

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING

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

THURSDAY, JANUARY 18, 2018

9:30 A.M.

Reported by:
Ramona Cota

A P P E A R A N C E SEnforcement Committee

Greg Scharff, Chair

Marie Gilmore

Sanjay Ranchod

Jill Techel

Counsel to the Committee

David Alderson, Deputy Attorney General
Office of the Attorney General

BCDC Staff and Consultants

Adrienne Klein, Chief of Enforcement

Brad McCrea, Regulatory Director

Marc Zeppetello, Chief Counsel

Tara Mueller, Deputy Attorney General
Office of the Attorney General

PermitteesScott's Jack London Seafood, Inc.

Michael P. Verna, Attorney at Law
Bowles & Verna LLP

Raymond Gallagher
Scott's Jack London Seafood, Inc.

Westpoint Harbor, LLC

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

Mark Sanders
Westpoint Harbor, LLC

A P P E A R A N C E SPublic Speakers

Liz Gallagher
Scott's Jack London Seafood, Inc.

Stephen Lewis, MD, FACP, CDE

Ignacio De La Fuente

Sandré Swanson

Ramiro Carabez
Scott's Jack London Seafood, Inc.

Steve Hanson

Kelly Hodgins
Scott's Jack London Seafood, Inc.

Scott Edin

Chris McKay

Maureen O'Connor Sanders

Kenneth Parker

Jingli Wang

Bob Wilson

Doug Furman

Michelle Bonhof

Gordon Muwat

David Hattery

Brenda Hattery

Carol Sheetz

Louis Adamo

Pauline Ruijssenaars
Friends of Westpoint Harbor

A P P E A R A N C E SPublic Speakers

Stephen Estrada

Sonya Boggs

Dean Hyatt

Whitney Newton

David Wells
101 Surf Sports

Marianne Barolich-Tracy

Jonathan Morris

Edward Stancil

Terey Quinlan

Nicole Sasaki
San Francisco Baykeeper

Peggy Raun-Linde

Fernanda Castelo
California Inclusive Sailing

Paula Bozinovich

David Laird

Lisa Belenky
Center for Biological Diversity

Gail Raabe
Citizens Committee to Complete the Refuge

Sheila Finch

Barbara Pierce, Former Mayor
City of Redwood City

The Honorable Diane Howard, Vice Mayor
City of Redwood City

Miles Dawood

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P R O C E E D I N G S

9:34 a.m.

1
2
3 CHAIR SCHARFF: Good morning, I would like to call this
4 meeting of the Enforcement Committee to order and we have
5 one recusal.

6 COMMITTEE MEMBER GILMORE: Well --

7 CHAIR SCHARFF: After we do the -- I forgot we have to
8 do public comment. So if we could call the roll.

9 MS. KLEIN: Good morning, Committee Members. Chair
10 Scharff?

11 CHAIR SCHARFF: Here.

12 MS. KLEIN: Member Techel?

13 COMMITTEE MEMBER TECHEL: Present.

14 MS. KLEIN: Member Ranchod?

15 COMMITTEE MEMBER RANCHOD: Here.

16 MS. KLEIN: And Member Gilmore?

17 COMMITTEE MEMBER GILMORE: Here.

18 MS. KLEIN: Thank you.

19 CHAIR SCHARFF: And we have one member of the public
20 that would like to comment in public comment, which is an
21 item not on the agenda, Michael Verna.

22 MR. VERNA: Yes, thank you, Commissioners. My name is
23 Michael Verna, I am an attorney for Scott's Seafood; have
24 been before you, unfortunately, many times in the past. And
25 what I wanted to bring up is an item that is not on the

1 agenda. We tried to get it on the agenda but staff has not
2 put it on the agenda, involving the removal of wooden
3 curtains at the pavilion and we would like to include that
4 in the discussion of the next two agenda items, Item number
5 5, when we talk about the 15 percent penalty.

6 There is no reason to remove these curtains, it is not
7 a requirement by the Cease and Desist Order, it clearly
8 doesn't have any impact on public access to the waterfront.
9 It actually by removing them is going to make the area less
10 attractive rather than more attractive so it doesn't really
11 promote any goals that we can see for the BCDC and we ask
12 that that be something that the Enforcement Committee
13 consider as part of its enforcement of the CDO which led to
14 this amended permit being required in the first place.

15 And we believe under the Bagley-Keene Open Meeting Act,
16 which Mr. Zeppetello said precludes this, that the Committee
17 can most certainly add it to the agenda on majority vote.
18 The Government Code section authorizes -- it's Section
19 11125.3(a)(2) authorizes upon a determination by a two-
20 thirds vote of the state body, a matter to be added to the
21 agenda.

22 In this particular case we raised this issue of the
23 wooden curtains in a letter I wrote on January 10th, nine
24 days ago, so there's been far more than 48 hours notice of
25 our intent to do this.

1 CHAIR SCHARFF: Okay. I actually don't think this is
2 appropriate under public comment, I think we should possibly
3 discuss this under Item number 5.

4 MR. VERNA: Okay. I just did not want to waive our
5 rights, that's why I'm doing it in public comment.

6 CHAIR SCHARFF: Fair enough. All right.

7 I need a motion to approve the minutes.

8 COMMITTEE MEMBER GILMORE: So moved.

9 COMMITTEE MEMBER TECHEL: I'll second.

10 CHAIR SCHARFF: All right. All in favor?

11 COMMITTEE MEMBER TECHEL: Aye.

12 COMMITTEE MEMBER GILMORE: Aye.

13 CHAIR SCHARFF: That passes unanimously.

14 (Committee Member Gilmore recused herself.)

15 CHAIR SCHARFF: And now we have a public hearing and
16 possible vote on a Recommendation to the Commission
17 Regarding Scott's Jack London Seafood, Inc.'s Appeal of the
18 Executive Director's Determination that Scott's Is not
19 entitled to a waiver of 15% of the Total penalty amount
20 under Cease and Desist and Civil Penalty Order No.
21 CDO 2017.01.

22 Did you talk about how you guys would like to proceed?
23 I assume since you're really appealing that you were going
24 to go first. How did you --

25 MR. ZEPPETELLO: Correct, that's what we agreed, that

1 Mr. Verna will go first and I'll respond.

2 CHAIR SCHARFF: Okay. Mr. Verna, can you do it in ten
3 minutes?

4 MR. VERNA: Oh, yes, sir.

5 CHAIR SCHARFF: Okay.

6 MR. VERNA: Hopefully less.

7 CHAIR SCHARFF: So I did note that there was a
8 threshold issue that was raised, at least by the Executive
9 Director, of whether or not we had the authority because he
10 seemed to imply that he had sole and absolute discretion
11 over this issue. So my actual ruling on that, if the rest
12 of this group would go along, would be that the Executive
13 Director does not have sole and absolute discretion, that we
14 provide deference to the Executive Director and that the
15 item may be appealed to us if you wish, so you may proceed
16 on the appeal.

17 Anyone have any concerns with that?

18 Okay. So you may proceed.

19 MR. ZEPPETELLO: Excuse me. Just before Mr. Verna
20 starts I would like to request perhaps a ruling on the
21 second issue that Mr. Verna has raised and whether that may
22 be considered under the Bagley-Keene Act. I think that
23 otherwise he will just go ahead and raise it and I don't
24 think you've ruled whether or not it's permissible.

25 CHAIR SCHARFF: That's a good point, we have not. All

1 right. Your point is that we can add this to the agenda and
2 deal with it?

3 MR. VERNA: Yes.

4 CHAIR SCHARFF: Now, this really hasn't been briefed to
5 us. I saw something about it in the -- but I didn't really
6 pay that much attention to it because it wasn't before us,
7 to be honest.

8 What is our procedures? I'm hesitant to add it to the
9 agenda, frankly. What are our procedures that if they --
10 why is this different than anything else where BCDC and
11 someone would disagree? You guys would try and work it out;
12 if you can't work it out where does that go? It does not
13 seem appropriate to be hearing it today. That's sort of
14 where I'm going but I'm listening.

15 MR. VERNA: But we don't know when it could be heard if
16 it's not heard today, that's why we raised it.

17 MR. ZEPPETELLO: My view is that the Bagley-Keene Open
18 Meeting Act requires the agency to provide an agenda
19 describing the topics to be heard at a public hearing at
20 least ten days in advance. This issue was not raised by
21 Scott's until fewer than ten days after the agenda went out
22 and the meeting was noticed.

23 In terms of remedies: I mean, what they're basically
24 asking for -- we agreed to a permit amendment, Scott's
25 agreed to a permit amendment in October. The permit

1 amendment allowed them to request covering of this curtain
2 rather than removal, subject to plan review and staff's
3 determination. Staff made a determination. Now they want
4 it to be -- they want the Enforcement Committee or the
5 Commission to revisit the issue. And frankly, in my view it
6 requires an amendment of the permit because the permit says
7 if staff declines the request the curtain shall be removed
8 if the staff denies on plan review. So anyway, I'll stop
9 there, thank you.

10 CHAIR SCHARFF: Okay, I'm going to defer to our
11 counsel.

12 MR. ALDERSON: I also took a look at the Government
13 Code provision that was mentioned earlier, 11125.3(a)(2).
14 That provision requires for a state body by unanimous vote
15 to add something to the agenda that there needs to be a need
16 to take immediate action. At this point I don't see that
17 here and so my advice would be it is not appropriate for the
18 Committee to hear this particular issue at this point in
19 time because there hasn't been sufficient notice.

20 CHAIR SCHARFF: Okay.

21 MR. VERNA: Well then we would like some guidance.
22 When can we be heard on this? Because this is directly
23 related to the CDO that was issued by the full Commission in
24 April of last year. These wooden curtains have been up for
25 20 years. BCDC never objected, no member of the public ever

1 objected; now they're asking us to remove them so we can
2 expose an ugly metal door.

3 We don't think that the Executive Director has
4 unfettered discretion, just as you said earlier, Chairman,
5 to make unreasonable decisions in abuse of that discretion,
6 so we would like an opportunity to be heard on that. This
7 is an ongoing problem we're having on these hyper-technical
8 interpretations of every little piece of the CDO and we just
9 want it to come to an end. That's why we're here.

10 And we couldn't possibly put this on the agenda because
11 they didn't make the decision until December 22nd that we
12 were supposed to remove these wooden curtains. We had
13 reached an agreement or we had offered to cover these
14 curtains during public use so that people didn't have to see
15 them. They didn't like that we covered them, they just want
16 them removed. No logical reason as to why that is. It
17 certainly doesn't impact public access, if anything it
18 enhances the public enjoyment of the area.

19 So from a -- there is no way we could have argued this
20 in front of the full board back in October when the 15
21 percent penalty was put on the agenda because they hadn't
22 made that decision yet, they made it on December 22nd.

23 CHAIR SCHARFF: All right, let me just try and
24 understand this. First, go on, Brad.

25 MR. McCREA: We don't disagree. We actually agree with

1 Mr. Verna that we also would like it to be over with.

2 So there is a procedural question here. We think that
3 if they would like the decision, the staff's decision to be
4 reviewed by another body we think that's also appropriate.

5 We think since this is a design issue, this is
6 basically a stage backdrop, it's some fake curtains that we
7 think has a privatizing effect on this public space and that
8 it should be interchangeable to be public-private-public-
9 private, that the Design Review Board is the appropriate
10 forum to have this discussion. The Commission's Design
11 Review Board, of course, is an advisory board that advises
12 you on appearance, design and public access issues. We
13 could agendize this relatively quickly with them. And then
14 if there are still some --

15 CHAIR SCHARFF: Then it would go to the full
16 Commission?

17 MR. McCREA: It could or it could not. If it's worked
18 out at the Design Review Board then it would be over. If it
19 needs to be elevated again we could bring it back here to
20 the Commission. I think that we can work this out. This is
21 a design element within a public pavilion.

22 CHAIR SCHARFF: Well that seems reasonable to me. It's
23 not on the agenda today. You do have a remedy. My
24 understanding is the remedy is you go through the Design
25 Review Board and then you can go to the full Commission and

1 then the full Commission can decide what they want to do.
2 It seems less of an enforcement issue to me, frankly. I
3 just wanted to make sure that this issue doesn't implicate
4 whether or not they are in compliance in this hearing.

5 MR. ZEPPETELLO: No, it does not.

6 CHAIR SCHARFF: Okay, that's good.

7 All right, Mr. Verna.

8 MR. VERNA: Then that leaves us with the 15 percent
9 penalty, \$59,304 in hard cash that has been denied Scott's
10 based on the Executive Director's decision, which is based
11 entirely on the claim that the Port through its property
12 manager CIM, did not forward two months worth of event
13 schedules for June and July. That's basically two emails
14 that were not forwarded to them by the Port and that Scott's
15 didn't directly CC the BCDC on those two emails.

16 It is not based on any over-usage of the pavilion by
17 Scott's, it's not based on any violation of the permit, it's
18 not based on failure to send quarterly reports which the
19 permit required Scott's to do to send to CIM, which Scott's
20 did timely, for years had done timely. It is not based on
21 anything other than the fact that they got the emails later
22 than they believed they should have gotten them notifying
23 them of the five events over two months in June and July.

24 And once they got those, in September I believe it was,
25 they did nothing with it. The BCDC staff didn't claim there

1 was any violation, didn't claim there was any misuse,
2 overuse; which was one of the main arguments for the Cease
3 and Desist Order in the first place was a claim of overuse
4 by Scott's. This has nothing to do with that, this is
5 whether or not they received from the Port the reports that
6 we were reporting to the Port. There is not even any
7 question here about Scott's reporting this timely. It did
8 report it timely. They agree that we have reported timely
9 to CIM.

10 So we think this is beyond nitpicky, beyond hyper-
11 technical interpretation of the CDO. It goes directly to
12 the enforcement actions of this Committee and it just
13 ignores the cold, hard reality that Scott's is a business
14 and the whole reason that this Committee - or I should say
15 the full board on a unanimous vote but it was also with this
16 Committee - reduced the penalty that staff had originally
17 proposed of close to \$900,000 down to \$395,000 and to pay
18 that over three years.

19 And to give Scott's this 15 percent penalty waiver was
20 in recognition that there are jobs at stake. That Scott's
21 wants to do the right thing. It's trying. It just needs
22 staff to help it and not hurt it in trying to accomplish
23 what we all want to accomplish, which is keeping that public
24 pavilion available for people and allowing Scott's to do
25 business. And this is punitive, one could even argue

1 vindictive, the word used by the Solano County Superior
2 Court in the Point Buckler matter.

3 I would like to direct your attention now specifically
4 -- and I don't know how you can see this on the screen.

5 CHAIR SCHARFF: We have little screens.

6 MR. VERNA: Oh, you have little screens, oh good.

7 Specifically to what the basis of this position by the
8 Executive Director is. After four months of going back and
9 forth with the Executive Director trying to resolve this, at
10 no small expense to Scott's by the way.

11 First, the 15 percent is authorized by the Cease and
12 Desist Order and specifically says that Scott's shall be
13 entitled to that waiver so long as it complied fully and in
14 a timely manner with each of the requirements of paragraphs
15 III.A through I of the CDO. So that's what this committee
16 and what the full board instructed the Executive Director,
17 that if we are in compliance with III.A, B, C, D, E, F, G
18 and I then we are to get the 15 percent discount.

19 So what are A, B, C, D, E, F, G, I? We have complied
20 with all of them. This was not a small undertaking.

21 III.A was to cease any permit violations. We have.
22 Staff is not saying that we have incurred any permit
23 violations.

24 B, make public access available. We have. Staff is
25 not claiming that that is a basis to deny us the 15 percent.

1 C, no storage of equipment in or unauthorized use of
2 public access areas. We have not stored equipment in
3 unauthorized areas. Staff is not claiming we did.

4 Planter removal. Removed a number of planters out
5 there. Staff is not claiming we violated that.

6 Compliance with Permit A guidelines for private use of
7 the pavilion. We complied with that. Staff is not arguing
8 otherwise.

9 Submit complete applications to amend the permit. We
10 did that actually before the CDO was issued so we clearly
11 are in compliance with that. Staff is not arguing to the
12 contrary.

13 G. And this actually -- G highlights the kind of
14 situation that we're confronting here in the real world, on
15 the ground. Provide public access improvements required by
16 the permit. That means put in four signs saying "public
17 access," 15 chairs and 35 tables. So one day Ms. Klein
18 apparently goes out there in August and she sees 3 signs, 3
19 chairs and 31 tables. So we're missing a sign, we're
20 missing a chair and we're missing a couple of tables.

