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STATEMENT
Recreational Boaters of California
March 15, 2018 Public Hearing – Westpoint Harbor
San Francisco Bay Conservation and Development Commission

My name is Ray Durazo and I am Vice President – North of the Recreational Boaters of California, RBOC.

RBOC is the nonprofit governmental advocacy organization that works to protect and enhance the interests of the state's 3 million recreational boaters before the legislative and executive branches of state and local government. RBOC was formed as a statewide organization fifty years ago and from that date forward has continued its commitment to promoting the enjoyment, protection, and responsible use of our waterways.

RBOC strongly urges the Commission to reject the proposed cease and desist order with regard to Westpoint Harbor.

BCDC's approach towards the harbor does not further the commission as a national model, does not encourage the responsible and productive use of the Bay's resources, and does not enable all of the Bay's communities to flourish.

The claimed violations all suffer from one or more of deficiencies that have been well-documented by the harbor, as well as our November 15, 2017 letter.

The BCDC actions will act as a powerful deterrent to future generations interested in investing and serving recreational boating in the Bay in areas under BCDC jurisdiction. This will be to the detriment of the Bay as boating in California is a $7 billion annual economic engine.

RBOC's concerns with BCDC's actions towards the harbor are exacerbated when considered in the context of the commission's similar enforcement actions against Scott's restaurant in Jack London Square, and against Sweeny's duck club in the Delta.

Taken together, the pattern is alarming to the boating community and has also led a County Superior Court judge in a recent case to opine that BCDC enforcement had exceeded its jurisdiction, had inflicted excessive fines, and had displayed vindictive prosecution.

-continued

Taken together, the pattern leads the community to have the strong impression that the commission enforcement staff is operating on its own and making important decisions that properly reside with the commissioners.

These issues need to be addressed in a timely manner, and RBOC urges the California State Legislature and State Auditor to investigate the BCDC enforcement actions including the exorbitant fines that are being imposed. It is critical that an independent, fair, objective, knowledgeable and transparent review be conducted.

RBOC has held meetings in the State Capitol with our elected officials regarding the Westpoint situation and our request for an audit. We have found a receptive audience and will continue to push forward in the weeks and months ahead.

Thank you for your attention and consideration of our position.

# # #

March 15, 2018

Regarding: West Point Marina Action

Dear Mr. Wasserman and Commission members,

Redwood City Vice Mayor Diane and former Mayor Barbara Pierce are sorry that they are unable to attend the meeting this afternoon, because of a scheduling conflict for an important event later this afternoon. We had spoken at the Enforcement Meeting January 18, 2018 and had hoped to speak again this afternoon.

During public comment at the enforcement meeting, both of us addressed the committee regarding their history with Mark Sanders of West Point Marina. Our experience with Mr. Sanders is that he has been an asset to the community and has long been involved in water front activities including the aqua terra cleanup of abandoned boats in our creeks and waterways in 2000 and the long-standing Bair Island Task Force.

Even though we can't be there in person today we want to communicate our strong support for a fair and equitable solution for both sides as quickly as possible. BCDC has important work to do and Mr. Sanders has an amazing marina to run. It would be in the best interest of both parties and the general public to put the resources being used for lawyers and penalties to be used to finish the appropriate mitigations to help meet BCDC's and Mr. Sander's goals. Please consider holding off on the fines and litigation, to prioritize the key violations and efforts needed to make substantial progress on things that both groups value.

We understand that both sides are frustrated and entrenched and encourage a fresh look by a neutral party to help solve the roadblock because enforcement is not creating the result desired.

Thank you for including our comments in the record today.

Best regards,

Redwood City Vice Mayor Diane Howard Redwood City Former Mayor Barbara Pierce

Cc. Marc Zeppetto, Grace Gomez, Mark Sanders, Melissa Stevenson Diaz

Subject: BCDC hearing 3/15/2018 re Westpoint Harbor
Date: Thursday, March 15, 2018 at 10:21:54 AM Pacific Daylight Time
From: Steve&Charlene Swierkowski
To: ReceptionDesk@BCDC
CC: Swierkowski Steve&Charlene, info@friendsofwestpointharbor.org, Harbor Westpoint

Dear BDCD commissioners and recreational boaters using Westpoint Harbor:

As a 50+ year sailor on SF Bay, and ex commodore of the California Cruising Clippers sailing club(PICYA and RBOC member for many decades), I and my many sailing friends are very concerned about BCDC actions that have and will adversely affect the access of our very active sailing community to the SF bay and specifically to Westpoint Harbor and the south bay.

Westpoint Harbor is one of the finest, well-managed marinas in the bay and it is a fabulous destination for the bulk of us who berth our boats in the central bay. We have had many fine trips there as guests that thoroughly enjoys the hospitality of the marina. They have reclaimed a wretched toxic dump site and at the same time provided us access to the edge of the south bay. Most of us have kayaks or paddle boards, or small inflatables that we can enjoy the wildlife and scenery that the south bay has to offer. All this would not be possible without Westpoint Harbor. Before Westpoint Harbor was built, we had no reasonable access to the south bay shores from our boats or for our drive-in guests. The other dock facilities of Redwood City are mostly industrial or antiquated and cannot accommodate recreational boats in the typical 30 - 50 foot length. The tenants of Westpoint Harbor also have wonderful access to the south bay, as it is the only new marina in that area for many decades. Where else could they dock their boats??

Public access is so important to us all. But that does not mean marinas docks (and tenant/guest boats) and tenant toilets and shower facilities should be open to the “general public” - - which would open us up to homeless, mentally ill, and criminal people. Without locked gates to the docks our boats and our home on the water are subject to burglary and much worse - that has been proven by our experience many times in poorly run marinas elsewhere in the bay. Poorly run marinas usually have derelict boats that often harbor crime, drug dealing, sneakaboards that dump raw sewage continuously and they don’t have properly working public pump out facilities. BCDC should concern itself with real degradation of the bay such as this. You won’t find any derelict boats at Westpoint Harbor.

Surely some reasonable accommodations can be made to avoid legal actions, that will certainly impair if not destroy our public access to the bay. That goes against the very notion for which the BCDC was founded. Maybe it is time for local government to review the operation of the BCDC.

Thank you for the opportunity to provide your customers and tax payers input,
Sincerely, Stefan Swierkowski

From: Jerry Hunt <jerrysue860@gmail.com>
To: Marc.zeppetello@bcdc.gov
Cc: Bob Wilson <bobw2654@gmail.com>
Bcc:
Date: Wed, 14 Mar 2018 21:36:14 -0700
Subject: Westpoint Harbor

I'm sorry this email is so late, but I feel strongly enough in the purpose and destiny of Westpoint Harbor Marina that I want the BCDC Board to hear my call for a positive decision in Mark Sander's favor. After so many years of non-agreement, it is time to step back and look at what would be best for everyone--Mark, the Board, the local city officials, the citizens who live in the area including visiting tourists and the marine and boating communities. San Francisco Bay and the surrounding environs are a treasure for all to enjoy in varying forms. The Westpoint Harbor Marina is a window into the enjoyment of this valuable resource, It is not just for the wealthy who have large yachts, but also the everyday families with children who want to experience the marvelous water-oriented picnics, walks and the birding sightings plus the natural marine animals that find this venue their home. It is for the intellectually curious who like to observe marine shore behavior and for the photographers who love to 'capture' what the views offer, It is for the physically active who get pure joy for just being able to walk or jog through the interlacing trails at the shoreline.

I used to live in the South Bay area and was always a big fan of the 'marine feel' I hope that everyone can see the benefits and the tremendous value Mark's Westpoint Harbor Marina brings to the South Bay. I urge the BCDC Board to move forward and approve the project.

Sincerely,

Jerry Hunt
860 Rocky Point Drive,
Camano Island, WA 98282
jerrysue860@gmail.com,
360-387-4911

Subject: westpoint harbor
Date: Wednesday, March 14, 2018 at 6:32:19 PM Pacific Daylight Time
From: Brent Nelson
To: ReceptionDesk@BCDC
CC: info@friendsofwestpointharbor.org, harbormaster@westpointharbor.com

I understand that the BCDC is meeting soon to discuss actions against westpoint harbor development in redwood city.

As a boater who lives in the SF bay area, I have a sailboat that is berthed at westpoint harbor.

The development that has been put in there is very nice. The facilities that they have put in provide good access to the bay, in an area where bay access is becoming harder and harder to achieve. The facilities are top notch, clean, well maintained lots of wildlife, migratory birds, sea life etc. passing through constantly.

It would be a deep shame if a strict adversarial enforcement attitude of the regulatory bodies (BCDC) penalize private investors who are trying their best to produce value where otherwise there was none.

The success of a regulatory body is not measured in the number of fines that it hands out. Good government works with the governed to produce good outcomes for everyone.

From what I can tell, Westpoint Harbor has been trying their hardest to comply with the requirements from the BCDC, but due to conflicting regulations and constraints outside of their control there has had to be some deviations from the original plans. But, as I understand it, the BCDC has not been responsive or willing to work with Westpoint Harbor in good faith to come to reasonable resolutions to those required deviations.

You catch more flies with honey than vinegar. Instead of jumping straight to fines and sanctions when a minor violation is noticed, your mandate would be better achieved if you talked to the developers (westpoint) as partners, bringing the matter to their attention and try to find a mutually acceptable solution that meets everybody's needs and that does not conflict with any other rules. Fines should be used a last resort, and should be proportional and fair.

Everybody, including westpoint harbor, agrees with the overall goals of the BCDC. However, when presented with a multitude of rules impossible to comply with and a non-responsive agency that is unwilling to find good solutions, westpoint has had to do the best that they can in a bad situation. And the BCDC has responded by applying more and more punitive fines rather than simply talking to westpoint harbor or trying to find productive solutions.

In the time that I have been living in the bay area, marine related businesses are declining and access to the bay is getting harder. This is counter to the BCDC's mandate. And I believe it is partly due to a hard handed and adversarial enforcement mentality from the BCDC.

In the past, the BDCD has done great work in improving the condition of the Bay. I have faith that the BCDC can once again become a force for good. I urge the BCDC to drop the fines against westpoint harbor, and come to the table in a spirit of cooperation and good faith with westpoint to find a way forward to resolve the issues to the benefit of all.

Brent Nelson

Atencio Family

335 Samson Street, Redwood City, CA 94063
650-464-3102
sailingtuva@gmail.com

March 13, 2018

Dear BCDC,

Our boat has seen several marinas over the decades as we've witnessed the ongoing evolution of the Bay. Just due to proximity alone, we had no hesitation in choosing Westpoint Harbor as a home for our sailboat. It's nearby and it's clean. What more could we want? How about a dedicated owner and Harbormasters who ensure access for all while preserving the very thing we were there for...the Bay.

We love the water. It draws us to it frequently, a deep yearning for its energy, which buoys us up and balances our own energy. Our lifelong love is enhanced by those who are likeminded and drawn here like we are...fishermen, paddlers, boaters, birdwatchers, nature enthusiasts, lovers of all Earth beings.

We all seem to share a common thought, a common feeling...that "Ahhhh" exhalation after breathing in the salty air and the space. That exhalation that shifts our mood and slows us into the natural "breath" of the water. The heavy "cloak" of the Bay Area's "bustling tech stress" falls off our shoulders. There's no rush here, no need to be anywhere else when you walk in this space and witness nature just "being". We want to just "be" too.

"Ahhhh" the water...the San Francisco Bay! We are very lucky to have access to this wonder! We are deeply grateful for those who have sought to protect it and nurture it from those who wish to exploit it. And we are especially grateful to the Westpoint Harbor crew, for their dedication to preservation and their vision of a picturesque space to share with all who seek the Bay's rejuvenating energy.

Warm regards,
Atencio Family

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March 14, 2018

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NDhillon@mofo.com

By E-mail and Personal Delivery

San Francisco Bay Conservation
And Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019

Re: Westpoint Harbor LLC - Violation Report/Complaint for the Imposition of Administrative Civil Penalties, No. ER2010.013

Dear Honorable Commissioners and Alternates:

We write on behalf of our clients, a group of San Francisco Bay residents who regularly enjoy access to the Bay for sailing, boating and fishing, and the public facilities that are essential to their access and enjoyment, including its dwindling number of marinas ("Boaters"). The Boaters have a deep and abiding commitment to the protection of the Bay. Our clients are equally committed to the fair and just treatment of facilities that provide essential services to the general public in their use and enjoyment of the Bay, such as Westpoint Harbor.[1]

The Boaters have followed closely the dispute that has unfolded over time between certain staff at BCDC and Westpoint Harbor.[2] Based on our clients' review of the underlying facts, they are troubled that certain BCDC staff continue to push for draconian penalties against Westpoint Harbor for what appear to the Boaters to be minor infractions, if violations at all.

[1] The Boaters are comprised of independent members of the community concerned with BCDC enforcement actions. In this connection, the Boaters support the activities of Friends of Westpoint Harbor (FOWPH).
[2] Through its legal counsel, Westpoint Harbor submitted a 139-page statement of defense in response to alleged permit violations (dated October 19, 2017). We support many of the arguments set forth in that statement and observe that there are serious questions about the legality of the actions taken by BCDC staff against Westpoint Harbor, to say nothing of the staff's apparent selection of priorities.

The McAteer-Petris Act provides:

> The Legislature finds that in order to make San Francisco Bay more accessible for the use and enjoyment of people, the bay shoreline should be improved, developed and preserved. The Legislature further recognizes that private investment in shoreline development *should be vigorously encouraged* and may be one of the principal means of achieving bay shoreline development, minimizing the resort to taxpayer funds; therefore, the Legislature *declares that the commission should encourage both public and private development of the bay shoreline.*

Gov't Code. § 66605.1 (emphasis added).

THE DISPUTE

The origins and evolution of this dispute are inconsistent with the above statutory directive. The time has come to end this controversy on just and fair terms. We write to urge the Commission to exercise its discretion and, rather than adopting the BCDC staff proposals, to adopt the recommendations set forth below.

As a preliminary matter, we emphasize several points to aid your consideration of these important issues.

The Boaters' concerns regarding the handling of the Westpoint Harbor matter are based on their thorough factual investigation, including:

- Review of the complete record offered by BCDC Enforcement Staff.[3]
- Discussions with individuals with personal knowledge of the day-to-day operations at Westpoint Harbor.
- Discussions with individuals with expertise regarding environmental issues and the boating industry.

The history of the matter and published minutes from the BCDC Enforcement Committee suggest that the erroneous findings and conclusions as to Westpoint Harbor may have been reached, in part, due to a lack of resources to review and evaluate permit compliance. Indeed, it appears BCDC staff often was confused about what obligations are required by the very permits it is charged with reviewing and issuing. Not only that, extensive delays during

[3] We note that there is a live dispute concerning whether BCDC staff violated public records laws by withholding information relevant to this controversy.

the permit review process were commonplace and agreements or understandings reached during that process apparently were ignored later in the process.

Against that background, it is highly doubtful that the conclusions and findings reached by BCDC staff would be affirmed in a potential mandamus action before the Superior Court, notwithstanding the deferential standard of review generally applicable to such agency actions.

In addition, we understand Westpoint Harbor submitted a Public Records Act request asking for information relating to this dispute. Despite repeated requests, we understand BCDC staff is withholding information and that a separate lawsuit against BCDC is pending to gain access to those public records. That BCDC staff is asking you to take action against Westpoint Harbor under such circumstances is troubling.

Plunging ahead with the staff proposals, particularly ones based on dubious factual and policy assertions, would create another serious risk. As you are aware, the Solano County Superior Court recently entered judgment against BCDC, concluding enforcement actions directed at the owners of Buckler Island were unlawful, and directed BCDC to set aside orders issued against the property owner.[4] That decision may serve as a caution in this instance.

As in the Buckler Island case, the handling of the Westpoint Harbor enforcement appears to be yet another instance of overzealous prosecution based on a disorganized and unpersuasive record. Without prompt intervention by the Commission, we are concerned that this matter will proceed down a path similar to Buckler Island. Indeed, following such a path could only result in a waste of resources and discourage shoreline development, which is an outcome squarely at odds with controlling statutory law. Gov't Code § 66605.1.

Finally, a few days ago, a petition fostered by FOWPH secured over 5,000 signatures on change.org. The efforts by FOWPH and others to bring public attention to the serious questions raised by the treatment of Westpoint Harbor should evidence to the Commission the importance of its full independent review. Such wide-spread public opposition also would support the conclusion that the public interest is not being promoted here.

A decision by the Commission to set aside the findings and conclusions reached by certain staff in this case would send an important message: substantial public resources should not be directed at alleged violations which are fairly described as *de minimis,* technical issues (at best), and ones that do not concern public access or the environment. That message would

[4] *See Sweeney vs. San Francisco Bay Conservation and Development Commission*, Case No. FCS048136 (Solana County Superior Court) (judgment entered on Dec. 27, 2017, against BCDC).

provide helpful guidance to Enforcement Staff and, ideally, prompt it to evaluate enforcement priorities and potentially streamline pending or future enforcement actions.

RECOMMENDATIONS

In light of the foregoing, the Boaters wish to offer suggestions which we hope will assist the Commission in connection with its obligation to promote environmentally responsible public access and waterside development around the San Francisco Bay, and reasonable, balanced enforcement. To promote an informal resolution of this controversy, the Boaters recommend:

The Boaters ask that the Commissioners take a "hard look" at the underlying allegations and promptly correct what many perceive as almost a vendetta—an unfair, expensive and unjust series of actions—against Westpoint Harbor. It bears emphasis that this is not a case that involves harm to the environment, such as water pollution or harm to endangered species. Well aware of that, Enforcement Staff has pivoted to insist that the harm it seeks to redress is a denial of public access. That position lacks factual support and it appears to be a distraction.

In addition, the Boaters understand that there were previous discussions between Westpoint Harbor and staff at BCDC concerning a resolution of the core issues presently in dispute. As we understand it, Amendment Five to the Permit at issue reflects those good-faith discussions, which included input from local, state and federal agencies. As a first step, requiring staff to honor the terms of the previously negotiated Amendment Five would likely narrow the issues in dispute and promote the public interest.

For reasons unknown, it appears that there is animus between certain staff at BCDC and Westpoint Harbor. Pushing the "reset" button on the staff assigned to Westpoint Harbor also would be helpful. In particular, we suggest the Commission take steps to ensure that, going forward, an independent and neutral person is assigned to work with Westpoint Harbor.

The Boaters have heard from a number of members of the public who fear the Commission will just "rubber stamp" whatever is proposed by Enforcement Staff. We truly hope the Commission will discharge its duties fully and fairly. This is a good opportunity for the Commission to remind the public that it plays an important and meaningful oversight role.

CONCLUSION

From the Boaters' point of view, the work and operations at Westpoint Harbor have improved the San Francisco Bay, its wildlife and the environment. The public record reflects clearly that Westpoint Harbor did not "fill" in the San Francisco Bay, but rather added 26

acres of bay water, thereby *increasing* public access to the Bay. It raised its land areas by 14 feet thereby helping to combat rising seas for almost one-half mile of bayfront. It fosters public access to the San Francisco Bay by both land and water.

Boaters finally wish to stress that the experience at Westpoint Harbor is more broadly troubling. If not corrected, it could set a precedent for adverse treatment of other marinas, on which public access of so many Bay Area residents to the Bay depend. In addition, as noted above, such an outcome is contrary to statutory law because it would discourage private investment and development. Gov't Code § 66605.1.

Accordingly, Boaters have authorized us to communicate to you that they reserve the right to pursue all remedies available under the law, including seeking relief in a mandamus action before the Superior Court. That said, the Boaters urge the Commission to take up and find a non-litigation solution that restores the right balance between private investment and government regulation. The Boaters offer their good offices to assist in such efforts.

We appreciate your attention to this important matter.

Respectfully,

Navi Singh Dhillon
Morrison and Forester LLP

cc: Zane O. Gresham, Morrison and Forester LLP
The Honorable Jerry Hill
The Honorable Kevin Mullen
San Mateo Board of Supervisors
The Honorable Ian Bain
The Honorable Diane Howard

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Enforcement Committee Members, Executive Director Goldzband , Director McCrae, Chief Klein, Chief Zeppetello.

I address this letter to you, as two groups of concerned persons, in the enforcement activities of the BCDC, and in the supervision of those enforcement activities and staff. I am a private citizen, concerned about the actions of the BCDC and especially its Enforcement team, in its actions against Westpoint Harbor, Redwood City CA, and its proprietor, Mark Sanders. I am both a friend as well as a customer of Mr. Sanders, but have no further business, financial, nor personal relationship with him.

First, I address the Commissioners on the Enforcement Committee, whose duties are to hold public hearings to review staff-recommended enforcement decisions and penalties and adopt, modify, or reject those decisions.

Second, I address Executive Director Goldzband, who manages all of the Commission's affairs, directs the staff in the implementation of the Commission's laws, regulations and policies, and serves as the Commission's confidential assistant; to Regulatory Director McCrae, who supervises the day-to-day operations of five teams, including Enforcement; to Chief of Enforcement Klein, who supervises the day-to-day operations of the enforcement staff; and to Chief Counsel Zeppetello, who provides legal advice to the Executive Director and the Commission on all matters related to the functions and operations of BCDC.

I wish to bring to your attention several observations about the activities of the Enforcement team.

I was present at the hearings of the Enforcement Committee on 16 November 2017 and on 18 January 2018 on this matter. At the November meeting, Chair Scharff made a summary statement which took the "evidence" of multiple alleged violations as "proven," and passed the Cease and Desist Order to the the full BCDC Commission. This was done, despite clarity that many of the alleged violations of the non-evidential nature; despite the fact that many the "rules" allegedly violated were of a trivial and harassing nature; and despite the fact that much of the documentary evidence of the true history of the case was "misplaced" or "lost" or claimed as "never delivered" in the face of evidence to the contrary.

At the January meeting, I heard many witnesses to the Scott's Seafood case present much evidence of repetitive harassment and vindictive behaviour by Enforcement team members. Chair Schardff vigorously defended the team members:

- *"So I would caution you about attacking staff, it's not helpful. No, it's not, it's not. Staff works really hard, they do a good job and I think – I think it's inappropriate."*

As the Scott's and the Westpoint Harbor hearings continued, the barrage of public speakers provided clear evidence of harassment and vindictive behaviour on trivial issues by Enforcement staff. Chair Scharff appeared to weaken and abandon any further attempts to defend the staff.

