

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

COMMISSION MEETING
PARTIAL TRANSCRIPT
ITEM 8

BAY AREA METRO CENTER
375 BEALE STREET
YERBA BUENA ROOM, FIRST FLOOR
SAN FRANCISCO, CALIFORNIA

THURSDAY, MARCH 15, 2018
1:00 P.M.

Reported by:
Ramona Cota

A P P E A R A N C E SCOMMISSION MEMBERS

Zach Wasserman, Chair

Jim Chappell, Vice Chair

Mark Addiego

Rick Bottoms, represented by Katerina Galacatos, Alternate

Wilma Chan, represented by Marie Gilmore, Alternate

Dave Cortese, represented by Greg Scharff, Alternate

Geoffrey Gibbs

John Gioia

Jim McGrath

Aaron Peskin

Dave Pine

Sanjay Ranchod

R. Sean Randolph

Kathrin Sears

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Jill Techel

Brad Wagenknecht

Sam Ziegler

Alexander Zwissler

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BCDC Staff and Consultants

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Adrienne Klein, Chief of Enforcement

Sharon Louie, Director, Administrative and Technology
Services

Brad McCrea, Regulatory Director

Marc Zeppetello, Chief Counsel

Tara Mueller, Deputy Attorney General
Office of the Attorney General

Cheneé Williams, Chief Budget Officer

Respondent/Permittee

Kevin Sadler, Attorney at Law
Chris Carr, Attorney at Law
Kevin Vickers, Attorney at Law
Baker Botts LLP

Mark Sanders
Westpoint Harbor, LLC

Public Speakers

Maureen O'Connor Sanders

Matthew Sanders

Barry Gearhart

Paulien Ruijssenaars

A P P E A R A N C E SPublic Speakers (continued)

Rob Krenn

Brenda Hattery

David Hattery

Richard Webber

Marianne Tracy

Ashley O'Healy

Allison O'Healy

Louis Adamo

Peter Blackmore

Max Wiedemann

Gail Raabe, Citizens Committee to Complete the Refuge

Raymond Durazo, Recreational Boaters of California (RBOC)

Kamilah Najieb-Wachob, Committee for Green Foothills

Helen Horn

Edward Stancil

Paula Bozinovich

Sonya Boggs

Doug Furman

Carol Sheetz

Kevin Parker

Arthur Feinstein

Bob Wilson

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P R O C E E D I N G S

2:39 p.m.

1
2
3 CHAIR WASSERMAN: If we can start to sit down. There
4 was no action taken in the closed session.

5 **8. Consideration of and Possible Vote on the Enforcement**
6 **Committee's Recommended Enforcement Decision Involving**
7 **Proposed Cease and Desist and Civil Penalty Order**
8 **No. CDO 2018.01; Mark Sanders and Westpoint Harbor, LLC**

9 CHAIR WASSERMAN: That brings us to the matter on the
10 recommendation of the Enforcement Committee regarding Mark
11 Sanders and Westpoint Harbor, LLC.

12 It is my understanding the process will be we will hear
13 from staff, we will hear from the Respondent. Do I have the
14 order right, David?

15 MR. ALDERSON: Yes.

16 CHAIR WASSERMAN: Thank you.

17 We will then hear from the public. We will then close
18 the public hearing and the Commission will deliberate.

19 Let's start out, however, by being clear about what the
20 options for the Commission today are and what the
21 fundamental procedure is. David, please.

22 MR. ALDERSON: Chair and Board, I am happy to do that.

23 The Commission's options today are in Title 14 of
24 California's Code of Regulations, Section 11332.
25 Essentially there are four options:

1 One, the Commission can adopt the recommended
2 enforcement decision without any changes in the proposed
3 Cease and Desist Order.

4 Two, the Commission could just dismiss the entire
5 matter and dismiss the recommended enforcement decision and
6 without adopting any particular Order.

7 Three, the Commission could remand the matter back to
8 the Enforcement Committee for further action as the
9 Commission directs.

10 Or four, the Commission could reject the recommended
11 enforcement decision and to decide to consider the matter de
12 novo.

13 Thank you.

14 CHAIR WASSERMAN: And the one other item that I think
15 is important to note is that this is simply listening to the
16 arguments, we are not hearing any evidence in this
17 procedure.

18 Any questions from the Commission at this level?

19 Then I think staff is up to bat. And I'm sorry, the
20 parties have agreed on 15 minutes each.

21 And I would caution everybody -- I'm sorry, let me make
22 one additional caution to the public. We want to hear from
23 you. We may start losing commissioners between 4:00 and
24 4:30. I would hope that all of you would be inspired a
25 little bit by the last speaker on general matters that if

1 you are basically reinforcing and repeating what's been said
2 you could say that without going on. I will allow two
3 minutes for the members of the public, each, but with the
4 context that we could start losing commissioners I would ask
5 you to be as brief as possible.

6 Now you can start batting, Mark.

7 MR. ZEPPETELLO: Chair Wasserman, Commissioners,
8 Mr. Sanders, good afternoon.

9 Mr. Sanders constructed the Westpoint Harbor Marina
10 from a portion of a former salt pond under a permit issued
11 by this Commission in 2003.

12 The reason that we are here today is that Mr. Sanders
13 has not done what he agreed to do under the permit. He has
14 refused to comply with the contract that he entered into
15 with the Commission 14, almost 15 years ago when he signed
16 his permit.

17 Like all other BCDC permits, the Westpoint Harbor
18 permit requires that public access be provided prior to the
19 use or occupancy of authorized structures. In this case
20 Mr. Sanders did the exact opposite, he pursued his
21 development first and he put off providing required public
22 access until last.

23 Specifically under this permit the trigger for
24 providing public access and public access improvements was
25 installation and use of what are referred to as the Phase 1B

1 marina berths and that occurred by no later than September
2 of 2009. However, Mr. Sanders did not provide public access
3 to the majority of the required public access areas or
4 amenities until July of 2017, approximately eight years
5 after required to do so by the permit.

6 To this date Mr. Sanders has not obtained approval of
7 required plans for signage, for public walkways, for
8 landscaping or for site furnishings.

9 Mr. Sanders has failed to install most of 170,000
10 square feet of landscaping as required by the permit or all
11 of the site furnishings required by the permit.

12 He has failed to provide required visual barriers to
13 the adjacent salt pond to the south.

14 Despite his agreement to do so and a finding in the
15 permit, he has failed to install required signs and buoys in
16 Westpoint Slough to protect wildlife, including conditions
17 that were imposed at the request of the United States Fish
18 and Wildlife Service to protect the adjacent national
19 wildlife refuge.

20 He has also failed to provide required shorebird
21 roosting habitat or to fully implement a wetlands mitigation
22 plan that he submitted to the Corps of Engineers, but not to
23 BCDC, in 2003.

24 And finally, he has installed numerous unauthorized
25 structures in the Bay and in dedicated public access areas.

1 BCDC staff inspected the site in 2011 following a
2 complaint that was forwarded to staff by a Commissioner that
3 a member of the public had been denied public access to the
4 site.

5 In May 2011 BCDC notified Mr. Sanders of numerous
6 permit violations at the site; and for the past seven years
7 staff has attempted to work with Mr. Sanders to resolve the
8 violations.

9 Between 2012 and 2015 staff prepared five different
10 versions of a proposed permit amendment that would have
11 addressed many of his concerns and each of which he refused
12 to sign.

13 Since 2003 Mr. Sanders has received the benefit of his
14 permit. He has developed and profited from his marina while
15 the public was denied required access and public access
16 amenities and while required environmental protections were
17 not implemented.

18 A brief comment on the proposed penalty. Staff
19 aggregated 35 multiple violations into a total of 22 so as
20 to avoid a claim of over-counting; and staff did not propose
21 a penalty for 4 of the violations. The proposed penalty is
22 what it is because of the large number of violations and the
23 long duration over which they occurred. However, staff has
24 no objection as proposed or suggested by the Enforcement
25 Committee that Mr. Sanders have an opportunity to be

1 entitled to a waiver of a substantial portion of the penalty
2 if he complies with the Order and with the permit.

3 For the remainder of my presentation I will provide a
4 brief orientation to the site and the timeline of the
5 enforcement matter, discuss briefly the key provisions of
6 the Proposed Order adopted by the Enforcement Committee and
7 present the staff's recommendation.

8 The slide on the screen is a vicinity map which shows
9 Westpoint Harbor on the right side; and to the south you can
10 see some of the green, that's the remainder of Pond 10, a
11 salt pond owned and operated by Cargill. To the east is
12 Pacific Shores Center that has public access along the
13 slough that is intended and now connects to Westpoint
14 Harbor. And approximately a little less than 300 yards
15 across the slough is Greco Island and the wetlands of the
16 National Wildlife Refuge.

17 Here is a closer map of the -- a Google Earth image of
18 the site. I will just point out a few of the site features.
19 The marina itself and the public access improvements are
20 Phase 1 of the project. Phase 2 is the boatyard to the east
21 and Phase 3 is the future retail areas to the west. The
22 guest docks are along the west side of the marina basin.
23 The unauthorized rowers dock that is discussed is the 101
24 Surf Sports facility here.

25 Mr. Sanders and his supporters are now saying that

1 there is plenty of public access at the site. However, he
2 only opened the public access or the majority of it after
3 being informed that staff was initiating a formal
4 enforcement process.

