

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

**Number:** ER2010.013

**Date Mailed:** July 24, 2017

**35th Day After Mailing:** August 28, 2017

**60th Day After Mailing:** September 22, 2017

**Enforcement Committee Hearing Date:** September 21, 2017

**VIOLATION REPORT/COMPLAINT  
FOR THE IMPOSITION OF ADMINISTRATIVE CIVIL PENALTIES  
ENFORCEMENT INVESTIGATION NO. ER2010.013  
MARK SANDERS  
WEST POINT HARBOR, LLC**

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

The San Francisco Bay Conservation and Development Commission is issuing this Violation Report/Complaint for the Imposition of Administrative Civil Penalties ("Violation Report/Complaint") and Statement of Defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of either the Commission's laws or a Commission-issued permit. The Violation Report/Complaint contains a brief summary of all the pertinent information that staff currently has concerning the possible violations and references all the pertinent evidence on which the staff currently relies. All the evidence to which this report refers is available in the enforcement file for this matter located at the Commission's office. You can review these materials at the Commission's office or have copies made at your expense, or both, by contacting Gregory Ogata of the Commission's staff at (415) 352-3658. This Violation Report/Complaint also informs you of the nature of the possible violations so that you can fill out the enclosed Statement of Defense form and otherwise be prepared for Commission enforcement proceedings.

Issuing this Violation Report/Complaint and the enclosed Statement of Defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission and/or its Enforcement Committee may hold an enforcement hearing and the Commission will determine what, if any, enforcement action to take.

Careful reading and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the Violation Report/Complaint, the enclosed Statement of Defense form, the procedures that the Commission and its Enforcement Committee follow, or anything else pertinent to this matter, please contact, as quickly as possible, Adrienne Klein or Marc Zeppetello of the Commission's staff at (415) 352-3600. Thank you for your cooperation.

### **I. Person or Persons Believed Responsible for Illegal Activity**

Mark Sanders  
16075 Skyline Boulevard  
Woodside, California 94062

Westpoint Harbor, LLC  
1529 Seaport Boulevard  
Redwood City, California 94063

**ATTENTION:** Mark Sanders, Registered Agent

Mark Sanders and Westpoint Harbor, LLC are hereafter collectively referred to as "Sanders"

### **II. Brief Description of the Nature of the Illegal Activity**

This enforcement action involves numerous longstanding and continuing violations of the BCDC permit for Westpoint Harbor Marina in Redwood City ("Site") and of the McAteer-Petris Act, despite Commission staff's repeated efforts since May 2011 to bring Sanders and the Site into compliance. The violations include, but are not limited to Sanders':

- A. Refusal, since September 2008, to make required public access areas available to the public, but to instead actively prevent and discourage public access;
- B. Failure to provide required public access improvements, including but not limited to public paths, landscaping, site furniture, signage, public parking spaces, a public boat launch, and public access to guest docks;
- C. Failure to comply with the permit's requirements for plan review and approval, and to construct various improvements without such approval;
- D. Failure to construct improvements in accordance with the terms of the permit and to construct or install unauthorized improvements, including within and obstructing required public access areas;
- E. Failure to comply with the permit's requirements to protect wildlife and sensitive habitat in the nearby San Francisco Bay National Wildlife Refuge ("Refuge"), including but not limited to:
  1. Failure to install and maintain required buoys and signs to inform the public of access restrictions on Greco Island and other areas of the Refuge;
  2. Failure to install and maintain required buoys identifying a "no wake" zone in Westpoint Slough; and

3. Failure to install required visual barriers between the active marina area (*i.e.*, parking lot) and an adjacent salt pond;
- F. Repeated failures to provide a required certification of contractor review of the BCDC permit and applicable plans prior to commencing construction activities;
- G. Repeated operation under an expired permit due to failure to complete all work by the time deadline specified in the permit or obtain an appropriate extension of said deadline; and
- H. Failure to submit certain documentation required by the permit including:
  1. Information regarding the number and location of live-aboard boats;
  2. A berthing agreement ensuring compliance with requirement for marine toilets; and
  3. Nautical charts to the National Oceanic and Atmospheric Administration (“NOAA”).

The permit requires Sanders to make available to the public an approximately 298,000 - square-foot area, referred to as the Phase 1B public access area, and to provide specified public access improvements, including 85,300 square feet of walkways and 170,500 square feet of landscaping, prior to the use of any authorized structure, including the marina berths, which occurred in September 2008. Sanders failed to comply with these requirements but instead actively prevented and discouraged public access. Commission staff first notified Sanders in May 2011 to remove numerous unauthorized signs prohibiting public access -- signs stating such things as “Members and Guests Only,” “Private Property/No Trespassing/Violators Will be Prosecuted,” and “West Point Harbor/Private Facility.” While Sanders removed certain signs at staff’s direction, he continued to maintain numerous unauthorized signs prohibiting public access, including two “Members and Guests Only” signs that were present at the marina entrance until early 2017 and numerous “Restricted Access” signs that were present at various locations around the Site until July 5, 2017.

From May 2011 through early 2017, Sanders claimed that Redwood City prohibited public access at the Site, even though Redwood City’s Use Permit contains a condition of approval stating that “[p]ublic access to open space and parking shall be maintained at all times.” While Redwood City had expressed concern in 2011 and 2012 regarding allowing public access to certain areas of the Site during active construction, Sanders continued to cite Redwood City’s use permit on “Restricted Access” signs as the basis for prohibiting public access to virtually the entire Site long after completion of active construction.

Moreover, to address Sanders’ concerns, in 2012, BCDC staff agreed to allow him to install temporary fencing to restrict public access to certain undeveloped portions of the Site, and staff prepared a permit amendment to authorize such temporary fencing, and to make certain other changes to the permit requested by Sanders. Sanders declined to execute the proposed amended permit, or any of the four subsequent versions of the amendment prepared by staff, or to otherwise seek an amendment limited solely to authorizing the temporary fencing of the undeveloped areas. Not until May 2017, after staff informed him that it was preparing this Violation Report/Complaint, and that the Executive Director might

first issue a cease and desist order directing him to immediately open all public access areas, did Sanders execute a permit amendment authorizing temporary fencing of the undeveloped areas and agree to open all required public access areas after installation of the fencing. Sanders reportedly completed the temporary fencing, removed all unauthorized signs, and opened the Phase 1B public access areas on July 5, 2017. However, Sanders continues to prohibit public access to the guest docks, which are within the dedicated public access area; access to the guest docks continues to be blocked by locked gates with signs stating "Members and Guests Only."

In addition to preventing physical access to the required public access areas, Sanders' violations of the permit's requirements to provide public access improvements since September 2008 include his failure to: (1) install no fewer than 15 public access or Bay Trail signs; (2) make the public restrooms in the harbor master's building available to the public; (3) provide all required site furnishings including lighting, seating, tables, and trash receptacles; (4) provide approximately 170,500 square feet of landscaping; (5) make a signed public boat launch available to the public; (6) provide 12 signed public parking spaces; (7) provide 15 signed public parking spaces for vehicle and boat trailer parking; (8) provide public access signage identifying the ten guest berths.

Sanders has consistently violated the permit's requirements for plan review and approval prior to constructing Site improvements. As of the date of this Violation Report/Complaint, Sanders has failed to obtain plan review approval for a signage plan, for the constructed decomposed granite pedestrian pathways, or for the partially completed landscaping, irrigation, lighting, and site furnishings.

Sanders has constructed Site improvements in violation of terms of the permit's. He constructed a substantially larger fuel dock than authorized (the larger dock was later authorized by an amendment to the permit). Similarly, in violation of the permit's requirement to construct "a 12 to 15-foot-wide public access path along the majority of the marina basin perimeter and overlooks of Westpoint Slough," Sanders instead constructed pedestrian paths that are only 10 feet wide.

Sanders has also constructed or installed many unauthorized Site improvements including a rower's dock on the west side of the marina, and three floating docks supporting large storage tents on the east side of the marina. Unauthorized construction or structures placed on land include, but are not limited to: (1) a fence and gate at the northwestern portion of the Site blocking public access from the adjacent Pacific Shores property; (2) a utility structure, two PG&E transformers, and fire suppression equipment on public access pathways; (3) a solar and wind powered container in the east end of the parking lot; (4) a fenced area south of the parking lot that contains a garden and may also be used for storage; (5) a wooden storage shed, numerous planters, and stored construction material south of the parking lot; and (6) an asphalt pad of unknown purpose in a dedicated public access area. In addition, Sanders has allowed the business that is using the unauthorized rower's dock to rent kayaks and stand-up paddleboards to also store kayaks in an adjacent public access area and use portions of the parking lot for a number of unauthorized

accessory facilities including a large storage container, a wood-enclosed changing or storage area placed over designated public parking spaces, picnic tables, and a portable toilet.

Because Greco Island and other wetlands of the San Francisco National Wildlife Refuge (“Refuge”) are located across Westpoint Slough from the Site, the permit includes a number of conditions to prevent or minimize impacts to endangered species found in the Refuge, including the California clapper rail, the salt marsh harvest mouse, and the California least tern. Sanders has violated these conditions, and related conditions to minimize impacts to wildlife, as follows:

- A. Sanders has failed to install and maintain required buoys and signs in the Slough to inform the public of access restrictions on Greco Island and other areas of the Refuge. In 2011, Sanders reportedly installed 35 signs on Greco Island, in lieu of the required buoy system; at that time, Commission staff determined that the signage on Greco Island met the fundamental intent of required buoy system, but also informed Sanders that the permit needed to be amended to reflect the proposed changes regarding the buoy and signage specifications. Sanders failed to execute any of the five versions of a proposed permit amendment that would have authorized these changes. In any event, photographs taken on April 9, 2017, have been provided to staff documenting that: (a) there is a single sign adjacent to Greco Island stating “Sensitive Wildlife Habitat / Do Not Enter,” but the sign is so faded that it is almost illegible; (b) there are two other faded signs on Greco Island with no writing visible; and (c) there is no evidence of signs along the majority of the perimeter of Greco Island.
- B. Sanders has failed to install and maintain required buoys identifying a “No Wake” zone in Westpoint Slough. In June 2011, Sanders submitted to staff a photograph of a sign marked “3 M.P.H. No Wake.” In contrast, photographs taken on June 5, 2016 and April 9, 2017, and recently provided to staff, show a buoy in the Slough marked “Slow 10 MPH,” and two photographs taken on June 6, 2016, show a ferry in the Slough generating a substantial wake.
- C. Sanders has failed to provide the required visual barriers (*i.e.*, landscaped buffer) between the active marina areas (*i.e.*, parking lot) and an adjacent salt pond to reduce disturbance to water birds, despite staff’s repeated requests that he comply with this permit condition.
- D. In 2011 and 2012, BCDC’s former Bay Design Analyst directed Sanders to remove the Monterey Cypress and Poplar trees that he had planted along the Slough, without plan approval, because these trees serve as perching sites for raptors that can then prey on listed species found in the Refuge. To date, Sanders has failed to remove these trees.

In May 2011, staff notified Sanders that he had failed to submit the required certification that, prior to commencing construction, his contractor had reviewed the requirements of the permit and final BCDC-approved plans. Staff elected not to pursue past violations of this permit condition, but reminded Sanders on two occasions, in September 2011 and September 2014, that prior to commencing future construction he was required to submit a signed certification that his contractor had reviewed the permit and BCDC-approved plans.

Nevertheless, in 2016, Sanders repeated this violation by commencing additional work, pursuant to a permit amendment, without submitting the required certification of contractor review.

Similarly, after staff notified Sanders in May 2011 that he had failed to complete all authorized work by the deadline specified in the permit, and, therefore, the permit had expired, he promptly requested and obtained a permit amendment granting an extension of time. However, in August 2014, he again allowed the permit to expire, and thereby conducted work and operations without authorization for 19 months, until the permit was subsequently amended, in April 2016, to grant a further extension of time to complete all authorized work.

Finally, Sanders violated a number of other permit conditions that require him to submit compliance documentation to BCDC. In 2011, after being notified of the violations by staff, Sanders incurred (unpaid) liability for standardized fines for failing to provide in a timely manner required: (1) copies of a berthing agreement ensuring that any berthed vessel is equipped with a marine toilet containing an adequate holding tank to preclude the discharge of wastes; and (2) verification that he had submitted certain specified information to NOAA. In addition, from May 2011 until January 2017, Sanders failed to submit required information regarding the number and location of live-aboard boats at the marina, despite staff's repeated requests for this information.

### **III. Description and Location of Property on Which Illegal Activity Occurred**

The violations occurred at Westpoint Harbor, located at 1529 Seaport Boulevard, Redwood City, San Mateo County. The Westpoint Harbor and Marina Project includes, but is not limited to, a marina and associated facilities, public walkways and trails, public access improvements, a boatyard, and undeveloped areas reserved for future commercial development.

The Site is subject to the Commission's jurisdiction under the McAteer-Petris Act (MPA) as established by Government Code Section 66610. More specifically, the Westpoint Harbor and Marina Project was constructed in a salt pond and the Site remains subject to the Commission's salt pond jurisdiction as defined in Government Code Section 66610(c). *See* 14 C.C.R. § 10710. In addition, under current conditions, portions of the Site are also in the Commission's "San Francisco Bay," and shoreline band jurisdictions as defined in Government Code Sections 66610(a) and 66610(b), respectively.

### **IV. Name of Owner, Lessee, and Other Person(s) Who Control Property on Which Illegal Activity Occurred**

Mark Sanders is the permittee on BCDC Permit No. 2002.02, as amended through May 9, 2017 (BCDC Permit No. 2002.002.07). Westpoint Harbor, LLC, is believed to own, operate, and/or control some or all of the property at the Site. Mark Sanders is the Chief Executive Officer and Register Agent of Westpoint Harbor, LLC.

**V. Approximate Date Illegal Activities Occurred**

Beginning on or about September 2008, and continuing through the present.

**VI. Summary of All Pertinent Information Currently Known to the Staff in the Form of Proposed Findings with References to all Pertinent Supporting Evidence Contained in the Staff's Permit and Enforcement Files.**

This Violation Report/Complaint is based on the following proposed findings. The administrative record in support of these proposed findings includes: (1) all documents and other evidence cited herein; and (2) all additional documents listed in the Index of Administrative Record attached hereto as Exhibit A. You may review the administrative record at BCDC's office and/or obtain copies of any or all documents contained in the record at your expense.