21 We explained to her that that was that day. There are
22 homeless out there, there's theft, there's issues. We
23 showed through a declaration of one of the Scott's employees
24 that they put out 35 chairs, 15 tables, whatever, and
25 ultimately prevailed after three rounds of letters back and

1 forth on the Executive Director waiving this argument of the
2 violation of III.G. But it just highlights the hassle that
3 Scott's is going through in trying to comply with these
4 things, through no fault of its own. Somebody stole a
5 chair, Scott's got another chair and put it out there. But
6 that's what we're confronting.

7 I is the only basis, submit pavilion event schedules.
8 That's the only basis that the Executive Director has based
9 his ruling on. And what does I say? I says, Section III.I
10 requires us to submit quarterly reports for 2013, 2014 and
11 2017 I believe it is to BCDC. Did that, check.

12 Then it says, submit monthly reports to BCDC on the
13 15th of the following month for use of the preceding month.
14 We did that by sending those reports to CIM. CIM is, of
15 course, the property manager for the Port, the party who is
16 our landlord, who we have been dealing with for years and
17 have constantly sent reports to them on. And the Port's
18 representative has told us and the BCDC, because you see
19 Ms. Klein is copied on this letter in July of 2017, that
20 Scott's is in compliance. That in fact there is no overuse
21 and that they are receiving the reports timely. BCDC knew
22 this on July 17th, they in fact knew it in June that we were
23 sending these reports to CIM with the expectation that they
24 would then forward those reports on to the BCDC.

25 Now, the Port did not apparently do that for two

1 months. Unbeknownst to Scott's the Port did not do that for
2 two months. So what impact did that have on things? Well,
3 according to Director Goldzband's own letter, had the Port
4 done that, had the Port forwarded those reports there would
5 be no violation, and if there is no violation there would be
6 no basis for the \$59,304 penalty.

7 I mean, effectively what is happening here is Scott's
8 is being penalized \$59,304 because the Executive Director
9 finds that the Port did not forward reports timely. We do
10 not believe that the CDO required Scott's to physically CC
11 their two emails for June and July to the BCDC because it
12 simply said that BCDC is to be put on notice of these. We
13 thought CIM was doing it, it turned out they didn't. This
14 is what happens in the field, okay, it turns out they
15 didn't. We don't think that's a violation.

16 But even if one were to say that Scott's somehow failed
17 to comply with the CDO because they didn't CC Ms. Klein or
18 the BCDC on the same email that they sent to CIM how could
19 that possibly be considered a material violation? That is
20 about the most immaterial violation, especially when those
21 reports did not disclose a single violation. And when they
22 got the reports a month later nobody on staff came back to
23 Scott's and said that we were in violation of anything. So
24 what is the point of this?

25 Now I'm sure Mr. Zeppetello is going to say, oh, well I

1 wrote an email, he wrote an email to us in early June,
2 right. What does that email say? Well, there's confusion
3 because there's emails back and forth from me to him, to
4 Liz, to everybody trying to figure out how do you guys want
5 this, okay. What his email most significantly does not say
6 is that there was going to be a determination that by not
7 sending these reports directly to BCDC there is going to be
8 a \$59,000 penalty. That's what he does not say. In fact,
9 what he says is - and I quote Mr. Zeppetello in his email to
10 me of June 7th which they apparently rely on as some kind of
11 evidence of bad faith by Scott's - quote: "I am not making
12 any compliance determination at this time, although
13 obviously BCDC reserves the right to do so."

14 Now all of a sudden, oh, it's a big issue? How did it
15 become a big issue from June until September? The same
16 issue. Now it's a \$59,304 issue. This is repeated again
17 and again and again. The wooden curtains the latest and the
18 greatest. There are so many things that we have been trying
19 to do to be in compliance, to be a good neighbor, to be a
20 citizen, to keep that public pavilion open, to make that
21 public access as good as we can make it for the public. We
22 need staff to help us and not get in our way and hurt us and
23 try to come up with every technical violation they can and
24 try to hit us with fines.

25 CHAIR SCHARFF: So I would caution you about attacking

1 staff, it's not helpful.

2 MR. VERNA: We would like --

3 CHAIR SCHARFF: No, it's not, it's not. Staff works
4 really hard, they do a good job and I think -- I think it's
5 inappropriate.

6 SPEAKER FROM THE AUDIENCE: Staff is doing a bad job.

7 CHAIR SCHARFF: No, and I'd appreciate it if we, you
8 know --

9 MR. VERNA: What we are asking -- I understand the
10 concern. What we are asking is that this Committee, looking
11 at all the evidence that has been presented to you in my
12 letter and enclosures and in this presentation as well as
13 the exchanges of correspondence that I've had with
14 Mr. Zeppetello and Director Goldzband's that are part of the
15 record, if you would look at that and come to a conclusion
16 as to whether or not you believe there was a material
17 violation warranting a \$59,000 -- We do not believe that it
18 warrants a denial of the 15 percent penalty discount.

19 I apologize by making it personal; it's enormously
20 frustrating for Scott's. And sometimes that frustration
21 boils out because they are dealing with it every day. Any
22 questions?

23 CHAIR SCHARFF: I do but first I want to hear from
24 Mr. Zeppetello.

25 MR. ZEPPETELLO: Good morning, Commissioners. This is

1 a relatively straightforward matter and the facts are not in
2 dispute.

3 The Cease and Desist Order provides, as Mr. Verna said,
4 that Scott's shall be entitled to a waiver of 15 percent of
5 the total penalty if Scott's has complied fully and in a
6 timely manner with each and every requirement of specified
7 paragraphs; so the standard is complied fully and in a
8 timely manner.

9 The provision of the Order at issue, also as Mr. Verna
10 said, is Paragraph III.I which says Scott's shall submit to
11 BCDC no later than the 15th of each month a statement for
12 the prior month listing all events held at the pavilion. So
13 the Order was adopted in April and the first report was due
14 on May 15th for the month of April.

15 We did not receive a report from Scott's so on June 6th
16 I called Mr. Verna and said, I want to give you a heads-up,
17 you've got a violation of the Order. I want to let you know
18 this before it happens again. And I explained to Mr. Verna
19 that the requirement to provide these monthly reports under
20 the Order was separate and distinct from the requirement in
21 the permit to provide quarterly reports to the Port. Later
22 that day Ms. Gallagher sent me some reports that included a
23 report, a quarterly report that included information for the
24 months of April and May and I believe estimated usage for
25 June, which we were still in May.

1 The following day I sent the email that Mr. Verna
2 referred to, following up, and I addressed it to Mr. Verna
3 and Ms. Gallagher and explained that the Order requires
4 something that is separate and distinct from the permit
5 requirement. To comply with it an email or a letter to BCDC
6 would be sufficient, it would also be sufficient or
7 acceptable to provide us a copy of the monthly reports you
8 submit to the Port.

9 Following that email we did not receive any information
10 on reports of pavilion usage until October when we got a
11 report that was captioned, New Monthly Monitoring Report for
12 September. This was after the Executive Director made his
13 determination.

14 So we did not receive, in addition to the report for
15 April that was due on May 15th we have got no report for the
16 month of June by July 15th and no report for July by August
17 15th. All of the exhibits to Mr. Verna's letter dated
18 September 27th that is in the record, all of the attachments
19 are communications from Scott's to the Port, none of which
20 are copied to BCDC.

21 Scott's tries to put the blame on the Port. The Port
22 is not a party to the Cease and Desist Order, as you will
23 recall. Under the existing permit Scott's has an obligation
24 to provide quarterly reports to the Port and the Port has an
25 obligation to provide annual reports to BCDC. The Port has

1 no obligation to provide monthly reports to BCDC. When I
2 said that if they copied us on the reports to the Port that
3 would have been sufficient, but for the Port -- if Scott's
4 wants to make the Port its agent then Scott's has a
5 responsibility to make sure the Port does what Scott's is
6 asking it to do. It's not the Port's obligation, it was
7 Scott's.

8 We believe that these are material violations for two
9 reasons.

10 First, as you will recall, the failure to report was a
11 significant issue in the enforcement action and one of the
12 violations that was at issue and so Scott's failure to
13 comply with a basic, simple, straightforward reporting
14 requirement, especially after it was called to their
15 attention, is a material violation.

16 And secondly, Scott's failure to provide that
17 information in a timely manner, as required by the permit,
18 prevented staff from being able to evaluate whether or not
19 Scott's was in compliance with the permit requirement, the
20 permit usage limitations. And I would note that when
21 Mr. Verna cited my email saying I am not making a compliance
22 determination at that time, that was in reference to
23 compliance with the permit, not with the Order. It was
24 premature. I was calling this to their attention and
25 saying, hey, just want you to know you need to do this and

1 this is how you do it.

2 So in summary, there was a failure to report for three
3 months out of the approximately five or six month reporting
4 period that would have allowed us to make the determination
5 of full and complete compliance under the Order. What
6 Scott's is really asking for is for the Committee to give
7 them a break and determine that full and complete compliance
8 in a timely manner means something different than the Order.

9 So our recommendation is that you affirm the Executive
10 Director's decision that Scott's has failed to comply fully
11 in a timely manner with the Order and therefore is not
12 entitled to the penalty waiver. Thank you.

13 CHAIR SCHARFF: Mr. Zeppetello, before you leave.

14 MR. ZEPPETELLO: Yes.

15 CHAIR SCHARFF: This is an ongoing permit requirement,
16 right?

17 MR. ZEPPETELLO: It now is, yes.

18 CHAIR SCHARFF: In the last three months, since - what
19 is it - September, have they have been doing it correctly?

20 MR. ZEPPETELLO: Let me turn to Adrienne. I think we
21 did get one recently, I am not sure if we've gotten every
22 month. We got September. I'm not sure if we got the last
23 five months. Do you know, Adrienne?

24 MS. KLEIN: I don't --

25 MR. ZEPPETELLO: I actually don't think so.

1 MS. KLEIN: I don't know.

2 CHAIR SCHARFF: Mr. Verna, do you know?

3 MR. VERNA: I'm advised that Kelly Hodgins, who is the
4 catering manager for Scott's, says they have been sending
5 them on to BCDC. It's surprising to me that they wouldn't
6 even know that yet it supposedly is such a significant issue
7 that they want to nick us \$59,000.

8 CHAIR SCHARFF: Mr. Verna, I guess what I'm hearing and
9 understanding in your argument is there was confusion on
10 your part as to what BCDC wanted and therefore you meant to
11 comply but you did not comply with what they wanted because
12 of the confusion. That's sort of what I'm hearing. That's
13 why I'm sort of --

14 MR. VERNA: Well, and also --

15 CHAIR SCHARFF: -- concerned.

16 MR. VERNA: -- we thought we were complying because
17 Joyce Koidal of CIM, who is our property --

18 MS. GALLAGHER: Jennifer.

19 MR. VERNA: Jennifer, excuse me. Jennifer Koidal told
20 us, told Kelly who is the catering manager, that she was
21 forwarding it on to BCDC. So, you know, if there was some
22 confusion there was -- obviously there's confusion or we
23 wouldn't be here, so there is no question about that.

24 I think the main point I want to leave this Committee
25 with is this is not, in our view, a violation at all; and

1 even if it is it's really a technical, non-material
2 violation. We understand the reporting is important but the
3 understanding and obligation was that the Port would do
4 that, they didn't do that. Once we realized that this was a
5 significant issue, and there's been dozens of emails between
6 the parties trying to deal with particular issue.

7 I mean, where does this fit on the list of priorities
8 and important issues? It certainly wasn't raised to the
9 list of a material issue in Mr. Zeppetello's email because
10 he doesn't say, you're at risk of losing your 15 percent
11 penalty waiver. So could Ms. Hodgins punch the CC to BCDC
12 on those emails it sent to CIM? Yes, of course she could.
13 Did she think that that was necessary? No, because she was
14 told that Joyce (sic) Koidal was getting it.

15 CHAIR SCHARFF: But she now knows it's necessary?

16 MR. VERNA: And she's done it since.

17 CHAIR SCHARFF: That's what I was asking.

18 MR. VERNA: That's what I'm told. I'm trying not to
19 monitor this myself.

20 CHAIR SCHARFF: It might have been cheaper if you had.

21 MR. VERNA: Nothing is cheaper this way.

22 CHAIR SCHARFF: All right. Do you have any questions
23 for him or for --

24 COMMITTEE MEMBER RANCHOD: I appreciate the intent to
25 comply with all the conditions and that this is the one open

1 question here. There has been reference by Mr. Verna and
2 staff to whether this is a material violation or not and
3 there is a disagreement about whether it's material.

4 Taking it on its own just looking at a monthly
5 reporting requirement it doesn't look like such a big deal.
6 The reason that's part of the Order is because timely
7 reporting of information to staff was an enforcement issue
8 in the Order and so that's why it was in here. This is a
9 material condition that was called out as one of a number of
10 conditions.

11 There is no confusion here about what the obligation
12 was. I think the question is, is in fact what occurred an
13 obligation on Scott's that it failed to meet and the
14 Executive Director had the discretion to make that decision,
15 or not? But the language of the Order that is set forth
16 here that everybody had a year ago or so that has been the
17 subject of this is quite clear actually. So if Scott's did
18 not understand how to comply with the Order, that's on
19 Scott's to figure out how to meet its obligation because it
20 says right here, Scott's shall submit to BCDC.

21 MR. VERNA: And for two months we -- I do agree with
22 Mr. Zeppetello, there is not a dispute about the facts,
23 Scott's did not send the June and July reports directly to
24 BCDC. They sent it to Jennifer Koidal of CIM who had been
25 getting the reports for years and was also in receipt of the

1 quarterly reports, with the understanding that she was
2 forwarding it on.

3 If that is a violation of Section III.I then we contend
4 that's not material when you put it in context with all the
5 other things that Scott's was required to do under Section
6 III in a very tight time frame. I went through all those
7 before of all the public improvements that had to be done.
8 The amended permit, getting the permit application done was
9 an exhaustive process.

10 This was just -- it wasn't raised to the level of
11 materiality to us by the BCDC in Mr. Zeppetello's email. I
12 grant you that the BCDC was not directly notified on five
13 events that are not in violation of the usage limitations
14 directly by Scott's. And if we are just going to take a
15 hyper-technical view and consider every single violation as
16 a material violation warranting a \$59,000 discount then I
17 guess, you know, so be it.

18 But that's not what we thought that the whole point --
19 and I believe it was you, Commissioner, that came up with
20 the proposal of having a 15 percent discount with the idea
21 that let's let Scott's have an opportunity to try to prove
22 it's mettle and act in good faith and get this done. And we
23 have acted in good faith. It's not like we didn't send the
24 reports to CIM or we didn't send reports afterwards to BCDC
25 or we ignored everything. There were a lot of things on

1 III.A through III.I that needed to be accomplished and
2 Scott's has spent a lot of time and a lot of money trying to
3 accomplish that and now all of a sudden it gets held up on
4 this one issue.

5 I can assure you this. Had Mr. Zeppetello's email said
6 to me that if you don't get those reports directly to us we
7 consider that a material violation and we'll seek to rescind
8 the 15 percent penalty discount then that would have
9 certainly raised the issue to materiality in our minds. It
10 doesn't say that.

11 So, I mean, there's not much more that can be said.
12 The point of this is there's jobs, there's efforts by
13 Scott's to comply, we're trying to move forward and we just
14 keep seeming to hit problems and we're trying to avoid that.
15 Whether that's a wooden curtain, whether that's this
16 interpretation of the CDO that shows no violation, whatever
17 it is. There's a number of things we have not brought to
18 your Committee that we have just swallowed it, but we can't
19 swallow this.

20 CHAIR SCHARFF: All right. We have a number of members
21 of the public; you will each have two minutes. Our first
22 speaker is Raymond Gallagher.

23 MR. GALLAGHER: Good morning. I am here today, I have
24 been trying to resolve this for three years. I have been in
25 business in Jack London Square for 44 years. I am trying to

1 do the right thing. My staff has reported to the property
2 management all the usage there in the pavilion and we
3 continue to support and do that.

4 We did not overuse the pavilion.

5 We are trying to make the improvements. Not only with
6 the fine but the improvements we have had to make are
7 close -- and attorney's fees are close to \$900,000. Now
8 justice delayed is justice denied. We feel that we want to
9 work in hand with staff.

10 We want to get this behind us. We want to move on with
11 our lives and we want to be a good economic engine in
12 Oakland and I respectfully request that you allow us to keep
13 our 15 percent discount.

14 We are sorting out the rules. You know, we are a
15 private business, we are not, we don't have staff that's
16 paid by the state of California, we have to do it with
17 meager profits. There are seven restaurants that have
18 closed in Jack London Square.