5 As recently as last June there were members only signs
6 at the marina entrance, there were restricted access signs
7 blocking the way -- well not blocking but discouraging cars
8 from driving down here. There was a restricted access sign
9 on the trail here so that you couldn't walk this way. The
10 public access along this side of the marina basin was
11 blocked with a gate, the connection to Pacific Shores was
12 blocked with a gate.

13 This is the site plan, the public access site plan that
14 is part of the permit, and it shows that all the shaded
15 areas are dedicated public access including the paths around
16 the perimeter of the marina. The guest docks are dedicated
17 public access; the boat launch is dedicated public access.

18 The timeline. In May, as I mentioned earlier, of 2011
19 staff notified Mr. Sanders of numerous violations.

20 One of Mr. Sanders' concerns was that he didn't want
21 the public walking along the undeveloped Phase 3 future
22 development sites. So although staff didn't think fencing
23 was required, an agreement was reached early in 2012 with
24 Redwood City and Mr. Sanders to install temporary fencing.
25 Staff prepared a permit amendment that would have authorized

1 that and made a number of other changes. Mr. Sanders had
2 problems so staff prepared several more versions of the
3 proposed amendment over the next few years.

4 In Version 4 in September of 2014 staff sent a 22 page
5 letter responding to Mr. Sanders' comments and explaining
6 why they couldn't make certain changes administratively.

7 We got no response to the fifth version. Shortly after
8 that Mr. Sanders' former counsel died so there was no
9 response. But during this time period Mr. Sanders had
10 applied for an amendment for the boatyard and staff proposed
11 that the changes for Amendment Five be incorporated.

12 Mr. Sanders declined and said his goal was to get
13 authorization for his boatyard. So once again development
14 came first and public access last.

15 In December of 2016 staff informed Mr. Sanders that it
16 was preparing a violation report. Mr. Sanders said, well,
17 if public access is important I'll apply for amendment and
18 get a fence up, which is how five years after an agreement
19 was reached for fencing, fencing was finally installed and
20 he opened the majority of the public access areas in July of
21 last year.

22 I am just going to go very quickly through the terms of
23 the Proposed Order.

24 One major section requires that all of the Phase 1B and
25 Phase 2 public access areas be opened and available for

1 unrestricted public access.

2 Another section requires submissions of plans that are
3 required by the permit. A signage plan. Mr. Sanders
4 submitted a signage plan last year that was rejected; staff
5 provided comments. Eight months later he has not submitted
6 a revised signage plan. There is also plans needed for the
7 walkways, for the landscaping, for the site furnishings.

8 One section of the Proposed Order requires removal of
9 unauthorized improvements in public access areas.

10 Another section requires that he submit an application
11 to amend the permit to request after-the-fact authorization
12 for a number of improvements. These are things where staff
13 is not asking that these things be removed but just that the
14 permit needs to be amended.

15 The permit requires installation of the buoys and signs
16 as required by the permit and some of the other mitigation
17 requirements intended to protect fish and wildlife and the
18 refuge.

19 One of the key terms is the submission of monthly
20 status reports and further review by the Enforcement
21 Committee, which we thought would be a useful means to
22 ensure compliance and track this going forward.

23 I discussed the penalty previously and I am sensitive
24 to time.

25 I would like to talk briefly about the penalty factors.

1 The recommended enforcement decision contains a detailed
2 analysis of the penalty factors, I would just highlight a
3 few:

4 This matter has been a very high cost to the state for
5 enforcement, over 2,000 hours is estimated in staff time.

6 Mr. Sanders has benefitted economically from the
7 violations by not providing public access sooner, by not
8 obtaining plant review for improvements.

9 Some public commentors have expressed concern that the
10 marina might be closed because of this enforcement action.
11 We requested economic information, financial information
12 from Mr. Sanders last year. He refused to provide any and
13 asserted that ability to pay was not a relevant factor.

14 I would like to talk just about failure to cooperate.
15 Failure to cooperate over the period from 2011 to '17 is one
16 thing and you'll hear, perhaps, Respondent's counsel say
17 there is no evidence of intentional violations because
18 nobody has submitted a declaration under penalty of perjury
19 that they were denied access.

20 Well, prior to the violation report is one thing, but
21 since last July Mr. Sanders has done nothing to come into
22 compliance. As examples, no signage plan. He has failed to
23 remove an unauthorized sign at the boat launch that charges
24 a fee and requires a permit from the harbormaster building.
25 You might ask Mr. Sanders why that is, why he's refused to

1 cooperate.

2 Last spring staff was told that Mr. Sanders had hired a
3 landscape architect to prepare a revised signage plan and
4 other required plans. Instead he has hired a team of
5 litigators and it appears that he has decided to litigate
6 rather than work with the Commission and staff.

7 So I would offer just a few comments on the litigation
8 option, Mr. Sanders. If you choose to sue you will still
9 need to comply with the permit unless you get an order,
10 unless you get a court to stay the Order.

11 The court will consider the probability of success on
12 the merits and the potential for irreparable harm. On the
13 probability of its success on the merits I think it's fair
14 to say it's an uphill battle to get a court to agree that
15 you don't have to comply with your permit. And as for
16 irreparable harm, we will submit statements by the Fish and
17 Wildlife Service about the need for buoys and signs and the
18 hazards for planting trees along the slough and the comments
19 the public is still being denied access to the kayak launch
20 -- to the boat launch. On the merits there is substantial
21 evidence to support the Commission's decision.

22 If it is not too late, Mr. Sanders, I would like to
23 make a final appeal to you to consider the alternative,
24 which is to work with staff and work with the Commission and
25 the Enforcement Committee. If you put as much effort into

1 compliance as litigation this would be largely behind you in
2 a year.

3 Turning to the staff's recommendation. The staff
4 recommends that the Commission reject the Enforcement
5 Committee's Recommended Enforcement Decision. The staff
6 further recommends that the Commission consider the matter
7 de novo and proposes that the staff will submit a modified
8 Proposed Order substantially identical to the modified Order
9 that the staff proposed to the Enforcement Committee,
10 subject to additional modifications by direction from the
11 Commission here today.

12 To explain the basis for the staff's position I just
13 will explain a few of the principal modifications we made in
14 the Order submitted to the Enforcement Committee in January.

15 A number of the modifications made the Order less
16 onerous and more favorable to Mr. Sanders. The modified
17 Order would allow more time to complete a number of plans
18 and submissions under the Order. There were some
19 improvements in the public access area where in the modified
20 Order we would allow Mr. Sanders to apply for an amendment
21 to leave those improvements even though they are in the
22 public access area so that he wouldn't be required to move
23 them immediately; this includes the community garden and a
24 storage shed.

25 Mr. Sanders claims the Coast Guard will not authorize

1 buoys and signs in the slough but there is no evidence he
2 even applied. So the modified Order, rather than directing
3 installation of the signs and buoys, would require him to
4 apply to the Coast Guard; and if the permission is denied,
5 to come up with an alternative and seek a permit amendment.

6 The modified Order would allow for an extension of time
7 provision so that the Executive Director could grant a
8 reasonable request for extension of any of the deadlines.

9 The modified Order also expands upon the requirement
10 for submission of monthly reports and further reports --
11 further hearings before the Enforcement Committee.

12 We would propose two subsequent hearings by the
13 Enforcement Committee in six months and a year. And tied to
14 that, the civil penalty provision would be modified to allow
15 for a waiver of a portion of the penalty as determined by
16 the Committee, not by staff, not by the Executive Director,
17 and it would provide for a waiver if substantial compliance
18 is determined by the Committee.

19 Mr. Sanders -- I just have one more minute.
20 Mr. Sanders, you may think the waiver provision is illusory
21 and provides a false expectation of a waiver and puts too
22 much discretion to the staff, but I would suggest to you
23 that the opposite is true. Those provisions for monthly
24 reporting and two further hearings by the Enforcement
25 Committee put the focus on the staff as well as on you.

1 Those provisions give you the opportunity to hold staff
2 accountable on both points. Staff will have a strong
3 incentive to work with you cooperatively and reasonably
4 because we will all be coming back to the Enforcement
5 Committee twice for the Enforcement Committee to assess
6 compliance.

7 Finally, the revised Proposed Order would make a number
8 of changes in response to evidentiary objections raised by
9 Respondents.

10 As two examples, the Committee's Proposed Order that is
11 before you states in a number of places that the violations
12 resulted in adverse impacts to biological resources. In
13 response to counsel's arguments that we haven't proved harm
14 the modified Order would revise the language to say the
15 violations likely resulted in harm. That's sufficient, the
16 staff doesn't have to prove harm, we just have to prove
17 failure to comply with the permit conditions.

18 As another example, the Respondents argue there is no
19 evidence of knowing and intentional conduct and we deleted
20 those provisions from the modified Order in a number of
21 places.

22 Finally I would comment on the two options available to
23 you if you choose not to adopt the Enforcement Committee's
24 recommendation are either to remand to the Enforcement
25 Committee or to hear the matter de novo.

1 We would urge you to hear the matter de novo for three
2 reasons: First, we believe the judicial review will be
3 clearer and cleaner if the Order is adopted by the full
4 Commission.

5 Second, if the Commission hears the matter de novo you
6 will be able to make modifications to the Order as late as
7 the hearing, rather than being presented with an Order from
8 the Enforcement Committee that you will have to accept
9 without modification.

