

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

January 8, 2018

TO: Enforcement Committee Commissioners

FROM: Larry Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Marc Zeppetello, Chief Counsel (415/352-3655; marc.zeppetello@bcdc.ca.gov)

SUBJECT: Modification of Executive Director's Recommended Enforcement Decision Regarding Proposed Cease and Desist and Civil Penalty Order No. CDO 2018.01; Mark Sanders and Westpoint Harbor, LLC.
(For Enforcement Committee Meeting on January 18, 2018)

Executive Director's Report

On November 6, 2017, the Executive Director issued his recommended enforcement decision in this matter, which included, as Exhibit E, a proposed cease and desist and civil penalty order.

On November 16, 2017, the Enforcement Committee held a noticed public hearing to consider the Executive Director's recommended enforcement decision, including the proposed cease and desist and civil penalty order, the evidence and arguments submitted by BCDC staff and Respondents, respectively, and all public comments pertaining to this matter. At the hearing, BCDC's Chief Counsel withdrew the proposed penalty of \$30,000 for one of the violations, which reduced the total proposed penalty to \$513,000. The Enforcement Committee adopted the Executive Director's recommended enforcement decision (as amended at the hearing to reduce the total proposed penalty), including the proposed cease and desist and civil penalty order, subject to potential modification of the proposed order by mutual agreement of the parties. Specifically, if the parties agreed on appropriate modifications to the cease and desist provisions of the proposed order (Section III), the Committee authorized the Executive Director to submit to the Commission a proposed order incorporating such agreed-upon modifications and also providing that: (1) Respondents would be required to pay 50% of the proposed penalty (*i.e.*, \$256,500) within 30 days of adoption of the proposed order by the Commission; and (2) Respondents would be entitled to a waiver of the remaining 50% of the proposed penalty (*i.e.*, \$256,500) if they complied with the requirements of the order within the agreed-upon time frames.

The parties were not able to agree on appropriate modifications to the proposed order. However, rather than submit the proposed order adopted by the Enforcement Committee on November 16, 2017 to the Commission, the Executive Director has modified his recommended enforcement decision by providing to the Enforcement Committee the attached revised proposed cease and desist and civil penalty order that incorporates certain modifications to the proposed order adopted by the Committee based on the discussions between BCDC staff and Respondents' counsel. The modifications include certain revisions to the cease and desist provisions of the proposed order (Section III), the Findings (Section II), including an updated description of the enforcement proceedings, and the civil penalty provisions (Section IV), including the addition of terms by which Respondents may be entitled to a waiver of fifty percent of the total proposed penalty. For your convenience, the principal revisions, which staff will discuss at the Enforcement Committee meeting on January 18, 2018, are highlighted in yellow on the attached revised proposed order.

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

Mark Sanders
16075 Skyline Blvd.
Woodside, CA 94063

Westpoint Harbor, LLC
1529 Seaport Blvd.
Redwood City, CA 94063

Respondents.

COMMISSION
CEASE AND DESIST AND CIVIL PENALTY
ORDER NO. CDO 2018.01

Effective Date:

TO MARK SANDERS AND WESTPOINT HARBOR, LLC:

I. CEASE AND DESIST

Pursuant to California Government Code Section 66638, Mark Sanders and Westpoint Harbor, LLC, and all of their agents and employees, and any other persons acting on behalf of or in concert with them (collectively “Sanders” or “Respondents”) are hereby ordered to cease and desist all activity in violation of BCDC Permit No. 2002.002.00, as amended through Amendment Nine (BCDC Permit No. 2002.002.09), or the McAteer-Petris Act (“MPA”) at Westpoint Harbor Marina in Redwood City, San Mateo County (“the Site” or the “Project”), as described herein. Specifically, Respondents are ordered to:

- A. Cease and desist from violating BCDC Permit No. 2002.002.09 and the McAteer-Petris Act.
- B. Fully comply with requirements of Sections III and IV of this Cease and Desist and Civil Penalty Order (“Order”).

II. FINDINGS

This Order is based on the following findings. The administrative record in support of these findings and this Order includes: (1) all documents and other evidence cited herein; and (2) all documents listed in the Index of Administrative Record, Attachment A hereto.

A. BCDC Permit No. 2002.002.00, as amended through September 20, 2017 (BCDC Permit No. 2002.002.09), issued to Mark Sanders, authorizes construction, use, and maintenance of the Westpoint Harbor and Marina Project that 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. (For convenience, the term “the Permit” is used herein to refer to the amendment to BCDC Permit No. 2002.002.00 in effect at the particular time referenced in a finding or to the amendment currently in effect – Amendment Nine – depending on the context.) Westpoint Harbor, LLC owns the Site and, together with Mark Sanders, operates the Westpoint Harbor Marina. The Site is subject to the Commission’s jurisdiction under the MPA, Government Code Section 66610.



B. In or about April 2011, BCDC staff commenced a review of the completed portions of the Project; the review included a Site visit on April 17, 2011, review of the Permit file, and communications with Sanders. Based on that review, staff determined that there were a number of violations of the Permit. By letter dated May 4, 2011, staff notified Sanders of the following violations or categories of violations. As described in Paragraphs II.C through II.DD, below, as of the date of the second hearing before the Enforcement Committee in this matter (January 18 2018), many of these violations still have not been remedied at all, some have been partially remedied, and only a few have been fully resolved.

1. Failure to Provide Required Public Access Area and Public Access Improvements.

Permit Special Condition II.B.4 requires Sanders to make available to the public an area exceeding approximately 255,800 square feet, referred to as the Phase 1B public access areas, including 85,300 square feet of walkways, 170,500 square feet of landscaping, and a public boat launch, and to provide specified public access improvements, prior to the use of any structure authorized under Phase 1B of the project, including the Phase 1B marina berths, which occurred no later than September 2009. Staff's May 4, 2011 letter directed Sanders to remove numerous unauthorized signs observed during Site visits prohibiting public access in violation of the Permit -- signs stating such things as "Members and Guests Only," "Private Property/No Trespassing/Violators Will be Prosecuted," and "West Point Harbor/Private Facility." 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.

Staff also noted in its May 4, 2011 letter 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 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 Site had not been constructed, and the connection to the Site 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 (the condition of the landscaping was also an issue of failure to maintain the public access areas and improvements, as discussed in Paragraph II.B.2 below);
 - 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.
2. **Failure to Maintain Public Access Improvements.** In violation of Permit Special Condition II.B.5, which requires the permittee to maintain all public access areas and improvements, some of the existing landscaping along public pathways 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.
3. **Failure to Comply with Plan Review Requirements.** Permit Special Condition II.A.1, "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 Sanders has submitted general and conceptual plans which were reviewed by the Design Review Board and approved by staff, in violation of Special Condition II.A.1, as of May 4, 2011, 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."
4. **Failure to Install Required Signs and Buoys to Protect Listed Species and Sensitive Habitat:**
- a. In violation of Permit 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 Violation of Permit Special Condition II.I, Sanders had 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 Wildlife, and BCDC staff, informing the public of the access restrictions on Greco Island and other wetlands in the Refuge.
5. **Failure to Provide Required Visual Barrier to Adjacent Salt Ponds.** In violation of Permit Special Condition II.K, Sanders had 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.
6. **Failure to Provide Required Certification of Contractor Review.** In violation of Permit 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.
7. **Permit Expiration.** In violation of Condition I.C. of the Authorization section of the Permit, all work authorized by the Permit (Amendment Three), 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 (14 C.C.R. section 10503(e)) and Permit Standard Condition IV.E, the Permit had become null and void.
8. **Failure to Provide Required Information Regarding Live-Aboard Boats.** In violation of Permit Special Condition II.P.5, Sanders had 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. **Failure to Provide Required Information Regarding Marine Toilets.** In violation of Permit Special Condition II.O.4, Sanders had 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 equipped with a marine toilet must contain an adequate holding tank or other approved device to preclude the discharge of wastes into waters of the marina.
10. **Failure to Provide Required Notification to NOAA re: Nautical Charts.** In violation of Permit 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 (2) the geographic coordinates of the project using a differential geographic positioning system unit or other comparable equipment.

Failure to Provide Required Public Access Areas

C. In response to BCDC staff's allegations that he was not providing the required Phase 1B public access areas, as referenced in Paragraph II.B.1, above, from May 2011 through early 2017, Sanders claimed that Redwood City prohibited public access at the Site. However, Redwood City's Use Permit No. UP 2005-08 for Westpoint Marina, issued to Sanders on November 21, 2005, states, as Condition of Approval No. 8: "Public access to open space and parking shall be maintained at all times as well as parking facilities for visitors."