19 I would like to bring up the issue of the tables, the
20 wrong color or wrong shape. We in Oakland have an epidemic
21 of homelessness. And when you see these homeless
22 encampments they are all surrounded by aluminum furniture
23 and bicycles. None of those are purchased, they come along
24 and they steal them. We do our very best -- now we have
25 ordered extras so we have extra in our storeroom. We are

1 not trying to renege on our responsibility.

2 So once again I respectfully request that we receive
3 our discount, thank you.

4 CHAIR SCHARFF: Thank you.

5 Our next speaker is Liz Gallagher.

6 MS. GALLAGHER: I am going to give my time to Scott
7 Edin.

8 CHAIR SCHARFF: There is no giving time.

9 MS. GALLAGHER: Okay.

10 CHAIR SCHARFF: Everyone has two minutes, you can speak
11 or not speak.

12 MS. GALLAGHER: Hi there, I'm Liz Gallagher. You know,
13 you got defensive of how Michael was speaking of your staff;
14 well, I've seen my dad be emotionally tortured, financially
15 tortured, for three years. I mean, we've spent over
16 \$900,000 just on attorneys and people to try to help us get
17 this done.

18 I called Adrienne three years ago when I started, I
19 wanted to get this done. I wanted to get this done and I've
20 tried everything in good faith. I wouldn't have not sent
21 the reports had it said, Scott's shall submit reports
22 directly to the BCDC and not the route that we had done for
23 several years, which was we submit the reports to CIM, they
24 then submit them to BCDC. That's how BCDC caught us for
25 overusing so I was under the assumption that that's who they

1 were getting their reports from. I was trying to do
2 everything - along with running a business that has 300
3 employees, helping my dad emotionally, physically - be in
4 compliance.

5 And I just believe that, you know, it's already topped
6 over a million three hundred, you know, and it's ongoing
7 with the tables that we have to keep there. Each one of
8 those tables is \$400. For the next four years every time a
9 table walks away we've got to replace it and that goes for
10 the chairs.

11 So when is enough, enough? I mean, the \$59,000, it's a
12 symbol of like enough is enough. You've paid your dues.
13 What you did was not -- it just needs to end. I mean,
14 that's all I can say is I just hope you guys will do the
15 right thing and we just need to move on with our lives and
16 run our business. And the people that are suffering the
17 most are our employees who are not getting hours because we
18 are not doing ten more pavilions a year, so they suffer. We
19 manage, we just adjust our expenses, they suffer and the
20 public suffers because we have to turn them away.

21 So with that I deplore (sic) you guys to just make a
22 decision. You know, this is my dad, this is my family.
23 Again, as you're protective of your staff I'm protective of
24 my dad and my business, so thank you.

25 CHAIR SCHARFF: Thank you.

1 Stephen Lewis.

2 DR. LEWIS: Thank you. My name is Steve Lewis, I'm a
3 board certified internist, endocrinologist, retired captain,
4 Medical Corps, United States Navy, the last ten years
5 looking after presidents at Bethesda, Maryland. I am
6 Mr. Gallagher's personal physician.

7 Two months ago we almost lost Ray, he almost died. The
8 physical, the mental and the financial health of
9 Mr. Gallagher is on a cross. When I sign his death
10 certificate I am going to accuse the BCDC of involuntary
11 manslaughter. (Applause.)

12 CHAIR SCHARFF: Ignacio De La Fuente.

13 MR. DE LA FUENTE: Thank you, Mr. Chair and members of
14 the Committee, thank you very much for the time.

15 You know, I've been, I think, working on this and been
16 in front of you several times now, at least for a couple of
17 years. And I can tell you that unfortunately for some
18 reason, to me, right, and not to attack anybody, but it has
19 become personal than it should be.

20 I think that when you look at Jack London Square and
21 when you look at Scott's -- just since last time that I was
22 here three or four restaurants have gone out of business in
23 Jack London Square, Pescatore's, Haven, Bocanova, you know,
24 several restaurants. It's not easy to do business in
25 Oakland; it's not easy to do business or maintain a

1 business. It's 150 jobs in that facility.

2 And I can tell you from personal knowledge that Scott's
3 and the attorneys and the staff have been trying everything
4 in their power to try to comply with the agreement, not only
5 the agreement but also the permit. To file the permit, 400
6 and some pages of things that we have to comply with and
7 have to comply with.

8 I believe, I believe that they have made a very good,
9 good faith effort to try to comply as much as they can.
10 Very difficult situation. I think that it has cost jobs
11 because obviously less events means less work for the people
12 that work in that facility.

13 I believe that you have the authority and the power to
14 really understand that this so-called violation is really
15 not a violation that was either -- either -- that was by
16 design or that they attempted to violate the agreement.
17 They knew. We argued and we asked you to provide that
18 opportunity of the 15 percent discount because we believed
19 that it was already excessive. We believed it was already a
20 fine that was due to having too many events, which again,
21 provide jobs for the people that live in Oakland and provide
22 jobs for people that have been working at that facility for
23 a long time.

24 I think it's your job and your responsibility,
25 obviously, to make sure that the rules are enforced. At the

1 same time how detailed or how nitpicky it can be in order
2 for us to comply.

3 So I hope that you realize that spending already almost
4 a million dollars is not only enough penalty and a fine --

5 CHAIR SCHARFF: You're out of time.

6 MR. DE LA FUENTE: Thank you very much.

7 CHAIR SCHARFF: Thank you.

8 MR. DE LA FUENTE: Appreciate your time.

9 CHAIR SCHARFF: Sandy Swanson, to be followed by Ramiro
10 Carabez. Sandré.

11 MR. SWANSON: I haven't been called Sandy Swanson since
12 high school.

13 CHAIR SCHARFF: I apologize, it was a little hard to
14 read.

15 MR. SWANSON: No, no, don't apologize. My friends call
16 me Sandy Swanson so that's good, it's a good way to start.

17 Can we take a moment and just sort of step back from
18 the forest here so we can see what's going on here?

19 I would contend that public access is at the center of
20 this discussion and Scott's is part of that public access on
21 the waterfront. And people have sort of voted with their
22 patronage to go down to Oakland waterfront Scott's is a
23 great place to go.

24 Mr. Gallagher has socked a lot of money into Scott's.
25 This historic fine that Scott's received could not come out

1 of the restaurants profits. You can't pull that kind of
2 money out of 3 or 5 percent profit. So Mr. Gallagher's
3 personal commitment to this restaurant was to try to pay
4 this historic fine, that all of you understand was a
5 historic fine, out of his own personal life savings.

6 So now we have a question of whether or not staff and
7 Scott's are in an atmosphere or cooperation to be able to
8 comply. Now Liz Gallagher has come up here and she said
9 several times through the course of all this, a simple phone
10 call, a simple communication.

11 Now I have been involved in public policy for 40 years,
12 as long as Scott's restaurant has been there. I've been
13 chief of staff for members of Congress, I've been a member
14 of the State Assembly. And the one big public complaint is
15 bureaucracies are not sensitive enough to businesses.

16 Without Mr. Gallagher's personal investment this
17 restaurant would be closed, no question about it. Closed.
18 And if that's the attempt of some here then they should just
19 say it. But bureaucrats have a responsibility too. Hey,
20 we've gone through this, you've paid the big fine. A simple
21 phone call, "You know, we didn't get that." "Well, it was
22 sent in." "Well no, it wasn't sent in." "Okay, we'll make
23 sure it happens." It should have been handled at the
24 administrative level, period. It should not be before you.

25 And I just think that we have to understand that's what

1 the passion is about here and Scott's too is public --
2 public access, the overuse was about public access to the
3 pavilion. And I just would ask you because your board
4 members brought this up in the original hearing.

5 CHAIR SCHARFF: The two minutes is up.

6 MR. SWANSON: Okay, I'm sorry. But your board members
7 brought this up in the original hearing saying that we do
8 have to have some compassion for the business and the staff
9 that benefits from that business.

10 MR. SWANSON: Thank you. (Applause.)

11 CHAIR SCHARFF: Thank you so much. Ramiro --

12 MR. CARABEZ: Good morning.

13 CHAIR SCHARFF: Go ahead.

14 MR. CARABEZ: Good morning. My name is Ramiro Carabez
15 and I am the general manager of Scott's Seafood in Oakland.
16 You know, it's really, it has been really challenging to
17 keep going every single time, every single -- for the last
18 three or four years. We made a mistake and we have
19 corrected it, we have tried to comply with everything that
20 was required.

21 I am personally the one ensuring that we have 35 chairs
22 outside, that we have 15 tables, every single day that we
23 have the signs out front, double signs. We have even more
24 signs than what we need.

25 It is very extremely difficult making money in the

1 restaurant. As you hear, many restaurants around us have
2 closed in the last few years and we have to find ways every
3 single day to become, to become profitable, you know, to be
4 able to keep our doors open. And unfortunately with all the
5 limitations and with everything that has been going on, all
6 the money that we are spending in this process, people have
7 lost their jobs, people have -- I had to cut hours on a lot
8 of employees, I have foregone raises.

9 We had to, you know, keep the restaurant going with a
10 lot of maintenance, it requires a lot of upkeeping,
11 painting, carpets. And \$65,000 in the big scheme of things
12 or \$60,000 might not seem like a lot of money but for us to
13 be able to make that amount of money takes months and months
14 to come up with that amount of money. And that's just
15 counting all the work that is done every single day. Our
16 food costs, our labor costs.

17 I mean, we have only two lines of income in our P&L
18 statement every month and expenses are three pages long.
19 Bottom line is not what you would think, you know. We had
20 to become very, very creative every single day, you know, to
21 ensure that we have a future. And we are going to keep on
22 fighting every single day because that's what we chose to do
23 and we love what we do, we love making people feel welcome
24 when they come to the waterfront. We plan on being there
25 for a long time; we need your help so that we can ensure

1 that we're there.

2 CHAIR SCHARFF: Thank you.

3 MR. CARABEZ: Thank you.

4 CHAIR SCHARFF: Steve Hanson to be followed by Kelly
5 Hodgins.

6 MR. HANSON: Hi, good morning, my name is Steve Hanson.
7 The reason I am sort of testifying here is my tenure with
8 the Port was for 25 years and I did a lot of work with BCDC
9 during my tenure to make the waterfront in Oakland a lot
10 better. The Port invested a lot of money in Jack London
11 Square and included public access, turned it from parking
12 lots to a lot of public access; we developed parks, we
13 developed boating centers, we did all sorts of things.

14 Certainly the Port and Oakland are not the bad people
15 here and neither is Mr. Gallagher who is an Oakland
16 businessman and has been dedicated to Oakland for over 40
17 years. And I have known him not only as his landlord - even
18 though he is sometimes difficult to work with - we worked
19 together and we resolved the problems.

20 My effort with BCDC to try to help Ray, since 2012 we
21 have been working on this project. This project was
22 approved in 1997 by BCDC, the pavilion, and it has attracted
23 I would say about 30,000 people a year to the waterfront.
24 And public assembly is one of the purviews of the McAteer
25 Act that brings people down to the waterfront and the

1 pavilion certainly has been an asset to that. And Ray was
2 simply trying to improve the pavilion so it would be a
3 better asset, it was not trying to privatize it.

4 So we have finally made these improvements that we
5 applied for in 2011 to upgrade the pavilion and we got our
6 actual permit in October of 2017. So now we are ready to
7 comply, including the issue of use. We've made -- as part
8 of the BCDC permit we have now got a publicly posted
9 schedule that everybody can look at, including the BCDC
10 staff, in advance of any uses, so I doubt if a violation
11 will ever occur again or miscommunication.

12 So we want simply to continue to operate the pavilion
13 and Scott's, which is I would say an anchor to Jack London
14 Square; it's got difficulties. Economic problems in Oakland
15 and Jack London Square, we don't have a lot of retail there,
16 those things are trying to be resolved. But a lot of
17 investment has been made there both by the Port and by
18 individual businesses like Scott's and we want those to
19 continue. So we are looking forward to moving forward and
20 keeping things in order from now on but thank you for your
21 attention.

22 CHAIR SCHARFF: Thank you.

23 Kelly Hodgins to be followed by Scott Edin.

24 MS. HODGINS: Good morning, Commissioners. My name is
25 Kelly Hodgins. I am the catering director at Scott's and

1 for the last three years I have been the one doing the
2 reports. The three years I have been sending it to the Vice
3 President and General Manager at CIM, our property manager,
4 Jenny. I'd give her the quarterly report, the yearly report
5 and last summer also the monthly report.

6 When it came to my attention that I should also be
7 sending it to BCDC you have gotten it every month. I have a
8 thread of all those emails so that you are also included.
9 Jenny also last week sent an email saying I am compiling a
10 report to give to you based on the reports that I give to
11 her so I have been in compliance with doing the reports.
12 Thank you.

13 CHAIR SCHARFF: Thank you.

14 Scott Edin to be followed by Curtis McKay.

15 MR. EDIN: Good morning. Just a couple of comments.

16 Does the Committee actually have oversight and hold
17 people accountable for the time frame that you want to have,
18 in this case one month, two months of statements, when in
19 fact February 16th of last year the entire Committee came up
20 with an agreement, Mr. Gallagher paid his first part of the
21 fine. He submitted an application in April and May to
22 staff. They didn't get back with a final application
23 approval until October. Is that timely relative to the one
24 month of a report gone missing on an email? I mean, is
25 there accountability there? Is there some sort of oversight

1 there?

2 They issued a permit, the City of Oakland. The permit
3 has time frames for completion, otherwise they've got to go
4 back. Is there going to be cooperation in completing the
5 work pursuant to the permit post this hearing?

6 You know, it seems like there could be a staph
7 infection with no doctor in the house. This is not the
8 cooperation that the intent of the agreement that you
9 executed back in February - the intent, not the details of
10 the minutiae - but the intent to hey, we've come to an
11 agreement after a number of years, you've made your first
12 payment, you've executed your part. Where is the good
13 faith? From a public point of view you're administering
14 public money, you're getting paid by the state of California
15 from various, you know, staff is. Where is the good faith
16 on the public side?

17 That's all. I mean, is there some oversight? Is there
18 some accountability that it will be forthcoming? Just be an
19 interesting comment. (Applause.)

20 CHAIR SCHARFF: Curtis (sic) McKay.

21 MR. MCKAY: Thank you. My name is Chris McKay and I
22 was the harbor master of Jack London Square Marina for four
23 years. I was there every day and I saw the emotional and
24 financial impact that all of this has had on Mr. Gallagher.

25 And all I would ask at this point after so many ideas

1 were floated by and so many requests attempted to be
2 fulfilled that there be, as Sandré said, some compassion to
3 show that there's an acceptance that Mr. Gallagher is
4 attempting to comply with this and doing everything he can.
5 And I would say that it would also help show that BCDC is
6 not a vindictive agency but it's simply trying to work
7 together with the shareholders on our waterfronts. And so
8 again, I would just use what Sandré said, some compassion
9 would go a long way I think in moving forward with this in
10 the best manner, thank you.

11 CHAIR SCHARFF: Thank you. And you are our final
12 speaker.

13 You know, I was very interested in what Ms. Hodgins had
14 to say. Ms. Hodgins, would you mind answering a couple of
15 questions? You don't have to if you don't want to but if
16 you're willing.

17 So you've become the point person on this. What's
18 before us, obviously, is the issue of sending the reports to
19 BCDC. And what I heard you say was that you thought you
20 were sending it correctly because that's the way it's been
21 done. Did anyone ever tell you not to send the reports to
22 BCDC?

23 MS. HODGINS: No, I just continued sending the reports
24 to the liaison of BCDC.

25 CHAIR SCHARFF: And now you know. And by "liaison" you

1 mean CIM, right?

2 MS. HODGINS: Correct.

3 CHAIR SCHARFF: And now you know you're supposed to be
4 sending the reports directly to BCDC, correct?

5 MS. HODGINS: Yes, I CC about 12 people now.

6 CHAIR SCHARFF: Okay. And you have been doing that
7 faithfully since when?

8 MS. HODGINS: Well, to BCDC since about --

9 CHAIR SCHARFF: Yes.

10 MS. HODGINS: I think it was August.

11 CHAIR SCHARFF: Okay. And that's what I wanted to
12 know.

13 MS. HODGINS: I mean, I'd have to look back, it was
14 either July or August.

15 CHAIR SCHARFF: Okay, fair enough.

16 Mr. Zeppetello, I wanted to ask you, do we have any
17 concerns of any ongoing violations? I mean, they are now
18 sending the reports in, from what I gather.