10 And finally and importantly, given the complete lack of
11 cooperation and failure to move forward to compliance, there
12 is some level of urgency in getting an Order adopted. We
13 believe that irreparable harm is occurring to wildlife and
14 to public access. The Commission should adopt an Order next
15 month following one more hearing rather than remand to the
16 Enforcement Committee, followed by Commission consideration
17 at yet another meeting, perhaps not until May.

18 The suggested motion that I would offer is that the
19 Commission reject the Enforcement Committee's recommendation
20 and decide that the Commission will consider the matter de
21 novo. Thank you.

22 CHAIR WASSERMAN: Thank you.

23 The Respondent has 18 minutes.

24 COMMISSIONER McGRATH: Zach, I want to make it clear to
25 the Respondent and the public, if the Commission adopts the

1 recommendation of the staff the de novo hearing would not be
2 today.

3 CHAIR WASSERMAN: Correct.

4 COMMISSIONER McGRATH: That would be at another time.

5 CHAIR WASSERMAN: Correct.

6 COMMISSIONER McGRATH: I just want to make sure
7 everybody understands.

8 CHAIR WASSERMAN: Thank you.

9 MR. SADLER: So Members of the Commission,
10 Mr. Chairman, I am Kevin Sadler of the Baker Botts law firm.
11 I am here with my colleagues Mr. Vickers and Mr. Carr and,
12 of course, we represent Mr. Sanders.

13 CHAIR WASSERMAN: Is your microphone on?

14 MR. SADLER: It is now.

15 CHAIR WASSERMAN: Thank you.

16 MR. SADLER: It was a minute ago.

17 And so I do not intend to give a detailed rebuttal to
18 what Mr. Zeppetello just said; I did not bring a PowerPoint
19 with me either.

20 This matter has been fully briefed extensively. We
21 filed a 123 page brief with detailed rebuttal of facts to
22 all the assertions made by the staff in their charging
23 document, backed up with hundreds of pages of evidence. I
24 am not going to repeat any of that here. That was all laid
25 out in front of the Enforcement Committee. That's done, the

1 record is closed, there is no more evidence.

2 What Mr. Zeppetello talked about at this hearing today,
3 'Mr. Sanders said this, Mr. Sanders felt that.' If it's not
4 in your record it didn't happen. Documents submitted just
5 in the last two or three weeks for your consideration,
6 purporting to respond to public comment and offering new
7 facts, new matters, that's not evidence before you. The
8 record is closed, the matter is submitted.

9 We have made a detailed response, binders and binders
10 of documents, because we don't agree with the charges. And
11 again to my astonishment I have heard yet additional
12 criticism for the mere fact that Mr. Sanders would dare to
13 hire lawyers and defend himself. We don't agree with that
14 either. We have a right to defend ourselves. You have a
15 right to enter whatever Order you like and we have a right
16 to appeal. That's not a threat, that is just everyone
17 standing on their rights.

18 So we submit the matter to you. You have an election
19 under 332. Mr. Alderson read it all to us, I agree with
20 every word he said.

21 The offer before you from the Enforcement Committee
22 was, adopt the Order. Plain and simple. As is, where is,
23 with all faults. Our view is, don't adopt any Order,
24 dismiss the complaint.

25 Now we have, apparently, option three, which is, let's

1 kick this can down the road, let's have yet another hearing
2 at huge expense, and adopt perhaps something else, which
3 sounds like an effort to tidy up a record that perhaps isn't
4 quite as strong as you might like it to be.

5 So we submit the matter to you. Make your election.
6 Our point of view is quite clear. The recommended Order
7 that came to you today came to you over all of our
8 objections. You adopt the Order that is being recommended
9 to do, you do so over all of our objections. You adopt
10 another Order that changes the language to help them, you do
11 so over our objections. We submit it to you. Make your
12 choice, make your election.

13 CHAIR WASSERMAN: Thank you, sir.

14 (Applause.)

15 CHAIR WASSERMAN: Sorry, I'm just checking my cheat
16 sheet. We will now hear from the public.

17 MR. ALDERSON: That's correct.

18 CHAIR WASSERMAN: We will now open the public hearing.
19 I sit corrected.

20 We have 27 speakers. I respect all of your rights to
21 speak and simply ask that you avoid trying to be repetitive.
22 The first speaker is Maureen O'Connor Sanders. Two minutes.

23 MS. O'CONNOR SANDERS: Thank you. I speak to counter
24 and correct misinformation conveyed to the public by Mark
25 Zeppetello and Adrienne Klein. Their statements that a

1 series of attorneys and landscape architects with whom Mark
2 Sanders has worked over the past 15 years left the Westpoint
3 Harbor project due to problems working with Mark. Nothing
4 could be further from the truth. It's misinformation.

5 In terms of attorneys, Mark's first attorney, Kent
6 Mitchell, worked with him for 15 years until his retirement.
7 Doug Aikens succeeded him and worked enthusiastically for 6
8 years. Dough Aikens died of lymphoma, still supportive of
9 Mark and Westpoint Harbor. David Smith succeeded Doug and
10 has worked closely with the harbor since 2015. He has fully
11 supported Mark's retaining Baker Botts, Mark's current
12 attorneys, and attended both Enforcement Committee meetings
13 and David is here today. Misinformation.

14 As for landscape architects, Mark originally used Tim
15 Hurley for 10 years until Tim left his firm. Mark
16 subsequently retained Kevin Stephens. Kevin tried for two
17 years to work cooperatively with BCDC staff on landscaping.
18 He finally exited the project utterly frustrated trying to
19 work with BCDC staff. He described numerous examples of
20 verbal agreements with Ellen Miramontes and Adrienne Klein
21 in one meeting, only to have those decisions upended and
22 overturned in the next. When told of Ms. Klein's claim that
23 he left due to problems with Mark, Kevin's comment was,
24 quote: "That's a lie." Unquote. Misinformation.

25 Name calling, demonizing permittees, (Timer tone

1 sounded) attacking an individual's character and using
2 misinformation to create a false impression has no place
3 here.

4 CHAIR WASSERMAN: Your time is up, ma'am, thank you.

5 MS. O'CONNOR SANDERS: They are desperate measures to
6 divert attention from allegations that are not evidence-
7 based and to avoid responsibility for a failed process.
8 They are vindictive and they are harassment.

9 CHAIR WASSERMAN: Thank you, your time is up.

10 The next -- (applause.)

11 CHAIR WASSERMAN: I am going to ask you not to applaud,
12 please, we are trying to get through this. I understand
13 your enthusiasm.

14 The next speaker is Matthew Sanders and the one after
15 that is Barry Geckhart, Gelhart?

16 MR. GEARHART: Gearhart.

17 CHAIR WASSERMAN: Gearhart.

18 Mr. Sanders.

19 (Commissioner Galacatos departed at 3:10 p.m.)

20 MR. MATTHEW SANDERS: Thank you. Just a few comments
21 about my dad. He's an engineer, he loves to build things,
22 he loves to fix things and he is certainly not afraid of
23 complicated projects. He is a sailor, he loves boats. My
24 sister and I were on boats since before we could walk, it's
25 a family passion.

1 I grew up living in harbors and since I was a kid
2 watching my dad work towards his goal of building a marina.
3 He has built companies, he's saved companies and spent all
4 of his success towards Westpoint Harbor. Since we were kids
5 he has always instilled in us the values of courage, doing
6 the right thing and integrity, so I find it insulting that
7 Mr. Goldzband would accuse him of endangering the
8 environment and cutting corners to minimize or maximize a
9 profit. There is nothing monetarily that has gone back to
10 my dad from Westpoint Harbor. That's it, thank you.

11 CHAIR WASSERMAN: Thank you very much. (Applause.)

12 Mr. Gearhart and following that, and I apologize,
13 Pauline Ruijssenaars. But first is Mr. Gearhart, Barry
14 Gearhart first. I'm trying to line you up so that we can
15 hear all of you as fully as possible.

16 MR. GEARHART: I'm Barry Gearhart. I had a bunch of
17 prepared remarks. I have spent hours going over the pages
18 and reams of documents. I'd like to ask you ladies and
19 gentlemen how many of the commissioners themselves have
20 actually been to Westpoint Harbor? Can I get a show of
21 hands? Anyone?

22 CHAIR WASSERMAN: No.

23 MR. GEARHART: Okay. So I have been there for six
24 years and in that time I have watched Mr. Sanders pull his
25 hair out and go, well, we've got this paper here and we got

1 this paper here, they're conflicted.

2 I wish the picture of the harbor were still there so I
3 could show you where I wasn't allowed to go, let alone the
4 public, and a lot of that had to do with Redwood City and
5 building permits and under construction and I am trying to
6 wrap my mind around how all of this is not reasonable.

7 Pond 10. I've got pictures on my phone and if I --
8 full of birds, wading birds, they're always there. Delta
9 smelt, pelicans, they're all there. The seals. Public
10 access. Thank you.

11 I think that what we have here is something strange and
12 I would like you -- I don't know what your options one, two,
13 three or four are. But I think if you go with the findings
14 as they currently stand you would all be complicit in
15 extortion. And I mean, that's just me. Born and raised in
16 the Santa Clara Valley. All right, thank you very much for
17 your time.

18 CHAIR WASSERMAN: Thank you very much, sir.

19 (Applause.)

