Enforcement Committee's Recommended Enforcement Decision

Cease and Desist and Civil Penalty Order No. CDO 2018.01 Mark Sanders and Westpoint Harbor, LLC

Marc Zeppetello, Chief Counsel

Adrienne Klein, Chief of Enforcement

March 15, 2018

Making San Francisco Bay Better

Greco Island, Don Edwards SF Bay National Wildlife Refuge
Westpoint Slough
Pacific Shores Center
Westpoint Harbor LLC
Westpoint Slough
Greco Is

Pedestrian Connection between PS and WPH
Pacific Shores Development
Phase 3 Area
Guest Docks
Vehicular Entrance
Phase 2 Boatyard
Surf 101 Sports
Rowers Dock
Westpoint Harbor LLC
Remainder of Salt Pond 10

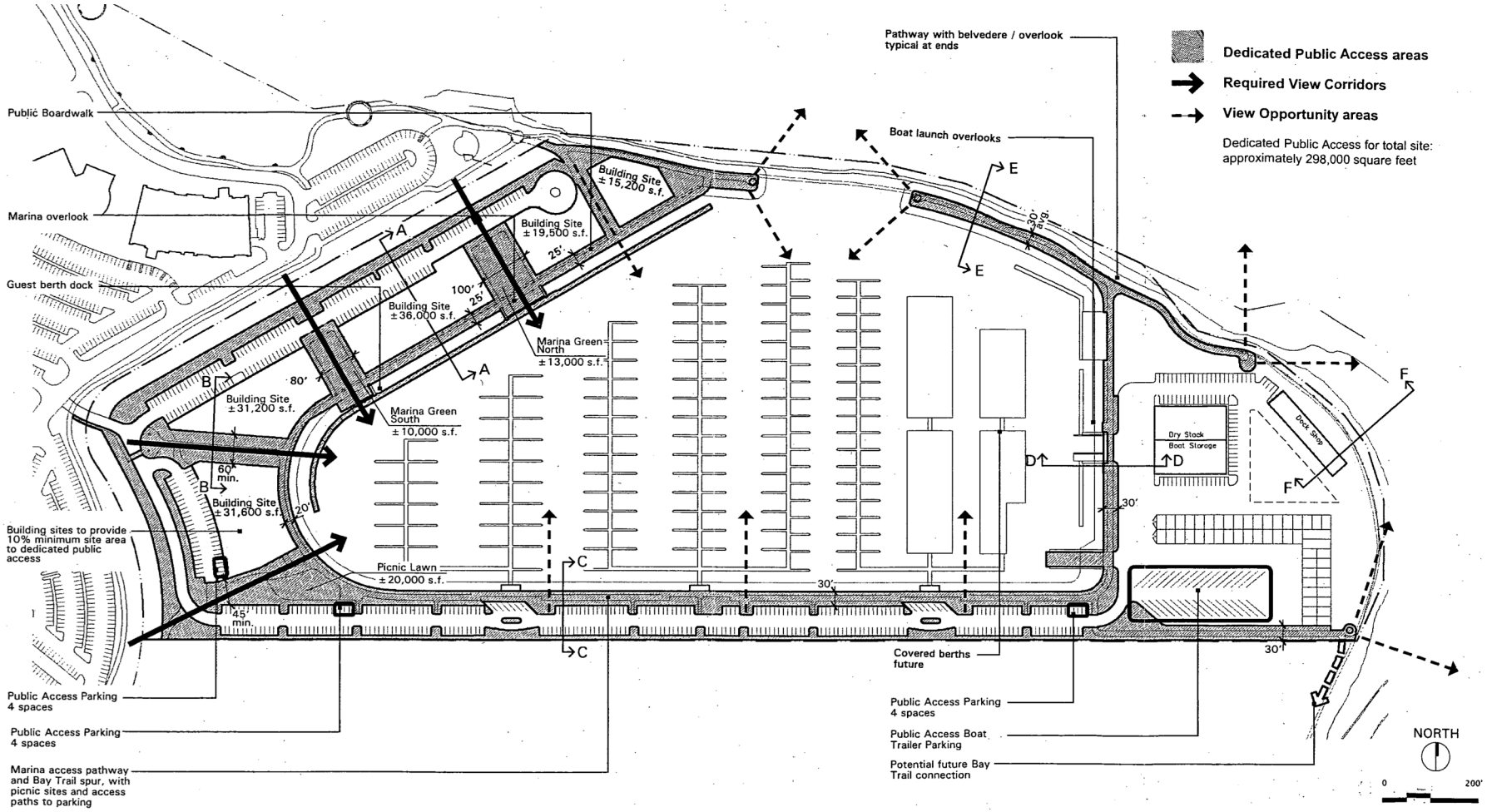

EXHIBIT A

Westpoint Marina and Boatyard

Redwood City, California

27 June 2003

Public Access Plan

BMS DESIGN GROUP

BOHLEY CONSULTING

Timeline

- May 4, 2011 BCDC Staff Notifies Mr. Sanders of Violations
- June 22, 2011 – Amendment Four (Time Extension)
- Early 2012 – Agreement to Allow Installation of Temporary Fencing of Phase 3 Areas
- September 9, 2012 -- Proposed Amendment Five, Version 1 (Authorized Temporary Fencing)
- May 20, 2013 -- Proposed Amendment Five, Version 2
- June 6, 2013 -- Proposed Amendment Five, Version 3