D. In 2011 and 2012, Redwood City Planning Department staff had expressed concern regarding unrestricted public access to certain areas of the Site during active construction, but Redwood City staff never asserted that Sanders was prohibited from providing required public access in areas where construction had been completed.

E. Respondents removed certain unauthorized signs at BCDC staff's direction, but continued to cite Redwood City's Use Permit on numerous "Restricted Access" signs as the basis for prohibiting or restricting public access to significant portions of the Site until July 5, 2017. This was long after completion of active construction around the marina basin and in the other Phase 1B areas. Respondents also continued to maintain numerous other unauthorized signs which had the effect of prohibiting or restricting public access, including two "Members and Guests Only" signs that were present at the marina entrance from at least April 2011 until early 2017. Respondents also continued to maintain a fence and locked gate to prevent public access to the Site from the adjacent Pacific Shores property.

F. To address concerns regarding public access to certain undeveloped portions of the Site, in 2012, BCDC staff had agreed to allow Sanders to install temporary fencing to restrict public access to the Phase 3 building sites, 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 in 2013, 2014, and 2015, or to otherwise seek an amendment limited solely to authorizing the temporary fencing of the undeveloped areas. Sanders did not execute a Permit amendment authorizing temporary fencing of the undeveloped areas, and did not agree to open all required public access areas after installation of the fencing, until May 2017, after staff informed him that it was preparing a Violation Report/Complaint for the Imposition of Administrative Civil Penalties ("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.

G. On or about July 5, 2017, Respondents completed the temporary fencing, removed most but not all unauthorized signs, opened the unauthorized gate blocking access to the Site from the Pacific Shores property, and allowed access to most but not all of the Phase 1B public access areas. As of the date of the second hearing before the Enforcement Committee

**Draft Commission Cease and Desist and
Civil Penalty Order No. CDO 2018.01
Mark Sanders And Westpoint Harbor, LLC
Page 6**

(January 18, 2018), however, Respondents continued to prohibit or restrict public access by pedestrians to the guest docks, which are within the dedicated public access area. Access to the guest docks continues to be restricted by unauthorized gates with signs stating “Members and Guests Only.”

H. Respondents committed additional violations of the Permit’s public access requirements after issuance of the Violation Report/Complaint on July 24, 2017. BCDC’s Chief Counsel informed Respondents’ counsel on August 1st of additional Permit violations that had been called to BCDC staff’s attention the previous week by a member of the public. Respondents had installed an unauthorized “Westpoint Harbor Boat Launch” sign at the public boat launch that violates the Permit’s public access requirements by: (1) requiring a permit and (2) charging a \$10 fee for the public to use this required public access amenity in a dedicated public access area. On August 3rd, BCDC’s Chief Counsel directed Respondents, through their counsel, to remove the unauthorized “Westpoint Harbor Boat Launch” sign or to effectively cover the portion of the sign requiring a permit and the payment of a fee to use the public boat launch by no later than August 4. Respondents’ counsel did not respond, and Respondents did not remove or cover the objectionable portion of the sign. (At the first Enforcement Committee hearing, on November 16, 2017, BCDC’s Chief Counsel withdrew the proposed penalty for this violation.)

Failure to Provide Public Access Improvements

I. In addition to preventing physical access to required public access areas, Respondents have violated the Permit’s requirements to provide public access improvements by no later than September 2009 by their failure to:

1. Install no fewer than 15 public access or Bay Trail signs in accordance with an approved signage plan;
2. Make the public restrooms in the harbormaster’s building available to the public;
3. Provide all required site furnishings including lighting, seating, tables, and trash receptacles in accordance with approved plans;
4. Provide approximately 170,500 square feet of landscaping in accordance with an approved landscaping plan;
5. Make a signed public boat launch available to the public;
6. Provide 8 signed public parking spaces;
7. Provide 15 signed public parking spaces for vehicle and boat trailer parking; and
8. Provide public access signage identifying the ten guest berths.

J. During Site visits by BCDC staff on October 22, 2016 and December 8, 2016, the restrooms at the harbormaster's building, which are required to be open and available to the public at all times, were locked and not posted as public restrooms. By an email from Sanders' counsel dated May 15, 2017, as supplemented and clarified by a May 22, 2017 email, Sanders committed that the public restrooms at the harbormaster's building would be unlocked and unrestricted during daylight hours. On or about July 5, 2017, Sanders began providing public access to the public boat launch, although as noted above, Sanders continues to maintain an unauthorized sign at the public boat launch that impermissibly requires a permit and the payment of a \$10 fee for the public to use the boat launch, in violation of the Permit's public access requirements. All other violations of the Permit's requirements to provide public access improvements noted in the preceding paragraph were continuing as of the date of the second hearing before the Enforcement Committee.

Failure to Maintain Public Access Improvements

K. In a letter dated September 1, 2011, BCDC staff informed Sanders that standardized fines were not 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. However, staff noted that Special Condition II.B.5 remained in place for all development authorized by the 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.

L. During a Site visit on December 8, 2016, staff observed that the public path at the northwestern portion of the Site, between the adjacent Pacific Shores Center property and the marina basin, and portions of the paths around the marina basin, were in a severely deteriorated condition which appeared to be due to improper construction.

Violations of Plan Review and Approval Requirements, Construction of Improvements that Failed to Comply with the Terms of the Permit Authorization, and Construction of Unauthorized Improvements

M. Sanders has consistently violated the Permit's requirements for plan review and approval prior to constructing Site improvements. As of the date of the second hearing before the Enforcement Committee, 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.

**Draft Commission Cease and Desist and
Civil Penalty Order No. CDO 2018.01
Mark Sanders And Westpoint Harbor, LLC
Page 8**

N. In May 2017, Sanders committed, through counsel, to submit a proposed signage plan by June 6, 2017 for review by staff for all required public access signs. On June 7, Sanders submitted a proposed signage plan. By a letter dated July 27, 2017, BCDC's Bay Design Analyst determined that the signage plan was insufficient to perform a proper plan review and therefore was not approved. As of the date of the second Enforcement Committee hearing, Sanders has failed to submit a revised signage plan for BCDC staff review.

O. Respondents have also constructed Site improvements in violation of terms of the Permit authorization. Sanders constructed a substantially larger fuel or service dock than authorized (BCDC subsequently authorized the larger dock by an amendment to the Permit). Similarly, in violation of the Permit's requirement (Special Condition II.B.4) 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 no more than 10 feet wide.

P. Respondents have also constructed or installed many Site improvements that are not authorized at all under the Permit, 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. Such unauthorized construction or structures placed on land, as observed by BCDC staff during Site visits, include but are not limited to:

1. A fence and gate at the northwestern portion of the Site that for years blocked public access from the adjacent Pacific Shores Center 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 in a dedicated public access area south of the parking lot that contains a garden and that may also be used for storage;
5. A wooden storage shed, numerous planters, and stored construction material in a dedicated public access area south of the parking lot; and
6. An asphalt pad of unknown purpose in a dedicated public access area at the southeastern portion of the Site.

Q. Respondents have also allowed the business that is using the unauthorized rower's dock to rent kayaks and stand-up paddleboards and to also store kayaks in an adjacent public access area and to 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.

Failure to Comply With Permit Conditions to Protect Sensitive Wildlife and Habitat and to Provide Mitigation

R. Following receipt of staff's May 4, 2011 letter, Sanders reported to BCDC staff that he had installed 35 signs on Greco Island, in lieu of the buoy and signage system required by the Permit, to advise the public of the access restrictions and sensitive Refuge habitat. As a result, September 1, 2011, BCDC staff informed Sanders that it had determined that the signage on Greco Island met the fundamental intent of the required buoy system, but also informed him that the Permit needed to be amended to reflect the on the ground 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. Sanders also failed to maintain the signs he reportedly installed in lieu of buoys. Photographs taken on April 9, 2017 by a member of the public and provided to BCDC staff document 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.

S. In June 2011, Sanders submitted to BCDC staff a photograph of a sign installed on a wooden post or piling marked "3 M.P.H. No Wake." However, Sanders failed to comply with staff's request, made in a letter dated September 1, 2011, to submit for staff review and approval site plans and photographs of buoys and signs installed in Westpoint Slough to identify the "No Wake" speed zone, as required by the Permit Special Condition II.H. Photographs taken on June 5, 2016 and April 9, 2017 by a member of the public and provided to BCDC 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.