19 MR. ZEPPETELLO: Well, the only thing in terms of this
20 issue is staff is doing an analysis of their usage
21 compliance for 2017 and that has not been completed. I
22 understand that there is at least one violation for the
23 month of May of exceedance of the weekend limitation for the
24 month. That's all I'm aware of. But it's an ongoing, we
25 are still looking at the data.

1 MR. McCREA: I would just add that it's the staff's
2 impression that they're earnest and they're doing their best
3 to be diligent in meeting the terms of the Order and the
4 permit.

5 CHAIR SCHARFF: So that's my impression too, to be
6 honest. You know, I don't think there was any sense here of
7 trying to not comply with the permit, frankly. I've had
8 staffs as well and I understand that it's sometimes hard to
9 get that out. I don't see any sense at all that Scott's
10 wasn't trying to comply with this.

11 Now on the other hand there are little warning signs
12 that I am uncomfortable with. First of all I've got to say,
13 the attacks on staff. I mean, you guys are supposed to be
14 working cooperatively with staff. And I understand there's
15 frustration, I understand that, you know, there are issues
16 but it's not helpful. We expect you to work with staff. We
17 expect you to work for the next, you know, 30 years or more
18 with staff on this, right? So, that concerns me.

19 It's not before us today but I am also a little
20 concerned that it seemed that you were -- you did not put
21 the permit together correctly and staff seemed to go out of
22 their way to make it easier for you to put the permit
23 together. They extended the time and then for 90 days you
24 didn't do anything, or it seemed that way in the report. So
25 I don't really know and I don't really care but that's sort

1 of behind us and staff is not saying that's a reason for
2 non-compliance.

3 But I really wish -- I feel like, I feel like on your
4 side - and I understand there may be some anger - but I do
5 feel like you're still not working with staff the way you
6 should and I'm not clear why, so I would just implore you to
7 do that.

8 I'm a little confused on Mr. Zeppetello's comment that
9 if there is a violation for May the reason we don't know
10 that is because -- is that related to the fact that they
11 were not timely reported or is it not related to that at
12 all?

13 MR. ZEPPETELLO: It's not a matter of timely reporting.
14 I mean, one of the issues is there is confusion because at
15 least initially -- and one of the reasons for this
16 requirement is they sent us quarterly reports and that
17 includes both past usage and in some cases for the quarter
18 going forward, estimated uses for certain months. And then
19 we'll get another report where the days - because the month
20 has now gone by - that the report changes. And so May is an
21 example where one of the reports we got showed I think a
22 total of five days and then we got another report a month
23 later that showed six days. So they got something on
24 Mothers Day and so the subsequent report has a new date.

25 CHAIR SCHARFF: It's clear to me there was confusion

1 how to do this originally for May, June, maybe July and
2 August. The question is, on an ongoing basis, I guess you
3 guys didn't know it, but are you getting what you need now?
4 I mean, are they complying now, are you getting the reports?
5 Do we have an ongoing issue or is this that we had this, I
6 would say this rough patch in a transition?

7 MR. ZEPPETELLO: I think that, from what Ms. Hodgins
8 said, they are submitting the reports. The permit has now
9 been amended to eliminate this quarterly reporting
10 obligation to the Port and the language in the permit --
11 yes, the language in the permit matches what you see up
12 there on the Order so it should be clear, you know, the
13 question, Scott's shall submit to BCDC, that's what the
14 permit says. So they have a separate obligation apparently
15 to report to the Port under their lease but the permit is
16 now clear and I believe that going forward now things are
17 clearer and there is compliance with the reporting.

18 CHAIR SCHARFF: So the issue before us then, is this a
19 material violation? That's really the issue before us. I
20 guess we need to discuss that. My view and I will tell you
21 straight off is that this is not a material violation, that
22 there was no intent by Scott's, Scott's has worked hard on
23 this. And I'm a little hesitant not -- the only hesitation
24 I really have is because I actually thought you were a
25 little bombastic about staff. That would be my only

1 hesitation.

2 You know, I think staff has worked hard with you. I've
3 watched this go. I think staff has bent over backwards in
4 many ways. I also think that Mr. Gallagher is a great
5 businessman and has done a lot for Oakland and that Scott's
6 is a great public good. And, you know, so -- I really do
7 not appreciate the attacks on staff, I want to say that over
8 and over again. I think they are misplaced, misguided. I
9 think I've said enough on that. I want to hear what you
10 guys think.

11 COMMITTEE MEMBER TECHEL: I just had a question about
12 the reporting and there was some information about new
13 technology that was available to get reports. Could you
14 share with me a little more information about what that is.

15 MR. ZEPPETELLO: The new permit that was issued or the
16 amendment that was issued in October has a requirement that
17 Scott's establish an online calendar of events, both
18 scheduled and as they occur, and that that calendar be
19 available to BCDC and the Port and also to the public,
20 although I believe Scott's is still dealing with issues
21 about how to make it anonymous with respect to the public
22 reporting. So that calendar was supposed to be up by
23 December 31st. I believe it is up, they're still working
24 out a few little kinks, but that's the new -- but that's
25 also in addition to the requirement for the monthly written

1 reports. But we do have an online calendar as well.

2 COMMITTEE MEMBER TECHEL: So an additional way to
3 review the data about usage on the pavilion.

4 MR. ZEPPETELLO: Correct.

5 COMMITTEE MEMBER TECHEL: Okay. Again, we've been here
6 quite a few times. I'm a mayor so I support balance and
7 communities and having business that is willing to invest in
8 your community and have heard in the past the support
9 Scott's does for local nonprofits and appreciate that,
10 appreciate that when it happens in my community so
11 appreciate when somebody is doing it another community.

12 My sense, they're on the waterfront, they bring people
13 to the waterfront, they bring people down to the water to
14 see the water and to enjoy it so I see them not trying to
15 keep people but introducing people to the waterfront. We
16 haven't seen evidence of overuse.

17 Having heard this, I don't think it is a material issue
18 and I think both sides kind of see it through their lens. I
19 appreciate staff and staff has got to support their staff
20 going out and enforcing the rules and regulations. But at
21 this point I think we've worked through the issue and I
22 would be supportive of the appeal.

23 COMMITTEE MEMBER RANCHOD: I want to say that there is
24 not a dispute in my mind as to whether a violation occurred.
25 We could characterize it as a technical violation, there is

1 a question about how material the violation was, but a
2 violation did occur.

3 The Commission delegated to the Executive Director to
4 determine whether Scott's had fully complied in a timely
5 manner with each and every requirement of these paragraphs
6 of the Order. And there are a number of paragraphs - I
7 think Mr. Verna you put up the list of requirements and
8 there are a number of them and this was one of them - and
9 that determination involves some subjectivity, some
10 interpretation of what the language means. What does
11 "complied fully" mean and "in a timely manner"?

12 And the Executive Director did a reasonable and
13 appropriate job in that interpretation. It's a reasonable
14 interpretation under the language of this Order so there was
15 not an issue with how the interpretation was made to the
16 facts here. I think under these facts there is some
17 subjectivity and you also could arrive at a determination
18 that was different, that in the full context of the
19 requirements of those paragraphs there was compliance. And
20 you could be reasonable and appropriate to find that Scott's
21 did comply in the context of the various requirements of
22 these paragraphs.

23 I want to echo the Chair's comments about staff, the
24 comments that have been made about staff. The staff are
25 hardworking and they are trying to do their best in the

1 workload that they have and the obligations they have and
2 also to apply the law to the facts as best that they can.

3 In what the language was set out here certainly gave
4 the Executive Director and the staff the reasonable ability
5 to interpret this technical violation as a basis for not
6 receiving the waiver of the 15 percent total penalty amount.

7 I also want to echo some of the comments that the
8 reporting requirement is important. It was included in the
9 Order because that was one of the issues that staff and the
10 Commission have been having with Scott's over the years was
11 timely reporting of information that they needed and
12 continue to need in order to make determinations about
13 compliance with permits. That will not be an issue that
14 goes away; it's important to have that information provided.
15 I think the message is being sent pretty clearly just from
16 this discussion how important the Commission and this
17 Committee takes that and how seriously we take that.

18 At the same time as a result of this technical
19 violation I don't believe there has been harm to the Bay or
20 impairment of public access and some of the other things
21 that we look for in a committee when we are trying to
22 balance various considerations. The reason that we have
23 this committee in part is to balance the many considerations
24 that go into applying the law and the conditions of a
25 permit.

1 I think there has been overall good faith intent by
2 Scott's to comply and that seems to be reflected in some of
3 the comments here about correcting any issue with reporting
4 so that if there has been a misunderstanding about what
5 needs to be reported and exactly how, that's been clarified
6 and that is now occurring and we expect that to continue.

7 If there are any issues on Scott's behalf about a
8 misunderstanding or needing a clarification it is on you to
9 get that clarified with staff and not let a misunderstanding
10 or confusion be an excuse or a basis for not complying with
11 a requirement. So please, we know that everybody is trying
12 to work together but we expect that if there is confusion or
13 any misunderstanding that that is on Scott's in this case in
14 an enforcement context to get it sorted out.

15 Complying with regulatory requirements, including in an
16 enforcement context, is part of the challenge of running a
17 business and it is not easy, especially when the business'
18 mission is as Scott's is and is doing so much good for this
19 area of Oakland.

20 In trying to balance all these considerations I think
21 we can as an Enforcement Committee say that the Executive
22 Director was well within his means to make the decision that
23 he did and at the same time he could have come to a
24 different decision; and this Committee can come, in hearing
25 all the facts here, come to a different decision as well.

1 And so I think with that I will join with the other
2 members of the Committee in viewing that in the full context
3 here we can find that Scott's fully complied. That while
4 this condition is important and we expect compliance and
5 full compliance, there was substantial compliance here to
6 meet the requirements of the Order in that we can act in
7 response to the request for a waiver of the 15 percent.

8 CHAIR SCHARFF: So I would agree. I actually really
9 appreciate the articulate way you do that. I totally agree
10 that the Executive Director was within his purview to
11 actually make that decision. But with that I would move
12 that we uphold the appeal of the Executive Director's
13 determination and grant Scott's the waiver of the 15 percent
14 of the total penalty.

15 MR. ALDERSON: Can I weigh in there for a second?

16 CHAIR SCHARFF: Sure.

17 MR. ALDERSON: I think what you have to do, and correct
18 me if I'm wrong, you have to make a recommendation to the
19 Commission on this.

20 CHAIR SCHARFF: That's right, we make a recommendation
21 to the Commission to do that.

22 COMMITTEE MEMBER TECHEL: I'll second the motion.

23 CHAIR SCHARFF: All in favor?

24 COMMITTEE MEMBER TECHEL: Aye.

25 COMMITTEE MEMBER RANCHOD: Aye.

1 CHAIR SCHARFF: Aye.

2 That passes unanimously. (Applause.)

3 MR. ZEPPETELLO: I would just like to -- in terms of
4 process I think the next step is that we will put this on
5 the agenda for a Commission hearing and the Committee can
6 report back its recommendation.

7 CHAIR SCHARFF: Yes.

8 MR. ZEPPETELLO: And we'll also follow-up with the
9 Design Review Board issue on the other matter.

10 CHAIR SCHARFF: Sounds good. Thank you all for
11 attending. We are going to go on to the next item. It's a
12 closed session.

13 MR. ZEPPETELLO: So I'll just for the public's benefit,
14 the next item is a closed session. The Committee is going
15 to go into a conference room.

16 CHAIR SCHARFF: And this is a closed session on pending
17 litigation.

18 (Off the record at 10:50 a.m.)

19 (On the record at 11:35 a.m.)

20 (Committee Member Gilmore rejoined the Committee.)

21 CHAIR SCHARFF: So we are back from our closed session
22 and there is no reportable action.

23 So now we are going to move on to Item number 7 which
24 is agendized as a public hearing and possible vote on a
25 recommended enforcement decision involving Proposed Cease

1 and Desist and Civil Penalty Order No. CDO 2018.01; Mark
2 Sanders and Westpoint Harbor, LLC.

3 So where we were last time was that on November 16,
4 2017 the Enforcement Committee adopted the Executive
5 Director's recommended enforcement decision, including a
6 Proposed Cease and Desist and Civil Penalty Order as amended
7 at the hearing following staff's withdrawal of a proposed
8 penalty for one violation, and that was subject to potential
9 modifications of the Proposed Order by mutual agreement of
10 the parties.

11 It is clear to us that the parties have not been able
12 to agree on this, at which point we on the Commission
13 believe this item then goes -- on the Enforcement Committee
14 believe it then goes up to the Commission.

15 So on the advice of counsel we are not going to hold a
16 hearing. This item goes directly up to the Commission and
17 our recommendation stands as to what we made the
18 recommendation last time, which was on the previous
19 enforcement order, and so we're recommending to the full
20 Commission that they enforce the original enforcement
21 decision.

22 Thank you for all coming.

23 SPEAKER FROM THE AUDIENCE: So how do you do that
24 without public comment?

25 CHAIR SCHARFF: There is no hearing so there is no

1 public comment.

2 SPEAKER FROM THE AUDIENCE: You announced a hearing.

3 (Several people in the audience speaking off mic.)

4 CHAIR SCHARFF: So that's what we're doing and so we
5 are now on to the next item.

6 (Several people in the audience speaking off mic.)

7 SPEAKER FROM THE AUDIENCE: Rubber stamping.

8 SPEAKER FROM THE AUDIENCE: Misuse and abuse.

9 CHAIR SCHARFF: Do you want to address the issue?
10 Sure, why don't you clarify.

11 MR. ALDERSON: This is for clarification, and correct
12 me if I'm wrong. The Committee is standing on its Order
13 that it made at the November 2018 (sic) hearing. That is,
14 if the parties could not reach an agreement then the
15 Committee was recommending -- that the Committee's Order was
16 that it was recommending to the full Commission that it
17 adopt the recommended enforcement decision in November with
18 the one modification.

19 SPEAKER FROM THE AUDIENCE: That modification was?

20 SPEAKER FROM THE AUDIENCE: Why did you schedule a
21 public hearing?

22 SPEAKER FROM THE AUDIENCE: Why are we in a public
23 hearing if it's not a hearing?

24 (Several people in the audience speaking off mic.)

25 CHAIR SCHARFF: So I think the answer is that we

1 received this and we have to view -- there was actually --
2 if I recall there are actually objections to the public
3 hearing from Mr. Sanders as well.

4 SPEAKER FROM THE AUDIENCE: What?

5 SPEAKER FROM THE AUDIENCE: Wrong.

6 (Several people in the audience speaking off mic.)

7 CHAIR SCHARFF: So anyway, that is our --

8 SPEAKER FROM THE AUDIENCE: No, not anyway, you're
9 wrong.

10 SPEAKER FROM THE AUDIENCE: Excuse me, sir. The public
11 challenges the jurisdiction. Jurisdiction once challenged
12 cannot be assumed --

13 CHAIR SCHARFF: So you are out of order.

14 SPEAKER FROM THE AUDIENCE: -- and must be decided.
15 It's *Maine v. Thiboutot*, 100 S. Ct. 250 for your records.

16 CHAIR SCHARFF: So the other thing I wanted to say is
17 there will be opportunity for public comment at the full
18 Commission hearing.

19 SPEAKER FROM THE AUDIENCE: And when is that?

20 CHAIR SCHARFF: So that has to be agendized. I am not
21 sure when that would be.

22 SPEAKER FROM THE AUDIENCE: And in the meantime?

23 CHAIR SCHARFF: We are where we are. The enforcement
24 decision has not been approved by the full Commission.

25 SPEAKER FROM THE AUDIENCE: So the people that drove

1 from Southern California --

2 SPEAKER FROM THE AUDIENCE: Are you interested in what
3 we have to say?

4 CHAIR SCHARFF: So next we have the report of the Chief
5 of Enforcement?

6 SPEAKER FROM THE AUDIENCE: Are you interested in what
7 we have to say?

8 SPEAKER FROM THE AUDIENCE: Obviously not.

9 CHAIR SCHARFF: So next we have --

10 SPEAKER FROM THE AUDIENCE: We're paying for you to be
11 here. We're taxpayers.

12 COMMITTEE MEMBER GILMORE: Okay. Excuse me.

13 SPEAKER FROM THE AUDIENCE: It's our dollar that you're
14 wasting.

15 COMMITTEE MEMBER GILMORE: Excuse me.

16 SPEAKER FROM THE AUDIENCE: I will not --

17 COMMITTEE MEMBER GILMORE: We are interested in what
18 you have to say.

19 SPEAKER FROM THE AUDIENCE: That's why you're shutting
20 us out.

21 COMMITTEE MEMBER GILMORE: Which is why we want you to
22 say it before the full Commission, because this body is
23 passing the recommended decision from November to the full
24 Commission, which is going to take public testimony and have
25 a vote on it. We are not voting on anything today.