20 Paulien, and you are going to correct me on the last
21 name, please. And following her is Rob Krenn.

22 MS. RUIJSSENAARS: My name is Paulien Ruijssenaars, I
23 know that's a hard one, and I am a friend of Westpoint
24 Harbor.

25 Like the BCDC our core values are protecting our

1 environment, preserving our natural resources and sharing
2 Westpoint Harbor with our entire community.

3 Friends of Westpoint Harbor have secured over 5,000
4 signatures on a petition, right here, with a call to action
5 to dismiss all allegations and proposed fines against
6 Westpoint Harbor, to investigate BCDC enforcement actions
7 and fines by the California Legislature and State Auditor,
8 to support BCDC for rights of equal access to the Bay for
9 all relevant water-oriented recreation sports - groups I
10 should say - and the appointment of an independent and
11 objective party to review the BCDC versus Westpoint Harbor
12 case.

13 We, Friends of Westpoint Harbor, have done our own
14 research and have distributed a comprehensive position
15 paper. You all should have received a copy.

16 The bottom line of all of this is that the facts do not
17 support the allegations. After months of seeing a bad
18 situation become even worse it is time to act. We call on
19 you to vote against the proposed Cease and Desist Order,
20 vote "No" today. Thank you very much. (Applause.)

21 CHAIR WASSERMAN: Thank you.

22 Mr. Krenn, followed by Brenda Hattery.

23 MR. KRENN: Hello. My name is Rob Krenn. I am a
24 native of the Bay Area and I am a friend of Westpoint
25 Harbor.

1 In the six years beginning May 2011 Westpoint Harbor
2 met with the BCDC at least nine different times and created
3 five different versions of amended permits.

4 In September 2014 this cooperative effort reached a
5 point at which 44 material errors and conflicts were
6 corrected. This was Amendment Five and it was signed by
7 BCDC Regulatory Director Brad McCrea.

8 Many of the issues you hear today are already resolved
9 by those years of hard work, but at the eleventh hour
10 Adrienne Klein added some new and deal-breaking conditions.

11 Number one: All fines must be paid from the time an
12 allegation was made until it was proven wrong.

13 Number two: Westpoint Harbor must comply with BCDC's
14 demands, even in the event of conflicts with other agencies.

15 And number three: Westpoint Harbor must waive its right
16 to seek justice in court.

17 It is this sort of behavior that drives the process to
18 litigation so we call on you to vote against the proposed
19 CDO and please vote "No" today. Thank you very much.

20 CHAIR WASSERMAN: Thank you, sir. (Applause.)

21 Brenda Hattery followed by David Hattery.

22 MS. HATTERY: My name is Brenda Hattery and I am a
23 friend of Westpoint Harbor.

24 We believe the allegations against the harbor are
25 unfounded and that the reasons that they are even possible

1 is because of behavior within BCDC. Other friends here will
2 tell you about problems like factual inaccuracies, mistakes
3 exaggerating, jurisdictional conflicts as well as BCDC's
4 demands that would hurt the environment, safety or public
5 access if the BCDC demands were completed.

6 Nineteen of the 23 allegations are built wholly or in
7 part on process problems. Those include losing or ignoring
8 paperwork, not following internal administrative processes
9 at BCDC like reviewing submitted documents, and subjectively
10 reinterpreting the permit at any time.

11 This amended permit includes at least 44 identified
12 errors and staff has little incentive to remove the errors.
13 I believe it is because they provide leverage and
14 enforcement traps. So now staff has alleged things like 12-
15 foot wide paths were intended everywhere, the rowing center
16 is authorized no dock, the public gets unlimited access 24/7
17 and the project's initial CEQA must be ignored.

18 BCDC won't acknowledge or review the submittals made
19 but now allege long after construction that no plan
20 submittals were made. BCDC refuses to accept permittee
21 proof of compliance, yet relies upon citizen reports rather
22 than doing their own inspections of the site.

23 This is a broken process. We call on you to vote
24 against the proposed CDO, against kicking the can down the
25 road. Just drop it, please. Thank you for your time.

1 CHAIR WASSERMAN: Thank you. (Applause.)

2 David Hattery, followed by Richard Webber.

3 MR. HATTERY: I am also a friend of Westpoint Harbor.

4 Exaggerating and reaching by BCDC was found in 17 of
5 the 23 allegations. So many examples, so little time.
6 Behind the dumpsters there is a small utility shed that BCDC
7 claims is blocking a public access view. You can't see the
8 shed because the dumpsters are in the way, and besides, who
9 wants to be looking behind dumpsters for a view? This is
10 reaching for a violation.

11 BCDC actually wants no view on the entire dumpster side
12 of the harbor. They are claiming insufficient visual
13 barriers between Westpoint Harbor and the roost base.
14 Ironically, a roost base Westpoint Harbor created from a
15 barren bittern pond that in other allegations BCDC claims
16 was never even created.

17 Drawings show that the existing barrier exists permit
18 requirements. But now BCDC wants an aesthetically pleasing
19 barrier, notwithstanding the complete absence of aesthetic
20 in the permit. The existing barrier as it stands is both
21 effective and pleasing. Roosting birds are unfazed by the
22 distant people and the people enjoy watching the birds that
23 roost. This is an example of exaggerating and reaching for
24 a violation, not to mention reinterpreting the permit and
25 conflicting claims.

1 There are a couple of utility boxes that extend some
2 inches into the wide public access paths. These sorts of
3 things are hard to avoid and changing the entire design of
4 the facility to account for a couple of boxes would no doubt
5 ruin the overall aesthetic of the facility. I see these
6 types of incursions on the Bay Trail everywhere, this is
7 reaching for a violation.

8 There were construction zones that Redwood City
9 required be off-limits for public safety, yet BCDC recently
10 decided that public shore signs welcoming public visitors
11 into those dangerous areas and public benches and chairs
12 were required in the construction zone during construction.
13 Really? This is reaching for a violation as well as a
14 jurisdictional conflict.

15 We call upon you to vote against the CDO. Vote today,
16 vote "No," thank you for your time. (Applause.)

17 CHAIR WASSERMAN: Thank you, sir.

18 Richard Webber, followed by Marianne Tracy.

19 MR. WEBBER: Thank you, Commissioners for the time to
20 talk to you. My name is Richard Webber; I am also a friend
21 of Westpoint Harbor.

22 I wanted to point out some factual inaccuracies that
23 are in the Cease and Desist Order which is before you at
24 this time, which astonishingly apparently now the
25 Enforcement Committee is asking you to vote down in order to

1 take a de novo approach, which to myself is amazing.

2 But I want you to know what is in that Order that you
3 are being asked to vote on because it contains significant
4 inaccuracies, one of which is a fine for the lack of
5 approval and planning for a fuel dock as well as the fact
6 that apparently alleged the fuel dock is larger than
7 approved. Commissioners, there is no fuel dock; there has
8 never been a fuel dock. In fact, if you were to go to
9 Westpoint Harbor at any time up to now and including now you
10 will find no fuel pumps, no fuel pipes, no fuel tanks,
11 nothing related to fuel dispensing. And yet the Cease and
12 Desist Order that is in front of you at this moment is
13 requesting and requiring a \$30,000 penalty for this
14 violation.

15 Frankly there is no wonder that they do not want you to
16 vote on this, it's riddled with inaccuracies, riddled with
17 mistakes, and quite honestly I don't think you should have
18 any expectation that a future order would be any more
19 accurate. So at this point I call on you in good conscience
20 not only to vote "No" on this Order but to dismiss it
21 entirely on the basis you cannot have any expectation what
22 is going to come in front of you will be any better
23 constructed. Thank you very much. (Applause.)

24 CHAIR WASSERMAN: Marianne Tracy, followed by Ashley
25 O'Healy.

1 MS. TRACY: Honorable Commissioners, thank you very
2 much for your time today. My name is Marianne Tracy and I
3 am a friend of Westpoint Harbor and a longtime resident of
4 Redwood City.

5 Several of the demands made by the BCDC will actually
6 make matters worse than better for the overall environment
7 and safety of the harbor. For example, in allegation 5
8 regarding public parking signs the BCDC staff states that
9 upright signs, clearly visible to the public, were needed
10 for parking spaces which are currently marked with paint on
11 pavement. Not only is this requirement not listed in the
12 permit but upright signs would create a perch for birds of
13 prey, which would endanger some of the protected wildlife
14 that currently thrive in the harbor and nearby Greco Island.

15 Allegation 1 includes leaving public access restrooms
16 unlocked after office hours, despite the fact that the BCDC
17 agreed to this request in April of 2012. This would
18 decrease the safety of the harbor and its residents,
19 especially since these restroom facilities include showers.
20 Even public parks lock their restrooms at night, why should
21 the harbor be any different?

22 And in allegation 7 BCDC is asking that the current
23 signs installed on the edge of Greco Island informing
24 boaters that access is prohibited be replaced by a series of
25 buoys. Not only were the current signs endorsed by the US

1 Fish and Wildlife and approved by BCDC's own Tim Sinclair -
2 sorry, Tom Sinclair - but many of the proposed buoys would
3 be useless at low tide and not visually effective for
4 kayakers and paddlers.

5 Therefore I ask you to vote "No" today and make a
6 decision in favor of the environment, safety and Westpoint
7 Harbor. Thank you. (Applause.)

8 CHAIR WASSERMAN: Ashley O'Healy, followed by Allison
9 O'Healy.

10 MS. ASHLEY O'HEALY: Hi, I'm Ashley O'Healy. I have
11 been at Westpoint for six years. It's great because it's a
12 clean marina. We even have a harbor seal; her name is
13 Emily. I have been to other marinas and they aren't clean,
14 but they get to lock their gates and bathrooms. I think we
15 should get to lock our gates and bathrooms too so we can be
16 safe. Please vote "No" on the proposed CDO. Thank you.
17 (Applause.)

18 CHAIR WASSERMAN: Thank you very much, Ms. O'Healy.

19 Allison O'Healy. Allison O'Healy, followed by Louis
20 Adamo.

21 MS. ALLISON O'HEALY: Hi; I'm Allison O'Healy. I have
22 been at Westpoint for six years. I am going to read your
23 mission statement as printed on your website, quote:

24 "Its mission is to protect and enhance San
25 Francisco Bay and to encourage the Bay's

1 responsible and productive use for this and future
2 generations."

3 I am the next generation and I don't see how preventing
4 gates and bathrooms from being locked for my safety has
5 anything to do with protecting the Bay.

6 Garbage is a big problem. My environmental group
7 cleans up Bay shores and beaches, picking up over 30 pounds
8 of trash in just a few hours.

9 Over three million gallons of fuel makes its way into
10 the Bay each year. This is a problem.

11 And runoff into the Bay after storms is the source of a
12 lot of pollution. This is a big problem.

13 I would like to request that you redirect your efforts
14 to protecting the Bay from real problems instead of
15 unrelated issues like not locking gates.

16 Please vote "No" on the proposed CDO. Thank you.

17 (Applause.)

18 CHAIR WASSERMAN: Thank you very much.

19 Louis Adamo, followed by Lewis Gatner.

20 MR. ADAMO: My name is Louis Adamo and I am a friend of
21 Westpoint Harbor. Several allegations by the BCDC against
22 Westpoint demonstrate BCDC's lack of regard for other
23 governmental jurisdictions, industry standards, for normal
24 operating procedures. Let me highlight a few examples.

25 BCDC alleges guest docks must be unlocked for non-

1 boater pedestrian access, when it is marina industry
2 practice that gates are locked for security and safety
3 reasons.

4 Another is that BCDC alleges their navigation
5 requirements to place markers and buoys in the middle of an
6 active channel must take precedence over the US Coast Guard
7 and the City of Redwood City.

8 A third is that BCDC alleges that certain tree species
9 would have a negative impact on the local wildlife, when
10 just five years earlier they accepted the same trees as the
11 appropriate choice.

12 In their lust to collect fines and penalties the BCDC
13 seems to have forgotten how to coexist with other
14 jurisdictions and practices. We call on you to vote against
15 the proposed CDO. Thank you. (Applause.)

16 CHAIR WASSERMAN: Thank you, sir.

17 Lewis Gatner, followed by Peter Blackmore.

18 MS. RUIJSSENAARS: It was Louis, I got his last name
19 wrong; so Lewis is the same person who just spoke. So
20 Peter, you're next.

21 CHAIR WASSERMAN: Sorry, I apologize for being
22 complicit in the error. (Laughter.)

23 You're up, sir. And next is --

24 MR. BLACKMORE: Good afternoon, my name is Peter
25 Blackmore, friend of Westpoint Harbor. So Commissioners,

1 thank you for the opportunity to speak at this hearing.

2 I think it's abundantly clear that this is a complex
3 and difficult situation. The staff at BCDC believe they
4 have a strong case. There are a lot of people, many of whom
5 are represented here, who have a totally different view. So
6 my comments are personally to address the Commissioners.
7 You have a difficult job by these standards.

8 I have been a successful businessman, I've had the
9 privilege of sitting on many boards. In the course of that
10 career I too have had difficult decisions to make as a board
11 member. What I have experienced is that there is no
12 substitute for going to get all the facts and see all the
13 points of view. And I emphasize this is never out of
14 disrespect to the staff who prepared a recommendation,
15 rather it is to do with good governance. Because only by
16 seeing all the facts and taking a firsthand view are you
17 able to make a decision in a very complex environment.

18 To that point I am saddened that up to now very few of
19 the Commissioners have had a chance to go and see the marina
20 and take the time and trouble to look at themselves. I
21 believe that is a fundamental request. Like everybody else
22 I hope that you reject the allegation and turn it down and
23 we can all move forward. But at the very least I urgently
24 request if you don't do that, go and see for yourselves.
25 There is too much at stake here, the reputation of BCDC, the

1 future of a very fine marina that meets any standards. So
2 please do think about that seriously. Thank you for your
3 time today. (Applause.)

4 CHAIR WASSERMAN: Thank you, sir.

5 Max Wiemann. I'm sure I'm not doing that right and I
6 apologize. Followed by Gail Raabe.

7 MR. WIEDEMANN: Hello, my name is Max and I represent
8 Friends of Westpoint Harbor.

9 (A video was played.)

10 MR. WIEDEMANN: Thank you for your time. (Applause.)

11 CHAIR WASSERMAN: Thank you.

12 Gail Raabe, followed by Raymond Durazo.

13 MS. RAABE: Chairman Wasserman and Commissioners, I am
14 Gail Raabe, I am representing the Citizens Committee to
15 Complete the Refuge.

16 We would like to convey our strong support for the
17 Enforcement Committee's recommended enforcement decision to
18 ensure that Westpoint Harbor complies with all BCDC permit
19 conditions.

20 Citizens Committee is a nonprofit organization of
21 volunteers dedicated to the protection of the Bay and
22 particularly concerned with environmental impacts to the Don
23 Edwards San Francisco Bay National Wildlife Refuge.

24 Citizens Committee originally commented in support of
25 the proposed Westpoint marina project based on the strength

1 of the required protections included in the 2001 Redwood
2 City Mitigated Negative Declaration and the seeming
3 willingness of Westpoint Harbor to implement these crucial
4 environmental mitigations that were recommended by the US
5 Fish and Wildlife Service. Many of these mitigation
6 measures were incorporated as special conditions in the
7 permit BCDC issued to Westpoint Harbor in 2003.

8 It's unacceptable that during ten years of operation
9 the Harbor continued to violate important BCDC permit
10 conditions to protect Bay natural resources.

11 Westpoint Harbor maintains that there has been no harm
12 to the environment; we disagree. The US Fish and Wildlife
13 Service Endangered Species Division concluded that provided
14 the Westpoint Marina project is, quote: "Implemented as
15 described, it is not likely to adversely affect the
16 endangered California clapper rail, salt marsh harvest mouse
17 and California least tern found on nearby Greco Island and
18 the adjacent salt pond."

19 BCDC must assume that it's equally true that Westpoint
20 Harbor's consistent failure to implement the protective
21 measures required in the permit creates unacceptable risks
22 and likely adverse impacts to these species and their
23 habitats.

24 In granting Westpoint Harbor's permit BCDC found that
25 the project would protect Bay resources because of this

1 permit's special conditions.

2 BCDC is responsible for ensuring that measures outlined
3 in the Westpoint Harbor permit are put in place as soon as
4 possible. Thank you.

5 CHAIR WASSERMAN: Thank you. Thank you, Ms. Raabe.

6 Raymond Durazo, followed by Kamilah Najieb-Wachob.

7 MR. DURAZO: Thank you, Mr. Chairman. My name is Ray
8 Durazo and I am vice president of the Recreational Boaters
9 of California, RBOC. RBOC is a 50 year old nonprofit
10 organization representing the state's three million
11 recreational boaters.

12 RBOC strongly urges the Commission to summarily reject
13 the proposed Cease and Desist Order with regard to Westpoint
14 Harbor. The claimed violations all suffer from one or more
15 deficiencies that have been well-documented by the harbor as
16 well as by our letter to the committee - the Commission,
17 rather - of November 15th, 2017.

18 RBOC's concerns with BCDC's actions toward the harbor
19 are exacerbated when considered in the context of the
20 Commission's similar enforcement actions against Scott's
21 Restaurant in Jack London Square and against Sweeney's Duck
22 Club in the Delta. Taken together the pattern is alarming
23 to the boating community and has also led a county superior
24 court judge in a recent case to opine that BCDC enforcement
25 had exceeded its jurisdiction and inflicted excessive fines

1 and had displayed vindictive prosecution.

2 RBOC urges the California State Legislature and State
3 Auditor to investigate the BCDC enforcement actions,
4 including the exorbitant fines that are being imposed.

5 RBOC has held meetings in the state capitol with our
6 elected officials regarding the Westpoint situation and our
7 request for an audit. We have found a receptive audience
8 and we will continue to push forward in this regard in the
9 weeks and months ahead. Thank you.

10 CHAIR WASSERMAN: Thank you. (Applause.)

11 Kamilah Najieb-Wachob, followed by Helen Horn.

12 Ms. NAJIEB-WACHOB: Thank you, Mr. Chairman. My name
13 is Kamilah Najieb-Wachob and I represent the Committee for
14 Green Foothills. We are a nonprofit organization whose
15 mission is to protect open spaces and our natural
16 environment in the San Mateo and Santa Clara Counties.

17 Our organization here is to voice concern about the
18 possible harm to migratory shore birds that nest near and
19 around the harbor. The Greco Island is a common nesting
20 area for migratory shore birds. The Ridgway's rail is one
21 of the species in particular of concern because it is a
22 federally endangered -- it is federally protected as
23 endangered.

24 Installing and maintaining "No Wake" signs was one of
25 the conditions of the permit and that was done to ensure

1 that there was no disruption of the feeding patterns of the
2 migratory bird population. There is only a four hour window
3 in which the birds may feed during low tide. If there is a
4 disruption to the area from wakes caused by boating the
5 birds will not be able to eat, thus causing detrimental harm
6 to their livelihood. The fact that there were no "No Wake"
7 signs for boaters for many years means that these endangered
8 birds may have been negatively impacted.

9 The Committee for Green Foothills strongly encourages
10 the BCDC to enforce the terms of the issued permit to ensure
11 that the habitat of migratory birds are protected and
12 conserved. Thank you.

13 CHAIR WASSERMAN: Thank you.

14 Helen Horn, followed by Edward Stancil.

15 MS. HORN: Hello, my name is Helen Horn and I am a
16 third generation Redwood City resident. My grandfather was
17 born there when my grandparents were living and working
18 there in 1890. I have been on the water my whole life. My
19 dad bought his first boat after he learned how to sail it
20 from a guy when he was only 16 when he graduated from
21 Sequoia. When he went into Stanford he swam, he taught
22 people how to sail, he swam the Golden Gate, got trophies,
23 he filled the attic from swimming Golden Gate in just his
24 swim trunks with races that the Call Bulletin newspaper put
25 on. I am also a friend of Westpoint by just being a friend.

1 I'm a sailor, a surfer, a swimmer.

2 I have three boats in three harbors. I bet that none
3 of you would go to any of those harbors and find that there
4 was - I just sold my fourth boat - that you would find any
5 of those harbors had open bathrooms. None of them are open.
6 The Don Edwards facility that we were talking about here has
7 a locked bathroom. Nobody has been able to access it.

8 Redwood City allowed the Pete's Harbor to put trailers
9 on the end of that where the only access would be to the
10 water and they allowed them to block the access to the
11 water. They are still there, selling apartments on the
12 other harbor that they built.

13 They eliminated three harbors. Harbors have gone down
14 the wayside. Palo Alto silted in and they never redid it,
15 full of marshy birds and everything. Alviso they tried,
16 they restored some of it. San Leandro is going. They
17 closed Peninsula Marina with 400 boats, they closed Pete's
18 Harbor. Now they have little boutique harbors with a couple
19 of three or four boats. Thank you.

20 I also support RBOC and I think that you should start
21 over on this to do the right thing because you are not
22 getting the point that we really need harbors and we need
23 places for people to hit the water. If you looked at that
24 one wall where you had that projection of Greco Island and
25 the area where all those places are, Sims Metal has had two

1 fires in the last five years there on holidays when nobody
2 looks, started by who knows what plastics. And the other
3 reason is nobody can hit the beach. You can't touch the
4 beach anywhere from there all the way to the muni marina by
5 foot, you have to go around or take a boat to get there.
6 Thank you.

7 CHAIR WASSERMAN: Thank you. (Applause.)

8 Edward Stancil, followed by Paula Bozinovich.

9 MR. STANCIL: Hi, my name is Edward Stancil. And
10 Zachary, just a couple. Your opening statement just threw
11 me off quite a bit. It was great that you went to Indonesia
12 and found a straw when you were snorkeling on a deserted
13 island. I came back from Panama. There was so much plastic
14 on the streets and the people who ride the bus, they just
15 drink it and throw it out, an unconscionable thing going on.

16 The kids might be able to help you work your smart
17 phone, okay, but they can't teach you anything. The kids
18 learn from adults and grandparents, okay, otherwise you'd be
19 nowhere, okay. So the whole deal with the -- I think that
20 the Easter Island could be out of BCDC's jurisdiction.

21 CHAIR WASSERMAN: Only a little bit.

22 MR. STANCIL: Okay. Along with Indonesia. But the
23 reason that you're -- another thing I wanted to point out to
24 you is that when you read something in a newspaper it's
25 already 48 hours old. That's because it has to fly to

1 Indonesia, be put on a disc and come back and be typeset,
2 okay. So they don't do typesetting anymore in America so
3 all your news is 48 hours old. So don't think that you're
4 cutting edge.

5 But the other deal is, you do have a good point on the
6 fact that there's faith in our youth. But we've already
7 sold out our youth for all the money that they're going to
8 have to work the rest of their life to get nothing. So
9 let's go ahead and take a hard look at this. You're the
10 parent; Mark is the unruly child. Let's pull him back in
11 line, let's have a group hug. And if you guys would go down
12 to the harbor you would see what a great job he's doing.
13 Thank you very much. (Applause.)

14 CHAIR WASSERMAN: Paula, I'm sorry, Bozinovich,
15 followed by Christopher Russler.

16 MS. BOZINOVICH: Pretty darn good, not many people get
17 my last name. Hello.

18 CHAIR WASSERMAN: It's a close call. Go ahead.

19 MS. BOZINOVICH: Strictly phonetic, I always say.
20 First of all, good afternoon. My name is Paula Bozinovich
21 and I won't take up a lot of time.

22 Briefly, in looking through various items posted on
23 this issue I was kind of aghast at a message that I found
24 on -- it was basically an email generated by Adrienne Klein
25 on, let me see, Monday, 7/12/2010. And it was addressed to

1 Tom Sinclair and I just want to briefly read it. The
2 subject is, a question about the water trail.

3 "Tom, Westpoint Marina is going to be a big
4 and juicy case for you because Mark Sanders, the
5 principal, doesn't think too highly of us. This
6 is one of your top priorities."

7 Very interesting.

8 So this is really prior to the time line earlier
9 presented by Mr. Zeppetello, I hope I have that correctly,
10 vis-à-vis the May 2011 violation letter and I'm wondering if
11 Adrienne's correspondence is really kind of what set the
12 stage for all of this? Not sure but it's just a little bit
13 odd. Working in industry a long time I thought this
14 correspondence was less than professional, at least by
15 accepted standards in the industry. It's hostile. And it
16 was particularly disconcerting because it was generated by a
17 person that's paid by public tax dollars going after a
18 business.

19 Lastly, I just wanted to know what actions were being
20 taken against businesses such as CEMEX and Sims, who has
21 already been addressed, who are really major offenders of
22 Bay pollution and wildlife endangerment. What they generate
23 from those places is horrific. And if you have not been
24 down there don't park your car too long because it will be
25 covered with ash and all kinds of unsightly things. Thank

1 you. (Applause.)

2 CHAIR WASSERMAN: Thank you.

3 Christopher Russler, followed by Sonya Boggs.

4 Mr. Russler?

5 MS. BOGGS: Is Boggs next?

6 CHAIR WASSERMAN: Boggs is next. Doug Furman is after
7 that.

8 MS. BOGGS: Good afternoon. I'd like to speak about
9 the backlog of over 170 enforcement actions. The BCDC staff
10 has assigned points to the various infractions, determining
11 which are the worst violators. Within the list of violators
12 there are a large number of public sector agencies, many of
13 which are in the jurisdictions represented on the
14 Commission. If you haven't read the minutes of your
15 enforcement workshop I encourage you to do so because you
16 will learn a lot about your enforcement process.

17 It is interesting to note that we don't seem to hear
18 about any action being taken by BCDC staff against these
19 public agencies, but instead staff has prioritized lesser
20 violators, often individuals and small businesses where
21 staff think there are more funds to be gained for the agency
22 by enforcement.

23 As a taxpayer and a friend of Westpoint Harbor I
24 believe an investigation should be launched as to why BCDC
25 staff prioritizes private individuals while apparently

1 ignoring the public agencies who have higher points for
2 violations, represented by the Commissioners; and I
3 encourage you today to vote "No." Thank you. (Applause.)

4 CHAIR WASSERMAN: Thank you.

5 Doug Furman, followed by Carol Sheetz.

6 MR. FURMAN: Good afternoon, Commissioners; my name is
7 Doug Furman.

8 Your Executive Director has written numerous times
9 about how many hours his staff has worked to try and resolve
10 the issues at Westpoint Harbor. His conclusion is that Mark
11 Sanders is an unreasonable man who is unwilling to work with
12 the reasonable BCDC staff. He's said that many times.

13 He has never really addressed the issue of his Chief
14 Enforcement Officer who in an email dated July 22nd, 2010
15 targeted Mark Sanders and Westpoint Harbor as a big juicy
16 one and ordered that it be your staff's top priority. He
17 also fails to address the notes between Adrienne Klein and
18 Brad McCrea dated October 24th, 2012 where they decided they
19 would out-nitpick Mark Sanders. There was nothing in the
20 notes where Brad McCrea said, no, we can't do that, that
21 isn't what BCDC is all about.

22 With the issues in front of you I would say they have
23 achieved their objectives of creating a big, juicy fine and
24 out-nitpicking Westpoint Harbor.

25 Mr. Goldzband would have you believe the staff are

1 reasonable and work earnestly to try and resolve the issues,
2 but the facts do not support this statement. You have a
3 problem and it starts at the top.

4 Today the Commission gets to decide who is in charge of
5 the future of BCDC, the staff or the Commission. Your
6 decision will determine the new mission statement, BCDC
7 saving the Bay, or, BCDC saving the Bay one brown, round
8 table at a time. Thank you. (Applause.)

9 CHAIR WASSERMAN: Carol Sheetz, followed by Kevin
10 Parker.

11 MS. SHEETZ: Hello. There are 27 of you up there, I
12 think anyway, and I can't believe that not one of you is
13 thinking there might be something wrong here. I guarantee
14 you that if you owned Westpoint Harbor and any of these
15 permits were presented to you, you wouldn't sign them
16 either. They have errors, they have omissions, they have
17 things in there that are not even in your jurisdiction. If
18 anyone on this staff worked in the private sector they'd be
19 fired by now.

20 So why are you looking the other way? Are there too
21 many of you? Is one person afraid to say something because
22 no one else is? And you think Mark Sanders is stubborn and
23 hard to work with. Do you think he's fighting this because
24 he is not an environmentalist, because he doesn't care about
25 the harvest mouse running around on Greco Island? It's

1 quite the contrary, he's fighting this because he's getting
2 screwed over by a government agency that has lost its way
3 and has no oversight.

4 So I ask again, why are you looking the other way? You
5 already got bit in the ass by Suisun Marsh, are you going to
6 let it happen again? People are watching, people are paying
7 attention. There are over 5,000 signatures from people who
8 think that what you're doing is wrong. So please stand up,
9 please say something, please do the right thing, because
10 this staff, they're making you look like fools. (Applause.)

11 CHAIR WASSERMAN: Kevin Parker followed by Arthur
12 Feinstein. Mr. Parker? (No response.) Going, going, gone.
13 Arthur, you're up.

14 MR. PARKER: What was the name?

15 CHAIR WASSERMAN: Kevin Parker.

16 MR. PARKER: I'm sorry, I couldn't hear you, the
17 applause was too loud. (Laughter.) Thank you for letting
18 me speak again. I'm very glad to be here again. Because I
19 didn't hear you I couldn't get my notes up.

20 First of all I want to thank the Commissioners for
21 their patience and attention this afternoon and your
22 participation in this process. I, as you can tell from my
23 accent, come from the extreme eastern end of California. I
24 took an exam to be here and I came here to Northern
25 California because I was told that it was a great, northern,

1 liberal democracy, and that has been my experience more or
2 less. The less part we'll get to in a second.

3 I was also told that if I wanted to have a quiet
4 evening out I should go to a Giants game. Well it turns out
5 that if I want a quiet afternoon I should come to a BCDC
6 meeting because your silence is absolutely deafening. A
7 little while ago you went into a private session. What
8 could you possibly be discussing that I shouldn't be able to
9 hear? These matters are about things that I care about.
10 Remember, you work for us, and if you don't remember let me
11 just remind you. California Government Code Section 11120
12 says about you:

13 "The people of this state do not yield their
14 sovereignty to the agencies which serve them. The
15 people, in delegating authority, do not give
16 public servants the right to decide what is good
17 for the people to know and what is not good for
18 them to know. The people insist on remaining
19 informed so that they may retain control over the
20 instruments they have created."

21 So do tell me what was so important that only you could
22 know about it in your exalted and esteemed position. It's
23 interesting to me this afternoon that all the speakers have
24 said the same thing. I was delighted that a couple of our
25 friends from the conservation groups got up and said the

1 same thing. (Timer tone sounded.)

2 We all want Westpoint Harbor to be compliant with the
3 requirements. Nobody yet has proven a single thing that
4 Westpoint has done wrong. There has been harm to wildlife,
5 there is no proof of that. There is likely harm, maybe, but
6 no proof of it.

7 CHAIR WASSERMAN: Mr. Parker, please conclude.

8 MR. PARKER: Okay, let me conclude by this. Can one of
9 you speak about something and let's have the next meeting at
10 Westpoint. (Applause.)

11 CHAIR WASSERMAN: And our last speaker is Arthur
12 Feinstein. You bat cleanup, sir.

13 MR. FEINSTEIN: Hi. Well, this has been a sort of
14 brutal session for you all, especially your staff, and I
15 commiserate with them somewhat.

16 When I started going to BCDC hearings, gee, 30, 40
17 years ago -- well let's go before BCDC, when the Bay was
18 really being filled, was polluted, before we had our
19 regulatory agencies that were - and we're losing them
20 quickly now under Trump - that were cleaning up our
21 environment, the place was a mess, and it took agencies like
22 you to change it. And there were always people who were
23 unhappy when you did that because when agencies do their job
24 there are a lot of unhappy people.

25 But for those of us who appreciate a clean Bay, a

1 healthy Bay, a Bay with wildlife, a Bay with fish, a Bay we
2 can access, you guys are it, you and your fellow agencies.
3 Without you we'd be going back to the dark ages. Life would
4 be pretty miserable. My granddaughter would not be enjoying
5 the Bay we have now.

6 So you've heard heartfelt pleas from people. I urge
7 you to ignore them because there are many other people who
8 want a clean Bay, who understand that regulatory agencies
9 actually know what they're doing. You have had really good
10 staff for the time I've been here, you still do. I urge you
11 to support the staff recommendations, move forward, get all
12 these permit requirements fulfilled which have not been and
13 continue to do your job making the Bay a place that is
14 livable for us and our wildlife we share the world with.
15 Thank you very much.

16 CHAIR WASSERMAN: Thank you, sir. (Applause.)

17 That concludes the speakers.

18 MR. WILSON: There was one more card.

19 CHAIR WASSERMAN: What's the name?

20 MR. WILSON: Wilson.

21 CHAIR WASSERMAN: I'm sorry?

22 MR. WILSON: Wilson.

23 CHAIR WASSERMAN: I don't have a card but if somebody
24 wishes to come up and speak I'll allow it.

25 MR. WILSON: Thank you. Just do it quick. First a

1 housekeeping item. You've noticed I'm a friend of Westpoint
2 Harbor, Bob Wilson, resident of Redwood City. As we have
3 gone through today you've noticed the Friends of Westpoint
4 Harbor have identified the allegations and we have pointed
5 to a number of areas of fact. Which I know today you're not
6 looking for facts. All of these things are documented
7 either in position papers we've submitted to you or in our
8 overall position paper so we don't see the facts that
9 support anything.

10 We are all, with respect, believers in the Bay and
11 believers in the environment and believers in your mission;
12 there is no doubt about that amongst our group. If you
13 spend time on the Bay you care about it, you want to save
14 it, you want to protect it, you want to improve it.

15 Yesterday there was a letter from a great organization,
16 the Audubon Society, and unfortunately somehow they have
17 also gotten some bad facts. We've heard a lot about signs.
18 The signs, as is well-documented, were posted, more than 30
19 of them were posted years ago in Westpoint Harbor. It is
20 the responsibility, however, of the Don Edwards group and
21 their Save the Refuge organization to maintain those signs.

22 Unfortunately recently, since the November meeting,
23 every one of those signs were removed. We found a few at
24 the bottom of the slough. We've reported it to the police.
25 It's disturbing. The harbor, even though they are not

1 responsible for it is working with the refuge manager to get
2 the right signs back in place with the right safeguards so
3 that none of the birds are harmed. That's what a
4 responsible community member does.

5 The second and third are related to the mitigation of
6 the shore bird habitat. It's fantastic. I'll take ten
7 seconds.

8 There were 5 acres in the original bittern pond
9 surrounded by a chemical called bittern. There's now 30
10 acres of roosting area, which was agreed to by the BCDC and
11 Cargill and Westpoint Harbor, that's been maintained for
12 over 30 years -- for over 16 years. And all of those birds
13 that you're seeing in pictures and videos, that's where
14 they're roosting, that's where they are every day.

15 I'm confused. I just don't understand where the harm
16 has been. (Timer tone sounded.) We hope you can get to the
17 bottom of this. Please vote "No," not de novo, that's a
18 copout. Vote "No" today, there's been enough time.

19 (Applause.)

20 CHAIR WASSERMAN: Thank you.

21 I would entertain a motion to close the public hearing.

22 COMMISSIONER VASQUEZ: So moved.

23 COMMISSIONER GIOIA: Second.

24 CHAIR WASSERMAN: Vasquez and Gioia seconds. All those
25 in favor of closing the public hearing say "Yes."

1 (Yeses and ayes.)

2 CHAIR WASSERMAN: Anybody wish to keep it open?

3 (No response.)

4 CHAIR WASSERMAN: It's unanimous to close the public
5 hearing, thank you.

6 I am going to exert the Chairman's prerogative to do
7 two things.

8 One, there have been a lot of remarks. This is, for
9 better or worse, not the forum to address them publicly.

10 But on the issue of going into closed session, because
11 there are a number of people here who may not be familiar
12 with government process, the Respondent's lawyer, as he has
13 every right to do, has demonstrated an indication to take
14 action if we were to support this measure. That's a
15 legitimate threat of litigation, entitled to do it, nothing
16 wrong with it.

17 When there is a threat of litigation a public agency
18 like ours is entitled and indeed at some level has a
19 responsibility to discuss that threat in private because it
20 can go to litigation. And if we had some of that discussion
21 in public it would one, destroy the attorney/client
22 privilege with our attorney; and two, we are entitled to
23 think about our litigation defense privately. That's what
24 happens in those sessions, that's the way it was entitled
25 and that's what occurred. We took no action in that

1 session.

2 Second, I suspect I am going to disappoint both
3 counsel. I am going to use my prerogative to make a motion
4 and my motion would be: In the context of all that has been
5 presented to us, both in writing and this afternoon, I would
6 move to remand the matter, the entire matter to the
7 Enforcement Committee to consider any additional information
8 and evidence from staff and from the Respondent and consider
9 any appropriate modifications to the proposed Order by staff
10 or by Respondent. Is there a second to the motion?

11 COMMISSIONER SEARS: I'll second.

12 CHAIR WASSERMAN: Kate Sears seconds.

13 MR. PARKER (off mic): Once again no debate.

14 CHAIR WASSERMAN: Does any Commissioner have any
15 comments or questions on the motion?

16 I have one. I do want to at some level echo Mark
17 Zeppetello's comment. You obviously have no obligation to
18 engage in further discussion or mediation but I would urge
19 both sides to think about that. Because as many of the
20 speakers and others have said, there in fact are a number of
21 common grounds here, a lot of differences too. Certainly I
22 think it would be beneficial if there could be a resolution
23 that both sides come to. Given what has happened I suspect
24 without mediation that is going to be very difficult, with
25 mediation it may still be difficult but possible. It is not

1 part of the motion, it is only a request.

2 Commissioner Vasquez.

3 COMMISSIONER VASQUEZ: I appreciate you opening that
4 door for both sides to maybe talk or have somebody come in
5 and help mediate the issue before it does apparently go to
6 litigation. We're not sure.

7 CHAIR WASSERMAN: Thank you. Any other comments? We
8 will take a roll call -- I'm sorry, Commissioner Pine.

9 COMMISSIONER PINE: Thank you. I would like to take a
10 few moments and share my observations about the matter. I
11 serve on the San Mateo County Board of Supervisors, so while
12 the Westpoint Marina is not in my supervisorial district it
13 is in my county. I used to live in Redwood City, I am very
14 familiar with the Bay shore. I did have the opportunity to
15 visit Westpoint Marina on two occasions so I would like to
16 just share some observations to both Westpoint and to BCDC.

17 So first off, Westpoint Marina is a remarkable marina.
18 When you see the pictures of the prior bittern pond, this
19 big, red blob, and then you look at what it is today, it's a
20 remarkable accomplishment. So we do now have 200 berths, an
21 expanded Bay because of the creation of the marina. We do
22 have a shore bird roosting habitat, we have a separate
23 boatyard that was completed in Phase 2. And while it's all
24 on hold now the plan was to have commercial and retail in
25 Phase 3. And I also compliment Mr. Sanders because it is

1 clear he is an extraordinarily environmentally conscious
2 person. The marina has been recognized for being as green
3 as it is and I think among his other contributions to the
4 environment, a lot of the dredging material from that marina
5 was moved over to Bair Island, which was an incredibly
6 remarkable restoration project.

7 But on the other hand I do believe there have been
8 instances where, in my opinion, Westpoint has not followed
9 the permit, particularly with respect to the public access.
10 Now I think most of the public access issues have been
11 resolved as of now; I think it took too long to get there.

12 In addition I believe, in my opinion, that many actions
13 were taken by Westpoint that were very reasonable but they
14 didn't comport with the permit and the permit wasn't
15 amended, so it's kind of a tricky situation there.

16 You know, turning to BCDC, I am really proud to serve
17 on this commission and, you know, the job of this commission
18 is to minimize Bay fill and provide public access and make
19 sure that bayshore development balances both -- can happen
20 while balancing environmental concerns. The staff here
21 gives their heart and soul to it and the success of their
22 work, as pointed out by one of the speakers, has seen an
23 incredibly improved quality of the Bay.

24 On the other hand I think that BCDC, sometimes the
25 perfect can be the enemy of the good. I think that the

1 original permit conditions themselves don't in some
2 instances match the realities on the ground and it's hard
3 for BCDC to adjust when that occurs, in my opinion.

4 So now what are we going to do? We could continue to
5 fight this. That would be a poor path. The cost would be
6 enormous in terms of private legal fees and public payment
7 for attorneys. And also I think everyone has to keep in
8 mind that there's really -- I can't imagine a scenario where
9 BCDC and Westpoint can part ways. I mean, as someone has
10 said, we're married and there is like no option for divorce.
11 So, you know, we can fight and fight and fight but we have
12 to, you know, we have to remain partners in the future.

13 So my hope, my sincere hope is that the parties can
14 pull back from this brink. And I think, actually, the
15 foundation is really there for resolution.

16 First off, Amendment number Five, which the parties
17 worked on extraordinarily hard for a long time. If it were
18 to be signed it would clear up a number, a number of these
19 violations.

20 And then secondly, many of the remaining violations I
21 think can be resolved either by modest actions by Westpoint
22 or by amending the permit to allow the conditions to remain.

23 I don't know if it's possible but I think the idea of a
24 mediator, a mutually acceptable mediator between BCDC and
25 Westpoint, perhaps could build off this foundation and we

1 could get this back on track.

2 Our values are the same. Westpoint Marina is an
3 incredible place. BCDC, its mission is one that none of us,
4 none of us dispute. If you step away from it all this
5 should be resolvable and I hope that it is.

6 CHAIR WASSERMAN: Thank you, sir.

7 Sharon, will you --

8 MR. SADLER: Mr. Chairman, may I address briefly?

9 CHAIR WASSERMAN: No, sir, I'm sorry, you actually
10 can't. The problem with your comment is it is going to open
11 comments up. We have closed the public hearing.

12 MR. SADLER: I will just simply note our objection as
13 Respondents to what you are proposing to take a vote on; I
14 just note that for the record.

15 CHAIR WASSERMAN: So noted.

16 MR. SADLER: Thank you.

17 CHAIR WASSERMAN: Sharon, will you -- I'm sorry,
18 Cheneé, take a roll call vote. The federal representative
19 may vote on this.

20 MS. WILLIAMS: Commissioner Addiego?

21 COMMISSIONER ADDIEGO: Yes.

22 MS. WILLIAMS: Commissioner Gilmore?

23 COMMISSIONER GILMORE: Yes.

24 MS. WILLIAMS: Commissioner Scharff?

25 COMMISSIONER SCHARFF: Yes.

1 MS. WILLIAMS: Commissioner Gibbs?
2 COMMISSIONER GIBBS: Yes.
3 MS. WILLIAMS: Commissioner Gioia?
4 COMMISSIONER GIOIA: Yes.
5 MS. WILLIAMS: Commissioner McGrath?
6 COMMISSIONER McGRATH: Yes.
7 MS. WILLIAMS: Commissioner Peskin?
8 COMMISSIONER PESKIN: Aye.
9 MS. WILLIAMS: Commissioner Pine?
10 COMMISSIONER PINE: Aye.
11 MS. WILLIAMS: Commissioner Ranchod?
12 COMMISSIONER RANCHOD: Yes.
13 MS. WILLIAMS: Commissioner Sears?
14 COMMISSIONER SEARS: Yes.
15 MS. WILLIAMS: Commissioner Techel?
16 COMMISSIONER TECHEL: Aye.
17 MS. WILLIAMS: Commissioner Wagenknecht?
18 COMMISSIONER WAGENKNECHT: Yes.
19 MS. WILLIAMS: Commissioner Chappell?
20 VICE CHAIR CHAPPELL: Yes.
21 MS. WILLIAMS: Chair Wasserman?
22 CHAIR WASSERMAN: Yes.
23 COMMISSIONER RANDOLPH: Commissioner Randolph here too.
24 MS. WILLIAMS: Sorry. Commissioner Randolph?
25 COMMISSIONER RANDOLPH: Yes.

1 MS. WILLIAMS: Commissioner Ziegler?

2 COMMISSIONER ZIEGLER: Yes.

3 MS. WILLIAMS: Commissioner Vasquez?

4 COMMISSIONER VASQUEZ: Yes.

5 MS. WILLIAMS: And Commissioner Zwissler?

6 COMMISSIONER ZWISSLER: Aye.

7 CHAIR WASSERMAN: The ayes have it, the motion passes
8 unanimately. I thank all of you for your attention and your
9 patience.

10 MR. DURAZO (off mic): Mr. Chairman, would you mind
11 repeating the motion?

12 CHAIR WASSERMAN: The motion was submitted and it will
13 be available for you. The fundamental motion is that it was
14 remanded to the Enforcement Committee.

15 I would entertain a motion to adjourn.

16 COMMISSIONER PESKIN: So moved.

17 COMMISSIONER GILMORE: Second.

18 CHAIR WASSERMAN: Peskin and Gilmore. All those in
19 favor say "Aye."

20 (Ayes.)

21 CHAIR WASSERMAN: All those opposed stay. The
22 Commission is adjourned.

23 (The Commission meeting was adjourned at 4:10 p.m.)

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CERTIFICATE OF REPORTER

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3 I, Ramona Cota, an Electronic Reporter and Transcriber,
4 do hereby certify that I am a disinterested person herein;
5 that I recorded the foregoing San Francisco Bay Conservation
6 and Development Commission Meeting and thereafter
7 transcribed it.

8 I further certify that I am not of counsel or attorney
9 for any of the parties to said meeting, or in any way
10 interested in the outcome of said matter.

11 IN WITNESS WHEREOF, I have hereunto set my hand this
12 19th day of March, 2018.

13
14 

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16 RAMONA COTA, CERT**478
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