T. As of the date of the second hearing before the Enforcement Committee, Sanders had failed to provide the required visual barriers (*i.e.*, landscaped buffer) between the active marina areas (*i.e.*, parking lot) and the adjacent salt pond to reduce disturbance to water birds, or even a proposed plan for such visual barriers, despite staff's repeated requests that he comply with Permit Special Condition II.K.

U. In 2011 and 2012, BCDC's former Bay Design Analyst Eleen Miramontes directed Sanders on multiple occasions (September 22, 2011, October 19, 2011, and December 22, 2012) to remove the Monterey Cypress and Poplar trees that he had planted along Westpoint Slough, without plan approval, because these trees serve as perching sites for raptors that can then prey on listed species found in the Refuge. As of the date of the second hearing before the Enforcement Committee, Sanders had failed to remove these trees.

V. By letter dated March 24, 2017, an interested organization, the Citizen's Committee to Complete the Refuge ("CCCR"), brought to BCDC staff's attention alleged violations of the following two permit conditions requiring Sanders to provide mitigation for project impacts:

1. **Shorebird Roost Habitat Mitigation.** Permit 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. 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.** Permit 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. provides that the habitat enhancement plans shall be reviewed and approved by the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife, and also by or on behalf of the Commission.

W. Sanders claims that the required shorebird roost habitat mitigation was accomplished by a November 26, 2003 letter from Cargill, the owner of the remainder of Pond 10 (Westpoint Harbor was constructed from a portion of a salt pond referred to as Pond 10), that, according to Sanders, guaranteed that Cargill would create a habitat similar to that lost due to construction of West Point Harbor, and that by unspecified modifications in Cargill's operations, an equivalent area of habitat would remain to provide the same functions and benefits. The letter (actually a memorandum) from Cargill is not a guarantee, or any other type of binding commitment or enforceable document, that Cargill will in fact provide 3.0 acres of replacement habitat with similar functions or benefits for shorebirds as that lost at West Point Harbor. Moreover, Permit Special Condition II.F requires Respondents' habitat creation plans to be reviewed and approved by or on behalf of the Commission after consultation with USFWS and the California Department of Fish and Wildlife, and there is no evidence that any of these three agencies determined that Cargill's memorandum complied with the Permit's shorebird roosting habitat mitigation requirement. Furthermore, Respondents have provided no evidence that Cargill has managed the remainder of Pond 10 for the past 14 years, and continues to do so, to ensure an equivalent area of habitat and to provide the same functions and benefits as the habitat impacted by Westpoint Harbor project. The permittee therefore has failed to comply with Special Condition II.F.

X. In 2003, Respondents submitted a mitigation and monitoring plan, including a plan for the wetlands mitigation at West Point Harbor, to the Army Corps of Engineers ("Corps"). Respondents also were required to submit a mitigation and monitoring plan to mitigate for the project's impacts on wetlands to the San Francisco Bay Regional Water Quality Control Board ("Regional Board"), but there is no evidence they did so. Respondents also have provided no

evidence that they submitted their mitigation and monitoring plan to BCDC staff, or that the wetlands mitigation plan was approved by or on behalf of the Commission, as required by Permit Special Condition II.G.

Y. Respondents submitted evidence that they re-sloped the drainage ditch where the wetlands mitigation was to be provided to a 3:1 slope as required by their mitigation and monitoring plan. However, their 2003 plan submitted to the Corps also required Respondents to: (1) place flap gates on the downstream end of each of the two 24-inch culverts placed beneath the primary access ditch crossing; (2) place a 10-inch PVC pipe with a control valve approximately one-foot below the mean high water elevation to connect the marina basin with the ditch; and (3) manage the control valve to allow tidal water to be introduced into the ditch during the dry season to extend the duration and area of soil saturation and/or inundation within the wetland mitigation area. Respondents submitted no evidence that they installed the flap gates on the culverts or the 10-inch PVC pipe with a control valve to connect marina basin with the ditch, or that they have managed the control valve to introduce tidal water to the ditch during the dry season, as required by their wetland mitigation plan.

Z. In 2006, Respondents notified the Corps that they had completed the wetlands mitigation, but both the Corps' permit and the Regional Board's water quality certification require Respondents to submit annual mitigation monitoring reports and Respondents have provided no evidence that they ever prepared or submitted such reports. Respondents did not conduct wetlands mitigation monitoring until September 2017, apparently in connection with preparation of their Statement of Defense. Although Respondents' consultant states that the wetlands mitigation exceeds the 5-year success criteria established by their 2003 mitigation and monitoring plan, this fortuitous result does not excuse Respondents from fully implementing wetlands mitigation in accordance with their plan and as required by Special Condition II.G.

Repeated Violation of Permit Requirement to Submit Certification of Contractor Review

AA. BCDC staff initially had elected not to pursue past violations of the Permit condition that requires Sanders to submit a certification that, prior to commencing construction, his contractor had reviewed the requirements of the Permit and final BCDC-approved plans. However, staff reminded Sanders on two occasions by letters, on September 1, 2011 and September 4, 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. Sanders' architect submitted the required certification of contractor approval on April 24, 2017, shortly after BCDC's Chief Counsel brought this repeated Permit violation to the attention of Sanders' counsel.

Failure to Complete All Authorized Work by Date Specified in the Permit

BB. As directed by BCDC 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. By a letter dated June 22, 2011, the Executive Director approved Amendment Four, which amended the Authorization section of the Permit by extending the deadline for completion of all work authorized by the Permit to August 15, 2014. However, in August 2014, Sanders again failed to complete all authorized work by the deadline specified in the Permit, until the Permit was subsequently amended again, in April 2016, to grant a further extension of time to complete all authorized work to August 15, 2019.

Failure to Submit Required Compliance Documentation

CC. **Live-Aboards.** 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 BCDC staff's repeated requests for this information. Sanders finally provided the required information on January 20, 2017.

DD. **Notifying NOAA re: Nautical Charts.** Sanders satisfied the Permit requirement to provide verification to the Commission that he had submitted certain information to NOAA including: (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.

Enforcement Proceedings

EE. On July 24, 2017, the Executive Director initiated enforcement proceedings by issuing to Respondents Mark Sanders and Westpoint Harbor, LLC a Violation Report and Complaint for the Imposition of Administrative Civil Penalties.

FF. On October 20, 2017, Respondents submitted their Statement of Defense and accompanying supporting documents.

GG. On November 6, 2017, the Executive Director issued his recommended enforcement decision, which included a proposed Commission cease and desist and civil penalty order.

HH. On November 16, 2017, the Enforcement Committee held a noticed public hearing to consider the Executive Director's recommended enforcement decision, including the proposed cease and desist and civil penalty order, the evidence and arguments submitted by BCDC staff and Respondents, respectively, and all public comments pertaining to this matter. At the hearing, BCDC's Chief Counsel withdrew the proposed penalty of \$30,000 for one of the violations (regarding the unauthorized "Westpoint Harbor Boat Launch" sign as discussed in Paragraph II.H, above), which reduced the total proposed penalty to \$513,000. The Enforcement Committee adopted the Executive Director's recommended enforcement decision (as amended at the hearing to reduce the total proposed penalty), including the proposed cease and desist and civil penalty order, subject to potential modification of the proposed order by mutual agreement of the parties. Specifically, if the parties agreed on appropriate

modifications to the cease and desist provisions of the proposed order, the Committee authorized the Executive Director to submit to the Commission a proposed order incorporating such agreed-upon modifications and also providing that: (1) Respondents would be required to pay 50% of the proposed penalty (*i.e.*, \$256,500) within 30 days of adoption of the proposed order by the Commission; and (2) Respondents would be entitled to a waiver of the remaining 50% of the proposed penalty (*i.e.*, \$256,500) if they complied with the requirements of the order within the agreed-upon time frames.

II. The parties were not able to agree on appropriate modifications to the proposed order. Nevertheless, rather than submit the proposed order adopted by the Enforcement Committee on November 16, 2017 to the Commission, on January 8, 2018, the Executive Director modified his recommended decision by providing to the Enforcement Committee a revised proposed cease and desist and civil penalty order that incorporated certain modifications to the order adopted by the Committee based on the discussions between BCDC staff and Respondents' counsel. On January 18, 2018, the Enforcement Committee held a noticed public meeting to consider the Executive Director's modified recommended enforcement decision, including the revised proposed cease and desist and civil penalty order, and the comments and arguments submitted by BCDC staff and Respondents, respectively, pertaining to the revised proposed order. The Enforcement Committee adopted the Executive Director's modified recommended enforcement decision, including the revised proposed order, as the Committee's recommended decision.