- A. On August 7, 2003, the Commission issued BCDC Permit No. 2002.02 to Mark Sanders for the Westpoint Harbor and Marina Project, and on March 9, 2004, August 3, 2006, and November 1, 2006, the Executive Director approved Amendments One, Two, and Three of the permit.
- B. As summarized in the Authorization section of Amendment Three (BCDC Permit No. 2002.02.3):

*The amended project will result in fill in a salt pond by: (1) placing 90,000 cy of imported fill for surcharge purposes; (2) creating upland land with the placement of 272,500 cubic yards of sediment (excavated to create a 26.6-acre marina basin) over approximately 25 acres to create marina support and commercial facilities; and (3) placing approximately 14,730 cy of the material excavated from the site over approximately 159,075 square feet (3.6 acres) to create a 7:1 slope, supportive buffer between the project site and the Cargill salt pond to the south. In addition, approximately 96,500 square feet of riprap would be placed around the excavated basin. Once the levee is breached and tidal action is introduced to the site, the marina part of the project would result in Bay fill, consisting of approximately 98,247 square feet of docks, 4,505 square feet of boardwalks, 750 square feet of pilings to support the boat docks, covered berths, and public access boardwalk, 69,440 square feet of covered boat docks, 2,160 square feet for the boat launch ramp, 3,450 square feet for a lift bay and forklift pier, the haul-out, and 17,500 square feet of riprap on the outboard levee, totaling 196,052 square feet of Bay fill. The project would result in approximately 447,077 square feet of new Bay surface. The approximately 298,000 square feet of public access areas would consist of a pathway along a majority of the marina basin perimeter, one pedestrian access connection from the Pacific Shores Center along the shoreline, overlooks of the boat launch area, an extension of the Pacific Shores Center pathway along Westpoint Slough, overlooks of the*

*adjacent habitat, two landscaped lawn areas, public access parking for vehicles and some public boat trailer parking, a boardwalk, and visitor and transient berths.*

- C. BCDC Permit No. 2002.02, as issued on August 7, 2003, authorized the project to be constructed and implemented in three phases consisting generally of a marina (Phase I), a boatyard (Phase 2), and commercial development (Phase 3). Amendment Three, as issued on November 1, 2016, divided Phase One into two sub-phases, Phases 1A and 1B.
- D. As authorized by Amendment Three, Phase 1A includes, but is not limited to:
  - 1. Creation of a marina basin and marina entrance;
  - 2. Dewatering of excavated material on site;
  - 3. Creation of a 24-acre upland area by reusing excavating material and placement of imported clean soil;
  - 4. Installation of riprap; and
  - 5. Construction and use of pile-supported and floating structures for three docks, approximately 145 slips, in the marina.
- E. As authorized by Amendment Three, Phase 1B includes, but is not limited to:
  - 1. Construction and use of pile-supported and floating structures for the remaining docks, approximately 271 slips, for a total of 416 slips, in the marina;
  - 2. Construction and use of 10 guest berths for public access;
  - 3. Construction and use of an approximately 2,160-square foot public boat launch ramp;
  - 4. Construction and use of a 3,500-square-foot harbor master's building that includes public restrooms;
  - 5. Complete construction of and maintain an approximately 242,000-square-foot public access area along Westpoint Slough and a majority of the marina basin perimeter including approximately 85,300 square feet of walkways, a twelve to fifteen-foot-wide path along the perimeter of the basin, and overlooks of Westpoint Slough and the adjacent habitat;
  - 6. Install and maintain approximately 170,500 square feet of landscaping; and
  - 7. Install and maintain a six-foot-tall fence on the east side of the site to prevent access into the marshes along Westpoint Slough adjacent to the project site and along the southern property line with Cargill to prevent access into the salt ponds.

- F. Amendment Three requires Sanders to install the following improvements within the Phase 1B public access area prior to the use of any authorized structure (including the marina berths):
1. A 2,160-square-foot, two-lane, signed, public boat launch ramp;
  2. Fifteen, signed public parking spaces for vehicle and boat trailer parking;
  3. Twelve, signed public parking spaces at various locations around the marina basin, although the entire approximately 600-space parking lot is open to public parking;
  4. Approximately 85,300 square feet of concrete, decomposed granite, wood, or asphalt (with header board) walkways (all designed to provide connections to adjacent properties), including a 12 to 15-foot-wide path along the majority of the marina basin perimeter and overlooks of Westpoint Slough and the adjacent habitat. The overlooks at the levee entrance to the marina shall include belvederes or other special features;
  5. Ten guest berths, identified with signage;
  6. One public restroom, provided within the Harbormaster's building and two public restrooms in the marina basin area;
  7. Approximately 170,500 square feet of landscaped areas;
  8. Site furnishings, as determined appropriate by the Commission staff as advised by the Design Review Board, including, but not limited to, lighting, seating (not less than 20 benches), tables, and trash receptacles (not less than 10 trash containers); and
  9. No fewer than fifteen public access and, when appropriate, Bay Trail signs, one at the beginning of each path on the site.
- G. At the public hearing at which the Commission considered and issued BCDC Permit No. 2002.02, on August 7, 2003, Mr. Sanders stated to the Commission: "With respect to open space, the entire marina is dedicated to the public. It is all water oriented. Of the 24 acres upland, anything that is not riprap or a building or boatyard is already public access. More than seven acres are public access, that is 40% of all the land." Minutes of Commission Meeting (Aug. 7, 2003) at p. 6.
- H. On November 21, 2005, the City of Redwood City issued Use Permit No. UP 2005-08 to Sanders for Westpoint Marina. Consistent with BCDC's permit, the project as described in Redwood City's Use Permit includes three phases: (1) Phase 1: Marina; (2) Phase 2: Boat Yard; and (3) Phase 3: Accessory and Commercial Uses. In addition to the marina basin, Phase 1 includes (but is not limited to) restrooms, vehicular parking, boat trailer parking, and a perimeter waterfront access path. Redwood City Use Permit Condition of Approval No. 8 states: "Public access to open space and parking shall be maintained at all times as well as parking facilities for visitors."

- I. On February 20, 2007, Sanders executed a staff-approved legal instrument that dedicates and imposes public access and open space restrictions on the required public access and open space areas at the Site, as required by Special Conditions II.B.2 and II.CC. On August 20, 2007, this document was recorded in San Mateo County as Instrument No. 2007-124895. See Permit Exhibit -- Public Access, attached hereto as Exhibit B.
- J. Occupancy of the marina berths commenced no later than September 2008, and, therefore, the Phase 1B public access areas were required to be open to the public, and the specified public access improvement were required to be installed, by that date.
- K. Amendment Three specified dates by which the work authorized by the original permit and the three amendments to the permit must commence, and further provided that all work must be diligently prosecuted to completion, and must be completed by August 12, 2010, unless an extension of time is granted by amendment of the permit.
- L. In December 2009, a member of the public notified a BCDC Commissioner that Sanders had approached him in the marina parking lot and informed him that Westpoint Harbor is private and there is no access to the water from the marina. As a result of this report, BCDC staff reviewed Sanders' permit, conducted a site visit, and identified a number of violations and categories of violations of the permit.
- M. In or about April 2011, BCDC staff commenced a review of the completed portions of the project; the review included site visits, review of the permit file, and a number of communications with Sanders. Based on that review, staff determined that there were a number of violations of the permit, as amended. By letter dated May 4, 2011, staff notified Sanders of the following 10 violations or categories of violations:
  1. **Permit Expiration.** In violation of Condition I.C. of the Authorization section of Amendment Three, all work authorized by the permit, as amended, had not been completed by August 15, 2010, and no extension of time had been requested or granted. Thus, in accordance with the Commission's regulations and Standard Condition IV.E, the amended permit has become null and void.
  2. **Plan Review.** Permit Special Condition II.A.1, entitled "Plan Review," provides, in part, that "[n]o work whatsoever shall be commenced...until final precise site, engineering, grading, architectural, public access, and landscaping plans...have been submitted to, reviewed, and approved in writing by or on behalf of the Commission." Though general and conceptual plans had been submitted and reviewed by the Design Review Board and approved by staff, in violation of Special Condition II.A.1, Sanders had not submitted to staff for final plan approval "complete plans, as requested, for any modification or other development authorized by Phase 1B or subsequent phases of the project, including but not limited to, boat docks, boat launch ramp, harbormaster building, public access improvements, signage, landscaping, and visual barriers to salt pond."

3. **Public Access Improvements.** In violation of Special Condition II.B.4, which requires that the Phase IB public access improvements be completed and accessible to the public prior to use of any authorized structure, including the marina berths (which occurred no later than September 2008) during site visits staff observed unauthorized signs in the vicinity of the parking lot entry that read: "MEMBERS AND GUESTS ONLY," "PRIVATE PROPERTY/NO TRESPASSING/VIOLATORS WILL BE PROSECUTED," and "WEST POINT HARBOR/PRIVATE FACILITY/Members and Guests ONLY." Staff also observed unauthorized "NO TRESPASSING" signs posted along the required public access perimeter pathway. Staff also noted the absence of any of the required BCDC Public Shore signs.

In addition, a portion of the required public access improvements had been completed, but not approved by final plan review. Staff also determined that in further violation of Special Condition II.B.4, none of the public access improvement required by that condition had been completed. Specifically:

- a. The 2,160-square foot, two-lane, signed public boat launch was not in place or was not accessible;
  - b. None of the parking spaces for vehicle and boat trailer parking were signed for public use;
  - c. None of the required public parking state signs were installed
  - d. The 85,300 square foot walkway, although partially constructed, was not completed and included unauthorized encroachments consisting of fire suppression equipment and at least one utility structure in the pathway;
  - e. The required pedestrian access connection from Pacific Shores Center along the shoreline located at the northwestern portion of the property had not been constructed, and the site connection was blocked with unauthorized fencing with at least one "No Trespassing" sign;
  - f. The required 10 guest berths were blocked by an unauthorized gate and were not identified with signage;
  - g. The public restroom required within the harbormaster building was not signed and open to the public;
  - h. Only a portion of the required landscaping was in place along the southern side of the marina, and most of the plants were either in very poor condition or dead;
  - i. Site furnishings, including 20 benches, tables, and 10 trash containers were not in place; and
  - j. None of the required 15 public access or Bay Trail signs were installed.
4. **Maintenance of Public Access Improvements.** In violation of Special Condition II.B.5, which requires the permittee to maintain all public access areas and improvements, some of the existing landscaping along public pathway was in poor

condition or dead, and portions of the sprinkler system were dysfunctional, missing the landscaped areas and instead saturating the public access perimeter path along southern section of marina.

**5. Required Signs and Buoys:**

- a. In violation of Special Condition II.H, Sanders had failed to install: (1) buoys adjacent to the navigation channel of Westpoint Slough to identify the “No Wake” speed zone; and (2) a buoy system within 100 feet from the salt marsh on Greco Island along the Westpoint Slough up to its confluence with Redwood Creek, with the buoys containing signs informing the public that public access into the marshlands of the San Francisco Bay National Wildlife Refuge (“Refuge”) is prohibited.
- b. In addition, in Violation of Special Condition II.I, Sanders failed to install signs at the boat launch and public access areas, or to coordinate the specific wording of such signs with the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and BCDC staff, informing the public of the access restrictions on Greco Island and other wetlands in the Refuge.

**6. Visual Barrier to Adjacent Salt Ponds.** In violation of Special Condition II.K, Sanders has failed to provide visual barriers between the active marina areas and the adjacent salt pond to reduce disturbance to water birds using the salt pond. (As stated in this condition, visual screening could be achieved through setbacks 85 to 90 feet in width or through a combination of reduced setbacks combined with landscaping or other visual barriers such as fence slates that obscure near range views of the salt ponds.)

**7. Marine Toilets.** In violation of Special Condition II.O.4, Sanders failed to submit to the Commission a copy of a berthing agreement that required, as a condition of the use or occupancy of any berth, among other conditions, that any berthed vessel be equipped with a marine toilet that contains an adequate holding tank or other approved device to preclude the discharge of wastes into waters of the marina.

**8. Live-Aboard Boats.** In violation of Special Condition II.P.5, Sanders failed: (a) to obtain plan approval from Commission staff (i) for the locations of the live-aboard boats at the marina or (ii) for the restrooms, showers, parking, and garbage disposal facilities to serve the authorized resident live-aboard occupants; and (b) to submit the required letter from the City of Redwood City stating that the lease of a berth for live-aboard purposes at the marina is consistent with local codes.

**9. Certification of Contractor Review.** In violation of Special Condition II.U, Sanders failed to submit certification of review by any contractor that, prior to commencing any grading or construction, such contractor had reviewed the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any required public access, open space, or environmentally sensitive areas.

**10. Notifying NOAA re: Nautical Charts.** In violation of Special Condition II.AA, Sanders failed to provide verification to BCDC staff that he had submitted certain specified information to the National Oceanic and Atmospheric Administration (“NOAA”), including but not limited to: (1) as-built drawings, blueprints or other plans that correctly depict the completed development; and (b) the geographic coordinates of the project using a differential geographic positioning system unit or other comparable equipment.

- N. Staff’s May 4, 2011 letter notified Sanders that standardized fines would begin to accrue pursuant to the Commission’s regulations (14 C.C.R. § 11386(e)) for each unresolved violation, if all of the alleged violations identified and described in the letter were not corrected within 35 days. Furthermore, the letter directed Sanders to complete, within 35 days of the date of the letter, specified items as to each violation or category of violations in order to resolve the violations and avoid standardized fines from accruing.
- O. In response to staff’s allegations that he was not providing required Phase 1B public access, Sanders claimed that Redwood City had prohibited such access. On May 6, 2011, Charles Jany with the Redwood City Planning Department wrote in an email to BCDC staff:

*“I understand BCDC is concerned about the provision for public access to pathways which makes sense on areas which are improved as planned and not under construction, however in the yet-to-be-developed Phase 2 and 3 areas (retail shops and boatyard) Mr. Sanders is required to control access until Phase 1 work is complete and the areas may be safely opened.*

*“As is it now Mr. Sanders is completing Phase 1 of the BCDC approved bay trail improvements and he expects these to be completed by summer 2011. Mr. Sanders currently provides public access to designated BCDC trail areas not under construction. Because of the current construction activities, allowing public access to the unimproved portion of the site is of concern since there is no lighting, irrigation is stubbed out and planting improvements are not delineating the BCDC area designated for public enjoyment.”*

Mr. Jany’s statement that Sanders was at that time providing public access to designated BCDC trail areas not under construction was not correct. Moreover, it appears from Mr. Jany’s email that Redwood City’s primary concerns was for public safety during active construction; Redwood City did not assert that Sanders was prohibited from providing required public access until all project construction, including Phases 2 and 3, was completed.

- P. As directed by staff in its May 4, 2011 letter, on or about May 23, 2011, Sanders submitted a request to amend the time deadline for completion of all work authorized by the permit, as amended. In addition, Sanders submitted numerous emails and memoranda to staff, including a letter dated May 26, 2011, that responded to the alleged violations identified and described in staff’s May 4, 2011 letter. BCDC staff responded to Sanders’ submittals through a combination of telephone calls, site visits,

emails, the issuance of Amendment No. Four to extend the deadline for completion of all work (discussed below), a meeting on July 29, 2011, and a letter dated September 1, 2011 outlining the status of the violations (also discussed below).

- Q. By a letter dated June 22, 2011, the Executive Director approved Amendment Four, which amended Condition I.C. of the Authorization section by extending the deadline for completion of all work authorized by the amended permit to August 15, 2014.
- R. Following a meeting between staff and Sanders on July 29, 2011, by letter dated September 1, 2011, staff provided a summary of the issues and concerns that had been raised in staff's discussions with Sanders and by his submittals. Staff's letter clarified which violations remained outstanding, provided additional guidance to bring the project into compliance with the permit, as amended, and specified dates for Sanders to achieve interim milestones to enable staff to determine that he was making good faith efforts to correct the alleged violations and thus avoid the initiation of a formal enforcement proceeding.
- S. Staff's September 1, 2011 letter indicated that the following alleged violations had been fully corrected or otherwise satisfactorily addressed by that time:
1. **Permit Expiration.** As noted above, on June 22, 2011, the Executive Director issued Amendment No. Four, which extended the deadline for completion of all work authorized by the permit, as amended, to August 15, 2014. Sanders resolved this issue without accruing a standardized fine.
  2. **Maintenance of Public Access Improvements.** Staff stated that standardized fines were not presently accruing for the violations of Special Condition II.B.5 (Maintenance) identified in staff's May 4, 2011 letter, which concerned the water-distressed appearance of certain landscaping and malfunctioning sprinkler heads that were soaking a path instead of adjacent vegetation, since no landscaping had been approved per plan review and the project was still under construction. Staff noted that Special Condition II.B.5 remained in place for all development authorized by the amended permit. Staff also stated that all landscaping at the marina must receive final approval during plan review and would require replacement pursuant to Special Condition II.B.5 if staff observed maintenance issues.
  3. **Marine Toilets.** Sanders had satisfied Special Condition II.O.4 by submitting a copy of the berthing agreement on July 29, 2011, and a document entitled "Harbor Rules and Regulations" on May 26, 2011. Prior to achieving compliance, standardized fines of \$3,000 had accrued for this violation.
  4. **Notifying NOAA re: Nautical Charts.** Sanders had satisfied Special Condition II.AA. by submitting to staff: (1) a copy of a letter he had sent to NOAA on February 7, 2009; and (2) copies of certain correspondence between NOAA staff, Coast Guard staff, and Sanders. Prior to achieving compliance, standardized fines of \$3,000 had accrued for this violation.