Timeline

- August 15, 2014 – Deadline to complete all work (per Amendment Four time extension) expires
- September 4, 2014 -- Proposed Amendment Five, Version 4
- September 14, 2015 -- Proposed Amendment Five, Version 5
- August 16, 2016 -- Amendment Six – Authorizes Phase 2 (Boatyard) construction activities but did not incorporate provisions of Proposed Amendment Five

Timeline

- December 8, 2016 BCDC staff site visit; informed Mr. Sanders that preparing Violation Report/Complaint
- January 5, 2017, Mr. Sanders applies for permit amendment to install temporary fencing in Phase 3 areas
- May 9, 2017, Amendment Seven issued, authorizing temporary fencing
- July 5, 2017, Unauthorized signs restricting public access removed and Phase 1B public access areas opened except guest docks

Terms of Proposed Order

- Make All Phase 1B and Phase 2 Public Access Areas Available For Unrestricted Public Access (Special Condition II.B. 1)
  - Remove unauthorized gates and “Members and Guests Only” signs from gangways to the guest docks and provide public access to guest docks (including to pedestrians)
  - Remove unauthorized "Westpoint Harbor Boat Launch" sign
    - Charge no fee to use public access improvements

Terms of Proposed Order

- Make All Phase 1B and Phase 2 Public Access Areas Available For Unrestricted Public Access
  - Keep Public Restrooms Open at All Times (subject to approved rules and restrictions)
  - Require 101 Surf Sports to Cease and Desist from Storing Boats or Conducting Activities on Public Access Areas

Terms of Proposed Order

- Submit Signage Plan for Review and Approval, and Install Approved Signs
- Submit Plans for Public Access Improvements for Review and Approval, and Complete Approved Improvements
  - Plans for Public Walkways
  - Plans for 170,500 square feet of landscaping, irrigation and drainage
    - Remove trees planted without approval along Westpoint Slough
- Submit Plans for Review and Approval for All Site Furnishings, Including Lighting, Seating, Tables and Trash Receptacles
- Submit As-Built Plans for Phase 2 Improvements Installed Without Plan Review and Approval

Terms of Proposed Order

- Remove Unauthorized Improvements
  - Gate and Fence at NW Corner of Site (at access to Pacific Shores Center)
  - Wood-Enclosed Changing or Storage Area Associated with 101 Surf Sports in Public Parking Spaces
  - Fenced Garden Area, Wood Storage Shed, Planters and Construction Materials in Dedicated Public Access Area
  - Asphalt Pad in Dedicated Public Access Area
  - Trees Planted along Westpoint Slough

Terms of Proposed Order

- Application to Amend Permit to Request After-the-Fact Authorization
  - PG&E transformers or utility structures and any other obstructions in dedicated public access areas
  - Rower's dock
  - Use of rower's dock by a business to rent boats to public
  - Any accessory facilities or structures associated with use of rower's dock (storage container, changing area, picnic tables, portable toilet)
  - Solar and wind-powered container in parking lot
  - Three floating docks supporting large storage tents
  - Use of guest docks or other location to moor public agency boats
  - Gates installed on gangways to private docks

Terms of Proposed Order

- Install Signs and Buoys in Westpoint Slough (Special Condition II.H)
  - Buoys to identify "no wake" speed zone, delineate center of channel, and discourage boats from deviating out of channel
  - Buoy system 100 feet from salt marsh on Greco Island with approved signs informing public of access restrictions to Refuge
- Submit Plan to Provide Visual Barriers to Adjacent Salt Pond, and Complete Visual Barriers (Special Condition II.K)
- Provide Shorebird Roost Habitat Mitigation (Special Condition II.F)
- Provide Non-Tidal Wetlands Mitigation (Special Condition II.G)

Terms of Proposed Order

- Provide Annual Reports on Live-Aboards (Special Condition II.P)
- Provide Certification of Contractor Review (Special Condition II.U)
- Submit Monthly Status Reports and Further Review by Enforcement Committee
  - Monthly Status Reports Re: Activities Undertaken to Comply with Order
  - Enforcement Committee Hearings No Later than April 30th and October 31th to Report on Status of Compliance with Permit and Order

Administrative Civil Penalty

- 35 separate violations grouped into a total of 22 violations; no penalty for four violations
- Proposed penalty of $513,000 for 18 violations (all but one capped at $30,000 statutory maximum)

Penalty Factors

- Respondents prevented and discouraged public access for six years
- Violations had substantial adverse impacts on required public access
- Violations likely had and continue to have adverse impacts on bay resources
- Mr. Sanders has refused to cooperate with staff
- High costs to state
- Respondents benefitted economically from violating permit
- Respondents do not assert inability to pay the proposed penalty

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