I put this in the light of the judgement in Solano County Superior Court in late December 2017 by Judge Harry S. Kinnicutt:

- *Plaintiffs argue that at least five key findings were not supported by the weight of the evidence. Four of the five have been discussed in the sections in which they were relevant. The Court agrees that those four findings were not supported by the weight of the evidence.*
- *When a "defendant shows that the prosecution has increased the charges in apparent response to the defendant's exercise of a procedural right, the defendant has made an initial showing of on appearance of vindictiveness. Once this prima facie case is made, the prosecution bears a 'heavy burden' of dispelling the appearance of vindictiveness as well as actual vindictiveness." The facts here support an initial showing of an appearance of vindictiveness.*
- *The Court finds that the penalty was grossly disproportional to the gravity of Plaintiffs' offense, and that it violated the Eighth Amendment.*
- *The Court agrees that BCDC did not adequately separate functions, and finds that the trial was unfair under the totality of the circumstances.*
- *Although the BCDC Order identifies eight violations, BCDC argues that the Commission found 27 violations. If so, then Plaintiffs had only about 2 minutes before the Enforcement Committee to make their case on each violation, and about 30 seconds before the Commission itself. The Court finds that these times were not sufficient for a fair trial in this case.*

You will also note that an internal BCDC email from John Bowers, Staff Counsel, addressed to Adrienne Klein, copied, amongst others, to Brad McCrae, on 3 September 201S, about the Point Buckler/Sweeney case, said:

- *"...we lack the assurance that we need to have that there in fact has been a violation... Sweeney has argued that everything he has done is consistent with his IMP. Unfortunately that is not an argument that can be casually dismissed, however much we might like to do so."*

Yet the case was pursued by Enforcement all the way to Superior Court, with the concomitant waste of large sums of staff salaries and Attorney General funds, as well as Mr. Sweeney's funds, with a completely failed outcome.

I have one final observation. I have been given access to a list of actual and potential projects of the Enforcement team, obtained through Public Records Access. This lists 170 "cases", each "scored" in terms of priority of the alleged violations by the BCDC Enforcement team in three areas, Bay, Uplands and Suisun Marsh. This list of 170 includes cities, counties, ports, state and federal agencies and operators, association, businesses... I would draw your attention to those that target cities/ports, which include Richmond, Oakland, Redwood City, San Francisco, Brisbane, South San Francisco, Burlingame, Vallejo, Belmont, San Rafael, Benicia, Emeryville...

There are no violations listed for **Palo Alto, Alameda, Napa, Fremont**, where Tesla is headquartered, nor **Berkeley** where the UCAL system has its principal campus. **South San Francisco** is on the list, but with a very low BCDC priority score on one violation. All of these have Bay frontage. Palo Alto especially has a rich area of salt marsh frontage, similar to the frontage of Redwood City, yet appears to be immune to Enforcement's predations.

Ladies and gentlemen Commissioners of the Enforcement Committee of the BCDC, I suggest that you pose yourselves the following questions:

1) Does all this reflect that the Enforcement Staff does not in fact "do a good job...."?
2) Does all this reflect that the executive and regulatory management of the BCDC is incapable of executing their responsibilities appropriately?
3) is it not bizarre that the cities represented by Enforcement Committee members appear practically immune to BCDC predations? At the very least, does it not leave open the potential interpretation that these cities are protected in some manner?
4) Does this not open the possible perception that the Commissioners who serve on the Enforcement Committee
   a) either are complicit in potentially inappropriate and repeatedly vindictive activities of Enforcement staff?
   b) or are negligent in not appropriately supervising the activities of Enforcement staff?
5) Has the BCDC
   a) trivialized the direction of its mission, and of its successes of the past, in restoring and protecting the Bay?
   b) become focussed on self-preservation, supplementing or replacing budget funding by vicarious, vindictive, contrived and repetitive actions and penalties on good, sound and environmentally responsible businesses, ports/cities, and other regulatory agencies around the Bay?
   c) built a successful communications machine so that the Commissioners and the general public only hear what the Executive and Staff wish them to hear, and strictly limit the time available for alleged violators to respond, so that the Commissioners have practically zero input to arrive at their supervisory decisions other than the input from the very people they are meant to be supervising?
   d) caused widespread and palpable fear of vindictive reprisal amongst business owners if they dare challenge the BCDC?
   e) consciously engaged a strategy of bankrupting businesses by levying penalties similar to their capitalization, and causing huge non-recoverable legal expenses as part of the fear strategy?
   f) ridden roughshod over multiple areas of competence of local, State and Federal agencies without any legislative foundation nor domain competence, while totally ignoring rulings, statutes and norms of those other agencies; and issued rulings that conflict with other agencies' rulings, with the clear goal of ensuring that businesses cannot legally comply?
   g) vicariously wasted BCDC budget funds and Attorney General funds in the pursuit and eventual loss of frivolous and vindictive lawsuits, even against the internal BCDC legal advice, while at the same time causing the pursued businesses huge and unrecoverable losses for no benefit to anybody?
   h) carried out self-determined "rulings" and applied self-determined "penalties" without any statutory foundation, without any due process, with minimal opportunity for the target to defend itself, with an evident gross lack of attention to the statutory requirement to maintain proper records?
   i) executed the above abuses in a repeated manner with multiple targets, which comes very close to or crosses the line of breaching RICO statutes?

If your answer to just one of these questions is "yes", and i believe that the answer to all of these question is "yes", then is it not time for those BCDC Commissioners who serve on the Enforcement Commmittee, at the very least, to carry out the following steps:

A. To pause, *sine die*, to all enforcement actions of the BCDC, and to dismiss the entire case against Westpoint Harbor.
B. To ensure that in any future relationship with Westpoint Harbor the BCDC excludes from that relationship all Enforcement and other staff who have been associated in any manner with the dismissed case.
C. To appoint an independent auditor, the California State Auditor and/or a forensic business practitioner, to examine the evidently broken internal processes and practices of the BCDC Executive and Staff.
D. To request the full BCDC Commission to propose that Governor Brown demand the immediate resignation of Executive Director Goldzband for incompetent execution of his duties?
E. To resign their positions as Enforcement Committee members, to recuse themselves on the BCDC Commission from any Enforcement decisions; or consider resigning their positions as BCDC Commissioners.

I thank you for your attention.

Gordon R Mowat

David C. Smith
(510) 735-0034
dsmith@sticeblock.com

VIA ELECTRONIC MAIL

March 14, 2018

Marc Zeppetello
General Counsel
SAN FRANCISCO BAY CONSERVATION AND
DEVELOPMENT COMMISSION
455 Golden Gate Avenue, Suite 10600
San Francisco, California 94102

Re: Westpoint Harbor; March 8, 2018 Letter Regarding Public Access to Restroom Facilities

Dear Marc,

I am in receipt of your March 8, 2018, letter to Mark Sanders, our client, regarding the Bay Conservation and Development Commission's ("BCDC") permit for Westpoint Harbor ("Permit") and its provisions regarding hours of public access for restroom facilities. I feel additional clarification and context are appropriate regarding the content of your letter and the assertions therein. As you are aware, I repeatedly clarified in our earlier engagements that our negotiations and attempts to resolve outstanding Permit issues short of formal enforcement proceedings were not to be interpreted as any kind of concession of alleged violations nor waivers of Mr. Sanders defenses, including his reliance on prior representations and statements by BCDC staff members. It is precisely that case here, and it is my personal view that Mr. Sanders' reliance on prior statements and representations by BCDC staff members, and the current staff's refusal to recognize or give credence to those statements and representations, are largely at the heart of the impasse at which we all find ourselves today.

As you are aware, Marc, we had many sessions and exchanges, both in person and written, in which we sought to identify specific outstanding matters which current BCDC staff contends are prior or ongoing violations of the Permit. It was rather slow and meticulous work, but I very much appreciated your time, patience, and efforts to find mutually agreeable resolution, issue-by-issue. Included in those matters were the issue of signage throughout the Harbor as well as the issue of access to the public restroom facilities.

In our discussions, I noted that staff previously had recognized and agreed with the propriety of the restrooms only being publicly accessible during daylight hours. Otherwise, they would be locked. This agreement was recognized verbally during in-person meetings between the Sanders and staff, which meetings were recorded. Additionally, staff's own internal notes, produced pursuant to Public Records Act requests, reflect this acknowledgment and agreement for limited hours. And, finally, the particular sign at issue here that reflects the hours of accessibility, I understand, was specifically

prepared according to the directions of staff. I do not view Mr. Sanders' reliance on that documented history unreasonable.

You are correct that, based on current staff's refusal to recognize the prior authorization and consistent with our mutual efforts to resolve the Permit issues short of formal enforcement proceedings, Mr. Sanders removed certain signs to which staff was objecting, including the restroom sign with specified accessibility hours. Those actions, however, were never intended as a concession of wrongdoing nor an abandonment of the clear and documented historic record of positions taken and authorizations communicated by staff.

I also know and recognize, Marc, that staff's position is that all such discussions were in the context of various negotiations to amend the Permit, which efforts were never consummated with execution of a revised Permit. That such is current staff's position does not unilaterally wipe clean the history of exchanges, assurances, and authorizations communicated to Mr. Sanders as permittee by prior staff members. I have seen no evidence of contemporaneous conditions placed on the historic representations that they were contingent upon execution of an amended Permit.

Certainly, the record on this matter is dense and complex, to say the least, spanning more than 15 years now. And trying to sort through the exchanges and propriety of reliances in any given instance is difficult, as evidenced by the extensive factual briefing before the Commission on both sides. But I continue to believe that ultimate resolution of this matter will only come about by setting aside prior disputes and personal animosities, recognizing the undisputed magnificence of this exemplary facility of which all parties may be proud, and defining a path forward that realizes the true potential that Mr. Sanders presented and the Commission unanimously embraced in 2002.

Please feel free to contact me should you have any concerns with the above or any other aspects of this matter.

Sincerely,

David C. Smith
STICE & BLOCK, LLP

cc: Mark Sanders
Chris Carr

Subject: FW: WestPoint Support
Date: Wednesday, March 14, 2018 at 9:29:41 AM Pacific Daylight Time
From: Zeppetello, Marc@BCDC
To: Gomez, Grace@BCDC
Attachments: image001.png

From: "Biggs, David" <David.Biggs@sslmda.com>
Date: Wednesday, March 14, 2018 at 9:28 AM
To: Marc Zeppetello <marc.zeppetello@bcdc.ca.gov>
Subject: WestPoint Support

Marc,

I just read the Friends of WestPoint Harbor analysis of the BCDC charges against the marina and I have to agree with their assessment that the vast majority of the charges seem unwarranted.

I've sailed the bay for over 20 years and visited marinas all over and Westpoint standouts as an exceptional facility that was sorely needed in the South Bay. Everything appears top notch to me compared to so many other marinas.

I wish you commission could show some flexibility and drop the charges against WestPoint and work on some reasonable improvements where they are really necessary.

Thanks

David Biggs
Cal 35 sailboat, *Runnin Late*
Coyote Pt Marina, SF Bay

P.S.
Although your commission has seem to take some strange position over the years. There is no denying that the Bay is ***FAR CLEANER and TEAMING WITH LIFE*** compared to 20 years ago when I moved here. Back in the 90's I sailed out of Redwood City and you never saW a sea lion down there. Now that is common. And now I even see little porpoises as far south as Brisbane. And the water clarity in the South Bay is orders-of-magnitude better now than in the 90's. So I would like to thank your commission for concrete efforts that truly lead to better water quality!!!!

MAXAR TECHNOLOGIES

David S. Biggs
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david.biggs@sslmda.com

This message (including any attachments) may contain confidential information intended for a specific individual and purpose. If you are not the intended recipient, you should delete this message and any attachments.

Friends of Westpoint Harbor
PO Box 352
Soquel, CA 95073
info@friendsofwestpointharbor.org

March 12, 2018

Dear BCDC Commissioners,

Friends of Westpoint Harbor feel compelled to respond to the misleading and inaccurate letter posted on the BCDC website on March 6, 2018, by BCDC Executive Director Goldzband as a response to the editorial in the *Latitude 38* March 2018 issue. Mr. Goldzband states many half-truths in his attempt to convince the BCDC Commission, the public and *Latitude 38* that the editor is confused about how BCDC has operated during its 50-year history. We are sure the editor of *Latitude 38* is not confused. He can respond directly to Mr. Goldzband if he chooses to do so. We are writing to correct the record as it relates to Westpoint Harbor prior to the Commission's hearing on March 15.

However, there is a bigger point to be made first.

Mr. Goldzband is doing nothing, but make a tense situation worse by his inaccurate comments to the public, the Commission and the press. His time would have been better spent meeting with the interested parties, like Friends of Westpoint Harbor, to review the facts of this case and seek resolution. We and others have pointed out repeatedly there is a problem with the BCDC permitting and enforcement process and the conclusions reached by the BCDC Staff. In fact, the Enforcement Staff largely agrees as you will see below that there are significant systemic flaws in the BCDC process.

We have offered help and we have offered to meet. There have been no meetings with Mr. Goldzband or his staff with our group. We see two letters from Mr. Goldzband on the Commission website, including his *Latitude 38* response, and another which attempts to neutralize many public comments made at the January 18 Enforcement meeting. We have provided the Commission and Mr. Goldzband our response to his misleading letter as well. We have published a Position Paper with our findings of facts and sent it to the BCDC Staff and this Commission. You can find all of this plus our Petition now signed by over 5,000 people on our website at: https://freindsofwestpointharbor.org.

There is a void of leadership at the BCDC. Mr. Goldzband is continuing to mislead the Commission and the public. He is not responding to offers of help; he and his staff continue to waste time writing self-serving letters and not searching for solutions.

We want to point out to the Commission, that in two enforcement meetings held in October of 2016 and March 16 of 2017, serious flaws in the permitting process and prioritizing of violators were identified by Ms. Klein of the BCDC enforcement staff. At the October 20, 2016 Enforcement Meeting Ms. Klein states on Page 114 of the transcript that: *"the permits are long and complex, they're dense"*. She goes on to say: *"The permit organization can make permits difficult to comply with"*. She states: *"we don't really have a dedicated compliance staff.* Finally, she states: *"we don't have a site inspection program."*

At the March 16, 2017 Enforcement Board meeting, a new violator's scoring system was introduced by staff and reviewed by the Enforcement Board to prioritize 190 then open enforcement cases. Staff proposed, and the Enforcement Board members endorsed, focusing first on violations that are related to the Bay (as opposed to "upland issues" that not near the water). All agreed that the worst 20% of those Bay violators would be the focus for the limited enforcement staff. Westpoint Harbor's Bay violations rank was 60 on the 190. Even if all were correct (and none are based on our investigations), this puts the harbor at rank 30%, well off the 20% threshold.

Further, you will see below that in September 2014, over three years ago, BCDC Staff and Westpoint Harbor negotiated "Amendment #5" to address all 44 of these permit issues. Enforcement Staff was ready to sign off, but suddenly added three new conditions not part of the permit which we describe below. Why would these facts not be communicated to the Commission, the Public and the press before costly and dubious enforcement efforts were authorized and pursued which may well result in costly litigation for all sides?

Westpoint Harbor is now embroiled in an enforcement dispute due to a systematically flawed permitting process, the lack of enforcement staff and focused on a permit that was about to be resolved. This even though this permit should not even be considered based on the board's direction. We would also point out dredging at Westpoint Harbor is also being opposed by the BCDC staff while being approved at other nearby marinas of Coyote Point and Brisbane. Why?

For these reasons, the Friends of Westpoint Harbor now insist that Mr. Goldzband must be relieved of his responsibilities. New leadership is desperately needed at the BCDC. Short of this change, no productive solutions to the Westpoint Harbor matter or, we believe the other now 170 pending enforcement matters, will be found. His lack of leadership in correcting known issues, not following explicit Commission direction, and his offensive approach to dealing with the public we have seen in this case, PLUS the significant loss of the legal case at Buckler island where Judge Kendrick stated the BCDC Staff was following "vindictive" policies also not based on facts, all considered together lead us to this unfortunate, but obvious conclusion.

Regarding Mr. Goldzband's Response to *Latitude 38*

As to the specifics of Mr. Goldzband's' latest letter directed to the Commission, the Public and *Latitude 38*, we offer the analysis below. It is instructive to consider both the tone used and time wasted in his misguided effort. We are pained to put so much effort into this letter, but you will find the facts enlightening.

He states: *The permits BCDC grants to private entities (such as Westpoint Harbor's Mark Sanders) and public agencies (including cities, counties, and park districts) spell out specifically how permit holders are required to provide maximum feasible public access, consistent with the project.*

Two days later Marc Zeppetello, BCDC's Chief Counsel, sent a notice to Westpoint Harbor and Mark Sanders' attorneys. This Permit No. 2002.002.09, requires Mr. Sanders to Provide Unrestricted Access to Public Access Areas throughout the Site. Permit Special Condition 11.B.1 (Public Access, Areas) provides that the required public access areas "shall be made available exclusively to the public for unrestricted access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes." "Unrestricted access" includes access at all times. Therefore, Mr. Sanders may not restrict the public's use of required public access areas to daylight hours only. All areas must be open 24 x 7, 365 days per year without restriction. (This is an over the top condition by the BCDC.)
As stated above, if Mr. Sanders is currently restricting public access at any portion of Westpoint Harbor to daylight hours only, he is in violation of the permit's public access requirements and is hereby directed to cease and desist from restricting public access to daylight hours only.

This is how the alleged violations originate. BCDC notifies Westpoint Harbor of a potential violation and make what may appear to be a reasonable cooperative request to provide, as Mr. Goldzband states, *maximum feasible public access, consistent with the project.* An objective observer might wonder how the public might be walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes at two or three o'clock in the morning and how such behavior would be *consistent with the project*?

Incidentally, that same letter from Mr. Zeppetello indicates: If Mr. Sanders would like to propose reasonable rules and restrictions for use of the public restrooms to correct particular problems that may arise, in accordance with Permit Special Condition 11.B.7, he remains welcome to do so at any time. Does this mean a someone taking an early morning shower needs to be accosted before Mr. Sanders is welcome to apply for a permit amendment to allow her to lock the door?

Perhaps Mr. Zeppetello's offer is what is meant by Mr. Goldzband's next comment: "*The BCDC staff provides permit holders with a great deal of assistance as they plan and build projects; we spend countless hours working closely and successfully with permit holders to ensure that public access requirements are met while property rights are respected. BCDC issues violation reports only as a last resort."*

It seems that proactively regulating public use of Westpoint Harbor to avoid potential safety problems is not an option. The problem must happen first, repeatedly, with police reports and so on, to qualify for a permit amendment. Not so surprisingly, however, is BCDC's failure to limit themselves to that same standard, with regulations to avoid situations that harm wildlife or could potentially harm wildlife. Nefarious activity that could potentially occur in the middle of the night is nothing to be concerned about, except by Westpoint Harbor.

Mr. Goldzband goes on to offer a statement that is absolutely mind-boggling in its misrepresentation: "*In the case of Westpoint Harbor, the BCDC staff notified Mr. Sanders almost seven years ago of permit violations and then waited six years before issuing a violation report. Why the delay? During that period, the BCDC staff met with Mr. Sanders and his representatives many times and offered him myriad ways to comply with or amend the permit that he originally signed 14 years ago. He declined every opportunity to do so."*

This is at best misleading. The facts:

Several of those six years were spent by Mr. Sanders and his attorneys working with BCDC staff – to correct a very badly written permit. Mr. Sanders initiated the review and rewrite process and on September 25, 2013, prepared the first iteration of Amendment Five for staff. Staff was reluctant to accept the magnitude and number of the errors, and only after confirmation by Redwood City, Regional Water Board, US FWS, CA Department of Boating and Waterways, NOAA and other agencies with any jurisdiction, and after reviewing documentation provided by Mr. Sanders (BCDC had not retained records of the CEQA process in which it participated). Each iteration of Amendment Five corrected more errors and conflicts, and finally this cooperative effort in September 2014 achieved a point at which 44 material errors and conflicts were corrected. It was even signed and notarized by the BCDC regulatory director Brad McCrea.

This process was lengthily, costly and due to exactly the systemic flaws M. Klein noted in her analysis on October 20, 2016 for the Enforcement Board members. Mr. Goldzband ignores the efforts of Westpoint Harbor AND his staff is working diligently to resolve a flawed permit over many years.

The parties DID work together and their discussions were fruitful; enforcement staff agreed the conflicts and errors were real and material, and years of hard work and cooperation were successful, and the basis of almost all allegations resolved. Success?

Unfortunately, chief of enforcement Adrienne Klein then took advantage of BCDC's privileged position to apply extreme leverage, insisting that Westpoint Harbor and Mr. Sanders agree to new and unreasonable requirements which were:

1- All fines must still be paid from the time an allegation was made until the allegation was proven invalid (in-spite of the fact the problem was a bad permit).
2- Conflicts with requirements of other agencies which have primary jurisdiction do not mean that Westpoint Harbor and Mr. Sanders are relived from complying with BCDC's demands (or future interpretations of conditions. In other words, complying with the Coast Guard rules on navigation which are in direct conflict with staff interpretations is not an option and would still result in non-compliance and fines from the BCDC.)

3- Finally, Westpoint Harbor and Mr. Sanders must waive his rights to seek justice in a court to resolve any of these conflicts!

Were these conditions part of BCDC's "myriad ways to comply with or amend the permit"? Of course, Mr. Sanders' counsel advised him not to agree to these unacceptable conditions. Mr. Goldzband ignores this significant effort by all parties and success Westpoint Harbor and Mr. Sanders of working proactively over many years to resolve the permit issues and instead claims Mr. Sanders is violating his "contract" with the BCDC. This is simply not supported by the facts!

Mr. Goldzband goes on to state: *Public access to the shoreline is the benefit that the public receives while Mr. Sanders earns revenue from operating his marina.*

Earnings and revenue are two different things. Mr. Sanders has received gross revenue from operating his marina, but has not taken any "earnings". All marina funds have been used to operate, expand and improve the marina.

Similarly, as recently as a few weeks ago, BCDC received a complaint from a member of the boating public who was told by someone at the Harbor, in violation of the permit, that the public boat launch ramp, another required public access improvement in a dedicated public access area, was not for use free-of-charge by kayakers.