T. Staff's September 1, 2011 letter discussed the status of, and provided additional guidance regarding achieving compliance with, the following violations that remained outstanding at that time:

1. **Required Signs and Buoys.**

- a. Sanders had provided documentation that signs to identify the "No Wake" speed zone (3 M.P.H.) were in place, partially satisfying Special Condition II.H. To obtain after-the-fact approval of the existing buoys and signs, staff directed Sanders to submit for staff review and approval by October 31, 2011, site plans and color photographs of the buoys and signs installed in the harbor and open water channel so that staff could evaluate the design, placement, and locations of the buoys, signs and support structures. Staff stated that standardized fines of \$5,400 had accrued for this violation and that such fines would continue to accrue until the violation is resolved.
  - b. Staff had received notification from the U.S. Fish and Wildlife Service that the 35 signs Sanders had installed on Greco Island, in lieu of the buoy system required by Special Condition II.H, were acceptable to USFWS staff to warn the public of restricted entry and sensitive habitat. As a result, BCDC staff determined that the signage on Greco Island met the fundamental intent of Special Condition II.H, but also informed Sanders that the permit needed to be amended to reflect the proposed changes regarding the buoy and signage specifications. Staff directed Sanders to submit a letter by October 31, 2011 requesting permission to amend Special Condition II.H after-the-fact and to obtain approval of plans documenting the design and installation of the required signage. Staff stated that standardized fines continued to accrue on the violation of the signage requirement of Special Condition II.H.
  - c. Staff advised that Sanders could resolve the violation of Special Condition II.I, which required installation of informational signs advising the public of access restrictions on Greco Island and other wetlands in the San Francisco Bay National Wildlife Refuge, by submitting plans containing the required draft wording and design specifications to BCDC, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game for the approval of each agency. Staff stated that standardized fines of \$5,400 had accrued for this violation and that such fines would continue to accrue until the violation is resolved.
2. **Live-Aboards.** To achieve compliance with Special Condition II.P.5, staff directed Sanders to provide, by October 31, 2011: (a) a proposed plan, for staff approval, showing the location of each live-aboard boat at the marina; and (b) a letter from Redwood City, confirming that the lease for the berth of live-aboard boats is adequate and consistent with the City's codes. Staff stated that standardized fines of \$5,400 had accrued for the violation of the failure to provide the required information designating the location of live-aboard berths and that such fines would continue to accrue until the violation is resolved.

3. **Certification of Contractor Review.** For all future development authorized by the permit, as amended, staff directed Sanders to submit a signed copy of the form certifying that the general contractor in charge of the project has read and understands the amended permit and final stamped approved plans, as required by Special Condition II.U.
4. **Plan Review.** Staff directed Sanders to submit by October 31, 2011 complete sets of plans for each component of the marina, including landscaping (both as-built and proposed), construction layout, and detail plans, elevations, architectural, and engineering plans, as appropriate to each phase of the project. Staff indicated that it would review the plans and work with Sanders and his landscape architect and other representatives to ensure that the plans are fully consistent with the amended permit. In addition, staff emphasized that it was “imperative that plans are completed and approved before you move forward with any additional development or landscaping.” Staff stated that standardized fines of \$5,400 had accrued for violation of plan review requirement and that such fines would continue to accrue until Sanders obtained written approval for all of the authorized improvements associated with Phase 1B of the project that Sanders had either already constructed or needed to construct to resolve the violations of Special Condition II.B.4, Public Access, discussed below.
5. **Public Access Improvements.**
  - a. Staff informed Sanders that final written plan approval was needed for the decomposed granite pathway already constructed along the southern and northwestern border of the marina basin. In addition to “as-built” construction drawings for the completed pathway, staff directed Sanders to submit proposed construction drawings and design plans for all proposed pathways and other public access areas for the marina, including but not limited to the two lookouts at the mouth of the marina, the connection of the marina pathway to the Pacific Shores pathway, walkways, ramps, public boat launch, public restrooms, parking for boats, and other public access improvements required by Special Condition II.B.4.
  - b. As staff had previously discussed with Sanders, staff’s letter stated that upright signs, clearly visible to the public, were need for the required public parking spaces that Sanders had marked with paint on the pavement. Staff directed Sanders to submit and obtain staff approval of the required plans and specifications for the public parking spaces by October 31, 2011, and to install the required signs by December 31, 2011.
  - c. Staff once again notified Sanders to remove the privatizing signs at the entrance to the marina; specifically, the posted signs that read: “MEMBERS AND GUESTS ONLY,” “PRIVATE PROPERTY/NO TRESPASSING/VIOLATORS WILL BE PROSECUTED,” and “WEST POINT HARBOR/PRIVATE FACILITY/Members and

Guests ONLY.” Staff directed Sanders to remove all of the unauthorized signs, and to replace them with BCDC Public Shore (and public parking) signs, pursuant to staff-approved plans, by December 1, 2011.

- d. Noting that Sanders had indicated that the required public restrooms are signed and open for public use, staff advised Sanders that these restrooms were to remain open for public use during daylight hours and be clearly designated with BCDC staff-approved signs indicating that they are open for public use.
  - e. Staff stated that standardized fines of \$5,400 had accrued for violation of the requirement to complete the required Phase 1B public access improvements and that such fines would continue to accrue until Sanders obtained Commission approval of plans for and implemented all public access improvements required by Special Condition II.B.4.
  - f. Staff stated that completion of the public access pathway along the southern portion of the marina, beginning at the harbormaster’s building and continuing west and north along the perimeter of the marina basin, and connecting to the Pacific Shores pathway, should be completed and open to the public by no later than December 31, 2011 pursuant to BCDC staff-approved plans. Staff also indicated that the fence blocking access along the border between Pacific Shores and Westpoint Marina may remain in place until, and should be removed by, no later than December 31, 2011.
  - g. Staff noted that the second significant section of the public access pathway to be completed under Phase 1B and opened for public use is the pathway east of the harbormaster’s building. Staff indicated that this section of the public access pathway, as well as the public boat launch and parking area, with 15 signed vehicle and boat trailer public parking spaces, was to be completed by no later than April 1, 2012.
6. **Visual Barrier to Adjacent Salt Ponds.** As staff and Sanders had previously discussed, staff’s letter indicated that producing an aesthetically pleasing barrier of landscaping adjacent to the parking lot along the southern boundary of the marina to shield the adjacent salt point would meet the requirement of Special Condition II.K. Staff advised Sanders to include any action that he proposed to take to meet this condition on the overall detailed landscaping plans to be reviewed and approved by staff. Staff directed Sanders to submit plans for the visual barrier by no later than October 31, 2011. Staff also stated that standardized fines of \$5,400 had accrued for the violation of failure to install the visual barrier adjacent to the salt pond and that such fines would continue to accrue until Sanders installed the landscape barrier pursuant to staff-approved plans.
- U. During the Fall of 2011, BCDC’s Bay Design Analyst (“BDA”), Sanders, and his then consultant, BMS Design Group, were in frequent communication regarding the need for plans to comply with the plan review requirements of Special Condition II.A. On September 8, 2011, BCDC’s BDA sent Sanders a letter: (a) conditionally approving plans

labeled "Construction Details, Utilities, Lighting, Signing, Striping, and Dimensioning;" (b) approving architectural plans for the Harbormaster's building; and (c) providing comments regarding existing site conditions including concerns regarding the stability of the decomposed granite pathway, which appeared to be inadequately compacted, and concerns regarding tree placement and selection. On September 22, 2011, BCDC's BDA noted in an email to Sanders that the line of Monterey Cypress and Poplars planted along the shoreline edge were not envisioned in the DRB drawing submittals and present a problem for wildlife in the Refuge because the trees will serve as a perch for raptors that can prey on listed species; the BDA directed that these trees should be removed or potentially moved to another location on the Site. During a call with BCDC's BDA on November 2011, Sanders indicated he understood the need for plan review and approval. BCDC's BDA provided additional responsive emails and plan notes on October 1 and October 19, 2011.

- V. In February 2012, a member of the public notified BCDC that each time he had taken a walk at the marina, Sanders had given him permission to be on the private property as long as he remained on the driveway, but that during his most recent walk, Sanders came out "like a bulldog," told him to leave the private property, and stated that there "never has been and there isn't now any public access at this marina," and that the provision of public access is at his (Sanders') discretion.
- W. In March 2012, representatives of Kevin Stephens Design Group ("KSDG") contacted BCDC's BDA and stated that KSDG had been retained by Sanders to replace BMS Design Group. During a series of six meetings between KSDG and BCDC staff, including BCDC's BDA, that occurred on March 9, March 28, April 25, June 7, July 11, and August 24, 2012, all of staff's allegations and Mr. Sanders' concerns and responses were discussed and, to the extent possible, addressed, including but not limited to: (a) what would be necessary to facilitate the production of public access plans that would meet all of the Phase 1B permit requirements; and (b) the contents of an amended permit to "fix" many of the alleged violations by shifting the due dates for some of the public access into a later phase of the project, shifting the due date for various permit phases, and authorizing new work, such as a fence around the Phase 3 building sites. BCDC's BDA also provided responsive emails and plan notes dated March 12, March 20, June 8, July 11, July 20, July 25, September 10, October 29, November 12, and November 15, 2012.
- X. In May 8, 2012, BCDC staff (Brad McCrea, John Bowers, Ellen Miramontes, and Adrienne Klein) conducted an unannounced site visit and experienced first-hand Sanders' conduct toward unrecognized members of the public. As Ms. Klein was inspecting the northwestern corner of the property, Sanders approached her at a fast speed in a large backhoe in a threatening manner. [Notwithstanding the permit's requirements for public access and public access improvements, Sanders informed staff that tight control of the public at the property is necessary for the public's safety and to limit his liability.]

- Y. In June 2012, a member of the public notified staff that he was refused access to the boat launch to launch a kayak and was told he “in an unpleasant confrontation with a guy in a golf cart” that he was trespassing. In November 2012, and with the knowledge that public access was indeed required, this same person contacted Westpoint Harbor by telephone and was reportedly informed by Doug Fermon, Sanders’ marina manager, that there was no schedule for allowing public access. Also, in August 2012, another member of the public notified staff that the marina was denying public access at various locations, even though there was no construction going on that might constitute a hazard, and inquired whether the marina could legally deny access to areas indicated on BCDC’s public access permit map.
- Z. On July 18, 2012, Sanders submitted an application to amend the permit in certain respects, including as had been and was being discussed between BCDC staff and Sanders’ consultant, KSDG (as referenced above in the paragraph commencing “In March 2012...”). In response to the application, staff prepared a draft version of a proposed Amendment Five that it transmitted to Sanders on September 19, 2012. Among other requested changes to the permit, Amendment Five would have authorized Sanders to install temporary fencing around the Phase 3 building sites, which he claimed was necessary prior to allowing public access to the Phase 1B public access areas. Based on comments provided by, and discussions with, Sanders and his counsel, staff subsequently prepared three more versions of proposed Amendment Five, which it transmitted to Sanders on May 20, 2013 (version 2), June 6, 2013 (version 3), and September 4, 2014 (version 4). Staff prepared each of these versions in response to Sanders’ concerns with specific aspects of the permit’s authorization, special conditions, and findings, and also to resolve certain of the permit violations initially identified and described in staff’s letter dated May 4, 2011. Sanders declined to execute any of the four versions of proposed Amendment Five prepared by staff. Instead, Sanders and his counsel found fault with various provisions or specific language of each version, and raised additional issues upon review of each subsequent version, including, in some cases rejecting, or requesting further modifications to, changes that staff had made at the previous request of Sanders or his counsel.
- AA. As noted above, Sanders claimed that Redwood City was preventing him from providing required Phase 1B public access. In a memorandum to Sanders dated February 21, 2012, Mr. Jany of the Redwood City Planning Department stated, “areas undergoing construction and installation and/or where construction equipment is located must remain properly secured and posted until these improvements are completed and approved for public access, to the satisfaction of the City and other applicable agencies. This includes Phase 2 and 3 areas (future boatyard and retail areas).” To address Redwood City’s concerns, BCDC staff agreed to allow Sanders to install temporary fencing around the Phase 3 building sites. Every version of proposed Amendment Five, beginning with the first version transmitted to Sanders on September 9, 2012, authorized him to install temporary fencing around the Phase 3 building sites. Proposed Amendment Five also would have deferred the past-due deadline for providing the required Phase 1B public access until 120 after issuance of the proposed amendment.

- BB. On November 16, 2012, Sanders' consultant, KSDG, submitted to BCDC a revised set of signage plans, and on November 30, 2012, KSDG submitted a set of plans entitled "Westpoint Harbor Marina, Existing and Proposed Public Access Plans," which included landscaping plans, and also submitted a set of irrigation plans. The landscaping plans included the proposed location of the temporary fencing of the Phase 3 building sites that would have been authorized by proposed Amendment Five. On December 19, 2012, KSDG submitted a set of revised signage plans. BCDC's BDA provided responsive emails and plan notes dated November 20, November 27, and November 29, 2012, and on December 22, 2012, BCDC's BDA provided comments on the revised landscaping and signage plans that KSDG had submitted on November 30<sup>th</sup> and December 19<sup>th</sup>. Among other comments on the landscaping plan, BCDC's BDA directed Sanders to remove the Monterey Cypress and Poplar trees that he had planted without authorization adjacent to Westpoint Slough; as BCDC staff had previously communicated to Sanders by email (on September 22, 2011, as noted above), these trees present a problem for wildlife in the San Francisco Bay National Wildlife Refuge because the trees serve as perching sites for raptors that can then prey on listed species such as clapper rail, western snowy plover, and salt marsh harvest mouse living on Greco Island. As observed in a later Site visit by BCDC staff, and as noted below, Sanders failed to remove these trees; Sanders also failed to submit revised landscaping, irrigation, or signage plans incorporating the BDA's December 22<sup>nd</sup> comments to KSDG.
- CC. On November 21, 2013, BCDC staff conducted a Site visit and observed that, without obtaining written plan approval, Sanders had: (a) undertaken new path construction at the site, nearly completing the marina perimeter path, marina entrance overlooks, West Point Slough overlook, and the connection to Pacific Shores Center; and (b) installed additional landscaping. However the public access connection to Pacific Shores Center remained blocked by a fence and "no trespassing" signs. During the Site visit, staff found that the Site remains devoid of public shore signage and also observed fewer than the 20 required benches and 10 required trash containers. In violation of Special Condition II.B.4.d, which requires a 12 to 15-foot wide path along the marina basin perimeter and slough overlooks, Sanders has constructed paths, without plan review and approval, that are only 10-feet wide.
- DD. On August 15, 2014, the authorization under Amendment Four expired in accordance with Section I.C., which provides, in part, that "[a]ll work must also be diligently prosecuted to completion, and must be completed by August 15, 2014, unless an extension of time is granted by amendment of the permit.
- EE. On September 4, 2014, staff provided Sanders with both: (a) version 4 of proposed Amendment Five (which Sanders declined to execute, as noted above); and (b) a lengthy letter containing a comprehensive response to numerous specified letters and memoranda from Sanders or his counsel pertaining to the alleged permit violations. Among many other issues, staff's September 4, 2014 letter addressed the following unresolved violations:

1. **Permit Expiration.** The authorization under Amendment Four had expired on August 15, 2014. To preserve his authorization, and avoid continuing to work with an expired permit, Sanders needed to either execute proposed Amendment Five (version 4), which would have extended the date to complete all work, or seek an extension of completion time by a separate permit amendment.
2. **Plan Review.** Sanders had failed to obtain plan approval of Phase 1B of the project (generally consisting of the marina, harbormaster's building, and public access trail surrounding the marina) prior to commencing construction of these improvements. Staff directed Sanders to revise the landscape and signage plans, as BCDC's BDA had directed in November and December 2012, and to submit them for staff review and approval. Staff also advised Sanders that plan review and approval was required for site furniture, lighting, and irrigation plans.
3. **Public Access Improvements.** Sanders had failed to install and make available all of the required public access improvements including, but not limited to, a public access trail around the entire marina with irrigated landscaping adjacent to the trail, including a connection to Pacific Shores Center, three viewing areas, public restrooms, public shore parking spaces, and public shore signage. More specifically:
  - a. In response to Sanders' statements that the City of Redwood City's Use Permit for the project prohibits public access because the Site is unsafe, staff explained that a local government lacks authority to nullify a requirement imposed under state law, and that if the requirements of various agencies conflict, such conflicts can and must be resolved by seeking and obtaining an appropriate permit amendment. Furthermore, staff responded that, as set forth in proposed Amendment Five, staff had agreed to: (i) authorize a fence around the future Phase 3 building sites so that Sanders could address the City's safety concerns as well as his concerns about risk reduction while opening the west end of the Site to public access; and (ii) reduce the public access associated with Phase 1B by postponing portions of it (such as the public access along the northeast side of the marina basin) until Phase 2. Staff added that Sanders may install the fencing upon executing proposed Amendment Five and obtaining staff approval of plans for the fencing. In addition, proposed Amendment Five would have extended the deadline for providing all required Phase 1B public access improvements to 120 days from the date of issuance of the amendment.
  - b. In response to Sanders' statement that seating, trash containers, and dumpsters are installed on the path/roadway from the entrance road to the harbormaster's building, staff noted that during its November 21, 2013 site visit, there were fewer than the 20 required benches and 10 required trash containers between the entrance and the harbormaster's building. Staff directed Sanders to install all the required public access site furnishing immediately upon obtaining plan approval for those improvements because they were to have been installed prior to use of any marina berths.

