

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 | Phone: 415-352-3600  
State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

*Via Certified Mail & Electronic Mail*

October 10, 2025

Beattie Trust

Attn: Jim Armstrong, Catherine Armstrong & Melissa Armstrong

172 Beattie Lane

Novato, CA 94945

Email: jimellen7@gmail.com

**SUBJECT: Violation Report and Complaint for Administrative Civil Penalties (BCDC Enforcement No. ER2018.015.00)**


Dear Respondent:

Please see the enclosed Violation Report and Complaint for Administrative Civil Penalties. BCDC is initiating a formal enforcement proceeding to compel you to remove unauthorized fill located within BCDC's jurisdiction. This includes a 66-foot wooden fence within the Bay jurisdiction, as well as additional unauthorized fill including wooden fencing, a wooden storage enclosure, and various household items and refuse within both the Bay and 100-foot shoreline band jurisdictions.

This action is being taken because you have failed to act voluntarily to resolve these issues since you were notified about them via written correspondence on November 20, 2023 and April 30, 2024.

Within thirty-five days, you must submit to me the completed statement of defense form or a certified cashier's check in the amount of the proposed administrative civil penalty.

Signed,

Signed by:  
  
9BC5650F82FA439

ISABEL CHAMBERLAIN

Enforcement & Compliance Manager

IC/mm

cc: Amanda Boyd, BCDC staff attorney, [amanda.boyd@bcdc.ca.gov](mailto:amanda.boyd@bcdc.ca.gov)



# San Francisco Bay Conservation and Development Commission

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**BCDC Enforcement File: ER2018.015.00**

**Permit: N/A**

**Date Mailed: October 10, 2025**

**35<sup>th</sup> Day After Mailing: November 14, 2025**

**60<sup>th</sup> Day After Mailing: December 9, 2025**

**Hearing Date: December 10, 2025**

**Violation Report/Complaint for Administrative Civil Liability -- Beattie Trust ("Respondent")  
c/o Jim Armstrong, Catherine Armstrong & Melissa Armstrong**

## Guidance to Respondents

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

The San Francisco Bay Conservation and Development Commission is issuing this violation report/complaint for administrative civil liability 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 report/complaint contains a brief description of the alleged violation, a summary of all the pertinent information currently known to staff, and a list of all supporting evidence relied on by staff. All the listed supporting evidence is attached to or accompanies this report/complaint or will be provided to you in electronic format upon request. You can arrange to review the Commission's enforcement file for this matter located at the Commission's offices and/or have copies of these materials made at your expense by contacting Isabel Chamberlain of the Commission's staff at telephone number 415-352-3605. The report/complaint informs you of the nature of the possible violation and lists the supporting evidence so that you can fill out the enclosed Statement of Defense form and otherwise be prepared for the Commission enforcement proceedings.





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

Careful reading and a timely response to these materials are 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 report/complaint, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, contact Isabel Chamberlain of the Commission's staff as quickly as possible at telephone number 415-352-3605. Thank you for your cooperation.

**1. Person or persons believed responsible for illegal activity:**

Beattie Trust ("Respondent") c/o Jim Armstrong, Catherine Armstrong & Melissa Armstrong

**2. Brief description of the nature of the violation or unauthorized activity:**

**Violation 1:** In BCDC's Bay jurisdiction, the placement of unauthorized fill, including a 66-ft wooden fence. Located on APN 157-061-01. (Exhibit A)

**Violation 2:** In BCDC's Bay and 100-foot shoreline band jurisdictions, the placement of unauthorized fill, including wooden fencing and a wooden storage enclosure, and sundry household items and refuse. Located on APN 156-061-39. (Exhibit B)

**3. Description of and location of the property on which the violation or unauthorized activity occurred:**

Address: 172 Beattie Lane, Novato, Marin County (located in unincorporated Novato)

Assessor's Parcel No.: 157-061-01, 156-061-39

BCDC jurisdiction(s): 100-foot shoreline band & Bay jurisdictions

Applicable BCDC permit number(s): N/A

**4. Name of owner, lessee (if any), and other person(s) (if any) who controls property on which violation or unauthorized activity occurred:**

Beattie Trust ("Respondent") c/o Jim Armstrong, Catherine Armstrong & Melissa Armstrong

**5. Approximate date (and time if pertinent and known) that the violation or unauthorized activity occurred:**

Continuously since circa January 2018 (Exhibit C), See also February 2018 Google Earth image (Exhibit F)

**6. Summary of all pertinent information currently known to the staff in the form of proposed findings of fact with references to all pertinent supporting evidence listed in an attachment to the report/complaint:**

- a. **Date complaint received by BCDC Enforcement and summary of complaint:**  
4/3/2028; A neighbor submitted a complaint to BCDC about the respondent's house located at the end of the board walk on San Pablo Bay (in a neighborhood called Black Point). During the first few months of 2018, he says the respondent had installed a fence out into the marsh in order to hide the fact that he is now starting work on an addition to his house. The neighbor reported that this work substantially expands the footprint of the house (including septic system) into the marsh. (Exhibit F)
- b. **Supporting evidence:** 04/03/2018 Initial Enforcement Report Form (Exhibit D)
- c. **Date of initial investigation and findings:** 1/11/2018; Staff visited the site on 01/11/2018 and observed that fences were installed. Staff visited the site again on 01/15/2020, 10/02/2023, 03/26/2024, 08/13/2024 and 01/21/2025 confirmed fence and storage structures still in place; **Supporting evidence:** Screenshot from google earth images taken in 05/20/2017 (Exhibit E) show the fence and storage structure have not been built yet, and screenshot from google earth images taken on 02/05/2018 (See Exhibit F) show fence has been built. Additional evidence: Photos from BCDC site visit in July 2017 show fence and storage enclosure not built yet (See Exhibit G), but in January 2018 BCDC staff visit shows fence is erect (See Exhibit C). Photos from site visits taken 01/15/2020, 10/02/2023, 03/26/2024, 08/13/2024, and 01/21/2025 show fence and storage structure continue to be in place See Site Visit Photos (Exhibit H)
- d. **Date of initial contact attempt with respondent(s):** 11/20/2023; **Supporting evidence:** Initial Contact Letter (See Exhibit I)
- e. **Date of initial response by respondent(s) and summary of response:** 1/23/2024; **Supporting evidence:** ICL Response Letter Part 1 (See Exhibit J), ICL Response Letter Part 2 (See Exhibit K)
- f. **Date of initiation of formal enforcement action:** 4/30/2024; **Supporting evidence:** Notice of Violation (NOV) (See Exhibit L)
- g. **Date of commencement of Commission Enforcement Proceedings and summary of rationale:** 12/10/2025; It has been over 125 days since the NOV was

mailed to the respondent on April 30, 2024. Since the mailing date of the NOV, the respondent has made no effort to resolve the violations. The 125th day following the mailing date of the NOV was September 2, 2024; Supporting evidence: Communications from the respondent and representatives have been inconsistent and, most recently, unresponsive to requests for action from BCDC staff. A reminder letter was sent on 09/25/24 (See Exhibit M) giving the respondent a chance to rectify the violations before BCDC commenced formal enforcement proceedings but BCDC staff received no response. As a result, BCDC Enforcement staff have decided to commence formal enforcement proceedings, and a letter was sent on 12/11/24 (Exhibit N) communicating to the respondent that the opportunity to resolve the violations through the standardized fine process was terminated and that BCDC staff will initiate formal enforcement proceedings.

**7. Provisions of law or Commission permit that the staff alleges have been violated:**

Section 66632(a) of the McAteer-Petris Act

**8. If the staff is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding:**

(FOR INTERNAL USE ONLY: Check this box if no penalty is being proposed at this time. ☐)

(a) A list or table of all alleged violations for which staff is proposing a penalty:

The staff is recommending fines of up to \$30,000 for each violation of the McAteer-Petris Act, enumerated as follows:

Violation 1 (the placement of unauthorized fill, including a 66-ft wooden fence)	\$30,000.00
Violation 2 (the placement of unauthorized fill, including wooden fencing and a wooden storage enclosure, and sundry household items and refuse)	\$30,000.00

(b) The total amount of proposed administrative civil penalties:

Total: \$60,000.00 (\$30,000 per violation)

(c) A statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of the Commission's regulations (14 CCR), in determining the total amount of the proposed administrative civil penalties:

After considering the Gravity of Harm and Extent of Deviation from legal requirements for each violation, below is a breakdown of the designation for each section. This is based on the Administrative Civil Penalty Policy in Appendix J of the Commission's regulations.

A summary of the penalty calculation methodology used herein is as follows:

- 1) Determined the total initial base penalty amount for each violation by evaluating: (a) the gravity of harm of the violation; and (b) the extent of deviation from the requirement at issue. Based on those evaluations, used *Table 1* of Appendix J to determine the initial base penalty amount for the violation and multiplied the initial base penalty amount by the number of days that the violation has persisted thus determining the total initial base penalty for each violation.
- 2) Adjustments specific to the violator were made to the base penalty amount for each violation. The following additional factors were considered for potential adjustment of the total initial base penalty for each violation:
  - a. the violator's degree of culpability for the violation;
  - b. any history of violations by the violator;
  - c. any voluntary removal or resolution efforts and cooperation by the violator.
- 3) The total base penalty amount was determined by calculating the sum for all violations of the total initial base penalty amount for each violation multiplied for each violation by the percentages of any adjustments for the violator's culpability, history of violations, and voluntary efforts to resolve the violation.
- 4) Considered adjustments to the total base penalty amount based on additional factors and determined the final penalty amount.

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

BCDC staff has reached out many times to the respondent and representatives between November 20, 2023 to the present day to resolve this matter. Despite this, the respondent has failed to take action correcting the violations. The timeline of BCDC staff outreach to the respondent is as follows:

- **11/20/2023** Initial Contact: ICL mailed to respondent via certified mail. ICL via certified mail was returned to sender, so BCDC staff sent another copy via U.S. mail.
- **02/15/24** Respondent Response Letter: BCDC staff received a response letter (Part 1 and Part 2) from Jim Armstrong.
- **03/22/24** BCDC staff emailed respondent permit application instructions.
- **03/26/24** Site Visit with Respondent: BCDC staff visited site and met with Jim Armstrong. We advised him that permit staff would assess whether the fence needed to be pulled back, and he should have a professional determine the marsh delineation as part of his application. He seemed willing to work with us and agreed if the parking pad needs to be pulled back, he will cooperate.
- **04/30/24** Notice of Violation: 35DL mailed.
- **09/19/24** Staff tried to reach respondent via phone call, no response.
- **09/25/24** Reminder letter notifying Respondent of open enforcement case sent via U.S. mail.
- **10/08/24** Letter was returned with “no postage.”
- **10/17/24** Reminder letter sent again via certified mail.
- **11/01/24** BCDC staff met Missy Armstrong on site at the property and handed her the reminder letter to give to Jim Armstrong and gave her staff’s mobile number.
- **11/14/24** Staff tried to reach respondent via phone call, no response.
- **11/15/24** Staff tried to reach respondent via phone call, no response.
- **11/25/24** Staff tried to reach respondent via phone call, no response.
- **12/11/24** Notice of Formal Enforcement letter: Sent via certified mail.
- **12/18/24** Staff tried to reach respondent via phone call, no response.
- **01/08/25** Staff tried to reach respondent via phone call, no response.

Moreover, using the Information for Planning and Consultation (IPaC) site by the U.S. Fish and Wildlife Service, a report of the area notes there are several endangered species that could reside in the area and may be impacted by fill within the Bay. The IPAC report is included (Exhibit O) and shows the following endangered species may be in the area: Salt Marsh Harvest Mouse; California Least Tern; California Ridgeway’s Rail; Longfin smelt; and Tidewater Goby.

**10. List of all supporting evidence relied on by staff, including any declarations under penalty of perjury (these records will be provided to you in electronic format upon request): See attached.**

Documentation Date	Description
08/13/2024	Exhibit A: Site Visit photos
08/13/2024	Exhibit B: Site Visit photos

01/11/2018	Exhibit C: Site Visit Photos
04/03/2018	Exhibit D: Initial Enforcement Report Form
05/20/2017	Exhibit E: Screenshot from Google Earth images taken on 05/20/2017
02/05/2018	Exhibit F: Screenshot from Google Earth images taken on 02/05/2018
07/14/2017	Exhibit G: BCDC site visit in July 2017 show fence and storage enclosure not built yet
2020 – 2025	Exhibit H: Photos from various site visits
11/20/2023	Exhibit I: Initial Contact Letter
01/23/2024	Exhibit J: Respondent Response via letter (part 1)
01/23/2024	Exhibit K: Respondent Response via letter (part 2)
04/30/2024	Exhibit L: Notice of Violations (NOV)
09/25/2024	Exhibit M: Reminder letter of Failure to Respond to NOV
12/11/2024	Exhibit N: Notification of Formal Enforcement
02/03/2025	Exhibit O: IPaC Report (accessed through IPaC website: <a href="https://ipac.ecosphere.fws.gov/">https://ipac.ecosphere.fws.gov/</a> )
11/08/2023	Exhibit P: Property Detail Report













01/11/2018 18:11



# Exhibit D

Report Date & Time

**Vicinity of the alleged violation (check all that apply):**

In the San Francisco Bay  
(inclusive of Richardson's Bay, San Pablo Bay,  
Suisun Bay, Grizzly Bay, and all marshes and  
tidelands thereof)

Within 100 feet of the shoreline of the  
San Francisco Bay

In an upland area designated with a BCDC  
Public Shore sign

In a tributary river, creek or slough of the  
San Francisco Bay

In a salt pond or its levees

In a duck club/managed wetland or its  
levees

In the Suisun Marsh

**Location of the Alleged Violation:**

Street Address (if exact address is unknown, please enter the nearest cross-streets)

City

County

Latitude (optional)

Longitude (optional)

**Description of the Allegation:** Please describe the alleged violation. Note the date it occurred and its duration, if known. Provide an estimate of the size and extent of the issue, and include other notable details, such as whether the alleged violation may pose a serious threat to either the public's health & safety or the local habitat. Please e-mail photographs of the alleged violation and any other relevant information. Please also email a screenshot of or link to an online map (e.g., Google Maps, MapQuest) pinpointing the location of the alleged violation to help with our investigation. *Attachments are limited to 50 MB so you may need to send more than one email.*

**Responsible Party's Information: Please provide the contact information of the property owner or the person or organization who is responsible for the alleged violation.**

Name of the Responsible Person or Organization

BCDC Permit No. (if known)

Mailing Address

City

State

Zip code

Phone 1

Phone 2 (optional)

E-mail (optional)

Web Site (optional)

**Responsible Party's Agent, Representative or Tenant: If known, please provide the contact information of the accused violator's agent or representative.**

Name of Agent, Representative or Tenant

Mailing Address

City

State

Zip code

Phone 1

Phone 2 (optional)

E-mail (optional)

**Reporter Information: Please provide your name and at least one piece of contact information. BCDC staff may wish to contact you for additional information about the alleged violation.**

Check here if you want to remain anonymous. BCDC staff will not share your name or contact information with any third party.

Reporter Name

Mailing Address

City

State

Zip code

Phone

E-mail

*Please e-mail this form to **report\_violation@bcdcc.ca.gov**.  
If you prefer to file your report by phone, please call (415) 352-3600.*

# Exhibit D

ER File Number

Date ER File Established

Prior Enforcement Files

Jurisdiction/Prioritization Type (check all that apply):

Bay

Upland

Suisun Marsh

Paper Violation

Prioritization Score

Notes:

Investigated By

Date Undertaken

Resolution Date

Penalty Amount Assessed

Penalty Amount Received

Case Closure Notes:

Exhibit E

172 Beattie Ln

Hunters Club Rd

Hunters Club Rd

Hunters Club Rd

Google Earth

# Exhibit F



Google Earth

Imagery Date: 2/5/2018 38°06'39.33" N 122°30'11.81" W elev 8 ft eye alt 238 ft







Exhibit H - 2020.01.15



01/15/2020 13:10



Exhibit H - 2020.01.15



01/15/2020 13:10



Exhibit H - 2020.01.15



01/15/2020 13:11





01/15/2020 13:18



Exhibit H - 2020.01.15



01/15/2020 13:18





01/15/2020 13:18



Exhibit H - 2020.01.15



01/15/2020 13:19



Exhibit H - 2020.01.15



01/15/2020 13:19





01/15/2020 13:19



Exhibit H - 2020.01.15



01/15/2020 13:19



Exhibit H - 2020.01.15



01/15/2020 13:19



Exhibit H - 2020.01.15



01/15/2020 13:20



Exhibit H - 2020.01.15



01/15/2020 13:20



Exhibit H - 2023.10.02





Exhibit H - 2023.10.02



Exhibit H - 2023.10.02





Exhibit H - 2023.10.02





Exhibit H - 2023.10.02





Exhibit H - 2023.10.02









# Exhibit H - 2024.03.26















































































































































Exhibit 2024.08.13

























**WARNING FIBER OPTICS**

**CALL BEFORE YOU DIG!**

**COMCAST**  
**1-888-824-8210**

**875**





































Exhibit H - 2025.01.2



















































# 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](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

## ***Via Certified Mail***

November 20, 2023

ATTN: Catherine Ann Armstrong and Melissa Jean Armstrong  
172 Beattie Lane  
Novato, CA 94945

### **SUBJECT: Initial Contact Letter Regarding Fill Placed in BCDL Jurisdiction (BCDC Enforcement Case ER2018.015.00)**

Dear Catherine and Melissa:

BCDC received a report regarding unauthorized activities at 172 Beattie Lane in in unincorporated Black Point, Marin County (Marin County APNs 157-061-01 and 157-061-39), as described below.

<b>Alleged Activity:</b>	<b>This action represents a violation of the following statute:</b>
Erection of fencing in the Bay and/or 100-foot shoreline band jurisdiction(s)	The McAteer-Petris Act Section 66632(a)
Filling of the Bay for use as waste bin storage and automobile parking	
Expansion of pre-existing home resulting in increased square footage in the 100-foot shoreline band and/or Bay jurisdiction(s)	

The McAteer-Petris Act Section 66632(a) requires that:

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.



Catherine and Melissa Armstrong  
BCDC Enforcement Case ER2018.015.00

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November 20, 2023

This letter serves as notice that because BCDC did not authorize the work described above, we believe that violations have occurred, and we have opened BCDC Enforcement Case ER2018.015.00.

To resolve this case, you must immediately cease the use of the storage and parking structure. You must seek and obtain a BCDC permit to remove the storage/parking structure and restore the affected portion of the Bay to its natural state. You must seek and obtain an after-the-fact permit authorizing the fencing in the shoreline band and the home addition. You may be subject to fines as well.

Please respond within 15 days of the date of this letter confirming that you have commenced the BCDC permit application process. You may obtain a permit application by visiting [www.bcdc.ca.gov](http://www.bcdc.ca.gov).

