

Subject: Westpoint Harbor Proposed Order No. CDO 2017.04

Date: Sunday, December 17, 2017 at 3:30:28 PM Pacific Standard Time

From: Tommaso Nicholas Boggia

To: Zeppetello, Marc@BCDC, ReceptionDesk@BCDC, wilma.chan@acgov.org

BCDC commissioners,

I live on a boat at the Oakland Jack London Marina and I am a voter in Alameda County.

I am writing in support of Westpoint Harbor and to urge the BCDC to work with the marina's leadership to resolve the situation in Proposed Order No. CDO 2017.04 in a manner that doesn't doom their ability to continue operating.

In taking an aggressive and uncompromising action **you are not just hurting a business, but also forcing the relocation of people from their home**, putting their ability to work at risk at a delicate time for housing supply.

Bay Area liveaboards are starting to organize so we can more effectively communicate our point of view to local regulatory agencies. In our initial conversations with liveaboards around the Bay, those at Westpoint Harbor have always spoken well of their marina management and amenities. We all considered them lucky for living in a place with competent and respectful administrators.

The liveaboards at Westpoint harbor deserve a decision that won't upend their lives.

Thank you for your important work,

Tommaso

--
Tommaso Nicholas Boggia
(831) 234 4507

Subject: Re: Westpoint Harbor Proposed Order No. CDO 2017.04
Date: Friday, December 22, 2017 at 9:46:10 AM Pacific Standard Time
From: Zeppetello, Marc@BCDC
To: tboggia@gmail.com, McCrea, Brad@BCDC
CC: Zeppetello, Marc@BCDC

Dear Mr. Boggia,

I am writing to follow up on two issues that you have raised regarding the Westpoint Harbor enforcement matter.

Members of the public certainly have the right to submit comments to BCDC Commissioners on pending permitting and enforcement matters. The public generally submits written comments after a matter has been scheduled for a hearing before the Commission or make comments orally, in person, during the hearing at which the matter is considered by the Commission. The prohibition against ex parte communications comes into play when a member of the public (or other interested party) seeks to meet with or otherwise engage in a dialogue with a Commissioner regarding the substance of a matter in an effort to influence his or her decision. Your email communication to BCDC Commissioners did not request a response from the Commissioners and, therefore, was not an improper ex parte communication. In any event, this is to let you know that we will forward your email to the Commissioners, together with the other comments we receive by email or letter, prior to the time this matter is considered by the Commission.

As to the potential impact of any penalty on the marina and marina residents, as part of its enforcement investigation, staff requested financial records and related information from Mr. Sanders and Westpoint Harbor, LLC because the ability to pay a penalty and the potential effect of a penalty on a permittee's ability to continue in business are relevant factors to be considered by the Commission in determining an appropriate penalty. Through their lawyers, Mr. Sanders and Westpoint Harbor, LLC not only refused to provide any of the requested financial records or information, they also stated that such information is not relevant to the proceeding because "financial inability to pay administrative penalties has not been asserted by Respondents." Thus, despite staff's request for such information, Mr. Sanders and Westpoint Harbor, LLC have not claimed, or submitted any evidence to suggest, that the proposed penalty would have an adverse economic impact on them that might potentially result in closure of the marina.

Thanks again for your comments on this matter.

Regards, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bccdc.ca.gov

From: Tommaso Nicholas Boggia <tboggia@gmail.com>
Reply-To: "tboggia@gmail.com" <tboggia@gmail.com>
Date: Monday, December 18, 2017 at 5:07 PM
To: "McCrea, Brad@BCDC" <brad.mccrea@bcdcc.ca.gov>, Marc Zeppetello <marc.zepetello@bcdcc.ca.gov>
Subject: Re: Westpoint Harbor Proposed Order No. CDO 2017.04

Thank you for your answer and I apologize for my faux pas regarding ex-parte communication. What would be the correct way for citizens to communicate to their elected representatives regarding issues pertaining to BCDC decisions? If I'm not mistaken we have a constitutional right to petition our elected government officials.

The key theme of my letter, which I would appreciate it if you could communicate to whoever is the relevant decision-maker, is that your enforcement action must address the fact that people structure their lives around the marinas they occupy. **Any enforcement action that has any possibility in resulting in people being displaced or people's ability to make a living being disrupted must provide accommodations for the marina tenants.** And while I'm mostly speaking of liveaboards, this also applies to other slip-holders who will face significant personal costs if this enforcement action directly results in the closure of the marina. You aren't just levying a fine on the marina, but submitting any client of such marina to large costs. I'm not a lawyer, but I would assume that if we were renters and our building owner was being fined to the point where they are likely to go out of business, there would be some mention of the impact on tenants in the regulatory proceedings.

It is not worth evicting people and upending their lives because a sign was painted instead of posted, and because signs were posted instead of buoys. I understand and respect the mission of the BCDC, but sticking up for the wording of a permit when the letter of it was respected, or when the reality of its implementation slightly differs the ideal expressed within, and turning that into a half a million (or quarter million) fine seems like a cruel and unproportional punishment when it costs the ability of people to a stable living situation.

Thank you for working on protecting our bay,

Tommaso

Tommaso Nicholas Boggia
(831) 234 4507

On Mon, Dec 18, 2017 at 12:21 PM, McCrea, Brad@BCDC <brad.mccrea@bcdcc.ca.gov> wrote:

Dear Mr. Boggia,

Thank you for your email to Marc Zeppetello regarding BCDC's enforcement matter involving Westpoint Harbor. I am writing in response to your email to Mr. Zeppetello who is currently out of the office.