- c. Sanders remained out of compliance with the landscaping requirements for Phase 1B because he had not yet obtained plan approval of landscaping plans or installed the balance of the required landscaping associated with Phase 1B.
- d. The public boat launch ramp was not in place or accessible, and remained overdue since the date of marina occupancy. Staff directed Sanders to sign the boat launch ramp as public and make the marina west of and including the boat launch ramp available to the public. (The new due date for the boat launch ramp, if Sanders had elected to execute proposed Amendment Five would be 120 days from the date of issuance of the amendment.)
- e. None of the 15 required public parking spaces for vehicle and boat trailer parking were signed for public use.
- f. Public shore parking signs had not been installed for any of the 12 parking spaces that the permit requires be designated exclusively for public use. Although Sanders had installed stenciling on the pavement at four of the parking signs, without plan approval, stenciling does not meet the permit requirements to install BCDC public shore signage pursuant to staff approved plans.
- g. The approximately 83,500-square foot public access walkway, although partially constructed, without plan review, was not completed and contained unauthorized encroachments of fire suppression equipment and at least one utility structure in the pathway.
- h. The pedestrian access connection from the Pacific Shores Center along the project shoreline had not been constructed and remained blocked by a fence and “no trespassing” signs. BCDC staff reported that it had confirmed with the onsite manager for Pacific Shores Center that there are no impediments to completing the trail connection between the two properties. Staff directed Sanders to remove the “no trespassing” signs and fencing, and to complete the connection from his property to the Pacific Shores Center.
- i. The required ten guest berths had not been made available for public access, including by people accessing Westpoint Harbor from land, and identified with public shore signage. (As previously offered by staff and requested by Sanders, proposed Amendment Five (version 4) would have transferred the requirement to provide public access to the water by pedestrians from the guest berth docks to the fuel dock. However, as noted above, and as further discussed below, Sanders declined to execute proposed Amendment No. Five.)
- j. Sanders had not installed any of the 15 required public access or Bay trail signs. In response to Sanders’ statements that Phase 1B of the project was incomplete and that signs could only be installed when Redwood City and Pacific Shores Center allowed access, staff noted, as previously discussed in the September 4, 2014 letter, that: (i) any conflicts between the BCDC permit and Redwood City requirements or issues related to the adjacent Pacific Shores Center are not valid reasons to violate the permit; (ii) BCDC staff had communicated with Redwood

City and the owners of Pacific Shores Center to address Sanders' concerns; and (iii) staff had prepared and provided a proposed Amendment No. Five (version 4) that, if executed by Sanders, would have extended the due date for some of the required public access improvements.

**4. Signs and Buoys to Alter Boaters of Sensitive Habitat.**

- a. Sanders had failed to: (i) install the required buoys adjacent to the navigation channel to identify the "no wake" zone; or (ii) the required buoy system informing the public that public access to the marshlands of the San Francisco Bay National Wildlife Refuge is prohibited. Sanders had also failed to apply for an amendment to the permit (as directed by staff in its September 1, 2011 letter) to authorize: (i) the signs reportedly installed by Sanders, in lieu of buoys, altering boaters not to trespass on Greco Island; or (ii) the signs installed by Sanders identifying the "no wake" zone. Staff noted that Sanders could resolve these violations of Special Condition II.H by executing proposed Amendment Five (version 4), which would change the requirements from installing buoys to installing signs.
- b. Sanders had failed to install informational signs at the public boat launch and other public access areas informing the public of access restrictions on Greco Island and other wetlands in the Refuge. If executed, Proposed Amendment Five would have extended the due date for making the public boat launch accessible, including associated signage requirements, to 120 days from the date of issuance of the amendment.

**5. Visual Barrier to Adjacent Salt Pond.** Sanders had failed to install a visual barrier between the marina parking lot and the adjacent salt pond. Staff directed Sanders to obtain plan approval of a proposed visual barrier prior to installing the visual barrier, and then installing the barrier pursuant to those approved plans. Staff also noted that Sanders appeared to be well on his way to gaining the necessary approval, as advised by BCDC's BDA in a series of email exchanges with KSDG in November and December 2012.

**6. Certificate of Contractor Approval.** Although staff had elected not to pursue any past violations of Special Condition II.U, staff reminded Sanders that neither he nor his contractors should be working without BCDC-approved plans, and that Sanders should have each contractor execute a Certificate of Contractor Review, which he should subsequently submit to BCDC staff.

**7. Live-Aboards.** Sanders has failed to provide a current list of the total number of live-aboard tenants and the location for each of them within the marina, notwithstanding prior direction from staff and staff's explanation of the basis for these requirements in the San Francisco Bay Plan. Staff once again directed Sanders to provide this information.

- FF. In addition to discussing the status of the alleged violations, and providing direction as to how Sanders could resolve the outstanding violations, staff's September 4, 2014, letter discussed the accompanying version 4 of proposed Amendment Five, which staff also provided to Sanders. In particular, staff's letter responded to numerous comments that Sanders and his counsel had made on the previous version of Amendment Five (version 3), described their requested revisions to amended permit that staff determined could be made administratively, and explained the basis for staff's determinations that certain requested revisions could not be made administratively.
- GG. Sanders declined to execute version 4 of proposed Amendment Five. Instead, Sanders and his counsel provided numerous comments to staff on version 4 of the proposed amendment regarding issues pertaining to interpretation of various terms of the permit and the ongoing alleged violations. Following exchanges of correspondence between Sanders or his counsel and staff concerning version 4 of the proposed amendment, staff prepared, and on September 14, 2015, transmitted to Sanders' counsel, another revised version -- version 5 -- of proposed Amendment Five. Shortly thereafter, staff learned that Sanders' counsel had recently died unexpectedly and that Sanders was no longer represented by counsel.
- HH. Sanders declined to execute version 5 of proposed Amendment Five, and, therefore, none of the modifications to the permit that would have been made by proposed Amendment Five went into effect. Furthermore, in disregard of staff's direction to resolve the ongoing violations, as provided in its letter dated September 4, 2014, Sanders failed to do any of the following:
1. To apply for a separate permit amendment to extend the expired August 15, 2014 deadline to complete all work authorized by the permit, as amended.
  2. To obtain final plan review approval of landscape and signage plans, or of Site furniture, lighting, and irrigation plans.
  3. To complete and make available the public access trail around the marina, including but not limited to the connection to Pacific Shores Center and three viewing areas.
  4. To apply for a separate permit amendment to install temporary fencing around the Phase 3 building sites, which Sanders contended was necessary prior to allowing public access to the required Phase 1B public access areas.
  5. To install all required site furnishings, including but not limited to 20 benches and 10 trash containers, and to install all required landscaping adjacent to the public access trail.
  6. To make the public boat launch ramp accessible to the public and sign the boat launch ramp as public.
  7. To install and sign the 15 required public parking spaces for vehicle and boat trailer parking.
  8. To install any public parking signs for any of the 12 parking spaces that the permit requires to be designated exclusively for public use.

9. To make the required ten guest berths available for public access, including by people accessing the marina from land, or to install public shore signs at the guest berths;
  10. To install any of the 15 required public access or Bay trail signs;
  11. To install: (a) the required buoys adjacent to the navigation channel to identify the “no wake” zone, or (b) the required buoy system informing the public that public access to the marshlands of the Refuge is prohibited, or to apply for a separate permit amendment to authorize: (a) the signs Sanders claimed to have installed, in lieu of buoys, to alter boaters not to trespass on Greco Island; or (b) the signs Sanders had installed identifying the “no wake” zone;
  12. To install informational signs at the public boat launch and other public access areas informing the public of access restrictions on Greco Island and other wetlands in the Refuge;
  13. To obtain plan approval for or install a visual barrier between the marina parking lot and the adjacent salt pond; or
  14. To provide staff with a current list of the total number of live-aboard tenants and the location for each of them within the marina.
- II. On December 15, 2014, Sanders submitted to BCDC staff a memorandum and various plans including a plan showing the “as-built” layout of Westpoint Marina and a number of drawings showing proposed Phase 2 Boatyard Buildings. The memo and accompanying materials included certain project changes that were not authorized by the current permit and would not have been authorized by proposed Amendment Five. BCDC’s BDA’s response to this submission, by letter dated January 29, 2015, stated, among other things, that: because Sanders had not signed proposed Amendment Five (version 4 had been prepared at that time), it would be premature to present Sanders’ materials to the Commission’s Design Review Board; because the plans were not consistent with the requirements of the current permit, they are not approved; and the letter would serve as plan review guidance. In addition, the BDA’s January 29, 2015 letter identified the following additional permit violations:
1. The as-built drawings showed that Sanders had constructed a substantially larger fuel dock than the “500-square foot fuel dock, including a pump-out facility,” authorized by the permit; and
  2. The as-built drawings showed that Sanders had constructed an unauthorized “rower’s dock” on the far western side of the marina.
- JJ. On July 20, 2015, Sanders applied for an amendment to the permit to amend, in certain respects, the authorization for construction, use, and maintenance of boatyard facilities (*i.e.*, Phase 2 of the project). In processing Sanders’ request to amend the permit as to Phase 2 of the project, staff requested that Sanders agree to integrate the provisions

version 5 of proposed Amendment Five together with the requested permit amendment for the boatyard facilities. Sanders' declined staff's request and indicated that his sole concern was to obtain an amended authorization to construct the boatyard facilities.

- KK. On August 18, 2016, the Executive Director issued Amendment Six, Exclusive of Amendment Five (BCDC Permit No. 2002.002.06). As requested by Sanders, Amendment Six amended the authorization for construction, use, and maintenance of boatyard facilities (*i.e.*, Phase 2 of the project) and specified the requirements for further plan review for those authorized improvements. Amendment No. Six did not incorporate any of the provisions of version five (or any earlier version of) proposed Amendment Five. However, Amendment Six: (1) extended the deadline for completion of all work authorized under the permit, as amended, to August 15, 2019; (2) revised the authorization for a 500-foot fuel dock to instead authorize a 2,600-square-foot service dock, including fuel and pump-out facilities; and (3) revised the authorization and public access requirement for a 2,160-square-foot public boat launch to instead authorize a 3,600-square-foot public boat launch and a 670-square-foot boat dock.
- LL. On October 22, 2016, BCDC's Chief Counsel, Marc Zeppetello, visited West Point Harbor. His observations include the following:
1. At the entrance to the marina, just off Seaport Boulevard, and further along the entrance road, there were two sets of several signs; one sign in each set read: "Westpoint Harbor, 1529 Seaport Blvd, Redwood City;" a second sign, just below the first, read: "Members and Guests Only." (*See Exhibit C, Site Photographs.*) There was not a single public shore sign or a public parking sign anywhere along the entrance road, at or along the parking lot, or at or along any of the paths in the Phase 1B public access area.
  2. Toward the western end of the parking lot, the path around the perimeter of the marina, that is required to be open for public access, was blocked with an obstruction on which were posted two signs; one read: "Restricted Area; Unauthorized Persons Keep Out; RWC UP 2005-08;" the other read: "Construction Area, Keep Out." At the same location, to the left of the trail was a sign that read: "Restricted Area, Authorized Personnel Access for RWC Police Dept, RWC Fire Dept, USGC, U.S. Coast Guard, RWC 2005-08;" to the right of the trail, another sign read: "Area Closed, Future Extension of the San Francisco Bay Trail." (*See Exhibit C, Site Photographs.*) There were no construction activities taking place, and no evidence of construction, in the vicinity of these signs or anywhere around perimeter of the marina basin.
  3. Adjacent to the harbormaster's building, the parking lot was blocked with a sign that read: "Restricted Area, Unauthorized Persons Keep Out, RWC UP 2008-08." Nearby were parked two golf carts marked "Harbor Security." (*See Exhibit C, Site Photographs.*)

4. Adjacent to the harbormaster's building, the path around the perimeter of the marina, that is required to be open for public access, was blocked with an obstruction on which was posted a sign that read: "Restricted Area; Unauthorized Persons Keep Out; RWC UP 2005-08."
  5. The restrooms at the harbormaster's building, which are required to be open and available to the public, were locked and not posted as public restrooms.
  6. At the east end of the parking lot, beyond the "Restricted Area" sign, the pavement at four parking spaces was stenciled "Public Parking." However, there were no signs designating those as public parking spaces.
  7. To the north of the east end of the parking lot, the path around the eastern perimeter of the marina, that is required to be open for public access, was blocked with a gated chain-link fence. A sign to the right of the path read: "Area Closed, Future Extension of the San Francisco Bay Trail." (See Exhibit C, Site Photographs.)
  8. There was construction equipment in the fenced Phase 2 area of the Site, north and east of the parking lot, reflecting that Sanders had begun construction of the boatyard facilities authorized by Amendment Six.
- MM. During his Site visit, as he was standing near the harbormaster's building in front of the "Restricted Area" sign, Mr. Zeppetello was approach by Sanders who asked: "Can I help you?" After Mr. Zeppetello identified himself as being with BCDC, Sanders invited him to view the marina from the upper floor of the harbormaster building and provided certain information regarding the history of the marina and associated permitting issues. When asked why the public access trails were closed, Sanders stated that Redwood City prohibits public access for safety reasons, due to construction. Sanders offered that anytime Mr. Zeppetello wanted to visit the marina, he should call and let Sanders know. Mr. Zeppetello expressed concern that the public does not know that there is public access at the marina and would not feel welcome there.
- NN. After visiting the Site, Mr. Zeppetello determined that the letters and numbers "RWC UP 2005-08" that appear on certain signs he had observed at the Site (signs which also included terms such as "Restricted Area," "Unauthorized Person's Keep Out," and/or "Authorized Personnel Access") refer to Redwood City's Use Permit for Westpoint Marina, File Number UP 2005-08. Condition of Approval No. 8 of Redwood City's Use Permit provides: "Public access to open spaces and parking shall be maintained at all times as well as parking facilities for visitors." Thus, Sanders had erected and maintained numerous signs inaccurately and misleadingly citing Redwood City's Use Permit to prohibit public access to the required Phase 1B public access areas.
- OO. Prior to commencing construction of the Phase 2 boatyard facilities, Sanders failed to submit a written certification of review by the general contractor in charge of such construction that the contractor had reviewed the requirements of BCDC permit requirements and the final BCDC-approved plans, in violation of Special Condition II.U. Sanders failed to submit the required certification of contractor review even though: (1) Sanders' previous failure to comply with Special Condition II.U was one of the violations

stated in BCDC's May 4, 2011 letter to Sanders; and (2) in staff's letter dated September 4, 2014, staff reminded Sanders that in the future he should have each contractor execute such a certification, which he should subsequently submit to staff.