JJ. On February 1, 2018, at a noticed public meeting, the Commission considered the Enforcement Committee's recommended enforcement decision, including a proposed cease and desist and civil penalty order, the evidence in the administrative record, and the arguments and comments presented by BCDC staff, Respondents, and members of the public, respectively, on the recommendation. The Commission adopted the Enforcement Committee's recommended enforcement decision, including this Order, without any changes or modifications.

III. CONDITIONS

A. **Cease and Desist from Violating Permit and the MPA.** On and after the Effective Date of this Order, Respondents shall cease and desist from all activity at the Site in violation of the Permit and the McAteer-Petris Act.

B. **Make Public Access Available.** On and after the Effective Date of this Order, Respondents shall make all public access areas at the Site required by Permit Special Condition II.B.4, Phase IB and Phase 2 available to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes.

1. No later than seven days after the Effective Date of this Order, Respondents shall remove each of the unauthorized gates and “Members and Guests Only” signs from each of the three gangways to the guest docks and shall ensure and provide, at all times, unrestricted public access to the guest docks, including access for pedestrians.
2. No later than seven days after the Effective Date of this Order, Respondents shall remove the unauthorized “Westpoint Harbor Boat Launch” sign at the public boat launch that violates the Permit’s public access requirements by: (1) requiring a permit and (2) charging a \$10 fee for the public to use this required public access improvement. Respondents shall immediately cease and desist from charging a fee or requiring a permit for the public to use the public boat launch.
3. Respondents shall not charge a fee for the public to access or use any of the required public access areas or improvements at the Site. **However, Respondents may request approval by or on behalf of the Commission of reasonable rules and restrictions regarding use of the guest docks.**
4. On and after the Effective Date of this Order, Respondents shall ensure and provide, at all times, unrestricted public access to the public walkway at the northwestern portion of the Site from the adjacent Pacific Shores Center property.
5. On and after the Effective Date of this Order, Respondents shall keep the public restrooms required by Special Condition II.B.4, Phase 1B, f (one set of two restrooms at the harbormaster’s building and one set of two restrooms at the boatyard), open, unlocked and available for use by the public at all times, 24 hours per day, seven days per week. Respondents may request approval by or on behalf of the Commission to impose reasonable rules and restrictions for access to the restrooms in accordance with Permit Special Condition II.B.7.
6. On and after the Effective Date of this Order, Respondents shall cease and desist, and shall require their tenant 101 Surf Sports to cease and desist, from storing or placing boats on, or otherwise conducting activities on, any portion of the Phase 1B required public access areas.

C. Submission of Signage Plan for Plan Review and Approval, and Installation of Approved Signs

1. No later than **30** days after the Effective Date of this Order, Respondents shall submit to BCDC staff a signage plan, for plan review and approval as required by Permit Special Condition II.A.1.a, consistent with BCDC’s Public Access Signage Guidelines showing the proposed location and content of:
 - a. The sign for the public boat launch required by Permit Special Condition II.B.4, Phase 1B, a;

- b. The signs for the public parking spaces required by Special Conditions II.B.4, Phase 1B, b (regarding 15 signed public parking spaces for vehicle and boat trailer parking) and c (regarding eight signed public parking spaces at this time);
 - c. The signs for the ten guest berths required by Special Condition II.B.4, Phase 1B, e;
 - d. The public access (*i.e.*, public shore) and Bay Trail signs required by Special Condition II.B.4, Phase 1B, i and Phase 2, c;
 - e. The signs for the public restrooms required by Special Condition II.B.4, Phase 1B, f;
 - f. The signs to be installed on the buoys required by Special Condition II.H to inform the public that public access into the marshlands of the Refuge is prohibited;
 - g. The signs required by Special Condition II.I to be installed at the public boat launch and other public access areas informing the public of the access restrictions on Greco Island and other wetlands in the Refuge; and
 - h. The proposed locations and content of the signs required by Special Condition II.R to address shipping lanes, safety guidelines, U.S. Coast Guard Rules for navigation, and clean boating information for smaller recreational craft.
2. No later than 30 days after approval of the signage plan by BCDC staff, Respondents shall install all the approved signs as required by Special Conditions II.B.4, Phase 1B, a, b, c, e, f, and i, Special Condition II.B.4, Phase 2, c, Special Condition II.I, and Special Condition II.R. Respondents shall notify BCDC staff in writing upon completion of installation of all such approved signs. Respondents shall install all the approved signs as required by Special Condition II.H in accordance with Paragraph III.H.3 or Paragraph III.H.4, below.

D. Submission of Plans for Public Access Improvements for Plan Review and Approval, and Completion of Approved Improvements

1. No later than 45 days after the Effective Date of this Order, Respondents shall submit to BCDC staff for plan review and approval, as required by Permit Special Condition II.A.1, plans for the concrete, decomposed granite, wood, or asphalt (with header board) walkways required by Permit Special Condition II.B.4, Phase 1B, d, except that the plans may include a 10 to 12-foot-wide, rather than a 12 to 15-foot-wide, path along the majority of the marina basin and overlooks of Westpoint Slough and the adjacent habitat. The plans shall include belvederes or other special features at the overlooks at the levee entrance to the marina.

2. No later than 45 days after approval of the plan for the public walkways required by Special Condition II.B.4, Phase 1B, d, by BCDC staff, Respondents shall complete construction of all required walkways in accordance with the approved plans. Respondents shall notify BCDC staff in writing upon completion of construction of said walkways in accordance with the approved plan.
3. No later than 45 days after the Effective Date of this Order, Respondents shall submit to BCDC staff for plan review and approval, as required by Special Condition II.A.1:
 - a. Plans for approximately 170,500 square feet of landscaped areas as required by Special Condition II.B.4, Phase 1B, g, and plans for irrigation and drainage associated with such landscaped areas. The plan for landscaped areas shall include the removal and any proposed relocation of all Monterey Cypress, Poplar, and any other trees that Respondents have planted without plan approval adjacent to and along Westpoint Slough; and
 - b. Plans for all site furnishings, including but not limited to, lighting, seating (not fewer than 20 benches), tables, and trash receptacles (not fewer than 10 trash containers) as required by Special Condition II.B.4, Phase 1B, h, and the site furnishings, including but not limited to, lighting, seating (not fewer than 4 benches), tables, and trash receptacles (not fewer than 2 containers) as required by Special Condition II.B.4, Phase 2, b.
4. No later than 60 days after approval of the plans for the landscaped areas required by Special Condition II.B.4, Phase 1B, g, including plans for irrigation and drainage associated with such landscaped areas, by BCDC staff, Respondents shall complete installation of all landscaping, and shall remove or relocate all Monterey Cypress, Poplar, and any other trees that Respondents have planted, without plan approval, adjacent to and along Westpoint Slough, in accordance with the approved landscaping plans, and shall also complete installation of all associated irrigation and drainage equipment, piping, structures, and materials in accordance with the approved plans. Respondents shall notify BCDC staff in writing upon completion of installation of all approved landscaping and associated irrigation and drainage features.
5. No later than 60 days after approval of the plans for site furnishings required by Special Condition II.B.4, Phase 1B, h and Special Condition II.B.4, Phase 2, b, by BCDC staff, Respondents shall install all required site furnishings in accordance with the approved plans. Respondents shall notify BCDC staff in writing upon completion of installation of all approved site furnishings.

6. No later than 45 days after the Effective Date of this Order, Respondents shall submit a full set or sets of as-built plans that depict the following Phase 2 improvements that Sanders has constructed or installed without plan review and approval:
 - a. Placement of 400 square-feet of riprap associated with the bio-retention basins, as authorized by Section I, Authorization, Phase 2, e, and in accordance with Special Conditions II.E.6 and EE;
 - b. The 670-square-foot boat dock authorized by Section I, Authorization, Phase 1B, 4 and required by Special Condition II.B.4, Phase 1B, a;
 - c. The two 500-square-foot public observation areas as required by Special Condition II.B.4, Phase 2, a.;
 - d. The public restrooms at the boatyard, as required by Special Condition II.B.4, Phase 1B, f, showing its as-built orientation with detail showing the ramp, railing, fencing, and landscaping (see also Section I, Authorization, Phase 2, 1.g); and
 - e. The fencing along the southern and eastern perimeter of the boundary of the Phase 2 project area as authorized by Section 1, Authorization, Phase 2, 4 (*see also* Permit Special Condition II.FF).