Simply put, carrying a kayak down a potentially slippery boat ramp is a dangerous way to launch. That's why the marina provides a safe place to launch kayaks from a low-to-the-water dock made especially for that purpose. There are now two letters on the BCDC website stating the facts related to safety and responsible environmental management. These are issues that should have been considered years ago, as the letter to BCDC indicates that the kayaker has been complaining to Ms. Klein at the BCDC since 2006!

Even today, the public shoreline trails are narrower than required by the permit. Until July 2017, long segments of the public paths were closed and overgrown with weeds.

The path widths are specified in error by the permit and were opened as they were completed and authorized to be opened. Long segments were necessarily closed due to safety concerns. These closures were due to requirements of Redwood City. There were also continued delays as the BCDC staff would not approve the design of fencing around these paths. All together, these are key facts ignored by Mr. Goldzband in his letter. One might also wonder why it's necessary to weed a closed pathway, or even mention this in a serious effort to reach resolution.

Should BCDC simply ignore his (Mr. Sanders) willful violations of the permit that he signed? Would the public want BCDC to look away if, for example, the San Francisco Giants closed the BCDC-mandated wide walkway around AT&T Park, or if access to the magnificent restored Hamilton Field wetlands in Marin County was closed?

That's quite a stretch, to compare Westpoint Harbor's public access potential to that of AT&T Park and Hamilton Field wetlands. In fact, the Harbor paths as we have shown in our

Position Paper and accompanying pictures are well done and also perfectly suited for the public to access the areas near the Harbor and the Bay in a responsible and safe manner.

Finally, for the sake of clarity, I should note that both BCDC and the Regional Water Quality Control Board, are appealing the decision of the Superior Court judge in Solano County in the Pt. Buckler case. Also, Latitude 38 should be careful about cherry-picking out of context a relatively minor issue from among the large-scale public access violations in the Scott's Restaurant enforcement case; that is comparable to stating that a large sailboat is not seaworthy due to some peeling varnish.

Peeling varnish on a large sailboat is definitely trivial to its seaworthiness, just as the color and shape of tables is trivial to the Scott Seafood permit. So why was the color and shape of tables mentioned as a violation? Even Commission member Scharff questions endowment staff during the March 16, 2017 enforcement meeting why they are focused on furniture issues in permits with so many larger Bay related violations. Indeed, why is Mr. Goldzband who attended that session continuing to do so?

Also consider, BCDC has tapped into substantial funds provided outside of their budget by the State and Attorney General's Office to pay attorneys for litigation. We find it curious also to see employment opportunities for more BCDC attorneys posted on the BCDC website. We believe that they are being funded from the fines of violators, which is specifically prohibited. (Stated by Mr. Goldzband in the January 18, 2018 BCDC Commission meeting). This issue has been brought to the attention of the State Auditor and will be the subject of separate communications by the Friends of Westpoint Harbor to this Commission. While Mr. Sanders is currently funding substantial legal fees to protect Westpoint Harbor from unwarranted enforcement actions by the BCDC, we do find it a risk that in any future litigation, just like at Buckler Island, a Judge might award him these fees. We find all of this effort too high a risk to take as taxpayers.

It's too bad that one recalcitrant permit holder has thumbed his nose at the public for so long and has caused BCDC to use the legal system to remedy his noncompliance with state law.

This tone from a public official who is charged with conducting the Public's business is offensive and entirely inappropriate. No, Mr. Goldzband, Mark Sanders would not thumb his nose at anyone. He has tried to follow the arcane process of the BCDC for years and has satisfied 12 other local, state and federal agencies. Your comments are insulting to ALL involved in this process. You, Mr. Goldzband, have had, and the Commission still has an opportunity to completely avoid further wasted and misguided enforcement efforts and dismiss the Cease and Desist Order you are being asked to approve on March 15. We would suggest you direct staff to immediately approve Amendment Five as agreed in 2014 without any further conditions. This Commission still has the opportunity to turn back the clock, drop the fines and put all of this to rest.

It's not up to Westpoint Harbor or Mark Sanders to act. It is now time for the decision of the full BCDC Commission.

We hope this letter and all of our communications help the Commission to reach the fair and fact-based conclusion that there is no basis for continued harassment of Westpoint Harbor by BCDC Staff. We continue to offer our help to together to show the rest of the stakeholders around San Francisco Bay, that Westpoint Harbor is a model project to be emulated for the benefit of the Public and future generations.

Thank you in advance for your consideration.

Respectfully,

Friends of Westpoint Harbor

Subject: Re: WestPoint Harbor Accessibility and Conservation
Date: Tuesday, March 13, 2018 at 10:47:15 AM Pacific Daylight Time
From: Mark Sanders
To: Paula Bozinovich
CC: ReceptionDesk@BCDC, info@friendsofwestpointharbor.org, harbormaster

Thank you Paula, your letter gets at the heart of things.

There was a time when a person had piled up nine boats (as each one sunk he would get another derelict and anchor it ion top of the other in First Slough in Redwood City. Trash, garbage and sewage into the Bay every day for thirteen years.. I petitioned BCDC to do something for years, and was not able to generate even a flicker of interest; it just wasn't a priority for them. So it seems their priorities have been misaligned for a long time.

Best

mark.

On Mon, Mar 12, 2018 at 10:13 PM, Paula Bozinovich <paulaboz@me.com> wrote:

> Dear BCDC Commissioners,
>
> I have been closely following the proceedings against WestPoint Harbor, and must confess I'm befuddled after reading some of the letters and comments submitted. My husband and I are frequent visitors at the Harbor and regardless of the weather conditions or time of day, there is always a great deal of foot traffic on the trails. Not only do the employees of Pacific Shores utilize the trails and rest areas surrounding the marina heavily, there are families with small children there on a frequent basis. Parents use the trails and surrounding facilities to help educate their children on the bay, wildlife, the boating community and more. Over the weekend multiple individuals launched a variety of crafts from public docks, and we recently enjoyed the Stanford Treeathlon. In light of this, has staff from the BCDC spent time both during the week and on the weekend monitoring use of the walking trails and logged usage? If not I would encourage that to be done, if so the results would support robust utilization and great public access. The biggest hurdle being the speed bumps on the roadway surrounding Pacific Shores when going to the marina!
>
> Also, in reviewing inputs from the Committee for Green Foothills, where were they when a developer was going to initially build 21,000 homes on the adjacent salt flats? If not for the Army Corps of Engineers putting a stop to the proposed development there wouldn't be any wildlife to protect! The grime and pollution from Simms Metal should be a major focus of the Committee for Green Foothills if they were truly interested in the environment and wildlife. Instead they are focused on "No Wake" signage. Or taking action against people throwing their trash in the Bay, and leaving litter and cans/plastic bottles on the shoreline after a day of fishing by Pacific Shores. Where is the vigilance in protecting the bay and wildlife here? It appears the priorities are misaligned.
>
> Regards,
>
> Paula Bozinovich

Subject: WestPoint Harbor Accessibility and Conservation
Date: Monday, March 12, 2018 at 10:13:45 PM Pacific Daylight Time
From: Paula Bozinovich
To: ReceptionDesk@BCDC
CC: Paula Bozinovich, info@friendsofwestpointharbor.org, harbormaster

Dear BCDC Commissioners,

I have been closely following the proceedings against WestPoint Harbor, and must confess I'm befuddled after reading some of the letters and comments submitted. My husband and I are frequent visitors at the Harbor and regardless of the weather conditions or time of day, there is always a great deal of foot traffic on the trails. Not only do the employees of Pacific Shores utilize the trails and rest areas surrounding the marina heavily, there are families with small children there on a frequent basis. Parents use the trails and surrounding facilities to help educate their children on the bay, wildlife, the boating community and more. Over the weekend multiple individuals launched a variety of crafts from public docks, and we recently enjoyed the Stanford Treeathlon. In light of this, has staff from the BCDC spent time both during the week and on the weekend monitoring use of the walking trails and logged usage? If not I would encourage that to be done, if so the results would support robust utilization and great public access. The biggest hurdle being the speed bumps on the roadway surrounding Pacific Shores when going to the marina!

Also, in reviewing inputs from the Committee for Green Foothills, where were they when a developer was going to initially build 21,000 homes on the adjacent salt flats? If not for the Army Corps of Engineers putting a stop to the proposed development there wouldn't be any wildlife to protect! The grime and pollution from Simms Metal should be a major focus of the Committee for Green Foothills if they were truly interested in the environment and wildlife. Instead they are focused on "No Wake" signage. Or taking action against people throwing their trash in the Bay, and leaving litter and cans/plastic bottles on the shoreline after a day of fishing by Pacific Shores. Where is the vigilance in protecting the bay and wildlife here? It appears the priorities are misaligned.

Regards,

Paula Bozinovich

Subject: westpoint harbor hearing on Thursday
Date: Tuesday, March 13, 2018 at 11:32:04 AM Pacific Daylight Time
From: Doug Finlay
To: ReceptionDesk@BCDC
CC: info@friendsofwestpointharbor.org

I'm concerned about what BCDC is trying to do: put Westpoint Harbor out of business, and shut down a marina that's providing valuable services to the mid peninsula.

I served on the Redwood School District Board of Trustees for 8 years. We viewed our job as trying to do the best job we could to educate all of our students. Unlike the BCDC, we didn't hide behind lots of obscure rules and regulations and treat the public like the great unwashed. And unlike most of the members of your board, I won two elections and was accountable to the public. I suppose it is easier to take money from folks when you are unaccountable to anyone.

Your enforcement action comes across as an attempt to take as much money as possible from Westpoint Harbor. It is preposterous – you even want to fine them for providing berth space to a City of Redwood City Patrol boat.

Is this your business model – shaking down the public to fund your bureaucracy? It sure seems that way. You should be ashamed of yourselves.

Doug Finlay
408-856-6282

From: Andy Jones <achjones@hotmail.com>
Date: Monday, March 12, 2018 at 11:59 AM
To: Marc Zeppetello <marc.zeppetello@bcdc.ca.gov>
Subject: Westpoint harbor

Hello Mr. Zeppetello,

I am writing to request that you cease and desist BCDC's long but unwarranted harrassment of Westpoint Harbor.

I've taken a keen interest in the harbor since its initial planning stages, the tireless effort the harbor staff has put into ensuring all environmental laws and regulations were followed (and improved upon), only to be dismayed time and again by the BCDC's prejudiced and aggressive stance against the development.

The harbor is a great place, and one of the few developments that has helped the bay.

Please stop your uncalled for attacks on Westpoint Harbor.

Andy

Sequoia Audubon Society
PO Box 620292
Woodside, CA 94062-0292
http://www.sequoia-audubon.org

March 11, 2018

R. Zachary Wasserman, Chair
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
via email: marc.zeppetello@bcdc.gov

RE: Consideration of and Possible Vote on Enforcement Committee's Decision Involving Proposed Commission Cease and Desist and Civil Penalty Order No. CDO 2018.01; Mark Sanders and Westpoint Harbor, LLC. (March 15, 2018)

Dear Chairman Wasserman and Commissioners:

Sequoia Audubon Society would like to convey our strong support for the Enforcement Committee's Recommended Enforcement Decision involving proposed Commission Cease and Desist and Civil Penalty Order No. CDO 2018.01 to ensure that Westpoint Harbor, LLC complies with all BCDC permit conditions.

Sequoia Audubon Society is the San Mateo County chapter of the National Audubon Society. I comment on behalf of our 1500 members. Our mission is to "protect native birds and other wildlife and their ecosystems in San Mateo County...". Our organization has submitted correspondence to the Enforcement Committee and provided oral testimony at the Committee hearing held on November 16, 2017.

We are particularly concerned that the permit conditions required to protect over 50 species of waterbirds documented to occur around the marina have not been put into place. Impacted habitats utilized by waterbirds include the mudflats that are used for foraging, salt marsh used for foraging and nesting, and the roosting/foraging habitat in the salt pond next to the marina. Of particular concern to us are impacts to the endangered Ridgway's Rail and California Least Tern.

Sequoia Audubon finds it unacceptable that for ten years the Harbor has continued to violate important BCDC permit conditions.

Specifically I wish to highlight three violations:

1. *failure to install required signs and buoys to protect listed species and sensitive habitat.*

   The signage that was required to warn people of the sensitive habitat and restrictions on Greco Island was installed, according to the Respondent, more than 10 years ago and are official USF&W signs saying "Area Beyond this Sign Closed. Public entry is prohibited." In November, I took a walk along the now open public access trail at the marina. One section has a view of the western side of Greco Island. I saw only one very small sign and it was faded and rusted and unreadable by me without taking a photograph with a long lens. I saw no other signs on that side of the island. The Ridgway's Rail is listed as an endangered species and Greco Island has one of the largest populations of nesting Ridgway's Rails in the Bay. The island is also used by California Least Tern and Western Snowy Plover, listed species

2. *failure to provide required visual barrier to adjacent salt ponds.*

   Despite the fact that there are "Trespassing Forbidden by Law Cargill Salt" signs lining the edge of the adjacent salt pond, it is quite easy to walk right up to the edge despite the harbor's assurance that there is adequate setback. On several visits to the site, I saw that all the shorebirds on that were on the other side of the pond and could easily have been displaced from the marina side by the simple act of people walking by or the noise created by people tossing their garbage into the dumpsters positioned right next to the salt pond.

3. *failure to provide shorebird roost habitat mitigation.*

   2.3 acres of high quality shorebird habitat was lost when Westpoint Harbor was constructed. BCDC's permit requires approximately 3.0 acres of replacement habitat "with similar functions and benefits" for shorebirds. The habitat lost was an elevated island area in a salt pond that accommodated a diversity species because of the area's higher elevations. The Respondent indicates that Cargill took responsibility for creating the upland island but because the pond is "ephemeral" the island is ephemeral too and disappears at high water levels. However, if the island had been built higher this would not be the case; there are lots of examples of "permanent" islands created on ephemeral ponds along San Francisco Bay. This was required under the permit and if it was installed, it certainly doesn't exist today.

Lastly our members are avid birders, and therefore the public access permit requirements for the Harbor, including pathways along Westpoint Slough, are very important.

We feel the violations at Westpoint Harbor are serious and we support BCDC's proposed enforcement action to ensure that all the public access requirements and wildlife protections are implemented and maintained. We also agree that the proposed administrative civil liability penalties are appropriate given the extensive permit violations.

Thank you for giving our comments your careful consideration.

Sincerely,

Leslie Flint

Leslie Flint
Chair, Conservation Committee
Sequoia Audubon Society
(650) 619-0836 (cell)

Subject: Please post to website public comment for Westpoint Harbor Hearing CDO-2018-01
Date: 2018-03-12 00:20
From: Brenda Hattery <brenda@windwardho.com>
To: "Gomez, Grace@BCDC" <grace.gomez@bcdc.ca.gov>, marc.zeppetello@bcdc.ca.gov, info@bcdc.ca.gov

Dear BCDC Commissioners:

Please consider my public comments about the allegations in CDO-2018-01 (CDO-2017-04) about Westpoint Harbor (WPH).

Reading through the allegations against the marina, one might get the impression the violations were deserved. But that doesn't coincide with what we know of the marina owner -- a very careful guy who crosses the t's and dots the i's. He doesn't take chances and follows the rules--and has a very high level of integrity. I, like the other boaters concerned about these allegations, asked many questions of the marina staff and owner, looked at the plans, spent time walking around the marina and adjacent properties to better understand the grounds, and having brought our own boats in and out of the harbor using the Westpoint Slough channel that some of the allegations refer to, we also evaluated the channel and considered what the BCDC was alleging there outside the marina as well. We were overwhelmed by the number of allegations that were literally wrong. Others were stretches (e.g. having "Public Parking" painted on the pavement instead of on a sign is presented by BCDC as preventing public access...)

We discovered there are several ways the BCDC found to put together the many seemingly unfounded allegations. Several patterns emerged and we began to group or characterize the allegations based upon the BCDC behavior underlying the allegations. Three of us sat down and went through the marina responses to the allegations, making a spreadsheet and then a heatmap based on that spreadsheet. We sorted through the response elements to understand what was real and what was an illusion of fact. Carefully we also physically walked the grounds, spoke with the parties, looked at emails and paperwork in the harbor office as well as the response exhibits. We learned a lot and patterns did emerge. The spreadsheet rows contain the 22 violation allegations that were sent to WPH before the November hearing and one additional allegation that popped up in the draft Cease and Desist Order (#23). Categorizing how the BCDC found a way to make an allegation (and why the allegation shouldn't be an allegation) fell into these areas:

1. Poor process and follow through -- this was actually a roundup of several problems with BCDC that all relate to "process":
* Changing decision (approved vs not),
* Changing or ignoring the paperwork trail (e.g. altering plan drawings w/o WPH knowledge, losing permit-related correspondence & ignoring WPH copies),
* Not following internal administrative processes (e.g. no plan review w/in 45 days but then, years later, choosing to not abide by the BCDC policy that the plan was automatically approved at 45 days if no feedback provided to permit holders like WPH),
* Reinterpreting the permit at any time (self-explanatory and yes, BCDC is doing this).
2. Factual inaccuracies
* The WPH responses to the allegations refer to these as "faulty facts"
3. Lack of understanding or mistakes
* Technical competency or lack of understanding -- where property lines exist or matters of navigation are examples.
4. "Latches" & timeliness
* Allegations of events older than 3 years from the date WPH was notified of the allegation are not timely so not legally supported.
5. Exaggerating or overreaching
* Self-explanatory
6. Conflict w/ jurisdictions or normal practices
* BCDC demands are in direct conflict with other Federal, State, or local laws, codes, requirements, or industry standards.
7. Making matters worse, not better if BCDC demands are complied with by WPH -- this was a roundup of two problems

* Demands by BCDC create security-, safety-, or environmental- risks or harm,
* Demands by BCDC actually reduce public access.

After realizing the above, we made a heatmap of the seven categories vs the violations. At the bottom of this web page (link below) you can find a Google sheet link with live links to the WPH Response document for each violation as well as heat in each "category" 1-7 above.

https://windwardho.com/westpoint-harbor-bcdc-allegations/

I have also attached a copy of just the heatmap to this email. Please share my email as a public comment with the full BCDC Commission and on the website for the public hearing.

Thank you very much,

Brenda Hattery

Westpoint Violation Categories

Number	Violation Category	Poor process and follow through issues	Factual inaccuracies	Lack of understanding or mistakes	"Latches" & timeliness	Exaggerating or over reaching	Conflict w/ jurisdictions or normal practices	Making matters worse not better	Proposed fine
1	Public access, restrooms	1.32	0.53	0.50		0.25	0.95	0.45	$30,000
2	Landscaping	1.67	0.67	0.17	0.17	0.17	0.17		$30,000
3	Furniture, lighting, irrigation	0.67	0.33	0.50		0.50			$30,000
4	Public access signs	1.00	0.17	0.42		0.42			$30,000
5	Public parking spaces	0.93		0.31			0.31	0.45	$30,000
6	Boat launch	0.93	0.37	0.37		0.17	0.17		$30,000
7	Buoys/signs protecting Greco Island	1.07	0.42	0.42		0.31	0.22	0.33	$30,000
8	Visual barriers	0.50	0.17	0.17		0.17			$30,000
9	Shorebird habitat mitigation	0.57	0.14			0.14	0.14		$30,000
10	Non-tidal wetland mitigation Rowers'	0.44	0.11	0.11	0.11	0.11	0.11		$30,000
11	dock/101 Sports	0.63	0.34	0.34		0.34		0.34	$30,000
12	Storage tents on docks			0.50		0.50			$30,000
13	Fuel dock	0.90	0.37	0.37		0.37			$30,000
14	Fill and change in use	1.50	0.58	1.17		2.00	1.00	1.50	$30,000
15	Contractor Certification					1.00			$0
16	Contractor Certification					1.00			$30,000
17	Unauthorized work				1.00				$0
18	Unauthorized work	0.25	0.25	0.25		0.25			$30,000
19	Liveaboard information	0.57	0.14	0.14		0.14			$30,000
20	Berthing agreement	0.60			0.20	0.20			$0
21	NOAA notification	0.50		0.25	0.25				$30,000
22	Public access improvements	0.50	0.25	0.25					$0
23	Boat launch sign/charge	0.40	0.20	0.20			0.20		$30,000

MARINE RECREATION ASSOCIATION
915 L Street, #C107
Sacramento,
CA 95814
916.441.1475
www.marina.org

March 9, 2018

Larry Goldzband, Executive Director
San Francisco Bay Conservation and Development Commission
455 Golden gate Avenue, Suite 10600
San Francisco, CA 94102-7019

Executive Director Goldzband and Commissioners:

The Marine Recreation Association (MRA) represents marinas and boatyards operating in California and the Western United States. Our members who operate marinas manage nearly 50,000 wet berths, many of which are located within the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC).

As you are aware, our members comply with a plethora of rules, regulations, and reporting requirements, whether they be federal, state, or other governing authorities. Our members regularly report to multiple agencies to document and demonstrate regulatory compliance. As a means of articulating the extent to which marinas and boatyards are regulated, please refer to MRA's Regulatory Matrix included with this letter. This matrix graphically illustrates the exhaustive range of federal and state agencies and the corresponding regulations our members must follow. The matrix does not include additional requirements imposed by county and city agencies. MRA's members fully understand the responsibilities they shoulder as well as the public, environmental, and economic consequences of violations. Failure to provide a pristine, safe, and compliant environment directly conflicts with the MRA's core values and objective to serve and educate the public and preserve and protect our nation's waterways, such that all citizens may enjoy its beauty and benefits.

Many of MRA's members are small businesses with modest resources, both in terms of staffing and financial capacity. In the maritime industry, the costs of demonstrating compliance have become disproportionally burdensome to small businesses. Regulatory costs are inevitably passed on to the boating public, which ultimately discourages participation in boating. This outcome is not in the best interest of MRA and the community it serves, nor can this outcome be in keeping with the mission of BCDC.

To insure regulatory compliance, minimize waste of public and private resources, and support the essential infrastructure that enjoyment of the Bay requires, all parties need to operate with mutual trust and collaborate towards these goals. Even with the best of transparent and collaborative relationships between industry and regulators, the resources required to achieve our joint goals remain significant. Without a reasonable level of trust between regulators and the maritime industry paralysis inevitably occurs.

Unfortunately, the BCDC's regulatory program has not fostered such trust. Fundamental to this lack of trust are issues within BCDC permitting and enforcement processes that diminish MRA's faith in the BCDC capacity to prepare and administer permits, much less work cooperatively with permittees in keeping with its true purpose.