Pursuant to the McAteer-Petris Act and its regulations, BCDC is authorized to conduct enforcement investigations and commence administrative enforcement actions. While this letter does not commence a formal enforcement proceeding, we reserve the right to take formal action, including imposing fines or penalties. A prompt response will be considered in determining the next steps that BCDC pursues.

Further, while the report we received focused on the activities identified above, we recognize the potential that there may be other violations at the site. We urge you to review the applicable regulations to your property to ensure you are fully compliant with them.

Thank you for your attention to this matter.

Sincerely,

DocuSigned by:  
  
01D29D76CC1B4FA...

MATTHEW TRUJILLO for  
RACHEL COHEN  
Coastal Program Analyst  
San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510  
San Francisco, California 94105  
Tel: 415-352-3661  
Email: [rachel.cohen@bcdc.ca.gov](mailto:rachel.cohen@bcdc.ca.gov)

cc: (via e-mail):

USACE, Bryan Matsumoto, [bryan.t.matsumoto@usace.army.mil](mailto:bryan.t.matsumoto@usace.army.mil)  
SFBROWQCB, Bryan Thompson, [brian.thompson@waterboards.ca.gov](mailto:brian.thompson@waterboards.ca.gov)  
USFWS, Kim Squires, [kim\\_squires@fws.gov](mailto:kim_squires@fws.gov)



Catherine and Melissa Armstrong  
BCDC Enforcement Case ER2018.015.00

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November 20, 2023

County of Marin Building Department, [cdabuilding@marincounty.org](mailto:cdabuilding@marincounty.org)  
County of Marin Code Enforcement, Gil Sanchez, Supervising Code Compliance Specialist,  
[gsanchez@marincounty.org](mailto:gsanchez@marincounty.org)



Catherine and Melissa Armstrong  
BCDC Enforcement Case ER2018.015.00

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*Figures 1, 2. Aerial imagery of the site from May 20, 2017 (left) and September 1, 2018 (right) with yellow overline depicting approximate area of new fencing and structures.*





Catherine and Melissa Armstrong  
BCDC Enforcement Case ER2018.015.00

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November 20, 2023

*Figure 3. Image of the site taken by BCDC staff on July 14, 2017, showing the conditions before the new fences and waste bin storage structure were placed.*





Catherine and Melissa Armstrong  
BCDC Enforcement Case ER2018.015.00

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November 20, 2023

*Figure 4. Image of the site taken by BCDC staff on July 14, 2017, showing the conditions before the new fences and waste bin storage structure were placed.*





Catherine and Melissa Armstrong  
BCDC Enforcement Case ER2018.015.00

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*Figure 5. Image of the site taken by BCDC staff on January 11, 2018, showing part of the new wooden fences.*





Catherine and Melissa Armstrong  
BCDC Enforcement Case ER2018.015.00

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November 20, 2023

*Figure 6. Image of the site taken by BCDC staff on January 11, 2018, showing part of the new wooden fences.*





Catherine and Melissa Armstrong  
BCDC Enforcement Case ER2018.015.00

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November 20, 2023

*Figure 7. Image of the site taken by BCDC staff on October 2, 2023, showing part of the new wooden fences and waste bin storage structure.*





1/23/24

ATTN: Rachel Cohen (for/ and Matthew Trujillo

Coastal Program Analyst San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, CA 94105

Tel 415-352-3661

Email: [Rachel.cohen@Bcdc.ca.gov](mailto:Rachel.cohen@Bcdc.ca.gov)



SUBJECT: Initial Response from Beattie Trust Re: Nov 20 2023 Initial Contact Letter from BCDC Regarding Fill Placed in BCDC Jurisdiction (received 1/18/24) and alleged violations per said letter (BCDC Enforcement Case ER2018.015.00)

Dear Rachel and Matthew,

This letter is to follow up on your 11/20/23 letter, enclosed, (received on 1/18/24), referenced above, regarding a complaint filed by a neighbor against the subject property. Your letter addresses alleged violations on the subject property on the 172 Beattie Lane parcel (APN 157-061-01) referencing 2 fence replacements built in the front yard area of the subject residence parcel, and replacement fencing and a small storage enclosure build on the parking lot parcel (APN 157-061-39) located across the street on the other side of the Beattie Lane roadway easement (APN 157-061-39). Your letter also references an alleged expansion to the subject residence, by a neighbor, which is completely inaccurate. At no time has the residence coverage ever been expanded, rather required repairs were implemented to the existing structure. Also, at no time during the 13+ years that Beattie Trust has occupied the subject property has any fill material ever been brought to the subject property.

This letter is submitted to you as an acknowledgement of the receipt of your letter and as an initial response to your Initial Contact letter. In connection with such we will be preparing and submitting to BCDC the appropriate and relevant permit applications, if needed, addressing your concerns expressed. The information that was provided to you in the complaint letter you received is an inaccurate representation of the facts which information we will clarify in our forthcoming permit application submittals.

Regarding such we are in the process, as you have recommended, of reviewing the BCDC website and applicable requirements, regulations, development standards, and specific process required to gain guidance regarding any future permit submittal. We also will be contacting you soon to ask and address questions including your recommendations relevant to said planned submittal.

We would appreciate your follow up contact to us acknowledging your receipt of our communication. I am the property manager for Beattie Trust (Jim Armstrong) and am authorized by Beattie Trust to follow up with you regarding your initial contact letter, including that I will be assisting the trust in their future applications as requested by BCDC to address the matters outlined in your notification letter. I can be reached at 415-606-6864 and [jimellen7@gmail.com](mailto:jimellen7@gmail.com) or by mail at 176 Beattie Ave, Novato CA 94945.

**Brief History and Adjacent Railroad Property:** Beattie Trust purchased this property in July of 2015, approx. 8 ½ years ago and prior to that resided at the property as tenants since 2009. The Beattie Trust property is the last property at the end of Beattie Lane and is bordered by the **Railroad parcel, which includes** the existing tidal and drainage canal that runs parallel to the 172 Beattie Lane property line,



which is entirely on the Railroads property and also includes the existing undersized culvert in said location. **In March of 2016 we submitted a complaint** letter about the adjacent Railroad property outlining years of unpermitted filling activities conducted by the Railroad, the failure of the Railroad to maintain and repair the broken drainage culvert on their property that had been abandoned for years and which was nonfunctional, significant unpermitted filling on their land via constant dumping of truckloads of gravel and fill over the years to build up an old unpermitted road on their land and in other areas of their property which entire area is by definition a marsh.... the failure of the Railroad to maintain and keep the access gate at the end of Beattie secured...representing a drowning and health and safety hazard.....which was laying on the ground, (which has previously always been locked for years, but then abandoned) ...and which continues to represent a significant drowning risk relating to the two 6" deep canal pools located within feet of 172 Beattie(where small children reside)... also the existing parking lot parcel associated with 172 Beattie that previously had been fenced...which later was replaced where the preexisting fence was represented the same drowning risk.... also that the original drainages had changed and that instead of flowing straight along the canal near the mailboxes, the run off from the marsh through the culvert to the canal was taking a severe right turn...near the existing mailboxes appurtenant to 172 Beattie...and flowing directly at and into the canal wall along 172 Beattie property causing erosion and damage to the 172 Beattie property.

The letter we submitted was a 18 page letter. Including photos and exhibits that was personally submitted to Marin County Public Works, to the Railroad, and to BCDC. We also met with BCDC at the site and the railroad representatives at a separate meeting at the site. **We are requesting that you review said letter communication submittal that was provided to BCDC...** When BCDC received and confirmed the information they immediately stopped the RR from additional activities...as BCDC was able to confirm the problems outlined...and required a permitting process. The RR however applied for a culvert and road repair and many of the issues discussed were ignored. In addition to the submittal of the letter to the above parties, **said letter was included as an exhibit** during the RR permitting process to repair the culvert...so you should have access to said information. If you cannot locate it, please advise me and I will scan and e-mail forward it to you.

**With regards to your letter** outlining 3 items of BCDC's concern, the following preliminary comments are outlined, which will be amended in the future after our review of additional information you have recommended on the BCDC website and in connection with our intent to make a permit application in the future. **(1)** At no time have we ever placed fill on the Beattie Trust property. **(2)** The fencing repairs or replacements made were in the same location of the pre-existing fencing. The fencing replacements were necessary to avoid liability from neighbors and trespassers who were accessing our property including to avoid existing serious health and safety and drowning concerns relating the adverse conditions adjacent to our property, which are further discussed in this letter. **(3)** At no time was the existing residence at 170 Beattie ever expanded, which instead was subject to needed repairs and no filling or coverage of additional land area occurred. **Per your letter, item 1.** Front yard fencing on the 172 Beattie Trust lot: The fencing outlined and noted on your diagram was the location of pre-existing fencing. The original open wood side yard fence, that is adjacent to the canal on the RR property represented a significant health and safety and drowning risk associated with the canal conditions especially since the current residents or the property includes 2 small children, age 2 and 5. Said pre-existing fence posts, and the replacement fence can be viewed per the photos. The solid wood replacement fence built is 4 feet 4 inches tall. A year or 2 later 2 feet of lattice was added for privacy.



# Exhibit J

Making said repair was an absolute necessary for health and safety reasons and we do not believe said improvement represents any impact in connection with BCDC possible concerns. It will be our intent to file an emergency permit for said "as built" improvement in the future. **2.** Fencing and storage bin structure on the Beattie Trust parking lot parcel, across the street from the Beattie Rd residences parcel: The fencing in said location was placed in the same location as the pre-existing fencing. At no time have we ever placed fill in said location or any location. The fencing was needed, as per the fence in the residential yard parcel, for significant health and safety reasons and drowning risk associated with the open water pools within feet from the property line on the RR property. Also, continually trespassing neighbors were walking on our property representing a significant liability issue in the event someone was injured by falling into the canal on the RR property. The storage bin is also conservative in size being approx. 5 'tall. Except for said improvements the parking lot parcel is in the same physical condition that has existed since the development of the property est 40-60 years. It is our intention that we will file an application seeking approval of said improvements, subject to our further discussions with you and any possible recommendations. In the future, under a separate application, it will be our intent to file for a permit to construct a garage on said lot. All of the parking lot parcels along Beattie Lane in this location appurtenant to the residences across the street from them...including 2 of which currently have garages .... are used for parking and have been used for such the last 60 years. **(3)** The residential structure at 170 Beattie: **(3)** At no time was the existing residence at 170 Beattie ever expanded, which instead was subject to needed repairs and no filling or coverage of additional land area occurred. Said information can be confirmed in the future with our future submittal.

**Additional photos and comments** are enclosed as an addendum to this letter which information will be amended in the future with our submittal.

Sincerely, Jim Armstrong. Property Manager for Beattie Trust. 415-606-6864 / [jimellen7@gmail.com](mailto:jimellen7@gmail.com)



BCE

LESTER

Exhibit J

**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](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)**Via Certified Mail**

November 20, 2023

RECEIVED 11/18/23

ATTN: Catherine Ann Armstrong and Melissa Jean Armstrong  
172 Beattie Lane  
Novato, CA 94945

Bea Hie Tawt

**SUBJECT: Initial Contact Letter Regarding Fill Placed in BCDC Jurisdiction  
(BCDC Enforcement Case ER2018.015.00)**

COPY

Dear Catherine and Melissa:

BCDC received a report regarding unauthorized activities at 172 Beattie Lane in in unincorporated Black Point, Marin County (Marin County APNs 157-061-01 and 157-061-39), as described below.

<b>Alleged Activity:</b>	<b>This action represents a violation of the following statute:</b>
Erection of fencing in the Bay and/or 100-foot shoreline band jurisdiction(s)	The McAteer-Petris Act Section 66632(a)
Filling of the Bay for use as waste bin storage and automobile parking	
Expansion of pre-existing home resulting in increased square footage in the 100-foot shoreline band and/or Bay jurisdiction(s)	

The McAteer-Petris Act Section 66632(a) requires that:

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.



~~Catherine and Melissa Armstrong~~  
BCDC Enforcement Case ER2018.015.00

SEATTLE TRUST

Page 2  
November 20, 2023

This letter serves as notice that because BCDC did not authorize the work described above, we believe that violations have occurred, and we have opened BCDC Enforcement Case ER2018.015.00.

To resolve this case, you must immediately cease the use of the storage and parking structure. You must seek and obtain a BCDC permit to remove the storage/parking structure and restore the affected portion of the Bay to its natural state. You must seek and obtain an after-the-fact permit authorizing the fencing in the shoreline band and the home addition. You may be subject to fines as well.

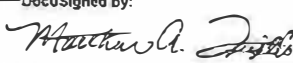
Please respond within 15 days of the date of this letter confirming that you have commenced the BCDC permit application process. You may obtain a permit application by visiting [www.bcdc.ca.gov](http://www.bcdc.ca.gov).

Pursuant to the McAteer-Petris Act and its regulations, BCDC is authorized to conduct enforcement investigations and commence administrative enforcement actions. While this letter does not commence a formal enforcement proceeding, we reserve the right to take formal action, including imposing fines or penalties. A prompt response will be considered in determining the next steps that BCDC pursues.

Further, while the report we received focused on the activities identified above, we recognize the potential that there may be other violations at the site. We urge you to review the applicable regulations to your property to ensure you are fully compliant with them.

Thank you for your attention to this matter.

Sincerely,

DocuSigned by:  
  
01D29D76CC1B4FA...

MATTHEW TRUJILLO for  
RACHEL COHEN  
Coastal Program Analyst  
San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510  
San Francisco, California 94105  
Tel: 415-352-3661  
Email: [rachel.cohen@bcdc.ca.gov](mailto:rachel.cohen@bcdc.ca.gov)

cc: (via e-mail):

USACE, Bryan Matsumoto, [bryan.t.matsumoto@usace.army.mil](mailto:bryan.t.matsumoto@usace.army.mil)  
SFBROWCB, Bryan Thompson, [brian.thompson@waterboards.ca.gov](mailto:brian.thompson@waterboards.ca.gov)  
USFWS, Kim Squires, [kim\\_squires@fws.gov](mailto:kim_squires@fws.gov)



~~Gatherine and Melissa Armstrong~~  
BCDC Enforcement Case ER2018.015.00

BEATTIE TRUST

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November 20, 2023

County of Marin Building Department, [cdabuilding@marincounty.org](mailto:cdabuilding@marincounty.org)  
County of Marin Code Enforcement, Gil Sanchez, Supervising Code Compliance Specialist,  
[gsanchez@marincounty.org](mailto:gsanchez@marincounty.org)



~~Catherine and Melissa Armstrong~~

BCDC Enforcement Case ER2018.015.00

BEATTIE TRUST.

Page 4

November 20, 2023

Figures 1, 2. Aerial imagery of the site from May 20, 2017 (left) and September 1, 2018 (right) with yellow overline depicting approximate area of new fencing and structures.





~~Gatherite and Melissa Armstrong~~

BEATTIE TRUST

BCDC Enforcement Case ER2018.015.00

Page 5

November 20, 2023

*Figure 3. Image of the site taken by BCDC staff on July 14, 2017, showing the conditions before the new fences and waste bin storage structure were placed.*





~~Catherine and Melissa Armstrong~~  
BCDC Enforcement Case ER2018.015.00

BEATTIE TRUST

Page 6  
November 20, 2023

*Figure 4. Image of the site taken by BCDC staff on July 14, 2017, showing the conditions before the new fences and waste bin storage structure were placed.*





~~Catherine and Melissa Armstrong~~ → SEATTLE MUST  
BCDC Enforcement Case ER2018.015.00

Page 7  
November 20, 2023

*Figure 5. Image of the site taken by BCDC staff on January 11, 2018, showing part of the new wooden fences.*





~~Catherine and Melissa Armstrong~~ *SEATTLE TRUST*  
BCDC Enforcement Case ER2018.015.00

Page 8  
November 20, 2023

*Figure 6. Image of the site taken by BCDC staff on January 11, 2018, showing part of the new wooden fences.*





~~Catherine and Melissa Armstrong~~

BCDC Enforcement Case ER2018.015.00

BEATTIE TRUST

Page 9

November 20, 2023

*Figure 7. Image of the site taken by BCDC staff on October 2, 2023, showing part of the new wooden fences and waste bin storage structure.*





**Property Photos and Preliminary Comments:** These photos and comments are provided to address the subject property history and conditions and are included with our preliminary contact to your initial contact letter. Said information is preliminary and will include significantly more detailed information, including additional photos confirming the current status and historical damaging conditions which are the 100% responsibility of the Railroad (adjacent neighbor).

The Railroads 50+ year history of unpermitted filling of their adjacent land, illegally filling and raising the grade of their private road, failure to properly repair the broken culvert on their property, and failure to make the necessary repairs or address the creek damage caused by their activities continues today... and has significantly damaged the existing creek near the Beattie Trust property at the end of the front yard fence near the telephone pole. Specifically, the creek bank wall along Beattie Trust has been eroded, caused by the change of alignment of the Railroads creek, caused by their filling activities including over 160+ feet of gravel fill damage to the creek as a result of said gravel filling to raise the natural grade of their private road evident today most of which gravel has been deposited during the past 10 years, when we previously contacted them about said problem. It is easily noted by review of the enclosed photos, that the filling activities have blocked the natural tidal flow from the Petaluma River, which historically fills the Beattie Marsh...and by blocking said flow.... because of their filling...they are trying to direct all said daily flow...into a small undersized culvert which fills and empties Beattie Marsh which is inadequate to properly handle said daily flow....so in reality the Marsh is being damaged as well, as the natural drainage channels are blocked. Conversely... as the Railroads efforts to raise their land by adding more gravel fill continues today, the river has simply flowed over the RR's wooden culvert retaining wall and previously filled land and is reestablishing the natural and normal flow to the marsh, and also extending the Marsh boundaries over near the existing Railroad tracks berm, shown in attached photos. This is the natural and historical tidal flow and the way the river is intended to flow...and the RR's filling activities should be stopped ...as such has caused damage to the creek that runs between our properties, including the eroded creek wall adjacent to the Beattie Trust property. It is the Railroads responsibility to implement a proper re alignment of the creek and install or implement a retaining wall repair along the Beattie Trust eroded creek bank wall. It can be noted that 2 of the fence posts on the front yard fence replacement near the telephone pole are now visible from the eroded creek wall. Per the photos, those posts were installed 7 years ago est... into solid ground. They are visible today due to creek bank damage referenced and erosion caused by the RR. At this time there is more than 160+ feet of gravel debris lined down the creek in the creek bed. In general, said ongoing filling activities has significantly damaged the hydrology and biology of the Creek. This is a matter that needs to be addressed with the RR including that the responsibility of correcting said problems is theirs. **Railroad Notification:** Beattie Trust has owned their property since 7/2015...aprox 8.5 years, but were former tenants for 5 years prior. **In March of 2016, Beattie Trust issued a formal complaint** letter to Marin County Dept of Public Works, the Railroad, and to BCDC regarding said activities. BCDC immediately investigated and stopped the work in progress, subject to a more comprehensive review and permitting process. The RR applied for a road repair and also a repair of the broken undersized culvert. All of the major issues like the blockage and redirecting of normal tidal flow via filled berms to a small creek and culvert... the damage to the creek and need for proper realignment, and to Beattie Marsh and neighboring property, the erosion on the creek wall, and the 160+' of damaged creek bed were ignored and or not properly addressed or remedied via their road filing and retaining wall repair request. We submitted a 18 page letter, 3 typed with remainder of photos and exhibits... The RR told us they weren't responsible for our property damage, caused by their activities and basically ignored us. This was in March of 2016. We were advised



by our consultant that the RR does carry the responsibility of correcting the problems noted, including the creek repair and erosion concerns and creek bank wall damage, the need for creek realignment, gravel removal and the creek bank wall repair...but didn't have the funds to pursue a proper remedy. Also, the RR property gate is unsecured...representing a significant health and safety concern and drowning risk... to a large volume of daily trespassers, neighborhood residents and children, including the small children who live at Beattie Trust, due to the un fenced or protected canal and two 6' deep open water pools and open canal on the RR property. This is a ongoing problem that is continuing to get worse. There are random children and people walking all over the RR property, daily. Based on today's river flow patterns... the entire area beyond the unlocked gate looks like a large lake. Children and people however walk there... with no way of knowing they easily could step into one of the large unprotected pools representing a serious drowning risk. Then **about 1.5 years ago** while speaking to an on-site RR employee, he advised us that there was a **phase 2 plan** that they were going to implement which was going to address the problems we've noted here.... relating to the creek repairs needed. **We are requesting that you please review the prior correspondence letter we sent in 2016 referenced herein,** which was also an exhibit to the RR's application with BCDC....so we can discuss such. You should have it in your database. If you can't locate it please advise and **we will send you the information.** Also please review any **phase 2 possible plan** regarding creek restoration referenced by the RR so we can discuss and advise us of such, which would be appreciated.

