



RBOC
Protecting your boating interests

Agenda Item #8

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February 7, 2018

Larry Goldzband, Executive Director
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019

RE: Westpoint Harbor

John Marshall
President

Executive Director Goldzband and Commissioners:

Ray Durazo
Vice President – North

Recreational Boaters of California [RBOC] strongly urges the San Francisco Bay Conservation & Development Commission [BCDC] to remove the cease and desist order issued to Westpoint Harbor, and to reduce or eliminate the costly and excessive fines.

Dan Hodge
Vice President - South

RBOC is the nonprofit governmental advocacy organization that works to protect and enhance the interests of the state's recreational boaters before the legislative and executive branches of state and local government. RBOC was formed as a statewide organization fifty years ago in 1968 and from that date forward has continued its commitment to promoting the enjoyment, protection, and responsible use of our waterways.

Otis Brock
Secretary – Treasurer

Since its establishment nearly a decade ago, Westpoint Harbor has become a valuable asset to the Bay's recreational boating community. The harbor has been justly recognized by the public, governmental entities, environmentalists, enthusiasts and the boating community as a successful marina development which adds significant value to the San Francisco Bay Area, its environment and recreation. The harbor is increasingly important as several marinas in the bay have terminated their operations and other closures are anticipated.

Peter Robertson
Past President

There are several examples of the harbor's value. It has installed state-of-the-art vessel pumpout facilities that facilitate the boating community's efforts to protect the environment. In fact, responsible environmentally sound bay access is a key objective of Westpoint Harbor and should be highlighted as a cooperative accomplishment by BCDC rather than an object of enforcement fines. The marina development has, for instance, worked to not just create the 3 acres of roost habitat required in the BCDC permit, but instead nearly 60 acres of roost habitat on adjacent Cargill lands; as well as by voluntarily acquiring rights to adjacent Pacific Shores land where additional wetland restoration could take place. The marina has protected wildlife with signs, setbacks, and barriers that exceed permit requirements.

Legislative Advocates
Jerry Desmond
Director of
Government Relations

Mail donation checks to
RBOC
c/o Otis Brock
1253 Yuba Avenue
San Pablo, CA 94806

The harbor hosts Stanford University's annual triathlon, the America's Cup electronic test program, the Sea Scouts, activities of the National Oceanic and Atmospheric Administration, the Yacht Racing Association of San Francisco Bay, the U.S. Geological Survey, Pacific Gas & Electric Company, and the Aqua-Terra and Spartina Projects. Also, Westpoint Harbor provides berthing for local fire department and police boats, Santa Clara University Rowing, Norcal Rowing, and a number of other water-oriented organizations, as well as guest berthing for many boating clubs in the Bay.



RBOC Letter to BCDC re Westpoint Harbor

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The actions BCDC is taking and proposes to take with regard to the harbor fail to recognize the significance of the harbor, and are contrary to the vital objectives of BCDC that was created in 1965 in order to protect the Bay, safeguard endangered species and provide public access and enjoyment of the Bay's waters.

BCDC's history, strategic plan, stated vision, mission and goals include the following:

Vision: Be the national model for coastal management.

Mission: To protect and enhance the San Francisco Bay, and encourage the responsible and productive use of its resources for this and future generations.

Goal 1: Enhance the Bay's unique contributions to the Bay Area and enable all its communities to flourish. (Emphasis added.)

BCDC's approach towards the harbor does not further the commission as a national model, does not encourage the responsible and productive use of the Bay's resources, and does not enable all of the Bay's communities to flourish.

The claimed violations alleged by the commission all suffer from one or more of deficiencies that have been well-documented by the harbor, as well as RBOC's November 15, 2017 letter which is attached here.

The BCDC actions will act as a powerful deterrent to future generations interested in investing and serving recreational boating in the Bay in areas under BCDC jurisdiction. This will be to the detriment of the Bay as boating in California is a \$7 billion annual economic engine.

RBOC's concerns with BCDC's actions towards the harbor are exacerbated when considered in the context of the commission's similar enforcement actions against Scott's restaurant in Jack London Square, and against Sweeny's duck club in the Delta. Taken together, the pattern is alarming to the boating community and has also led a County Superior Court judge in a recent case to opine that BCDC enforcement had exceeded its jurisdiction, had inflicted excessive fines, and had displayed vindictive prosecution.

This needs to be addressed in a timely manner, and RBOC urges the California State Legislature and State Auditor to investigate the BCDC enforcement actions including the exorbitant fines that are being imposed. It is critical that an independent, fair, objective, knowledgeable and transparent review be conducted.

