three or four years ago BAKE did a workshop in the South Bay and we created a map. We just grabbed whoever was doing what and put it on the map. And lo and behold, there was planning going along on virtually the entire shoreline of the South Bay.

And those plans are proceeding. And somehow or another this is going to be a very fine line for you guys to walk. I will leave it to you to figure out exactly how to do it but I see this coming down the road.

Like with Caltrans, right? What is Caltrans going to do for their assets? And that is going to influence. Pat was bringing up this idea of how one project can influence sea height in another place. But I think that the decisions say made by Caltrans about what they are going to do on a particular piece of shoreline will have an enormous influence on what else goes on around there.

And in that context it is kind of a regional plan by Caltrans but these are not regional decisions. So I look forward to hearing on these issues as you come forward but that is going to be a real challenge.

And then the last question I have to you is, for the \$5 million that you have already, assuming that, I understand the Coastal Conservancy has not actually acted yet. What percentage of that do you see going to subcontractors and what percent do you see going to the staff positions that you identified?

Ms. Brechwald replied: I have the budget up right here so let me do some math.

Commissioner Gunther stated: You can just give me a ballpark.

Ms. Brechwald continued: It is probably three-quarters staff and one-quarter contracts.

Commissioner Gunther acknowledged: Okay, that was about what I expected. And I hope that we can look at integrating SFEI into this in a way that will build SFEI's institutional role going forward in this.

I think that we are very, very lucky in our region to have an independent scientific organization dedicated to these issues. And we need to, I think, build that capacity because it will be with us for decades if we do that and it will be very, very valuable. Thanks.

Ms. Brechwald acknowledged: Thank you for your comments.

Commissioner Eckerle commented: Commissioner Gunther, those were many of the conversations that we had between OPC and BCDC staff, so lots of detail to work out.

I had my hand up to just talk about funding because it keeps coming up and it is such an important issue.

And just to flag that SB 1, Senator Atkins' bill last year, basically mandated or allowed for the expenditure of up to \$100 million annually for grants to local and regional governments to update their land use plans for sea level rise adaptation and implementation projects. It did not have any associated funding with it.

However, if that legislation does have an associated appropriation there is going to be significant money for these planning efforts.

I do not know how many of you are closely tracking the state budget process, the climate and the energy packages have been deferred. They will be negotiated over the summer.

The Senate proposal included \$3.3 billion for sea level rise and highlighted fully funding SB 1.

So we are tracking that closely and if funding comes through that will be significant for the work that we are doing here and in other parts of the state.

Chair Wasserman asked: Any others? Just a couple of quick comments. The sort of Regional Shoreline Adaptation Plan that is in SB 867 is in certain respects a new concept. I would actually argue it is precisely what the goal of Bay Adapt has been and that Bay Adapt really provides, and has been intended to provide and described as providing the platform, very broad level guidance for getting us there.

I have always said that I think one of the major models for that kind of plan, the RSAP, is the MTC Transportation Plan, the Regional Transportation Plan, because that is very much an iterative, up and down process. And I think that is what this one needs to be as well.

Several people have made the point that a number of projects and plans are underway and that is tremendously important. There are some gaps and there are some coordination issues and that is a lot of what I think the RSAP is going to address. And then, of course, it is going to have to address the big elephant in the room, which is funding.

So I think it is terrific. I think it fits. I think it is timely. It gives me a lot of help. Larry, Executive Director Goldzband commented: Thank you, Chair Wasserman. You, as usual, stole my thunder on the first point, which is that I want to acknowledge the leadership of Jessica and Dana and their team, along with Chair Wasserman and the members of the Commission who have been part of the Bay Adapt process.

Because the thing that we all sort of talked about behind closed doors was, wow, if we could only get funding this could really be great. And not only that, but in case this ever became mandatory, we have got the guidance about how to do it. And lo and behold it appears that it may become mandatory. So that is number one.

Number two, I think it is really, really important, going back to Commissioner Showalter, that we recognize that creating a regional plan depends in great part upon the adoption of sub-regional plans.

And going to Commissioner Gunther's point, the recognition that scale is incredibly important.

And that unlike where we all live on land where good fences make good neighbors, it is really the opposite with regard to a Regional Shoreline Adaptation Plan. Good fences do not make good neighbors here.

This is the kind of thing where we are going to have to make sure that city A, which is right next to city B, which also includes part of a park that is created by a special district, all have to work together in a way to ensure that what each of them does contributes to something which is greater than simply the sum of its parts.

And that is going to be really hard to do but it is something that I think we are all looking forward to doing, much less even on the larger scale.

And we have learned from Professor Mark Stacy and his model about how the Bay reflects and about what happens down where Pat Showalter lives has a tremendous effect on what happens where the other Pat, Pat Eklund lives. And so we need to make sure that we are cognizant of that.