MRA is concerned about nuances in poorly written permits that can result in highly subjective enforcement. Not only can this have the outward appearance of enforcement traps and targeted retribution, but more it importantly detracts from the core mission of BCDC. It also incites fear and distrust of BCDC by MRA's members who hold BCDC permits. These fears have been reinforced by public statements and acts of BCDC's enforcement staff. For those permittees who would like to help improve or correct matters with BCDC, such actions have only served to foster silence on all fronts. Privately, MRA's members have voiced their concerns that BCDC's enforcement activities deter development opportunities that would be beneficial to the economy, the public, as well as the Bay itself. These fears are not imaginary but are grounded in the realities of BCDC's record of vindictiveness, most recently found by Solano County Superior Court Judge Harry Kinnicutt (ER2012.043 Club 940/John Sweeney).

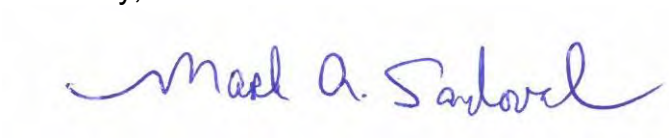
MRA's members are acutely aware of the lengthy list of enforcement targets BCDC has created and the ranking system applied to each violation. However, MRA's members are shocked and discouraged by how BCDC chooses to enforce: overlooking gross violators and instead going after the lower ranked violators in what appears to be a decision based on potential for revenues. For example, the Richardson's Bay Regional Agency has been ranked as the 4th worst of the 170 offenders on BCDC's enforcement list. The appalling conditions on this portion of San Francisco Bay are well documented and continue to grow. Yet BCDC's efforts, money and resources have focused on specious and non-environmental related matters, such as parking signage and design of public seating. The appearance of BCDC's subjective and overreaching enforcement efforts is very disturbing and unjust. None of these efforts serve the public at large.

MRA strongly encourages the BCDC Commission to return to activities that support its core goals and unwind the regulatory and administrative processes practiced by its staff which appear to violate due process and administrative law. We request that BCDC seek assistance outside of the agency for an independent assessment of BCDC regulatory affairs, particularly the Permits and Enforcement Divisions. This investigation should assess the attitudes and behaviors within the Enforcement Division that can intimidate and coerce permittees and are increasingly detrimental to projects that would improve public access, public safety, the economy as well as the long-term health and environment of San Francisco Bay.

In summary, MRA requests that BCDC address the following:

1. Return to BCDC's mission and cease regulatory overreach.
2. Engage with MRA and other maritime stakeholders during conception of requirements to bring an increased level of technical experience and expertise to improve processes and outcomes.
3. Establish fair and consistent permitting policies.
4. Foster compliance with regulation and, when enforcement is necessary, follow an established and transparent system that is not based on fine potential.
5. Separate the functions of rulemaking and permitting, allegations of non-compliance, and benefit of revenues from penalties.

We welcome your response and look forward to engaging in a positive and constructive dialogue about the matters noted above.
Sincerely,



Mark A. Sandoval
President, Marine Recreation Association

MRA REGULATORY MATRIX FOR MARINAS AND BOATYARDS

ACTIVITY	RESPONSIBLE AGENCY	LAW OR REGULATION	PERMITS / ENVIRONMENTAL REVIEW	NOTES	WHAT TO WATCH FOR
COMMUNITY RIGHT-TO-KNOW	County hazardous material or solid waste management departments Cities and local fire departments in some areas	Federal: SARA Title III Assembly Bill 2185 Applicable County codes CCR Title 22, §66262.12	County Hazmat Response and Inventory Permit Business Plan (inventory, quantities, locations, MSDS, emergency contact)	Owners/operators are required to train employees in handling hazardous materials and emergency response preparedness (emergency evacuation and neighborhood notification). Provide county with business plan detailing inventory of hazardous materials onsite, employee safety training, and emergency evacuation procedures.	• Periodic County inspections • Requires annual business plan update, including hazardous materials inventory • Requires bi-annual report on recycling and source reduction (1991 is the baseline year for recycling reports and first source reduction report)
WORKER RIGHT-TO-KNOW AND SAFETY PROGRAMS	Cal-OSHA administers both state and federal laws	Federal OSH Act Cal-OSH Act Senate Bill 198, Injury and Illness Prevention Program	Cal-OSHA allowed to access employee health records and facilities Workers handling hazardous materials must have Safety and Response training Site-specific/job-specific plan is required to prevent illness and injury	Owners/operators are required to conduct employee training; files documenting health and safety training programs, safety meetings, accidents, and health records are required.	• Owners/operators must make MSDS available to employees • All materials and containers must be labeled for safety • Negligent managers may be penalized under Corporate Criminal Liability Act • Physicals must be made available for workers in contact with carcinogens
MAINTENANCE OR NEW CONSTRUCTION OF IN-WATER STRUCTURES, DREDGING, AND PLACEMENT OF FILL	Local governments (City, County, Port)	CEQA	Final CEQA Determination (Cat Ex, ND, MND, or EIR)	Maintenance projects are commonly exempt from CEQA. If project is issued an MND or EIR, an MMRP is required.	• Significant impacts to air quality, water quality, and/or sensitive habitat may trigger an EIR. Local governments or regualtory agencies may require above water and/or below water noise and/or vibration monitoring if project is located near commercial or residential establishments, or threatened and endangered species.
	USACE/USEPA	RHA; CWA ESA; MSA NEPA	Department of the Army Permits ESA and EFH consultations NEPA Determination	Beneficial reuse of clean dredged material as beach nourishment is preferred by agencies. The final USACE permit will be issued after the applicant has obtained the 401 WQC and approval from CCC/BCDC. ESA and EFH consultations are with the USFWS and NMFS. CDFW is a consulting agency. NEPA has been completed for activities covered by Nationwide Permits. For maintenance projects, determine if it is located in an area covered by RGP which will streamline the permitting effort. Many maintenance activities or minor discharges are covered under Nationwide Permits or LOPs. Consult with the USACE to determine applicability.	• Work windows may be determined by the presence of threatened or endangered species. Increased overwater coverage and working in special aquatic sites may trigger mitigation. Wetland or eelgrass impacts typically require preparation of a Mitigation and Monitoring Report and demonstration of successful mitigation within 5 years. • Pre-construction surveys and approvals are needed for dredging projects, including sediment characterization and eelgrass and Caulerpa surveys in coastal areas. Selection of the disposal site requires detailed testing under USACE and USEPA framework. USACE/USEPA and CCC/BCDC must approve the disposal location. • Selection of disposal site requires detailed testing under USACE and USEPA framework. Disposal sites must be approved by USEPA/USACE and CCC/BCDC.
	CCC (in coastal zone outside of San Francisco Bay Area) BCDC (in San Francisco or Suisun Bay Areas)	CCA; CZMA Government code §66600 et seq.; McAteer-Petris Act; Suisun Marsh Preservation Act	CDP Construction and Development Permits	BCDC is the regulatory agency for these laws in the San Francisco Bay and Suisun Bay Areas. Transport of the material to an open water disposal site may require a Federal Consistency Determination (federal project) or a Federal Consistency Certification (non-federal project).	• Allow 9 months to complete the process. Before a development permit can be issued, completion of CEQA and approval from SLC is required.
	RWQCB	CWA; California Porter-Cologne Water Quality Control Act	401 WQC; WDR	WQMR is often required.	• An SPCC Plan is required for construction activities. Upland construction activities trigger the need for an NPDES to manage stormwater during construction. • Some activities such as jetting of piles can create turbidity issues that require monitoring. • Water quality monitoring will be required during dredging.
	CDFW	CDFW Code §1601, §1603	SBAA (projects in non-tidal area)		
	SLC	PRC §6321, §6303; CEQA	Aquatic Lands Lease	Approval for dredging under existing lease or new lease is required.	• Proof of ownership or authority to dredge in project area that is provided by the SLC is required before a CDP can be issued. Project may be in an area that has been granted to the local jurisdiction.
DREDGING AND DISPOSAL OF CONTAMINATED MARINE SEDIMENTS	Local governments (City, County, Port)	CEQA	Final CEQA Determination (CatEx, ND, MND, or EIR)	Final Determination often depends on the disposal location and whether the project would result in signficant environmental effects. Upland disposal, depending on the volume of material and access, may result in significant air quality and traffic impacts associated with transport of the material.	• Significant impacts to air quality, water quality, and sensitive habitat may trigger an EIR.
	USACE/USEPA	RHA; CWA ESA; MSA NEPA	Department of the Army Permit ESA and EFH consultations NEPA Determination	Upland disposal may allow simplified permits, but could result in a higher cost, depending on volume. ESA and EFH consultations are with the USFWS and NMFS. CDFW is a consulting agency. Issuance of an Individual Permit will require an EA.	• Contaminated sediments will not be disposed unconfined in the aquatic environment. • Water quality monitoring and implementation of BMPs will likely be required. • Pre-construction surveys and approvals are needed for dredging projects, including eelgrass and Caulerpa surveys in coastal areas. Selection of the disposal site requires detailed testing under USACE and USEPA framework. USACE/USEPA and CCC/BCDC must approve the disposal location. • Possible disposal areas include upland landfills, CAD facility, or CDF site. Treatment of material is possible but not necessarily feasible. In some cases, in situ capping or isolation of sediments may be preferred to removal. Regulatory limits defining contaminated sediments (numerical standards) are currently poorly defined for lower limits in an aquatic environment. • Work windows may be determined by the presence of threatened or endangered species. Work in special aquatic sites may trigger mitigation. Wetland or eelgrass impacts typically require preparation of a Mitigation and Monitoring Report and demonstration of successful mitigation within 5 years.
	CCC/BCDC	CCA; CZMA Division 20 of Public Resources Code; CCR Title 14	CDP	BCDC is the regulatory agency for these laws in the San Francisco Bay and Suisun Bay Areas. Maintenance dredging is an exempt activity. Transport of the material to a confined aquatic disposal site or a confined dispsoal facility over the water may require a Federal Consistency Determination (federal project) or a Federal Consistency Certification (non-federal project).	• Water quality monitoring and implementation of BMPs will be required.
	RWQCB and DTSC	CWA; Porter-Cologne Water Quality Control Act	401 WQC; WDR; concurrence on Remedial Action Plan by RWQCB and DTSC	Water quality monitoring will be required during dredging and BMPs must be implemented.	• An SPCC Plan is required for construction activities.
	SLC	PRC §6321, §6303; CEQA	Aquatic Lands Lease	Approval for dredging under existing lease or new lease is required.	• Proof of ownership or authority to dredge in project area that is provided by the SLC is required before a CDP can be issued.
EXCAVATION AND REMOVAL OF UPLAND CONTAMINATED SOILS AND DEBRIS	County Environmental Health Department, Cal-EPA, DTSC	Federal Regulation of Hazardous Wastes through RCRA (RCRA Title 40 CFR); California Hazardous Waste Control Law (Title 22, Div. 6.5); and California Hazardous Waste Control Regulations (Title 22, Div. 45)	Approval of Remedial Action Plan by oversight agency	Assumes work is outside the coastal zone. Site investigations, report contents, and reporting and implementation schedule are site-specific. Typical reports include 1) sampling work plan, 2) Health and Safety Plan, 3) Initial Report of Investigations, 4) Remedial Investigation/Feasibility Study, 5) Remedial Action Plan and progress reports.	• Environmental audits associated with real estate transfers and loans or underground tank removal frequently trigger follow up. • Develop clean up standards using Public Health and Environmental Risk Assessment Procedures.
	Local governments (City, County, Port)	Local Land Development Codes	Grading or encroachment permits may be needed.	Letter from County or DTSC requesting a site investigation may be received based on surveillance and inspection.	• Significant impacts to air quality, water quality, and sensitive habitat may trigger EIRs.
BOATYARD OPERATIONS Fueling Stations, Use of Solvents, Sanding, and Spray Painting Activities	U.S. Coast Guard California Air Quality Management Districts CDFW	CWA/Oil Pollution Act of 1990; Ports and Waterways Safety Act, 333 USC 1221, 132b California Clean Air Act; Federal CWA CDFW Code §5660; California Government Code §8670; Oil Spill Pollution Response	Small craft refueling dock operators must register with U.S. Coast Guard and complete questionnaire. Permit to Operate; AQMD permit for sanding/painting operations, fuel dispensing, and use of solvents Must register with CDFW OSPR as a small craft refueling dock under the Small Craft Refueling Dock Program.	Must have SPCC plan in place which has contact number to report oil spills immediately. Period testing/inspections may occur; CARB is responsible for regulation of mobile sources for extremely toxic/acutely hazardous compounds. VOC painting logs are required.	• Marine paints are currently exempt from VOC paint standards. Use BACT to reduce emissions. • BACT: conduct sanding/painting operations inside a building with filtered air; or if outside, under tarp and plastic tenting • Any pollution incident which affects fish, plants, animals, or water quality must be reported to RWQCB, CDFW, and the U.S. Coast Guard immediately. Employee training must be available.
Discharge of Sewage Process Water Discharged to Sanitary Sewers	U.S. Coast Guard Local sanitation districts, POTW, DTSC	CWA/33 CFR 154-160; Harbors and Navigation Code §133, §151; Ports and Waterways Safety Act, 33 USC 1221	U.S. Coast Guard requires Financial Responsibility Certification for large vessels, tankers, barges, and marine terminals. NPDES Boat Washing Permit; approval by sanitation district/POTW; DTSC tiered treatment permit of wash water if water is recycled.	Intentional or negligent release of oil into state water is prohibited. Discharge of untreated sewage within 3 miles of coastline is regulated by the CWA. Assume all sludge from treatment system to be hazardous unless lab testing shows otherwise. Bilge water is assumed to be hazardous unless laboratory testing shows otherwise.	• Fines when discharging sewage in U.S. waters • U.S. Coast Guard will provide courtesy inspection of all land-based facilities for fueling, oil storage, and head pump-out.
Stormwater Control	USEPA, RWQCB, CCC/BCDC	California Porter-Cologne Water quality Control Act; CWA; 40 CFR parts 122-124 require boatyard NPDES permit	Regionally applicable NPDES stormwater permit	Stormwater monitoring and laboratory analyses are required. Permit must be renewed every 5 years. SWPPP and NPDES identifies BMPs to put in place to reduce pollutants entering the ocean.	• Pertains to boatyards that clean equipment and/or that provide boat maintenance facilities. Most USEPA programs are administered through the RWQCBs or Cal-EPA.
Hazardous Waste Management	DTSC (Cal-EPA)	California Hazardous Waste Control Law Title 22; California Hazardous Waste Control Regulations; Health and Safety Code §25250	On-site recycling permit; extremely hazardous waste permit; Small Quantity Generator Storage Permit exemptions may apply; tiered permit for treatment; provides Generator Identification numbers	Spill prevention/stormwater management BMPs for fueling stations must be part of the SWPPP and Industrial NPDES. SPCC plan may also be required where spilled product could reach navigable waters. Identify the wastes that are generated; obtain Generator Identification number, if required; applies to storage, handling, labeling, and transportation of waste; conduct employee training; violations or failure to comply may result in fines or jail time.	• The characteristics and quantities of all hazardous waste material must be tracked. Annual reports are to be filed with the State Franchise Tax Board.
Live-aboards and Houseboats	BCDC/CCC	Government code §66600 et seq.; McAteer-Petris Act; Suisun Marsh Preservation Act	Regulates the number of live-aboards and house boats in a marina	Marina permit requires provision of sewage pump out station and oil recovery facilities in San Francisco and Suisun Bay Areas.	• BCDC marina permit requires provision of sewage pump out station and oil recovery facilities in the San Francisco Bay Area.
Storage of Petroleum Products and Other Hazardous Materials, Vehicle Maintenance, Fueling	SWRCB / RWQCB / USEPA SWRCB / RWQCB / County Health Department - Fire Protection District Office of Waste Management	Health and Safety Code §25288; 40 CFR Part 112 California Above Ground Petroleum Storage Act; Uniform Fire Code Applicable local codes	Underground Storage of Hazardous Substances Permit Above ground storage tank permit Fueling permit for installation of fuel tanks; permit for gasoline; hazardous materials permit	Owners must file a storage statement and pay a fee every two years. Hazardous SPCC Plan to include certification information, facility analysis/inspection information, facility improvements, site plans, spill notification plan, etc.	• Also need verification from county building department that storage facility plans are in compliance
Storage of Hazardous Materials and Waste in USTs	Health Services Department, County Government	CCR Title 22; Sher Bill; Federal UST Law	UST Operating Permit (or Removal/Abandonment Permit)	Local fire department supervises tank installation and removal. County/RWQCB oversees cleanup and remediation. SWRCB funds are available for cleanup programs under Senate Bill 2004.	• Many USTs are found during Phase 1 Real Estate Transfer or Bank Loan Environmental audits.
Collection and Storage of Used Oil	California Integrated Waste Management Board DTSC; County Environmental Health	Public Resources Code §48600-48691 CCR Title 22 §66262.12; Health and Safety Code §25250.8, §25250.11	Waste Oil Collection Center Certification Hazardous materials handlers fee	Applies to the collection of used oil from marina users (i.e., do-it-yourself oil changes). Drain used oil filters and recycle for metal, or dispose of as hazardous waste.	• Container must be maintained in good condition, separated from incompatible water, have secondary containment, protection from weather, and be labeled as hazardous waste.
Acceptance of Hazardous Waste from Public or Other Businesses	Cal-EPA, DTSC	CCR Title 22; Health and Safety Code §25250.11	Hazardous Waste Facilities Permit for treatment, storage, disposal	TSD Permit not required if: 1) facility accepts and recycles only used oil, antifreeze, latex paint, and lead-acid batteries; 2) shipments of used oil are less than 20 gallons and contents of one container are less than 5 gallons; and 3) collected wastes are stored less than 6 months.	

ACRONYMS

AQMD	Air Quality Management District
BACT	Best Available Control Technology
BCDC	Bay Conservation and Development Commission
BMP	Best Management Practice
CAD	Confined Aquatic Disposal
Cal-EPA	California Environmental Protection Agency
CARB	California Air Resources Board
CCA	California Coastal Act
CCC	California Coastal Commission
CCR	California Code of Regulations
CDBW	California Department of Boating and Waterways
CDF	Confined Disposal Facility
CDFW	California Department of Fish and Wildlife
CDP	Coastal Development Permit
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DTSC	Department of Toxic Substances Control
EA	Environmental Assessment
EFH	Essential Fish Habitat
EIR	Environmental Impact Report
ESA	Endangered Species Act
LOP	Letter of Permission
MMRP	Mitigation Monitoring and Reporting Program
MND	Mitigated Negative Declaration
ND	Negative Declaration
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MSDS	Material Safety Data Sheets
NPDES	National Pollutant Discharge Elimination System
OSH	Occupational Safety and Health
OSHA	Occupational Safety and Health Administration
OSPR	Office of Spill Prevention and Response
POTW	Publicly Owned Treatment Works
PRC	Public Resources Code
RCRA	Resource Conservation and Recovery Act
RGP	Regional General Permit
RHA	Rivers and Harbors Act
RWQCB	Regional Water Quality Control Board
SARA	Superfund Amendments and Reauthorization Act
SBAA	Streambed Alteration Agreement
SLC	State Lands Commission
SPCC	Spill Prevention, Control, and Countermeasure
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TSD	Treatment, Storage, and Disposal
USACE	U.S. Army Corps of Engineers
USC	U.S. Code
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service
UST	Underground Storage Tank
VOC	Volatile Organic Compound
WDR	Waste Discharge Requirement
WQC	Water Quality Certification
WQMR	Water Quality Management Report

PERMIT AGENCIES

U.S. Army Corp Engineers
Sacramento District.....(916) 557-7490
San Francisco District.....(415) 744-3324
Los Angeles District.....(213) 452-4160

U.S. Environmental Protection Agency
Region 9.....(415) 744-1500

San Francisco Bay Conservation and Development Commission.....(415) 557-3638

Regional Water Quality Control Board
North Coast.....(707) 576-2220
San Francisco Bay.....(510) 464-1255
Central Coast.....(916) 361-5600
Los Angeles.....(213) 576-6600
Central Valley.....(916) 464-3291
Lahontan.....(530) 542-5400
Colorado River Basin.....(760) 346-7491
Santa Ana.....(951) 782-4130
San Diego.....(858) 467-2952

California Environmental Protection Agency Department of Toxic Substances Control.....(510) 542-2112

California Department of Fish and Game
Oil Spill Prevention and Response.....(916) 445-9338
Small Craft Refueling Dock Program.....(916) 445-9338

California Coastal Commission
San Francisco, Headquarters.....(415) 904-5200
North Coast.....(707) 445-7833
North Central Coast.....(415) 904-5260
Central Coast.....(831) 427-4863
South Central Coast.....(805) 585-1800
South Coast.....(562) 590-5071
San Diego Coast.....(619) 767-2370

U.S. Coast Guard Marine Safety Office.....(510) 437-3073

California Air Resources Board.....(800) 242-4450

Bay Area Air Quality Management District.....(415) 771-6000

South Coast Air Quality Management District.....(909) 396-2000

EMERGENCY PHONE NUMBERS

EMERGENCY (MEDICAL, FIRE, POLICE).....**911**

Poison Control Center.....(800) 662-9886

Emergency Response Spill Reporting.....(800) 852-7550

California Office of Emergency Services.....(800) 852-7550

National Response Center.....(800) 424-8802

Office of Spill Prevention and Response.....(800) OILS-911

ABOUT THIS MATRIX The maritime industry is heavily regulated by a myriad of federal, state and local organizations, with sometimes overlapping and even conflicting requirements. The purpose of this matrix is to illustrate the interrelationship between the laws and agencies, which govern the boating industry, as a useful resource to facilitate communication between these agencies, non-government organizations and those who serve the maritime industry. It is hoped this will assist regulators in avoiding burdensome, duplicative and conflicting regulations detrimental to the recreational boating industry and the public it serves. This matrix and its production costs were funded entirely by the Marine Recreation Association and its Boating Agencies Resource Fund.

MARINE RECREATION ASSOCIATION 915 L Street C-107, Sacramento, CA 95814 | 916.441.1475 | Fax: 209.334.6876

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BOATING AGENCIES RESOURCE FUND

COMMITTEE FOR
GREEN FOOTHILLS

March 9, 2018

The Honorable Bay Conservation and Development Commission
Bay Area Metro Center
375 Beale Street
Yerba Buena, First Floor
San Francisco, CA 94105
Sent via email marc.zeppetello@bcdc.ca.gov

RE: March 15, 2018 BCDC Meeting - Agenda Item #8

Dear Honorable Commissioners:

Thank you for the opportunity to submit comments on the Westport Marina matter as this is a challenging issue. The Committee for Green Foothills is a regional organization that advocates for the protection of open space, farmlands, and natural resources in Santa Clara and San Mateo Counties.