The San Francisco Bay Conservation & Development Commission has a proud and noble past. However, RBOC is gravely concerned about its present and even more concerned about its future.

Thank you for this opportunity to submit RBOC's comments with regard to BCDC's actions at they pertain to Westpoint Harbor. I can be reached at 678.296.4970, and Jerry Desmond, RBOC's Director of Government Relations, can be reached at 916.441.4166.

Sincerely,

John Marshall, RBOC 2018 President

Enclosure



RBOC
Protecting your boating interests.™

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www.rbo.org

November 15, 2017

BCDC Enforcement Committee Members and BCDC Commissioners
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
Via email: marc.zeppetello@bcdc.ca.gov

Peter Robertson
President

John Marshall
Vice President – South

Ray Durazo
Vice President – North

Otis Brock
Secretary – Treasurer

Ralph Longfellow
Past President

Legislative Advocates
Jerry Desmond

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Re: BCDC Staff Enforcement Action Against Westpoint Harbor and Mark Sanders
Proposed Order No. CDO 2017.04

Dear Enforcement Committee Members and BCDC Commissioners:

Recreational Boaters of California [RBOC] is the nonprofit advocacy organization that works to protect and enhance the interests of the state's recreational boaters before the legislative and executive branches of state and local government. RBOC is in its 49th year as a statewide organization promoting the enjoyment, protection and responsible use of our waterways.

As you know, RBOC does not weigh in on public disputes involving individual projects lightly. And, when it does, it does not uniformly take "the side" of the project owner.

Our organization is writing to express our great concern about the above-referenced enforcement action against Mr. Sanders and Westpoint Harbor.

We note that the Executive Director has recommended a penalty of more than \$540,000 and the issuance of a cease and desist order, based on allegations going back many years and, in one instance, to 2004. Our review of the materials filed in this matter reveals a profound "mismatch" between the staff's expertise and the appropriate regulation (and operation) of marinas.

For example, some of the allegations concern boating "trade terminology" that is undefined in the BCDC permit. Terms such as "Guest Berths" are central to certain allegations, such as Allegation No. 1C. BCDC staff allege that Westpoint Harbor has failed to "make available for public access 10 guest berths" as required by the BCDC permit. However, BCDC staff do not dispute that Westpoint Harbor has guest berths available for guest/transient boaters to use. BCDC staff assert that those guest berths must be available to landside public visitors for "walking, bicycling, sitting, viewing, picnicking, and related purposes." BCDC staff assert that "the definition of that term ["guest berths"] in the boating industry is irrelevant to the issue of whether the Permit requires Respondents to provide unrestricted public access to those berths." In other words, BCDC staff assert that they are the sole arbiters of the meaning of all words in a permit, regardless of whether those words have common meaning used throughout the regulated community (here, the boating community) and, also as here, that common meaning is strongly informed by concerns for the safety of both the public and boaters.



Recreational Boaters of California

Re: BCDC Staff Enforcement Action Against Westpoint Harbor and Mark Sanders

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Other examples of this mismatch are afforded by allegations that assert violations of BCDC permit conditions that, if read in the manner demanded by BCDC staff, would result in violation of federal and/or state law. For example, one reading of the BCDC permit would require installation of "no wake" buoys throughout Westpoint Slough. However, installation of buoys in state and federal navigable channels is subject to California and Coast Guard regulations that require authorization from appropriate agencies. We understand that the Coast Guard informed Mark Sanders that it would not grant such authorization. Thus, buoys could only be installed in violation of the Coast Guard regulations, which are concerned to ensure the safety of boaters and the public.

This is not the first time RBOC has sought to help BCDC in such "mismatch" situations. You may recall that we had to respond to a proposal to make automatic bilge pumps on boats illegal, despite their being required by the Coast Guard for safety. In light of the understandable disadvantage staff has labored under because of its lack of experience with the full panoply of local, state, and federal regulations and requirements governing marinas and their operations, RBOC respectfully suggests that the Enforcement Committee stay the hearing of this matter indefinitely, pending referral of the dispute to an independent review that has the benefit of expertise in the full range of regulations and requirements governing marinas and their operation and, not least, those regulations and requirements concerned to ensure safety.

Thank you for your consideration.