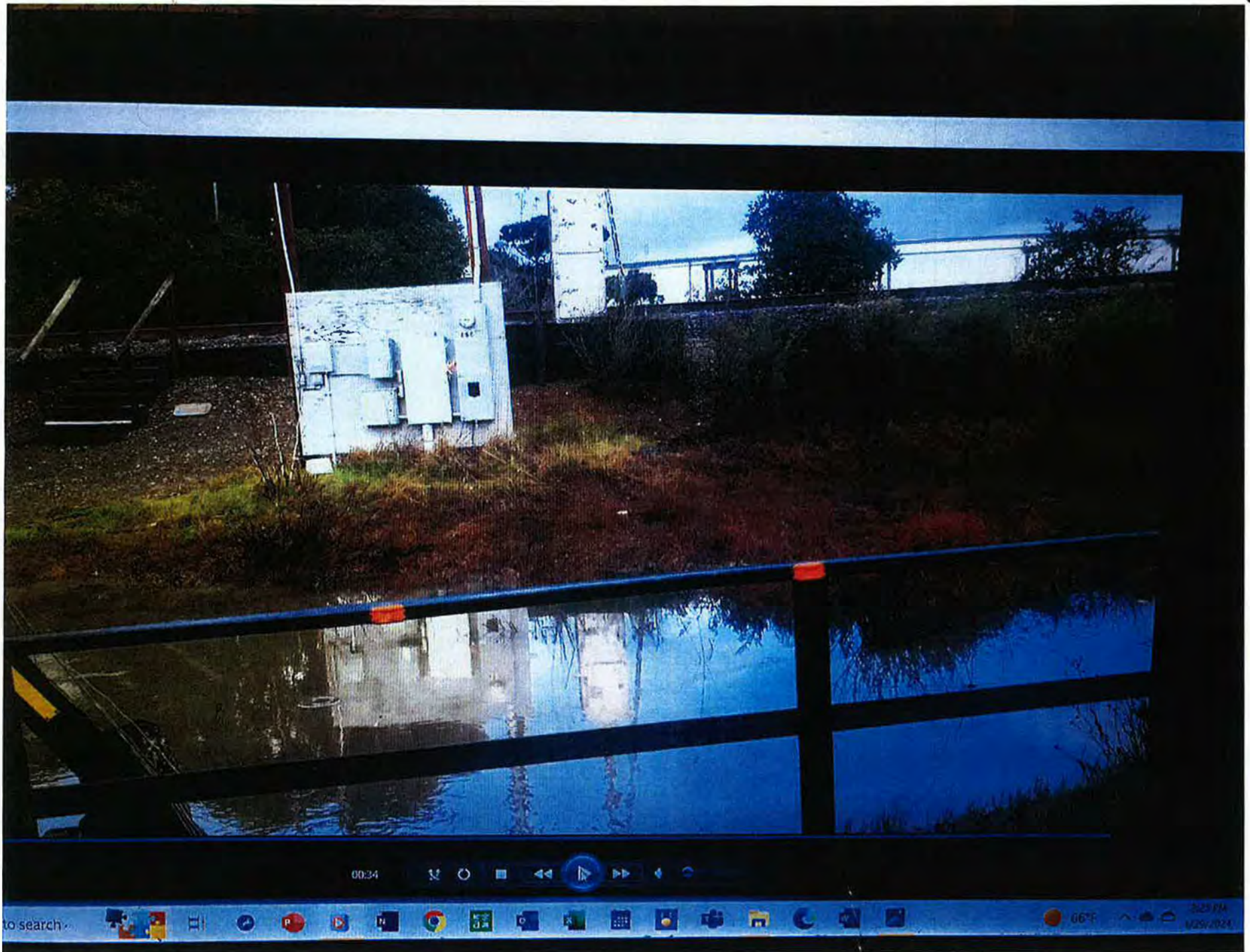
**The comments below** also address some comments **relating to the photos attached**, which will be clarified or amended via our future discussions and permit application, if needed. Accordingly, this letter does not entirely address all of our comments relating to your **Initial Contact letter**, which we wish to discuss with you in the near future. **Photo 1.** The large open unprotected canal directly adjacent to our property, (drowning risk). **(2)** A photo showing canal realignment need. The small yard and front yard replacement fence was located in the same location as the preexisting open fence. This was necessary to address a serious drowning risk to the small children at Bettie trust. The replacement fence did not impact the canal, but there are 2 posts visible today, due to extensive additional creek bank erosion, since we notified the RR in 2016. We made a significant effort to address all of this. That was 8 years ago...and as predicted...things have gotten significantly worse. **(3)** Front Yard Fence. The open pre-existing fence posts are visible. This was replaced it with a 4'4" solid fence, and later an additional 2' of lattice. Implementing said repair to protect the front yard was an absolute necessity to protect against a serious drowning risk. To our children or others. Said improvement, given the circumstances should not be considered a BCDC violation, as the fence location replaced a previous fence in the same location, which did not impact the creek. **(4)** Front Yard Fence view that extends to the mailboxes. The same comments that apply to #3 apply here. **(5)** Property view, showing one of many dirt berms filled by RR, that has forced the Petaluma River incoming tidal flow to be directed to the small undersized canal by the Bettie Trust property to the Beattie Marsh. **(6 & 7)** View of original open wood fence along the adjacent creek. This was replaced with a 4.4 foot solid wood fence to avoid an obvious drowning risk and to keep neighbors and trespassers off of our private property. The posts associated with the replacement fence went into solid ground and did not impact the creek. **(8)** A view of previous open wood fence in front yard. Also, a large filled area by the RR which have contributed to the creek misalignment problem and extensive ongoing erosion to the creek wall. **(8A)** This is a photo from your Initial Contact Letter that shows extensive gravel fill run off that has damaged the creek hydrology and biology. Today the creek is full of over 160+ feet of gravel. This is the result of years of unreported filling including the ignoring of addressing the issues and the railroads on going depositing of truckloads of



# Exhibit K

gravel to raise the grade of their internal road. While the original conditions ie the undersized broken culvert have been a problem for years...the ultimate pursuit by the railroad to fix and raise the elevation of their road, has and continues to create a much bigger problem for this neighborhood. **(9)** Creek alignment issues. **(10, 11,12)**. 6-foot open water pool (drowning hazard) that is near the solid fence on the designated parking lot parcel, just across the road easement on Beattie Lane. A solid fence in said location, in the same location as the previous fence is there today, for the same reason the solid front yard fence was needed, to stop trespassers from walking around our property and the associated liability and also to avoid a serious drowning risk to neighbors and neighborhood children associated with the open 6' pool and canal on the RR property. **(13)** Parking lot replacement fence placed in same location as previous fence and storage bin structure. **(14)** View of gravel and creek alignment problem. **(15)** This view from a photo from 2016 of the area below the white car where the normal flow of the Petaluma River is supposed to go. Today, since the ongoing program by the RR to keep the grade on their property filled with ongoing fill gravel has temporarily failed, the daily River tidal flow ...now just fills up said area, which is the way it should be...rather than be blocked by fill. The RR carries the responsibility for the problems noted here. **(16)** Photo taken today of un protected, open and unsecured access to RR property and associated drowning hazards. A child could walk into the creek or even worse, 2 unprotected open 6' pools located just feet from the Beattie Trust property which are a hazard without knowing they are there.





PRE EXISTING YARD (front) FENCE 2016



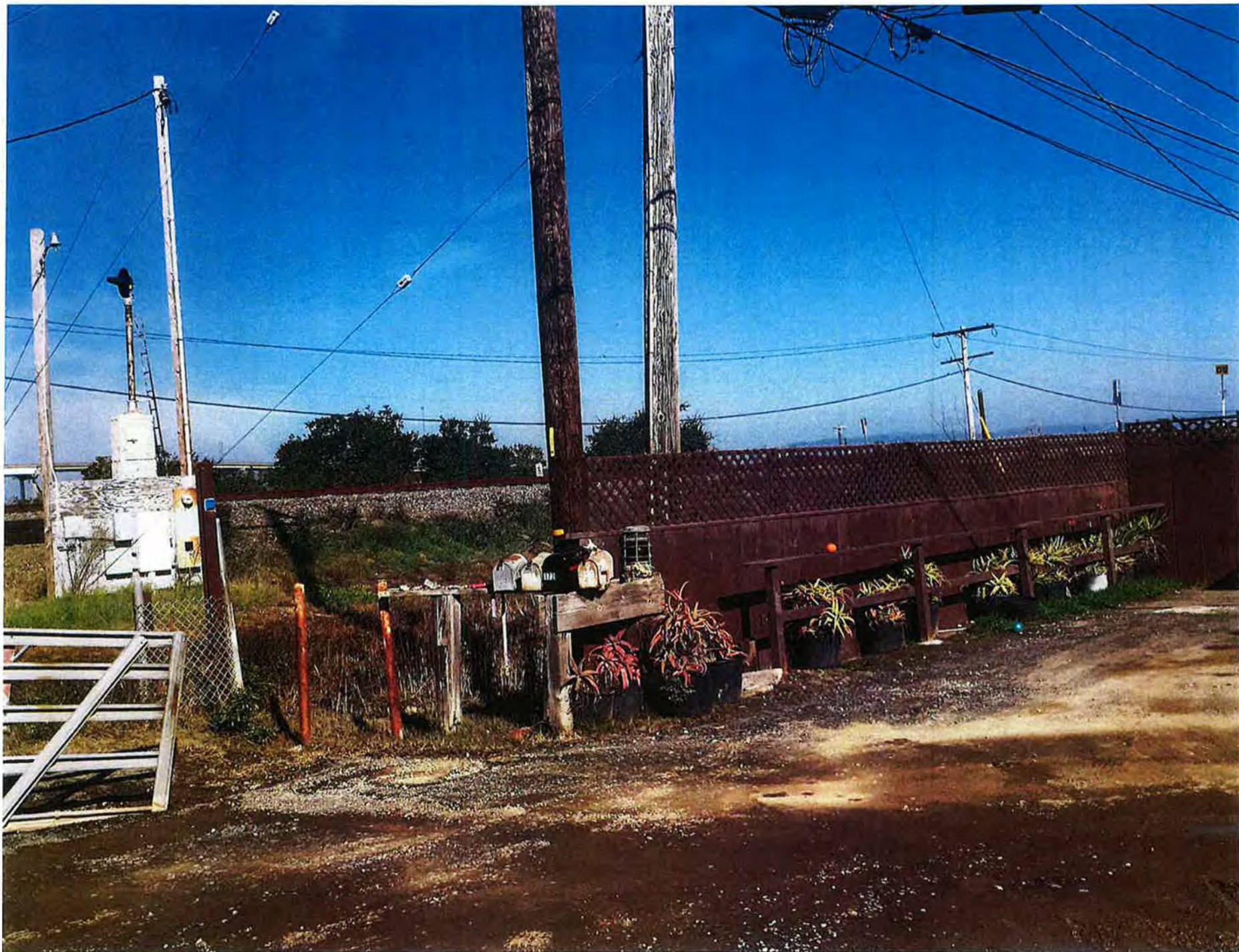






PRE EXISTING YARD FENCE POSTS AND 4'x4" SOLID REPLACEMENT + LATTICE











PRE EXISTING OPEN FENCE 6 / Exhibit K





~~Catherine and Melissa Armstrong~~ BEATTIE  
BCDC Enforcement Case ER2018.015.00 TRUST

8A

Page 7  
November 20, 2023

*Figure 5. Image of the site taken by BCDC staff on January 11, 2018, showing part of the new wooden fences.*





~~Catherine and Melissa Armstrong~~  
BCDC Enforcement Case ER2018.015.00

BEATTIC TRUST

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November 20, 2023

*Figure 4. Image of the site taken by BCDC staff on July 14, 2017, showing the conditions before the new fences and waste bin storage structure were placed.*











OPEN 6' DEEP POOL NEAR (RR) ENTRY GATE









SAME POOL



13



PARKING LOT VIEW











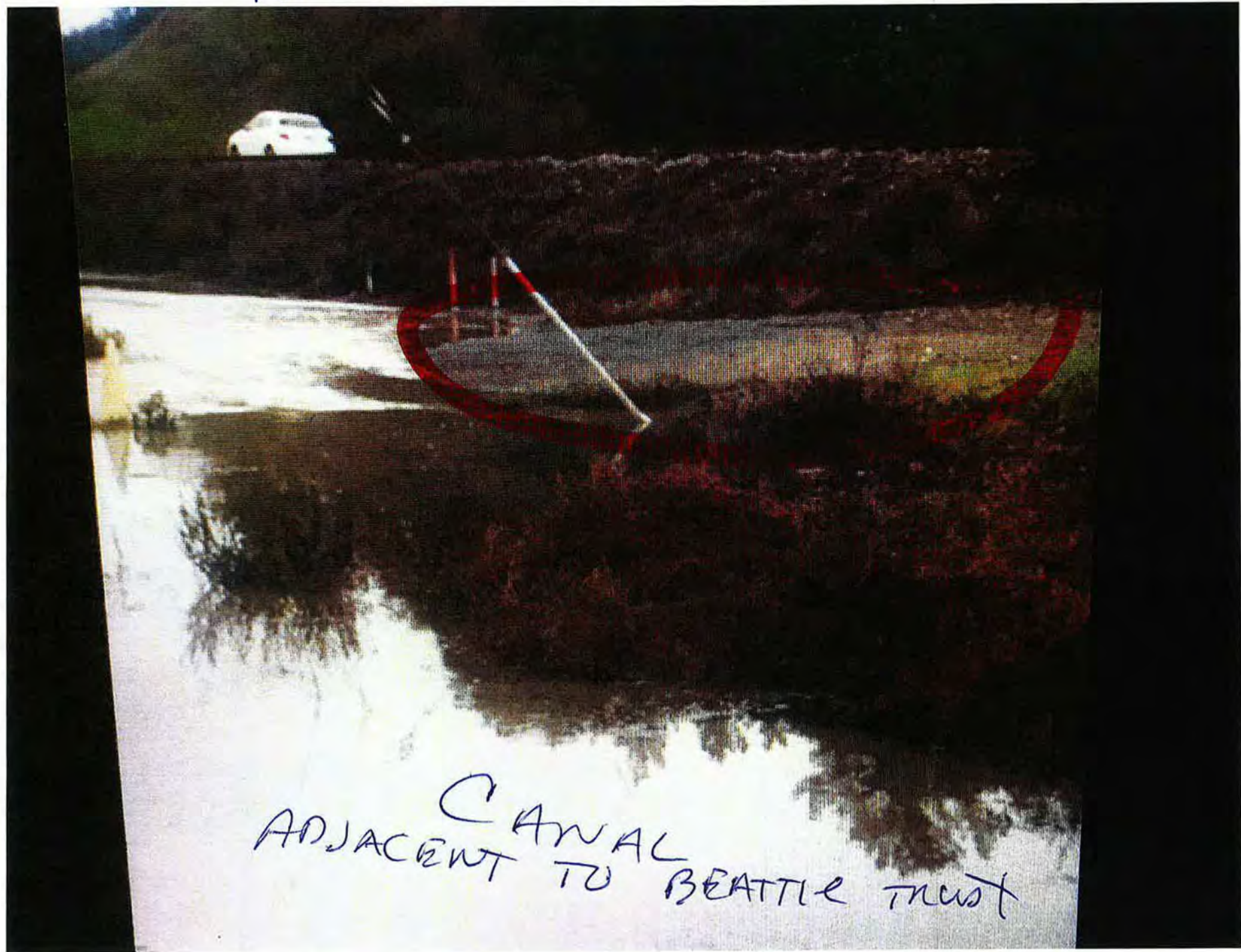




17

FILL BLOCKING NATURAL RIVER FLOW <sup>to Beattie</sup> Exhibit K

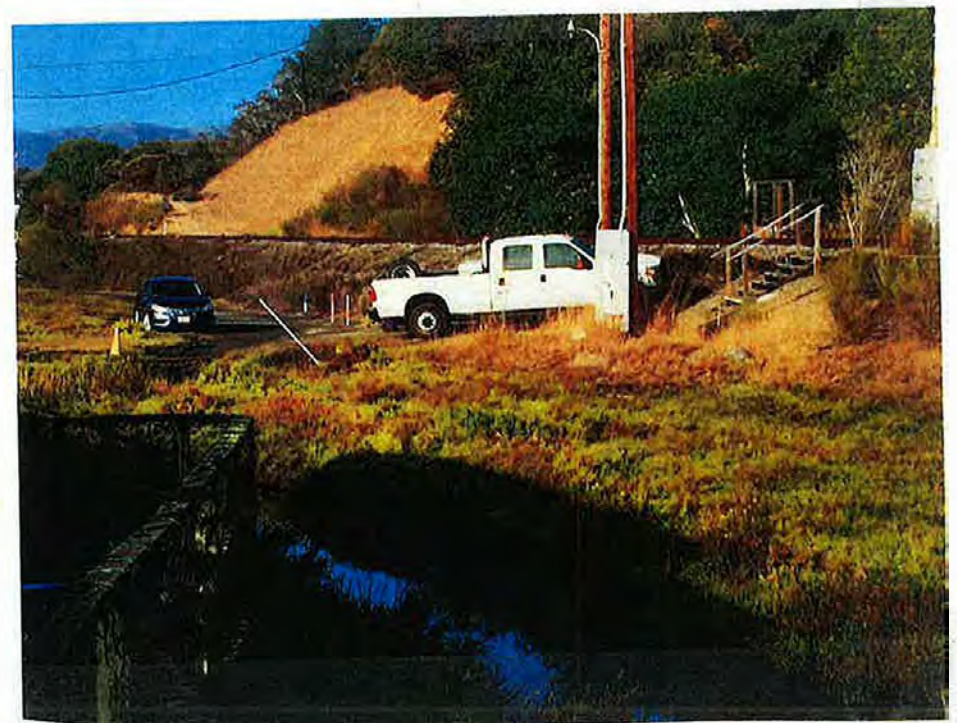
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Exhibit K