And finally, as the Executive Director let me say that it is contrarian but it is true. And I think that Commissioner Eckerle and Commissioner Pemberton who work, live, breathe, Sacramento would agree, it is an awful lot harder to spend wisely when you have a lot of money than when you have very little. And it is always far more difficult to figure out, candidly, how to spend your money wisely when you have an abundance of it.

We will not have an abundance of money, I assure you. The \$2 million, and God bless Jenn Eckerle for doing what she did and the \$3 million and we say thank you in advance to Amy Hutzler and the State Coastal Conservancy, will get us halfway there.

But it will take an awful lot of work by your staff, indeed the administrative portion of your staff, to get that done correctly, to get it done wisely and to get it done efficiently. We will do our best to make sure that happens and we will make sure that we are held accountable for doing so. Thank you.

Chair Wasserman asked: Any other questions, comments, hands? (No comments were voiced)

Thank you, Dana, very much, for the presentation and more importantly, for the work.

That brings us to our last Item, Adjournment.

12. **Adjournment.** Upon motion by Commissioner Peskin, seconded by Commissioner Nelson, the Commission meeting was adjourned at 3:39 p.m.

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9 Attorney for Debtor-in-Possession
10 PSG Mortgage Lending Corp

11 **UNITED STATES BANKRUPTCY COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14	In re	)	Case No. 23-30281 DM 11
15)	
16	PSG MORTGAGE LENDING CORP,	)	Chapter 11
17	a Delaware Corporation)	
18		)	<u>DEBTOR’S REPORT OF SALE OF REAL</u>
19	Debtor	)	<u>PROPERTY (RULE 6004)</u>
20)	
21		)	Date:
22		)	Time:
23		)	Room: Via Tele/Videoconference
24		)	www.canb.uscourts.gov/calendars
25)	
26		)	Courtroom 17
27		)	Phillip Burton Federal Building
28		)	450 Golden Gate Avenue
29		)	16th Floor
30		)	San Francisco, CA 94102
31		)	Hon. Dennis Montali

32
33 PSG MORTGAGE LENDING CORP, the above-captioned Debtor-in-Possession (the
34 “DIP”) hereby files its Rule 6004 Report of Sale, representing as follows.

35 1. On January 29, 2024, the Court entered its *Order Granting Debtor’s Motion to: (1)*
36 *Sell Real Property Free and Clear of Liens and Interests; and (2) Pay Real Estate Commissions,*
37 *Deed of Trust, and Standard Closing Costs out of Escrow, Dkt. # 88* (the “Order Approving
38 Sale”).

Exhibit P

2. On February 5, 2024, the Debtor closed the sale of the real property of the estate commonly known as 224 Sea Cliff Ave., San Francisco, CA 94121, PIN: Block 1307, Lot 001S (the "Real Property").

3. Attached as **Exhibit 1** is an unsigned copy of the estate's *Final Seller's Closing Statement*, identifying all disbursements and payees from the sale of Real Property ("Final Closing Statement").

4. A summary of the Final Closing Statement is as follows:

Sales Price/Consideration		
Purchase Price		\$6,500,000.00
Prorations		
2nd Installment 2023-2024 County Taxes 1/1/2024 thru 2/5/2024 @\$80,025.68/6mo	\$15,389.55	
Payoffs		
Senior Lienholder Payoff to Wells Fargo Bank Acceptable Net Sale Proceeds	\$5,915,815.03	
Commissions		
Listing broker commission \$162,500.00 to Mark Vasquez	\$162,500.00	
Selling broker commission \$162,500.00 to Marianne Schier to Compass Real Estate	\$162,500.00	
Recording Fees/Transfer Charges		
Documentary Transfer Tax	\$146,250.00	
Additional Charges		
Mobile Notary/Signing Fee to First Class Signing Service	\$200.00	
Woody's Fire/Hazard Remediation to Woody's Restoration	\$13,109.17	
Sale Prep and Pre-Inspections to Mark Vasquez	\$2,236.25	
Court Approved Administrative Expenses to DIP Account	\$30,000.00	
Court Approved Trustee Fees to United States Trustee	\$52,000.00	
Subtotal:	\$6,500,000.00	\$6,500,000.00
Balance due from Seller:		\$0.00
Totals:	\$6,500,000.00	\$6,500,000.00

DATED: February 5, 2024

BELVEDERE LEGAL, PC

By: /s/ Mathew D. Metzger
MATTHEW D. METZGER
Attorney for Debtor-in-Possession
PSG Mortgage Lending Corp

EXHIBIT 1

**Stewart Title Guaranty Company
Final Seller's Closing Statement**

Dated as of this _____ day of _____, _____

Seller(s):

PSG MORTGAGE LENDING CORP,
a Delaware corporation

By: _____
Name: Philip Fusco
Title: _____

Stewart Title Guaranty Company,
a Texas Corporation

Date

By: _____
Tina L. Lucero
Senior Vice President
Escrow Operations Manager

