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13 *Attorneys for Mark Sanders and Westpoint Harbor, LLC*

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15  
16 SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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18 IN THE MATTER OF:

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20 VIOLATION REPORT/COMPLAINT FOR THE  
21 IMPOSITION OF ADMINISTRATIVE CIVIL  
22 PENALTIES No. ER2010.013

23  
24 PROPOSED CEASE AND DESIST AND CIVIL  
25 PENALTY ORDER No. CDO 2017.04

26  
27 MARK SANDERS AND  
28 WESTPOINT HARBOR, LLC  
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RESPONDENTS' RESPONSE TO STAFF'S  
OBJECTIONS TO DECLARATION OF MARK  
SANDERS

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1 Respondents Mark Sanders and Westpoint Harbor, LLC (“Respondents”) submit the  
2 following response to the staff’s objections to the Declaration of Mark Sanders.

3 **Response to Staff’s Claim Regarding Sufficiency**  
4 **of Statements in Sanders’ Declaration to Support Findings of Fact**

5 For the reasons explained below, San Francisco Bay Conservation and Development  
6 Commission (“BCDC”) Staff is incorrect in asserting that certain statements in Mark Sanders’  
7 declaration (Respondents’ Statement of Defense, Exhibit No. 1) are hearsay. Nonetheless, even if  
8 Sanders’ declaration did contain hearsay, BCDC staff’s claim that such “hearsay statements are  
9 not sufficient to support a finding” is false. (*See* Executive Director’s Recommended  
10 Enforcement Decision, p. 48.) Sanders’ declaration has been submitted under penalty of perjury,  
11 and Sanders would be subject to cross-examination as provided by BCDC regulations, if BCDC  
12 staff had chosen to request cross-examination of Sanders. Cal. Code of Regs. tit. 14, §§ 11321,  
13 11322, 11327, 11329. BCDC staff cannot, by choosing not to cross-examine Sanders, legally  
14 preclude the use of statements found in Sanders’ declaration to support findings of fact.

15 **Response to Staff’s Objections**

16 **Paragraph 8:**

17 **Declaration Text:** “These meetings together with more detailed discussions with the U.S.  
18 Coast Guard (“USCG”) and National Oceanic and Atmospheric Administration (“NOAA”), prior  
19 to the issuance of the Permit, resulted in an agreement among all concerned that regular channel  
20 markers would be placed over the length of Westpoint Slough, but other buoys and markers in  
21 the navigable channel would not be allowed (other than an existing ‘no wake’ buoy and other  
22 marks already located in the channel by the Port of Redwood City).”









1 told me she was unwilling to make this statement and said she didn't want to put the public or  
2 employees at risk.”

3 Objection: Staff objects to the above excerpt regarding what Yvette Montoya and Carey  
4 Liggett allegedly disputed, as well as what Kris Vargas allegedly informed Mr. Sanders about  
5 alleged pushback from Adrienne Klein as hearsay.

6 Response: This excerpt is not hearsay because it is not being offered to prove the truth of  
7 the matter asserted. Evid. Code, § 1200(a). Rather, the excerpt is being offered to show the effect  
8 of the statements on Mark Sanders and why he took specific actions in his efforts to comply with  
9 the permit, while operating under the belief that property managers for Pacific Shores Center  
10 considered there to be impediments to completing the trail between Pacific Shores Center and  
11 Westpoint Harbor. In addition, Adrienne Klein is a BCDC staff member whose statement to Kris  
12 Vargas is being offered against BCDC staff.

13 Paragraph 53:

14 Declaration Text: “In past discussions with BCDC staff concerning signage of the  
15 restrooms, BCDC staff agreed restroom and shower access could be controlled for the safety of  
16 tenants and others, and provided suggested designs on signage for this purpose.”

17 Objection: Staff objects to the above excerpt stating what, BCDC staff allegedly “agreed”  
18 to concerning controlling restroom and shower access as hearsay.

19 Response: Under the Evidence Code, this excerpt is not hearsay because “[e]vidence of a  
20 statement is not made inadmissible by the hearsay rule when offered against the declarant in an  
21 action to which he is a party in either his individual or representative capacity.” Evid. Code,  
22 § 1220. BCDC staff’s statement is admissible evidence and not hearsay.

1 Paragraph 72:

2 Declaration Text: “I hand-delivered the Westpoint Harbor Management and Operations  
3 Manual to Brad McCrea of BCDC in July 2007. BCDC staff even remarked on specific portions  
4 of the submittal when it was delivered in 2007. However, when I later discussed this submittal  
5 with Tom Sinclair in 2012, he admitted that he had never looked at the document.”

6 Objection: Staff objects to the above excerpt regarding alleged remarks by BCDC staff as  
7 well as Tom Sinclair’s alleged admission concerning a document as hearsay.

8 Response: Under the Evidence Code, this excerpt is not hearsay because “[e]vidence of a  
9 statement is not made inadmissible by the hearsay rule when offered against the declarant in an  
10 action to which he is a party in either his individual or representative capacity.” Evid. Code,  
11 § 1220. BCDC staff’s statements are admissible evidence and not hearsay. Similarly, Tom  
12 Sinclair was a BCDC staff member whose statement is being offered against BCDC in this case.

13 Conclusion

14 For the reasons set forth, Respondents request that the Enforcement Committee overrule  
15 BCDC staff’s objections and admit the statements.

Dated: November 15, 2017

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Christopher J. Carr

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