# Exhibit K





Exhibit K







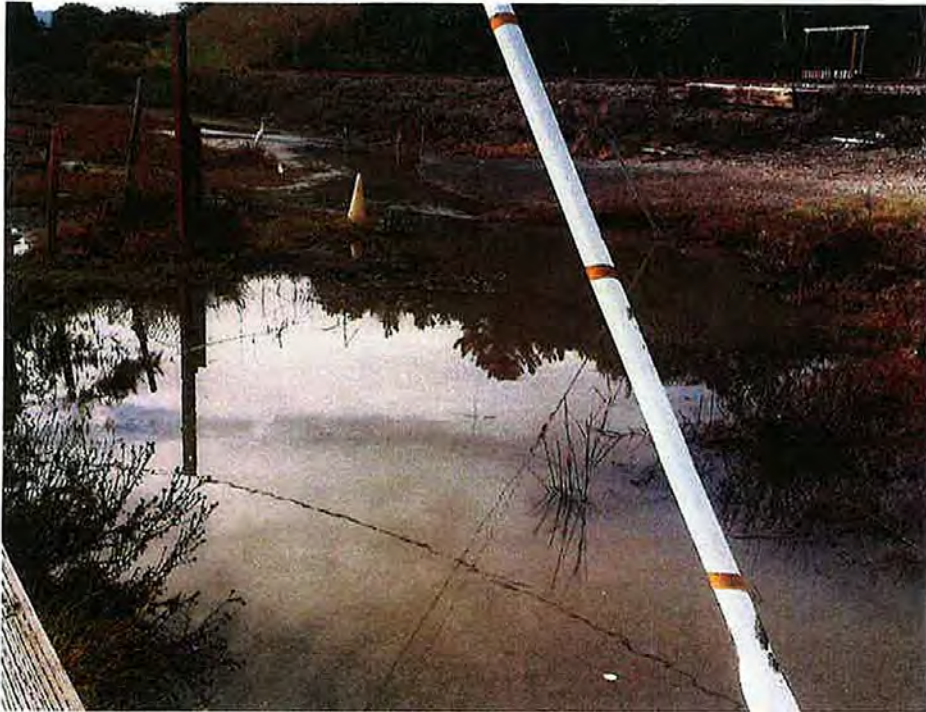


Exhibit K





Exhibit K





# Exhibit K









## 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](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

### ***Via Electronic and Certified Mail***

April 30, 2024

ATTN: Jim Armstrong  
Beattie Trust  
176 Beattie Lane  
Novato, CA 94945  
E-mail: [jimellen7@gmail.com](mailto:jimellen7@gmail.com)

ATTN: Catherine Ann Armstrong and Melissa Jean Armstrong  
172 Beattie Lane  
Novato, CA 94945

**SUBJECT: Notice of Violations (BCDC Enforcement Case ER2018.015.00)**

Dear Jim, Catherine, and Melissa:

On November 20, 2023, BCDC informed you of alleged violations of the McAteer-Petris Act Section 66632(a) at 172 Beattie Lane, Novato (Marin County APNs 157-061-01 and 157-061-39). Staff received Jim's response dated January 23, 2024, on February 15, 2024. In your response, you state that replacement fencing, and a small storage enclosure were placed. BCDC staff visited the site on March 26, 2024, and observed that the fill was placed in BCDC's jurisdiction.

You have thirty-five (35) calendar days from the date of this letter to resolve the outstanding violation described below before fines begin to accrue pursuant to the appropriate provision of California Code of Regulations, Title 14, § 11390. A detailed description of how fines accrue is attached to this letter in Appendix 1.

**Violation 1.** In BCDC's 100-foot shoreline band jurisdiction, the placement of unauthorized fill, including wooden fencing. (*Fines accrue pursuant to California Code of Regulations, Title 14, § 11390(a)(4)*).

**Violation 2.** In BCDC's Bay jurisdiction, the expansion of a parking pad and placement of unauthorized fill, including wooden fencing and a wooden storage enclosure. (Fines accrue pursuant to California Code of Regulations, Title 14, § 11390(a)(6)).

These activities represent a violation of the following:

**McAteer-Petris Act 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*



Catherine, Melissa, Jim Armstrong  
Enf. Case ER2018.015.00

Page 2  
April 30, 2024

*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.*

To resolve your violations, you must apply for and obtain a BCDC permit or remove the unauthorized materials from BCDC's jurisdiction. If you fail to obtain a permit or remove the unauthorized materials within 125 days of the mailing date of this notice, you will be subject to a formal enforcement action that may include up to \$30,000 in administrative civil penalties per violation (i.e., each individual instance of fill) found at the site and a Commission cease-and-desist order.

Thank you for your attention to these matters.

Sincerely,

DocuSigned by:  
  
19E41D36C890496...

RACHEL COHEN

Enforcement Analyst

Tel: 415-352-3661

Fax: 415-352-3606

Email: [rachel.cohen@bcdca.gov](mailto:rachel.cohen@bcdca.gov)

Website: [www.bcdca.gov](http://www.bcdca.gov)

RC/mm

Cc: (via e-mail only)

USACE, Bryan Matsumoto, [bryan.t.matsumoto@usace.army.mil](mailto:bryan.t.matsumoto@usace.army.mil)

SFBRWQCB, Bryan Thompson, [brian.thompson@waterboards.ca.gov](mailto:brian.thompson@waterboards.ca.gov)

USFWS, Kim Squires, [kim\\_squires@fws.gov](mailto:kim_squires@fws.gov)

County of Marin Building Department, [cdabuilding@marincounty.org](mailto:cdabuilding@marincounty.org)



Catherine, Melissa, Jim Armstrong  
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April 30, 2024

*Figures 1, 2. Aerial imagery of the site from May 20, 2017 (left) and September 1, 2018 (right) with yellow overline depicting approximate area of new fencing and repairs to the home.*





Catherine, Melissa, Jim Armstrong  
Enf. Case ER2018.015.00

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April 30, 2024

## **Appendix 1. Explanation of Standardized Fines Pursuant to the BCDC's Regulations (Effective October 1, 2022)**

### **Enforcement Options.**

Pursuant to [Chapter 13, Subchapter 2, Article 3](#) of the BCDC's administrative regulations, you may resolve each alleged violation without having to go through a Commission enforcement proceeding by taking each and every corrective action required by this letter and by paying the standardized fines specified in the BCDC's regulations §11390(a) or (b) or (c), as described below. Pursuant to [§11390\(d\)](#), if you do not make a good-faith effort to correct the alleged violations; have not corrected all the alleged violations within 125 days of the mailing date of this letter (or by the date(s) specified below); or you do not pay the amount of standardized fines assessed by the date payment is due, you may no longer have the option to settle this matter with standardized fines and we may, pursuant to BCDC's regulations §11321-11334, commence a formal enforcement proceeding that would include public hearings before the Commission, and could lead to the issuance of a cease and desist and civil penalty order with an administratively imposed civil penalty of between \$10 and \$2,000 per day, up to a maximum of \$30,000 per alleged violation.

### **Opportunity to Complete Corrective Action without Imposition of a Standardized Fine.**

Pursuant to [§11388](#), except as provided in [§11390\(c\)](#), if the person responsible for the alleged violation submits information demonstrating that the alleged violation(s) have not occurred or that the responsible person has completed each and every corrective action required by this notice within 35 days after the date of mailing printed above, the Commission shall not impose any standardized fine.

### **Opportunity to Complete Correction Action with Imposition of a Standardized Fine.**

Except as provided in § 11390 (c) and (d), if the person responsible for the alleged violations noted above fails to resolve each violation within 35 days of the date of this letter, that person may resolve their enforcement case by completing each and every corrective action required by this letter and by paying a fine in the amount provided in § 11390(a) and, where applicable, (b), as follows:

**[§ 11390\(a\)\(1\)](#). *For the failure to submit an executed Commission permit before commencing the work authorized by the permit, or, for any permit issued to authorize previously commenced or completed work, for failure to return an acknowledged, executed permit within the time period stated in the permit:***

### **Standardized Fines.**

If the executed permit is received between 36 and 65 days after the date of the mailing of this letter, you may resolve the penalty portion of the alleged violation by paying a standardized fine of \$2,000. If the executed permit is received more than 65 days after the date of the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$5,000, plus \$500 per day, from the 65<sup>th</sup> day to the date the executed permit is received, up to a maximum fine of \$30,000 per violation.



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**§ 11390(a)(2). For the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:**

**Standardized Fines.**

For each document submitted between 36 and 65 days after the date of the mailing of this letter, you may resolve alleged violation by paying a standardized fine of \$2,000 per document. For each document submitted between 66 and 95 days after the date of the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$5,000 per document. For each document submitted more than 95 days after the date of the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$5,000 per document, plus \$500 per day, from the 96<sup>th</sup> day to the date the document is received, up to a maximum fine of \$30,000 per document.

**§ 11390 (a)(3). For the failure to comply with any condition required by a Commission permit not covered by (a)(1) or (a)(2):**

**Standardized Fines.**

If corrected between 36 and 65 days after the date of the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$2,000 for each violation of each separate permit requirement. If corrected between 66 and 95 days after the date of the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$5,000 for each violation of each separate permit requirement. If corrected more than 95 days after the date of the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$5,000 for each violation noted above, plus \$500 per day per violation, from the 96th day to the date the required improvements are provided, up to a maximum fine of \$30,000 per permit requirement.

**§ 11390 (a)(4). For the failure to obtain a Commission permit or an amendment to a previously issued Commission permit prior to undertaking any activity that can be authorized by an administrative permit or an amendment to a previously issued Commission permit:**

**Standardized Fines.**

If either a complete and properly executed application accompanied by a check or money order for the application fee is submitted between 36 and 65 days and a permit or permit amendment is obtained within 155 days after the date of the mailing of this letter, or the unauthorized activity is completely corrected between 36 and 65 days after the mailing date of this letter, then you may resolve the alleged violation by paying a standardized fine of \$2,000.

If a complete, executed application and fee is submitted between 66 and 95 days and a permit or permit amendment is obtained within 185 days after the date of the mailing of this letter, or the unauthorized activity is completely corrected between 66 and 95 days after the mailing date of this letter, then you may resolve the alleged violation by paying a standardized fine of \$5,000.



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If a complete, executed application and fee is submitted, or the unauthorized activity is completely corrected, more than 95 days after the date of the mailing of this letter then you may resolve the violation by paying a standardized fine of \$5,000 plus \$500 per day from the 96<sup>th</sup> day to the date that either the complete, executed application and fee are submitted or the unauthorized activity is completely corrected, up to a maximum fine of \$30,000 per violation.

**§ 11390 (a)(5).** *For the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by either a regionwide or abbreviated regionwide permit:*

**Standardized Fines.**

If either a complete notice of intent to proceed (NOI) under a regionwide or abbreviated regionwide permit is submitted between 36 and 65 days and said NOI is approved within 155 days after the date of the mailing of this letter, or the unauthorized activity is completely corrected between 36 and 65 days, you may resolve the alleged violation by paying a standardized fine of \$2,000.

If either a complete NOI under a regionwide or abbreviated regionwide permit is submitted between 66 and 95 days and said NOI is approved within 185 days after the date of the mailing of this letter, or the unauthorized activity is completely corrected between 66 and 95 days, you may resolve the alleged violation by paying a standardized fine of \$4,000.

If either a complete NOI under a regionwide or abbreviated regionwide permit is submitted, or the unauthorized activity is completely corrected, more than 95 days after the date of the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$4,000, plus \$500 per day, from the 96<sup>th</sup> day to the date the NOI is submitted or the unauthorized activity is completely corrected, up to a maximum fine of \$30,000 per violation.

**§ 11390 (a)(6).** *For the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies:*

**Standardized Fines.**

If the violation is corrected and the area returned to its prior status between 36 and 65 days after the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$3,000.

If the violation is corrected and the area returned to its prior status between 66 and 95 days after the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$8,000.

If the violation is corrected and the area returned to its prior status more than 95 days after the mailing of this letter, you may resolve the alleged violation by paying a standardized fine of \$8,000, plus \$500 per day, to the date the violation is completely corrected, up to a maximum fine of \$30,000 per violation.



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[§ 11390\(b\)](#). A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (a) to resolve the alleged violation if that person has previously paid, or has been assessed but has failed to pay, any standardized fine pursuant to § 11390(a) and § 11391 within the five years prior to resolution of the alleged violation.

[§ 11390\(c\)](#). If a violation resolved pursuant to § 11388 is repeated by the same person within five years of the resolution of the prior violation, § 11390(a) and (b) shall not apply. Instead, the person believed to be responsible for the subsequent alleged violation may resolve the subsequent alleged violation by paying \$200 per day for each day the alleged violation occurs or persists after the mailing date of this letter.



## 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](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

September 25, 2024

**ATTN:** Catherine Ann Armstrong, Melissa Jean Armstrong, and Jim Armstrong  
Beattie Trust  
172 Beattle Lane  
Novato, CA 94945

**SUBJECT:** Failure to Respond to Notice of Violation (BCDC Enforcement File No.  
ER2018.015.00)

Dear Jim, Catharine, and Melissa:

On November 20, 2023 BCDC Informed you of alleged violations of the McAteer-Petris Act Section 66632(a) at 172 Beattie Lane, Novato (Marin Country APNs 157-061-01 and 157-061-39). On February 15, 2023, staff received Jim Armstrong's response dated January 23, 2024. In your response you state that replacement fencing, and a small storage enclosure were placed. BCDC staff visited the site on March 26, 2024, and observed that the fill was placed in BCDC's jurisdiction.

On April 30, 2024 BCDC sent you a Notice of Violation (see below for details on violation and attached NOV) and have not received a response or action in over 125 days from the mailing date of the notice. On August 13, 2024 BCDC staff visited the site and observed that the fill was still placed in BCDC's jurisdiction. Due to failure to resolve the violations after the issuance of the Notice of Violation within the time frame given, you are subject to a formal enforcement action that may include up to \$30,000 in administrative civil penalties per violation (i.e., each individual instance of fill) found at the site and a Commission Cease-and-Desist order.

As a reminder to resolve your violation, you must remove the unauthorized material from BCDC's jurisdiction or apply for and obtain a BCDC permit. Please contact Isabel Chamberlain at (415) 352-3605 or [Isabel.Chamberlain@bcdc.ca.gov](mailto:Isabel.Chamberlain@bcdc.ca.gov) within 14 days of receipt of this letter to discuss the steps necessary to resolve these violations, to understand your schedule for implementing these steps, and to discuss the proper course of action for the proposed improvements to the property. Thank you in advance for your cooperation in correcting these violations.





## 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](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

Sincerely,

*Isabel Chamberlain*

ISABEL CHAMBERLAIN  
Enforcement Analyst

9/24/2024






### Certificate Of Completion

Envelope Id: FCD07FEAA5DF430483D7049A3BE37F1D	Status: Completed
Subject: Here is your signed document: Courtesy Letter 172 Beattie .pdf	
Source Envelope:	
Document Pages: 2	Signatures: 1
Certificate Pages: 2	Initials: 0
AutoNav: Disabled	Envelope Originator:
Envelope Stamping: Disabled	Isabel Chamberlain
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	715 P Street
	Sacramento, CA 95814
	isabel.chamberlain@bcdcc.ca.gov
	IP Address: 165.235.17.238

### Record Tracking

Status: Original	Holder: Isabel Chamberlain	Location: DocuSign
9/24/2024 12:24:58 PM	isabel.chamberlain@bcdcc.ca.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Department of Water Resources	Location: DocuSign

### Signer Events

Signer Events	Signature	Timestamp
Isabel Chamberlain		Sent: 9/24/2024 12:25:06 PM
isabel.chamberlain@bcdcc.ca.gov		Viewed: 9/24/2024 12:25:12 PM
Coastal Program Analyst II		Signed: 9/24/2024 12:25:29 PM
BCDC		Freeform Signing
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: 165.235.17.238	

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

### In Person Signer Events

In Person Signer Events	Signature	Timestamp
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### Editor Delivery Events

Editor Delivery Events	Status	Timestamp
------------------------	--------	-----------

### Agent Delivery Events

Agent Delivery Events	Status	Timestamp
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### Intermediary Delivery Events

Intermediary Delivery Events	Status	Timestamp
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### Certified Delivery Events

Certified Delivery Events	Status	Timestamp
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### Carbon Copy Events

Carbon Copy Events	Status	Timestamp
Isabel Chamberlain	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; color: blue;">COPIED</div>	Sent: 9/24/2024 12:25:29 PM
isabel.chamberlain@bcdcc.ca.gov		Resent: 9/24/2024 12:25:30 PM
Coastal Program Analyst II		Viewed: 9/24/2024 12:25:50 PM
BCDC		
Security Level: Email, Account Authentication (None)		

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

### Witness Events

Witness Events	Signature	Timestamp
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### Notary Events

Notary Events	Signature	Timestamp
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### Envelope Summary Events

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/24/2024 12:25:06 PM
Certified Delivered	Security Checked	9/24/2024 12:25:12 PM
Signing Complete	Security Checked	9/24/2024 12:25:29 PM



# Exhibit M

Envelope Summary Events	Status	Timestamps
Completed	Security Checked	9/24/2024 12:25:29 PM
Payment Events	Status	Timestamps



## 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@bcdcd.ca.gov](mailto:info@bcdcd.ca.gov) | [www.bcdcd.ca.gov](http://www.bcdcd.ca.gov)

*Via Certified Mail*

December 11, 2024

ATTN: Jim Armstrong, Catharine Ann Armstrong, and Melissa Jean Armstrong  
172 Beattie Lane  
Novato, CA 94945

ATTN: Jim Armstrong, Catharine Ann Armstrong, and Melissa Jean Armstrong  
176 Beattie Lane  
Novato, CA 94945

**SUBJECT: Notification of Formal Enforcement for Case ER2018.015.00**

Dear Jim Armstrong, Catharine Ann Armstrong, and Melissa Jean Armstrong,

This letter serves as a notification that the San Francisco Bay Conservation and Development Commission (BCDC) will be initiating a formal enforcement process regarding the following matters:

- In BCDC's 100-foot shoreline band jurisdiction, the placement of unauthorized fill, including wooden fencing.
- In BCDC's Bay jurisdiction, the expansion of a parking pad and placement of unauthorized fill, including wooden fencing and a wooden storage enclosure.