We acknowledge that Mr. Sanders is a responsible marina operator and that Westpoint Harbor is generally operated in an environmentally sound manner and that Mr. Sanders promotes clean boating. However, this enforcement matter has little to do with marina operations.

Unfortunately, Mr. Sanders failed to provide public access and public access improvements for approximately eight years as required by the permit he was granted by BCDC, and he also failed to comply with a number of permit conditions to prevent or minimize adverse impacts to wildlife, including endangered species found in the adjacent national wildlife refuge – and he repeatedly refused requests by BCDC staff to do so voluntarily. For a detailed description of the issues, please refer to the official transcript for the Enforcement Committee meeting held on November 16, 2017. In particular, I encourage you to read Chief Counsel Marc Zeppetello's statement on pages 17-37 and the comments of the Committee Chair, Commissioner Greg Scharff, following all presentations and public comment, on pages 113-115. <http://www.bcdc.ca.gov/enforcement/2017/1116Transcripts.pdf>

Also, please note that communicating with BCDC Commissioners during an enforcement proceeding is an *ex parte* communication and that the Commission's regulations do not allow Commissioners to engage in such communications. Having *ex parte* communications with members of the public or other interested parties would raise due process and fair hearing concerns because Commission decisions must be based on information that has been provided to all parties and the public at Commission meetings, and also must be based on material contained only in the administrative record. Commissioners are required to disclose the content of any substantive *ex parte* communication on the matter that does occur.

If you have any questions, please don't hesitate to contact me. Marc Zeppetello will be back in the office next Thursday.

Best regards,

Brad McCrea

Regulatory Director

San Francisco Bay Conservation and Development Commission

[415-352-3615](tel:415-352-3615) office

[415-385-2954](tel:415-385-2954) cell

brad.mccrea@bcdc.ca.gov

From: Tommaso Nicholas Boggia <tboggia@gmail.com>

Sent: Sunday, December 17, 2017 3:30 PM

To: Zeppetello, Marc@BCDC; ReceptionDesk@BCDC; wilma.chan@acgov.org

Subject: Westpoint Harbor Proposed Order No. CDO 2017.04

BCDC commissioners,

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I am writing in support of Westpoint Harbor and to urge the BCDC to work with the marina's leadership to resolve the situation in Proposed Order No. CDO 2017.04 in a manner that doesn't doom their ability to continue operating.

In taking an aggressive and uncompromising action **you are not just hurting a business, but also forcing the relocation of people from their home**, putting their ability to work at risk at a delicate time for housing supply.

Bay Area liveboards are starting to organize so we can more effectively communicate our point of view to local regulatory agencies. In our initial conversations with liveboards around the Bay, those at Westpoint Harbor have always spoken well of their marina management and amenities. We all considered them lucky for living in a place with competent and respectful administrators.

The liveboards at Westpoint harbor deserve a decision that won't upend their lives.

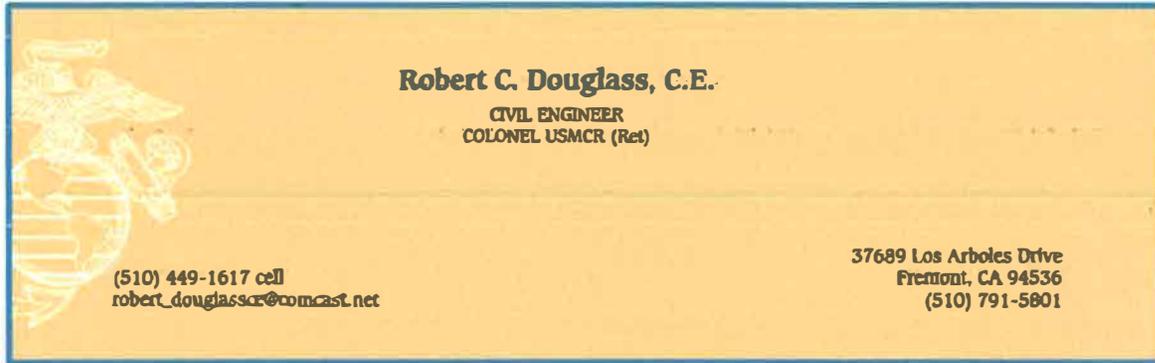
Thank you for your important work,

Tommaso

--

Tommaso Nicholas Boggia

[\(831\) 234 4507](tel:(831)2344507)



R. Zachary Wasserman, Chair

December 16, 2017

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue Suite 10600

San Francisco, CA 94102-7019

Subject: Westpoint Harbor, CDO 2017.04

Dear Chairman Wasserman and members of the Commission:

This letter is in support of Mr. Mark Sanders, the proprietor of Westpoint Harbor, and the ongoing dispute with the Commission. By way of background, though long since retired, I represented Cargill Salt management in our negotiations leading up to the sale of a portion of our property for the future Westpoint Harbor. At the time I was responsible for obtaining permits for our salt operations and very knowledgeable about the always difficult process of obtaining permits.

Both Mr. Sanders and I recall my concerns about the task he had embarked upon. I warned him how arduous the permitting process would be. That said, I am deeply disappointed, but sadly not surprised, as to how difficult the process became. The opportunity to increase recreational boating, open bay water surface and public access to San Francisco Bay should have been embraced by the Commission. Instead, every step in the process was disputed and challenged. As a counter point, a visit to the harbor by members of the appointed commission would reveal this marina is in compliance with reasonable permit conditions and is an asset to the region.