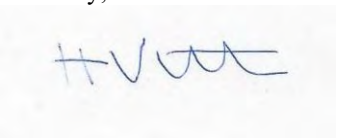
The Committee for Green Foothills writes today in support of staff's findings, and the Enforcement Committee's recommendations. We appreciate BCDC's efforts to maintain the public trust by working to provide, and improve, public access to the Bay. The eight year record conclusively indicates that Mr. Sanders repeatedly failed to provide access to all residents in a manner that supports public access as written in the California Constitution. The importance of public access for all to our waterways is a fundamental right that needs to be maintained, and protected.

We also find the disregard for wildlife by the Westport Marina to be disconcerting. Mr. Sanders bills his marina as environmental yet his flagrant contempt for the permitted requirements to safeguard nearby threatened species demonstrates the true nature of his attitude towards the wildlife. Failure to install buoys and no wake signs, after multiple requests from staff, reveals a true disregard for wildlife's well being. Migratory shorebirds have limited windows to forage as their food supply is only available during low-tide; wake can disrupt their nutritional intake which then leads to problems on their long migratory journeys.

Due to the permit holder's continued lack of effort to meet the requirements of the permit, we support the recommendations of staff, and the Enforcement Committee.

Thank you for your consideration.

Sincerely,



Helen Wolter
Legislative Advocate, Committee for Green Foothills

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Redwood City, CA 94063

March 8, 2018

Response to Executive Director Larry Goldzband's 1/10/2018 email to Marc Hershman and Mario Rendon

For Publication on the BCDC Website Prior to the March 15, 2018 BCDC Board Meeting

Dear BCDC Commissioners:

Friends of Westpoint Harbor (FOWPH or Friends) seeks to promote the common mission of the Bay Conservation and Development Commission (BCDC) and Westpoint Harbor LLC (WPH), to protect and enhance the Bay and to encourage her responsible and productive use for this and future generations.

To guide our efforts, we adopted three core values:

- Protect our environment
- Preserve our natural resources
- Share Westpoint Harbor with our community

We hope in the long term we will be viewed as friends of BCDC as well. Unfortunately, WPH's future is endangered by BCDC's aggressive enforcement of specious provisions associated with the permit for Westpoint Harbor, the first new marina in the Bay in many decades. These actions compel us to adopt an adversarial stance with BCDC. Executive Director Goldzband's email to Marc Hershman and Mario Rendon offers a fortuitous template to explain our views.

(This Response will indicate in italics, portions of Mr. Goldzband's email, with occasional rephrasing.)

Mr. Goldzband initiates his message by establishing a context:
BCDC's Violation Report was issued on July 24, 2017. That action began BCDC's formal enforcement proceeding. However, the actual enforcement process began six years earlier. That is because BCDC always attempts to solve enforcement issues more informally starting with a "notice of violation" letter (leading to negotiations and a resolution) rather than to immediately impose an enforcement "solution" by issuing a Violation Report. As you might imagine, permit holders that voluntarily work with BCDC to resolve violations, instead of working against the agency, receive far more consideration from BCDC for their cooperation than those

who do not, and generally are assessed reduced penalties. In most cases, permittees and BCDC staff are able to cooperatively resolve outstanding issues.

The present-day enforcement process actually began in the 1980s. At that time, BCDC was required to ask a court's permission to issue Cease and Desist Orders (CDOs), and fines. BCDC had a significant incentive to resolve permit issues because court cases were expensive, often delayed a year or more and very time consuming, at least from BCDC's point of view. Developers on the other hand sometimes profited from the violations and were happy to correct the violation later rather than sooner as the courts were reluctant to issue fines. The underlying problem of developers ignoring permit conditions was not addressed, at least until the late 80s that is.

In a well-intentioned but somewhat ill-conceived move, lawmakers came to the rescue by authorizing BCDC to issue its own CDOs and fines. A quick and decisive CDO along with an appropriate penalty gave developers plenty of incentive to straighten out. But while the developers could no longer take advantage of limited enforcement powers, the enforcement process' built-in incentive, that could be characterized as self-oversight for BCDC to make reasonable compromises, was lost. Surely the cooperative culture did not evaporate overnight. It would take years of new technology, creative enforcement encouraged by the siren song of financing through penalties, the growth of social concern for nature and the attendant explosion of regulatory agencies combined to reshape the regulatory landscape into what it is today. Evolution accelerated faster than process could adapt. It is quite reasonable that a high-level view would reveal a few hot spots of opportunity to adjust the regulatory enforcement paradigm. How do we know where those opportunities are? The brouhaha between WPH and BCDC provides an easy clue.

BCDC might argue that their current permit process is proven, it works just fine and has been essentially the same for a long time except for fine amounts which have mushroomed ten-fold in the last several years. And they might point out certain process improvements that were made to adapt to and/or address changing situations. But give an apple pie recipe to five different chefs and you'll get five different apple pies. Process is dependent on experience, skill, attitude, intent and goals, all of which are colored by individual interests and agendas. Depending on the quality of process, objectivity and fairness are not guaranteed in the least. The basic step of offering an email explanation to legislators is an example of this:

While BCDC staff, and members of BCDC's Enforcement Committee, recognize that Mr. Sanders promotes clean boating and is committed to the Westpoint Harbor tenants, and that the marina operation is generally operated in an environmentally sound manner, this enforcement matter has little to do with marina operations. Since approximately September 2009, Mr. Sanders has failed to provide over 250,000 square feet of public access areas and public access improvements that are required by the BCDC permit that Mr. Sanders signed in 2003. He also has failed to comply with a number of permit conditions intended to prevent or minimize adverse impacts to wildlife, including endangered species found in the adjacent national wildlife refuge, which were imposed in response to comments by the U.S. Fish and Wildlife Service. And, during the course of the enforcement case prior to BCDC issuing its Violation Report, Mr.

Sanders repeatedly refused requests by BCDC staff that he voluntarily comply with the BCDC permit.

If you're a friend of BCDC, this paragraph might suggest that Mark Sanders has no regard for the permit conditions and pretty much did as he pleased to support marina operations. If you're a Friend of Westpoint Harbor, the illusion this paragraph might create is offensive in that the truth leads one to a different conclusion than the whole truth would.

Mr. Goldzband suggests that Mark Sanders had six years to get it right but failed to provide over 250,000 square feet of public assess area and improvements. Mr. Sanders did provide public access for each portion of the marina as it was completed. What Mr. Goldzband didn't say is public access for subsequent phases of the project were completed as physically possible, as clearly shown in the plans associated with Amendment Three of the project. "Site preparation" (excavation, drying and conditioning of mud) continued through 2012, and until complete when the land was at its final elevation, it was impossible to install paths or landscaping. Moreover, many areas were restricted by Redwood City for public safety, which staff argued should be ignored. The whole truth is maximum possible public access was built in step with construction, as provided in Amendment Three's phased construction plans.

Mr. Goldzband also suggests that Mr. Sanders turned his back on the U.S. Fish and Wildlife service, as well as turning his back on copious opportunities to comply with the permit. Mr. Goldzband ignores both the CEQA documentation (on which many permit conditions are based) and a recent letter from the (now retired) FWS refuge manager affirming that Mr. Sanders complied with the requirements of FWS. Mr. Goldzband's assertions are incorrect. That the harbor worked together with FWS to comply with the permit was also confirmed in staff statements of 2012 ("Mr. Sanders conformed to the intent of the permit condition" as shown in the transcriptions of those meetings).

Mr. Goldzband's correspondence suggests to Friends is that it's pointless to ask the Executive Director what happened as his reply was likely formulated by the Enforcement staff and revised into proper form by their legal staff. The Enforcement Committee's job is to assure compliance using the tools available to them. The legal group's role is to safeguard the ethics of the process and to make sure that due process is observed and documents will stand up to scrutiny. Surely the initial stages of a possible permit violation case involve some give and take and the discussions are honest and well-intended. But as compliance is questioned and each permit violation allegation evolves, the Enforcement Committee appears to shape its position to justify the penalties and prepare for a judicial review. It is entirely understandable that at some point rather than encouragement of compliance, an enforcement process emerges and without careful shepherding, morphs into a defensive response to a possible Superior Court proceeding. Enforcement Committee members reinforce that conclusion with strong assertions related to references that a judicial review may eventually be necessary. Their response basically appears to be, "Bring it on."

This Response will provide explanations to show some of Mr. Goldzband's allegations are incorrect. For now, Friends suggest that the BCDC enforcement process is ripe for investigation. The chief of enforcement is said to have stated that all of BCDC's active permits

have violations, adding that many are meaningless “paper” violations. Adding human resources to the enforcement staff is not the solution to a broken process, at least not until the BCDC process is thoroughly investigated with strong independent oversight.

Mr. Goldzband goes into enforcement background:

On April 11, 2011, BCDC’s former Executive Director sent Mr. Sanders a letter requesting that he cooperate in resolving various permit compliance issues first observed during a site visit on May 17, 2010. On April 17, 2011, staff conducted another site visit… On May 4, 2011 the staff issued a notice of violation enforcement letter that commenced an administrative civil penalty clock… During the six years following BCDC’s written notice, and prior to commencing the formal enforcement proceeding last July, BCDC staff met with Mr. Sanders and/or his representatives at least nine times… staff also met extensively with staff of Kevin Stevens Design Group, Mr. Sanders’ former landscape architect. During this period, BCDC staff attempted to help Mr. Sanders secure BCDC approval of plans for pathways, signage, landscaping, site furnishings, etc., responded to Mr. Sanders’ submittals and other changes requested by Mr. Sanders, and offered five separate versions of an amended permit that included deferred deadlines for required public access improvements. Despite BCDC staff’s efforts to modify the amended permit five times… Mr. Sanders found fault with different aspects of each revision of the amended permit and refused to sign each version.

While Mr. Goldzband’s statement is factual, it is again an incomplete story and misleads the reader to an incorrect conclusion. Friends would like to correct Mr. Goldzband’s misleading statement of the facts.

Maureen and Mark Sanders and their attorneys did work with BCDC staff – to correct a very badly written permit. Mr. Sanders initiated the review and rewrite process and on

September 25, 2013, prepared the first iteration of Amendment Five for staff. Staff was reluctant to accept the magnitude and number of the errors, and only after confirmation by Redwood City, Regional Water Board, US FWS, CA Department of Boating and Waterways, NOAA and other agencies with any jurisdiction, and after reviewing documentation provided by Mr. Sanders (BCDC had not retained records of the CEQA process in which it participated). Each iteration of Amendment Five corrected more errors and conflicts, and finally this cooperative effort in September 2014 achieved a point at which 44 material errors and conflicts were corrected. It was even signed and notarized by the BCDC regulatory director Brad McCrea.

So these discussions were fruitful, staff agreed the conflicts and errors were real and material, and years of hard work and cooperation were successful, and the basis of almost all allegations dissolved. Sadly, snatching defeat from the jaws of victory, chief of enforcement Adrienne Klein took advantage of BCDC's privileged position to apply extreme leverage, insisting that Mr. Sanders agree to new and unreasonable requirements:

- All fines must still be paid from the time an allegation was made until the allegation was proven invalid,
- Conflicts with requirements of other agencies which have primary jurisdiction do not mean Mr. Sanders should not comply with BCDC's demands (or new interpretations of conditions). In other words, complying with the Coast Guard rules on navigation which are in direct conflict with staff interpretations is not an option.
- Mr. Sanders must waive his rights to seek justice in a court.

Of course, Mr. Sanders' counsel advised him not to agree to these unacceptable conditions.

These sorts of behavior of the BCDC staff and the BCDC process drives permittees to litigation as the only resort to resolve disputes, other than to yield to staff coercion. BCDC lacks sufficient oversight (such as California Natural Resources Agency may provide in the case of the Coastal Commission), and as a consequence Mr. Sanders waiving his sole path to justice in a court of law is not a fair, rational or acceptable condition.

A study of how the enforcement process went awry would benefit from examining the signage and pathways compliance issues from a wider perspective, i.e., compliance with the intent and purpose of the permit instead of chasing enforcement opportunities. WPH's "Bay Trail" pathways are certainly adequate to satisfy the purpose for which they were intended, comply with Bay Trail guidelines, and <u>as part of the six-year environmental (CEQA) process, paths and shoreline treatment are required</u> to match the ten-foot paths of neighboring Pacific Shores Center. Was the alleged violation willful? If yes, perhaps a fine is warranted. But path widths are constrained by physical limitations, must meet commonly accepted standards, and as staff agreed to in the Amendment Five meetings, the paths were always intended to be 10 feet, and it's the future boardwalk (12-15 feet wide) which was transposed in error by staff that resulted in this error. The present BCDC process appears to allow for abuse of its authority and take advantage of mistakes to override the actual intent of the permit.

What about parking signage? BCDC staff demands that "signed public parking spaces" must be signs on posts so visitors know where to park. In fact, all of the nearly 600 parking spaces in the marina are designated public parking by Redwood City ordinance. There are no private or reserved parking spaces in the marina and Mr. Goldzband's claim that parking spaces are for "members and guests" misleads the reader to think this is not public use. In fact, there has never been a time when WPH's parking was full or when the public was not able to park in any of the unmarked spaces they so desired.

The permit makes no mention of posts at all. And more important, the several environmental analyses for the project (BCDC retained no records of these reports) state signs on posts are detrimental to endangered species and should not be used. Staff cites BCDC sign guidelines in support for this new interpretation of the permit, even though its "public access design guidelines are advisory" and published in August 2005, two years after the WPH permit. (Mr. Goldzband recently explained in writing that Pacific Shores is not required to have its signed public parking spaces on posts is because its permit preceded the guidelines by five years.) Finally, the US FWS in a recent letter to Mr. Goldzband reaffirmed their desire for Westpoint Harbor to minimize signs on posts and mimic the signage treatment at Pacific Shores. In summary, dedicated public parking signage is moot since all parking is public, the permit does not require signs on posts, and Mr. Sanders understandably refused to yield to this staff demand which would clearly harm endangered species, in no way enhances public access, and does not "economically benefit Mr. Sanders".

Mr. Goldzband's email goes on to state:
Indeed, this case needs to be viewed as a whole, in addition to understanding each single violation. Chair Scharff also said: "I think a lot of the skills you have, Mr. Sanders, in getting that marina built, have made it difficult for you to work with BCDC on the permit... I don't think I can recall so many specific violations."

Mr. Scharff's comment is as disingenuous as this comment might be: BCDC's chief of enforcement's passion to allege violations and assess fines makes it difficult for her to come to agreement with Mr. Sanders. And that same chief of enforcement made the prediction in writing back in 2010 that this case would result in "a big and juicy case". A pre-90s BCDC might have taken the list of violations and immediately acted to reconcile any low hanging fruit. Today's enforcement staff might also be inclined to do that but for a certain insistence that all the violations be resolved at one time. What could be the benefit of that policy but to make a big lawsuit juicier as well as inflate its scope?

We might also consider that Mr. Scharff has never seen so many specific violations because the enforcement staff is particularly creative in ballooning a few violations into many, as it has so often done to inflate the fees it seeks. Such an accusation of being picky would be unthinkable but for a BCDC internal handwritten note from the enforcement chief indicating to need to do so with the Westpoint Harbor permit.

Mr. Goldzband then addresses State of Play, providing further evidence regarding the effect of refusing to truncate the list of alleged violations vis-à-vis resolving all of them together, presumably along with the plea bargain: pay the penalty even if the allegation is wrong, agree

that BCDC has priority over any other agencies which have legal jurisdiction (and more importantly, competence on the matter), and agree to abandon the only path to justice.

Although any single violation could potentially be viewed as having only a de minimis effect on the Bay's natural resources and the public's use and enjoyment of the shoreline, the total impact of Mr. Sanders' refusal to comply with his BCDC permit has resulted in the public not receiving the benefits it was guaranteed in the permit while Mr. Sanders has materially benefited from the private gains of his marina. At the November 16, 2017 Enforcement Committee meeting, Commissioner Marie Gilmore addressed Mr. Sanders' attorney on this point: "…when we talk about public access, you talk about the signs, the striping, the impediments to the public pathways. Each one of them on their own, I agree with you, seems kind of small and maybe insignificant. But what really bothers me is when you take a look at them together, the totality of the circumstances."

It's interesting that Ms. Gilmore would discuss "public" access limitations while brushing away the details. Also interesting is the unfounded claim that Mark Sanders has materially benefitted from the alleged violations. In what way? A marina's income is dependent on public access and exposure. Visitors like what they see and spread the word. How is spending hundreds of thousands of dollars related to BCDC permit allegations of non-compliance profitable? Mr. Sanders has never taken a penny in income from the project and plowed all revenues right back into it. There is simply no merit in the claim that "Mr. Sanders has materially benefitted from the private gains of his marina" as justification for such exorbitant fines.

A similar comment could be made on the "total impact of Mr. Sanders refusing to comply with his BCDC permit". How is someone impacted by arriving at the marina's 12-foot-wide walkways by walking on a path that's 10 feet wide to get here? How is someone impacted by the availability of hundreds of unmarked parking spaces? How is the public impacted by not placing obstacles in the middle of navigable waterways? How is someone impacted by the presence of Police and Fire boats at an otherwise empty dock? Does BCDC know that the marina's tenants whose boats are away from the marina for more than a few days are bound under contract to allow WPH to utilize their personal slips as spaces for visiting public boats if the need arises? Does it realize WPH created the largest dedicated guest dock in the Bay (over staff objections that "it's just more fill"), and now is targeted for doing so? How does a small raised vegetable garden located on a hyper-saline Cargill levee on which nothing grows negatively impact public assess? The list goes on. One would conclude that "negative public impact" is just fodder to create a fine.

That being said, while the Enforcement Committee adopted the Executive Director's recommended decision and the proposed cease and desist order (after the total penalty was reduced by $30,000), it requested that BCDC staff and Mr. Sanders (and his representatives) attempt to agree on modifications to the order through further negotiations – and offered to waive half the penalty if Mr. Sanders complied with the adopted order and permit.

The irony of that offer is breathtaking. After several years of discussion, Mark and staff actually did reach a tentative agreement. Execution of the agreement was made impossible by

Adrienne Klein's 11th hour leverage on Mr. Sanders, knowing full well it would torpedo the enforcement action she has made a centerpiece. The chance of coming to agreement in December was nil.

Another example of the Enforcement Committee's insensitivity to the realities of the situation or indeed the public good is the proposed modified cease and desist order slated to be considered by the enforcement committee in January of this year. It contained a provision to require Mr. Sanders to apply to the Coast Guard for an exemption to BCDC's navigational mark demands, which Mr. Sanders claims violate state and federal maritime law. Mr. Goldzband ignores the facts (again confirmed by staff in 2013) that the Coast Guard and NOAA did so 16 years ago, and this was deemed satisfactory by all agencies including BCDC. The proposal would have required Mr. Sanders to report back to the Enforcement Committee and regardless of the result puts the marina back into the endless bureaucratic loop with enforcement staff. Having done this correctly once and rejected a decade before by staff, there is no reason to believe a different result is possible.

And secondly, evidence of BCDC ignoring the realities of the signage issue, Mr. Sanders offered this under oath at the Enforcement Committee's November 16, 2017 meeting (underline emphasis added):

MR. SANDERS: "Mr. Gibbs asked a very good question, why don't you just put the signs on posts? It's not an economic question. We have over 500 public parking spaces. <u>They are all public access by law in Redwood City</u> and the permit says, 9 signed public parking spaces and 15 more boat launch public parking spaces. The EIR that was done for the entire end of the peninsula, which applied to Westpoint Harbor as well as Pacific Shores Center. It had a bunch of specifics about the environment and the concerns about Westpoint Slough and Greco Island and it said <u>minimize</u> signs on posts and trees that would have -- that provide roost habitat for raptors. And Pacific Shores Center did that. Fish and Wildlife specifically said, paint them on the asphalt. All WPH signs are painted "public parking" on the asphalt, just like neighboring Pacific Shores.

<u>The sign on posts came up years later when BCDC said, we have a new sign plan.</u> It came out <u>years after</u> WPH's permit. And it recommends, it says this is <u>advisory only</u>, signs on posts. And we said, no, this is the worst thing you can do. You have a letter from the at-the-time Clyde Morris Refuge Manager saying, "No, no, no, we told you no signs on posts, it's the worst thing you can do right next to the water."

On the signs on the launch ramp, launch ramps are drive-through so boats -- trailers <u>can drive through the parking space to drop off the trailer.</u> A sign on the end of each space makes the trailer parking useless. We covered all this with meetings with BCDC. Erik Buehmann said, "You're right, we didn't understand." That was in 2012 and here it is still an allegation. It's not about the money, it's not that I don't want to put up the signs, it's that if you care about the environment you don't put signs on posts. Pacific Shores Center has 237 publicly marked sign posts -- I'm sorry, painted spots on their parking lot right next to us. Can you imagine a forest of 237 signs on posts right next to the levee where endangered species may or may not be? That's the reason. It's a practical, honest realistic reason. It's nothing about me trying to avoid doing the right thing."

This this appears to be about staff fabricating an allegation that Westpoint Harbor is engaged in something which will harm the environment, cloaked in a shroud of nonsense about parking availability. Friends of Westpoint Harbor has the same question as Mark Sanders. Why are signs still an issue?

Mr. Sanders' sworn statement regarding buoys:
MR. SANDERS: "You brought up the buoys. Now I have been sailing my whole life. I was, as I said, a naval officer. Buoys 100 feet from Greco Island at high tide are in one foot of water so any buoy would be laying on its side. This was clear in 2001 when the CEQA process was going through and everybody participated. The Coast Guard said, by the way, it's in navigable waters, we cannot allow it. Everybody said, we understand why. Fish and Wildlife who wrote the letter that made the permit requirement said, "we just didn't understand. We normally put signs on the edge of the island anyway, here's the signs we want. Here's how we want to mount it, here's where we want them placed". The permit says, coordinate location and types of signs with Fish and Wildlife. You have a letter from Clyde Morris who was the Refuge Manager at the time who said, we did agree with this. Steve McAdam (BCDC Deputy Director at the time) was a participant. WPH did exactly what they were supposed to do and Mr. Sanders carried out the intent and the purpose of the permit requirement. All other permits are the same. BCDC's permit came out a year later after all these mitigation measures were done and here's the buoy requirement back in there."