PP. On November 17, 2016, Sanders' new counsel, David Smith, contacted Brad McCrea and Marc Zeppetello to invite BCDC staff to visit Westpoint Harbor.

QQ. On December 8, 2016, BCDC staff (Messrs. McCrea and Zeppetello, Adrienne Klein, Chief of Enforcement, and Andrea Gaffney, Bay Design Analyst) visited Westpoint Harbor and walked around the marina with Sanders and Mr. Smith. BCDC's staff's observations included the following:

1. The unauthorized signs observed by Mr. Zeppetello on October 22, 2016 remained in place, including the "Members and Guests Only" signs at the entrance to the marina, and the signs on or adjacent to the public paths and adjacent to the harbormaster's building that cite Redwood City's Use Permit as a basis for prohibiting public access. However, since October 22, Sanders had posted two or three "Public Shore" signs at scattered locations, without plan review or approval.
2. Throughout the Site, there were various unauthorized structures items located in parking spaces, which are shared public shore and marina tenant parking spaces, or in public access areas. The unauthorized structures or items in the parking lot or in public access areas included, but were not limited to: (a) a solar and wind-powered container; (b) a parked fire truck; (c) a wooden fenced area south of the parking lot that contains a garden and may also be used for storage; (d) a wooden storage shed, numerous planters, and stored construction material all also south of the parking lot; and (e) and an asphalt pad of unknown purpose. (See Exhibit C, Site Photographs.)
3. There was an unauthorized "rower's dock" in place as an extension of one of the guest docks at the western side of the marina, and there were numerous small boats stored on the dock and adjacent upland, partially in the public access area and a view corridor and partially on a future Phase 3 building site. In addition, the business that is using the unauthorized rower's dock was also using portions of the nearby parking lot for a number of unauthorized accessory facilities including a large storage container, a wood-enclosed changing or storage area placed over designated public parking spaces, picnic tables, and a portable toilet. (See Exhibit C, Site Photographs.)
4. The public path at the northwestern portion of the Site, between the adjacent Pacific Shores property and the marina basin, and portions of the paths around the marina basin, were in a severely deteriorated condition. (See Exhibit C, Site Photographs.)
5. The unauthorized gate and fence between the Pacific Shores property and the Site appeared to be new and more extensive than what Ms. Klein and Mr. McCrea recalled from an earlier Site visit. (See Exhibit C, Site Photographs.)

6. It appeared to Ms. Klein that Sanders had conducted additional tree planting, without plan approval, along the marina basin and in the area between the parking lot and the adjacent Cargill salt pond. In addition, the Cypress trees along the slough remained in place even though BCDC's former BDA had asked repeatedly (on 9/22/11 and 12/22/12) that they be removed to protect species from predation.
7. The restrooms at the harbormaster building, which are required to be open and available to the public, were locked and not posted as public restrooms.
8. There were three unauthorized floating docks, each supporting a large storage tent, on the east side of the marina basin. (See Exhibit C, Site Photographs.)
9. Construction was in progress (although not during the Site visit) in the Phase 2 boatyard areas, precluding access to these areas. There were two new PG&E transformers in the public access areas adjacent to the Phase 2 boatyard areas; one of the transformers impacts Bay views toward Westpoint Slough.
10. Locked gates had been installed without authorization at the gangways leading to the boat docks, including to the guest docks that are part of the dedicated public access area, and each gate was posted with an unauthorized sign stating "Members and Guests Only; Westpoint Harbor Club."

RR. At the conclusion of the December 8, 2016 Site visit, Mr. Zeppetello stated that he had begun preparing a Violation Report and Complaint for the Imposition of Administrative Civil Penalties, and that while certain outstanding issues might be resolved through further amendments to the permit, resolution of the enforcement issues raised by the alleged violations would include issuance of an administrative order.

SS. Also at the conclusion of the December 8<sup>th</sup> Site visit, Sanders asked if BCDC would entertain a permit amendment to allow temporary fencing that would run contiguous with the closed public access trail along the western shore of the marina basin; Sanders stated that if he could obtain authorization to construct a fence around the Phase 3 building sites, he could open access by the end of January. Later that day, Mr. McCrea responded to Sanders by email stating that BCDC would process an amendment request to install temporary fencing and directing Sanders to submit the amendment request to BCDC's Chief of Permits, Jaime Michaels.

TT. On December 13, 2016, Sanders responded to Mr. McCrea by email stating that he would contact Ms. Michaels to process an amendment request to add a temporary fence on the western side of the marina. Sanders also stated he would contact Pacific Shores Center to seek to open the path between the two properties.

UU. On January 5, 2017, BCDC received Sanders' request (dated January 4<sup>th</sup>) to amend the permit (Amendment Seven) to authorize installation of a temporary fence in the Phase 3 building site areas.<sup>1</sup> His request also sought: (1) authorization to construct, use and maintain two decks to overlook the marina and rower's dock; and (2) correction of what Sanders claimed was an error in Amendment Six in failing to reflect that Amendment

---

<sup>1</sup> All the following dates cited herein are in 2017 unless otherwise noted.

Three had moved a rower's boathouse from the east to the west side of the marina. By letter dated February 6, BCDC staff found Sanders' application to be incomplete and requested additional information. With respect to the temporary fencing, staff requested that Sanders indicate the area to be encompassed by the fence and "how close to the required public access trail that the fence will be (there should be a gap between the fence and the path." On February 21, Sanders responded to staff's February 6 letter, stating that the "temporary fence will two feet away from the edge of the path and enclose the Phase 3 construction areas from Seaport Boulevard along the marina and shoreline path to Pacific Shores' property." Sanders' response also: (1) withdrew the proposed decks from the amendment application because they would delay the application; and (2) continued to request that the amendment correct an alleged error regarding the location of the rower's boathouse. As discussed below, on March 23, staff responded to Sanders and requested additional information concerning the amendment request.

- VV. On January 5, BCDC's Chief Counsel and Sanders' counsel, David Smith, met to discuss the history of the Site and marina project, various permit conditions and amendments, and the permit violations alleged by BCDC. This was the first of a series of discussions between Mr. Zeppetello and Mr. Smith in an effort to resolve certain violations and narrow the issues in dispute. One of the many issues discussed at the January 5th meeting was Sanders' continuing failure to provide required information regarding the number and location of live-aboard boats at the marina. Following Mr. Zeppetello's clarification of the necessary information, on January 20, Sanders provided, through his counsel, a letter captioned "Live Aboard Report 2016/17," dated December 2, 2016, containing information regarding the location and number of live-aboards at the marina. This information satisfied the requirement of Permit Special Condition II.P.1 (and also demonstrated compliance with Special Condition II.P.3) and resolved this violation.
- WW. On February 22, 2017 BCDC staff participated in a conference call with Redwood City's Assistant City Manager and Community Development Director, Aaron Aknin, and City Attorney, Veronica Ramirez, to discuss public access issues at Westpoint Marina. Mr. Aknin and Ms. Ramirez acknowledged that Redwood City's Use Permit requires public access at the Site to be maintained at all times, but also noted that, in the past, Redwood City staff had been concerned about allowing public access during active construction activities. Mr. Aknin and Ms. Ramirez were not aware that Sanders was continuing to prohibit public access even though there was no longer active construction at the Site (other than in fenced the Phase 2 boatyard area) or that Sanders had erected numerous signs around the Site citing Redwood City's Use Permit as the basis for restricting public access. Mr. Aknin also stated that Redwood City preferred that the Phase 3 building sites be fenced to prevent people from entering or using those undeveloped areas.

On March 13, 2017, Ms. Ramirez and BCDC's Chief Counsel had a further conversation regarding public access issues, after Ms. Ramirez had an opportunity to follow up with Redwood City staff. Ms. Ramirez reported the City had determined that: (1) there is no basis for not opening the public pathways; (2) all signs citing Redwood City's Use Permit

as a basis for restricting public access at the Site should be removed; (3) the gate preventing access to the Site from the adjacent Pacific Shores property should be removed; and (4) the City preferred that fencing be installed to prevent access to the Phase 3 building sites.

- XX. On March 6, BCDC received BCDC received a Public Records Act (“PRA”) request from attorney Brian Gaffney, on behalf of his client, Citizens Committee to Complete the Refuge (“CCCR”), for copies of “all records” concerning the Westpoint Harbor Marina (BCDC Permit No. 2002.02, as amended). BCDC’s Chief Counsel provided an initial response to the PRA request on March 8, including a copy of the current permit, Amendment Six, and also suggested that CCCR consider narrowing the scope of its request. BCDC staff subsequently provided additional responsive documents to CCCR and its counsel, and also made BCDC’s files on the Westpoint Harbor permit and staff’s enforcement investigation available to CCCR representatives for inspection and copying.
- YY. On March 10, Mr. Gaffney submitted a letter, on behalf of CCCR, to the Executive Director urging BCDC to bring Sanders into immediate compliance with the BCDC permit for the Site. Mr. Gaffney’s letter alleged that Sanders:
1. Had failed to install and maintain buoys adjacent to the navigation channel in Westpoint Slough to identify the “No Wake” speed zone, delineate the center of the navigation channel for adequate draw, and discourage boats from deviating out of the navigation channel, as required by Special Condition II.H;
  2. Had failed to install and maintain a buoy system 100 feet from the salt marsh on Greco Island along Westpoint Slough up to its confluence with Redwood Creek, with buoys containing signs informing the public access into the marshlands of the San Francisco National Wildlife Refuge (“Refuge”) is prohibited, as required by Special Condition II.H;
  3. Had failed to install and maintain information signs at the public boat launch and other public access areas at the Site informing the public of the access restrictions on Greco Island and the other wetlands in the Refuge, as required by Special Condition II.I.

Mr. Gaffney’s letter stated that areas directly adjacent to the Site, including Greco Island, are home to several listed wildlife species, and expressed concern that permit compliance is important because of potential adverse impacts to listed species. Mr. Gaffney’s letter also noted that during 2016, Sanders and/or the marina operator had “allowed PROP ferry service to utilize the marina for up to four round trips per day,” as further discussed in an accompanying letter from CCCR member Matt Leddy. PROP’s website indicates that it is a private ferry service that plans to have routes that will transit between Redwood City and San Francisco, Berkeley and Alameda, respectively.

- ZZ. Mr. Leddy’s March 10 letter documents his observations at the Site from 2012 to February 27, 2017, with supporting photographs, regarding the absence of buoys in Westpoint Slough and the introduction of commercial ferry service in the Slough in 2016. One photograph, taken on June 5, 2016, shows a buoy in the Slough marked

“Slow 10 MPH,” in violation of Special Condition II.H, which requires Sanders to install and maintain buoys to identify the “No Wake” speed zone (In contrast to the marking on this buoy, in June 2011, Sanders had submitted a photograph of a sign marked “3 M.P.H. No Wake.”) Two photographs taken on June 6, 2016, show a ferry in the Slough generating a substantial wake and traveling at a speed that Mr. Leddy estimated to be greater than 10 mile per hour. Furthermore, Mr. Leddy states that, due to the lack of public access at the Site, he did not know if signs are posted at the boat launch and other public access areas regarding the sensitive nature of the Greco Island area and the access restrictions on Greco Island and other wetlands of the Refuge. However, he noticed in September 2016 that a new business, 101 SURF SPORTS, had begun operating at the (unauthorized) rower’s dock at the Site, that the company’s website ([www.101surfsports.com](http://www.101surfsports.com)) advertises stand up paddleboard and kayak rentals, lessons, and tours, and that in the photos on the website of the rower’s dock used by the company there are no signs visible advising customers of the access restrictions on Greco Island and other wetlands in the Refuge.

AAA. As a result of CCCR’s PRA request and Mr. Gaffney’s follow-up communications with BCDC’s Chief Counsel, on March 24, Mr. Gaffney submitted a letter to the BCDC’s Chief Counsel identifying additional alleged violations of the permit. Based on the lack of any records in BCDC’s files documenting compliance, Mr. Gaffney’s letter raised questions whether Sanders had failed to comply with:

1. **Shorebird Roost Habitat Mitigation.** Special Condition II.F requires Sanders to provide, prior to commencement of work authorized under Phase 2 (*i.e.*, the boatyard), approximately 3.0 acres of shorebird roost habitat mitigation, to replace such habitat lost as a result of the project. Special Condition II.F. further provides that the habitat creation plans shall be reviewed and approved by or on behalf of the Commission after consultation with the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife.
2. **Non-tidal Wetland Mitigation.** Special Condition II.G requires Sanders to provide mitigation for the loss of 0.27 acres of non-tidal wetlands located in a drainage ditch on the Site by enlarging the wetlands in the remainder in the ditch and creating additional wetlands for a replacement ratio of at least 1:1. Special Condition II.G. further provides that the habitat enhancement plans shall be reviewed and approved by the U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and by or on behalf of the Commission.

Mr. Gaffney’s March 24 letter also raised the issue whether Sanders had violated Special Condition II.L, which requires him to “select and limit landscaping to species that are not considered to be problematic invasive exotics by the California Exotic Pest Plant Species Council.”

BBB. By letter dated March 23, staff responded to Sanders regarding his request to amend the permit to install temporary fencing and correct an alleged error regarding the location of the rower’s boathouse. In response to Sanders’ statement that the temporary fencing would be set back two feet from the path, staff requested that

Sanders propose a further setback of at least four feet from the public access pathways and view corridors. In addition, staff explained that the rower's boathouse could be added to the permit via an amendment, but not as a correction of an alleged error, and requested additional information regarding the proposed rower's boathouse.

- CCC. On April 14, staff received a memorandum from Sanders, dated April 10, responding to staff's March 23<sup>rd</sup> letter. Sanders recognized staff's request for a four-foot setback from the path but claimed, erroneously, that "as previously discussed and agreed with BCDC staff the fence setback is 2' for several existing infrastructure reasons." Sanders further claimed, erroneously, "this fence design and location were previously approved by BCDC (Ellen Miramontes/KSDG August 2012) and Redwood City." Sanders also noted that based on staff's comments regarding the rower's boathouse, "it would be more expeditious to realizing the temporary fence" to confine the amendment request to the temporary fencing and address the rower's boathouse separately.
- DDD. After receiving Sanders' April 10<sup>th</sup> memorandum, staff reviewed the proposed landscaping plan prepared by KSDG, originally dated August 19, 2012 and revised September 11, 2012, which shows Sanders' previously-proposed location of temporary fencing of the Phase 3 building sites that staff had been prepared to authorize as part of proposed Amendment Five (which Sanders declined to execute). In contrast to the temporary fencing plan submitted with Sanders' April 10 memorandum (which indicated that the temporary fencing would be located two feet from the paths, three feet from the road, and 10 feet from the future buildings), the proposed location of the temporary fence on the proposed landscaping plan prepared by KSDG included: (1) a larger setback on the interior (*i.e.*, landward) side of the existing path between the Pacific Shores property and the marina basin; (2) setbacks on both sides of a new path to be constructed from the existing path along Westpoint Slough near the Pacific Shores property directly toward the marina basin; (3) a larger setback on the interior (*i.e.*, landward) side of the path between the Slough and the parking lot; and (4) larger setbacks adjacent to the parking lot and along the road. Moreover, KSDG's proposed landscaping plan shows that all of the strips of land along each of the referenced setbacks would be landscaped, as authorized by Section I, Phase 1B, paragraph 7 and required by Special Condition II.B.4.g of the permit. Although BCDC's (former) BDA had not approved KSDG's proposed landscaping plan, and Sanders had failed to revise the plan in response to the BDA's comments (provided on December 22, 2012, as discussed above), the BDA had not objected to the proposed location of the temporary fencing because it would accommodate landscaping along all the paths, within the boundary of the dedicated public access area. Therefore, to expedite installation of the temporary fencing, staff determined to authorize the fencing at the location and with the setbacks from the paths and road as shown on KSDG's proposed plan, rather than engage in further correspondence with Sanders regarding an acceptable location for the fencing.
- EEE. During a phone call with Sanders' counsel, David Smith, on April 14, BCDC's Chief Counsel informed Mr. Smith that, prior to commencing work in the Phase 2 boatyard areas, Sanders had failed to submit a Certification of Contractor Review as required by Special Condition II.U (*i.e.*, a certification that the contractor had reviewed and

understands the permit's requirements and the final BCDC-approved plans). BCDC Chief Counsel expressed concern over Sanders' continuing disregard of this permit condition and noted that Sanders' prior failure to comply with Special Condition II.U was one of the original violations first raised by BCDC staff in its May 4, 2011 letter, and was also discussed in subsequent BCDC correspondence to Sanders. On April 24, Sanders' architect, Dawn Jedkins, submitted a Certification of Contractor Review, dated April 18, 2017, for the Phase 2 work.