Reviewing the dispute will serve no purpose. Instead, I will state that, in my professional opinion, many of the permit violations Mr. Sanders has been charged with are sheer nonsense. His responses have been ignored and the staff happily continues to add to the outrageous total of fines.

Mr. Sanders cannot receive a fair hearing from the Commission. That must be acknowledged by the Commission. The issue must be decided by a fair and independent third party and the continuing escalation of fines tolled.

REGARDS,
Robert C Douglass



Subject: Re: Westpoint Harbor
Date: Friday, December 22, 2017 at 9:49:18 AM Pacific Standard Time
From: Zeppetello, Marc@BCDC
To: robert_douglasse@comcast.net
CC: McCrea, Brad@BCDC, Zeppetello, Marc@BCDC

Dear Mr. Douglas,

I am writing to follow up on your email exchange with Mr. McCrea regarding the Westpoint Harbor enforcement matter.

With respect to accepting public communications to decision-makers, members of the public certainly have the right to submit comments to BCDC Commissioners on pending permitting and enforcement matters. The public generally submits written comments after a matter has been scheduled for a hearing before the Commission or makes comments orally, in person, during the hearing at which the matter is considered by the Commission. The prohibition against ex parte communications comes into play when a member of the public (or other interested party) seeks to meet with or otherwise engage in a dialogue with a Commissioner regarding the substance of a matter in an effort to influence his or her decision. Your email and letter to BCDC Commissioners did not request a response from the Commissioners and, therefore, was not an improper ex parte communication. In any event, this is to let you know that we will forward your letter and/or email to the Commissioners, together with the other comments we receive by email or letter, prior to the time this matter is considered by the Commission, and that all such comments will be included as part of the public record.

Thanks again for your comments on this matter.

Regards, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

Begin forwarded message:

From: Robert <robert_douglasse@comcast.net>
Date: December 18, 2017 at 7:32:26 PM PST
To: "Brad@BCDC McCrea" <brad.mccrea@bcdc.ca.gov>
Subject: Re: Westpoint Harbor

Mr. McCrea,

This is to acknowledge receipt of your email to me in response to my earlier email to Mr. Zeppetello and my letter to Chair Wasserman. I am a battle-scarred veteran of permit battles with the BCDC staff with over thirty years of experience. In twelve years as a consultant I was the project manager for the King and Lyons project in Fremont, which at the time was, and still may be the single largest return to the San Francisco Bay by a developer. The staff made the process very difficult (and they are long since gone), but the culture obviously remains in place. They should have been allies for what was a precedent setting project. This was in the early 1980s so I am dating myself. Long since retired from Cargill Salt, I spent over twenty years embroiled in permit matters with various generations of the permit staff. One would think the staff and commission would have been a positive influence on salt making operations, given the origins of the McAteer-Petris Act. Salt ponds comprised a significant part of the commission's jurisdiction and yet the staff made it very, very difficult to operate our system. Yet, the environmental community always seemed to have easy access to the staff and had significant influence on our permit conditions. I would suggest that most permit holders do not share your opinion of the permit process.

The Westpoint Harbor is an acknowledged success within the boating community and a wonderful asset to the San Francisco Bay. It is safely operated and accessible to the public.

In my extensive professional experience in matters of permitting, most public agencies willingly accept communications to decision makers from the public. Your rules pretty much silence public comment except at public hearings which are carefully controlled. That is unfortunate and unfair. If the commission functioned as open and responsive public agency, my letter would be part of the public record.

Clearly, you and I do not share common perspectives on the issue of the Westpoint Harbor and my past experience with the commission makes me very disappointed with the treatment of Mr. Sanders. I would hope that there is a solution that will put this dispute in the past that does not involve what are clearly misguided and punitive fines that have no bearing on public safety or public access.

Regards,

Robert C. Douglass, C.E.

From: "Brad@BCDC McCrea" <brad.mccrea@bcdc.ca.gov>
To: "robert douglassce" <robert_douglassce@comcast.net>
Sent: Monday, December 18, 2017 12:15:10 PM
Subject: Re: Westpoint Harbor

Dear Mr. Douglass,

Thank you for your email to Marc Zeppetello and your letter to Chair Wasserman regarding BCDC's enforcement matter involving Westpoint Harbor. I am writing in response to your email to Mr. Zeppetello who is currently out of the office.

We recognize that the regulatory process for shoreline development can be arduous. That is why we strive to streamline the process for the regulated community. Although the permitting process can be difficult at times, the BCDC staff and the Commission have successfully issued thousands of development permits over the past 52 years, resulting in over \$20 billion of development around San Francisco Bay and hundreds of miles of public shoreline access. As required by law, all conditions of approval (permit requirements) must be reasonable.

Unfortunately, Mr. Sanders failed to provide public access and public access improvements for approximately eight years as required by the permit he was granted by BCDC, and he also failed to comply with a number of permit conditions to prevent or minimize adverse impacts to wildlife, including endangered species found in the adjacent national wildlife refuge – and he repeatedly refused requests by BCDC staff to do so voluntarily. For a detailed description of the issues, please refer to the official transcript for the Enforcement Committee meeting held on November 16, 2017. In particular, I encourage you to read Chief Counsel Marc Zeppetello's statement on pages 17-37 and the comments of the Committee Chair, Commissioner Greg Scharff, following all presentations and public comment, on pages 113-115. <http://www.bcdc.ca.gov/enforcement/2017/1116Transcripts.pdf>

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occur.