Friends of Westpoint Harbor asks why buoys are still an issue? With this clear and documented explanation to the enforcement committee, its "fair and considered" response was, "You are out of time Mr. Sanders".

Mr. Sanders' sworn statement regarding gate access:
MR. SANDERS: "Now they keep talking about the access along the trail going from Pacific Shores to me. What the permit actually says is, because I only had one legal access for a road through Pacific Shores Center, I am to make my best efforts to develop approvals with Pacific Shores Center to create another access along the shoreline. And I did that. It cost $75,000 and took years. They finally agreed but there were conditions. They said, when Redwood City says it's safe to open that path to the retail area we will allow you to open the gate. Now that gate and fence has been there since 1972, placed by Leslie Salt. It's on Pacific Shores' property, not mine, and so my hands were tied. The permit says do my best, I did my best, Pacific Shores Center, we will let you open that gate when it's safe and Redwood City will tell us. Redwood City has written four letters to BCDC saying, here is why we require Mark Sanders to keep this gate closed for now.

Friends of Westpoint Harbor would like to know why this gate crossing is still an issue. Especially in view of the fact that the safety fence authorized by the City in 2011, and finally allowed by staff in 2017 after Mr. Sanders' repeated efforts, is now in place and the City has allowed the path to be opened.

Mr. Sanders' sworn statement regarding the fence:
MR. SANDERS: "Now then about the fence. In 2011 Redwood City said, well look, they want the path open, we understand that. We want this eight-acre area under construction closed

because it's very dangerous, we already had accidents and injuries, and so put up a temporary fence. That was a Redwood City recommendation in 2011. They approved it, it went to BCDC, I have a letter from Adrienne that said she has the amendment ready to go for the temporary fence, please send us $300 for the fee and it's done. I did that, waiting for it was told, “It's off the table.” I said, "What's wrong? You want the path open, what's wrong? They said, "Well, we want to tie it to the rest of the items in Amendment Five", which went on for years and years and years. I was never allowed to put up that fence. At one point in time Brad McCrea said, "Just put up the fence. Buy the material and get it up there." Adrienne looked at him and said, "No", so I was absolutely prevented from putting up the fence. I wanted a temporary fence. I wanted that. Why would I build a path and not want it open? It made no sense. The agenda was not public access; it was a different agenda.”

Friends of Westpoint Harbor feel this sworn statement is central to the reason why the list of allegations is so lengthy when many of the issues could have easily been resolved. To repeat: "Well, we want to tie it to the rest of the items in Amendment Five".

Mr. Goldzband’s email makes a strong allegation: *Although any single violation could potentially be viewed as having only a de minimis effect on the Bay’s natural resources and the public’s use and enjoyment of the shoreline, the total impact of Mr. Sanders’ refusal to comply with his BCDC permit has resulted in the public not receiving the benefits it was guaranteed in the permit while Mr. Sanders has materially benefited from the private gains of his marina.*

Does Mr. Goldzband realize his chief of enforcement set it up to be that way?

Mr. Goldzband concludes:

Our staff and I would be happy to provide you with further details about this case should you so desire, knowing that all that we can provide to you is that which is already in the record. Let me know if you would like to discuss this further.

This statement is telling as it reveals Mr. Goldzband’s response can only inform the legislators what is already on the record and that the response did not present the facts in full but instead an incomplete view. The agency appears to accept no obligation to present any facts, just BCDC’s enforcement case. Although the BCDC enforcement process follows rules of order, it begs the question, is it even close to fair and effective? The Commission offered Mr. Sanders a reduction in fines if he was able to come to some sort of resolution with the Enforcement Committee after the November hearing, however unlikely. The committee’s discussion considered in part the amount of money the commission spent on Mr. Sanders’ case, about $167,000. An objective review would reveal Mr. Sanders did provide valuable assistance in correcting certain provisions of the permit. We might not expect staff to make mistakes when issuing a permit, but it is reasonable to realize staff has not issued any other permits for new marinas and they are not expected to know or anticipate everything that may be needed to do the job. An investigation could show that Mr. Sanders spent an equal amount of money as the result of staff’s mistakes, supporting the notion that a process may exist but is not necessarily fair. Mr. Sanders has no BCDC sanctioned recourse such as fines to recover his losses due to BCDC failures in process or competence.

Follow-up questions should be asked regarding the full facts of the story and Mr. Goldzband should have offered Mr. Sanders' sworn testimony to provide this. To our knowledge, those questions have not been asked and Mr. Goldzband has zero incentive to volunteer information; therefore, Friends of Westpoint Harbor is eager to fill the informational voids. The length of this Response underscores the magnitude of doing so. The collective of BCDC commissioners has centuries of combined wisdom which can be fully utilized only when their deliberations are informed by a full and clear understanding of all the facts of the story.

Conclusion

At the beginning of this Response, Friends of Westpoint Harbor state that Executive Director Goldzband's email offers a fortuitous template to explain our views. The more we explain, the stronger our impression that BCDC's case against Westpoint Harbor is an avatar telling us something is seriously wrong with BCDC. It's not only the enforcement process that needs fixing. It's time for a full investigation leading to the restructuring of the way Bay permits are issued, managed and enforced. Checks and balance need to be restored. We can no longer allow the same few people within a small regulatory agency make and amend the rules, interpret and administer the rules, and enforce the rules by penalizing the violators, effectively preventing due process, while benefitting from the fines.

The Permit function – Permits should be created by an entity that has as its only mission the assembly of an informed and conflict free consensus of the manifold agencies with Bay jurisdictions into an executable contract.

The Compliance function – Permits should be monitored for compliance by a separate and independent entity that has no other agenda than to support the permittee to complete and operate a project by resolving issues that arise along the way. This necessarily requires some expertise in the business being regulated, applied with equal priority on the permit's intent as well as its strict interpretation.

The Enforcement function – Permits should be enforced when all other avenues of resolution have failed. The Enforcement Group's mission is to use a minimum of force and intimidation to eradicate contentious issues as quickly as possible and then provide guidance to the other two groups such that the issues do not reoccur.

A full investigation by the California State Auditor will clearly show that none of this is the case with BCDC permits and in particular with Westpoint Harbor.

To reach Friends of Westpoint Harbor, contact us by phone at (650) 394-6291 or email info@friendsofwestpointharbor.org.

Sincerely yours,

Friends of Westpoint Harbor

Cc: Marc Zeppetello, Chief Counsel
San Francisco Bay Conservation and Development Commission

March 8, 2018

Mr. Zachary Wasserman - Chairman of the BCDC Board

Mr. Larry Goldzband - Executive Director BCDC-

Please pass on to other BCDC Board Members as needed.

We are writing with respect to access for small non-motorized craft at Westpoint Harbor. As the owner/operators of 101 Surf Sports, a human powered water sports business, we wanted to bring forward some best practices based on our experience for maintaining safe public access when operating in San Francisco Bay. Our goal is to maximize access in a way that is safe for both the public & the environment. While every launch has its own unique challenges, special considerations must be made when the launch is shared amongst mechanized and non-mechanized craft.

Our policy, at both our locations, has always been to allow the public free access to use our facilities to launch their own personal human powered water craft with one stipulation. We need to be open and/or onsite during the duration of the use. Both our locations are operated from within marina's. To allow 24 x 7 access would unsafe for both the public, and the environment for the reasons outlined below. From our experience we have found that most recreational water sports users are relatively uneducated with respect to how to safely & respectfully enjoy San Francisco Bay. The bay is a special place with regards to the need to stay safe and to respect the sensitive habitats. There are a few key points where an education on how to enter and enjoy the bay safely is needed.

- Proper Gear (i.e appropriate boards/boats/craft, PFD's, Leashes, and correct outer wear)
- Understanding the everchanging weather and tide dynamics
- Co-existence with mechanized craft
- Sensitive habitat and wild life considerations

We could spend quite a bit of time detailing out these points but instead will try to summarize them at a high-level here. For example, with respect to proper gear, many first-time users are unaware of the legal requirement surrounding lifejackets. Our business acts as an important filter to not only ensure customers are aware of this requirement but that they take it seriously. Some other critical pieces of gear are not legally required but would be negligent for users to be on the water with out. One example being be the absolute necessity of a leash on all paddleboards.

As to the weather component the bay is a challenging environment. Paddling off any launch in the bay under the wrong conditions can be ill advised. When conditions are in appropriate we will close our business as it's simply not safe to be on the water. This can be a big tide moving one direction or a big wind forecasted for the afternoon. Proper water apparel is also key to having a safe day on the bay.

We also spend time ensuring that those taking to the water are aware of the sensitivity of certain habits. The public may think they have found a great new beach to have picnic on without knowing the impact they are having on the environment. Both our locations share spaces with sensitive ecosystems in addition to having dynamic localized weather systems.

Certain environments and locations for accessing Bay waters may appear to be great places to hand-launch kayaks and SUP's, but in fact are fraught with risk. For example, the concrete (trailerable) boat launch ramps so common in marinas are often congested and unsafe due to the launching and recovery

of trailerable motorboats. To the untrained eye they appear perfect for hand-launching when in fact they are slippery and unsafe due to the hard-mossy surfaces and ever-changing dynamics of variable tides. And the ramp itself is designed to prevent tires from slipping, making them unforgiving and un-useable as a walking surface. Keeping small human-powered water craft separate from these areas is a key element of safety due to the close quarters and proximity with mechanized craft. In addition, basic rules of navigation like staying out of the marked channels and knowing the nautical rules-of-the-road are essential for a safe boating experience for individuals as well as other boaters.

All too often inexperienced or careless users launch and retrieve craft in these unintended areas, risking their own safety and the safety of others, and creating unacceptable liability. This irresponsible behavior is minimized in facilities which provide separate hand-launch areas, and which stress safe boating education.

Lastly keeping docks secured at night is key for theft prevention as well as safety. If someone falls in to the water on the inside of the harbor with a large dock preventing them from swimming to land it has obvious dangers.

Over the years we have trained, sponsored, and supported thousands of kayakers, windsurfers, paddlers, and kiteboarders safely and without incidents in these shared environments. It just takes extra care and expertise to make it all work safely. Thanks for your consideration.

Cordially,

Cort Larned & David Wells

Owners 101 Surf Sports

115 Third St

San Rafael, Ca 94901

101 West Point Harbor Roard

Redwood City, Ca 94603

dbw-030818

CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto, CA 94306 Tel: 650-493-5540 www.cccrrefuge.org cccrrefuge@gmail.com

March 8, 2018

R. Zachary Wasserman, Chair
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019
Via email: marc.zeppetello@bcdc.ca.gov

RE: Consideration of and Possible Vote on the Enforcement Committee's Recommended Enforcement Decision Involving Proposed Commission Cease and Desist and Civil Penalty Order No. CDO 2018.01; Mark Sanders and Westpoint Harbor, LLC. (March 15, 2018)

Dear Chairman Wasserman and Commissioners,

Citizens Committee to Complete the Refuge would like to convey our strong support for the Enforcement Committee's Recommended Enforcement Decision involving proposed Commission Cease and Desist and Civil Penalty Order No. CDO 2018.01 to ensure that Westpoint Harbor, LLC complies with all BCDC permit conditions.

Citizens Committee is a non-profit organization of volunteers, dedicated to the protection of the Bay, and particularly concerned with impacts to the Don Edwards San Francisco Bay National Wildlife Refuge, its ecosystem and affected species. Our organization has submitted correspondence to the Enforcement Committee and provided oral testimony at the Committee hearings held on November 16, 2017 and January 18, 2018. Although we believe the Commission must address the serious and long-standing permit violations regarding public access at the marina, our primary focus is on the permit violations related to Westpoint Harbor's failure to implement Special Conditions for protection of Bay sensitive habitats, endangered species and other wildlife near or adjacent to the marina.

Citizens Committee, on behalf of its membership, originally commented in support of the proposed Westpoint Marina project, based on the strength of the required protections included in the 2001 Redwood City Mitigated Negative Declaration for the marina project, and the seeming willingness of Mr. Sanders to implement these crucial environmental impact mitigations recommended by US Fish and Wildlife Service and other regulatory agencies to protect the Don Edwards San Francisco Bay National Wildlife Refuge and other natural resources. Many of these mitigation measures were later incorporated as Special Conditions in the permit BCDC issued to Westpoint Harbor in 2002.

It is unacceptable that during ten years of operation, the harbor continued to violate important BCDC permit conditions, including the following:

- *Failure to install buoys in slough to identify "no wake" zone. Special Condition II.H.*

This measure protects the Westpoint Slough mudflats and Greco Island from erosion and damage from boat wakes and protects wildlife from disturbance from boaters. Migratory shorebirds, forage on Westpoint Slough mudflats at low tide, and Greco Island provides habitat for salt marsh harvest mouse and Ridgeway's rail. The buoys are required to be installed adjacent to the navigation channel in Westpoint Slough, in order to "delineate the center of the channel for adequate draw, and discourage boats from deviating out of the navigable channel."

- *Failure to install buoys informing public of access restrictions on Greco Island and other protected marshlands. Special Condition II.H.*

The Marina has a tenant business that rents kayaks and paddleboards. At high tides, small boats and other watercraft can access the shoreline of Greco Island and enter larger slough channels, potentially disturbing endangered species on the island, including one of the largest populations of nesting Ridgeway's rail (clapper rail) in the Bay. Buoys with signage are required to be installed 100 feet from the salt marsh on Greco Island along Westpoint Slough up to its confluence with Redwood Creek.

- *Failure to install signs at public boat launch and other public access areas informing public of access restrictions on Greco Island and other protected marshlands. Special Condition II.I*

Public information/education about access restrictions for Refuge wetlands is a key protection for reducing human disturbance to wildlife at Greco Island and also for nearby Bair Island.

- *Failure to provide visual barriers to adjacent salt pond. Special Condition II.K.*

The Cargill salt pond immediately adjacent to the Westpoint Marina parking lot provides roosting habitat for shorebirds during high tides. The required visual barrier is necessary to reduce disturbances to waterbirds from human activities at the Marina.

- *Failure to provide shorebird roost habitat mitigation. Special Condition II.F.*

2.3 acres of high quality shorebird roost habitat was lost when the Westpoint Marina was constructed. The habitat lost was an elevated island area in a salt pond that accommodated a diversity of species because of the area's higher elevations. BCDC's permit requires approximately 3.0 acres of replacement habitat "with similar functions and benefits" for shorebirds.

- *Failure to provide non-tidal wetland mitigation. Special Condition II.G.*

The USACE required mitigation for the loss of 0.27 acres of non-tidal wetlands from road culvert construction in a drainage ditch that flows into Westpoint Slough. BCDC's permit incorporates the requirement for the permittee to provide 1:1 mitigation by "enhancing and enlarging the wetlands in the remainder of the drainage ditch". The mitigation has not been completed. The permittee did not install the required infrastructure for enhancing water flows to the channel.

- *Failure to obtain plan review prior to approval to install landscaping. Special Condition II.A.1.*
- *Failure to remove trees adjacent to Westpoint Slough that act as perch for potential predation of wildlife.*

These violations relate to Westpoint Harbor's failure to remove unapproved Monterey cypress and poplar trees planted on the levee directly adjacent to Westpoint Slough. In early project comment letters, USFWS voiced concerns about creating perches for avian predators that could impact endangered species and stated that trees at the Westpoint Marina should be minimized and placed well back from tidal areas.

In the Statement of Defense, Westpoint Harbor maintains that there has been "no harm to the public or the environment". We disagree. After outlining required mitigation measures, the USFWS Endangered Species Informal Consultation concludes by stating that provided the Westpoint Marina Project "is implemented as described," it is not likely to adversely affect the endangered California clapper rail (Ridgeway's rail), salt marsh harvest mouse and California least tern found on nearby Greco Island and the adjacent salt pond.

BCDC must assume that it is equally true that Westpoint Harbor's consistent failure to implement the protective measures required in the BCDC permit creates unacceptable risks and likely adverse impacts to these species and to their sensitive habitats. In granting Westpoint Harbor's permit, BCDC found that the project will result in the protection of Bay resources including wildlife "because Special Conditions ensure the protection of surrounding valuable habitat and require mitigation for any impacts to wildlife or habitat at the project site." (Permit 2002.002 Findings III.F.)

Citizens Committee supports the proposal for administrative civil penalties which can serve not only as an effective tool for gaining permit compliance, but also for ensuring a level playing field for the Bay Area businesses that are doing everything right. Given the nature, extent and gravity of Westpoint Harbor's permit violations, the proposed administrative civil penalty is appropriate.

BCDC's primary responsibility is safeguarding San Francisco Bay habitats and wildlife, and therefore it is imperative that measures outlined in the Special Conditions for the Westpoint Harbor permit are put in place as soon as possible.

Thank you for giving our comments your careful consideration.

Sincerely,

Gail Raabe Carin High

Gail Raabe Carin High

Co-Chairs, Citizens Committee to Complete the Refuge

March 7, 2018

Mr. R Zachary Wasserman
Chairman of the BCDC Board

Mr. Larry Goldzband
Executive Director BCDC

(Please Route to the Other BCDC Board Members)

By Email

I am writing to address the January 27, 2018 letter related to kayak access as published on the BCDC website this week (but noted as received January 30, 2018). While BCDC staff is focusing on public access at Westpoint Harbor (which you will see below is excellent), staff are missing key facts and ignore several inaccuracies in the letter which need urgent attention. Importantly there are safety and environmental issues in play.

Westpoint Harbor already offers a safe year-round kayak launching beach adjacent to the boat launch ramp. It offers direct access to the Bay, does not conflict with motor vessel launching, and is easily accessible. The beach is at the same 12.5-degree slope recommended by DBW (like the trailer boat launch ramp) and has no “rip-rap” rock like the rest of the marina basin, so hand-launching is easy and safe. It also has “pea gravel” for safe walking and easy launching. I am told that in 2014 staff denied a request by Westpoint Harbor to make the entire beach area pea gravel for even easier launching. Perhaps this should be revisited. This special beach area (1) keeps hand-launched craft away from environmentally sensitive areas (2) prevents the risk of launching from high-freeboard docks and rocky areas, and (3) is close to kayak storage racks. The use of this beach and launch area is free to all, and parking for car-top vessels is adjacent to it.

Quick action is needed in communicating with the letter writer as there are first and foremost serious safety and environmental issues at stake. Please help me work with BCDC staff to address both today! The letter writer describes issues kayaking in the Westpoint Harbor area occurring since 2012 and notes these have been communicated to BCDC Staff. It would be

helpful if I can communicate with this person directly together with the BCDC Staff and help both understand the critical safety and environmental issues involved.

My offer to help is genuine. Given BCDC staff have been aware of the situation for six years, it is vital we all work urgently to correct this kayakers' lack of knowledge. Also, please provide the correspondence and summaries of calls that have occurred with this person so I can address any of the author's issues when we all meet.

The letter writer is simply misusing the public boat launch at Westpoint Harbor, putting themselves and others at risk of injury. You may know that the Division of Boating and Waterways (DBW) publishes guidelines on construction and operation of "boat launches intended for motorized trailerable vessels" which are well known and highly regarded. The incompatibility of "hand-launched" craft like kayaks and trailer-launched motor vessels is a considered an unsafe practice. Boats on trailers behind cars and trucks result in poor visibility; sometimes boat engines operate out of the water, on a wet and slippery surface; adding hand launched craft in those areas is simply too high a risk. Further, I understand, electric shock drowning is a leading cause of death in marinas. It's one reason both DBW and the US Coast Guard have active programs warning people not to enter the water at boat launch ramps. Hand-launched vessels do not belong near motorized boat launch areas ever! We both need to help the letter writer understand these safety issues.

BCDC Staff should know the California Coastal Commission, DBW, Recreational Boaters of California (RBOC) and others describe kayaks, canoes, surfboards and paddleboards as "conflicting uses" on boat launch ramps that are specifically intended for trailered vessels. This is common sense, and I am alarmed that the BCDC staff have not advised this individual on such a fundamental safety issue. SAFE public access should be our mutual objective.

I understand that at this year's California Boating Congress this issue was discussed, and DBW announced its plan to revise and expand its guidelines to include (separate) boat launch areas for hand-launched vessels, including grant funding for hand-launch facilities as it does for trailerable vessel boat launch facilities. This would be an opportunity for BCDC staff to support and participate in this effort, in the name of safe public access.

Since the author of the letter has been kayaking in the area for at least six years, they really should meet the folks at 101 Surf Sports located at the entrance to Westpoint Harbor. Their best-in-class facility supports use, training, rental and class events for all types of hand-launched vessels. They support an active kayaking community. Importantly, they require and ensure that users of the special low-freeboard dock at Westpoint Harbor are trained on both safety and identify the environmentally safe areas for kayakers to paddle near in order to respect the nearby ecosystems. Only after this instruction are users provided keys and permitted access to the rowing dock and . It is a sensible approach balance the public needs with safety and environmental concerns.

I can help your author with ANY kayak related issues they may have at Westpoint Harbor. Please help me help them! It is both a vital safety and environmental issue. Anyone can see from the foregoing, that Westpoint Harbor ENCOURAGES SAFE and RESPONSIBLE KAYAKING YEAR-ROUND. The harbor staff resist acting against either the public or environment's interest which apparently the letter writer has been complaining about, but I am sure with the facts, we can help them understand why it is sometimes necessary to have boundaries and rules.

I believe we can work together to help the author of the January 27, 2018 letter better understand why there are much better ways to enjoy the Bay using a kayak. We need to work together to insist they stop recklessly misusing the Bay and facilities in and around Westpoint Harbor. I am happy to help facilitate a meeting among BCDC staff, the owner of 101 Surf Sports and the Westpoint Harbor team to help the author of the letter learn more about available training programs and responsible kayaking.

Most importantly, safety and security of boaters of every kind and useful knowledge of these activities should become a high BCDC staff priority. Thanks in advance for your cooperation in this matter.

Please publish this letter on the BCDC website next to January 27, 2018 kayaker letter, so the public has a full and accurate picture of the situation.