These violations are associated with the property located at **172 Beattie Lane, Novato, CA 94945**. On April 30, 2024, you received a Notice of Alleged Violation notifying you of your opportunity to resolve the alleged violations at your property by completing certain corrective actions and by paying a standardized fine. Pursuant to Section 11390(d) of BCDC's regulations, the Executive Director has determined that the person responsible for the violations has not made a good faith effort to correct the alleged violations. Therefore, the Executive Director has terminated the opportunity to resolve the violations through the standardized fine process. (14 CCR 11390(d)).

You will receive a **Violation Report** initiating the formal enforcement process within the next month. This report will provide detailed information on the identified issues, outline next steps including the submission of a Statement of Defense, and set a hearing date before the Commission's Enforcement Committee. I encourage you to continue your work to correct the alleged violations at your property while formal enforcement is pending.



Armstrong; Beattie Trust  
Enforcement Case No. ER2018.015.00

December 11, 2024  
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If you have any immediate questions or require clarification, or evidence that the violations have been resolved, please feel free to contact me.

Thank you for your attention to this matter.

Sincerely,

Signed by:  
  
9BC5650F82EA439  
ISABEL CHAMBERLAIN

Enforcement Analyst

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510

San Francisco, California 94105

Tel: 415-352-3605

Fax: 415-352-3606

Email: [isabel.chamberlain@bcdcc.ca.gov](mailto:isabel.chamberlain@bcdcc.ca.gov)

Website: [www.bcdcc.ca.gov](http://www.bcdcc.ca.gov)



# IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

## Location

Marin and Sonoma counties, California





## Local offices

### San Francisco Bay-Delta Fish And Wildlife

☎ (916) 930-5603

📅 (916) 930-5654

650 Capitol Mall

Suite 8-300

Sacramento, CA 95814

### Sacramento Fish And Wildlife Office

☎ (916) 414-6600

📅 (916) 414-6713

Federal Building

2800 Cottage Way, Room W-2605

Sacramento, CA 95825-1846



# Endangered species

**This resource list is for informational purposes only and does not constitute an analysis of project level impacts.**

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Draw the project location and click CONTINUE.
2. Click DEFINE PROJECT.
3. Log in (if directed to do so).
4. Provide a name and description for your project.
5. Click REQUEST SPECIES LIST.

Listed species<sup>1</sup> and their critical habitats are managed by the [Ecological Services Program](#) of the U.S. Fish and Wildlife Service (USFWS) and the fisheries division of the National Oceanic and Atmospheric Administration (NOAA Fisheries<sup>2</sup>).

Species and critical habitats under the sole responsibility of NOAA Fisheries are **not** shown on this list. Please contact [NOAA Fisheries](#) for [species under their jurisdiction](#).



1. Species listed under the Endangered Species Act are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information. IPaC only shows species that are regulated by USFWS (see FAQ).
2. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

The following species are potentially affected by activities in this location:

## Mammals

NAME	STATUS
<b>Salt Marsh Harvest Mouse</b> <i>Reithrodontomys raviventris</i> Wherever found No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/613">https://ecos.fws.gov/ecp/species/613</a>	Endangered

## Birds

NAME	STATUS
<b>California Least Tern</b> <i>Sternula antillarum browni</i> Wherever found No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/8104">https://ecos.fws.gov/ecp/species/8104</a>	Endangered
<b>California Ridgway's Rail</b> <i>Rallus obsoletus obsoletus</i> Wherever found No critical habitat has been designated for this species. <a href="https://ecos.fws.gov/ecp/species/4240">https://ecos.fws.gov/ecp/species/4240</a>	Endangered



**Northern Spotted Owl** *Strix occidentalis caurina*

Threatened

Wherever found

There is **final** critical habitat for this species. Your location does not overlap the critical habitat.

<https://ecos.fws.gov/ecp/species/1123>

**Western Snowy Plover** *Charadrius nivosus nivosus*

Threatened

There is **final** critical habitat for this species. Your location does not overlap the critical habitat.

<https://ecos.fws.gov/ecp/species/8035>

## Reptiles

NAME

STATUS

**Green Sea Turtle** *Chelonia mydas*

Threatened

No critical habitat has been designated for this species.

<https://ecos.fws.gov/ecp/species/6199>

**Northwestern Pond Turtle** *Actinemys marmorata*

Proposed Threatened

Wherever found

No critical habitat has been designated for this species.

<https://ecos.fws.gov/ecp/species/1111>

## Amphibians

NAME

STATUS

**California Red-legged Frog** *Rana draytonii*

Threatened

Wherever found

There is **final** critical habitat for this species. Your location does not overlap the critical habitat.

<https://ecos.fws.gov/ecp/species/2891>



## Western Spadefoot *Spea hammondi*

Wherever found

No critical habitat has been designated for this species.

<https://ecos.fws.gov/ecp/species/5425>

Proposed Threatened

## Fishes

NAME	STATUS
<b>Longfin Smelt</b> <i>Spirinchus thaleichthys</i> There is <b>proposed</b> critical habitat for this species. <a href="https://ecos.fws.gov/ecp/species/9011">https://ecos.fws.gov/ecp/species/9011</a>	Endangered
<b>Tidewater Goby</b> <i>Eucyclogobius newberryi</i> Wherever found There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat. <a href="https://ecos.fws.gov/ecp/species/57">https://ecos.fws.gov/ecp/species/57</a>	Endangered

## Insects

NAME	STATUS
<b>Monarch Butterfly</b> <i>Danaus plexippus</i> Wherever found There is <b>proposed</b> critical habitat for this species. Your location does not overlap the critical habitat. <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Proposed Threatened

## Flowering Plants

NAME	STATUS
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Marin Dwarf-flax *Hesperolinon congestum*

Threatened

Wherever found

No critical habitat has been designated for this species.

<https://ecos.fws.gov/ecp/species/5363>

## Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

There are no critical habitats at this location.

You are still required to determine if your project(s) may have effects on all above listed species.

## Bald & Golden Eagles

Bald and Golden Eagles are protected under the Bald and Golden Eagle Protection Act <sup>2</sup> and the Migratory Bird Treaty Act (MBTA) <sup>1</sup>. Any person or organization who plans or conducts activities that may result in impacts to Bald or Golden Eagles, or their habitats, should follow appropriate regulations and consider implementing appropriate avoidance and minimization measures, as described in the various links on this page.

Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>
- Nationwide avoidance and minimization measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>



- Supplemental Information for Migratory Birds and Eagles in IPaC <https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action>

There are Bald Eagles and/or Golden Eagles in your [project](#) area.

### Measures for Proactively Minimizing Eagle Impacts

For information on how to best avoid and minimize disturbance to nesting bald eagles, please review the [National Bald Eagle Management Guidelines](#). You may employ the timing and activity-specific distance recommendations in this document when designing your project/activity to avoid and minimize eagle impacts. For bald eagle information specific to Alaska, please refer to [Bald Eagle Nesting and Sensitivity to Human Activity](#).

The FWS does not currently have guidelines for avoiding and minimizing disturbance to nesting Golden Eagles. For site-specific recommendations regarding nesting Golden Eagles, please consult with the appropriate Regional [Migratory Bird Office](#) or [Ecological Services Field Office](#).

If disturbance or take of eagles cannot be avoided, an [incidental take permit](#) may be available to authorize any take that results from, but is not the purpose of, an otherwise lawful activity. For assistance making this determination for Bald Eagles, visit the [Do I Need A Permit Tool](#). For assistance making this determination for golden eagles, please consult with the appropriate Regional [Migratory Bird Office](#) or [Ecological Services Field Office](#).

### Ensure Your Eagle List is Accurate and Complete

If your project area is in a poorly surveyed area in IPaC, your list may not be complete and you may need to rely on other resources to determine what species may be present (e.g. your local FWS field office, state surveys, your own surveys). Please review the [Supplemental Information on Migratory Birds and Eagles](#), to help you properly interpret the report for your specified location, including determining if there is sufficient data to ensure your list is accurate.

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to bald or golden eagles on your list, see the "Probability of Presence Summary" below to see when these bald or golden eagles are most likely to be present and breeding in your project area.

### Review the FAQs

The FAQs below provide important additional information and resources.

NAME

BREEDING SEASON



**Bald Eagle** *Haliaeetus leucocephalus*

Breeds Jan 1 to Aug 31

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<https://ecos.fws.gov/ecp/species/1626>

**Golden Eagle** *Aquila chrysaetos*

Breeds Jan 1 to Aug 31

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<https://ecos.fws.gov/ecp/species/1680>

## Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read "[Supplemental Information on Migratory Birds and Eagles](#)", specifically the FAQ section titled "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

### Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is



the maximum of any week of the year. The relative probability of presence on week 12 is  $0.25/0.25 = 1$ ; at week 20 it is  $0.05/0.25 = 0.2$ .

- The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

### Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

### Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

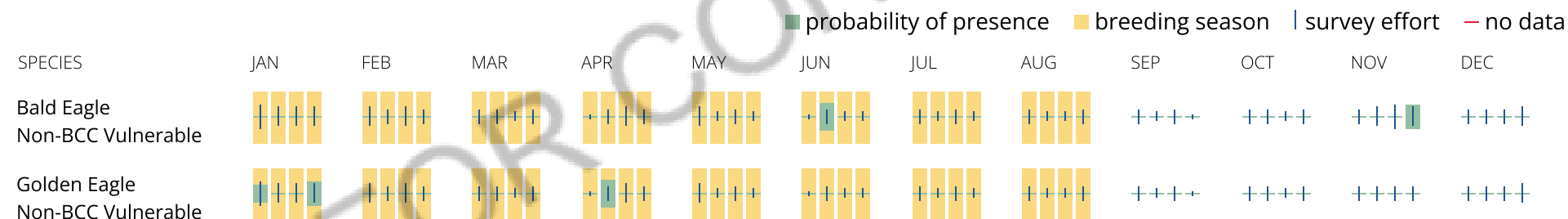
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

### No Data (—)

A week is marked as having no data if there were no survey events for that week.

### Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.



## Bald & Golden Eagles FAQs

What does IPaC use to generate the potential presence of bald and golden eagles in my specified location?



The potential for eagle presence is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are an eagle ([Bald and Golden Eagle Protection Act](#) requirements may apply).

### Proper interpretation and use of your eagle report

On the graphs provided, please look carefully at the survey effort (indicated by the black vertical line) and for the existence of the "no data" indicator (a red horizontal line). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort line or no data line (red horizontal) means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list and associated information help you know what to look for to confirm presence and helps guide you in knowing when to implement avoidance and minimization measures to eliminate or reduce potential impacts from your project activities or get the appropriate permits should presence be confirmed.

### How do I know if eagles are breeding, wintering, or migrating in my area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating, or resident), you may query your location using the [RAIL Tool](#) and view the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If an eagle on your IPaC migratory bird species list has a breeding season associated with it (indicated by yellow vertical bars on the phenology graph in your "IPaC PROBABILITY OF PRESENCE SUMMARY" at the top of your results list), there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

### Interpreting the Probability of Presence Graphs

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. A taller bar indicates a higher probability of species presence. The survey effort can be used to establish a level of confidence in the presence score.

#### *How is the probability of presence score calculated? The calculation is done in three steps:*

The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.

To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is  $0.25/0.25 = 1$ ; at week 20 it is  $0.05/0.25 = 0.2$ .

The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.



**Breeding Season ()**

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

**Survey Effort ()**

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps.

**No Data ()**

A week is marked as having no data if there were no survey events for that week.

**Survey Timeframe**

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.

## Migratory birds

The Migratory Bird Treaty Act (MBTA) <sup>1</sup> prohibits the take (including killing, capturing, selling, trading, and transport) of protected migratory bird species without prior authorization by the Department of Interior U.S. Fish and Wildlife Service (Service). The incidental take of migratory birds is the injury or death of birds that results from, but is not the purpose, of an activity. The Service interprets the MBTA to prohibit incidental take.

1. The [Migratory Birds Treaty Act](#) of 1918.
2. The [Bald and Golden Eagle Protection Act](#) of 1940.

Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds>
- Nationwide avoidance and minimization measures for birds
- Supplemental Information for Migratory Birds and Eagles in IPaC <https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action>



## Measures for Proactively Minimizing Migratory Bird Impacts

Your IPaC Migratory Bird list showcases [birds of concern](#), including [Birds of Conservation Concern \(BCC\)](#), in your project location. This is not a comprehensive list of all birds found in your project area. However, you can help proactively minimize significant impacts to all birds at your project location by implementing the measures in the [Nationwide avoidance and minimization measures for birds](#) document, and any other project-specific avoidance and minimization measures suggested at the link [Measures for avoiding and minimizing impacts to birds](#) for the birds of concern on your list below.

## Ensure Your Migratory Bird List is Accurate and Complete

If your project area is in a poorly surveyed area, your list may not be complete and you may need to rely on other resources to determine what species may be present (e.g. your local FWS field office, state surveys, your own surveys). Please review the [Supplemental Information on Migratory Birds and Eagles document](#), to help you properly interpret the report for your specified location, including determining if there is sufficient data to ensure your list is accurate.

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, see the "Probability of Presence Summary" below to see when these birds are most likely to be present and breeding in your project area.

## Review the FAQs

The FAQs below provide important additional information and resources.

NAME	BREEDING SEASON
<b>Allen's Hummingbird</b> <i>Selasphorus sasin</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. <a href="https://ecos.fws.gov/ecp/species/9637">https://ecos.fws.gov/ecp/species/9637</a>	Breeds Feb 1 to Jul 15
<b>Bald Eagle</b> <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. <a href="https://ecos.fws.gov/ecp/species/1626">https://ecos.fws.gov/ecp/species/1626</a>	Breeds Jan 1 to Aug 31



**Belding's Savannah Sparrow** *Passerculus sandwichensis beldingi*

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

<https://ecos.fws.gov/ecp/species/8>

Breeds Apr 1 to Aug 15

**Black Scoter** *Melanitta nigra*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

Breeds elsewhere

**Black Turnstone** *Arenaria melanocephala*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds elsewhere

**Brown Pelican** *Pelecanus occidentalis*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<https://ecos.fws.gov/ecp/species/6034>

Breeds Jan 15 to Sep 30

**Bullock's Oriole** *Icterus bullockii*

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

Breeds Mar 21 to Jul 25

**California Gull** *Larus californicus*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds Mar 1 to Jul 31

**Clark's Grebe** *Aechmophorus clarkii*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds Jun 1 to Aug 31



# Exhibit O

## Common Loon *gavia immer*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<https://ecos.fws.gov/ecp/species/4464>

Breeds Apr 15 to Oct 31

## Common Yellowthroat *Geothlypis trichas sinuosa*

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

<https://ecos.fws.gov/ecp/species/2084>

Breeds May 20 to Jul 31

## Double-crested Cormorant *phalacrocorax auritus*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<https://ecos.fws.gov/ecp/species/3478>

Breeds Apr 20 to Aug 31

## Elegant Tern *Thalasseus elegans*

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

<https://ecos.fws.gov/ecp/species/8561>

Breeds Apr 5 to Aug 5

## Golden Eagle *Aquila chrysaetos*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<https://ecos.fws.gov/ecp/species/1680>

Breeds Jan 1 to Aug 31

## Heermann's Gull *Larus heermanni*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds Mar 15 to Aug 31



# Exhibit O

## Long-tailed Duck *Clangula hyemalis*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<https://ecos.fws.gov/ecp/species/7238>

Breeds elsewhere

## Marbled Godwit *Limosa fedoa*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/9481>

Breeds elsewhere

## Northern Harrier *Circus hudsonius*

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

<https://ecos.fws.gov/ecp/species/8350>

Breeds Apr 1 to Sep 15

## Nuttall's Woodpecker *Dryobates nuttallii*

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

<https://ecos.fws.gov/ecp/species/9410>

Breeds Apr 1 to Jul 20

## Oak Titmouse *Baeolophus inornatus*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/9656>

Breeds Mar 15 to Jul 15

## Olive-sided Flycatcher *Contopus cooperi*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/3914>

Breeds May 20 to Aug 31



**Red Knot** *Calidris canutus roselaari*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/8880>

Breeds elsewhere

**Red-breasted Merganser** *Mergus serrator*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

Breeds elsewhere

**Red-necked Phalarope** *Phalaropus lobatus*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

Breeds elsewhere

**Red-throated Loon** *Gavia stellata*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

Breeds elsewhere

**Ring-billed Gull** *Larus delawarensis*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

Breeds elsewhere

**Santa Barbara Song Sparrow** *Melospiza melodia graminea*

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

<https://ecos.fws.gov/ecp/species/5513>

Breeds Mar 1 to Sep 5



# Exhibit O

## Short-billed Dowitcher *Limnodromus griseus*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/9480>

Breeds elsewhere

## Surf Scoter *Melanitta perspicillata*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

Breeds elsewhere

## Tricolored Blackbird *Agelaius tricolor*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/3910>

Breeds Mar 15 to Aug 10

## Western Grebe *aechmophorus occidentalis*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/6743>

Breeds Jun 1 to Aug 31

## Western Gull *Larus occidentalis*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds Apr 21 to Aug 25

## Western Screech-owl *Megascops kennicottii cardonensis*

This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

Breeds Mar 1 to Jun 30

## White-winged Scoter *Melanitta fusca*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

Breeds elsewhere



**Willet** *Tringa semipalmata*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds elsewhere

**Wrentit** *Chamaea fasciata*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds Mar 15 to Aug 10

## Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read ["Supplemental Information on Migratory Birds and Eagles"](#), specifically the FAQ section titled "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

### Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is  $0.25/0.25 = 1$ ; at week 20 it is  $0.05/0.25 = 0.2$ .
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.