E. Maintenance of Public Access Areas and Improvements

1. On and after the Effective Date of this Order, Respondents shall maintain all public access areas and improvements at the Site as required by Permit Special Condition II.B.5.
2. No later than 30 days after the Effective Date of this Order, Respondents shall inspect all public access areas and improvements at the Site. No later than 45 days after the Effective Date of this Order, Respondents shall submit a written inspection report to BCDC staff identifying each of the inspected public access areas and improvements and describing:
 - a. The condition of all public access areas and improvements as observed (and as shown in photographs included with the report) during the inspection;
 - b. Any repairs to or maintenance of any public access areas or improvements necessary or proposed to comply with Special Condition II.B.5;
 - c. The plan specification standard to which the repair or maintenance will conform, or, if none exists, an appropriate standard shall be proposed in the inspection report for staff review and approval and, upon approval, the repair or maintenance shall conform thereto; and
 - d. Respondents' schedule for conducting and completing such repairs or maintenance.

F. Remove Unauthorized Improvements

1. No later than seven days after the Effective Date of this Order, Respondents shall remove the unauthorized fence and gate at the northwestern portion of the Site that Respondents formerly used to block access to the public walkway at the northwestern portion of the Site from the adjacent Pacific Shores Center property.
2. No later than seven days after the Effective Date of this Order, Respondents shall remove the unauthorized wood-enclosed changing or storage area associated with the operations of 101 Surf Sports from being located or placed on designated public parking spaces. On and after the Effective Date of this Order, Respondents shall cease and desist from placing, or from allowing 101 Surf Sports or any other person or entity from placing, any unauthorized structure, equipment, or material on any designated public parking space, any designated public parking space for vehicle and boat trailer parking, or within any public access area.
3. No later than 30 days after the Effective Date of this Order, Respondents shall remove from the dedicated public access area south of the parking lot the numerous unauthorized planters and the construction materials stored without authorization in this area. Respondents shall submit for plan review and approval, as required by Permit Special Condition II.A.1, plans for any temporary storage area prior to temporarily storing plants for landscaping or any other material necessary to comply with the requirements of the Permit or this Order.
4. No later than 30 days after the Effective Date of this Order, Respondents shall remove from the Site the unauthorized solar and wind-powered container located or formerly located in the east end of the parking lot.
5. No later than 30 days after the Effective Date of this Order, Respondents shall remove the unauthorized asphalt pad from the dedicated public access area in the eastern portion of the Site and restore the surface to grade level, and shall properly dispose of the asphalt debris in accordance with applicable legal requirements off-Site, at a location outside the Commission's jurisdiction.
6. No later than 60 days after approval of the plans for the landscaped areas required by Special Condition II.B.4, Phage 1B, g, submitted in accordance with Paragraph III.D.3.a, above, Respondents shall remove (or relocate in accordance with approved plans) all the unauthorized trees (including but not necessarily limited to Monterey Cypress and Poplar trees) planted by Respondents along and adjacent to Westpoint Slough without authorization. Respondents shall properly dispose of any trees that are not relocated on-Site, in accordance with the approved landscaping plans, at an off-Site location outside the Commission's jurisdiction.

G. Submit Complete Application to Amend the Permit to Request After-the-Fact Authorization for Certain Improvements or Modifications. No later than 60 days after the Effective Date of this Order, Respondents shall submit a fully complete and properly executed application to amend the Permit. The application shall include the following:

1. The application to amend the Permit shall request after-the-fact authorization for the following unauthorized structures or uses at the Site:
 - a. All PG&E transformers, utility boxes, or structures, and any other obstructions placed on or constructed in dedicated public access areas as shown on the recorded legal instrument imposing public access and open space restrictions or located in any public access areas required by Permit Special Condition II.B.4, Phase 1B, a, d, e, or g, or Permit Special Condition II.B.4, Phase 2, a;
 - b. Construction, use, and maintenance of the unauthorized rower's dock on the west side of the marina basin;
 - c. Use of the unauthorized rower's dock on the west side of the marina basin (if construction and maintenance of the rower's dock is authorized by the Permit amendment) by a business for the purpose of renting kayaks, stand-up paddle boats, and other small boats to the public;
 - d. Authorization for any accessory facilities or structures associated with use of the rower's dock on the west side of the marina basin by a business (if such use is authorized by the Permit amendment), including but not necessarily limited to a large storage container, a wood-enclosed changing or storage area, picnic tables and a portable toilet. If any of the accessory facilities or structures are proposed to be located in the parking lot, the application to amend the Permit shall include any required discretionary approvals from the City of Redwood City or documentation that the City of Redwood City does not require approval, and does not object to the location, of such facilities or structures.
 - e. The unauthorized fenced area that contains a garden and also appears to be used for storage that is located in the dedicated public access area south of the parking lot.
 - f. The unauthorized wooden storage shed that is used to store booms and absorbents for potential fuel and oil spills that is located in the dedicated public access area south of the parking lot.
 - g. The three unauthorized floating docks supporting large storage tents on the east side of the marina basin;
 - h. Authorization to use the guest docks or other locations at the Site to moor the City of Redwood City's Police Boat, the City of Redwood City's Fire Boat, and/or any other public agency boats;

- i. The unauthorized gates that Sanders' installed at each of the gangways leading to the private boat docks; and
 - j. Any other unauthorized structures or uses at the Site for which Respondents request after-the-fact authorization.
2. The application to amend the Permit shall include proposed public access improvements or amenities to mitigate for the unavoidable adverse impacts to public access and public views caused by and resulting from the unauthorized structures that Respondents have constructed or placed, and from Respondents' unauthorized uses, in required public access areas and for which Respondents seeks after-the-fact authorization by the application to amend the Permit.
3. If the Commission, in issuing an amended Permit, does not authorize any structure constructed or placed at the Site without authorization or any existing unauthorized use, then no later than ninety (90) days after issuance of the amended Permit (or sooner if required by the amended Permit), Respondents shall remove all unauthorized structures and uses from the Site and from the Commission's jurisdiction in compliance with all applicable legal requirements.
4. The application to amend the Permit shall also request that the references to a twelve to fifteen-foot-wide path along the perimeter of the marina basin, in Section I. Authorization, Phase 1A, 15, Section 1, Authorization, Phase 1B, 6, and Special Condition II.B.4, Phase 1B, d, be changed to references to a ten to twelve-foot-wide path along the perimeter of the marina basin.

H. Install Buoys and Signs in Westpoint Slough

1. No later than 30 days after the Effective Date of this Order, Respondents shall submit an application or other written request for authorization to the Coast Guard and to any other agency having jurisdiction to install and thereafter maintain: (a) buoys adjacent to the navigation channel of Westpoint Slough, as required by Permit Special Condition II.H, to identify the "no wake" speed zone, delineate the center of the channel for adequate draw, and discourage boats from deviating out of the navigable channel; and (b) a buoy system 100 feet from the salt marsh on Greco Island along the Westpoint Slough up to its confluence with Redwood Creek, as required by Permit Special Condition II.H, with such buoys containing approved signs informing the public that public access to into the marshlands of the Refuge is prohibited. The application or other written request for authorization shall state that such buoys and buoy system with approved signs are required by the Permit to protect the Refuge and have also been requested in correspondence from the U.S. Fish and Wildlife Service to BCDC.

