

**AGREEMENT BY AND BETWEEN
THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
AND WESTPOINT HARBOR, LLC**

This Agreement is made and entered into by and between the San Francisco Bay Conservation and Development Commission (“BCDC” or “Commission”) and Westpoint Harbor, LLC (“WPH”). The parties to this Agreement are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. BCDC Permit No. 2002.002, as amended through September 20, 2017, authorizes construction, use, and maintenance of the Westpoint Harbor marina in Redwood City, San Mateo County, California (the term “Permit” herein refers to any version of BCDC Permit No. 2002.002 effective now, in the future, or at any time in the past).

B. WPH owns and operates the Westpoint Harbor marina, which includes a marina and associated facilities, public access improvements, and areas reserved for commercial development.

C. On July 24, 2017, BCDC initiated administrative enforcement proceedings against WPH by issuing a Violation Report and Complaint for the Imposition of Administrative Civil Penalties, Enforcement Investigation No. ER2010.013 (the “Complaint”), alleging violations of the Permit and the McAteer-Petris Act.

D. On October 2, 2017, WPH filed a California Public Records Act action against BCDC in the California Superior Court, County of San Francisco: *Mark Sanders and Westpoint Harbor, LLC v. San Francisco Bay Conservation and Development Commission*, Case No. CPF-17-515880 (the “CPRA Action”).

E. On October 20, 2017, WPH filed a Statement of Defense in response to the Complaint, contesting and denying the allegations asserted by BCDC.

F. On November 8, 2017, BCDC filed an answer in the CPRA Action, denying liability.

G. On November 16, 2017, the Commission’s Enforcement Committee held a noticed public hearing and adopted the Executive Director’s recommended enforcement decision, as modified at the hearing, including a proposed Cease and Desist and Civil Penalty Order.

H. On January 18, 2018, the Enforcement Committee held a noticed public hearing to consider the Executive Director’s modified recommended enforcement decision. The Enforcement Committee declined to consider the modified recommended enforcement decision and upheld its November 16, 2017 decision and recommendation.

I. On March 15, 2018, at a noticed public meeting, the full Commission considered the Enforcement Committee’s recommended enforcement decision. The Commission declined to

adopt the Enforcement Committee's recommendation and instead remanded the matter to the Enforcement Committee for further consideration.

J. On August 23, 2018, WPH requested additional public records pursuant to the California Public Records Act (the "**August 2018 CPRA Request**").

K. From late-March to late-October, BCDC staff and WPH engaged in confidential settlement discussions. As a result of those discussions, the Executive Director and WPH agreed on a number of modifications to the Permit that are included in Permit Amendment Ten (BCDC Permit No. 2002.002.10), which has been issued by the Executive Director and executed by WPH and which is attached hereto as Exhibit A.

L. The Parties have expended substantial resources on administrative and judicial proceedings relating to the Complaint, the CPRA Action, and the August 2018 CPRA Request.

M. To avoid costly and uncertain administrative proceedings and litigation and to conserve private and public resources, the Parties have reached a comprehensive resolution of the issues raised by the Complaint, the CPRA Action, and the August 2018 CPRA Request as set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, including the mutual covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Permit Compliance. WPH agrees to comply in full with the Permit.
2. Termination of Enforcement Proceedings. Within three days of the Effective Date (as defined in Paragraph 17, below), BCDC, through its Executive Director, will terminate the enforcement proceedings that were initiated by the Complaint and promptly thereafter will send to WPH written confirmation of the termination.
3. Public Records Act Disputes. Within three days of the Effective Date, WPH shall file a request to dismiss the CPRA Action with prejudice, and each side shall bear its own fees and costs incurred in that litigation. WPH further agrees to withdraw its August 2018 CPRA Request and agrees that no further response or production of records from BCDC is required.
4. Mutual General Releases. BCDC releases and forever discharges WPH and its agents, directors, staff, officers, successors, assigns, attorneys, and employees from any and all claims, causes of action, penalties, damages, and liabilities, whether known or unknown, that were asserted or could be asserted based upon or relating in any way to the Permit or the allegations set forth in the Complaint or any enforcement activities related thereto. WPH releases and forever discharges BCDC and its commissioners, agents, staff, successors, attorneys, and employees from any and all claims, causes of action, penalties, damages, and liabilities, whether known or unknown, that were asserted or could be asserted based upon or relating in any way to the CPRA Action, the August 2018 CPRA Request, or the Complaint or any enforcement activities related thereto. Each Party acknowledges that it is familiar with California Civil Code section 1542, which provides:



A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Party hereby waives and relinquishes any rights or benefits it may have under California Civil Code section 1542 with respect to the claims covered by the general releases above.