To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

### Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

### Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

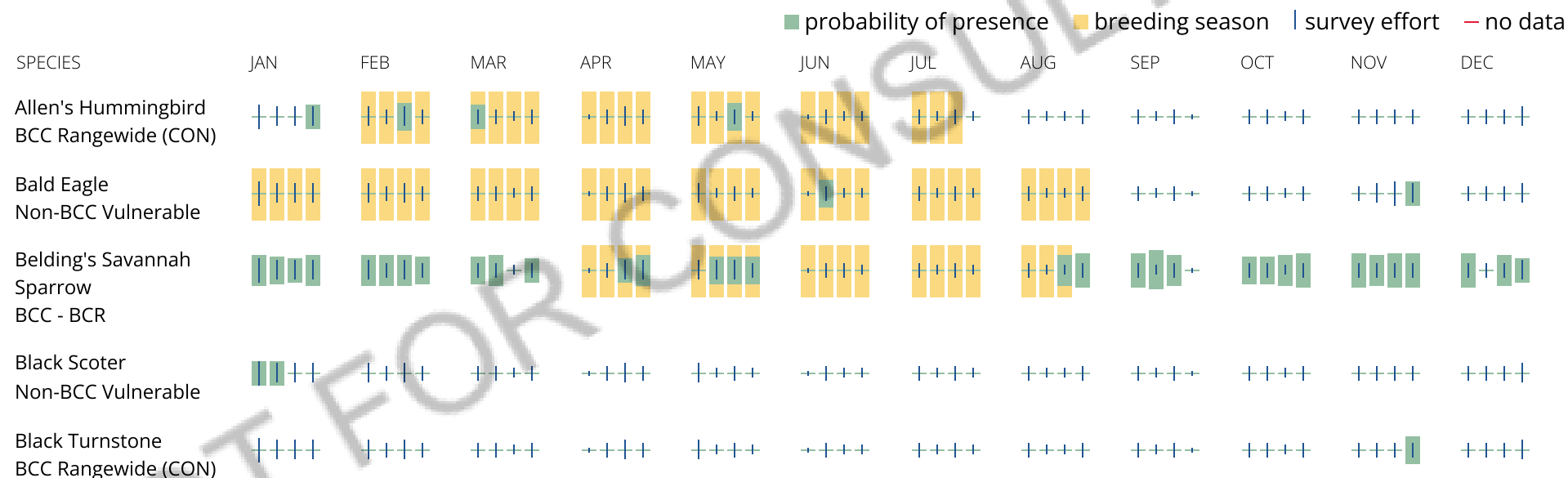
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

### No Data (—)

A week is marked as having no data if there were no survey events for that week.

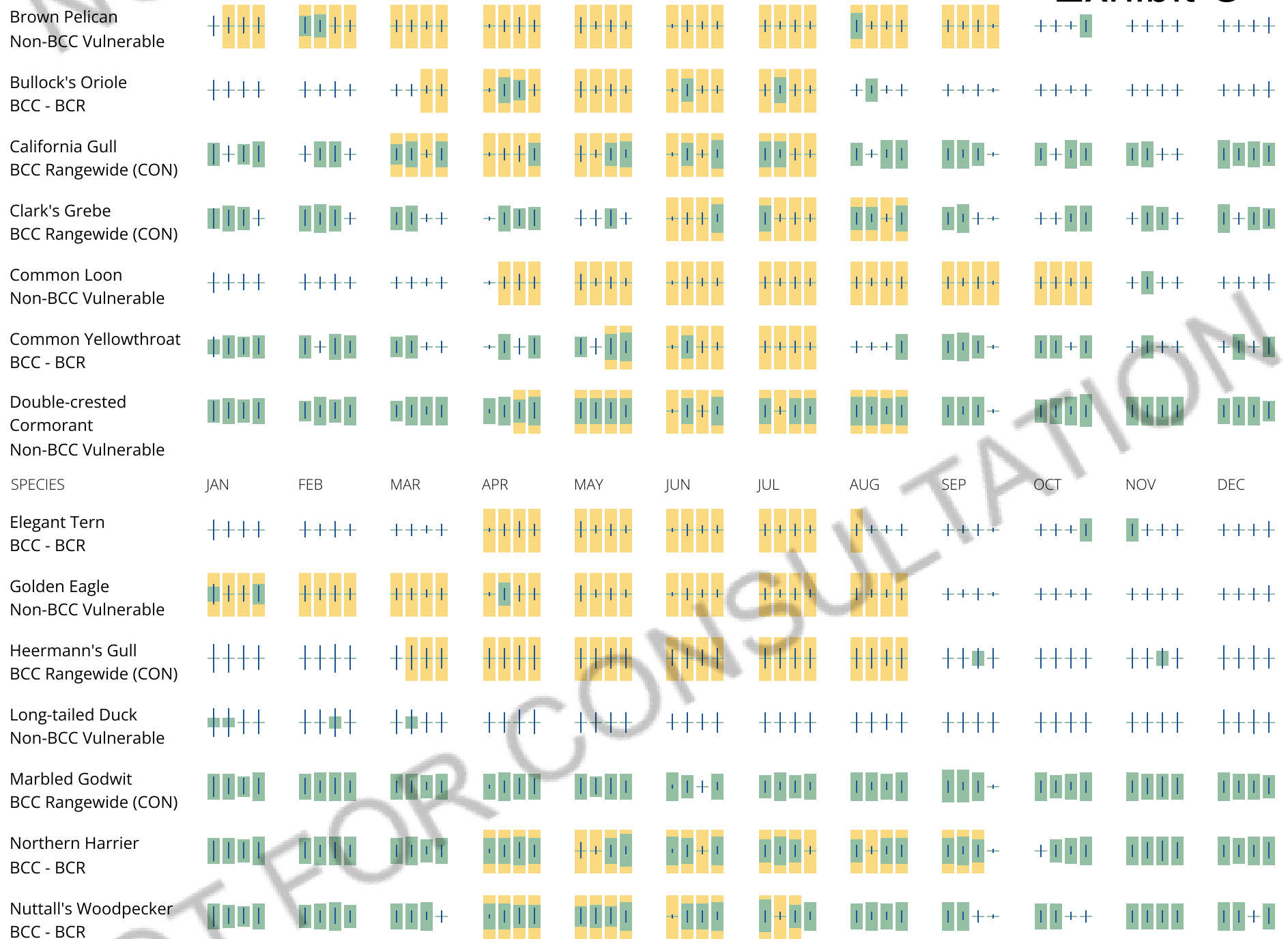
### Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.





## Exhibit O

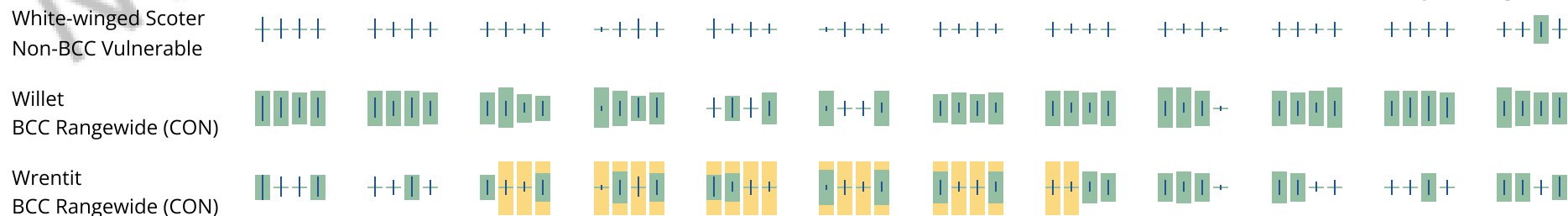




## Exhibit O

Oak Titmouse BCC Rangewide (CON)												
Olive-sided Flycatcher BCC Rangewide (CON)												
Red Knot BCC Rangewide (CON)												
Red-breasted Merganser Non-BCC Vulnerable												
Red-necked Phalarope Non-BCC Vulnerable												
SPECIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Red-throated Loon Non-BCC Vulnerable												
Ring-billed Gull Non-BCC Vulnerable												
Santa Barbara Song Sparrow BCC - BCR												
Short-billed Dowitcher BCC Rangewide (CON)												
Surf Scoter Non-BCC Vulnerable												
Tricolored Blackbird BCC Rangewide (CON)												
Western Grebe BCC Rangewide (CON)												
Western Gull BCC Rangewide (CON)												
Western Screech-owl BCC - BCR												





## Migratory Bird FAQs

Tell me more about avoidance and minimization measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Avoidance & Minimization Measures for Birds](#) describes measures that can help avoid and minimize impacts to all birds at any location year-round. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is one of the most effective ways to minimize impacts. To see when birds are most likely to occur and breed in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

### What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?

The Migratory Bird Resource List is comprised of [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location, such as those listed under the Endangered Species Act or the [Bald and Golden Eagle Protection Act](#) and those species marked as “Vulnerable”. See the FAQ “What are the levels of concern for migratory birds?” for more information on the levels of concern covered in the IPaC migratory bird species list.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) with which your project intersects. These species have been identified as warranting special attention because they are BCC species in that area, an eagle ([Bald and Golden Eagle Protection Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, and to verify survey effort when no results present, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

### Why are subspecies showing up on my list?



Subspecies profiles are included on the list of species present in your project area because observations in the AKN for the species are being detected. If the species are present, that means that the subspecies may also be present. If a subspecies shows up on your list, you may need to rely on other resources to determine if that subspecies may be present (e.g. your local FWS field office, state surveys, your own surveys).

### **What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?**

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go to the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

### **How do I know if a bird is breeding, wintering, or migrating in my area?**

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating, or resident), you may query your location using the [RAIL Tool](#) and view the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your IPaC migratory bird species list has a breeding season associated with it (indicated by yellow vertical bars on the phenology graph in your "IPaC PROBABILITY OF PRESENCE SUMMARY" at the top of your results list), there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

### **What are the levels of concern for migratory birds?**

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Bald and Golden Eagle Protection Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially BCC species. For more information on avoidance and minimization measures you can implement to help avoid and minimize migratory bird impacts, please see the FAQ "Tell me more about avoidance and minimization measures I can implement to avoid or minimize impacts to migratory birds".

### **Details about birds that are potentially affected by offshore projects**



For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

### Proper interpretation and use of your migratory bird report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please look carefully at the survey effort (indicated by the black vertical line) and for the existence of the "no data" indicator (a red horizontal line). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list does not represent all birds present in your project area. It is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list and associated information help you know what to look for to confirm presence and helps guide implementation of avoidance and minimization measures to eliminate or reduce potential impacts from your project activities, should presence be confirmed. To learn more about avoidance and minimization measures, visit the FAQ "Tell me about avoidance and minimization measures I can implement to avoid or minimize impacts to migratory birds".

### Interpreting the Probability of Presence Graphs

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. A taller bar indicates a higher probability of species presence. The survey effort can be used to establish a level of confidence in the presence score.

#### *How is the probability of presence score calculated? The calculation is done in three steps:*

The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.

To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is  $0.25/0.25 = 1$ ; at week 20 it is  $0.05/0.25 = 0.2$ .

The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

### Breeding Season ()



Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

**Survey Effort ()**

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps.

**No Data ()**

A week is marked as having no data if there were no survey events for that week.

**Survey Timeframe**

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.

Facilities

National Wildlife Refuge lands

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

This location overlaps the following National Wildlife Refuge lands:

LAND	ACRES
SAN PABLO BAY NATIONAL WILDLIFE REFUGE	9,208.59 acres

Fish hatcheries

There are no fish hatcheries at this location.



# Wetlands in the National Wetlands Inventory (NWI)

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

This location overlaps the following wetlands:

ESTUARINE AND MARINE DEEPWATER

[E1UBL](#)

ESTUARINE AND MARINE WETLAND

[E2EM1N](#)

[E2USN](#)

[E2EM1Nh](#)

[E2SBNx](#)

[E2EM1Nx](#)

[E2SBN](#)

[E2SBNh](#)

[E2USMh](#)

[E2USM](#)

FRESHWATER EMERGENT WETLAND

[PEM1Ch](#)

FRESHWATER POND

[PUBHh](#)

[PUBHx](#)

RIVERINE

[R3UBHx](#)



[R4SBCx](#)[R4SBAX](#)[R4SBC](#)[R4SBA](#)

A full description for each wetland code can be found at the [National Wetlands Inventory website](#)

**NOTE:** This initial screening does **not** replace an on-site delineation to determine whether wetlands occur. Additional information on the NWI data is provided below.

### Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

### Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

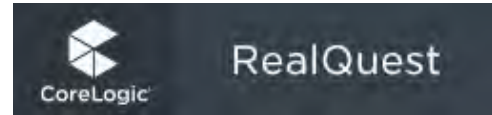
### Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending



to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate Federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.



**Property Detail Report****For Property Located At :****172 BEATTIE AVE, NOVATO, CA 94945-3502****Owner Information**

Owner Name: **BEATTIE TRUST/ARMSTRONG CATHERINE ATR**  
 Mailing Address: **172 BEATTIE AVE, NOVATO CA 94945-3502 C060**  
 Vesting Codes: **// TR**

**Location Information**

Legal Description:		APN:	157-061-01
County:	MARIN, CA	Alternate APN:	
Census Tract / Block:	1011.00 / 1	Subdivision:	
Township-Range-Sect:		Map Reference:	/
Legal Book/Page:		Tract #:	
Legal Lot:		School District:	NOVATO SAN JOSE
Legal Block:		School District Name:	NOVATO SAN JOSE
Market Area:		Munic/Township:	NOVATO UNIFIED SCHOOL AREA
Neighbor Code:			

**Owner Transfer Information**

Recording/Sale Date:	/	Deed Type:	
Sale Price:		1st Mtg Document #:	
Document #:			

**Last Market Sale Information**

Recording/Sale Date:	07/31/2015 / 07/28/2015	1st Mtg Amount/Type:	\$355,000 / PRIVATE PARTY
Sale Price:	\$400,000	1st Mtg Int. Rate/Type:	/
Sale Type:	FULL	1st Mtg Document #:	37516
Document #:	37515	2nd Mtg Amount/Type:	/
Deed Type:	GRANT DEED	2nd Mtg Int. Rate/Type:	/
Transfer Document #:		Price Per SqFt:	\$157.36
New Construction:		Multi/Split Sale:	MULTI
Title Company:	OLD REPUBLIC TITLE		
Lender:	PRIVATE INDIVIDUAL		
Seller Name:	DUFFIN WILLIAM W TRUST		

**Prior Sale Information**

Prior Rec/Sale Date:	02/21/1984 /	Prior Lender:	
Prior Sale Price:	\$98,000	Prior 1st Mtg Amt/Type:	/
Prior Doc Number:	3394-449	Prior 1st Mtg Rate/Type:	/
Prior Deed Type:	DEED (REG)		

**Property Characteristics**

Gross Area:	2,542	Parking Type:	Construction:
Living Area:	2,542	Garage Area:	Heat Type:
Tot Adj Area:		Garage Capacity:	Exterior wall:
Above Grade:		Parking Spaces:	Porch Type:
Total Rooms:		Basement Area:	Patio Type:
Bedrooms:		Finish Bsmnt Area:	Pool:
Bath(F/H):	/	Basement Type:	Air Cond:
Year Built / Eff:	1936 / 1936	Roof Type:	Style:
Fireplace:	/	Foundation:	Quality:
# of Stories:		Roof Material:	Condition:
Other Improvements:			



# Exhibit P

**Site Information**

Zoning:		Acres:	0.21	County Use:	MULTI FAMILY RESID (21)
Lot Area:	9,151	Lot Width/Depth:	x	State Use:	
Land Use:	MULTI FAMILY DWELLING	Res/Comm Units:	4 /	Water Type:	
Site Influence:				Sewer Type:	

**Tax Information**

Total Value:	\$443,524	Assessed Year:	2023	Property Tax:	\$5,970.78
Land Value:	\$329,964	Improved %:	25%	Tax Area:	77008
Improvement Value:	\$111,960	Tax Year:	2022	Tax Exemption:	
Total Taxable Value:	\$443,524				



## Statement of Defense Form

BY NOVEMBER 14, 2025 : (1) COMPLETE THIS FORM (OR A DOCUMENT PROVIDING THE INFORMATION REQUESTED BY THIS FORM), (2) INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS, UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF CASE AS IDENTIFIED IN THE VIOLATION REPORT/COMPLAINT FOR ADMINISTRATIVE CIVIL LIABILITY THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF. FAILURE TO DO SO, OR TO SUBMIT A WRITTEN EXTENSION REQUEST (AS DISCUSSED BELOW), MEANS THAT YOU WILL WAIVE THE OPPORTUNITY TO RAISE ANY DEFENSES OR MITIGATING FACTORS OR TO INTRODUCE ANY EVIDENCE AND THAT THE ENFORCEMENT COMMITTEE OR COMMISSION CAN REFUSE TO CONSIDER ANY STATEMENTS AND EVIDENCE THAT YOU SUBMIT AT A LATER DATE WHEN THE ENFORCEMENT COMMITTEE OR COMMISSION HEARS THIS MATTER.

ANY STATEMENTS THAT YOU MAKE ON THIS FORM (OR IN A DOCUMENT PROVIDING THE INFORMATION REQUESTED BY THIS FORM) WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report/complaint for administrative civil liability. The violation report/complaint indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report/complaint summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any administrative civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report/complaint, to raise any defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. Failure to raise a defense or mitigating factor in or to submit evidence with your response to the violation report/complaint will waive your right to raise such defense or mitigating factor or to submit such evidence at the enforcement hearing on this matter. This form also requires you to identify by name any person whose declaration under penalty of perjury was submitted by staff with the violation report/complaint whom you may want to cross-examine at the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty (*i.e.*, issuance of either a cease and



desist order or a permit revocation order is not proposed), this form allows you to pay the proposed civil penalty without contesting the matter if you chose to do so, subject to notification of the amount by the Commission.

**IF YOU WANT TO CROSS-EXAMINE ANY PERSON WHOSE DECLARATION UNDER PENALTY OF PERJURY STAFF HAS SUBMITTED WITH THE VIOLATION REPORT/COMPLAINT, YOU MUST COMPLETE PARAGRAPH EIGHT TO THIS STATEMENT OF DEFENSE FORM.**

Complete this form as fully and accurately as you can and return an original and one copy of the completed form and an original and one copy of all documents that you want to be made part of the record of the enforcement proceeding, no later than 35 days after this form was mailed to you, to the Commission's enforcement staff at the following address:

**SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION  
375 BEALE STREET, SUITE 510  
SAN FRANCISCO, CA 94105**

If you believe that you have good cause for not being able to complete this form and submit all written documents and any declarations under penalty of perjury that you want the Commission to consider within the required 35 days of its mailing, you may, within that time, submit a written extension request explaining why you need additional time to respond. If the Executive Director has issued a combined violation report and complaint for administrative liability, or only a complaint for administrative liability, your extension request shall include a waiver of and consent to extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b).

If the violation report/complaint that accompanied this statement of defense form included a proposed administrative civil penalty, you may resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed civil penalty within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed administrative civil penalty along with a notation that you are choosing to pay the civil penalty rather than contesting it on an administrative permit listing. (See 14 C.C.R. § 11322(g).) If no Commissioner objects to the amount of the administrative civil penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the amount of the proposed administrative civil penalty, the Commission shall determine by a majority of those present and voting whether to accept or object to the proposed civil penalty. If such a majority votes to accept the proposed civil penalty, your payment will resolve the civil penalty portion of the alleged violation. If such a majority objects to the proposed civil penalty, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's actions. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact ISABEL CHAMBERLAIN of the Commission Enforcement Staff as soon as possible at telephone number 415-352-3605.