If you have any questions, please don't hesitate to contact me. Marc Zeppetello will be back in the office next Thursday.

Best regards,

Brad McCrea

Regulatory Director

San Francisco Bay Conservation and Development Commission

415-352-3615 office

415-385-2954 cell

brad.mccrea@bcdc.ca.gov

From: Robert <robert_douglasse@comcast.net>

Date: December 16, 2017 at 7:59:53 PM AST

To: marc zeppetello <marc.zeppetello@bcdc.ca.gov>

Cc: <harbormaster@westpointharbor.com>

Subject: Westpoint Harbor

Please see attached letter...

R. Zachary Wasserman, Chair

December 16, 2017

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue Suite 10600

San Francisco, CA 94102-7019

Subject: Westpoint Harbor, CDO 2017.04

Dear Chairman Wasserman and members of the Commission:

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Mr. Sanders cannot receive a fair hearing from the Commission. That must be acknowledged by the Commission. The issue must be decided by a fair and independent third party and the continuing escalation of fines tolled.

Subject: Westpoint Harbor vs BCDC

Date: Friday, January 5, 2018 at 2:10:03 PM Pacific Standard Time

From: Zeppetello, Marc@BCDC

From: Nick Vicars-Harris <nickvh@msn.com>

Date: Tuesday, December 12, 2017 at 8:57 AM

To: Rick Bottoms <richard.m.bottoms@usace.army.mil>

Cc: Zachary Wasserman <zwasserman@wendel.com>, Anne Halsted <ahalsted@aol.com>, Mark Addiego <mark.addiego@ssf.net>, Newsha Ajami <newsha.ajami@gmail.com>, Joshua Arce <josharce.bcdc@gmail.com>, Rick Bottoms <richard.m.bottoms@usace.army.mil>, Jason Brush <brush.jason@epa.gov>, Thomas Butt <tom.butt@intres.com>, Wilma Chan <wilma.chan@acgov.org>, "chappell_jim@att.net" <chappell_jim@att.net>, Mallia Cohen <Malia.Cohen@sfgov.org>, "dconnolly@marincounty.org" <dconnolly@marincounty.org>, Dave Cortese <dave.cortese@bos.sccgov.org>, Pauline Russo Cutter <pcutter@sanleandro.org>, "Eckerle, Jenn@CNRA" <Jenn.Eckerle@resources.ca.gov>, Karen Finn <Karen.Finn@dof.ca.gov>, Katerina Galacatos <Katerina.Galacatos@usace.army.mil>, Marie Gilmore <melrgilmore@gmail.com>, John Gioia <John.Gioia@bos.cccounty.us>, Federal Glover <district5@bos.cccounty.us>, Susan Gorin <Susan.Gorin@sonoma-county.org>, Carole Groom <CGroom@co.sanmateo.ca.us>, Dan Hillmer <dhillmer@cityoflarkspur.org>, Claire Jahns <Claire.Jahns@resources.ca.gov>, "Jane.Kim@sfgov.org" <Jane.Kim@sfgov.org>, Jennifer Lucchesi <Jennifer.Lucchesi@slc.ca.gov>, "McElhinney, Dan@DOT" <dan.mcelhinney@dot.ca.gov>, Jim McGrath <macmcgrath@comcast.net>, Barry Nelson <barry@westernwaterstrategies.com>, Sheri Pemberton <Sheri.Pemberton@slc.ca.gov>, Aaron Peskin <aaron.peskin@sfgov.org>, Dave Pine <dpine@co.sanmateo.ca.us>, David Rabbitt <david.rabbitt@sonoma-county.org>, Belia Ramos <belia.ramos@countyofnapa.org>, Sanjay Ranchod <sranchod@tesla.com>, Sean Randolph <sean@bayareacouncil.org>, "Sartipi, Bijan@DOT" <bijan.sartipi@dot.ca.gov>, Greg Scharff <greg.scharff@cityofpaloalto.org>, Kathrin Sears <ksears@marincounty.org>, Patricia Showalter <Pat.Showalter@mountainview.gov>, Jim Spering <jimzspering@cs.com>, Jill Techel <jtechel@cityofnapa.org>, John Vasquez <JMVasquez@SolanoCounty.com>, Brad Wagenknecht <brad.wagenknecht@countyofnapa.org>, Sam Ziegler <ziegler.sam@epa.gov>, Larry Goldzband <larry.goldzband@bcdc.ca.gov>

Subject: Westpoint Harbor vs BCDC

Dear Dr Bottoms and the commissioners of the BCDC,

I'm one of a group of sailors at Westpoint Harbor in Redwood City attempting to support the disagreements between the BCDC and Westpoint Harbor, and your name came up on our list of important people to try and reach out to for support and guidance.

You may not be fully aware of the long history of issues surrounding Westpoint/BCDC, but seem to align with some of the disagreements between USACE and the BCDC from our understanding.

There's an article in "Latitudes 38" you can read [online](#) (or directly from the BCDC site [here](#)) if you have some time. Otherwise I included some highlights we are raising with local government as we start to build support below:

1. Why is BCDC requiring public signs on post when they are not required in the adjacent site at Pacific shores. This also contravenes the Fish and Game rules that disallow sign posts in favor of clear markings on the tarmac, as has been done at Westpoint.