2. Subject to Paragraph III.H.4, below, no later than 30 days after obtaining authorization from the Coast Guard and any other agency having jurisdiction, Respondents shall install, and thereafter maintain, buoys adjacent to the navigation channel of Westpoint Slough, as required by Permit Special Condition II.H, to identify the “no wake” speed zone, delineate the center of the channel for adequate draw, and discourage boats from deviating out of the navigable channel. Respondents shall notify BCDC staff in writing upon completion of installation of the required buoys.
3. Subject to Paragraph III.H.4, below, no later than 30 days after obtaining (a) authorization from the Coast Guard and any other agency having jurisdiction and (b) BCDC staff approval of the signage plan submitted in accordance with Paragraph III.C.1, above, Respondents shall install, and thereafter maintain, a buoy system 100 feet from the salt marsh on Greco Island along the Westpoint Slough up to its confluence with Redwood Creek, as required by Permit Special Condition II.H, with such buoys containing approved signs informing the public that public access to the marshlands of the Refuge is prohibited. Respondents shall notify BCDC staff in writing upon completion of installation of the required buoy system and approved signs.
4. If the Coast Guard or any other agency having jurisdiction refuses or states that it is unable to approve Respondents’ application or other written request for authorization to install and maintain the buoys and/or the buoy system with signs required by Permit Special Condition II.H, Respondents shall consult jointly with such agency or agencies, BCDC staff, and the U.S. Fish and Wildlife Service as to alternative compliance options that are consistent with and would meet the intent of the requirements of Permit Special Condition II.H. Based on such consultation, and no later than 30 days after being directed to do so by the Executive Director, Respondents shall submit a letter to the Executive Director requesting that the Permit be amended to amend Special Condition II.H to require implementation of the agreed alternative measures that are consistent with and will meet the intent of the requirements of existing Special Condition II.H. Upon issuance of the amended Permit, Respondents shall promptly implement the alternative measures required by Special Condition II.H, as amended.

I. Submission of Plan to Provide Visual Barriers to Adjacent Salt Pond for Plan Review and Approval, and Completion of Visual Barriers

1. No later than 60 days after the Effective Date of this Order, Respondents shall submit to BCDC staff a proposed plan, for plan review and approval as required by Permit Special Condition II.A.1.a, 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 required by Permit Special Condition II.K. Because the active marina areas include the parking lot immediately adjacent to the salt pond, there is effectively no set back between the active marina areas and the salt pond. Therefore, Respondents' proposed plan shall include landscaping or other visual barriers to obscure near range views of the salt ponds.

2. No later than 60 days after approval of the plan to provide visual barriers between the active marina areas and the adjacent salt pond by BCDC's Bay Design Analyst, Respondents shall complete installation of all approved visual barriers as required by Special Condition II.K. Respondents shall notify BCDC staff in writing upon completion of installation of all approved visual barriers.

J. Provide Shorebird Roost Habitat Mitigation

1. No later than 60 days after the Effective Date of this Order, Respondents shall submit to BCDC staff, the U.S. Fish and Wildlife Service, and the California Department of Fish and Wildlife a shorebird roost habitat creation plan, as required by Permit Special Condition II.F, to provide mitigation for the 2.3 acres of shorebird roost habitat lost as a result of the Westpoint Harbor Project with approximately 3.0 acres of replacement habitat with similar functions and benefits for shorebirds. The shorebird roost habitat creation plan may include: (a) a contract or other binding agreement between the permittee and Cargill under which Cargill or the permittee agrees to manage the remainder of Pond 10 to provide approximately 3.0 acres of replacement habitat with similar functions and benefits for shorebirds to mitigate for the 2.3 acres of shorebird roost habitat lost as a result of the Westpoint Harbor Project; (b) a management plan describing how the remainder of Pond 10 will be managed to provide approximately 3.0 acres of replacement shorebird roost habitat; (c) a reporting program to describe and document the measures taken by Cargill or the permittee during the reporting period to manage the remainder of Pond 10 in accordance with the management plan; and (d) a binding assurance that if the remainder of Pond 10 is developed in the future, Cargill or the permittee shall provide at an alternative location approximately 3.0 acres of replacement habitat with similar functions and benefits for shorebirds to mitigate for the 2.3 acres of shorebird roost habitat lost as a result of the Westpoint Harbor Project.
2. No later than 45 days after approval of the shorebird roost habitat creation plan by or on behalf of the Commission, after consultation with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife, Respondents shall complete implementation of the shorebird roost habitat creation plan. Respondents shall notify BCDC staff in writing upon completion of implementation of the plan.

K. Provide Non-tidal Wetland Mitigation

1. No later than 60 days after the Effective Date of this Order, Respondents shall submit to BCDC staff, the U.S. Army Corps of Engineers (“Corps”), and the San Francisco Bay Regional Water Quality Control Board (“Regional Board”) a wetland habitat mitigation plan, as required by Permit Special Condition II.G, to provide mitigation for the loss of 0.27 acres of non-tidal wetlands formerly located in a drainage ditch on the Site by enhancing and enlarging wetlands in the remainder of the drainage ditch and by creating additional wetland on isolated fringes of the Site for a replacement ratio of at least 1:1. The wetland habitat mitigation plan shall include: (1) full implementation of Respondents’ wetlands mitigation plan prepared in 2003 by (a) placing flap gates on the downstream end of each of the two 24-inch culverts placed beneath the primary access ditch crossing; and (b) placing a 10-inch PVC pipe with a control valve approximately one-foot below the mean high water elevation to connect the marina basin with the ditch; (2) a management plan describing operation of the control valve during the dry season to allow tidal water to be introduced into the ditch to extend the duration and area of soil saturation and/or inundation within the mitigation wetland; and (3) a reporting program to document measures taken by the permittee to during the reporting period in accordance with the management plan.
2. No later than 45 days after approval of the wetland habitat mitigation plan by or on behalf of the Commission, after consultation with the U.S. Army Corps of Engineers and the San Francisco Bay Regional Water Quality Control Board, Respondents shall complete implementation of the non-tidal wetland habitat mitigation plan.

L. Provide Annual Reports on Live-Aboard Boats. No later than 30 days after the Effective Date of this Order, and thereafter by no later than January 15, 2019, and annually by January 15 of each following year, Respondents shall provide a report of the number and location of live-aboard boats at the marina.

M. Provide Certification of Contractor Approval. As required by Permit Special Condition II.U, on and after the Effective Date of this Order, prior to commencing any grading, demolition, or construction at the Site, Respondents shall submit to BCDC staff a written certification from any general contractor or contractors in charge of performing work at the Site, that the contractor has reviewed and understands the requirements of the Permit and the final BCDC-approved plans.

N. Extension of Time

1. If Respondents believe that an event arising from a cause or causes beyond the control of Respondents, or their contractors or agents has occurred that will delay timely compliance with any provision of Paragraph III.B through Paragraph III.K of this Order and justifies an extension of a compliance date set forth therein, Respondents shall notify BCDC’s Chief Counsel by e-mail within five business days of

when Respondents first knew of the event. The e-mail notice shall describe the cause or causes of the delay, the anticipated length of time the delay may persist, the measures taken or to be taken by Respondents to prevent or minimize the delay, the schedule by which these measures will be implemented, and the additional time requested to comply.

2. The Executive Director may grant an appropriate extension of time to comply with any provision of Paragraph III.B through Paragraph III.K of this Order, in response to a request made by Respondents pursuant to Paragraph N.1, for good cause shown.

O. Submission of Monthly Status Reports and Further Review by the Enforcement Committee

1. By no later than **April 15, 2018**, and by no later than the 15th of each following month, Respondents shall submit a status report by letter to the Executive Director describing: (a) all actions or activities Respondents have undertaken since the Effective Date of this Order (for the April 15, 2018 status report) or since submission of the prior monthly status report to comply with this Order; (b) the status of their application to amend the Permit as required by Section III.G, above, and any other applications that Respondents may submit to amend the Permit; and (c) the actions or activities Respondents plan to take in the coming month or months to comply with this Order.
2. The Executive Director shall schedule two public hearings before the Enforcement Committee to be held by no later than **July 31, 2018, and January 31, 2019**, to report on the status of Respondents' compliance with the Permit and this Order. If proposed by the Executive Director, or in the exercise of its discretion, the Enforcement Committee may recommend that the Commission impose additional administrative civil penalties for violations of the Permit that occur after the Effective Date of this Order, provided that Respondents shall have an opportunity to submit a statement of defense and the Executive Director shall have an opportunity to submit a reply to such statement of defense prior to the Commission's consideration, at a public meeting, of any Enforcement Committee recommendation for the imposition of additional penalties. **At the second public hearing, to be held by no later than January 31, 2019, the Enforcement Committee shall, after considering the Executive Director's recommendation and Respondents' response to such recommendation, determine, in accordance with Paragraph IV.O, below, whether Respondents have substantially complied with this Order and the Permit, and have maintained substantial compliance with this Order and the Permit, and, therefore, whether Respondents shall be entitled to a waiver of fifty percent (50%) of the total penalty amount, or \$256,500.**

IV. CIVIL PENALTY ORDER

A. Government Code Section 66641.5(e) provides that the Commission may administratively impose civil liability for any violation of the MPA or a BCDC permit in an amount that shall not be less than \$10 nor more than \$2,000 for each day in which that violation occurs or persists, but may not administratively impose a penalty of more than \$30,000 for a single violation.