Sincerely,

Peter Robertson, RBOC President

Subject: CDO 2017.04 and CDO 2018.01 numbering
Date: Tuesday, February 6, 2018 at 11:35:33 AM Pacific Standard Time
From: Schooner Mahdee
To: Zeppetello, Marc@BCDC
CC: mark@westpointharbor.com

When I saw the email from BCDC on enforcement status including:

"MARK SANDERS AND WESTPOINT HARBOR, LLC, LOCATED AT THE END OF SEAPORT BOULEVARD IN REDWOOD CITY, SAN MATEO COUNTY (RECOMMENDED ENFORCEMENT DECISION AND PROPOSED CEASE AND DESIST AND CIVIL PENALTY ORDER NO. CDO 2018.01). The Enforcement Committee's recommended enforcement decision on proposed Cease and Desist and Civil Penalty Order No. CDC 2018.01, which it adopted on November 16, 2017, for alleged violations of BCDC Permit No. 2002.002.09 and the McAteer-Petris Act, will be considered by the Commission on MARCH 15, 2018. For details contact Marc Zeppetello (415/352-3655 marc.zeppetello@bcdc.ca.gov)."

It jumped out at me that BCDC was stating that the staff revised CDO 2018.01 which was not considered in January or conceived of in November was adopted by the committee at the November Enforcement Committee meeting.

I called you this morning and asked which CDO was being forwarded to the full commission. Thanks for quickly understanding my confusion. You told me it was the one from November (implied 2017.04) but because it is a new year, the office of the state's attorney general needed a "new number" and so the approved CDO (implied CDO 2017.04) was renumbered with the 2018 date and now is CDO 2018.01.

I suggested to you that BCDC might have been wiser to retire number 2018.01 and to have used 2018.03 (since 2018.02 is already assigned another case). This may present as just a little niggle and no big deal but since a previous CDO 2018.01 was circulated to the Enforcement Committee, the public, and WPH, the number should not be re-used. It almost certainly can cause confusion going forward. If we look at the official records at BCDC we see <http://www.bcdc.ca.gov/enforcement/2018/0118WPHRecommendedDecision.pdf> CDO 2018.01 as first shared with the public on January 8, 2018 and it was never adopted by the Enforcement Committee. That is an existing document within the public record.

I request that you do not use the CDO 2018.01 number for the CDO being considered by the full commission in March. They will be considering the adopted CDO 2017.04 which must, for some state's accounting reason be renumbered with a 2018 prefix, but, in my opinion, it is entirely inappropriate to use CDO 2018.01 because of the confusion it can, and will, cause for the public and others. Beyond local temporal confusion, over time, the use of this CDO number may inadvertently obfuscate the relationship between CDO 2017.04 and the original CDO 2018.01.

Kindest regards,
Brenda Hattery
202.726.1994 mobile

Dear Commissioner Randolph,

I'm a proud member of Westpoint Harbor, where I have had a boat since 2012.

Westpoint Harbor sets the standard for marinas in the Bay Area and should be lauded as an example for thoughtful and effective enhancement of the Bay. Instead Westpoint Harbor is being targeted by the BCDC Enforcement Committee unjustly.

As a commissioner, I ask that you review this case closely, which is at a critical juncture. On January 18, 2018 you and the rest of the commission will vote on a cease and desist order. I ask that you vote against the cease and desist or at the very least delay the vote until you have had a chance to learn more about Westpoint Harbor and the facts.

I invite you to visit Westpoint Harbor and I know you too will be impressed and understand the value it is providing to the entire Bay. When you visit you'll see:

- A shimmering marina teeming with wildlife, which only 30 years ago was industrial waste site. By far the cleanest, safest marina in the Bay
- Bay Area residents enjoying direct access to a mile of new walking trails, kayaking, rowing, sailing, canoeing and stand-up paddleboarding
- A thriving small business community where those whose businesses serve the boating public and are flourishing and growing their businesses

Westpoint Harbor is a tribute to the Bay, recognized as one of the most advanced, innovative, environmentally friendly and public amenity in the best sense of the word. BCDC should foster and support it rather than destroy it.

Many citizens have been galvanized by Westpoint Harbor's struggle with BCDC and are truly at a loss as to why BCDC's enforcement office is so doggedly coming after Westpoint -- it defies logic, especially since Westpoint is the living example of the BCDC's charter:

“protect and enhance San Francisco Bay and to encourage the Bay’s responsible and productive use for this and future generations.”

Again, we ask that you vote against the cease and desist against Westpoint Harbor on January 18, 2018.

Thank you for your consideration and your service.

Best,

A handwritten signature in black ink, appearing to read "Steven Cooper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steven Cooper
steve@280first.com
650 575 9650