FFF. On May 9, the Executive Director issued Amendment Seven (BCDC Permit 2002.002.07) to authorize the installation of temporary fencing as specified in the landscaping plan prepared by KSDG dated August 19, 2012 and revised September 11, 2012. Staff's transmittal letter to Sanders accompanying Amendment Seven noted that the fencing plan submitted with Sanders' April 10 memorandum would conflict with the permit's requirements for Phase 1B public access and associated improvements within the public access area. Staff's May 9 letter also stated that:

*staff has accommodated your request for temporary fencing even though such fencing is neither required nor necessary to allow access to the Phase 1B public access areas that were required to be accessible to the public since occupancy of the marina berths, or no later than September 2008. However, the installation of temporary fencing shall not reduce the amount of dedicated public access currently required under the permit or prevent the installation of required improvements within the Phase 1B public access areas, including landscaping.*

GGG. On May 10, BCDC staff met with Sanders' counsel, David Smith, to answer questions and provide clarification regarding certain alleged violations and permit requirements. At the meeting, BCDC's Chief Counsel informed Mr. Smith that Amendment Seven requires setback distances between the temporary fencing (of the Phase 3 building sites) and the pedestrian paths, parking lot, and roadway that are greater than the setback distances requested by Sanders, and that in some areas the location of the authorized temporary fencing is different than requested. He further stated that if Sanders declined to execute Amendment Seven and declined to open all Phase 1B public access area immediately upon installation of the temporary fencing, the Executive Director would temporarily defer finalizing a Violation Report/Complaint and would instead promptly issue an Executive Director Cease and Desist Order requiring Sanders to open all Phase 1B public access areas regardless of whether Sanders installed the authorized temporary fencing. BCDC's Chief Counsel requested that, by no later than the following Monday, May 15, Sanders:

1. Return by email a scanned copy of the executed signature page of Amendment Seven;
2. Provide an estimated timeframe for installation of the temporary fencing;

3. Commit to remove all unauthorized signs and open all Phase 1B public access paths and areas immediately upon installation of the temporary fencing (including removing the gate between the Site and the adjacent Pacific Shores property);
4. Commit to a timeframe for submitting for plan review a proposed signage plan showing the proposed locations and content of all required public access signs; and
5. Commit to ensuring that the public restrooms at the harbormaster's building remain open (*i.e.*, unlocked) and available for public use.

HHH. By an email dated May 15, Mr. Smith returned the signature page of Amendment Seven executed by Sanders. Mr. Smith explained that Sanders was not yet able to provide an estimate of when the fence would be installed; two contractors had both noted a backlog of approximately six weeks before they could begin work. However, once work commences, Sanders estimated "it would take approximately one week, and certainly not more than two (weather permitting), to get the fence constructed." Mr. Smith's May 15 email, as supplemented and clarified by a May 22 email, also committed:

1. Concurrent with the installation of the temporary fencing, unauthorized signs will be removed and Phase 1B public access paths and areas will be opened (including removal of the gated fence between the Pacific Shores property and the Site);
2. By June 6, Sanders would submit a proposed signage plan for review by staff for all required public access signs; and
3. The public restroom in the harbormaster's building will be unlocked and unrestricted during daylight hours effective immediately.

III. In a phone conversation with BCDC's Chief Counsel on May 12, Mr. Smith asked whether BCDC staff would approve installation of one of more gates in the temporary fence to provide access to the Phase 3 building sites. BCDC's Chief Counsel responded that staff would consider authorizing one gate for emergency access by plan review. The fencing plan submitted by Sanders on April 14 shows two requested gates in the temporary fence, but such gates and their intended purpose had not been discussed in the correspondence between staff and Sanders in connection with his application to amend the permit, and Amendment Seven does not authorize any gates in the fence. Mr. Smith's May 15 email stated that Sanders was now requesting a total of three gates in the temporary fencing, and his May 15 and May 22 emails provided further information regarding the requested gates.

JJJ. By email dated June 9, staff agreed to authorize by plan review one 12-foot gate capable of allowing vehicle access for emergency access purposes (as well as access to utilities) at the western corner of the site, near the entrance/exit to the marina, and specified the additional information needed concerning this gate to provide such approval. Staff declined, on numerous grounds, to authorize by plan review a second 12-foot gate capable of allowing vehicle access or a four-foot gate both of which would reportedly be used to allow access for police, fire, and other agency personnel, vehicles, and equipment. If Sanders wanted to seek authorization for the additional gates, staff

directed him to do so by submitting a request to amend the permit with supporting information so that the amended permit could specify the terms of use (*i.e.*, frequency, duration, and whether vehicle parking would be allowed inside the temporary fencing) and might also require mitigation to compensate for the impacts on existing required public access.

- KKK. On May 23, CCCR's counsel, Mr. Gaffney, submitted a letter to the Executive Director alleging a number of permit violations in regards to: (1) failure to install fencing to prevent access into adjacent salt ponds and wetlands; (2) failure to provide required shorebird roost habitat mitigation; (3) failure to provide the required visual barrier between the marina and the adjacent salt pond to protect waterbirds from human disturbance; (4) failure to provide required non-tidal wetland mitigation; and (5) failure to provide required landscaping; and (6) failure to provide required public access. CCCR urged BCDC to consider issuance of an immediate cease and desist order and imposition of civil penalties, and also asked that this matter be placed on the Enforcement Committee's agenda for consideration at the earliest possible date.
- CL. On May 24, CCCR's counsel, Mr. Gaffney, submitted a letter to the Executive Director specifically related to Sanders' failure to install and maintain signs and buoys, as required by the permit, to inform the public of the access restrictions on Greco Island and other wetlands in the Refuge. Mr. Gaffney enclosed a number of photographs taken on April 9, 2017, showing that: (1) there are only three buoys in the Slough; (2) none of the buoys state "No Wake" as required by the permit, but one buoy states "Slow, 10 MPH," in violation of the permit; (3) no buoys contain signs about restricted access or sensitive habitat; and (4) there is a single sign adjacent to Greco Island stating "Sensitive Wildlife Habitat / Do Not Enter," but the sign is so faded that it is almost illegible; (5) there are two other faded signs on Greco Island with no writing visible; and (6) there is no evidence of signs along the majority of the perimeter of Greco Island. In addition, Mr. Gaffney's letter noted that there are no posted signs about access restrictions on Greco Island and other wetlands at the Refuge at the (unauthorized) rower's dock at the Site used by 101 Surf Sports for paddleboard and kayak rentals, and that 101 Surf Sports allows people to bring dogs on rented paddleboards.
- CLI. On June 7, Sanders submitted a proposed public access signage plan to BCDC staff for review. In a transmittal memorandum, Sanders stated that the proposed signage plan was a revised version of the proposed signage plan previously submitted in 2012 with changes to reflect comments from BCDC's former BDA on the earlier plan as well as signage from Amendment Six.
- NNN. On June 8, Sanders' fence contractor began installation of the temporary fencing of the Phase 3 building sites as authorized by Amendment Seven.
- OOO. On June 12, BCDC's Chief Counsel informed Sanders' counsel, Mr. Smith, in a phone conversation, that the proposed signage plan submitted by Sanders was facially inadequate and failed to comply with BCDC's Public Access Signage Guidelines. Mr. Zeppetello also noted that contrary to BCDC's BDA's request at staff's meeting with Sanders' counsel on May 10, Sanders had prepared the proposed signage plan without

first consulting with the BDA. Mr. Zeppetello requested that Sanders withdraw the proposed signage plan and commit to submit a further revised signage plan, prepared by a professional, by a date certain, such as June 30. During this call, Mr. Zeppetello raised three other issues:

1. The proposed signage plan includes a sign for the public boat launch that, among other information, states that public access is restricted on Greco Island and other Refuge wetlands. Mr. Zeppetello asked whether Sanders had coordinated with USFWS and the California Department of Fish and Wildlife regarding the wording of this sign, as required by the permit, and, if so, that he provide documentation of such coordination.
2. In light of the photographic evidence that Sanders had installed a buoy in Westpoint Slough stating "Slow, 10 MPH," in violation of the permit, Mr. Zeppetello requested that Sanders commit to promptly replace that buoy with a buoy designating a "No Wake" zone, as required by the permit.
3. CCCR had raised the concern that there are no signs at the (unauthorized) rower's dock used by 101 Surf Sports regarding the access restrictions on Greco Island and other wetlands at the Refuge. To address that concern, but to avoid additional issues regarding unauthorized signage, Mr. Zeppetello requested that Sanders agreed to prepare a flier that the operators of 101 Surf Sports would commit to give their customers renting paddleboards and kayaks to advise them those access restrictions.

PPP. On June 19, BCDC's Chief Counsel sent an email to Sanders' counsel, Mr. Smith, confirming the items discussed during their call on June 12 and stating, among other things, that Sanders had failed to: (1) withdraw his proposed signage plan and commit to submit revised plan, prepared by a professional, by a date certain, such as June 30; (2) provide documentation that he had consulted with federal and state wildlife resource agencies regarding the proposed sign to be installed at the boat launch to inform the public of the access restrictions on Greco Island and other Refuge wetlands; (3) agree to prepare a flier that the operators of 101 Surf Sports would provide to their customers to inform that of the access restrictions on Greco Island and other Refuge wetlands; or (4) agree to replace the buoy in the Slough designating a 10 M.P.H. speed zone with a buoy identifying a "No Wake" zone.

QQQ. On June 22, Sanders' counsel, Mr. Smith, informed BCDC staff that Sanders recognized the need to retain a professional to prepare a signage plan. On June 29, Mr. Smith sent an email to BCDC's Chief Counsel to provide a status update on several items including the following:

1. Sanders had contacted Kevin Stephens of KSDG, given Mr. Stephens' prior knowledge of the project, but had not been able to confirm his retention. If KSDG proved unavailable, Sanders and his counsel would work to identify a new firm with whom to work to prepare a proposed signage plan and a design plan for the gate to be installed in the temporary fence of the Phase 3 building sites.

2. Completion of the temporary fencing of the Phase 3 building sites had taken longer than anticipated but might be completed that day.
3. Sanders' counsel forwarded copies of materials used by 101 Surf Sports with its customers, as well as 101 Surf Sports' explanation of its standard approach with its customers, that include pointing out to those customers that no landing is allowed on Greco and Bair Islands and other nearby areas of the Refuge.
4. Sanders had reached out to USFWS and Redwood City regarding the acceptability of the content of the public boat launch sign regarding access restrictions on Greco Island.

RRR. In a second email sent on June 29, Mr. Smith addressed two other alleged permit violations: Sanders' failure to provide both shorebird roost habitat mitigation and non-tidal wetland mitigation.

1. Mr. Smith provided a copy of a letter from Cargill Salt Company's Manager of Real Property, Robert Douglas, dated November 26, 2003 ("Cargill's Pond 10 Letter"), which Mr. Smith claimed addressed satisfaction of the requirement to provide shorebird roosting habitat. Cargill's Pond 10 Letter states that Cargill had to agree to permanently relocate the "roosting island" which exists on Pond 10, part of which is occupied by Sanders' property, and "that the location and timing of a permanent roosting island would be determined when the future use of our Redwood City pond sites is determined." Cargill's Pond 10 Letter continued:

*"...Cargill, by management of pond levels, will create a similar habitat to the south, where it remains in Pond 10 as before. By minor modifications in our operations an equivalent area of habitat will remain to provide the same functions and benefits."*

According to Mr. Smith, Cargill assured the creation of shorebird roosting habitat "via its assurance to appropriately manage levels in Pond 10. And given that the current remaining Pond 10 was simply part of the prior 'whole' Pond 10, the functions and benefits for the birds, as referenced in the permit, are the same."

2. Mr. Smith reported that Sanders claimed he addressed and carried out the requirement to provide non-tidal wetlands mitigation in a ditch as depicted on specified "Site Preparation Plans" dated August 15, 2003, which had been approved by BCDC.

On July 7, after reviewing this information, Mr. Zeppetello responded to Mr. Smith on these two issues, as discussed below.

SSS. On June 30, Mr. Smith notified Mr. Zeppetello by email that Redwood City would be providing notice to Pacific Shores that the City considers the undeveloped Phase 3 building sites stabilized via the temporary fencing and are "OK" with the removal of the fence between Westpoint marina and Pacific Shores. Once the notice is delivered,

Sanders expected Pacific Shores “to approve removal of the fence. It should come down later this morning or this afternoon.” Mr. Smith also reported that KSDG had failed to respond to Sanders and therefore would not be retained, so “we are reaching out to alternate design professionals.”

TTT. On July 5, Mr. Smith notified Mr. Zeppetello by email that Sanders had “confirmed that the fence between Pacific Shores and the Harbor has been removed. Also, the referenced [unauthorized] signs have been taken down. All Phase 1B access is open.”

UUU. On July 7, Mr. Zeppetello responded in a phone conversation to the information provided by Mr. Smith regarding Sanders’ failure to provide both shorebird roost habitat mitigation and non-tidal wetland mitigation as required by the permit. In brief, the information provided by Sanders failed to demonstrate compliance with these permit conditions.

1. Mr. Zeppetello noted that, based on the Cargill Pond 10 Letter, Redwood City had revised its mitigation measure requiring Sanders to provide a roosting site by allowing, as an alternative, that this responsibility could be assumed by any future developer of the remainder of Pond 10. However, there is no evidence that USFWS, California Department of Fish and Wildlife or BCDC was consulted or concurred with this change. Moreover, BCDC’s permit was not amended and unequivocally requires Sanders to “provide mitigation for the 2.3 acres of shorebird roost habitat lost as a result of this project with approximately 3.0 acres of replacement habitat with similar functions and values.” Mr. Zeppetello noted that the argument that mitigation for the loss of habitat resulting from the development of approximately ½ of Pond 10 is provided by leaving the remainder of Pond 10 in its existing condition is inconsistent with the very concept of providing mitigation for an adverse project impact. Finally, noting that Cargill had represented, in the Cargill Pond 10 Letter, that it would create similar habitat by management of pond levels, Mr. Zeppetello requested that Sanders provide any available records documenting that Cargill had been and was continuing to manage Pond 10 to provide shorebird roosting habitat.
2. Mr. Zeppetello reported that BCDC staff had reviewed the Site Preparation Plans that Sanders claimed showed he had implemented the permit requirement to provide non-tidal wetlands mitigation, and staff found no indication of any such mitigation on those plans. Mr. Zeppetello noted that the requirement to provide non-tidal wetlands mitigation was based on the Regional Water Quality Control Board’s water quality certification, which further required Sanders to implement a monitoring and reporting program for the non-tidal wetlands mitigation. Mr. Zeppetello requested that Sanders provide BCDC staff with copies of any monitoring reports for this mitigation prepared pursuant to the water quality certification.