B. Government Code Section 66641.9(a) states:

In determining the amount of administrative civil liability, the commission shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

C. **Nature and Extent of the Violations.** Respondents have violated a range of Permit requirements concerning many aspects of the Westpoint Harbor Project over a long period of time, many of which have occurred and are continuing to occur on an ongoing basis. The violations concern many elements and areas of the Project and a number of violations likely have had off-Site impacts affecting Greco Island, other marshlands of the Refuge, and the adjacent salt pond. The violations include: (1) prohibiting or restricting required public access to many areas of the Site for almost eight years; (2) failing to provide and maintain required public access improvements for almost eight years; (3) failing to comply with Permit requirements for plan review and approval by BCDC staff; (4) construction or installation of improvements that failed to comply with the terms of the Permit authorization or which are not authorized under the Permit at all; (5) failure to comply with Permit conditions for the protection of sensitive wildlife species and habitat; (6) failure to provide required mitigation for Project impacts; and (7) failure to provide information or documentation required by the Permit.

D. **Circumstances of the Violations.** In May 2011, after commencing a review of the Westpoint Harbor Project and Permit compliance, staff notified Sanders by letter of 10 violations or categories of violations. Sanders resolved a few of the violations relatively quickly, including obtaining a Permit amendment to extend the past-due date to complete all authorized work and providing documentation to staff regarding submission of specified information to NOAA, but failed to address or resolve most of the violations, notwithstanding staff's repeated efforts over the next six years to work with Respondents to bring the Site into compliance with the Permit.

Respondents continued for six years to prevent and discourage public access by installing numerous unauthorized signs around the Site prohibiting public access, obstructing the required Phase 1B public paths around the marina basin, and refusing to remove a gated fence along the shoreline that blocked public access to the Site from Pacific Shore Center's Bay shoreline trail. In 2012, BCDC staff agreed to allow Sanders to install temporary fencing to restrict public access to certain undeveloped portions of the Site, and staff prepared a proposed Permit amendment to authorize such temporary fencing, and to make certain other changes to the permit requested by Sanders. Sanders declined to execute any of the five versions of a proposed Permit amendment prepared by staff or to otherwise seek an amendment limited solely to authorizing the temporary fencing of the undeveloped areas. Sanders did not execute a Permit amendment (Amendment Seven) authorizing temporary fencing of the undeveloped areas until May 2017, after staff had informed Sanders that it was preparing a 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. However, Respondents continue to prohibit public access by pedestrians to the guest docks, which are within the dedicated public access area.

E. Gravity of the Violations

1. The Violations Have Had Substantial Adverse Impacts On Required Public Access.

In granting the Permit, the Commission found "that the project as proposed, provides the maximum feasible public access to the bay consistent with the proposed project because the public access provided will result in high quality, dedicated access through the site that provides views of the marina and surrounding habitat." Permit Findings and Declarations, Section III.D (Public Access).

Respondents' violations of the Permit's public access requirements have resulted in the denial and loss of public access areas and improvements at the Site for an approximately eight-year period, from September 2009 to July 2017. Respondents continue to deny required public access by pedestrians to the guest docks.

2. Respondents Have Disregarded the Permit's Requirements for Many Years.

Respondents have, *inter alia*: (a) violated the Permit's requirements to provide and maintain public access and public access improvements for an approximately eight-year period, and have repeatedly violated the Permit's requirements for plan review and approval prior to constructing Site improvements; (b) constructed Site improvements that failed to comply with the terms of the Permit authorization; and (c) constructed or installed many unauthorized improvements. In knowing disregard of direction from staff, Respondents continue to impermissibly require a permit and charge a fee for the public to use the public boat launch that is a required public access improvement located in a dedicated public access area. Although the proposed penalty for this violation was withdrawn at the first hearing before the

Enforcement Committee, Respondents' failure to respond to or comply with BCDC's Chief Counsel's direction, provided on August 3, 2017, to remove the unauthorized "Westpoint Harbor Boat Launch Sign" or to cover the portion of the sign requiring a permit and the payment of a fee, demonstrates Respondents' disregard of the Permit's public access requirements.

3. **The Violations Have Likely Had Adverse Impacts On Bay Resources.** In granting the Permit, the Commission found "that the project will result in the protection of Bay resources including marshes and fish and wildlife habitat because Special Conditions ensure the protection of surrounding valuable habitat and require mitigation for any impacts to wildlife or habitat at the project site." Permit Findings and Declarations, Section III.F (Fish and Wildlife and Tidal Marshes and Tidal Flats). Respondents' violations of the Special Conditions that the Commission imposed to protect Bay fish and wildlife resources and habitat, and to avoid or mitigate any significant impacts to such resources that were anticipated to occur as a result of construction and operation of the Project, have likely resulted in adverse impacts to sensitive wildlife species and habitat that exist in the area. These violations include Respondents' failures to:
- a. Install and maintain buoys adjacent to the navigation channel of Westpoint Slough to identify the "No Wake" speed zone, delineate the center of the channel for adequate draw, and discourage boats from deviating out of the navigable channel;
 - b. Install and maintain a buoy system in Westpoint Slough, with approved signs, to inform the public that access to Greco Island and other marshlands of the Refuge is prohibited;
 - c. Provide the required visual barriers between the active marina areas and the adjacent salt pond to reduce disturbance to water birds using the salt pond;
 - d. Remove the Monterey Cypress and Poplar trees that Sanders planted along Westpoint Slough, without plan approval, after BCDC's former Bay Design Analyst twice directed him to do so, in 2011 and 2012, because these trees serve as perching sites for raptors that can prey on listed species found in the Refuge;
 - e. Provide required mitigation for the 2.3 acres of shorebird roost habitat lost as a result of the project with approximately 3.0 acres of replacement habitat with similar functions and benefits for shorebirds; and
 - f. Provide required mitigation for the loss of 0.27 acres of non-tidal wetlands formerly located in a drainage ditch on the Site by enhancing and enlarging wetlands in the remainder of the drainage ditch and by creating additional wetland on isolated fringes of the Site with a replacement ratio of at least 1:1.

F. Susceptible to Removal or Resolution. Most of the violations are, and have been, susceptible to removal or resolution, including but not limited to Respondents' failures to: (a) make required public access areas available; (b) complete, install, and maintain required public access improvements; (c) obtain BCDC staff approval of required plans; and (d) comply with Permit conditions to protect and mitigate for the Project's adverse effects on sensitive wildlife and habitat. Respondents have been on notice and capable of removing or resolving most of these violations since May 4, 2011, but have failed or refused to do so.

Moreover, although the majority of violations are susceptible to removal or resolution going forward, there is no way to compensate for the adverse impacts that have occurred or that have likely occurred in the past a result of Respondents' ongoing violations. In particular, there is no way to recover or restore to the public the lost public benefits caused by Respondents' conduct in preventing and discouraging public access to the Site, and in failing to provide and maintain all required public access improvements, over an approximately eight-year period, from 2009 to 2017. Similarly, there is no way to compensate for the adverse impacts to listed species and sensitive habitat that have likely occurred as a result of Respondents' violations of the Permit requirements included by the Commission to prevent or minimize such impacts.

G. Cost to State. Commission staff has incurred substantial costs in pursuing this enforcement action. Staff estimates that the costs to the state from May 2011 through November 2017 total at least 2,160 hours and a cost of over \$165,000. Staff will incur additional costs in the future to oversee Respondents' compliance with this cease and desist and civil penalty order.

H. Violator's Ability to Pay and Effect on Business. In response to document subpoenas and associated interrogatories issued by the Executive Director for the production of financial records and information, Respondents challenged the Executive Director's authority to propound such discovery requests and objected to the requests on numerous grounds. Respondents refused to provide any of the financial records or information requested by the Executive Director, but also stated that the information sought is not at all relevant to this proceeding, "as financial inability to pay administrative penalties has not been asserted by Respondents." Because Respondents refused to provide the requested financial records and information and because Respondents have not asserted an inability to pay the proposed penalty, the statutory factors of the violator's "ability to pay, [and] the effect on ability to continue in business" are not relevant to determination of an appropriate amount of administrative civil liability.