1 SPEAKER FROM THE AUDIENCE: So why did you call this
2 hearing?

3 SPEAKER FROM THE AUDIENCE: So we take off work to come
4 here and now you're canceling it?

5 SPEAKER FROM THE AUDIENCE: We've got kids and
6 responsibilities.

7 (Several people in the audience speaking off mic.)

8 SPEAKER FROM THE AUDIENCE: This doesn't sound like a
9 very compassionate board.

10 (Several people in the audience speaking off mic.)

11 CHAIR SCHARFF: So we need to move on to the report of
12 the Chief of Enforcement.

13 (Several people in the audience speaking off mic.)

14 CHAIR SCHARFF: Go on, report of the Chief of
15 Enforcement.

16 SPEAKER FROM THE AUDIENCE: Where is the rest of the
17 Commissioners?

18 (Several people in the audience speaking off mic.)

19 CHAIR SCHARFF: You are out of order, sir, you are just
20 simply out of order.

21 (Several people in the audience speaking off mic.)

22 SPEAKER FROM THE AUDIENCE: Are you unable to answer
23 the question or just inept to do so?

24 SPEAKER FROM THE AUDIENCE: Maybe could staff answer
25 the question?

1 SPEAKER FROM THE AUDIENCE: Your attorney should answer
2 that question.

3 CHAIR SCHARFF: I think we are moving on to the report
4 of the Chief of Enforcement.

5 MR. ALDERSON: I'll provide clarification, this is for
6 clarification. The Committee's understanding based on its
7 November Order was that there were two paths for the
8 parties.

9 This was the Committee's Order: The parties were either
10 to reach an agreement and that would become the Committee's
11 recommended decision to the full Commission; or

12 2) if the parties didn't reach an agreement the
13 Committee's recommendation to the full Commission was
14 staff's recommended enforcement order, presented to them in
15 November, with one modification made at that decision.

16 SPEAKER FROM THE AUDIENCE: So this agenda was sent out
17 in error?

18 (Several people in the audience speaking off mic.)

19 MR. ZEPPETELLO: Could I make a comment just again to
20 try to clarify for the public.

21 SPEAKER FROM THE AUDIENCE: Why are we here?

22 SPEAKER FROM THE AUDIENCE: Why would you have us come
23 here if we can't speak? Is this America or what? Why are
24 we here?

25 SPEAKER FROM THE AUDIENCE: We could speak in general

1 comments at the beginning of the session for anything that
2 was not in front of the Commission. This is no longer in
3 front of the Commission, we could be speaking our comments
4 right now, it is my understanding. You shut us off at the
5 beginning by not telling us at the beginning that we would
6 not going to be talking about Westpoint Harbor CDO 2018.01.

7 SPEAKER FROM THE AUDIENCE: When you accepted the card
8 that's a contract.

9 SPEAKER FROM THE AUDIENCE: You did not alter the
10 agenda. You did not alter the agenda.

11 SPEAKER FROM THE AUDIENCE: Either we get to speak or
12 we go out of here really mad.

13 MR. ALDERSON: You do have the discretion whether you
14 want to let them speak.

15 (Members of the audience were commenting as the
16 Committee conferred with counsel.)

17 SPEAKER FROM THE AUDIENCE: Well I think Pelosi,
18 Feinstein and the rest need to be aware of the proceedings.

19 SPEAKER FROM THE AUDIENCE: You did not alter the
20 agenda.

21 SPEAKER FROM THE AUDIENCE: No motion to alter the
22 agenda.

23 SPEAKER FROM THE AUDIENCE: There was no motion to
24 alter the agenda. You are violating state law.

25 SPEAKER FROM THE AUDIENCE: Is Governor Brown aware of

1 these types of proceedings; does he approve of them?

2 SPEAKER FROM THE AUDIENCE: You did not alter the
3 agenda, you did not motion.

4 SPEAKER FROM THE AUDIENCE: It's due public process.

5 SPEAKER FROM THE AUDIENCE: When you accepted our cards
6 that was a contract to speak. If you weren't going to let
7 us speak you shouldn't have accepted our cards.

8 SPEAKER FROM THE AUDIENCE: These are public agencies.

9 SPEAKER FROM THE AUDIENCE: You accepted the agenda.
10 You did not make a motion to alter the agenda; you must
11 follow the agenda according to the law.

12 SPEAKER FROM THE AUDIENCE: Their minds are already
13 made up, it doesn't matter what we say, so why bother?

14 SPEAKER FROM THE AUDIENCE: Well I would like to
15 still --

16 SPEAKER FROM THE AUDIENCE: They are going to violate
17 the law if they don't go forward.

18 SPEAKER FROM THE AUDIENCE: Nobody ever agrees with me
19 anyway. I didn't come all the way from Santa Cruz and
20 Redwood City -- it's important enough for me to come here, I
21 think it's important enough for me to speak. You can always
22 plug your ears.

23 SPEAKER FROM THE AUDIENCE: I just think our officials
24 need to understand what's going on.

25 SPEAKER FROM THE AUDIENCE: Robert's Rules of Order,

1 you accepted the agenda, you did not make a motion, the
2 agenda moves forward as is, that is the law.

3 SPEAKER FROM THE AUDIENCE: No addendum was published
4 24 hours prior.

5 SPEAKER FROM THE AUDIENCE: How come the camera is not
6 rolling when we're being shut off?

7 SPEAKER FROM THE AUDIENCE: Yeah, the camera should be
8 rolling.

9 SPEAKER FROM THE AUDIENCE: Yeah, that's true, that's a
10 violation of the law as well.

11 SPEAKER FROM THE AUDIENCE: It must be part of the
12 public record.

13 SPEAKER FROM THE AUDIENCE: That's a violation of the
14 law, without that camera on. The meeting is in discussion,
15 the camera should be on.

16 SPEAKER FROM THE AUDIENCE (CAMERA OWNER): It is on.

17 SPEAKER FROM THE AUDIENCE: It is?

18 (Several people in the audience speaking off mic.)

19 SPEAKER FROM THE AUDIENCE: If this is not recorded
20 that would be another section in violation.

21 SPEAKER FROM THE AUDIENCE: I'll state it again. You
22 accepted the agenda, you did not make a motion to alter the
23 agenda, you have to move forward with the agenda per the
24 law.

25 MR. ALDERSON: My advice to the Committee would be that

1 you allow the parties to speak and allow the members of the
2 public to speak with respect to this item.

3 CHAIR SCHARFF: So in terms of -- we are not holding
4 the hearing because on advice of counsel you've suggested to
5 us that you think that we should stick with our original
6 Order and that it should go up to the Commission.

7 SPEAKER FROM THE AUDIENCE: Can we hear why, please,
8 directly from the lawyer?

9 CHAIR SCHARFF: So I have no problems listening and
10 hearing from the public. I am a little confused as to when
11 we talk about the public and when we talk about the parties.
12 I mean, are we -- what are you thinking?

13 MR. ALDERSON: I'm thinking since this matter was
14 agendized we need to hear from the parties and members from
15 the public, based on your opening comments that the
16 Committee believes that its enforcement decision that it
17 held in November did not contemplate that there would be
18 this hearing today, that it would be going to the
19 Commission.

20 COMMITTEE MEMBER RANCHOD: Can I ask for clarification?
21 Are you recommending that the Committee hold a public
22 hearing in light of the intention of the Committee for how
23 to proceed or otherwise hear from the public?

24 MR. ALDERSON: I think both, yes.

25 CHAIR SCHARFF: All right, then we should hear from the

1 parties first. So there's a number of objections from
2 Westpoint Harbor. Mr. Sanders' attorney, do you want to
3 speak to them?

4 MR. McCREA: Mr. Chair, if I might just do a time
5 check. There is a BCDC Commission meeting scheduled in this
6 room at 1:00 o'clock.

7 (Several people in the audience speaking off mic.)

8 MR. McCREA: Excuse me, it's across the hall.

9 CHAIR SCHARFF: I'm thinking about the time check as
10 well and I want to give the public the opportunity to speak
11 so if you want to just make a speech for maybe five minutes.
12 And then I think what we'll end up doing is --

13 SPEAKER FROM THE AUDIENCE: That's not legal.

14 CHAIR SCHARFF: I think what we'll end up doing is
15 continuing this process.

16 SPEAKER FROM THE AUDIENCE: That's not legal.

17 SPEAKER FROM THE AUDIENCE: Yeah, we just wasted 20
18 minutes debating this.

19 SPEAKER FROM THE AUDIENCE: You can all lose your jobs.
20 Just sayin'.

21 (Several people in the audience speaking off mic.)

22 MR. SADLER: So, Chairman Scharff, if I may. Obviously
23 we are here in a very unusual circumstance.

24 The staff, Mr. Zeppetello, have a Proposed Order that
25 they presented to you, put on the agenda.

1 CHAIR SCHARFF: Let's be clear, we did not put it on
2 the agenda. Staff put it on the agenda and you objected to
3 it being on the agenda.

4 MR. SADLER: I believe that's what I said.

5 CHAIR SCHARFF: Right.

6 MR. SADLER: So I am happy for Mr. Zeppetello to take a
7 few minutes, as he and I talked about, to make his
8 presentation about why the Proposed Modified Order is the
9 appropriate way to proceed and then I am happy to respond to
10 that.

11 On the other hand, I thought I heard you say we are not
12 having a hearing. So I certainly don't want to waste the
13 public's time if we are not having a hearing, having two
14 lawyers argue about something that is really not before you.
15 I am very happy to cede my time to have the members of the
16 public address their comments and concerns to you.

17 CHAIR SCHARFF: All right. So I think this is --

18 (Applause.)

19 CHAIR SCHARFF: I think this is -- so when I read your
20 objections, your objections were to having this hearing,
21 frankly. And I thought you indicated that you did not think
22 that we should hold a hearing on this, that we should, in
23 fact, go up to the Commission because that's what our Order
24 was.

25 MR. SADLER: No, no. Our position was, and we made

1 several objections to the Proposed Modified Order. We did
2 not object to having a hearing. Mr. Sanders has incurred
3 incredible time and expense with lawyers, others have been
4 here, to come to this hearing, so we did not object to there
5 being a hearing. What we have objected to on a number of
6 grounds is the Proposed Modified Order.

7 I am now understanding that based on the advice of
8 counsel that the Proposed Modified Order is moot, that you
9 are not going to take it up, you are going to recommend the
10 Order from back in November.

11 CHAIR SCHARFF: And if that is true, and maybe we
12 misspoke. If we are just going to send this up to the
13 Commission what would be the purpose of discussing the
14 Proposed Order and going over the different issues?

15 MR. SADLER: You're back to where I was. It's their
16 proposal. If they want to speak to it I'm happy to respond.
17 Or better use of time that's ticking away, let the members
18 of the public address their comments and concerns. I am not
19 interested in arguing about an Order that you have just now
20 said you are not going to take up. That would be a waste of
21 everyone's time.

22 MR. ZEPPETELLO: But if they are not going to take up
23 the Order - they've already made a decision, there was a
24 public hearing and it was closed, in November.

25 CHAIR SCHARFF: Well that's what happened. We had the

1 public hearing, we had it in November. That was our
2 thinking on this. I'm glad we're having this discussion
3 because there is so much confusion. We had a public
4 hearing, we had an Order. Staff has come forward asking us
5 to come up with a Modified Order. We believe that should go
6 to the Commission and that the Commission should decide
7 whether or not they want to accept the original Order we
8 made, whether or not they want to refer it to staff, whether
9 or not they want to hold a de novo hearing, it becomes a
10 Commission decision. So it seemed silly for us to hold a
11 hearing when we did not think procedurally we should be
12 entertaining staff's notion of coming back and reopening the
13 hearing on this.

14 MR. SADLER: I understand --

15 CHAIR SCHARFF: And that's what your brief argued,
16 that's at least the way I understood it.

17 MR. SADLER: What we argued is that the Proposed
18 Modified Order was defective in a number of respects.

19 MR. ZEPPETELLO: But also that they had no discretion
20 to hear it because they already made a decision and we
21 didn't agree to modify.

22 MR. SADLER: And so back to what Mr. Alderson said, if
23 this Committee is willing to hear from the public then I am
24 about three minutes past sitting down and letting members of
25 the public address their comments.

1 CHAIR SCHARFF: All right. Do you have any problem
2 with me hearing from the public, Mr. Zeppetello? I mean, I
3 agree that we have had this hearing already, that's why I'm
4 at a little procedural -- because we had this hearing in
5 November, the public spoke in November.

6 You object as a threshold. It's in your brief as a
7 threshold issue of whether or not we can entertain hearing a
8 modified order. And we have agreed with you, basically,
9 that we think it should go up to the Commission.

10 MR. SADLER: Understood.

11 CHAIR SCHARFF: So I'm happy to hear from the public
12 because you came today but I just want to make sure there's
13 no objections to that or concerns.

14 COMMITTEE MEMBER RANCHOD: Can I ask counsel for
15 advice? Can we proceed as follows: Open a public hearing on
16 the Modified Recommended Enforcement Decision, briefly hear
17 from staff as to the basis for presenting that. We have
18 read counsel's briefs and arguments about why it would be,
19 in their view, inappropriate to consider that now. We can
20 hear from members of the public who have taken time out of
21 their day to attend, on the issues that are presented, and
22 then the Committee can close the public hearing and make a
23 decision as to how to proceed with the Modified Proposed
24 Enforcement Decision. We have expressed our intent already
25 as to how to proceed.

1 MR. ALDERSON: Yes.

2 CHAIR SCHARFF: Okay. Mr. Zeppetello, anything further
3 or should I start calling members of the public?

4 COMMITTEE MEMBER TECHEL: Or --

5 CHAIR SCHARFF: Yes.

6 COMMITTEE MEMBER TECHEL: Or could we make the decision
7 we made that we are going to forward the original decision
8 to the Commission and revisit the general public comment
9 section, noting that we did not at that point when we were
10 at the general public comment, that this item was still on
11 the agenda. Now that we have moved it off the agenda we
12 could go back to that public comment and hear from the
13 public.

14 MR. ALDERSON: My advice would be to do what had been
15 previously expressed, that would be the safest route.

16 CHAIR SCHARFF: Okay, so we are opening the public
17 hearing then on this.

18 Did you want to say anything, Mr. Zeppetello?

19 MR. ZEPPETELLO: It's not clear to me exactly what the
20 subject of the public hearing is. If it is the Modified
21 Order then I would suggest that the comments should be
22 focused on the modifications. But I expect that it -- well,
23 it sounds like we are -- I guess I have no objections. The
24 public is here. For the sake of process if you want to
25 listen to further comments or have further comments be part

1 of the record that's fine.

2 COMMITTEE MEMBER RANCHOD: Mr. Zeppetello, it would be
3 helpful if you could provide briefly, also for members of
4 the public, the context for why staff was proposing a
5 modification and why there was a proposal to put this on the
6 agenda, then we can receive the comments from the members of
7 the public on the proposed modifications and then the
8 Committee can decide how to proceed.

9 MR. ZEPPETELLO: Okay. So I will give an abbreviated
10 discussion here.

11 As has already been said, you held a hearing on
12 November 16th, you adopted a decision, a recommended Order.
13 You provided that it could be potentially modified if the
14 parties met and agreed to modifications, particularly with
15 respect to the cease and desist provisions of the Proposed
16 Order.

17 The parties had a number of conversations, counsel did.
18 Those settlement discussions are confidential so I am not
19 going to talk about the substance, but as a result of that
20 staff reevaluated a number of issues and decided to suggest
21 a Modified Order.

22 As an example - and I am not necessarily going to go
23 through this in the order I had intended - but the Committee
24 proposed that Mr. Sanders be entitled to a waiver of 50
25 percent of the penalty if he complied with the Order, but it

1 was contingent on the parties reaching an agreement.

2 Well the parties did not reach an agreement but we
3 thought we would recommend and revise the Proposed Order to
4 build in the provision for a 50 percent waiver even though
5 there is no agreement and leave it -- present that for your
6 consideration as a recommendation that the Order allow for
7 that to provide an incentive for compliance.

8 As a few other examples, there are a couple of
9 structures in the dedicated public access area south of the
10 parking lot, an enclosed garden and a wooden storage shed.
11 The original Order would have required those items to be
12 removed within 30 days. Instead we, in the revised Order we
13 suggest that Mr. Sanders be allowed to request a permit
14 amendment to keep those structures in place and present that
15 to the Commission for consideration. And even if the proper
16 location is not there, that would give us time to talk with
17 Mr. Sanders about an alternative location but wouldn't
18 require those uses to be removed within 30 days.