1. Facts or allegations contained in the violation report/complaint that you admit (with specific reference to the paragraph number in the violation report/complaint):

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2. Facts or allegations contained in the violation report/complaint that you deny (with specific reference to paragraph number in the violation report/complaint):

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3. Facts or allegations contained in the violation report/complaint of which you have no personal knowledge (with specific reference to paragraph number in the violation report/complaint):

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4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify such evidence by name, date, type, and any other identifying information and provide the original or a copy if you can):

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5. If the Executive Director is proposing that the Commission impose an administrative civil penalty as part of this enforcement proceeding and if you would be unable to pay the proposed penalty or paying the proposed penalty would have a substantial adverse effect on your ability to continue in business, provide factual information establishing such inability to pay or such adverse effect. Submit all relevant supporting documentation which may include but not be limited to audited financial statements and reports (or if not audited, then those that are the basis of tax returns or regulatory filings), balance sheets, profit and loss statements, statements of net worth, annual budgets, bond prospectuses, and tax returns including supporting forms and schedules as may be applicable. Before submitting this information redact (cover or blackout) all personal information including your social security or taxpayer identification number, driver's license/state identification number, financial account number and any other private, non-public personal information including a residential address, personal telephone numbers, or personal email address:

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6. Any other information, statement, etc. that you want to make:

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7. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to or enclosed with this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding. (Please list in chronological order by date, author, and title and enclose a copy with this completed form):



8. Name of any person whose declaration under penalty of perjury was submitted with the violation report/complaint as being part of the staff's case who the respondent wants to cross-examine, identify all documents referred to in such person's declaration about which you want to cross-examine the person, the area or areas of information about which the respondent wants to cross-examine the person, and the information that the respondent hopes to elicit in cross-examination, and state the reason(s) why some other method of proving this information is unsatisfactory.

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NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

### § 11214. Designation of an Amendment as Minor.

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

### § 11215. Frequency of Amendments.

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

## Chapter 13. Enforcement Procedures

### Subchapter 1. General Provisions

#### § 11300. Grounds for the Issuance of Cease and Desist Orders.

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

#### § 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

- (a) the violation of a term or condition of a permit,
- (b) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
- (c) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641(d), Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

#### HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Redesignation of former subsections (1)-(3) as subsections (a)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

#### § 11302. Grounds for the Imposition of Administrative Civil Liability.

Any one of the following actions shall constitute grounds for the imposition of administrative civil liability by the Commission:

- (a) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (b) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e) and 66641.6, Government Code; and Sections 29610 and 29611, Public Resources Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section heading, designation of former subsection (1)-(2) as subsection (a)-(b) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

#### § 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer-Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66640(a), 66641(b) and 66642(a), Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).
3. Amendment of subsection (c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).



## Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability

### Article 1. Definitions

#### § 11310. Definitions.

The following definitions are applicable to this chapter:

(a) “Complaint,” as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil liability by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and follow the format and include the information for a staff violation report/complaint as set out in Appendix H.

(b) “Enforcement committee,” as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution. The Chair shall appoint Commission members or other representatives of the Commission to the enforcement committee with the concurrence of the Commission to assist the Commission in carrying out its enforcement responsibilities. The enforcement committee shall consist of no fewer than four and no more than six Commission members or other representatives of the Commission. A quorum of the enforcement committee necessary to conduct business, to hold hearings and to vote on recommended enforcement decisions shall consist of three members notwithstanding the total number of enforcement committee members. The enforcement committee shall select from its members a chair, who shall serve for a period agreed upon by a majority of the enforcement committee members. The enforcement committee shall conduct its hearings in accordance with the Commission’s laws and regulations upon matters referred to it by either the Executive Director or the Commission. The Chair of the Commission may change the members of the enforcement committee from time to time as necessary due to changes in membership of the Commission or to fill vacancies on the committee provided that the Chair notifies the Commission prior to such change at a Commission meeting and the Commission concurs.

(c) “Enforcement hearing,” as used in this chapter, means any public hearing held before the enforcement committee or the Commission as part of a Commission enforcement proceeding.

(d) “Person,” as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(e) “Respondent,” as used in this chapter, means a person to whom the Commission staff has issued a violation report or complaint and a statement of defense form in accordance with Section 11321(c).

(f) As used in this Chapter, “significant harm to the Bay’s resources or to existing or future public access” shall be determined based on both the context and intensity of the violation.

(1) “Context” refers to the location of the violation and the characteristics of the area where it occurs. Areas with important environmental or ecological significance (e.g., habitat or refugia for sensitive species) are generally considered to be more significant than previously degraded habitat or areas with limited habitat value, and highly visible and/or frequently used areas are generally considered to be more significant than isolated areas with low visibility or infrequent usage.

(2) “Intensity” refers to the severity of the impact and the degree to which it affects the environment or public access. Violations presenting significant ecosystem hazards (e.g., toxic or biohazardous fill) or involving large portions of a particular site shall generally be considered to be more severe. In addition, violations that substantially interfere with the

ability to use designated public access or encompass large portions of a designated public access area will be considered to be more significant.

(3) Where multiple violations are alleged at a site, if a single violation results in harm that is individually limited but cumulatively significant when added to other violations at the site, it shall be determined that the violation has resulted in significant harm to the Bay’s resources or to existing or future public access.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e), 66641.6 and 66643, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
3. Amendment of subchapter heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

## Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability

#### § 11320. Staff Investigation and Discovery, and Appointment of a Hearing Officer.

(a) As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

(b) At the request of the Executive Director or the chair of the enforcement committee, or on its own initiative, the Commission may appoint a hearing officer to conduct an investigation or hold a hearing, make proposed findings of fact, and recommend to the Commission what action it should take on an enforcement matter. A hearing officer appointed to hold an enforcement hearing shall proceed in accordance with the procedural requirements of Section 11327 and shall adopt a recommended enforcement decision in accordance with Section 11330.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180, 11181, 66637, 66638, 66641.5(e), 66641.6 and 66643, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of article heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes, as a result of an enforcement investigation, that any person has caused or threatens to cause significant harm to the Bay’s resources or to existing or future public access, or that the nature, circumstances, extent, and gravity of the violation or violations so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that follows the format and contains the information set out in Appendix H,

(2) a complaint for administrative civil liability that follows the format and contains the information set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that follows the format and requests the information set out in Appendix I. The violation report and complaint for administrative civil liability can be combined into a single document so long as it contains all the information required for both.



(b) The violation report and/or complaint shall list all documents, including any declarations under penalty of perjury, on which the staff relies to provide a prima facie case of the violations alleged and copies of all such documents shall be attached to or accompany the violation report and/or complaint or shall be provided to the respondent in electronic format upon request.

(c) Issuance of a violation report and/or complaint shall occur when the violation report and/or complaint is mailed by certified mail to all persons or entities named as a respondent in the violation report and/or complaint. Upon written consent of the respondent or respondent's authorized representative, a violation report and/or complaint shall be mailed to the respondent or the respondent's authorized representative by email.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11322. Respondent's Required Response to the Violation Report or Complaint, the Executive Director's Consideration of the Respondent's Response, and Extensions of Time.

(a) Within thirty-five (35) days of the issuance of the violation report and/or complaint and the statement of defense form, each respondent shall submit to the Commission at its office an original and one copy of the completed statement of defense form (or an original and one copy of a document providing the information requested by the form) and an original (or verified copy) and one copy of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint is needed to show or contest a fact alleged in the violation report and/or complaint, the respondent shall request such cross-examination in the completed statement of defense form. The completed statement of defense form or an addendum shall list the name of each person whose declaration under penalty of perjury has been submitted with the violation report and/or complaint that the respondent wants to cross examine, all documents referred to in such person's declaration about which the respondent wants to cross-examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for administrative civil liability and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed administrative civil penalty or (2) the completed statement of defense form, copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding in accordance with subsection (a), and any request to allow cross-examination in accordance with subsection (b).

(d) If the staff wants to cross-examine any person whose declaration under penalty of perjury has been submitted with a respondent's completed statement of defense form, the staff shall, within seven days of receiving the completed statement of defense form, mail to all respondents a list of all persons whose declaration under penalty of perjury has been submitted by respondent that the staff wants to cross examine, all documents referred to in such person's declaration about which staff wants to cross-examine the person, a description of the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for administrative civil liability together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) If the Executive Director issues a violation report only, and not a complaint for administrative civil liability, the Executive Director shall for good cause extend the 35-day time limit imposed by subsection (a) upon receipt within the 35-day time limit of a written request for such extension and demonstration of good cause. If the Executive Director issues a violation report and complaint for administrative civil liability or only a complaint for administrative civil liability, the Executive Director shall for good cause extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension, demonstration of good cause, and waiver of and consent to extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b). Any extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for administrative civil liability by submitting a cashier's check in the amount of the penalty proposed in the complaint to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall submit his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

(i) At any time after issuance of a violation report and/or complaint, the Executive Director and a respondent may agree on the terms of a proposed stipulated order or a proposed settlement agreement to resolve a violation or violations, which may include a schedule of corrective actions to be implemented by the respondent and payment of administrative civil penalties. The Executive Director shall include the proposed stipulated order or proposed settlement agreement in his or her recommended enforcement decision prepared in accordance with Section 11326. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has not submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination in accordance with subsections (a) and (b), the respondent shall submit his or her completed statement of defense form, copies of any supporting documents, and any request for cross-examination within 35 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement. Thereafter, the enforcement matter shall proceed according to these regulations. If the Commission fails to adopt the proposed stipulated order or proposed settlement agreement, and the respondent has previously submitted a completed statement of defense form, copies of any supporting documents, and any request for cross-examination, the Executive Director shall prepare a new recommended enforcement decision in accordance with Section 11326 within 30 days of the Commission's failure to adopt the proposed stipulated order or proposed settlement agreement, and thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11415.60, 66638,



66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee or the Commission the Executive Director shall mail by first class mail or send by email, and shall also make available on the Commission's website, a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address, the Deputy Attorney General advising the enforcement committee or Commission, and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed and posted on the Commission's website pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing by first class mail or sending by email, and also making available on the Commission's website, written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11324. Distribution of the Violation Report, Complaint, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall make available on the Commission's website and shall mail by first class mail or send by email the following materials to each respondent, to the committee members if the enforcement hearing will be held before the enforcement committee or to the Commission if the enforcement hearing will be held before the Commission, and to the Deputy Attorney General advising the enforcement committee or Commission: (1) the violation report and/or complaint for administrative civil liability and all documents or other evidence cited therein or listed on an index of supporting documents or evidence attached thereto, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11325. Ex Parte Contacts. [Repealed]

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12–27–2004; operative 1–26–2005 (Register 2004, No. 53).

### § 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil liability.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a summary of (A) any background to the alleged violation, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), and (D) all defenses and mitigating factors raised by the respondent(s);

(2) any staff response to the defenses, mitigating factors, or arguments raised by the respondent(s), and any rebuttal evidence submitted by the staff to matters raised in the statement of defense form, with references to supporting documents;

(3) a summary and analysis of all disputed issues;

(4) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify all violations for which administrative civil penalties are proposed and include:

(A) the total amount of proposed administrative civil penalties; and

(B) a statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

(5) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

(6) a recommendation on what action the Commission should take; and

(7) the proposed text of any cease and desist order, permit revocation order, order setting administrative civil liability, or stipulated order that the Executive Director recommends that the Commission issue or any settlement agreement that the Executive Director recommends that the Commission approve.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair or enforcement committee chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair or enforcement committee chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and/or complaint for administrative civil liability and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;



(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the respondent party or parties;

(e) members of the public may speak concerning the matter;

(f) presentations made by the staff, a respondent, and the public shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the enforcement committee or the Commission shall not allow oral testimony unless the committee or Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to examine or cross-examine all witnesses who are allowed to testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing pursuant either to Section 11322(b) or Section 11322(d) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered. Following cross-examination of a witness whose declaration under penalty of perjury has become part of the enforcement record, a representative of the opposing party shall be entitled to examine the witness on the area or areas of information addressed during cross-examination. Neither cross-examination nor direct examination shall be allowed of any person who has not submitted a declaration under penalty of perjury which has become part of the enforcement record and who has not been identified in writing pursuant to either Section 11322(b) or Section 11322(d), including any member of the public who has commented on an enforcement matter or submitted information related to an alleged violation.

(h) enforcement committee members or Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall rule on any objections to the admissibility of evidence or the acceptance of late evidence and identify any evidence submitted but rejected because it was not filed in a timely manner or in violation of Section 11328.

(k) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(l) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an enforcement committee recommended enforcement decision in accordance with Section 11330 within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the violation report and/or complaint or the completed statement of defense form, except to the extent otherwise provided by Section 11322(d) or the Executive Director has extended the time for such submittal pursuant to Section 11322(f), or the Commission or enforcement committee admits the testimony into

the record pursuant to Section 11327(f) and this section. To this end, the Commission or the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner but was unable to do so and would be substantially prejudiced if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence, including but not limited information provided by the public to the Commission or staff or in public comments, may be admitted and used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury and the declarant is subject to cross-examination as provided in Sections 11322 and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair or the enforcement committee chair shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair or the enforcement committee chair shall consult with the Deputy Attorney General advising the Commission or enforcement committee at the hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; Section 29601, Public Resources Code; and Section 351, Evidence Code.

#### HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).
3. Amendment of subsections (b), (d) and (e) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11330. Adoption of an Enforcement Committee Recommended Enforcement Decision.

(a) After the enforcement committee has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

(1) a summary of (A) any background to the alleged violations, (B) the allegations made by staff in its violation report and/or complaint, (C) the allegations either admitted or not contested by respondent(s), (D) the defenses and mitigating factors raised by the respondent(s), and (E) the staff's response to the defenses, mitigating factors, or arguments raised by the respondent(s);

(2) a statement of any rulings by the enforcement committee;

(3) a recommended enforcement decision on a proposed order setting administrative civil liability shall identify the violations for which penalties are proposed and include:

(A) the total amount of proposed administrative civil penalties; and



(B) a statement of the applicable factors set forth in Government Code Section 66641.9 that the enforcement committee considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

(4) a statement of whether the Executive Director has issued a cease and desist order and its expiration date;

(5) any further written report on or explanation of the enforcement proceedings as the enforcement committee believes is appropriate;

(6) a recommendation on what action the Commission should take; and

(7) the proposed text of any cease and desist order, permit revocation order, order setting administrative civil liability, or stipulated order that the enforcement committee recommends that the Commission issue or any settlement agreement that the enforcement committee recommends that the Commission approve.

(b) The enforcement committee can adopt with or without change the Executive Director's recommended enforcement decision. The chair of the enforcement committee shall direct Commission counsel to prepare the enforcement committee recommended enforcement decision, provided that: (1) Commission counsel shall submit the enforcement committee recommended enforcement decision to the respondent(s) by email for review not less than three days before the Executive Director mails the recommended decision to the Commission and respondent(s) in accordance with Section 11331; and (2) if the respondent(s) provides written comments on or objections to the recommended decision within two days of receipt thereof, the Executive Director may modify the recommended decision based on such comments or objections, if he or she determines that such modifications are appropriate, and shall include the respondent's comments or objections when mailing the recommended decision to the Commission and respondent(s) in accordance with Section 11331.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director or by the enforcement committee, the staff shall mail by first class mail or send by email, and shall also make available on the Commission's website, the recommended enforcement decision to all respondents, to all Commissioners, and to the Deputy Attorney General advising the Commission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Codes.

#### HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11332. Commission Action on Recommended Enforcement Decision.

(a) Except as provided in subsection (c), when the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments or comments on the recommendation, subject to such reasonable time limits as the Chair may

impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

(1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or order setting administrative civil liability;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed order setting administrative civil liability or (B) if the recommended enforcement decision includes one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed order setting administrative civil liability, adopt the recommended enforcement decision with regard to one or more proposed orders and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this 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 these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Sections 11327 and 11328 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

(c) If the respondent(s) agrees in writing to accept the recommended enforcement decision, and the Executive Director also agrees to accept the recommended decision, the Executive Director shall calendar the recommended enforcement decision as a consent item on a Commission meeting agenda. At the Commission meeting, after allowing public comment on the consent item the Commission shall determine by a majority of those commissioners present and voting whether to adopt the recommended enforcement decision on consent without any change and without any further proceedings. If a majority of those commissioners present and voting do not determine to adopt the recommended decision on consent, the Commission shall proceed to act on the matter in accordance with subsections (a) and (b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

#### HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

The Executive Director shall determine whether to refer an enforcement matter to the Commission or to the enforcement committee. When the Executive Director refers an enforcement matter directly to the Commission, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10–11–89; operative 11–10–89 (Register 89, No. 30). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).



**§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Order Setting Administrative Civil Liability.**

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed order setting administrative civil liability by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, and 66641.5(e) and 66641.6, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section heading, subsection (a) and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

**§ 11335. Staff Report and Recommendation. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11336. Distribution of Staff Report and Recommendation. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11337. Notice of Public Hearing. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(c), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11338. Public Hearing Procedure. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11339. Admissibility of Evidence. [Renumbered]**

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637–66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11340. Contents of Cease and Desist Orders.**

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

(1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;

(2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;

(3) identification of the property where the activity has been undertaken or may be undertaken;

(4) a description of the activity;

(5) the effective date of the order;

(6) the expiration date, if any, of the order;

(7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer–Petris Act, the Suisun Marsh Preservation Act, or a permit;

(8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;

(9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;

(10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and

(11) such other provisions that the Commission has approved, including provisions relating to:

(A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;

(B) the obligation to conform strictly to the order and the consequences of the failure to do so; and

(C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order and/or an order setting administrative civil liability so long as the combined order contain all the information required under these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of subsection (b) and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

**§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.**

The Executive Director may modify a cease and desist order that he or she has issued for good cause, but he or she shall not do so in a manner that extends the 90–day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66637, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

**§ 11342. Modification of Cease and Desist Orders Issued by the Commission.**

The Executive Director may modify a cease and desist order issued by the Commission for good cause if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.



## HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director by filing a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

## HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11344. Amendments to Cease and Desist Orders. [Renumbered]

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

## HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, or the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and/or an order setting administrative civil liability so long as the combined order contains all the information required by these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

## HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of subsections (a)(2) and (b) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order for good cause if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Sections 29600 and 29601, Public Resources Code.

## HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

## HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of subsections (b)-(c) and amendment of NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11360. Preparation and Execution of Commission Cease and Desist Orders, Permit Revocation Orders, and Orders Setting Administrative Civil Liability.