I. Voluntary Removal or Resolution Efforts. Although Respondents partially resolved certain longstanding violations in July 2017 (including opening most but not all of the Phase 1B public access areas, removing most but not all unauthorized signs prohibiting public access, and making the restrooms in the harbormaster's building available to the public during daylight hours only), these efforts cannot be characterized as voluntary. Respondents implemented these measures only after being notified that staff was preparing a Violation Report/Complaint

and that the Executive Director was considering the issuance of a cease and desist order to require Respondents to immediately open all required public access areas. The record reflects that Respondents have taken little, if any, *voluntary* action to resolve most of the violations, that Respondents continue to refuse to remedy numerous violations, and that Respondents did not otherwise cooperate constructively with staff's repeated efforts to bring the Site into compliance with the Permit.

J. Any Prior History of Violations. Staff does not allege a history of violations prior to May 4, 2011, when staff first notified Respondents of ten violations or categories of violations, but over the past six years, from 2011 to 2017, Respondents have a history of repeated violations including: (1) failing to submit the required Certification of Contractor Review, certifying that the permittee's contractors have reviewed the Permit requirements and final BCDC-approved plans prior to commencing construction; (2) failing to complete all authorized work by the deadline specified in the Permit without requesting and obtaining a Permit amendment granting an extension of time to complete such work; and (3) repeatedly violating the Permit's requirements for plan review and approval.

K. Respondents' Culpability. Sanders executed the Permit in 2003, and executed a number of subsequent Permit amendments, attesting each time that he understood and agreed to the Permit terms and conditions, but for an approximately eight-year period (from 2009 to 2017) he has disregarded those Permit conditions that he subsequently apparently determined to be inconvenient or unacceptable. Respondents' violations of the Permit's requirements to provide public access to all required Phase 1B public access areas, and to complete all required Phase 1B public access improvements, appear to have been knowing and intentional. In preventing and discouraging public access by maintaining numerous unauthorized signs around the Site prohibiting or restricting public access, Sanders has misled the public for years. This includes signs that misleadingly cited Redwood City's use permit as basis for restricting public access, even though the City's use permit states as a condition of approval that: "Public access to open space shall be maintained at all times."

Respondents also appear to have knowingly and intentionally: (a) violated the Permit's requirements for plan review and approval prior to constructing Site improvements; (b) constructed Site improvements that failed to comply with the terms the Permit authorization; and (c) constructed or installed certain unauthorized improvements.

L. Economic Savings. The Commission is not in a position to quantify the economic savings to Respondents resulting from the violations. However, Respondents presumably benefitted economically from violating numerous Permit requirements for years, including saving money by: (1) not providing public access to the Site, and not completing and maintaining all required public access improvements, for an approximately eight-year period from 2009 to 2017; (2) constructing or installing Site improvements without submitting plans to Commission staff for plan review and approval; (3) constructing Site improvements in violation of the terms of the Permit; (4) constructing or installing numerous unauthorized improvements at the Site; (5) not installing the required buoy system in Westpoint Slough, with approved signs, to inform the

public that access to Greco Island and other marshlands of the Refuge is prohibited (and by not maintaining the signs that Sanders installed on Greco Island in 2011 in lieu of the required buoy stem); and (7) not providing the shorebird roost habitat mitigation or the wetlands mitigation required by the Permit.

M. Administrative Civil Penalties. The Executive Director's Recommended Enforcement Decision includes, as Exhibit C, a Summary of Violations and Proposed Administrative Civil Penalties that lists 23 violations or categories of violations and a total proposed penalty of \$543,000. At the Enforcement Committee hearing on November 16, 2017, BCDC's Chief Counsel withdrew the proposed penalty of \$30,000 for one of the violations, and, therefore, the total proposed penalty is \$513,000. Based on consideration of the relevant factors set forth in Government Code Section 66641.9(a), the penalty amounts authorized by Government Code Section 66641.5(e), and the preceding findings, the Commission hereby finds that an administrative civil penalty of \$513,000 is justified to resolve this matter. Provided, however, that if the Enforcement Committee determines, in accordance with Paragraph IV.O, below, that Respondents have substantially complied with this Order and the Permit, and have maintained substantial compliance with this Order and the Permit, Respondents shall be entitled to a waiver of fifty percent (50%) of the total penalty amount, or \$256,500.

N. Pursuant to Government Code Section 66641.6(d) and 66647, Respondents shall remit payment to the Commission, by a cashier's check in the amount of \$256,500, payable to the San Francisco Bay Conservation and Development Commission – Bay Fill Clean-Up and Abatement Fund, within 30 days of the Effective Date of this Order.

O. Respondents shall be entitled to a waiver of fifty percent (50%) of the total penalty amount, or \$256,000, if the Enforcement Committee determines, at the public hearing to be held by no later than January 31, 2019, pursuant to Paragraph III.N.2, above, that Respondents have substantially complied in a timely manner with each and every requirement of Paragraphs III.A, III.B, III.C, III.D, III.E, III.F, III.G, III.H, III.I, III.J, III.K, III.L, III.M, and III.O.1 of this Order and have maintained substantial compliance with this Order and the Permit through the date of said hearing. By no later than February 15, 2019, the Executive Director shall notify Respondents in writing of the Enforcement Committee's determination as to whether or not Respondents have complied with the referenced requirements of this Order and have maintained compliance with this Order and the Permit through the date of said hearing, and, therefore, whether or not Respondents shall be entitled to a waiver of fifty percent (50%) of the total penalty amount.

P. If the Enforcement Committee determines, in accordance with Paragraph IV.O, above, that Respondents are not entitled to a waiver of fifty percent (50%) of the total penalty amount, Respondents shall remit payment of the balance of the total penalty amount, or \$256,500, by cashier's check, payable to the San Francisco Bay Conservation and Development Commission – Bay Fill Clean-Up and Abatement Fund, within 30 days of receiving the Executive Director's notification of the Enforcement Committee's determination.

V. TERMS

A. Under Government Code Section 66641, any person who intentionally or negligently violates any cease and desist order issued by the Commission may be liable civilly in the sum of up to \$6,000 for each day in which such violation persists. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

B. This Order does not affect any duties, right, or obligations under private agreements or under regulations of other public bodies.

C. Respondents must conform strictly to this Order.

D. This Order does not constitute a recognition of property rights.

E. This Order is effective upon issuance thereof.

VI. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Sections 66639(a) and 66641.7(a), within thirty (30) days after service of a copy of a final cease and desist order and civil penalty order issued by the Commission, any aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

DATED: February __, 2018

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission

List of Attachments

Attachment A: Revised Index of Administrative Record

Westpoint Harbor Index of Administrative Record

11/6/2017

Document No.	Document Description	Date
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

Westpoint Harbor Index of Administrative Record

11/6/2017

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 Enforcement 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
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 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

Westpoint Harbor Index of Administrative Record

11/6/2017

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
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. FR2010.013)	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. FR2010.013)	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

Westpoint Harbor Index of Administrative Record

11/6/2017

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	5/15/2017
83	Email from David Smith to Marc Zeppetello, Subject: WPH: Response to May 16 Email	5/22/2017
84	Letter from Brian Gaffney to Larry Goldzband, RE: BCDC Enforcement File ER2010.013, Further Violations of BCDC Permit No. 2002.002.06 by Mark Sanders, Westpoint Marina	5/23/2017
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	5/24/2017
86	Letter and enclosure from Mark Sanders to Erik Buehmann, Subject: Westpoint Harbor Public Access Signage Plan	6/7/2017
87	Email from Marc Zeppetello to David Smith, Subject: Re: WPH: Response to May 16 email	6/9/2017
88	Photographs from Marc Zeppetello Site Visit	6/18/2017
89	Email from Marc Zeppetello to David Smith, Subject: Westpoint Harbor: June 7 Sign Plan and other issues	6/19/2017
90	Email from David Smith to Marc Zeppetello, Subject: Westpoint Harbor -- Status Update	6/29/2017
91	Email from David Smith to Marc Zeppetello, Subject: WPH: Roosting Habitat and Non-tidal Wetlands	6/29/2017
92	Email from David Smith to Marc Zeppetello, Subject: RE: Westpoint Harbor -- Status Update	6/30/2017
93	Email from David Smith to Marc Zeppetello, Subject: RE: Westpoint Harbor -- Status Update	7/5/2017
94	Photographs from BCDC Staff Site Visit	7/11/2017
Additional Documents Added to the Administrative Record After Issuance of Violation Report		
95	Application Summary for BCDC Permit Application No. 2002.002.00	7/3/2003
96	BCDC Public Access Signage Guidelines - Shoreline Signs	8/1/2005