2. Why would BCDC object to Fire and City police having vessels in the harbor (given it provides for quicker access to any emergency in the surrounding bay)?
3. Around the bay and beyond, almost all Marinas have locked gate access for both safety and security. Its difficult to understand why BCDC would single out Westpoint as requiring to retain public open access to the docks and facilities 24/7?
4. BCDC require additional waterway buoys in contradiction with marine law as specified by the US Coast Guard, in fact the runway into the marina is marked in accordance with the USCG recommendations.
5. Brad McCrea has already stated (and there is a transcription of this discussion) that the allegations are for the most part baseless.
6. There is an item on the agenda to remove storage tanks, there are none!

Our task is not to cause any trouble but simply to find a way to mediate this situation by gathering support and eventually engaging an impartial mediator both on behalf of the BCDC and Westpoint to resolve this without continuing to expend hundreds of thousands of dollars on lawyer fees for both parties and put at risk the closure of this wonderful marina and it potential to become a public facility for boaters and non-boaters to enjoy the harbor for years to come.

I was wondering if you are also present in 1455 Market st, where I have sometimes bumped into your colleagues, since I work for Vevo on the 21st floor here, if so possibly we could meet for a coffee or tea very close by and chat further? There is some urgency to making progress on finding a route to arbitration given the impending meeting now set for the 18th Jan 2018, would appreciate any guidance or help you can give.

Kind regards

Nick

Subject: Westpoint Harbor vs BCDC
Date: Friday, January 5, 2018 at 1:26:48 PM Pacific Standard Time
From: Zeppetello, Marc@BCDC
Attachments: image001.png

From: "McCrea, Brad@BCDC" <brad.mccrea@bccdc.ca.gov>
Date: Friday, December 15, 2017 at 11:33 AM
To: "nickvh@msn.com" <nickvh@msn.com>
Subject: Re: Westpoint Harbor vs BCDC

Mr. Vicars-Harris,

Thank you for your email regarding BCDC's enforcement matter involving Westpoint Harbor.

Unfortunately, Mr. Sanders failed to provide public access and public access improvements for approximately eight years as required by the permit he was granted by BCDC, and he also failed to comply with a number of permit conditions to prevent or minimize adverse impacts to wildlife, including endangered species found in the adjacent national wildlife refuge – and he repeatedly refused requests by BCDC staff to do so voluntarily. For a detailed description of the issue, please refer you to the official transcript for the Enforcement Committee meeting held on November 16, 2017. In particular, I encourage you to read Chief Counsel Marc Zeppetello's statement on pages 17-37 and the comments of the Committee Chair, Commissioner Greg Scharff, following all presentations and public comment, on pages 113-115. <http://www.bccdc.ca.gov/enforcement/2017/1116Transcripts.pdf>

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Please don't hesitate to contact me if you have any questions or comments. My contact information is below.

Best regards,

Brad

Brad McCrea
Regulatory Director
San Francisco Bay Conservation and Development Commission
415-352-3615 office
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Date: Tuesday, December 12, 2017 at 8:57 AM
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Cc: Zachary Wasserman <zwasserman@wendel.com>, Anne Halsted <ahalsted@aol.com>, Mark Addiego <mark.addiego@ssf.net>, Newsha Ajami <newsha.ajami@gmail.com>, Joshua Arce <josharce.bcdc@gmail.com>, Rick Bottoms <richard.m.bottoms@usace.army.mil>, Jason Brush <brush.jason@epa.gov>, Thomas Butt <tom.butt@intres.com>, Wilma Chan <wilma.chan@acgov.org>, "chappell_jim@att.net" <chappell_jim@att.net>, Mallia Cohen <Malia.Cohen@sfgov.org>, "dconnolly@marincounty.org" <dconnolly@marincounty.org>, Dave Cortese <dave.cortese@bos.sccgov.org>, Pauline Russo Cutter <pcutter@sanleandro.org>, "Eckerle, Jenn@CNRA" <Jenn.Eckerle@resources.ca.gov>, Karen Finn <Karen.Finn@dof.ca.gov>, Katerina Galacatos <Katerina.Galacatos@usace.army.mil>, Marie Gilmore <melrgilmore@gmail.com>, John Gioia <John.Gioia@bos.cccounty.us>, Federal Glover <district5@bos.cccounty.us>, Susan Gorin <Susan.Gorin@sonoma-county.org>, Carole Groom <CGroom@co.sanmateo.ca.us>, Dan Hillmer <dhillmer@cityoflarkspur.org>, Claire Jahns <Claire.Jahns@resources.ca.gov>, "Jane.Kim@sfgov.org" <Jane.Kim@sfgov.org>, Jennifer Lucchesi <Jennifer.Lucchesi@slc.ca.gov>, "McElhinney, Dan@DOT" <dan.mcelhinney@dot.ca.gov>, Jim McGrath <macmcgrath@comcast.net>, Barry Nelson <barry@westernwaterstrategies.com>, Sheri Pemberton <Sheri.Pemberton@slc.ca.gov>, Aaron Peskin <aaron.peskin@sfgov.org>, Dave Pine <dpine@co.sanmateo.ca.us>, David Rabbitt <david.rabbitt@sonoma-county.org>, Belia Ramos <belia.ramos@countyofnapa.org>, Sanjay Ranchod <sranchod@tesla.com>, Sean Randolph <sean@bayareacouncil.org>, "Sartipi, Bijan@DOT" <bijan.sartipi@dot.ca.gov>, Greg Scharff <greg.scharff@cityofpaloalto.org>, Kathrin Sears <ksears@marincounty.org>, Patricia Showalter <Pat.Showalter@mountainview.gov>, Jim Spering <jimzspering@cs.com>, Jill Techel <jtechel@cityofnapa.org>, John Vasquez <JMVasquez@SolanoCounty.com>, Brad Wagenknecht <brad.wagenknecht@countyofnapa.org>, Sam Ziegler <ziegler.sam@epa.gov>, Larry Goldzband <larry.goldzband@bcdc.ca.gov>
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2. Why would BCDC object to Fire and City police having vessels in the harbor (given it provides for quicker access to any emergency in the surrounding bay)?
3. Around the bay and beyond, almost all Marinas have locked gate access for both safety and security. Its difficult to understand why BCDC would single out Westpoint as requiring to retain public open access to the docks and facilities 24/7?
4. BCDC require additional waterway buoys in contradiction with marine law as specified by the US Coast Guard, in fact the runway into the marina is marked in accordance with the USCG recommendations.
5. Brad McCrea has already stated (and there is a transcription of this discussion) that the allegations are for the most part baseless.
6. There is an item on the agenda to remove storage tanks, there are none!

Our task is not to cause any trouble but simply to find a way to mediate this situation by gathering support and eventually engaging an impartial mediator both on behalf of the BCDC and Westpoint to resolve this without continuing to expend hundreds of thousands of dollars on lawyer fees for both parties and put at risk the closure of this wonderful marina and its potential to become a public facility for boaters and non-boaters to enjoy the harbor for years to come.

I was wondering if you are also present in 1455 Market st, where I have sometimes bumped into your colleagues, since I work for Vevo on the 21st floor here, if so possibly we could meet for a coffee or tea very close by and chat further? There is some urgency to making progress on finding a route to arbitration given the impending meeting now set for the 18th, Jan 2018, would appreciate any guidance or help you can give.

Kind regards

Nick



From: James M <jamesmitchell300@gmail.com>
Date: Sunday, December 10, 2017 at 12:09 PM
To: Marc Zeppetello <marc.zeppetello@bcfdc.ca.gov>, "ReceptionDesk@BCDC" <reception@bcfdc.ca.gov>
Subject: Westpoint Harbor Marina follow up

Marc and team,

I sent this email a few days ago but haven't heard back. can you please respond if even with a sentence and let me know your feedback? thank you!

James

Dear Marc and team,

I have been a tax paying boat owner since 2003 with 2 boats. I've been in 7 marinas from Berkeley to Marina del Rey. I have found home in Westpoint Harbor Marina. The reason for it is that it has been the most cleanest, strictest least impacting marina to the environment I have observed in nearly 15 years of boat ownership.

The water is prestene, all boaters are held to the highest standard of boat maintenance, including under water electrical current, proper sewer dumping, recycling.

What I find interesting is that the other marinas, including Redwood City Marina, as well as Berkeley marina, which I have found to be in an incredibly disgusting and unsanitary shape, from dumpsters, trash in the water, as well as sewage dumped into water, frequently grotesque smell, unsanitary boats, they haven't been challenged to clean up their act to my knowledge ever. I can tell this from the fact that when I visit those marinas, their shape, cleanliness, and even safety, have degraded over the years.

I therefore sense that the motivation behind these legal accusations of the marina of which I am a part of are personal in nature. Sadly the BCDC clearly does not care about the environment as they seem to have selected the best ran cleanest, strictest marina in SF Bay in my experience, while turning blind eye to the neighboring marinas next door.

I would be more than happy to testify in court of my experience in nearly 2 years of being the member of Westpoint Harbor as compared other marinas where I have been and visit sometime. Further, I will investigate possibilities of seeking legal counsel myself to challenge BCDC in court and have them testify in writing as to why gross violations of cleanliness and environment are allowed in other marinas while this one is personally hand picked.

Thank you for your listening and consideration. I am the utmost protector of our beautiful bay. I hope you have an opportunity to visit a few marinas in the bay area, then visit WestPoint Harbor, and then ask yourself in good conscience whether most of your accusations are based on truth or some ulterior motives.



--
Cheers!

James

Subject: Westpoint Harbor Marina follow up
Date: Friday, January 5, 2018 at 2:10:52 PM Pacific Standard Time
From: Zeppetello, Marc@BCDC
Attachments: image001.png

From: "McCrea, Brad@BCDC" <brad.mccrea@bcdc.ca.gov>
Date: Friday, December 15, 2017 at 11:44 AM
To: "jamesmitchell300@gmail.com" <jamesmitchell300@gmail.com>
Subject: Re: Westpoint Harbor Marina follow up

Mr. Mitchell,

Thank you for your email regarding BCDC's enforcement matter involving Westpoint Harbor. I am writing in response to your email to Marc Zeppetello who is currently out of the office.

We acknowledge that Mr. Sanders is a responsible marina operator and that Westpoint Harbor is generally operated in an environmentally sound manner and that Mr. Sanders promotes clean boating. However, this enforcement matter has little to do with marina operations.

Unfortunately, Mr. Sanders failed to provide public access and public access improvements for approximately eight years as required by the permit he was granted by BCDC, and he also failed to comply with a number of permit conditions to prevent or minimize adverse impacts to wildlife, including endangered species found in the adjacent national wildlife refuge – and he repeatedly refused requests by BCDC staff to do so voluntarily. For a detailed description of the issue, please refer you to the official transcript for the Enforcement Committee meeting held on November 16, 2017. In particular, I encourage you to read Chief Counsel Marc Zeppetello's statement on pages 17-37 and the comments of the Committee Chair, Commissioner Greg Scharff, following all presentations and public comment, on pages 113-115. <http://www.bcdc.ca.gov/enforcement/2017/1116Transcripts.pdf>

Please don't hesitate to contact me if you have any questions or comments. My contact information is below. Marc will return to the office later next week.