Bob Wilson

Friends of Westpoint Harbor
PO Box 352
Soquel, CA 95073
info@friendsofwestpointharbor.org

March 2, 2018

Dear BCDC Commissioners,

Westpoint Harbor, located on Westpoint Slough in Redwood City, is a community resource that since its inception, has been designed for safe and environmentally responsible public access by water and land. The harbor is located in an environmentally sensitive area, so its innovative designs have been approved, supported and monitored at every step by more than a dozen local, state and federal agencies, including the San Francisco Bay Conservation and Development Commission.

<u>Summary</u>
Here are a few of the many contributions by Westpoint Harbor to enhance public's access to the San Francisco Bay Estuary:

- 26 acres of new pristine bay surface, easily accessible from Westpoint Slough and Westpoint harbor.
- Almost one mile of new pathways added to the San Francisco Bay Trail.
- Connection of the San Francisco Bay Trail with neighboring Pacific Shores by "bridging" over sensitive wetlands and in the process creation of .27 acres of new wetlands.
- Over 1,000 feet of public guest dock space.
- Addition of a state of the art public boat launch ramp and supporting docks plus trailer and car parking areas.
- Facilitating and attracting 101 Surf Sports to the harbor, a small business serving the public with kayak and paddle board rentals
- Creating a new public boat storage area that also supports boating and community activities such as local chapters of Dragon Boat paddlers
- Installation of over 400 state of the art boat slips of varying sizes with supporting concrete docks; all slips have easy access to innovative, clean pump out facilities without a need to move any boat from its slip.

To date, among all government organizations and agencies involved with Westpoint Harbor, ONLY the Staff of the BCDC has found fault with any implementation of the Westpoint Harbor plans. Government officials and agencies, community groups and the public, have universally praised Westpoint Harbor's development and its responsible management by founder, Mr. Mark Sanders and his team.

This is our summary of why we believe the BCDC staff contention that there is a lack of timely and adequate public access, is NOT a fair conclusion. It is based on our careful review of the BCDC claims, the public record and many meetings with Westpoint Harbor staff, government agencies and our close observations conducted at the harbor.

Background

Westpoint Harbor was created on the site that was formerly an industrial bittern pond. It has been restored as 50 pristine acres, including 26 acres of new bay surface. By working cooperatively with the BCDC and Cargill, Westpoint Harbor has substantially INCREASED and restored the adjacent bird habitat, which can be viewed by the public at a safe distance. (See Exhibit #1). The project has added almost a mile to the Bay Trail of safe and publically accessible pathways with unmatched 180 degree vistas of South San Francisco Bay.

Westpoint Harbor is positioned near both restored and protected habitats, teaming with wildlife, yet has won praise from environmentalists and regulators alike for creative methods to enable protection and viewing of local wildlife, including at risk species. Every aspect of the harbor was thoughtfully developed balancing conservation with safe, public access.

From its inception, the project has had three stages. As each stage is completed, more trails, docks and viewing areas are made available to the public. During constriction, all areas around the harbor were carefully managed and monitored to avoid injury to both wildlife and the public. These actions were closely monitored by many local, state and federal agencies to ensure that safe and environmentally responsible practices were followed. Mr. Sanders and his team have been diligent stewards of this site. They have often needed to resolve overlapping and

conflicting regulations among the many government stakeholders. This iterative and lengthily process slowed project completion and added significant costs born 100% by Mr. Sanders.

Understandably, many members of the public not familiar with either the three project stages or the environmentally sensitive nature of the site, were both excited by this landmark effort and wanted instant access to the entire 50 acre project! During construction, some complained to the BCDC when total access was not possible due to continuing construction and safety concerns. At times, some persistent members of the public needed to be warned that certain areas were simply not yet safe for their enjoyment. However, since its opening, Westpoint Harbor has consistently and aggressively put safe public access as its highest priority. Water oriented public access has been a key driving force behind the vision of the founder of Westpoint Harbor, Mr. Mark Sanders. Sensible public access has always been key to the continuing success for Westpoint Harbor.

BCDC Allegations Refuted by Friends of Westpoint Harbor

Allegations by the BCDC Staff that there is insufficient public access are simply not supported by the facts. Any delayed access by the public was due either to the nature of the phased completion schedule of the project, or the many over-lapping government safety regulations that needed to be respected.

We would prefer that all members of the BCDC Board visit Westpoint Harbor soon to see for themselves the incredible public resource Mr. Sanders and his team have created and maintained from this formerly high-risk industrial site.

In the interim, here are a few BCDC Staff allegations refuted by the attached photos and facts:

- Restrooms have always been publically accessible. Early on, signs were posted on the harbormaster's window stating the public simply ask for a key for use. More recently, and unlike most other harbors, the restrooms are open 24 x 7. This was done specifically at the request of the BCDC. The BCDC Staff also missed seeing the signs posted on the restroom doors on one visit and assessed a $30K fine. (See Exhibit #1 below).
- There is substantial and well-marked public parking in many arears of the harbor site including near the entrance and the large boat launch ramp. BCDC Staff has insisted on parking signs being placed on posts. This is an environmentally unsound practice near sensitive wildlife which would be placed at risk by roosting raptors. (See Exhibit #1 below).
- BCDC staff have alleged pathway obstructions are hindering public access. The pictures attached show this is simply not correct. Pathways are plentiful and designed for safe access as well as supporting infrastructure for water, power and fire-fighting. (See Exhibit #3 Below)
- BCDC Staff alleges inadequate public access. We again refer you to Exhibit #1 below which is a mark-up of a Google Satellite Map photo showing many of the major public access points at the harbor. Clearly this is a site freely open to the public by both land and sea. Westpoint harbor is unmatched for public access in South San Francisco Bay!

Honorable commissioners, we appreciate your time in learning about Westpoint Harbor's mission and its long history of good environmental stewardship. We invite you to find out more about this important asset for the community and the ecosystem at www.friendsofwestpointharbor.org.

We also urge you to support the goals of the Friends of Westpoint Harbor which are as follows:

1. We seek, first and foremost, the preservation of Westpoint Harbor and continuation of the phased master plan that will result in a unique recreational community for the Peninsula and South Bay.

2. We call on BCDC to stop its ongoing unjustified "enforcement" actions against Westpoint Harbor and to immediately allow urgent and legal maintenance dredging to prevent further damage to the piers in the harbor.

3. We urge an informed, fair and unbiased outside review of the baseless claims made by BCDC, unsupported by the facts.

4. We ask the California State Auditor to review the behavior and practices of BCDC.

The Friends of Westpoint Harbor seek to share and responsibly enjoy the Bay with our community in, on and around the water and help preserve the natural beauty and wildlife that surrounds the Bay shoreline for generations to come.

We want to raise awareness in our community about Westpoint Harbor, the Bay's most southern marina, as a model for its environmental stewardship.

Respectfully,

Friends of Westpoint Harbor

Exhibits #1, #2 & #3 Attached

Exhibit #1: Google Earth Photo of Westpoint Harbor & Surrounding Areas

Exhibit #2 Restrooms & Parking Signs

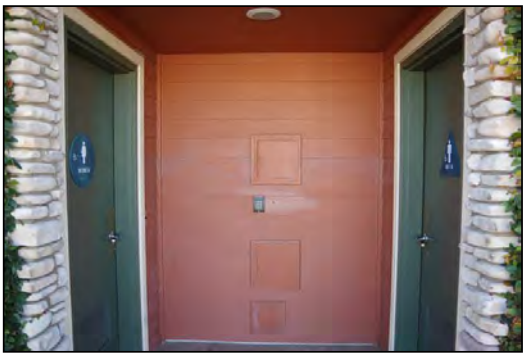
Insufficient Signage 'Violations'

The Charges

These doors in the outside of the Harbor office breezeway appear to be restrooms and should have been clearly marked and unlocked for the public. Westpoint seemingly discourages outside use by the public, right?

BCDC says Westpoint's public parking spaces are not marked. But would anyone have trouble seeing this? BCDC staff insists that signs on posts are required for each space, although the permit does not say this. Also, predator birds could roost on those to hunt endangered species.

The Realities



Wrong! If BCDC inspectors had exited the breezeway (not part of public access) and walked toward the boat slips, they would have seen the public restrooms marked with regulation signs -- and unlocked. Staff agreed it was a mistake, so why not reverse this?

Strangely, the shoreline access parking spaces at Pacific Shores, a huge office complex adjacent to Westpoint Harbor, are marked the same way, -- painted on the pavement. And no BCDC violations are claimed there. ***Double standard***?

Exhibit #3 Pathways

'Unauthorized' Trail Obstruction

The Charge

BCDC asserts that this PG&E power cabinet, which is part of the electrical system for the Harbor, along with the fire hydrant next to it, are intrusive to walkers and cyclists on the shoreline trail because of their size and proximity, and therefore are a permit violation.

The Reality

Well, here is the big picture. Do you think that anyone or anything other than a Mack truck would have difficulty negotiating this trail without running into these utility structures? In fact, placement of these is controlled by PG&E and the Fire Department. They in turn must follow state code requirements for setbacks. Quick question: Is a fire hydrant a dangerous imposition on the landscape? Or a potential saver of life and property? Of course, it is also required by municipal code.

WESTPOINT HARBOR

ENVIRONMENTAL MODEL FOR SAN FRANCISCO BAY FACES UNJUSTIFIED ALLEGATIONS AND MASSIVE FINES FROM THE STAFF OF THE BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC)

AN ANALYSIS BY FRIENDS OF WESTPOINT HARBOR

https://friendsofwestpointharbor.org

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The Issue

Innovation and Quest for Fairness

Westpoint Harbor is an award-winning marina and environmental sanctuary, open to the public and located at the edge of the South San Francisco Bay in Redwood City, California. The former industrial site, once a high environmental risk, was transformed by Mark Sanders, a passionate and successful technology pioneer. Mark started this innovative project in the late 1980s, and has responsibly maintained Westpoint Harbor for over 15 years.

It's a haven and gateway to adventure if you're a boater. It's a shining waterside jewel if you're an environmentalist, naturalist or protector of wildlife. It's a gift if you are simply a person who enjoys discovering the treasures that nature offers in and around the Bay.

The San Francisco Bay Conservation and Development Commission (BCDC), is a California agency charged with both enhancing and protecting San Francisco Bay. For 50 years, it has been tasked with minimizing any fill required for an appropriate project, ensuring that the project is compatible with the conservation of Bay resources, and providing maximum feasible public access within the Bay's 100-foot shoreline band. Mark Sanders has worked in concert with BCDC for three decades to achieve these same objectives.

But instead of celebrating a mutual victory, in a dramatic turn of events BCDC's staff and its Enforcement Committee (which consists of voting commissioners), are now charging Mark with dozens of unfounded and questionable permit violations and want to assess financial penalties of $512,000 as well as a Cease & Desist order that would, in effect, bring an end to Westpoint Harbor.

Friends of Westpoint Harbor believe these actions are the result of unjustifiable actions that have no material effect on BCDC and Mark Sanders' mutual goals. Furthermore, many allegations are the result of Westpoint Harbor complying with the regulations of other government agencies, new interpretation of requirements that were not part of the original permit, or just plain errors.

Our goal is to present the facts behind the story in hopes of achieving a resolution.

Goals of Friends of Westpoint

- We seek, first and foremost, the preservation of Westpoint Harbor and continuation of the master plan that will result in a unique recreational community for the Peninsula and South Bay.

- We call on BCDC to stop its ongoing unjustified "enforcement" actions against Westpoint Harbor and to immediately allow urgent and legal maintenance dredging to prevent further damage to the piers.

- We urge an informed, fair and unbiased outside review of the baseless claims made by BCDC, unsupported by the facts.

- We ask the California State Auditor to review the behavior and practices of BCDC.

More Information From Online Links

- **Westpoint Harbor** website: www.westpointharbor.com
- **Friends of Westpoint Harbor**: https://friendsofwestpointharbor.org
- **Change.org** petition calling for review of the Bay Conservation and Development Commission (BCDC) by the California State Auditor and local legislators: https//www.change.org/p/westpoint-harbor
- **Response to the Allegations of BCDC** against Westpoint Harbor: https://windwardho.com/westpoint-harbor-bcdc-allegations/
- Video: **A Short History of Westpoint Harbor** told by founder and President Mark Sanders: https://www.youtube.com/watch?v=ZdTM_CFGeDY
- Video: **From Bittern to Beauty:** Westpoint Harbor and the Environment, narrated by founder and President Mark Sanders. Describes Harbor's frequent and substantial contributions to Don Edwards San Francisco Bay National Wildlife Refuge. https://youtu.be/FeyJp7TDuN4
- **YouTube Channel, Westpoint Harbor**: https://www.youtube.com/channel/UCSFkYRquSAG8-UPSUD8ajcg
- **Westpoint Harbor Facebook page**: https://www.facebook.com/Westpoint-Harbor-334276266781/
- **Friends of Westpoint Harbor on Twitter**: https://twitter.com/friendsofwph
- **BCDC Enforcement Committee Hearing,** Jan. 18, 2018. Friends of Westpoint Harbor YouTube video of multiple speakers, including two City Council members from Redwood City, supporting Westpoint Harbor: https://www.youtube.com/watch?v=4Nkz0vzOO7k

Mark Sanders

Preserving the South Bay for Future Generations

Mark Sanders is President of Westpoint Harbor LLC, a full-service publicly-accessible recreational marina and shoreline access point located in Redwood City on the San Francisco Peninsula. It is the first new harbor in San Francisco Bay in decades.

Sanders is a former U.S. Navy officer and decorated combat veteran, and has been active in recreational boating for 40 years. In 2015 he was named President of the Marina Recreation Association (MRA) and is a member of the Marine Legislative Counsel in Sacramento, The California Boating Conference, the MRA representative to the Bay Planning Coalition as well as a member of the BPC Recreational Boating Committee and past director of the Marine Science Institute. Mark is a lifelong sailor and boater.

Other positions:

- Member of the California Division of Boating and Waterways Technical Advisory Board.
- Member of the Bair Island Restoration Project
- Member of the Aqua Terra Project
- Member of the Salt Pond Restoration Project, started in 1988

Before embarking on a 30-year journey to plan, build and operate Westpoint Harbor, Sanders' primary career was in technology, most recently as President/CEO of Pinnacle Systems Inc., a public company meeting the video needs for both consumers and professionals.

Prior to Pinnacle Sanders held various executive positions at Ampex Corporation and has been a director for a number of public and private companies including Bell Microproducts, LookSmart Inc., and Accom. He holds an engineering degree from California Polytechnic State University and an MBA from Golden Gate University. He is a fellow in the Society of Motion Picture and Television Engineers (SMPTE) and as Pinnacle CEO received nine Emmy Awards for technical innovation.

Converting an Industrial Waste Site to 26 Acres of New Pristine Bay Water

Creating the marina involved removing bittern – highly concentrated chemical waste from salt production – and 4.3 million tons of mud from 50 acres of this sterile pond that Sanders purchased from Leslie Salt Company. It took 20 years from concept to realization to open the harbor in 2008. Excavation consumed 4 years and involved removing 640,000 cubic yards of mud to create the basin. Another 600,000 cubic yards were used to create 24 acres of uplands. (Called "beneficial reuse of dredged materials," this was a demonstration project for the Army Corps of Engineers.) The land is now 14 feet higher, creating a buttress to potential rising seas.

Before: a salt bittern pond. After: a vibrant marina with new berths, trails and breathtaking views of the national wildlife refuge.

Public Benefits and Accolades

New:

- 26 acres of new Bay surface and pristine Bay water.
- Expanded bird habitat in cooperation with Cargill Salt Company to maintain critical shorebird roosting area.
- Raised the entire 50-acre site 14 feet to combat potential sea level rise.
- Almost a mile of new Bay Trail for walking and bicycling.
- New access to the Bay for watersports including a public trailerable boat launch, the 101 Sports concession for kayaks and paddle boards, and a kayak launching beach.
- 416 wet slips, including docks for guest boats and dry storage for 75 vessels.
- Innovative guest and full-time berths with access to modern pump-out for sewage management without needing to move your vessel.
- Benches and visitor observation decks throughout the harbor.
- Preservation of Greco Island by thoughtful, responsible signage and other measures in cooperation with the Don Edwards San Francisco Bay National Wildlife Refuge.
- Large public facilities for parking and rest areas
- Responsible access to the best 180-degree views of the South Bay

Certified 'Clean Marina' Award

Spectacular Haven for Wildlife

Westpoint Harbor included new roosting habitat for thousands of shorebirds in and around the marina

Egrets? We've had a few -- hundred

Avocets enjoying the water

Westpoint Harbor is a gateway to the 30,000-acre Don Edwards San Francisco Bay National Wildlife Refuge

Giving Back to the Wildlife Refuge

Westpoint's Contributions to the Environment

Helping marshland restoration at Bair Island, a major element of the Don Edwards San Francisco Bay National Wildlife Refuge. As part of a region-wide effort, Westpoint contributed tons of ultra-clean excavated soil from the construction of the marina to help restore this island complex. Some 1.5 million cubic yards of fill were needed to restore the island after decades of farming, salt pond harvesting and other uses. Westpoint dried and trucked soil to the island over the course of several years.

Truck collecting soil for Bair Island, left

Supporting the Spartina Project to eliminate invasive cordgrass. For 10 years, Westpoint Harbor has provided resources to assist this environmental cleansing program, which is a coordinated regional effort among local, state and federal organizations. The project is aimed at preserving California's unique coastal biological resources by removing introduced species of Spartina (cordgrass). These cordgrasses are aggressive invaders that significantly alter both the physical structure and biological composition of Bay tidal marshes, mudflats and creeks. Westpoint worked with Cargill Salt Company to provide a staging area on Cargill's property for the Spartina team for surveying and spraying the marshes to successfully remove the Spartina. But BCDC accuses Westpoint of allowing an "unauthorized" use (mistakenly assuming the work pad was on the Harbor's property).

Water Suitable for Swimming

Providing the cleanest water in San Francisco Bay . . . .

Westpoint Harbor annually hosts the swimming competition of the annual **Stanford University Treeathlon**, a national triathlon event that draws hundreds of participants from across the country. The swimming portion of the race is conducted in the marina. To ensure that this is a clean venue, officials test the water before each race, and results have shown undetectable levels of Giardia and E. Coli. Tests show that the water in Westpoint Harbor is cleaner than the Bay itself.

. . . so why is Westpoint Harbor in the crosshairs of the BCDC enforcement staff?

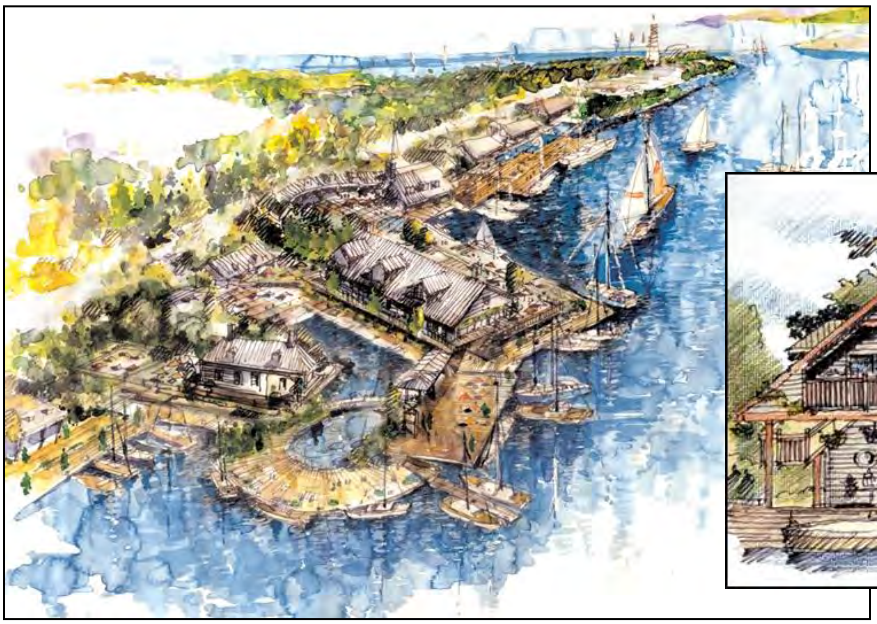
Host to Many Community Activities

Sailing, Canoeing, Dragon Boats and Environmental Education For Youths

- Hosted the Schooner Seaward "Call of the Sea." Their mission is to inspire young people to unleash their potential through experiential, environmental education under sail.
- 101 Surf Sports – on-site concession provides public rentals for kayaks and paddleboards
- Hosted training and operations for numerous community and school boating organizations including Los Gatos Rowing, Santa Clara University Rowing, Stanford Rowing, HPOCC - Ho'okahi Pu'uwai Outrigger Canoe Club, Project Floaters Dragon Boats, Sequoia Yacht Club Nor-Cal Rowing, paddle boarders and the local chapter of the Sea Scouts.
- Hosts "cruise-in" events for many Bay Area boating clubs including Master Mariners Benevolent Society, Coyote Point Yacht Club, Sequoia Yacht Club, Cruising Clippers and Discovery Bay Yacht Club.
- Westpoint Regatta -- Westpoint is a major contributor, both in time and resources, to this annual event. 2017 was the 9th annual Westpoint Regatta, a Yacht Racing Association sanctioned race, and last year the number of boats increased by 30 percent to a total of 71 boats.
- Urban Shield Regional Disaster Training Exercises, with staging area and water access., involving Bay Area law enforcement agencies and other first-responders.

The Vision: Recreation for All

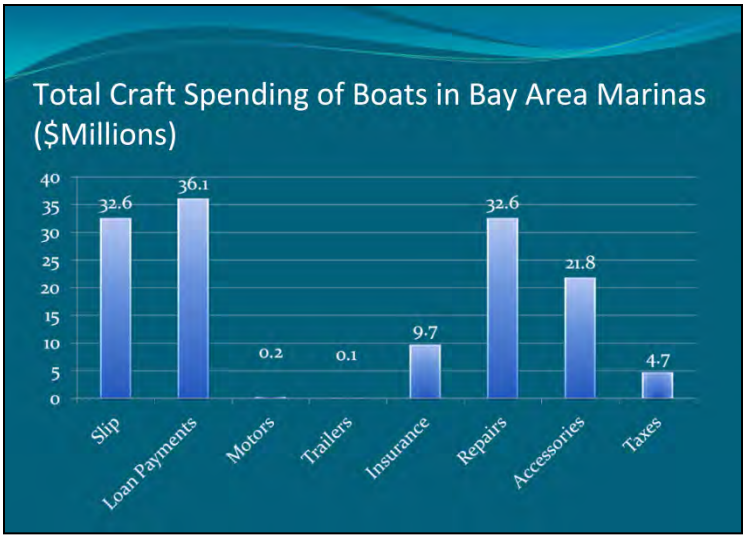
The Harbor's master plan represented a waterfront community that includes restaurants, shops, kayaking and paddleboard concessions, a sailing center, boatyard, fuel dock, yacht club and a 1000-foot boardwalk and guest dock. This would create a full-service marina for the South Bay, dedicated to the boating public by sea and land.