The Executive Director shall prepare and sign a cease and desist order, a permit revocation order, or an order setting administrative civil liability authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29601, 29610 and 29611, Public Resources Code.

## HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, an order setting administrative civil liability, or of any modification of such orders, is complete when the Executive Director executes the original copy of the order or modification and it is stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.



## HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

**§ 11362. Service of Copies.**

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modification of such orders to each person to whom the order or modification is being issued and the owner of the property on which any violation addressed by the order occurred no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or modification by email.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by certified mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification of such an order to each person who appeared at the hearing and submitted a written request for a copy no later than the second working day following the date of issuance, except that with the written consent of the party to be served, the Executive Director shall serve any such order or order modification by email. The Executive Director shall cause to be personally served or mail by registered mail an order setting administrative civil liability or modification to such order to each person who appeared at the hearing and submitted a written request for a copy, except that with the consent of the party to be served, the Executive Director shall serve any such order or order modification by email. In addition, the Executive Director shall post on the Commission's website a copy of a cease and desist order, permit revocation order, or an order setting administrative civil liability, or any modification of such orders no later than the second working day following issuance.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637, 66638, 66641.5(e) and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

## HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
3. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

**§ 11370. Enforcement Record.**

The record of an enforcement proceeding shall consist of

- (a) the violation report, including all documents referred to in the report;
- (b) any complaint for administrative civil liability;
- (c) all timely filed statement of defense form(s), including all documents submitted therewith;
- (d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;
- (e) the Executive Director's recommended enforcement decision, including all documents and any other evidence referred to or included in the recommendation;
- (f) minutes or a verbatim transcript of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if any oral testimony or any cross-examination and direct examination of a person whose declaration under penalty of perjury has become part of

the enforcement record is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;

(g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;

(h) any enforcement committee's or hearing officer's recommended enforcement decision,

(i) any order that the Commission issues,

(j) such other permit or other Commission files as have explicitly been made a part of the record,

(k) the McAteer-Petris Act, if relevant to any of the issues raised in the proceeding,

(l) the San Francisco Bay Plan, if relevant to any of the issues raised in the proceeding,

(m) the Suisun Marsh Preservation Act, if relevant to any of the issues raised in the proceeding,

(n) the Suisun Marsh Protection Plan, if relevant to any of the issues raised in the proceeding,

(o) the Suisun Marsh Local Protection Program, if relevant to any of the issues raised in the proceeding, and

(p) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66640, 66641.5(e), 66641.6 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

## HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

**§ 11380. Content of Complaint for Administrative Civil Liability.**

The complaint shall follow the format and contain the information set out in Appendix H to these regulations. The complaint shall identify the violations for which administrative civil penalties are proposed and include:

(a) a list or table of all alleged violations for which staff is proposing a penalty;

(b) the total amount of proposed administrative civil penalties; and

(c) a statement of the applicable factors set forth in Government Code Section 66641.9 that the Executive Director considered, consistent with the Administrative Civil Penalty Policy in Appendix J of these regulations, in determining the total amount of the proposed administrative civil penalties;

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29610 and 29611, Public Resources Code.

## HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

**§ 11381. Commission Hearing on Complaint for Administrative Civil Liability.**

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either: (1) hearing the matter itself within 60 days of the service of the complaint; or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint. With the written consent of the respondent(s) to whom a complaint is issued, the Executive Director shall for good cause extend the 60-day time limit for a hearing on the complaint under Government Code Section 66641.6(b).

(b) The Executive Director shall determine whether to refer a complaint for administrative civil liability to the Commission or to the enforcement committee.



(c) When the Executive Director determines whether to refer a complaint to the Commission or to the enforcement committee, he or she shall consider the following factors:

(1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,

(2) whether the Executive Director has issued a cease and desist order for the violation or violations alleged in the complaint, and whether the Executive has proposed that any order setting administrative civil liability be combined with a Commission cease and desist order and/or a permit revocation order,

(3) the relative workloads of the Commission and the enforcement committee at the time,

(4) whether the complaint involves any policy issues that should be determined by the Commission initially,

(5) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and

(6) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e) and 66641.6, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11382. Further Procedures for Commission Review of Complaints for Administrative Civil Liability.

The Commission shall follow the procedures established by Sections 11321 through 11334 of these regulations when it considers a recommended enforcement decision from either the staff or the enforcement committee relative to the possible imposition of administrative civil liability.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11383. Contents of a Commission Order Setting Administrative Civil Liability.

(a) A Commission order setting administrative civil liability shall be signed by the Executive Director and shall contain the following:

(1) the name(s) of the person(s) required to pay the civil penalties;

(2) the amount of the civil penalties and findings that address the applicable factors set forth in Government Code Section 66641.9 that the Commission considered in determining the amount of the civil penalties;

(3) the date by which the civil penalties must be paid in full, or, if the penalties are to be paid in installments, the amount of each installment and the date by which each installment must be paid;

(4) written findings that (1) explain the decision to issue the order setting administrative civil liability and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues an order setting administrative civil liability may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) An order setting administrative civil liability can be combined with a cease and desist order or a permit revocation order so long as the combined order contains all the information required under these regulations for each type of order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code; and Sections 29610 and 29611, Public Resources Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11384. Modification of a Commission Order Setting Administrative Civil Liability.

The Executive Director may modify an order setting administrative civil liability for good cause if the modification would not alter the total amount of the civil penalties or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

### § 11385. Appeal from Modification of an Order Setting Administrative Civil Liability.

(a) A person to whom the Commission has issued an order setting administrative civil liability may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals of modifications of an order setting administrative civil liability by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5(e), 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).
2. Amendment of section heading, section and NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

## Article 3. Standardized Fines

### § 11386. Applicability of Article.

(a) This Article shall apply to an enforcement action if the Executive Director determines:

(1) that an alleged violation is one of the types identified in Section 11390;

(2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and

(3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) For purposes of this Article, "significant harm to the Bay's resources or to existing or future public access" shall be determined in accordance with Section 11310(f).

(c) If an enforcement action involves both an alleged violation that has not resulted in significant harm to the Bay's resources or to existing or future public access and an alleged violation that has resulted in significant harm to such resources or public access or that is otherwise not subject to resolution under this Article, the Executive Director may, depending on the nature and extent of all the violations and on whether the responsible party has taken appropriate action to resolve the violations, commence Commission enforcement proceedings for all the alleged violations by following the procedures established by Sections 11321 through 11334 of these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

#### HISTORY

1. New section filed 2–26–93; operative 3–29–93 (Register 93, No. 9).
2. Amendment filed 6–26–97; operative 7–26–97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12–9–98; operative 1–8–99 (Register 98, No. 50).
4. Amendment filed 5–22–2003; operative 6–21–2003 (Register 2003, No. 21).
5. New article 3 heading, amendment of section heading and subsections (a)–(a)(10), renumbering of former subsections (b)–(b)(3) to new section



11387, renumbering of former subsection (c) to new section 11388, renumbering of former subsection (d) to new section 11389, renumbering of former subsections (e)–(h) to new section 11390, renumbering of former subsections (i)–(k) to new section 11391, new subsections (b)–(c) and amendment of NOTE filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11387. Notice of Alleged Violation.

If this Article applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) responsible for the alleged violation(s) that contains all of the following information:

(a) the nature of the alleged violation(s) and each and every action that must be taken to correct the alleged violation;

(b) the fact that if the alleged violation(s) are fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any fine; and

(c) the fact that if the alleged violation(s) are not fully corrected within 35 days of mailing of the notice, the person responsible for the alleged violation(s) may be subject to the payment of a fine and may resolve the alleged violation(s) by taking each and every corrective action required by the notice and paying the standardized fine specified in Section 11390(a) or 11390(b) without having to go through a Commission enforcement proceeding pursuant to Sections 11321 through 11334, except as provided in Section 11390(d).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

##### HISTORY

1. Renumbering and amendment of former section 11386, subsections (b)–(b)(3) to new section 11387 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11388. Opportunity to Complete Corrective Action without Imposition of a Standardized Fine.

Except as provided in Section 11390(c), if the person responsible for the alleged violation(s) submits to the Executive Director information demonstrating that the alleged violation(s) have not occurred or that such person has completed each and every corrective action specified in the notice pursuant to Section 11387 within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized fine.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

##### HISTORY

1. Renumbering and amendment of former section 11386, subsection (c) to new section 11388 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11389. Opportunity to Complete Corrective Action with Imposition of a Standardized Fine.

Except as provided in Sections 11390(c) and 11390(d), if the person responsible for the alleged violation(s) fails to submit to the Executive Director information demonstrating that such person has completed each and every corrective action required by the notice pursuant to Section 11387 within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the alleged violation(s) by completing each and every corrective action required by the notice sent pursuant to Section 11387 and by paying a fine in the amount provided in Sections 11390(a) or 11390(b).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(c), Government Code; and Section 29610, Public Resources Code.

##### HISTORY

1. Renumbering and amendment of former section 11386, subsection (d) to new section 11389 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

#### § 11390. Violations Subject to a Standardized Fine and Schedule of Standardized Fines.

(a) The following standardized fines shall apply to the following types of alleged violations:

(1) for the failure to return an acknowledged, executed Commission permit before commencing the work authorized by the permit, or, for any permit issued to authorize previously commenced or completed work,

for failure to return an acknowledged, executed permit within the time period stated in the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an acknowledged, executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each document plus FIVE HUNDRED DOLLARS (\$500.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (a)(1) or (a)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00) for each violation of each separate permit requirement, plus FIVE HUNDRED DOLLARS (\$500.00) per day for each violation, from the ninety-sixth (96th) day to the date the violation is corrected or the required improvements are provided.

(4) for the failure to obtain a Commission permit or an amendment to a previously issued Commission permit prior to undertaking any activity that can be authorized by an administrative permit or an amendment to previously issued Commission permit:

(A) if either a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted between thirty-six (36) and sixty-five (65) days and a permit or permit amendment is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted between sixty-six (66) and ninety-five (95) days and a permit or permit amendment is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mail-



ing of the notice required by Section 11387: FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a complete and properly executed application accompanied by a check or money order for the applicable application fee, as determined pursuant to Appendix M, Section (b) of the Commission's regulations, is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the ninety-sixth (96th) day to the date the fully complete and properly executed application accompanied by a check or money order for the applicable application fee is submitted or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit or an abbreviated regionwide permit:

(A) if either a complete notice of intent to proceed under a regionwide permit or abbreviated regionwide permit is submitted between thirty-six (36) and sixty-five (65) days and the Executive Director approves the notice of intent to proceed within one hundred and fifty-five (155) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by Section 11387: TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted between sixty-six (66) and ninety-five (95) days and the Executive Director approves the notice of intent to proceed within one hundred and eighty-five (185) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by Section 11387: FOUR THOUSAND DOLLARS (\$4,000.00);

(C) if a complete notice of intent to proceed under a regionwide permit or an abbreviated regionwide permit is submitted more than ninety-five (95) days after the date of the mailing of the notice required by Section 11387 or the unauthorized activity is completely corrected within the same time limits: FOUR THOUSAND DOLLARS (\$4,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day from the ninety-sixth (96th) day to the date the complete notice of intent to proceed is submitted or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies:

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by Section 11387: THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than ninety-five (95) days after the mailing of the notice required by Section 11387: EIGHT THOUSAND DOLLARS (\$8,000.00) plus FIVE HUNDRED DOLLARS (\$500.00) per day to the date the violation is completely corrected.

(b) A person responsible for any alleged violation must pay double the amount listed in subsection (a) to resolve the alleged violation if that person has previously paid or has been assessed but has failed to pay any standardized fine pursuant to subsection (a) and Section 11391 within the five years prior to resolution of the alleged violation.

(c) If a violation resolved pursuant to Section 11388 is repeated by the same person within five years of the resolution of the prior violation, Section 11388 and subsections (a) and (b) shall not apply. Instead, the person responsible for the subsequent violation may resolve the subsequent al-

leged violation by paying TWO HUNDRED DOLLARS (\$200.00) per day for each day the subsequent alleged violation occurs or persists after the date of the mailing of the notice required by Section 11387.

(d) If the person responsible for the alleged violation does not complete all the required corrective actions within 125 days of the notice mailed pursuant to Section 11387 or does not pay the amount of standardized fines assessed in accordance with this section when payment is due under Section 11391(c) or (d), the Executive Director may commence Commission enforcement proceedings in accordance with Sections 11321 through 11334. If the Executive Director determines that the person responsible for the violation has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for resolution of the violation using the standardized fine process by mailing a notice stating that the process is no longer available. After mailing such notice, the Executive Director shall commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former section 11386, subsections (e)-(h) to new section 11390 filed 6-7-2022; operative 10-1-2022 (Register 2022, No. 23).

### § 11391. Notice of Liability for Standardized Fines and Opportunity to Appeal or to Resolve Violation through Commission Enforcement Proceedings.

(a) After the violation has been completely resolved, the Commission staff shall notify the person responsible for the violation by first class mail or email of the amount of standardized fines assessed in accordance with Section 11390. The notice shall state that if any person subject to standardized fines believes that the amount of standardized fines is inappropriate or was not properly determined in accordance Section 11390, that person can appeal the amount of the fines to the Executive Director and the Chair by submitting to the Executive Director within 21 days of the date of the notice a written statement that the person is appealing and the reasons for the appeal. The Commission staff shall submit to the Executive Director a response to the appeal within 14 days after receipt thereof. The Executive Director and the Chair can reduce the amount of the standardized fines to an amount that they believe is appropriate and can establish a schedule for the payment of the standardized fines in installments.

(b) If any person subject to the standardized fines listed in Sections 11390(a), (b), or (c) believes that the 35-day time limit for resolution without a standardized fine established pursuant to Sections 11387 and 11388 is not feasible, that person may appeal the time limit to the Executive Director and the Chair by submitting to the Executive Director within 35-days of the notice mailed pursuant to Section 11387 a written statement that the person is appealing the 35-day time limit, the reasons for the appeal, and a proposed alternative date to complete the required corrective action. The Executive Director and the Chair can modify the 35-day time limit and the time periods for accrual of standardized fines set forth in Section 11390(a) for the violation as they believe appropriate.

(c) If any person subject to standardized fines does not appeal the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), the full amount of such fines shall be due and payable by cashier's check thirty (30) days after the date of the notice provided under subsection (a).

(d) If any person subject to standardized fines appeals the amount of such fines within 21 days of receiving notice from Commission staff under subsection (a), any fines the Executive Director and Chair determine to be appropriate shall be due and payable by cashier's check by the date or dates specified in their decision on the appeal.

(e) Any person receiving a notice under Section 11387 may waive the opportunity to resolve the violation under this Article by submitting a let-



ter to the Executive Director indicating such a waiver and requesting that the violation be resolved through Commission enforcement proceedings in accordance with Sections 11321 through 11334 if that person believes such proceedings are necessary to fairly determine liability for the violation, the appropriate remedy, or the appropriate fine or administrative civil penalty amount. A waiver of the opportunity to resolve a violation under this Article and request that the violation be resolved through Commission enforcement proceedings may be submitted at any time after receipt of a notice under Section 11387 but no later than: (1) twenty one (21) days after the date of the notice provided by Commission staff under subsection (a) of amount of standardized fines assessed, if the person receiving such notice elects not to appeal the amount of such fines to the Executive Director and Chair; or (2) fourteen (14) days after the date of the decision of the Executive Director and Chair on any appeal of the amount of standardized fines. If a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings is submitted after the Commission staff has provided notice under subsection (a) of the amount of standardized fines assessed or after the decision of the Executive Director and Chair on any appeal of the amount of standardized fines, no such fines shall be due pursuant to that notice or that decision, and the appropriate amount of fines or administrative civil penalties shall be determined through Commission enforcement proceedings.

(f) If a person subject to standardized fines fails to pay such fines when due and payable under subsection (c) or (d), as applicable, and if such person has not submitted a letter waiving the opportunity to resolve a violation under this Article and requesting that the violation be resolved through Commission enforcement proceedings under subsection (e), the Executive Director shall commence Commission enforcement proceedings in accordance with Sections 11321 through 11334 to resolve the violation. In those proceedings, the person subject to such fines may not contest his or her liability for the violation or that the violation occurred, and the Commission shall determine only whether the amount of standardized fines was properly calculated in accordance with Section 11390.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5(e), Government Code; and Section 29610, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former section 11386, subsections (i)–(k) to new section 11391 filed 6–7–2022; operative 10–1–2022 (Register 2022, No. 23).

## Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

### Subchapter 1. Marsh Development Permits Issued by Local Governments

#### Article 1. Application

##### § 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as “a marsh development authorization,” by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

#### Article 2. Marsh Development Permits Issued by Local Governments

##### § 11410. Order of Permits.

If a Suisun Marsh development requires both a marsh development permit from the Commission and a marsh development authorization from a local government because part of the development site is located within either the primary management area of the Suisun Marsh or within tidelands, submerged lands, or other public trust lands within the secondary management area and if another part of the development site is located within the secondary management area of the Suisun Marsh, the person or entity who proposes the development shall first obtain the marsh development authorization from the appropriate local government for that part of the site or development that is within the secondary management area before requesting a marsh development permit from the Commission for that part of the site or development that is within the primary management area.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Sections 29300 and 29502, Public Resources Code.

#### HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Change without regulatory effect amending section filed 12–31–2020 pursuant to section 100, title 1, California Code of Regulations (Register 2021, No. 1). (OAL review extended 60 calendar days pursuant to Executive Order N–40–20.)

##### § 11411. Application.

(a) The person or entity applying for a marsh development authorization from local government for a development within the secondary management area shall submit to the local government and the local government shall require the person or entity to provide the following:

(1) an application that provides detailed information about the development and that includes a site plan that shows the property lines of the site and the location and extent of existing and proposed work and uses information that clearly distinguishes existing improvements from proposed improvements, and existing shoreline public access areas from proposed shoreline public access areas, the location of any existing levees and water transporting and water control structures, and information that identifies all building elevations, the approximate distance from the development to the nearest marsh, the location of any managed wetland and any tidal area in the vicinity, and the name and location of the nearest public road;

(2) a statement that describes all environmental impacts that may arise from the proposed development with supporting facts and information;

(3) a statement that the person signing the application is either the applicant or has the authority to bind legally the applicant;

(4) sufficient evidence that shows the applicant either owns the land, has a lease of sufficient duration to allow a reasonable return on any investment, or has an enforceable option on the land on which the development will occur or other similar authority to use the property; and

(5) a statement under penalty of perjury by the person signing the application that all the information submitted is complete and accurate.

(b) The local government may either incorporate the request for this information into its existing applications forms or may request this information separately.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of Section 11227 to Section 11411 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

##### § 11412. Notice to the Commission of Pending Applications.

(a) Within five (5) working days of the filing of an application with the local government for a marsh development authorization, the local government shall provide in writing to the Commission the following information: