

# 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

March 6, 2018

John Arndt, Publisher  
Tim Henry, Associate Editor  
*Latitude 38*  
15 Locust Avenue  
Mill Valley, CA 94941

To the Editor:

Thank you for asking BCDC staff to respond to your Westpoint Harbor editorial published in last month's magazine. However, we still do not understand why your magazine decided not to publish our response last month, *alongside your editorial and prior to the March 15<sup>th</sup> public hearing*, given that it would have consumed such a small amount of room in your very large publication.

Unfortunately, *Latitude 38* is confused about how BCDC has operated during its 50-year history. BCDC's mission is to minimize fill in the San Francisco Bay and maximize the public's access to the Bay and along its shoreline. The permits BCDC grants to private entities (such as Westpoint Harbor's Mark Sanders) and public agencies (including cities, counties, and park districts) spell out specifically how permit holders are required to *provide maximum feasible public access, consistent with the project*. These permits ensure that the people of the State of California have access to the Bay in exchange for the State allowing private and public development in and around the Bay.

The BCDC staff provides permit holders with a great deal of assistance as they plan and build projects; we spend countless hours working closely and successfully with permit holders to ensure that public access requirements are met while property rights are respected. BCDC issues violation reports only as a last resort. In the case of Westpoint Harbor, the BCDC staff notified Mr. Sanders almost seven years ago of permit violations and then waited six years before issuing a violation report. Why the delay? During that period, the BCDC staff met with Mr. Sanders and his representatives many times and offered him myriad ways to comply with or amend the permit that he originally signed 14 years ago. He declined every opportunity to do so.

Permits are a kind of contract. Simply put, Mr. Sanders hasn't fulfilled his part of the bargain. That is why BCDC's Enforcement Committee has recommended a proposed order that requires Mr. Sanders to abide by his signed agreement and pay a large penalty.

The violations have nothing to do with how Mr. Sanders promotes clean boating, is committed to the harbor's tenants, and operates the marina in what appears to be an environmentally sound manner. Instead, Mr. Sanders has broken his contract by refusing to provide over a quarter-million square feet of public access areas and specified public access improvements that he promised to provide when he signed his permit. Public access to the shoreline is the benefit that the public receives while Mr. Sanders earns revenue from operating his marina. Mr. Sanders also has failed to comply with a number of permit conditions intended to prevent or minimize adverse impacts to wildlife, including endangered species found in the adjacent national wildlife refuge, which were imposed in response to comments by the U.S. Fish and Wildlife Service.

Only after learning that the BCDC staff would bring his violations to the Commission's Enforcement Committee did Mr. Sanders finally agree to open all required public access areas. Yet, while that occurred in early July 2017 – eight years after the deadline established by the permit – Mr. Sanders continues to restrict public access by pedestrians to the guest docks, which are a required public access improvement in a dedicated public access area. Similarly, as recently as a few weeks ago, BCDC received a complaint from a member of the boating public who was told by someone at the Harbor, in violation of the permit, that the public boat launch ramp, another required public access improvement in a dedicated public access area, was not for use free-of-charge by kayakers.

Just as important, the site as it exists now is not what existed when the enforcement case commenced, or even as recently as a year ago. The public access areas and improvements were required to be completed in Fall 2009, commensurate with the phased construction and occupancy of the marina. Until July 2017, the main entrance to the site was posted with multiple signs that read "Members and Guests Only," a second pedestrian access point was blocked by a fence, and Mr. Sanders maintained numerous "Restricted Access" signs at various locations around the site that effectively prohibited public access to the Bay.

Even today, the public shoreline trails are narrower than required by the permit. Until July 2017, long segments of the public paths were closed and overgrown with weeds. Other ancillary public access improvements also were missing. Combined, this noncompliance leads the public to believe that the Bay shoreline is simply not accessible – the opposite of the permit's intent. Just as important, required natural resource protections such as visual habitat barriers and mitigation for shorebird roost habitat and wetlands, are not fully in place.

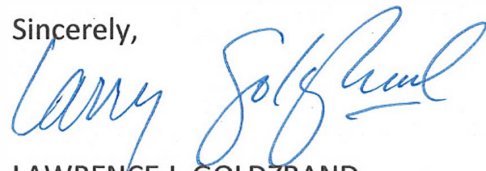
John Arndt, Publisher  
Tim Henry, Associate Editor  
*Latitude 38*  
March 6, 2018  
Page 3

The upshot of the problem is that Mr. Sanders has materially benefitted from the private gains of his marina while not fulfilling his promises to the State of California to provide the public access to, and enjoyment of, the shoreline. Should BCDC simply ignore his willful violations of the permit that he signed? Would the public want BCDC to look away if, for example, the San Francisco Giants closed the BCDC-mandated wide walkway around AT&T Park, or if access to the magnificent restored Hamilton Field wetlands in Marin County was closed?

Finally, for the sake of clarity, I should note that both BCDC and the Regional Water Quality Control Board, are appealing the decision of the Superior Court judge in Solano County in the Pt. Buckler case. Also, *Latitude 38* should be careful about cherry-picking out of context a relatively minor issue from among the large-scale public access violations in the Scott's Restaurant enforcement case; that is comparable to stating that a large sailboat is not seaworthy due to some peeling varnish.

BCDC has helped open up hundreds of miles of public access along the Bay. A vast majority of that access has been created through the fine work of BCDC permit holders who have honored their commitments. It's too bad that one recalcitrant permit holder has thumbed his nose at the public for so long and has caused BCDC to use the legal system to remedy his noncompliance with state law.

Sincerely,



LAWRENCE J. GOLDZBAND  
Executive Director

LG/gg