19 As another example, the issue of buoys in the slough
20 that the permit requires, both with respect to a no-wake
21 zone and Greco Island and warning boaters to keep away from
22 Greco Island. The original Order required that Mr. Sanders
23 put the buoys up within 30 days.

24 Well Mr. Sanders claims that that can't be done, so in
25 the revised Order we built in a provision that said he shall

1 apply to the Coast Guard or anybody else, any other agency,
2 to put those buoys in, within 30 days.

3 And if in the end the Coast Guard or other agency say
4 it can't be done, that he shall consult with BCDC and the
5 Coast Guard and those agencies and come up with an
6 alternative and then apply to a permit amendment -- apply
7 for a permit amendment that would allow that to happen. So
8 again, we are building in some flexibility and an
9 opportunity to not make this such an inflexible Order, as an
10 example on that issue.

11 Let me just look through my notes and see if there's --

12 Oh, another example, there are pathways around the
13 marina basin and they are required by the permit to be 12 to
14 15 feet wide. Mr. Sanders has claimed it is physically
15 impossible, for the most part these pathways are 10 feet
16 wide. While staff doesn't agree that it would be impossible
17 to widen these pathways, we have proposed in the revised
18 Order that he be allowed to keep the pathways at 10 to 12
19 feet and apply for a permit amendment to the Commission that
20 would authorize him to keep those pathways at 10 to 12 feet.
21 So again, where the original Order said, submit plans and
22 rebuild the pathways to 12 feet.

23 COMMITTEE MEMBER RANCHOD: Thank you, Mr. Zeppetello.

24 MR. ZEPPETELLO: I guess I want to raise just one maybe
25 other point and it ties in with this issue of the penalty

1 waiver. We also modified the dates. From the original
2 Order there were to be periodic monthly status reports
3 provided by Mr. Sanders and then the matter would come back
4 to this Committee on two occasions for the Committee to
5 gauge progress.

6 Unlike what you heard from today on Scott's, the
7 standard in this Proposed Order would be substantial
8 compliance, if he substantially complies, and rather than
9 giving the discretion to the Executive Director on the
10 penalty waiver it gives it to the Commission -- or to this
11 Committee, rather, and ultimately to the Commission. So we
12 were building in an opportunity for working together and for
13 oversight by this Committee for purposes of compliance.

14 I guess I will -- that highlights the key changes. I
15 would want to report back to the Committee, because I think
16 it's important and it relates to what you heard in a way on
17 the Scott's matter. Since we were here in November there
18 has been no movement at all by Mr. Sanders in terms of
19 recognizing his obligations or starting in any proactive way
20 to address any of the compliance issues, a signage plan, a
21 landscaping plan, dealing with the buoys.

22 There is no working with staff despite what was said
23 before. We have got a continuing non-compliance,
24 uncooperative. Many of the comment letters say BCDC staff
25 is being unreasonable, you should be working with

1 Mr. Sanders. It takes two to work together and there's --
2 you know. We appear to be on the litigation path that was
3 threatened. We could talk more about that but I'll stop.
4 That summarizes the changes from the Order, the original
5 Order.

6 CHAIR SCHARFF: Okay. So I guess I am going to have to
7 -- would you like to -- I was going to go to the public but
8 I saw you get up.

9 MR. SADLER: Well thank you because I do need to
10 respond very briefly.

11 One of the objections that we raised to this proposed
12 new Order is it was clearly based on matters outside the
13 record. And everyone who knows anything about
14 administrative law knows you cannot base a proper legal
15 order on matters outside the record. All of this stuff that
16 we just heard from Mr. Zeppetello about cooperation, lack of
17 cooperation, no movement, that is not evidence, it is all
18 outside the record, and that just highlights one of the
19 critical objections we had to this proposed new Order.

20 The last thing I will draw your attention to, because
21 you're right, we're headed to court and that was pretty
22 clear. There are changes that were proposed in this
23 modified Order that didn't have anything to do with
24 pathways, didn't have anything to do with storage sheds, but
25 it went to the issue that I talked to you about at the last

1 hearing, which is you are being asked to sign or recommend
2 an Order finding that all of these things caused harm and
3 damage to the environment.

4 And you recall I said over and over again, they have
5 not brought you evidence of any harm or any damage. And one
6 of the changes they made in more than one place in this
7 proposed new order was to change the finding that harm and
8 damage had occurred and now it's to say, well, it likely
9 occurred.

10 And I submit to you that simply reinforces the point we
11 made before, which is you don't have evidence, not for this
12 proposed new Order or the old Order, of harm or damage to
13 the environment. If somebody comes up to you and says, let
14 me tell you, this happened. Well, wait a minute. Actually
15 it's just likely that it happened. I don't play poker too
16 often but that's a tell. It's telegraphing there isn't the
17 evidence in this record for the Order you're going to send
18 up for harm to the environment. And that's all I have to
19 say at this point.

20 CHAIR SCHARFF: So it's Mr. Carr?

21 MR. SADLER: I'm Kevin Sadler.

22 CHAIR SCHARFF: You're Kevin Sadler. So Mr. Sadler, a
23 couple of questions since we now seem to be having this --
24 How would you like to proceed on this if you had your
25 druthers? You've asked -- clearly they're suggesting things

1 that are all beneficial to your client, for the most part,
2 when I read the changes in the Proposed Order. You have
3 indicated that those changes you object to and maybe that's
4 why we thought maybe we should just go straight to the full
5 Commission because you're objecting to the hearing. But
6 that's why, because you basically are making the argument
7 that you don't believe that that's within the record.

8 So there are several things we could do. We could hold
9 another hearing, we could have staff put and give you an
10 opportunity to put all the stuff into the hearing. I mean,
11 it's a little weird to me that staff is proposing stuff that
12 benefits your client, the Order is becoming better for your
13 client, and yet you're opposing it. That's the way it
14 seems.

15 And so I am really asking from a procedural point of
16 view what would give your client the best possible
17 opportunity here to change the record, to amend it, and then
18 we could consider maybe that Order, I mean that might be a
19 possibility; or we could go up to the Commission. What
20 would you recommend? How would you like to approach this
21 from your client's perspective?

22 MR. SADLER: Thank you for that opportunity and I'll
23 answer it in two parts. What we want is a procedural,
24 lawful order and we made clear that this proposed new Order
25 does not meet that standard in a number of different

1 respects.

2 I hear what you're saying and I anticipated it was
3 going to be part of his lengthy opening, that, oh, look at
4 all these changes in this modified order, they're helpful to
5 you, they're helpful to you. But to me as I read all the
6 changes, not just the ones that were highlighted - because
7 what I spoke about a moment ago, changing it to "likely
8 occurred" - you go on the website and look at their proposed
9 Order, those changes aren't highlighted, I found those by
10 reading it line by line.

11 No, sir, we are not asking that the record be changed
12 and we are not agreeing, we are not acquiescing in any way
13 to change the legal standard on the fly. The Proposed Order
14 that was discussed in November, the one that I've heard you
15 say should go up to the Commission, contains a finding
16 stated several times, there has been harm to the
17 environment, damage to the environment. They wanted to
18 water it down not to help us but to make it look better in
19 court and we don't agree that you can do that.

20 So what we want is a proper procedural order that we
21 can then go on down the road and deal with at the Commission
22 and then in court. That's what we want and that's why we
23 have raised these objections to this Proposed Modified
24 Order.

25 CHAIR SCHARFF: So we are proceeding along the way that

1 you want to proceed then, which is we take that Order to the
2 Commission.

3 MR. SADLER: Understood.

4 CHAIR SCHARFF: That's what you've asked for; is that
5 correct? You're not asking us to reopen this, to have
6 another hearing on this, to move forward. You are asking
7 that the original Order that we had on November 16th go to
8 the full Commission.

9 MR. SADLER: My response is, that's exactly right.

10 Because you have two orders that have been presented to
11 you, the one in November and the one just now. We raised
12 all kinds of objections to the original one, we stand on
13 those, those are going to be litigated, we are not rearguing
14 that here. The new Order came in, we objected to that on a
15 number of grounds. What I hear you saying is this body is
16 not going to take up that Modified Order, the original Order
17 is going to go up to the Commission.

18 CHAIR SCHARFF: Okay. I just wanted to make sure you
19 thought that was procedurally appropriate.

20 MR. SADLER: I do. I don't think we should reopen this
21 hearing for more evidence, more lawyer argument. If this
22 Committee is not going to take up the new Proposed Order
23 then once again, I think we should sit down and let the
24 members of the public be heard.

25 CHAIR SCHARFF: Okay. The next point, then you have no

1 objection to members of the public speaking?

2 MR. SADLER: None.

3 CHAIR SCHARFF: All right, I wanted to make sure.

4 MR. SADLER: Thank you.

5 CHAIR SCHARFF: All right. You will each have -- we
6 are going to end this a little bit later. You will each
7 have one minute.

8 (Several people in the audience speaking off mic.)

9 SPEAKER FROM THE AUDIENCE: Come on.

10 SPEAKER FROM THE AUDIENCE: That's not acceptable. You
11 wouldn't do that in Palo Alto.

12 CHAIR SCHARFF: So our first speaker is Maureen
13 O'Connor - Maureen O'Connor Sanders, sorry - to be followed
14 by Kenneth Parker. And the comments should be to the
15 modifications, I guess, or the Committee decision.

16 MS. O'CONNOR SANDERS: I urge you to dismiss this case,
17 but I also want to tell you something you probably haven't
18 heard about. In April last year Mark applied for a BCDC
19 permit amendment to authorize maintenance dredging at
20 Westpoint Harbor. It is specified in his BCDC permit every
21 ten years.

22 Maintenance dredging entails removing sediment that has
23 built up below the docks that will cause the docks to buckle
24 and break. To get the maintenance dredging done Mark
25 applied for authorization from all appropriate agencies, the

1 DMMO process.

2 In late November, after this Committee's last meeting
3 on the case, staff, Mr. McCrea, sent a letter to Mark saying
4 that BCDC would not authorize the maintenance dredging after
5 all This was after all the agencies, including the BCDC
6 rep, had given verbal approval. Mr. McCrea asserted that a
7 new EIR under CEQA had to be done, that Redwood City hadn't
8 done a proper one 15 years ago, and that he would be
9 appointing BCDC as the lead agency. But CEQA contains a
10 clear exception for maintenance dredging. He was aware of
11 that, he was made aware of it by Westpoint Harbor and the
12 dredging company and all the other agencies involved
13 verified that the exception does apply.

14 It looks to me like BCDC staff is slowing, delaying,
15 maybe preventing maintenance dredging to punish Mark for
16 exercising his rights in this case. It's abuse of this
17 agency's power. It's harassment --

18 CHAIR SCHARFF: Thank you.

19 MS. O'CONNOR SANDERS: -- it's vindictive and it
20 directly harms the harbor. (Applause.)

21 CHAIR SCHARFF: So Kenneth Parker, to be followed by
22 Jingli Wang. And if we could come up a little bit early so
23 we can move through it faster.

24 MR. PARKER: Hi there. My name is Kenneth Parker. I
25 have been a boater most of my life.

1 I need to say this, though. I hate hearing people
2 referred to as "staff." They're people, they're human
3 beings. We are all human beings. And I'm sure as humans
4 they're working hard, they do the best they can, but people
5 make mistakes; and among them are some of the allegations
6 against Westpoint Harbor.

7 For example, having finally completed all of the permit
8 process they opened the boat ramp in the fall of 2017 and
9 yet Westpoint is being fined for six years before the thing
10 was opened. How do you fine somebody for something that
11 wasn't even open yet, that wasn't constructed, that wasn't
12 finished?

13 So the question becomes, along the line staff, those
14 people get overworked, they make mistakes. Sometimes it's
15 mistakes. It's not a personal attack on these people, we're
16 all like that, we're all people, we all make mistakes. I
17 think they've made some mistakes. I think they need to be
18 addressed and corrected. And I think, honestly, that's your
19 responsibility to help them.

20 CHAIR SCHARFF: Thank you.

21 Jingli Wang, to be followed by Bob Wilson.

22 MS. WANG: Good morning; I am Jingli Wang, I am a life
23 science consultant. About 13 years ago I was working at a
24 biotech company in the Pacific Shores Center and the place
25 where the West Harbor is sitting now was a lifeless, toxic,

1 muddy pond. Thanks to Mark Sanders who transformed that
2 ugly, toxic land into a beautiful marina we all enjoyed.
3 These days I saw my former coworkers take a stroll in the
4 middle of the day and really enjoy this beautiful place.
5 Thank you, Mark and your team for making this possible for
6 all of us to enjoy. Thank you. (Applause.)

7 CHAIR SCHARFF: Thank you.

8 Bob Wilson, to be followed by Doug Furman.

9 MR. WILSON: Thank you. My name is Bob Wilson and I
10 have sailed and worked alongside Mr. Sanders for over 35
11 years. He has the highest integrity, he is a good man.

12 I want to give you just one quick example of how
13 ridiculous some of these attacks are by the staff; and they
14 are attacks, make no mistake about it. My dad was a
15 policeman, my grandfather was a fireman, and so I am
16 particularly offended and alarmed by the actions of the
17 staff.

18 This is a picture of the Redwood City fireboat. It's
19 called the Sequoia Guardian, Guardian's Key there. The
20 Sequoia and the Redwood City Police boat are in fact
21 stationed at Westpoint Harbor right now. They are ready to
22 serve our community 24/7 today, every day and every night.
23 However, on page 19 of the staff's unfounded, misguided
24 Order it claims that Mr. Sanders must amend his permit to
25 authorize Redwood City's police and fireboats to use the

1 guest docks or any other docks.

2 You know, that's ridiculous. The staff order claims
3 that our brave police and firefighters can't use the marina
4 without their permission and without their permit. Why are
5 they against our public safety? The police and fire boats
6 at Westpoint Harbor pay slip fees just like everybody there.
7 Why is the staff targeting them, and by extension our
8 community, and by extension endangering the public safety of
9 our community.

10 CHAIR SCHARFF: Thank you.

11 MR. WILSON: Thank you very much for your time.

12 CHAIR SCHARFF: Thank you. (Applause.)

13 Doug Furman to be followed by Michelle --

14 MR. FURMAN: Members of the Enforcement Committee, my
15 name is Doug Furman.

16 Much has been made by the BCDC staff of Mark Sanders
17 not signing Amendment No. Five to the permit.

18 I was at the meeting held on August 21st, 2013. The
19 purpose of that meeting, along with a number of previous
20 meetings, was to correct a badly written permit fraught with
21 errors and are the basis for most of the alleged violations.
22 Brad McCrea was the chief spokesperson for BCDC and had
23 agreed to correct 44 major conflicts in the permit. That
24 was Amendment No. Five. Both Westpoint Harbor and your
25 staff spent many hours writing the amendment to resolve the

1 issues now before you.

2 At the meeting I attended, Adrienne Klein flatly stated
3 that regardless of any changes to a poorly written permit,
4 Mark Sanders in signing Amendment No. Five would have to
5 admit that he purposely violated his permit and that he was
6 responsible for fines from the time of the original permit
7 until the signing of Amendment No. Five. Who would sign an
8 amendment admitting that they had purposely violated their
9 permit and agree to fines when they did not agree with
10 either? You wouldn't and neither would he.

11 Amendment No. Five shows you that BCDC agreed the
12 original permit was poorly worded and that a corrected
13 permit could be written that resolved almost all the issues
14 before you.

15 CHAIR SCHARFF: Thank you.

16 MR. FURMAN: Thank you for your time.

17 CHAIR SCHARFF: Michelle Bonhof to be followed by
18 Gordon Muwat.

19 MS. BONHOF: Thank you. I was on the website looking
20 at some of the allegations and one of the ones that came to
21 mind was the allegation that BC posted that Westpoint Harbor
22 has failed to create a roosting habitat according to their
23 permit. The permit states that the creation of the 3 acres
24 of roosting habitat was no responsibility of Westpoint
25 Harbor, it was the responsibility of Cargill, which has 15

1 years ago created this roosting habitat and in fact it's now
2 20 to 30 acres versus the original 3 acres required.

3 I went to the site the other day and I took a picture
4 and you can see hundreds if not thousands of birds on this
5 roosting habitat. But someone at the BCD has submitted a
6 violation saying that that roosting habitat is not in place.
7 Who went down there with their due diligence and could not
8 see hundreds, maybe thousands of birds on a habitat and then
9 make a violation and a fine.

10 CHAIR SCHARFF: Thank you.

11 David Hattery. Gordon Muwat, followed by David
12 Hattery.

13 MR. MUWAT: This is Gordon Muwat and my topic has
14 already been covered so I'll cede the time.

15 CHAIR SCHARFF: Thank you.

16 David Hattery to be followed by Brenda Hattery.

17 MR. HATTERY: CDO Allegation 11, unauthorized
18 construction of rower's dock, unauthorized fill and
19 substantial change in use. Just judging this on face value
20 against BCDC objectives should be enough for this allegation
21 to be thrown out.

22 But if seeking facts, look no further than the rower's
23 dock in the original approved BCDC permit. And while
24 approving that permit BCDC even tasked Mark with the best-
25 effort commitment to meet community needs for a boat house

1 and rowing center for all ages and abilities, open to a
2 diverse group of the rowing and boating community. In fact,
3 BCDC wanted the rowing dock and its building moved from the
4 boat yard side to the retail side of the marina and this new
5 up-front and central location can only be seen as BCDC
6 demonstrating their commitment to its use.

7 After reviewing stacks of BCDC paperwork at best I
8 conclude the problem is a failure of BCDC staff to follow
9 their own published processes and poor to non-existent
10 record keeping by staff. I have seen BCDC documents
11 approving the change, the DRB review and authorization of
12 construction --

13 CHAIR SCHARFF: Thank you.

14 MR. HATTERY: -- BCDC checklists and dates.

15 CHAIR SCHARFF: David Hattery followed by Brenda
16 Hattery.

17 MS. HATTERY: I could pick up where he left off.

18 CHAIR SCHARFF: Okay.

19 MS. HATTERY: But I won't. My name is Brenda Hattery
20 and I come to you with a background in federal regulation of
21 the railroad industry, which is a very difficult industry to
22 regulate. People are fighting all the time about everything
23 and I was involved in consensus-based processes there, which
24 was also very interesting.

25 And what I see between BCDC and Westpoint Harbor are

1 two very different views. It is your job to make two plus
2 two equal more than four or less than four, but whatever
3 each side is telling you probably isn't quite what you
4 should be seeing.

5 It is your responsibility to ensure Westpoint Harbor's
6 compliance with its permit and that staff complies with its
7 own internal rules.

8 I looked carefully at hundreds if not thousands of
9 pages of allegations, responses, drawings, permit materials
10 and I know the harbor well because I keep my boat there.
11 And in the records I saw that staff doubled back and changed
12 decisions, imposed new requirements not in the original
13 permit and confused or disingenuously stretched the facts.

14 I am not happy. I am a former government employee. I
15 am asking you to look at what BCDC is doing with this case
16 very, very carefully. It's huge, there's a lot of material
17 there, it's easy to understand confusion, but it's not okay
18 to just ignore all the facts at all.

19 CHAIR SCHARFF: Thank you.

20 MS. HATTERY: Thank you very much for your time.

21 CHAIR SCHARFF: Carol Sheetz to be followed by Louis
22 Adamo.

23 MS. SHEETZ: Former First Lady Michelle Obama planted a
24 vegetable garden on the grounds of the White House. She
25 started a national dialogue on the benefits of organic

1 vegetables, exercise and weight loss.

2 Westpoint Harbor has their own community garden for
3 years. It is run for by the boaters and is for the benefit
4 of the members of our boating community. The garden does
5 not infringe on any of the walking paths for the public and
6 does not block any public views. The members do not use
7 pesticides and they create their own mulch and grow
8 delicious organic vegetables on the levee between the marina
9 and adjacent bittern pond. There is no economic benefit to
10 Mark Sanders and this garden is simply an amenity for the
11 boating public.

12 BCDC enforcement, the Executive Director and this
13 Enforcement Committee has determined that this is a
14 violation of Westpoint Harbor's permit and fined Westpoint
15 Harbor for the garden. Where are the BCDC rules that say it
16 is against organic vegetable gardens?

17 I urge you to take a closer look at these ridiculous
18 allegations. It is your responsibility to oversee these
19 people and they are not doing their job.

20 CHAIR SCHARFF: Thank you.

21 MS. SHEETZ: I know that they work hard, I believe that
22 they work hard, but they screwed up and you need to hold
23 them accountable, it's just not right. (Applause.)

24 CHAIR SCHARFF: Louis Adamo to be followed by Pauline
25 Ruijssenaars.

1 MR. ADAMO: My name is Louis Adamo. My wife and I have
2 lived aboard a sailboat together in the Bay Area since 1990
3 and at Westpoint since 2011.

4 What I would like to point out this morning is the
5 outrageousness of penalties assessed by this Committee.

6 At the hearing on November 16th last year, which I
7 attended, this Committee made it very clear that there were
8 two parts to their decision. The first had to do with
9 whether or not they would side with their own staff on the
10 validity of their allegations - no surprise how that went -
11 and the second was the penalty assessment. This part was
12 presented almost gleefully, oh, don't worry, there will be
13 penalties, followed by a very brief discussion where the
14 Committee asked the staff to remind them how much they had
15 spent putting together the allegation report, as if this had
16 any bearing on what the penalties should be. Then without
17 any reference to any details of anything that had been
18 presented during the hearing, in a very matter-of-fact tone,
19 it was stated that even a reduced penalty needed to be more
20 than they had spent. It sounds like mob tactics to me.

21 I don't believe this is in line with the spirit of why
22 this Commission was created and I think it is reprehensible.
23 Thank you. (Applause.)

24 CHAIR SCHARFF: Thank you.

25 Pauline Ruijssenaars, to be followed by Stephen

1 Estrada.

2 MS. RUIJSSENAARS: Thank you. My name is Pauline
3 Ruijsseenaars. A picture is worth a thousand words and I
4 think a video is probably worth a lot more than that so I
5 would like to roll a video. And I would urge all of you to
6 come and visit Westpoint Harbor, the place we love and we
7 are here to save.

8 (A video was played.)

9 MS. RUIJSSENAARS: Thank you. (Applause.)

10 CHAIR SCHARFF: Thank you.

11 Stephen Estrada to be followed by Sonya Boggs.

12 MR. ESTRADA: My name is Stephen Estrada. I have been
13 an active boater in California since 1977; been a part of
14 the Coast Guard Auxiliary and Ducks Unlimited, which is the
15 largest preservation of the wetlands in the country, and I
16 have found it to be an honor and a privilege to be in this
17 marina held by a man with such honor and integrity to do his
18 best to maintain the integrity of the land and the public
19 access around him.

20 No matter how hard your staff works, if they don't know
21 what they're doing it doesn't matter how hard they work.
22 They're giving you fines against things they can't even
23 enforce. To have somebody put in buoys that they are not
24 authorized to enforce them to put in. They don't even know
25 what they're enforcing.

1 So a big look needs to be done on what is being
2 enforced, why it's being enforced and who is benefit it is.
3 This is just a money grab. The arbitrary fine amounts, the
4 arbitrary times, the arbitrary things that you come up with
5 as a -- something that they're doing against the public
6 access is a ridiculous thing. Mark is doing nothing but
7 trying to attempt to make it a place for everybody to enjoy.
8 He is bringing revenue to the city and to the county and
9 access. You guys need to wake up. (Applause.)

10 CHAIR SCHARFF: Thank you.

11 Sonya Boggs to be followed by Dean Hyatt.

12 MS. BOGGS: Hello. I came here today to point out that
13 the revised Cease and Desist Order in front of you has
14 changes throughout that are not highlighted for you to
15 review, nor were they called out to Westpoint Harbor. This
16 is standard operating procedure for your organization and
17 part of a culture that the Commissioners need to change, if
18 only to protect BCDC's true purpose and mission.

19 The only real solution to this issue with Westpoint
20 Harbor is for the Commission to appoint a qualified neutral
21 third-party to review the facts of this case. Thank you.
22 (Applause.)

23 CHAIR SCHARFF: Thank you.

24 Dean Hyatt to be followed by Whitney Newton.

25 MR. HYATT: Good afternoon; my name is Dean Hyatt.

1 I understand that BCDC has brought a parking allegation
2 against Westpoint Harbor, alleging that Westpoint Harbor did
3 not provide proper parking spaces with the right signage for
4 public parking. Public parking spaces with painted signs,
5 just like the hundreds of public parking spaces at
6 neighboring Pacific Shores, are made available according to
7 The approved phased design plan. This allegation from
8 August 2008 is incorrect. There was only a dirt road at the
9 time and the design phase not yet complete. Once completed
10 the 12 public parking spaces were provided with signage.

11 I also understand that the signage on the ground is not
12 approved. Why has Pacific Shores not been fined yet for the
13 same signage? Please also note that putting a sign on a
14 post goes against the fish and wildlife agency as the top of
15 these posts provide a roosting place for prey that could
16 endanger the natural wildlife of Westpoint Harbor.

17 I urge you to take a close look and read all the facts
18 before casting your vote. Thank you. (Applause.)

19 CHAIR SCHARFF: Thank you.

20 Whitney Newton to be followed by David@101 Sports.

21 MR. NEWTON: Thank you very much. I am a boat owner
22 and have been involved in the marine industry in Europe,
23 Asia and the US since I graduated from Cal in 1958.

24 I have never seen a marine operation that is
25 environmentally concerned as Westpoint Harbor. It should be

1 shown and exhibited as how things should be. And I would
2 ask that if you have not actually physically been to
3 Westpoint Harbor and see what a beautiful place and what a
4 great job Mark Sanders and the staff have been doing, please
5 do so. Thank you very much. (Applause.)

6 CHAIR SCHARFF: Thank you.

7 David@101 Sports and then I have David Hyatt.

8 MR. WELLS: Thank you again for your time. Yes, David
9 Wells, one of the owners of 101 Surf Sports; we operate a
10 kayak and paddleboard rental business on the unauthorized
11 dock. We have made our life's work sharing San Francisco
12 Bay with the public, that's what drives us every day, and it
13 would be a shame to see that this body couldn't come to
14 agreement with somebody who shares such a common set of
15 goals.

16 I read your mission statement, I know exactly what Mark
17 is trying to do with his life, and what we are trying to do
18 is the same thing, so why can't we all get together. I
19 stress the need for an independent third-party entity to
20 come between these two because it's gotten personal. It
21 just needs to get back to facts and let's try to make
22 Westpoint Harbor the crown jewel that it is. Thank you for
23 your time. (Applause.)

24 CHAIR SCHARFF: Thank you.

25 David Hyatt to be followed by Kenyon Stewart.

1 MS. RUIJSSENAARS: This is Pauline Ruijsseenaars. Dave
2 Hyatt already spoke and Marianne Barolich is speaking for
3 Kenyon Stewart.

4 CHAIR SCHARFF: Okay. So -- and then Marianne Tracy
5 afterwards.

6 MS. BAROLICH-TRACY: Pauline has known me for a while,
7 when I was Barolich. I am Marianne Barolich-Tracy. I am a
8 Bay Area native and a resident of Redwood City for almost 20
9 years and I am here to talk about the buoys.

10 The process of applying for navigational and no-wake
11 buoys and nautical charts as part of the US Army Corps of
12 Engineering permits was completed in 2009. BCDC along with
13 NOAA, USCGC, FWS, DBW and Port of Redwood City, State Lands
14 and RWQCB were part of this permit. It was a long process
15 that started in '93 with NOAA being responsible for issuing
16 a permit circulated to all agencies, including BCDC. That
17 was electronically filed in 2002.

18 Permit requirements changed over time, specifically as
19 it relates to no-wake buoys. It was determined that the no-
20 wake buoys are a part of Redwood City, which has been
21 maintained at the entrance of the channel. This is all
22 pursuant to the California Harbor and Navigational Code. It
23 was also concluded during this meeting with BCDC
24 participation that no-wake buoys cannot be installed beyond
25 the channel entrance, it is a navigational hazard.

1 Westpoint Harbor did install no-wake buoys, 3 miles per
2 hour signs, on the port and starboard pilings inside the
3 entrance to the Westpoint Harbor.

4 I urge you to take a close look at this and read all
5 the facts before casting your vote. And I want to say I was
6 a paddler out of BIAC for seven years before the Westpoint
7 Harbor was established and it was a toxic hazard, as one of
8 our other speakers had said. And now as a resident of
9 Redwood City I enjoy this newly revived environment. It is
10 a beautiful place to be and I enjoy it all the time as a
11 resident of Redwood City and I would hate for it to go away.
12 Thank you for your time. (Applause.)

13 CHAIR SCHARFF: Thank you.

14 Jonathan Morris to be followed by Edward Stancil.

15 MR. MORRIS: Jonathan Morris. I work at a local
16 hospital there in Redwood City.

17 Regarding the earlier Scott restaurant matter
18 Commissioner Ranchod said something very wise and poignant
19 and I appreciated it and I'm sure everybody here did too.
20 The goal of this Commission is to balance considerations in
21 order to be reasonable and comply with regulatory laws.

22 Regarding the matter of safety. The gates and docks
23 and boats are prevented from being locked at this point.
24 The ladies' showers are prevented from being locked at
25 night. Many of us have family, mothers, children, nieces,

1 grandmothers. I have a nine-year-old niece Olivia with her
2 father and mother that stay on my boat occasionally. They
3 shower at night sometimes. They are unable to lock the
4 doors to the bathroom. It's a legitimate safety concern and
5 this is something that is being prevented.

6 And if these were your family, your daughter, your
7 niece, would you change that law? Would you change that
8 rule and allow them to lock the door just to go to the
9 shower? These young women and ladies. Well I know I would
10 if I had that choice. So something to consider.

11 And if you could just consider that goal of being
12 balanced and reasonable I think -- I think doing that,
13 allowing the gates to be locked going to the boats.
14 Sometimes the ladies stay at the boat at night by themselves
15 and that is something that is to be considered as well for
16 their safety, it's a reasonable matter.

17 And just in conclusion, I have been in many harbors, I
18 have had my boats in a number of different places. Mark
19 Sanders and his team run the best, well-run marina I have
20 ever been in. (Applause.)

21 CHAIR SCHARFF: Thank you.

22 Edward Stancil, to be followed by Terey Quinlan.

23 MR. STANCIL: It's Edward Stancil and I know Westpoint
24 Harbor from -- I have not been a tenant there; I live in
25 other harbors in Redwood City. I don't know if you guys

1 know this but there's been four harbors that have been
2 closed down, another one is going bye-bye on the 28th of
3 February.

4 Back to Mark's harbor. It's probably the finest harbor
5 I've seen on the West Coast. There is -- it's thought out
6 completely. There's sewer hook-ups for each place, you
7 don't have to take your boat around to pump out, you can
8 just hook it up and pump it out right there. A lot of
9 thought went into it and he's being fined for stuff.

10 I'm thinking the compassionate thing to do would be to
11 go ahead and work a deal, \$100,000. Let's get past this,
12 get going, give him a clean slate, start over and you can
13 have some more battles. Thank you. (Applause.)

14 CHAIR SCHARFF: Thank you.

15 Terey Quinlan to be followed by Nicole Sasaki.

16 MS. QUINLAN: Thank you for having us. I am here -- I
17 am Terey Quinlan and I've worked for many nonprofits in the
18 Bay Area helping to serve the Bay Area community. This is
19 Allison and Ashley, they are my community members from
20 Westpoint Harbor, they are helping me out today.

21 It's been curious to me that BCDC does not conduct
22 talks on boating and the environment in the South Bay and
23 elsewhere. The Coast Guard, also an enforcement agency,
24 holds boat safety checks and boating classes and offers this
25 for free and low-cost. They make it known that they are a

1 helpful entity - yes, with their rules - yet they are also
2 there to educate and provide information for safe boating.
3 I wondered why the same type of presence -- I wonder why,
4 sorry, the same type of presence from agencies such as BCDC
5 is not in place to help boaters be responsible stewards of
6 the Bay?

7 Not only are there important environmental issues of
8 wildlife preservation, which boaters by the way care deeply
9 about, there is the important issue of rising seas. Just as
10 NASA has engaged regular people as citizen scientists and
11 has been done in the Chesapeake Bay to learn about dolphin
12 life, would it not be better to develop relationships with
13 boaters rather than trying to eliminate any and all boating
14 in the South Bay? Wouldn't BCDC want to encourage
15 engagement of those of us who love the Bay and love being on
16 the water to help gather useful information that may impact
17 the fate of us all and our Bay.

18 You may say that BCDC does not conduct educational
19 offerings and that you represent an enforcement arm. Yet,
20 we all know the difference in policing, for example, between
21 the by-the-book officer who is only there to write up
22 tickets --

23 CHAIR SCHARFF: Thank you.

24 MS. QUINLAN: -- and make arrests and the benevolent
25 enforcer who cares about the general mood and atmosphere of

1 the town, who cares about the children, the men and the
2 women.

3 Excuse me, just one more minute, I have one more -- two
4 more sentences.

5 Might it not be a more productive relationship with the
6 boaters to engage them. To quote a famous early leader of
7 the environmental movement and innovative and enthusiastic
8 boater and lover of the sea, Jacques Cousteau, "The sea, the
9 great unifier, is man's only hope." Now as never before the
10 old phrase has a literal meaning, we are all in the same
11 boat. (Applause.)

12 CHAIR SCHARFF: Thank you.

13 Nicole Sasaki, to be followed by Peggy Raun-Linde.

14 MS. SASAKI: Good afternoon, Commissioners. I am
15 Nicole Sasaki, associate attorney with San Francisco
16 Baykeeper.

17 Baykeeper supports the Cease and Desist Order and Civil
18 Penalty Order against Westpoint Harbor. In accordance with
19 the McAteer-Petris Act, BCDC originally granted this permit
20 on the basis that the project would provide the maximum
21 feasible public access to the Bay because of the permit's
22 public access requirements and would also result in the
23 protection of Bay resources including the habitat at Greco
24 Island and the Redwood City salt ponds. Because of the
25 permit, special conditions required habitat protection and

1 mitigation.

2 These requirements must be complied with. Baykeeper
3 appreciates BCDC's action to protect the sensitive habitat
4 in the South Bay and restore public access in full. Thank
5 you.

6 CHAIR SCHARFF: Thank you.

7 Peggy Raun-Linde, to be followed by Fernanda Castelo.

8 MS. RAUN-LINDE: My name is Peggy Raun-Linde, I have a
9 boat at Westpoint Harbor. I began sailing in 1968 and I am
10 a Bay Area resident. I am also an educator.

11 I need to let you know that I am in favor of a third-
12 party neutral decider in this fact because, I'm sorry but
13 the facts are BCDC is being disingenuous with you as a
14 Committee.

15 From the beginning of this project the project had
16 three phases of development. Brad McCrea knows this, he sat
17 in meetings where it was discussed. He knows that from the
18 beginning public access would be phased in in Phase 2 and
19 Phase 3. The phasing of the project was talked about in the
20 Design Review Committee, it was in the original information
21 provided to the Commission before the staff - note - before
22 the staff inserted a different plan by switching the
23 drawings. It was not a secret that the public access would
24 be phased in.

25 Yet when you read the Cease and Desist Order you think

1 that BCDC staff is being personally attacked, surprised,
2 appalled and genuinely served unjustly. In actuality I go
3 back to the sentence, it was in the original information
4 provided to the Commission before the staff inserted a
5 different plan by switching the drawings, okay.

6 So, please take a look. Please consider a neutral
7 third-party. Thank you. (Applause.)

8 CHAIR SCHARFF: Thank you.

9 Fernanda Castelo to be followed by Paula Bozinovich.

10 MS. CASTELO: Good afternoon. Westpoint Harbor is
11 strategically placed at a place in the South Bay that is, as
12 a boater and a sailor it's the last landmark we see and as
13 we are coming in to the harbor it's the first one to see.
14 So for boaters and sailors like myself, that is safety.

15 This has been a process and a dream of Mr. Mark Sanders
16 in the last 20 years and he brought these ideas of design,
17 sanctuary and environmentally and sustainability from a
18 boater's perspective. Not from one person's vision but to
19 benefit the thriving community that has sprouted and sustain
20 an inner harbor including Stanford boat house, Bair Island's
21 rowing house, Sequoia Yacht Club, Peninsula Youth Sailing
22 Foundation and also headquarters of California Inclusive
23 Sailing, which I'm a part of.

24 Think about that. We only have a short time in this
25 life but we must continue the vision that is always a work

1 in progress. And I encourage the policy head and
2 institution in this room that we look at the future by
3 beginning to understand the perspectives of the end-users
4 constantly. And if it wasn't for Mark Sanders this model is
5 slowly reaching out to other ports all over the world
6 because I make it -- and I make it my mission when I do
7 travel in different marinas, what we have here in Redwood
8 City. Thank you very much.

9 CHAIR SCHARFF: Thank you. (Applause.)

10 Paula Bozinovich, to be followed by Captain Aimee
11 Gifoce.

12 MS. BOZINOVICH: Good afternoon. My name is Paula
13 Bozinovich and basically I have been retired from a small
14 company you may have heard of called Apple. I worked there
15 for 33 years in a variety of marketing capacities and I am
16 pretty darn well-versed in the areas of compliance and
17 negotiation. And the only reason I raise this is because
18 when I look at the reality versus what's been posted on
19 websites as far as infractions I have to raise my eyebrows
20 in utter confusion.

21 For example, there's been a lot of chatter in here
22 about lack of public access and that this is a private
23 facility. We berth our boat there and I can say it's
24 anything but. Westpoint Harbor has docks and facilities
25 open for public access and they actually have 1,000 feet of

1 open visiting berthing; I know because my friends have used
2 it.

3 Another thing that has been a bit of a puzzlement for
4 me is there haven't been like public access paths. Well I
5 can tell you, there's a heck of a lot of people trotting
6 around paths that aren't public access. In fact, I'm
7 thinking of being a consultant for some of these companies
8 over in the Pacific Shores complex based on all the chatter
9 I hear from their engineers and legal attorneys.

10 CHAIR SCHARFF: Thank you.

11 MS. BOZINOVICH: So anyway, there's a lot of people
12 floating around and there's a lot of public access and I
13 thank you, Mark, for allowing us to store our boat in your
14 wonderful, pristine, clean, environmentally friendly
15 facility. (Applause.)

16 CHAIR SCHARFF: Captain Aimee.

17 SPEAKER FROM THE AUDIENCE: She had a delivery she had
18 to go out on.

19 CHAIR SCHARFF: All right.

20 David Laird, to be followed by Lisa Belenky.

21 MR. LAIRD: Thank you. Members of the Enforcement
22 Committee, my name is David Laird, I'm a diver, I clean
23 hulls of yachts underwater. I started at Westpoint when
24 there were just three boats there and one of my clients
25 moved there from another marina. It's undoubtedly the

1 nicest marina that I have ever worked in or been around and
2 Mark has created a real beautiful community.

3 I want to just share one example of what -- mirroring
4 what everyone else is mentioning, some strange little
5 contradictions.

6 Westpoint Harbor is a certified, clean marina. That
7 means that the best management practices are followed. Part
8 of those practices are planning and preparation for a fuel
9 spill in the marina. There is a Tuff Shed with fuel
10 absorbent booms and diapers to clean up any spills and it's
11 behind the garbage dumpsters on the site.

12 BCDC enforcement, the Executive Director and this
13 Committee have decided that the boom shed is illegal and
14 must be removed. California says such sheds less than 120
15 square feet, which it is, do not require permits. This is
16 another example of the \$30,000 fines that are a total
17 injustice.

18 Members of the Enforcement Committee are charged with
19 enforcing the intent of the law on permittees as well as the
20 agency itself. This clearly failed as the staff violates
21 its own bill of rights and procedures. I urge you to take a
22 close look before casting your vote. Thank you.

23 CHAIR SCHARFF: Thank you. (Applause.)

24 Lisa Belenky.

25 MS. BELENKY: Yes. Good afternoon; Lisa Belenky with

1 the Center for Biological Diversity.

2 I want to echo the comments that were made by
3 Baykeeper, our colleagues at Baykeeper. Our interest in
4 this matter is to see that the permit conditions that
5 protect habitat like Greco Island and the no-wake zone and
6 the other issues as far as perching and some of the trees
7 that were planted, that those are enforced. It is very
8 important to enforce these kinds of permit conditions that
9 were a pre-condition of the marina being placed there.

10 I understand that people locally feel like, "Oh, the
11 birds seem to be doing really well," but part of the reason
12 is because of the refuge. And the word "refuge" is very
13 important. This is one of the last best places for a lot of
14 our bird species in this area. And throughout the Bay we
15 have similar problems, people think, "Oh, there's tons of
16 birds" but really it's in these very small refuges that are
17 protected. And we must ensure that there are sufficient
18 conditions to protect them.

19 So if these conditions are somehow too difficult to
20 enforce as in the signage or buoys for the no-wake we do
21 hope that a solution can be found, but the important piece
22 is that the condition itself is enforced. Thank you so
23 much.

24 CHAIR SCHARFF: Thank you. (Applause.)

25 Gail Raabe, to be followed by Sheila Finch.

1 MS. RAABE: Good afternoon, Gail Raabe, I am
2 representing Citizens Committee to Complete the Refuge.

3 As we stated in our November letter and our oral
4 testimony, BCDC's primary responsibility is safeguarding San
5 Francisco Bay habitats and wildlife and therefore it is
6 imperative that measure outlined in the special conditions
7 for the Westpoint Harbor permit are put in place as soon as
8 possible.

9 We reviewed the Executive Director's revisions to the
10 Order and came prepared to state our support for those
11 modifications. But we support your recommendation this
12 afternoon to send the original Proposed Cease and Desist and
13 Civil Penalty Order to the full Commission for
14 consideration.

15 Thank you very much for all your efforts, we appreciate
16 it. Thank you.

17 CHAIR SCHARFF: Thank you.

18 So Sheila Finch, to be followed by Barbara Pierce.

19 MS. FINCH: I want to thank you for hearing my
20 comments. My name is Sheila Finch and I am an artist and a
21 painter of over 50 years. I have had my boat at Westpoint
22 Marina since it opened back in 2008.

23 Westpoint Marina is a beautiful place with 180 degree
24 views of the South Bay.

25 As I understand it, the trees and landscaping in and

1 around Westpoint Harbor - that I love to paint, by the way -
2 were all part of the original permit process and they were
3 approved. In fact, the type of trees were specified by the
4 permit and CEQA requirements for those plantings along
5 Westpoint Harbor Slough and the harbor itself.

6 The landscape plan was presented to the Commission back
7 in 2003 with all the details mentioned before and approved
8 in 2006 by BCDC. I watched those little young trees that
9 Mark planted; I watched them as they grew up and I painted
10 them. Now ten years the BCDC desires to remove those trees
11 that were specifically specified and approved in accordance
12 with the permit. So why did these mandated and approved
13 trees fall out of favor and fall out of the permit after ten
14 years?

15 CHAIR SCHARFF: Thank you.

16 MS. FINCH: I'm sorry?

17 CHAIR SCHARFF: Your time is up.

18 MS. FINCH: Okay, thank you. It doesn't make sense to
19 me. I just want you to consider that these allegations may
20 be put there to confuse the Commissioners. Thank you for
21 your time.

22 CHAIR SCHARFF: Thank you. (Applause.)

23 Barbara Pierce, to be followed by Diane Howard.

24 MS. PIERCE: Thank you very much. My name is Barbara
25 Pierce, I am a former mayor and council member from Redwood

1 City. I had the opportunity to sit with Mark Sanders on the
2 Bair Island Task Force, which was a multi-agency volunteer
3 task force that was looking at beneficial reuse of dredge
4 materials from the Port to be used to restore Bair Island.

5 In his capacity as the owner of Westpoint Marina I have
6 always found him to be helpful, supportive of public access,
7 wanting to have green marinas and ensure that all of the
8 boaters and people who are on the waterfront support a
9 healthy environment. So I speak to you for that.

10 I am also a rower out of Bair Island Aquatic Center and
11 encourage you to think about the fact that that area is
12 tidal, so that the more stuff we put in the narrow creekways
13 and passageways, when the water goes down because it is
14 tidal it makes it more dangerous for users to use that area.

15 I encourage you to think about what the enforcement
16 fines would do and whether you are creating a better area
17 out there or whether it's merely penalizing Mr. Sanders.
18 Thank you. (Applause.)

19 CHAIR SCHARFF: Thank you.

20 Diane Howard, to be followed by Mike Dawood.

21 VICE MAYOR HOWARD: Thank you, Mr. Chair, and members
22 of the Commission and staff. Thank you for allowing me to
23 speak today. My name is Diane Howard; I am the Vice Mayor
24 of Redwood City.

25 I first met Mark Sanders back in the '90s when we

1 worked together on a group called Aqua Terra. We had
2 abandoned boats and debris in our sloughs and waterways and
3 we banded together and worked to clean up our waterways for
4 people to enjoy for the future. I found him to be very
5 supportive and passionate and a good steward of our
6 waterways.

7 Jumping to today, Mark continues to be a good steward
8 of our waterways. He is in compliance with all our local
9 Redwood City permits. He stays involved in keeping our
10 waterways clean and safe. And a benefit to Redwood City, he
11 has allowed the stationing of the fire boat and the police
12 boat to be used for emergency services on our waterways and
13 we are very grateful for that.

14 I am sad to hear that litigation may be in the future.
15 I am hoping that maybe a third party could step in and help
16 mitigate these polarizing issues. Thank you for your time.
17 (Applause.)

18 CHAIR SCHARFF: Thank you.

19 Mike, go ahead.

20 MR. DAWOOD: Hi, my name is Miles Dawood, I'm an ex-
21 yacht broker from Redwood City. I have known Mark Sanders
22 since the late '90s when he was waiting 12 years for a
23 permit to build this place.

24 My point today is for Mr. Zeppetello and the legal team
25 of Westpoint Harbor used to question whether BCDC has

1 jurisdiction over you. According to *Maine v. Thiboutot* in
2 1990, if jurisdiction is challenged no further proceedings
3 can be allowed until proof of jurisdiction. That includes
4 all fines and amendments made. Thank you.

5 CHAIR SCHARFF: Thank you. And that was our final
6 public speaker. Thank you all for coming. (Applause.)

7 So we come back to the Commission. I think we need a
8 motion, a formal motion to send it up to the full Commission
9 with a recommendation.

10 MR. ZEPPETELLO: Excuse me. Should you close the
11 public hearing?

12 CHAIR SCHARFF: Yes, close the public hearing.

13 COMMITTEE MEMBER RANCHOD: Let me do that. I want to
14 thank the members of the public who came here today, took
15 the time out of their day to travel here for the agendized
16 item. I am going to make the motion to close the public
17 hearing at this point.

18 CHAIR SCHARFF: Second. So all in favor?

19 (Ayes.)

20 CHAIR SCHARFF: The public hearing is closed.

21 COMMITTEE MEMBER RANCHOD: I've reviewed the materials
22 for this item and have heard the comments from staff and
23 also from counsel. And as the Committee Chair indicated
24 earlier, on the advice of counsel and out of an abundance of
25 caution I support sending the original Proposed Order that

1 was considered in November, and upon which a public hearing
2 was held, be sent to the full Commission for its
3 consideration.

4 CHAIR SCHARFF: All right, I'll second that.

5 Do you want to speak?

6 COMMITTEE MEMBER GILMORE: Yes. Before we have a vote
7 I just want to add some clarity to what the Committee here
8 can do. There were a lot of people who came up and asked
9 for various remedies that, you know, perhaps you wanted to
10 see.

11 And I want to make it clear that we listen very
12 carefully to each and every one of you, but we are -- as the
13 Enforcement Committee we are a subset of the full Commission
14 and as such our purview is very, very limited. We can
15 make -- We have certain authorities and other authorities we
16 don't have; so some of the suggestions that were made today,
17 even if we wanted to we can't take advantage of.

18 And we are sitting in the position of having to
19 recommend a course of action to the full Commission based in
20 large part by and informed by our November meeting. And I
21 just wanted to say, at that point in time, the way we left
22 it was we were hopeful that the parties would reach an
23 agreement, that was one path, and then the other path was if
24 they didn't reach an agreement the Commission had said that
25 we would recommend our November decision to the full

1 Commission. So that's kind of where we are right now.

2 CHAIR SCHARFF: Thank you.

3 All in favor of the motion?

4 (Ayes.)

5 CHAIR SCHARFF: Thank you all for coming.

6 So we have one more item. I'm not sure we have time
7 for it so I think we are just going to adjourn the meeting.

8 COMMITTEE MEMBER RANCHOD: Actually, Commissioner.

9 CHAIR SCHARFF: Go ahead.

10 COMMITTEE MEMBER RANCHOD: On one of the first items,
11 which was the approval of the minutes. I would like to
12 abstain from those minutes because I was actually not
13 present at the November hearing and the minutes should be
14 corrected to reflect that I was not there.

15 CHAIR SCHARFF: Okay.

16 COMMITTEE MEMBER RANCHOD: Thank you. Did you catch
17 that?

18 All right, meeting adjourned.

19 (Thereupon, the Enforcement Committee
20 meeting was adjourned at 12:56 p.m.)

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1 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, Enforcement Committee Meeting
7 and thereafter 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 23rd day of February, 2017.

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16 RAMONA COTA, CERT**478
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