SSS. On July 11, BCDC staff conducted a Site visit and confirmed that: (1) the temporary fencing of the Phase 3 building sites appears to be installed as authorized by Amendment Seven (however, Sanders had installed the emergency access gate without plan review and approval); and (2) with one significant exception, all required Phase 1B public access areas are open and all unauthorized signs have been removed. The

exception is that Sanders continues to prohibit public access to the guest docks along the western side of the marina, which are part of the dedicated public access area, and each of the three gangways to these docks is blocked by a locked gate containing a sign stating “Members and Guests Only; Westpoint Harbor Club.” (See Exhibit C, Site Photographs.) Staff also observed that although Sanders, through his counsel, had committed to remove the gate blocking access to the Site from the adjacent Pacific Shores property, Sanders has in fact only opened the unauthorized gate; the gate remains attached to the associated unauthorized fence and, therefore, may be closed again at any time. Finally, staff was able for the first time to walk the overlook at east entrance to the marina and noted that Sanders has installed a small sign stating “3 MPH; No Wake.” However, the sign is oriented to be read by boaters who are entering the marina, rather than by boaters departing the marina and traversing Westpoint Slough.

**VII. Provisions of Law or Commission Permit that the Staff Alleges Have Been Violated**

BCDC Permit No. 2002.002, as amended on November 1, 2006 (Amendment Three), June 22, 2011 (Amendment Four), April 18, 2016 (Amendment Six), and May 9, 2017 (Amendment Seven), all exclusive of proposed Amendment Five. Sanders’ violations of BCDC Permit No. 2002.002, as amended, are identified and described above in Section VI.

Government Code Section 66632(a), which requires any person wishing to place fill, to extract materials, or to make any substantial change in use of any water, land, or structure, within the area of the Commission’s jurisdiction to secure a permit from the Commission.

**VIII. If the Staff Is Proposing that the Commission Impose an Administrative Civil Penalty as Part of this Enforcement Proceeding, the Amount of the Proposed Penalty:**

Staff proposes a penalty of \$504,000 under Section 6641.5(e) of the McAteer-Petris Act. Please see Exhibit D attached hereto that is a chart summarizing the violations, the proposed penalty for each violation (or for multiple violations that are considered to be a single violation for proposed of the proposed penalty), and the total proposed penalty for all violations.

**IX. Any Other Statement or Information that the Staff Believes is Either Pertinent to the Alleged Violation or Important to a Full Understanding of the Alleged Violations**

Sanders actively prevented and discouraged public access at the Site for over six years after being notified by staff of the public access violations, from May 2011 until July 2017, notwithstanding the permit’s requirements to provide all required Phase 1B public access no later than September 2008. After committing in May 2017 to open all required Phase 1B public access areas upon installation of the temporary fencing of the undeveloped Phase 3 building sites, Sanders continues to prohibit public access to the guest docks that are within the dedicated public access area.

From September 2012 until after September 2015, Sanders refused to cooperate with staff to resolve certain violations at the Site by agreeing to any of the five different versions of proposed Amendment Five prepared by staff, at Sanders’ request, causing staff to waste considerable limited public resources on this Site.

As of the date of this Violation Report/Complaint, Sanders has not committed to a schedule for submitting for plan review and approval a signage plan, or plans for the Phase 1B pedestrian paths, landscaping, irrigation, lighting, and site furnishings. Until such plans are submitted and approved, the Site will remain out of compliance with applicable permit requirements for public access signage, pedestrian paths, landscaping, and site furnishings. Similarly, Sanders has not yet committed to install in Westpoint Slough required buoys identifying a "No Wake" Zone or required buoys and signs to inform the public of the access restrictions on Greco Island and other Refuge wetlands.

**X. List of Attached Exhibits**

Exhibit A: Index of Administrative Record

Exhibit B: Permit Exhibit – Public Access

Exhibit C: Site Photographs

Exhibit D: Summary of Violations and Proposed Administrative Civil Penalties

**Westpoint Harbor Index of Administrative Record**

<b>Document No.</b>	<b>Document Description</b>	<b>Date</b>
1	Letter from Clyde Morris to Charles Jany re: response to Notice of Negative Declaration and Use Permit for Westpoint Harbor	9/18/2001
2	Environmental Assessment 10913-00 Negative Declaration & Redwood City Planning Commission Staff Report	10/16/2001
3	Westpoint Marina Mitigation and Monitoring Program	Undated
4	Letter from Jan Knight to Phelicia Gomes, Subject: Comments on U.S. Army Corps of Engineers Public Notice # 22454S for Construction of West Point Harbor Marina in Redwood City, San Mateo County, California	6/14/2002
5	Letter from California Regional Water Quality Control Board SF Bay Region to Mark Sanders, Subject: Conditional Water Quality Certification for Construction of Westpoint Marina and Boatyard, Redwood City, San Mateo County, California	5/16/2003
6	Meeting Minutes for the Commission's August 7, 2003 Public Hearing	8/7/2003
7	Environmental Assessment 10913-00 Negative Declaration with Addendum EA 2003-1	1/20/2004
8	Letter from Brad McCrea to Pet Bohley, SUBJECT: BCDC Permit No. 2-02; Plan Review; Site Preparation Plans (Road Improvements and Basin Surcharge Plans)	11/3/2005
9	City of Redwood City Use Permit No. UP 2005-08	11/21/2005
10	BCDC Permit No. 2002.02, Amendment No. Three	11/1/2006
11	Agreement Imposing Public Access and Open Space Restrictions on the Use of Real Property, recorded on 8/20/2007 in San Mateo County as Instrument No. 2007-124895	2/20/2007
12	Letter from Charles Jany to Mark Sanders, Re: Phase 1A, Westpoint Marina, 1259 Seaport Blvd	6/16/2008
13	Letter from Mark Sanders to Kate Fensterstock, Subject: Chart Corrections for Westpoint Slough	7/7/2009
14	Email from Jim McGrath to Brad McCrea, Subject: Fwd: Re: A question about the water trail	12/14/2009
15	Letter from Will Travis to Mark Sanders, SUBJECT: Westpoint Marina, 1529 Seaport Boulevard, Redwood City, San Mateo County (BCDC Permit File No. 2-02 Enforcement File ER10-13)	4/11/2011
16	Letter from Mark Sanders to Tom Sinclair, Subject: Your visit to Westpoint Harbor on April 17, 2011	4/18/2011
17	Letter from Tom Sinclair to Mark Sanders, SUBJECT: Alleged Violations of Permit Requirements at Westpoint Harbor, 1529 Seaport Boulevard, Redwood City, CA 94063 (BCDC File Nos. ER10-13 and 2-02)	5/4/2011
18	Email from Tom Sinclair to Charles Jany, attaching PDF copy of 5/4/2011 letter from BCDC to Sanders regarding Alleged Violations of Permit Requirements at Westpoint Harbor	5/5/2011
19	Email and attachment from Charles Jany to Tom Sinclair, SUBJECT: Re: Westpoint Marina Letter to Mark Sanders	5/6/2011
20	Letter from Mark Sanders to Tom Sinclair, Subject: Permit Extension for Westpoint Harbor and Marina	5/23/2011
21	Letter and enclosures from Mark Sanders to Tom Sinclair, Subject: Westpoint Marina and Boatyard; BCDC Permit file No. 2-02	5/26/2011
22	Email from Mark Sanders to Tom Sinclair, Subject: Re: Westpoint Marina Email Attachment: "Allegations detailed in Tom Sinclair May 4, 2011, letter"	6/2/2011
23	Letter from Bob Batha to Mark Sanders, SUBJECT: Amendment No. Four to BCDC Permit No. 2002.002.04; Time Extension	6/22/2011
24	Email from Ellen Miramontes to Maureen O'Connor, Tom Sinclair, Brad McCrea, and Mark Sanders, SUBJECT: Re: WestPoint Harbor Action Items & Others Email attachment: Action Items List re WPH/BCDC 7/29/2011 Meeting with Ellen Miramontes comments	8/8/2011
25	Letter from Tom Sinclair to Mark Sanders, SUBJECT: Response to Submittals and Summary of July 29, 2011 Meeting WITH BCDC Regarding Permit Violations at Westpoint Harbor, 1529 Seaport Boulevard, Redwood City, CA 9406 [sic]; BCDC Enforcment File No. ER2010.13 and Permit No. 2002.002.04	9/1/2011
26	Letter from Ellen Miramontes to Mark Sanders, SUBJECT: BCDC Permit No. 2002.002.04; Conditional Approval of Construction Details, Utilities, Lighting, Signing, Striping and Dimensioning Plans for Westpoint Harbor and Approval of Architectural Plans for the Westpoint Harbor Master Office; Landscape Feedback from September 1, 2011 Site Visit	9/8/2011
27	Email from Ellen Miramontes to Michael Smiley, Valeria Conant, Mark Sanders, and Maureen O'Connor, SUBJECT: Feedback on Westpoint Marina Plants	9/22/2011
28	Email from Ellen Miramontes to Michael Smiley, Valeria Conant, SUBJECT: FW: a Grass Planted at Westpoint Marina Elytrigia, not Paspalum	9/22/2011

**Westpoint Harbor Index of Administrative Record**

<b>Document No.</b>	<b>Document Description</b>	<b>Date</b>
29	Letter and Enclosures from Mark and Maureen Sanders to Tom Sinclair and Ellen Miramontes, Subject: Buoys and Charts	10/6/2011
30	Email from Ellen Miramontes to Valerie Conant, Subject: Re: Westpoint Harbor Email Attachment: 10/19/2011 Comments by Ellen Miramontes on landscape concept	10/19/2011
31	Email from Ande Bennett to Adrienne Klein, Subject: Confidential / West Point Marina Complaint	2/21/2012
32	Redwood City Community Development Services Memorandum from Charles Jany to Mark Sanders, RE: Permit update	2/21/2012
33	Email from Ellen Miramontes to Truman Mak, SUBJECT: Re: Westpoint Harbor Marina As-Built Construction	3/1/2012
34	Email from Ellen Miramontes to Truman Mak and Kevin Stephens, SUBJECT: Re: a Grass Planted at Westpoint Marina Elytrigia, not Paspalum	3/20/2012
35	BCDC Memorandum, Subject: Meeting between Adrienne Klein, Ellen Miramontes, Kevin Stevens, Truman Mak and Peter [unknown last name]	3/9/2012
36	BCDC Memorandum, Subject: Meeting between Kevin Stevens, Truman Mak, KSDG, Ellen Miramontes and Adrienne Klein	4/25/2012
37	BCDC Memorandum, Subject: Meeting between Truman Mak, Ellen Miramontes and Adrienne Klein	6/7/2012
38	Emails from Ellen Miramontes to Kevin Stephens, Subject: Re: Westpoint Marina - Temporary Fence	6/8/2012
39	Email from Laurence Frank to BCDC, Subject: Re: Public access at private marinas?	6/13/2012
40	Emails between Ellen Miramontes, Adrienne Klein and Kevin Stephens, Subject: Re: Westpoint Marina Landscape Plans	7/11/2012
41	Amendment Request for BCDC Permit No. 2002.002	7/18/2012
42	Email from Ellen Miramontes to Kevin Stephens, Subject: FW: a Grass Planted at Westpoint Marina Elytrigia, not Paspalum	7/20/2012
43	Email from Ellen Miramontes to Kevin Stephens, Subject: Re: planting area	7/20/2012
44	Email from Ellen Miramontes to Kevin Stephens and Silvia Robertson, Subject: Re: planting area	7/25/2012
45	Email from Matt Leddy to Adrienne Klein, Subject: Westpoint Marina Redwood City public access	8/14/2012
46	Email and attachment from Ellen Miramontes to Kevin Stephens and Silvia Robertson, Subject: Westpoint [sic] - two questions and drawing comments	9/10/2012
47	Letter and enclosure from Steve Goldbeck to Mark Sanders, SUBJECT: Amendment No. Five to BCDC Permit No. 2002.002.05	9/19/2012
48	Email and attachment from Ellen Miramontes to Kevin Stephens and Silvia Robertson, SUBJECT: Re: Comments on landscape irrigation plans	11/15/2012
49	Email and attachment from Kevin Stephens to Ellen Miramonte, SUBJECT: Westpoint Harbor Public Spaces PDF	11/16/2012
50	Email from Ellen Miramontes to Silvia Robertson and Kevin Stephens, SUBJECT: Re: signage comments	11/20/2012
51	Email from Ellen Miramontes to Mark Sanders, Subject: Re: signage comments	11/27/2012
52	Email from Silvia Robertson to Ellen Miramontes and Mark Sanders, SUBJECT: Westpoint Harbor PDF Set and delivery info	11/29/2012
53	Email and attachment from Silvia Robertson to Ellen Miramontes, Subject: Revised signage Plan	12/19/2012
54	Email and attachment from Ellen Miramontes to Silvia Robertson and Kevin Stephens, SUBJECT: Re: Revised signage Plan	12/22/2012
55	Email from Mark Sanders to Erik Buehmann, SUBJECT: Comments on Amendment for Westpoint	5/20/2013
56	Letter from Steve Goldbeck to Mark Sanders, SUBJECT: Re-Issued Amendment No. 5 to BCDC Permit No. 2002.002.00	6/6/2013
57	Letter from Brad McCrea to Mark Sanders, SUBJECT: Amendment No. Five to BCDC Permit No. 2002.002	7/16/2013
58	Letter from Douglas Aikins to Brad McCrea, Subject: Westpoint Harbour; Amendment No. Five to BCDC Permit No. 2002.002	8/2/2013
59	Letter and enclosure from Brad McCrea to Mark Sanders, SUBJECT: Re-issued BCDC Permit No. 2002.002.05	9/4/2014