5. Payments.

- a. Within thirty (30) days of the Effective Date, WPH shall remit payment to the Commission by a cashier's check in the amount of \$75,000 payable to the San Francisco Bay Conservation and Development Commission -- Bay Fill Clean-Up and Abatement Fund. Within thirty (30) days of receipt, BCDC shall transfer the \$75,000 remitted by WPH to the California Coastal Conservancy to be used however the California Coastal Conservancy desires and shall submit to WPH evidence of the \$75,000 transfer to the California Coastal Conservancy. The Parties shall jointly recommend to the California Coastal Conservancy that the \$75,000 be used only for the Invasive Spartina Project or other California Coastal Conservancy projects that the Parties mutually agree upon.
- b. Within thirty (30) days of the Effective Date, WPH shall remit payment to the Marine Science Institute (MSI) by a cashier's check in the amount of \$75,000 payable to the Marine Science Institute to be used however MSI desires and shall submit to BCDC evidence of the \$75,000 payment to MSI.

6. Joint Statement. Within two (2) days of the Effective Date, the Parties shall, at approximately the same time, cause to be posted on their respective websites and released to the press a mutually agreeable Joint Statement, and the Parties agree to make no further public statements relating to the subject matter of this Agreement.

7. Severability. If any part of this Agreement is construed to be invalid or in violation of any law, such part shall be modified to achieve the objective of the Parties to the fullest extent permitted by law and the balance of this Agreement shall remain in full force and effect.

8. Attorneys' Fees and Costs. If an action in law or in equity is brought by either Party to enforce or interpret the terms of this Agreement, each Party shall bear its own attorneys' fees and costs incurred in that action.

9. Neutral Construction. This Agreement is the joint product of the Parties and shall not be construed against one Party more strictly than the other.

10. Complete Agreement. This Agreement constitutes the sole and entire agreement between the Parties and supersedes all prior agreements, negotiations, and discussions between the Parties, with respect to the subject matter covered hereby. The terms of this Agreement, including the mutual releases set forth herein, are contractual and not merely a recital. Each of the Parties

acknowledges that, in entering into this Agreement, it is not relying upon any representations or warranties made by anyone other than those terms and provisions expressly set forth in this Agreement.

11. Amendment and Waiver. Any amendment or change to this Agreement must be in a writing signed by each Party. No waiver of any provision of this Agreement may occur unless signed in writing by the waiving Party.

12. No Admission of Liability. This Agreement represents a compromise and settlement of disputed matters resolved for the sole purpose of terminating and avoiding protracted and costly administrative proceedings, litigation and disputes. Neither the execution of this Agreement nor the performance of any obligation herein constitutes an admission of wrongdoing or liability on the part of any Party.

13. Reservation of Rights. The Executive Director and the Commission reserve the right to take appropriate enforcement action in the event of any violation of the Permit or the McAteer-Petris Act occurring after the Effective Date.

14. Authority. Each Party has the full and complete authority to provide and receive the mutual consideration exchanged, and to execute this Agreement as set forth below. Further, the Parties warrant and represent to each other that the individuals executing and delivering this Agreement on behalf of the Parties have full and complete authority and capacity to execute this Agreement.

15. Governing Law. This Agreement shall be governed by, interpreted, and construed in accordance with the laws of the State of California.

16. Non-Approval. In the event that the Commission does not approve this Agreement, the Executive Director and WPH hereby agree to negotiate in good faith to resolve any issues raised by the Commission and to present a revised version of the Agreement to the Commission for its consideration and approval. In the event that the Enforcement Committee or Commission provide comments or recommendations that it believes should be addressed by and/or incorporated into the Permit, the Executive Director and WPH agree to negotiate in good faith to address such comments or recommendations.

17. Effective Date. This Agreement is effective on the date it is approved in full by the Commission and signed by the Executive Director.

FOR THE SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

Dated: 12/16/12


LAWRENCE J.
GOLDZBAND
Executive Director



FOR WESTPOINT HARBOR, LLC.
A California Limited Liability Company

Dated: 10/26/18



MARK SANDERS
President