Best regards,

Brad

Brad McCrea
Regulatory Director
San Francisco Bay Conservation and Development Commission
415-352-3615 office
415-385-2954 cell
brad.mccrea@bcdc.ca.gov

From: Jason Fox <Jason_Fox@us.ibm.com>

Date: Tuesday, November 21, 2017 at 12:57 PM

To: Marc Zeppetello <marc.zeppetello@bcdc.ca.gov>, "Klein, Adrienne@BCDC" <adrienne.klein@bcdc.ca.gov>, "ReceptionDesk@BCDC" <reception@bcdc.ca.gov>, "receptiondesk@bcdc.ca.gov" <receptiondesk@bcdc.ca.gov>

Subject: Re: Summary of BCDC Enforcement Committee Meeting on November 16, 2017

Please advise where in what was sent below there are fixes to address safety concerns from those living aboard to restrict public access to the docks. Reading the full filing and history of what it took to get where we are it is very clear BCDC is disconnected from the boating community. Is the BCDC involved in communication, advocacy, etc to local yacht clubs, USCGAUX, general activities around boating? Apparently not.

We are live aboard boat owners and will hold BCDC responsible if anything happens that causes us or our boat any damage or harm due to restrictions on securing the docks. Also what does cease and desist actually mean to us where this is our primary residence? This is our home and we take pride in helping build the best in class marina in the SF Bay Area.

I have been a member of the boating community for almost 20 years in the Bay Area on the Board of Directors for Sierra Point Yacht Club in Brisbane, past Commodore of SPYC, member of USCG auxiliary and a true advocate for the ocean environment and improvement to address real issues.

My wife and I assist in marine mammal conservation, farallon island watch volunteers and my wife is a certified vet technician, small animals and large animal anesthesia nurse. We are marine, animal and nature lovers.

We have been to most marinas in the Bay Area, had one of our two boats at Port of RWC, Coyote Point, Brisbane Marina, Pillar Point, Pier 39 and South Beach for extended time (greater than one year in each place). To even compare what they have versus what West Point is trying to do for the community and environment makes me realize BCDC is really disconnected from the boating community. BCDC has a reputation from past and current harbor masters in marinas outside of Westpoint harbor to be a **Bureaucracy and the filing and this communication makes it even more apparent of the disconnect this organization has with boating and real wildlife community. It is obvious BCDC doesn't know what is really going on around them in the Bay Area.**

Failure to respond to this email is further confirmation how BCDC is disconnected from the boating environment, community and what really happens on the Bay.

Jason Fox
Program Director, B2B Cloud Services
IBM Watson Customer Engagement
Phone: +1-720-396-9286
E-mail: jason_fox@us.ibm.com

On Nov 21, 2017, at 8:49 PM, ReceptionDesk@BCDC <reception@bcdc.ca.gov> wrote:

Enforcement Committee Members, Interested Parties, and Staff:

Five members of the Enforcement Committee attended the November 16, 2017, BCDC Enforcement Committee meeting, which was held at 455 Golden Gate Avenue in San Francisco.

Following a public hearing, the Committee adopted, with modifications, by a vote of 5-0, the Executive Director's Recommended Enforcement Decision, including proposed Cease and Desist and Civil Penalty Order No. CDO 2017.04, that would be issued by the Commission for alleged violations of BCDC Permit No. 2002.002.09 and the McAteer-Petris Act at Westpoint Harbor, located at the end of Seaport Boulevard in Redwood City, San Mateo County.

The alleged violations include but are not limited to: (1) failure to provide required public access and public access improvements; (2) failure to comply with plan review requirements; (3) failure to maintain public access improvements; (4) failure to install required signs and buoys to protect listed species and sensitive habitat; (5) failure to provide required visual barrier to an adjacent salt pond; (6) failure to provide required mitigation; (7) failure to provide required certification of contractor review; (8) failure to secure a time extension to complete construction; (9) failure to provide required information regarding live-aboard boats; and (10) failure to provide required notification to NOAA regarding updated nautical charts.

The Executive Director's Recommended Enforcement Decision and proposed order would require Mr. Sanders and Westpoint Harbor LLC by specified dates to: (1) cease and desist from violating BCDC Permit No. 2002.002.09; (2) make public access available; (3) submit a signage plan for review and approval, and install the approved signs; (4) submit plans for public access improvements for review and approval, and complete installation of approved improvements; (5) maintain public access areas and related improvements; (6) remove unauthorized improvements; (7) submit a complete application to amend the BCDC permit to request after-the-fact authorization for certain improvements or modifications; (8) install buoys and signs in Westpoint Slough; (9) submit a plan to provide visual barriers to the adjacent salt pond for BCDC review and approval, and complete installation of visual barriers; (10) provide shorebird roost habitat mitigation; (11) provide non-tidal wetland mitigation; (12) provide annual reports on live-aboard boats; (13) provide certification of contractor approval; (14) submit monthly status reports; and (15) pay an administrative civil penalty of \$513,000.

The Enforcement Committee adopted the Executive Director's Recommended Enforcement Decision with the following modifications: (1) the Enforcement Committee allowed the parties to attempt to negotiate mutually agreed-upon revisions to the cease and desist provisions of the proposed order to be presented to the Commission for its consideration; and (2) if the parties are able to mutually agree on proposed revisions to the cease and desist provisions of the proposed order, the Respondents would be entitled to a waiver of 50% of the proposed penalty (*i.e.*, the penalty would be reduced from \$513,000 to \$256,500), provided that the Respondents comply fully with the order, as determined by the Executive Director. The Respondents would be required to pay the reduced penalty of \$256,500 within 30 days of issuance of the order by the Commission.