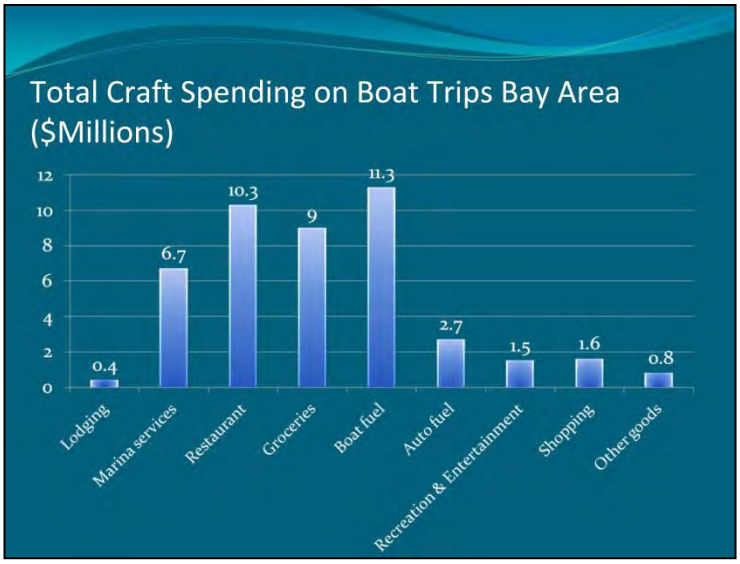


Renderings show boardwalk, kayaking and sailing concessions, restaurants and stores

Boating's Financial Contributions

When Completed, Westpoint Harbor Generates Nearly $9 Million Per Year to the Local Economy





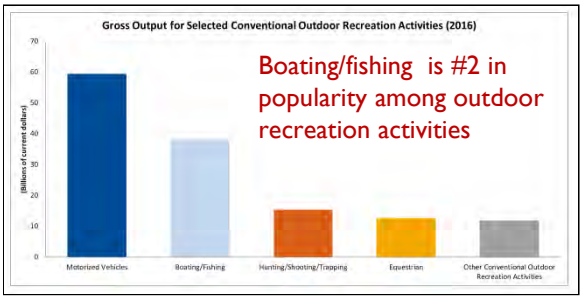
Boaters are Voters: Some 7 million Bay Area residents on average engage in 2.4 water activities per year.

Economic Impact of Recreational Boating

In California:

- $8.9 billion total annual economic contribution
- 826,590 recreational boats in California
- 71,748 total boating-related jobs
- $3.8 billion annual recreational boating-related spending

In the United States:



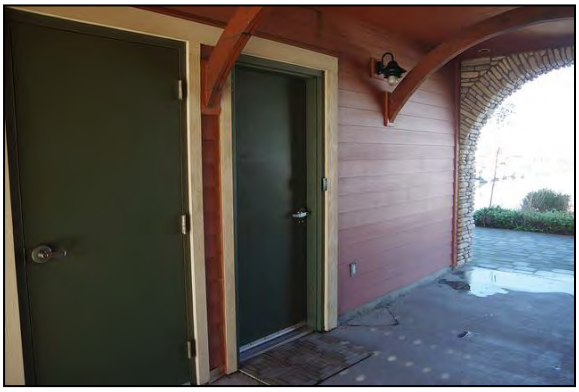
U.S. boating/fishing activities generated $38.2 billion in 2016, an increase of 4% from the previous year. Boating/fishing is the second most popular conventional outdoor recreation activity. In general, outdoor recreation accounts for 2% of the GDP or $373.3 billion per year.

Sources: National Marine Manufacturers Association, Recreational Marine Research Center, and U.S. Department of Commerce Bureau of Economic Analysis (2018 report)

Sampling of BCDC Enforcement Actions Against Westpoint Harbor: Charges Versus Reality

Insufficient Signage 'Violations'

The Charges



These doors in the outside of the Harbor office breezeway appear to be restrooms and should have been clearly marked and unlocked for the public. Westpoint seemingly discourages outside use by the public, right?

BCDC says Westpoint's public parking spaces are not marked. But would anyone have trouble seeing this? BCDC staff insists that signs on posts are required for each space, although the permit does not say this. Also, predator birds could roost on those to hunt endangered species.

The Realities

Wrong! If BCDC inspectors had exited the breezeway (not part of public access) and walked toward the boat slips, they would have seen the public restrooms marked with regulation signs -- and unlocked. Staff agreed it was a mistake, so why not reverse this?

Strangely, the shoreline access parking spaces at Pacific Shores, a huge office complex adjacent to Westpoint Harbor, are marked the same way, -- painted on the pavement. And no BCDC violations are claimed there. ***Double standard***?

‘Unauthorized’ Trail Obstruction

The Charge

BCDC asserts that this PG&E power cabinet, which is part of the electrical system for the Harbor, along with the fire hydrant next to it, are intrusive to walkers and cyclists on the shoreline trail because of their size and proximity, and therefore are a permit violation.

The Reality

Well, here is the big picture. Do you think that anyone or anything other than a Mack truck would have difficulty negotiating this trail without running into these utility structures? In fact, placement of these is controlled by PG&E and the Fire Department. They in turn must follow state code requirements for setbacks. Quick question: Is a fire hydrant a dangerous imposition on the landscape? Or a potential saver of life and property? Of course, it is also required by municipal code.

Unauthorized Use 'Violation'

The Charge

BCDC says that the presence of public agency boats, including the Redwood City Fire and Police Department rescue vessels represents an unauthorized use in the harbor. BCDC claims that Westpoint must seek an amendment to its permit to allow these boats use of the harbor, even though Redwood City pays berthing fees just like any other boater.

Fire truck parked for training is also branded as "unauthorized" use by BCDC

The Reality

Once again, here is the big picture. The reason these first responders berth in Westpoint is that it enables them to reach the Bay quicker in emergencies. The Harbor routinely offers visiting boats space at the guest docks as well as unoccupied slips, and has never turned a guest away. The fire and police boats have been involved in a number of water rescues in the Bay.

Wildlife-Threatening Trees?

The Charge

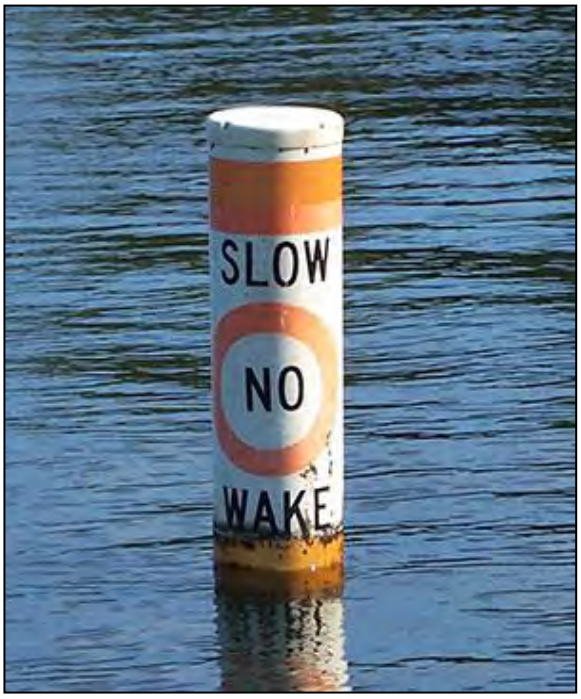
BCDC alleges that the poplar, willow, cypress and Cajeput trees that were planted by the Harbor along the shoreline trails pose a threat to some wildlife. The agency claims that raptors could use them as perches to hunt rare and endangered species in the Don Edwards San Francisco Bay National Wildlife Refuge. BCDC has ordered the Harbor to remove those 'hazardous' trees immediately!

The Reality

Enforcement staff at BCDC may have a short memory or unable to read the original CEQA requirements. Permit plans and specs required the planting of these species because they don't support raptors. Similarly, signs on posts like the one above *do* allow raptors to be close to prey. Wildlife officials have reminded staff to avoid the kinds of signposts that BCDC wants at each public parking space. Such posts, they say, would give hawks plenty of launching pads for their next meals. By the way, those same trees are plentiful at next door Pacific Shores office complex, along the Bay Trail, and there is no BCDC enforcement action underway there. In fact, all of the EIR studies required both businesses to use the identical tree palette. ***Enforcement bias and targeting?***

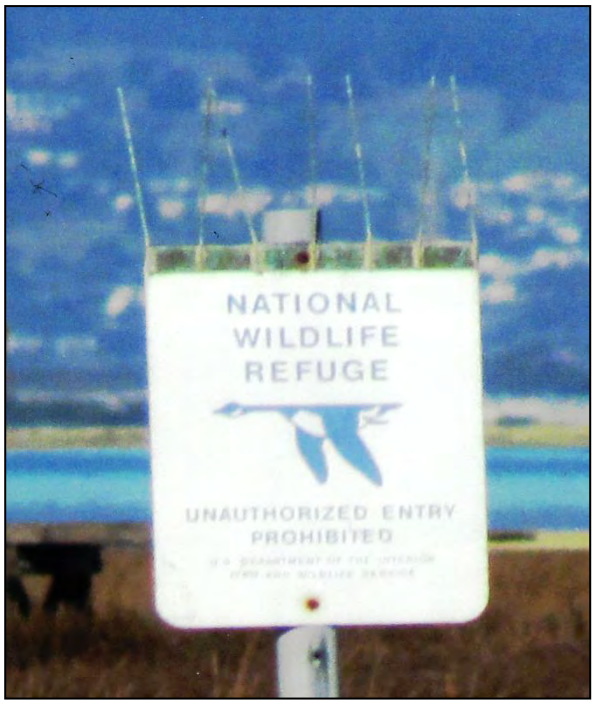
More Signage 'Violations'

Buoys For the Channel?



BCDC accuses Westpoint Harbor of refusing to place a string of No Wake and Restricted Access buoys along Westpoint Slough next to Greco Island. This is sensitive habitat and managed by the National Wildlife Refuge. Because of the several hundred feet of mud flats and narrow channel, such buoys are unworkable as determined by the U.S. Coast Guard, Fish and Wildlife and Redwood City in 2002. Yet 16 years later, BCDC decides they were wrong, having no records from this period. The Coast Guard has warned Westpoint not to install such buoys because they could be hazardous to navigation. Should Westpoint defy federal rules?

Signs on Greco Island



Back in 2003, several years before the opening of the marina, Westpoint had collaborated with the U.S. Fish & Wildlife Service to install 35 signs on the perimeter of Greco Island. These were in plain view of approaching boaters and served to warn against human trespassing on the island. Mysteriously, all but three signs disappeared in 2017, and BCDC alleged that Westpoint didn't install signs to protect the island because no signs were visible. As recently as February 6, the remaining signs were observed lying in the mudflats at low tide., having been recently pulled out.

How to Kill a Harbor

BCDC Stops Lawful Maintenance Dredging

- BCDC's blocking of Westpoint Harbor's dredging permit, after 18 months of preparation and planning before work was to start, leads to substantial damage to the docks. Piers are being upended at low tide and utility conduits are being bent and will crack, costing the Harbor thousands of dollars for repairs The siltation also limits public access and makes it impossible for some boats to reach these slips. Worse, it negates the marina entrance engineering design to protect Greco Island, subjecting it to erosion.
- The master plan that envisioned restaurants and a lively water recreation escape for the entire South Bay has been put on hold due to BCDC's enforcement actions. The harbor cannot even open its dry dock or fuel dock repair facilities.
- The legal defense by Mark Sanders is costing hundreds of thousands of dollars – money that could have been spent on adding new amenities.
- What was once a dream supported by every agency is now a daily nightmare of unjustified allegations from BCDC staff.

Other Baseless 'Violations'

- **Rower's Dock** -- BCDC claims that a rower's dock on the west side of the marina basin is "unauthorized," but all of the harbor's plans clearly show the dock.
- **Garden** -- BCDC alleges that an enclosed community garden is a violation. In fact, the garden is beyond the agency's 100-foot jurisdictional limits and is a public service. The garden is above ground on "hyper saline soil" on the levee where nothing grows.
- **Gates to Berths** -- BCDC takes the position that all gates are illegal. However, in virtually all of the 60 marinas around the Bay, locked gates are used for security and safety reasons.
- **Shorebird Habitat** -- BCDC says that the Harbor has failed to provide shorebird roost habitat mitigation. But the original CEQA environmental review agreed that Cargill Salt Company would be responsible for maintaining roost habitat, and mitigation was completed in 2003.
- **Wetlands Mitigation** -- BCDC claims that Westpoint failed to provide wetlands mitigation. But again, as part of the CEQA review, that was accomplished by re-sloping a drainage ditch to a 3:1 slope, which was inspected and approved.
- **Width of Paths** -- BCDC is trying to levy fines for failing to provide a 12-foot-wide walking/cycling path, even though the agency had years ago agreed to a 10-foot-wide path which is consistent with Bay Trail Design Guidelines. Most paths are at the maximum physical limit.
- **Visual Barriers** -- BCDC asserts that the Harbor has failed to provide "required visual barriers" between the western edge of its property and the adjacent Cargill salt pond to reduce disturbance to shore birds. In fact, the visual setback at Westpoint exceeds the required 85 feet.
- **Missing Ramp?** -- BCDC claims that Westpoint failed to provide a signed public boat-launching ramp from September of 2008 until July of 2017 when in fact the ramp area until recently was still under construction. A boat launch requires a road to the ramp, a parking area for vehicles and trailers, and utilities such as street lights, water and power.

Rower's Dock

Community Garden

Unlocked Gates to Boat Slips

Boat Launch Ramp

BCDC's Quest for 'Juicy' Targets

BCDC enforcement strategy: First pick the target, then pick the penalties. Westpoint was in the staff's crosshairs a year before the first violation notices were issued.

"….West Point Marina is going to be a big and juicy case for you…..
-- Adrienne Klein, BCDC
in 2010 email, before ANY violation notices were issued to Mark Sanders

Subject: FW: A question about the water trail.
Date: Thursday, July 22, 2010 3:52 PM
From: Tom Sinclair <tsinclair@coastal.ca.gov>
To: Tom Sinclair <tsinclair@bcdc.ca.gov>

-----Original Message-----
From: Adrienne Klein [mailto:adriennek@bcdc.ca.gov]
Sent: Mon 7/12/2010 4:45 PM
To: Tom Sinclair
Cc:
Subject: FW: A question about the water trail.

Tom, West Point Marina is going to be a big and juicy case for you b/c Mark
Sanders, the principal, doesn't think too highly of us. This is one of your
top priorities.
--
Adrienne Klein
SF BCDC
50 California Street, Suite 2600
SF CA 94111

415-352-3609
http://www.bcdc.ca.gov/

10/24/2012 4:15 –
W.P.H. Brad, John, Stephen

I need to respond to each detail he raises in all his letters. We need to be more nitpicking than Mark. We can do it better than he can.

★ Set up a meeting with Mark

"I need to respond to each detail he raises in all his letters. We need to be more nitpicking than Mark."
-- Andrienne Klein, BCDC, in 2012 handwritten note

BCDC Fine Philosophy: Think BIG!

BCDC's new math of calculating penalties for so-called infractions. No violation is too minor for the maximum fine.

- Restroom Public Access
  $30,000
- Landscaping
  $30,000
- Furniture, lighting and irrigation
  $30,000
- Public Access Signs
  $30,000
- Public Parking Spaces
  $30,000
- Boat Launch
  $30,000
- Buoys/Signs Protecting Greco Island
  $30,000
- Visual Barriers
  $30,000
- Shorebird Habitat Mitigation
  $30,000
- Non-tidal Wetland Mitigation
  $30,000
- Rowers' Dock and Kayak Concession
  $30,000
- Storage Tents On Docks
  $30,000
- Fuel Dock
  $30,000
- Unauthorized Work
  $30,000
- Liveaboard Information
  $30,000
- Boat Launch Sign/Charge
  $30,000

The formula: Take a handful of violation categories and slice and dice them to arrive at 35 separate infractions

The bottom line: $512,000 in fines for Westpoint Harbor

And a proposed Cease & Desist Order, if issued, could pile on additional hundreds of thousands of dollars

Not one of these allegations is valid, and BCDC has provided no evidence to the contrary

Superior Court Rules BCDC Actions 'Vindictive'; Lacking Facts to Support Fines

In December of 2017 a Solano County Superior Court judge dismissed ALL charges against Point Buckler Island and owner John Sweeney by BCDC and the Regional Water Quality Control Board. The two agencies had collaborated to seek fines of $5.5 million based on a series of alleged infractions involving Sweeney's repair of the island's crumbling levee to accommodate duck clubs and other recreation on his 39-acre property.

Goats and horses on Point Buckler Island

Excerpts from the Ruling

- "The Court finds that the individual management plan exempts five of the eight violations alleged in the BCDC Order: repairing the levee, excavating ditches, installing a tide gate, constructing roads and destroying vegetation. By imposing penalties for these acts, BCDC exceeded its jurisdiction and did not proceed in the manner required by law.
- "BCDC is also penalizing Plaintiffs for bringing shipping containers to the island without a BCDC permit. Plaintiffs provided aerial photographs showing that containers were present at 67 other duck clubs, apparently without permits from BCDC. The Court finds that there is a great disparity between the absence of penalties BCDC has imposed for similar behavior, and the severe penalty imposed here."
- "The prosecution team was biased in favor of its own position, and did not provide an impartial assessment of the issues. Because the prosecution team (rather than the Commission's advisory team) prepared the summary memos on which the Commission relied, the trial appeared to be biased and unfair."
- "The Court finds that BCDC imposed penalties on Plaintiffs with vindictive intent in retribution for the lawsuit challenging the Regional Board's order as a violation of due process. The penalties were an apparent response to the club's exercise of its procedural right, and BCDC has not met its burden dispelling the appearance of vindictiveness as well as actual vindictiveness." (Highlight emphasis added.)

Rejection of Staff Legal Advice?

Before launching into the Point Buckler enforcement campaign, BCDC's own staff attorney expressed doubt about the agency's position in this e-mail to the enforcement manager, which was introduced during the court case. So why was this advice ignored?

From: "Bowers, John@BCDC" <John.Bowers@bcdc.ca.gov>
Date: Thursday, September 3, 2015 at 1:26 PM
To: Adrienne Klein <adrienne.klein@bcdc.ca.gov>
Cc: "McCrea, Brad@BCDC" <brad.mccrea@bcdc.ca.gov>, "Weber, Maggie@BCDC" <maggie.weber@bcdc.ca.gov>, "Aichele, Cody@BCDC" <cody.aichele@bcdc.ca.gov>
Subject: Re: Point Buckler Island/Sweeney

Adrienne,

My answer is that at least at present we lack the assurance that we need to have that there in fact has been a violation. The SMPA is not like the MPA, under which a physical act, without more, requires a permit. Under the SMPA Sweeney or some other duck club owner can do anything he wants without getting a permit as long as it is consistent with his IMP. Sweeney has argued that everything has has done is consistent with his IMP. Unfortunately that is not an argument that can be casually dismissed, however much we might like to do so.

John

Punishment Vs. the 'Crime'?

Recent BCDC enforcement action against Scott's Seafood & Grill at Oakland's Jack London Square involved this set of 'violations' related to a permitted outdoor events pavilion on a deck adjacent to the restaurant.

❖ One moveable public access sign was missing (there were two permanent and one moveable sign present):

❖ There were 14 tables and 31 chairs in position at the Pavilion in accordance with the approved plans. All of the tables should be silver and round, but instead four were silver and square, and ten were brown and round.

❖ There were two chairs and one table (brown, not silver) located in the public access area south of the storage shed, outside the pavilion, and not in position Per the approved plans.*

BCDC staff recommended fines for table and chair 'violations' of $59,304 – part of an overall fine of $395,000

At the BCDC Enforcement Committee Meeting of Jan. 18, 2018, where more than 30 people spoke on behalf of the restaurant, there were these comments., as drawn from the official BCDC transcript of the meeting:

Liz Gallagher, daughter of Ray Gallagher, the owner of Scott's, said: "I've seen my dad be emotionally tortured, financially tortured for three years. I mean, we've spent over $900,000 just on attorneys and people to try to help us get this done……When is enough, enough?"

And Dr. Steve Lewis, who said he was Mr. Gallagher's personal physician, had this to say: "Two months ago we almost lost Ray, he almost died. The physical, the mental and the financial health of Mr. Gallagher is on a cross. When I sign his death certificate I am going to accuse the BCDC of involuntary manslaughter."

* Letter from BCDC Executive Director Lawrence Goldzband to the restaurant regarding an unannounced Aug. 30, 2017 visit to the restaurant by Andrienne Klein from the enforcement division.

Who Is Vandalizing Greco Signs?

Just who is behind the systematic destruction of the Greco Island signs that warn of fragile habitat? Designed to discourage trespassing, 35 signs that were cooperatively installed by Westpoint Harbor and the U.S. Fish & Wildlife Service have been vandalized, with most disappearing in just the past few months.

The one above, revealed at low tide in January, 2018, was destroyed and clearly tossed into the water at a higher tide in an attempt to conceal the fact that it was ever installed.

These actions have all occurred since the BCDC enforcement hearing in November 2017, when the staff falsely stated that these signs were never installed. In fact, the manager of the Don Edwards San Francisco Bay National Wildlife Refuge and Westpoint Harbor have continually observed the signs and the Greco Island habitat for more than a decade from the safe distance of the Harbor observation platform. This is the first time that any sign has been disturbed.

More information

Friends of Westpoint Harbor
P.O. Box 352
Soquel, CA 95073
Website: https://friendsofwestpointharbor.org
Email: general@friendsofwestpointharbor.org

Westpoint Harbor Management

Mark Sanders, President, Westpoint Harbor
(650) 701-0545; mark@westpointharbor.com
Doug Furman, Harbormaster, Westpoint Harbor
(650) 701-0545; harbormaster@westpointharbor.com

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101 Westpoint Harbor Drive
Redwood City, CA 94063
Website: www.westpointharbor.com