**Westpoint Harbor Index of Administrative Record**

<b>Document No.</b>	<b>Document Description</b>	<b>Date</b>
60	Letter from Adrienne Klein to Douglas Aikins, SUBJECT: Staff responses to Permittee's Defenses of BCDC Allegations (Permit No. 2002.002.03 and Enforcement File No. ER2010.013)	9/4/2014
61	Letter and enclosures from Mark Sanders to Erik Buehmann, Subject: Design Review for Westpoint Harbor Boatyard Structures	12/12/2014
62	Letter from BCDC to Mark Sanders, SUBJECT: Plans Not Approved Pursuant to BCDC Permit No. 2002.002.04 and Plan Review Guidance Comments Pursuant to Re-Issued (unsigned) BCDC Permit 2002.002.05 in Response to Materials and Plans Relating to Westpoint Harbor Located in Redwood City, San Mateo County, Hand-delivered to BCDC on December 15, 2014	1/29/2015
63	Letter and Enclosure from Dawn Jedkins, Subject: Permit Amendment Request	7/20/2015
64	Letter and enclosure from Adrienne Klein to Douglas Aikens, SUBJECT: Version 5 of Permit No. 2002.002.05 (Permit File No. 2002.002.03 and Enforcement File No. ER2010.013)	9/14/2015
65	Letter from and enclosures from Brad McCrea to Mark Sanders, SUBJECT: Amendment No. Six to BCDC Permit No. 2002.002.06, Exclusive of Amendment Five	8/18/2016
66	Photographs from Marc Zeppetello Site Visit	10/22/2016
67	Letter from Mark Sanders to BCDC, Re: Live Aboard Report 2016/17	12/2/2016
68	BCDC Internal Memorandum and attached photographs regarding Site Visit at West Point Harbor, San Mateo County	12/8/2016
69	Email from Brad McCrea to Mark Sanders, Subject: Fence at Westpoint	12/8/2016
70	Email from Mark Sanders to Brad McCrea, Subject: Fences	12/13/2016
71	Letter from Mark Sanders to Erik Buehmann, Subject: Request for Amendment 7 to Westpoint Harbor Permit 2002.002.03	1/4/2017
72	Letter from Sanders to BCDC, dated January 20, 2017, enclosing "Live Aboard Report 2016/17," dated December 2, 2016	1/20/2017
73	Letter from Matthew Trujillo to Mark Sanders, SUBJECT: Westpoint Harbor Permit Amendment No. Seven Application (BCDC Permit No. 2002.002.07)	2/6/2017
74	Photographs from Marc Zeppetello Site Visit	2/11/2017
75	Email and attachment from Mark Sanders to Matthew Trujillo, Subject: Response to Questions on Westpoint Harbor Amendment 7	2/21/2017
76	Letter from Brian Gaffney to Larry Goldzband, RE: Violations of BCDC Permit No. 2-02 (2002.002.06) Issued to Mark Sanders for the Westpoint Marina, Redwood City	3/10/2017
77	Letter from Matt Leddy to Larry Goldzband	3/10/2017
78	Letter from Matthew Trujillo to Mark Sanders, SUBJECT: Additional information required before your application may be filed as complete for Amendment No. Seven to BCDC Permit No. 2002.002.00 (second request)	3/23/2017
79	Letter from Mark Sanders to Matthew Trujillo, SUBJECT: Temporary Fence for Phase 3, Westpoint Harbor	4/10/2017
80	Email and attachment from Dawn Jedkins to Adrienne Klein, Subject: Westpoint Harbor Phase 2 Boatyard - Certification of Contractor Review	4/24/2017
81	Letter and Enclosure from Brad McCrea to Mark Sanders, SUBJECT: Amendment No. Seven to BCDC Permit 2002.002.07, Exclusive of Amendment No. Five	5/9/2017
82	Email from David Smith to Marc Zeppetello, Subject: Amendment 7	5/15/17
83	Email from David Smith to Marc Zeppetello, Subject: WPH: Response to May 16 Email	5/22/17
84	Letter from Brain Gaffney to Larry Goldzband, RE: BCDC Enforcement File ER2010.013, Further Violations of BCDC Permit No. 2002.002.06 by Mark Sanders, Westpoint Marina	5/23/17
85	Letter from Brian Gaffney to Larry Goldzband, RE: Enforcement Case No. ER2010.013, Further Evidence of Violations of BCDC Permit No. 2002.002.06 (Mark Sanders, Westpoint Marina) Related to Signage to Alert Boaters of Sensitive Habitat and Restricted Access to Greco Island	5/24/17
86	Letter and enclosure from Mark Sanders to Erik Buehmann, Subject: Westpoint Harbor Public Access Signage Plan	6/7/17
87	Email from Marc Zeppetello to David Smith, Subject: Re: WPH: Response to May 16 email	6/9/17
88	Photographs from Marc Zeppetello Site Visit	6/18/17
89	Email from Marc Zeppetello to David Smith, Subject: Westpoint Harbor: June 7 Sign Plan and other issues	6/19/17
90	Email from David Smith to Marc Zeppetello, Subject: Westpoint Harbor -- Status Update	6/29/17
91	Email from David Smith to Marc Zeppetello, Subject: WPH: Roosting Habitat and Non-tidal Wetlands	6/29/17

Westpoint Harbor Index of Administrative Record

Document No.	Document Description	Date
92	Email from David Smith to Marc Zeppetello, Subject: RE: Westpoint Harbor -- Status Update	6/30/17
93	Email from David Smith to Marc Zeppetello, Subject: RE: Westpoint Harbor -- Status Update	7/5/17
94	Photographs from BCDC Staff Site Visit	7/11/17

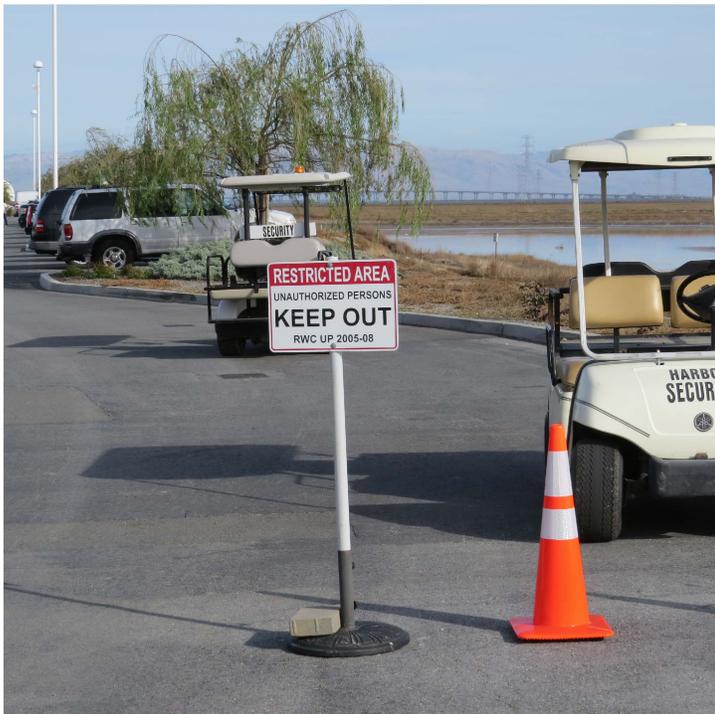




Signs at Westpoint Harbor Entrance, October 22, 2016



Closed Public Access Path, October 22, 2016



Public Access Blocked in Parking Lot at Harbormaster's Building, October 22, 2016



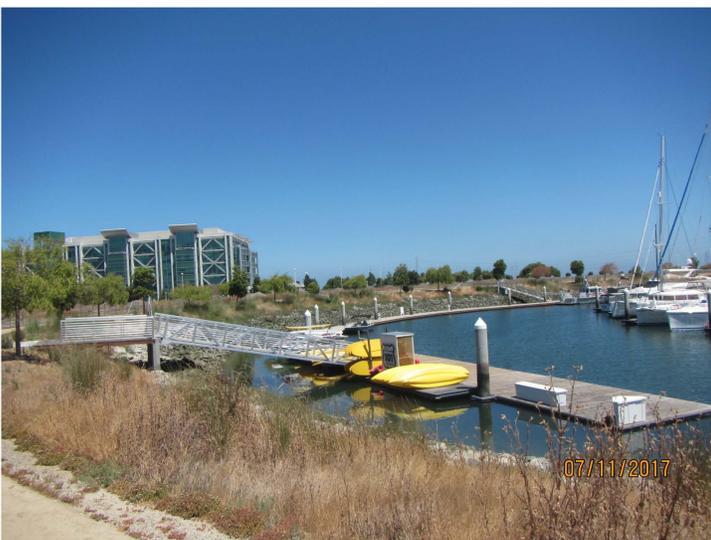
Unauthorized Gate and Fence Blocking Public Access from Pacific Shores Property, February 11, 2017



Access Blocked to Public Path on East Side of Marina Basin, June 18, 2017



Access Blocked to Guest Berths in Dedicated Public Access Area, July 11, 2017



Unauthorized Rower's Dock, July 11, 2017



Unauthorized Wooden Enclosure and Portable Toilet Placed on Designated Public Parking Spaces, December 8, 2016



Unauthorized Storage Container in Parking Lot, June 18, 2017



Public Access Path In Poor Condition and Unauthorized Trees Planted Along Westpoint Slough, December 8, 2016



Unauthorized Floating Docks Supporting Large Storage Tents, July 11, 2017



Unauthorized Solar and Wind-Powered Container in Parking Lot, June 18, 2017

**Summary of Violations and Proposed Administrative Civil Penalties**  
**Westpoint Harbor (BCDC permit No. 2002.002.00)**

	<b>Specific Permit Violations</b>	<b>Duration in Days of Violation</b>	<b>Minimum Penalty at \$10/day;</b>	<b>Maximum Penalty at \$2,000/day;</b>	<b>Proposed Daily Penalty</b>	<b>Proposed Penalty</b>	<b>Remarks</b>
1A	Failure to obtain plan review approval to construct public access pathways. Special Condition II.A.1	May 2011 to July 2017 (more than 6 years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000		
1B	Failure to install and/or make available public access pathways. Special Condition II.B.4.d	September 2008 to July 2017 (more than 8.75 years)	Capped at \$30,000	Capped at \$30,000	\$1000/day; Capped at \$30,000	\$30,000	Four separate violations counted as a single violation for the purpose of proposed penalty
1C	Failure to make available for public access 10 guest berths. Special Condition II.B.4.e	September 2008 to July 2017 (more than 8.75 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000		
1D	Failure to make available public restrooms within the harbormaster's building. Special Condition II.B.4.f	September 2008 to June 2017 (8.75 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000		
2A	Failure to obtain plan review prior approval to install landscaping. Special Condition II.A.1	May 2011 to July 2017 (more than 6 years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000		
2B	Failure to complete installation of and make available 170,500 square feet of landscaped areas. Special Condition II.B.4.g	September 2008 to July 2017 (more than 8.75 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Three separate violations counted as a single violation for the purpose of proposed penalty
2C	Failure to remove trees adjacent to slough that present problem for wildlife per director of Bay Design Analyst. Unauthorized fill. Government Code § 66632(a)	December 2012 to July 2017 (more than 4.5 years)	\$16,425	Capped at \$30,000	\$50/day; Capped at \$30,000		
3A	Failure to obtain plan review approval to install site furniture, lighting and irrigation. Special Condition II.A.1	May 2011 to July 2017 (more than 6 years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Two separate violations counted as a single violation for the purpose of proposed penalty
3B	Failure to complete installation of and make available all required site furnishings. Special Condition II.B.4.h	September 2008 to July 2017 (more than 8.75 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000		
4A	Failure to obtain plan review approval to install public access signs. Special Condition II.A.1	May 2011 to July 2017 (more than six years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Two separate violations counted as a single violation for the purpose of proposed penalty
4B	Failure to provide required public access and Bay Trail signs. Special Condition II.B.4.i	September 2008 to July 2017 (more than 8.75 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000		
5A	Failure to make available 12 signed public parking spaces. Special Condition II.B.4.c	September 2008 to July 2017 (more than 8.75 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Two separate violations counted as a single violation for the purpose of proposed penalty
5B	Failure to make available 15 signed public parking spaces for vehicle and boat trailer parking. Special Condition II.B.4.b	September 2008 to July 2017 (more than 8.75 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000		

**Summary of Violations and Proposed Administrative Civil Penalties**  
**Westpoint Harbor (BCDC permit No. 2002.002.00)**

6A	Failure to obtain plan review approval to construct public boat launch. Special Condition II.A.1	May 2011 to July 2017 (more than 6 years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Two separate violations counted as a single violation for the purpose of proposed penalty
6B	Failure to make available signed public boat launch. Special Condition II.B.4.a	September 2008 to July 2017 (more than 8.75 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000		
7A	Failure to install buoys in slough to identify "no wake" zone. Special Condition II.H	May 2011 to July 2017 (more than 6 years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000		Three separate violations counted as a single violation for the purpose of proposed penalty
7B	Failure to install buoys informing public of access restrictions on Greco Island and other protected marshlands. Special Condition II.H	May 2011 to July 2017 (more than 6 years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	
7C	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	May 2011 to July 2017 (more than 6 years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000		
8	Failure to provide visual barriers to adjacent salt pond. Special Condition II.K	May 2011 to July 2017 (more than 6 years)	\$21,900	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	
9	Failure to provide shorebird roost habitat mitigation. Special Condition II.F	October 2016 to July 2017 (9 months)	\$2,700	Capped at \$30,000	\$100/day; = \$27,000	\$27,000	Violation began upon construction of Phase 2; exact date unknown but no later than October 22, 2016.
10	Failure to provide non-tidal wetland mitigation. Special Condition II.G	2004 to 2017 (more than 13 years)	Capped at \$30,000	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Permit does not establish a compliance deadline, but Regional Board's water quality certification requires this prior to construction of the marina basin.
11A	Unauthorized construction of rower's dock on west side of marina basin. Unauthorized fill and substantial change in use. Government Code § 66632(a)	December 2014 to July 2017 (more than 2.5 years)	\$9,125	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Multiple separate violations counted as a single violation for the purpose of proposed penalty.
11B	101 Surf Sports use of unauthorized rower's dock, storage of kayaks in required Phase 1B public access area, and use of parking lot for storage container, a wood-enclosed changing or storage area placed over designated public parking spaces, picnic tables, and portable toilet. Substantial change in use. Government Code § 66632(a)	September 2016 to July 2017 (10 months)	\$3,000	Capped at \$30,000	\$100/day; Capped at \$30,000		
12	Three unauthorized floating docks supporting large storage tents on the east side of the marina basin. Unauthorized fill. Government Code § 66632(a)	December 2016 to July 2017 (7 months)	\$2,100	Capped at \$30,000	\$100/day = \$21,000	\$21,000	Unknown when these violations commenced; discovered on 12/8/16 site visit. Three separate violations counted as a single violation for the purpose of proposed penalty.

**Summary of Violations and Proposed Administrative Civil Penalties**  
**Westpoint Harbor (BCDC permit No. 2002.002.00)**

13A	Failure to obtain plan review approval to construct fuel dock. Special Condition II.A.1	December 2014 to April 2016 (1 year and 4 months)	\$4,850	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Unknown when these violations commenced. Existing structure authorized after-the-fact by Amendment 6. Two separate violations counted as one for the purpose of proposed penalty.
13B	Unauthorized construction of substantially larger fuel dock than authorized. Government Code § 66632(a)	December 2014 to April 2016 (1 year and 4 months)	\$4,850	Capped at \$30,000	\$100/day; Capped at \$30,000		
14	Numerous instances of unauthorized placement of fill and/or substantial change in use <ul style="list-style-type: none"> <li>•Fence and gate blocking public access from Pacific Shores property</li> <li>•Fire suppression equipment and utility structure on public access pathway</li> <li>•Two PG&amp;E transformers in public access area near boatyard</li> <li>•Solar and wind powered container in east end of parking lot</li> <li>•Storage container, wood-enclosed changing or storage area, and portable toilet, all in parking lot</li> <li>•Fenced area south of parking lot that contains a garden and may be used for storage</li> <li>•A wooden storage shed, numerous planters, and stored construction material south of the parking lot</li> <li>•An asphalt pad of unknown purpose in a dedicated public access area</li> </ul> Government Code § 66632(a)	Duration varies and in some cases unknown. Certain violations discovered earlier than September 2014 (more than 2.75 years) others discovered during December 2016 site visit (7 months)		Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	Multiple separate violations counted as a single violation for the purpose of proposed penalty.
15	Failure to submit Certification of Contractor Review. Special Condition II.U	May 2011 to September 2014				\$0	No penalty proposed for violations of this requirement for work performed under Amendment Three or Amendment Four.
16	Failure to submit Certification of Contractor Review. Special Condition II.U	October 22, 2016 to April 24, 2017 (6 months)	\$1,800	Capped at \$30,000	\$200/day; Capped at \$30,000	\$30,000	Repeat violation.
17	Conduct work and operations without authorization (expired permit). Authorization Section I.C; Standard Condition IV.E.	8/16/2010 to 6/15/2011 (303 days)				\$0	Violations resolved promptly after issuance of May 4, 2011 enforcement letter
18	Conduct work and operations without authorization (expired permit). Authorization Section I.C; Standard Condition IV.E.	8/16/2014 to 4/18/2016 (610 days)	\$6,100	Capped at \$30,000	\$200/day; Capped at \$30,000	\$30,000	Repeat violation.
19	Failure to provide information regarding the number and location of live-aboard boats. Special Condition II.P.1	May 2011 to January 2017 (6 years and 7 months)	\$23,700	Capped at \$30,000	\$100/day; Capped at \$30,000	\$30,000	

**Summary of Violations and Proposed Administrative Civil Penalties**  
**Westpoint Harbor (BCDC permit No. 2002.002.00)**

20	Failure to provide copy of berthing agreement re: compliance with requirements for marine toilets. Special Condition II.O.4	5/4/2011 to 7/29/2011				\$3,000	Standardized fines accrued prior to compliance.
21	Failure to notify NOAA re: nautical charts. Special Condition II.AA	May 4, 2011 to July 29, 2011				\$3,000	Standardized fines accrued prior to compliance.
22	Failure to maintain public access improvements. Special Condition II.B.5	May 2011 to July 2017 (more than 6 years)				\$0	No penalty imposed for violations of this requirement because public access improvements not approved, completed or made available for public use.
						<b>Total Proposed Penalty</b>	<b>\$504,000</b>