The Enforcement Committee's Recommended Enforcement Decision will be considered by the Commission on **January 18, 2018**. For details contact Marc Zeppetello (415/352-3655 marc.zeppetello@bcdc.ca.gov).

On **January 18, 2018**, the Enforcement Committee may hold a public hearing and vote on: (1) a recommended enforcement decision including adoption of proposed Cease and Desist and Civil Penalty Order No. CDO 2018.01 for alleged violations of the McAteer-Petris Act by the North Coast Rail Authority in a tidal slough on the west shore of the Petaluma River adjacent to the Lombard Segment of the Northwestern Pacific Railroad, Marin County. For details contact Matthew Trujillo (415-352-3633 matthew.trujillo@bcdc.ca.gov); and (2) an appeal of the Executive Director's determination that Scott's Seafood, Inc. did not fully comply and in a timely manner with certain requirements of Cease and Desist and Civil Penalty Order No. CDO 2017.01, issued on April 7, 2017, and, therefore, is not entitled to a waiver of 15% (\$59,304) of the total penalty of \$395,360 under the Order. For details contact Marc Zeppetello (415/352-3655 marc.zeppetello@bcdc.ca.gov).

San Francisco Bay Conservation
and Development Commission
415-352-3600
reception@bcdc.ca.gov

Subject: Re: Summary of BCDC Enforcement Committee Meeting on November 16, 2017
Date: Monday, December 4, 2017 at 9:09:41 PM Pacific Standard Time
From: Jason Fox
To: Zeppetello, Marc@BCDC
CC: Klein, Adrienne@BCDC, ReceptionDesk@BCDC, receptiondesk@bccdc.ca.gov, chris.carr@bakerbotts.com, kevin.vickers@bakerbotts.com, kevin.sadler@bakerbotts.com, David Smith

Marc Zeppetelli, you never responded to what this means to us as liveaboard tenants in the marina. We all need to understand clearly what this means so that as a group we can take appropriate actions. Since this is our primary residency we need to understand what you/BCDC means by cease and desist.

As for the other items you present below it's even more obvious on the disconnect with the community. Have you had someone from BCDC spend time with the folks here to really see what is happening? If so provide who they are working with. If not please advise so we can make sure your information is not disconnected.

Thanks,

Jason Fox
Program Director, B2B Cloud Services
IBM Watson Customer Engagement
Phone: +1-720-396-9286
E-mail: jason_fox@us.ibm.com

On Nov 22, 2017, at 1:57 PM, Zeppetello, Marc@BCDC <marc.zeppetello@bccdc.ca.gov> wrote:

Mr. Fox:

Thank you for your comments. We received a large number of comment letters, expressing a range of perspectives and raising numerous issues, on this enforcement action involving Westpoint Harbor. All comment letters were provided to the members of the Enforcement Committee and made a part of the record. We generally do not respond to comment letters submitted on matters before the Enforcement Committee or Commission, but will briefly address certain questions you have raised.

In your email yesterday, and your earlier email on November 14th, you raised safety concerns about public access to the private boat docks. You appear to be misinformed on this issue. BCDC's understanding is that there are locked gates on the gangways to all of the private docks. BCDC is not seeking in this enforcement action the removal of those gates or that they be kept unlocked, even for limited periods, to allow public access to the private docks.

You repeatedly claim that BCDC is disconnected from the boating community. BCDC staff generally works cooperatively with marina owners and operators throughout the Bay Area, and

both the Commission and the policies of the San Francisco Bay Plan are supportive of recreational boating. In any event, this enforcement action has very little to do with operation of the marina. As you know, Westpoint Harbor is more than a marina; it is a mixed-use project with substantial land-side development, including required public access areas around the marina basin and certain public access improvements.

BCDC has brought this enforcement action to require compliance with a number of permit conditions, including those for public access and public access improvements. What this will likely mean for marina tenants, including live-aboards, is increased public use and activity over time on the paths around the marina basin and in the parking lot. While the marina itself may be a members and guests only facility, the larger project area is not. As you may know, shoreline public access exists at nearly every marina in San Francisco Bay.

We acknowledge that there may be legitimate safety concerns associated with public access, but as noted in your November 14th email, means to address those concerns may include hiring security and installing more security cameras. In addition, the permit authorizes the permittee to request approval to impose reasonable rules and restrictions for the use of public access areas to correct particular problems that may arise. However, generalized safety concerns do not warrant, for example, completely prohibiting public access from sunset to sunrise, as suggested in your November 14th email, which would thereby limit enjoyment of the public access areas and improvements during those times to marina tenants only. Restrictions on public access to required public access areas and improvements would need to be both reasonable and justified.

Once again, thank you for your comments.

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

From: Jason Fox <Jason_Fox@us.ibm.com>
Date: Tuesday, November 21, 2017 at 12:57 PM
To: Marc Zeppetello <marc.zeppetello@bcdc.ca.gov>, "Klein, Adrienne@BCDC" <adrienne.klein@bcdc.ca.gov>, "ReceptionDesk@BCDC" <reception@bcdc.ca.gov>, "receptiondesk@bcdc.ca.gov" <receptiondesk@bcdc.ca.gov>
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