

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

I N D E X

	<u>Page</u>
1. Call to Order	8
2. Roll Call	8
3. Public Comment Counsel Michael Verna	8
4. Approval of Draft Minutes for November 16, 2017	10
5. Public Hearing and Possible Vote on a Recommendation to the Commission Regarding Scott's Jack London Seafood, Inc.'s Appeal of the Executive Director's Determination that Scott's Is Not Entitled to a Waiver of 15% of the Total Penalty Amount Under Cease and Desist and Civil Penalty Order No. CDO 2017.01.	10
 <u>Presentations</u>	
<u>Permittee</u> Counsel Michael Verna	16
<u>BCDC Staff</u> Counsel Marc Zeppetello	23
Committee Members' Questions of the Parties	27
 <u>Public Speakers</u>	
Raymond Gallagher	32
Liz Gallagher	34
Dr. Stephen Lewis	36
Ignacio De La Fuente	36
Sandré Swanson	38
Ramiro Carabez	40
Steve Hanson	42
Kelly Hodgins	43
Scott Edin	44
Chris McKay	45
Committee Members' Questions and Deliberations	46
Motion	56
Vote	56

I N D E X

	<u>Page</u>
6. Closed Session on Pending Litigation: (1) Mark Sanders and Westpoint Harbor, LLC v. San Francisco Bay Conservation and Development Commission, San Francisco Superior Court Case No. CPH-17-515880; and (2) Recommended Enforcement Decision Involving Proposed Cease and Desist and Civil Penalty Order No. CDO 2018.01; Mark Sanders and Westpoint Harbor, LLC.	57
7. Public Hearing and Possible Vote on a Recommended Enforcement Decision Involving Proposed Cease and Desist and Civil Penalty Order No. CDO 2018.01; Mark Sanders and Westpoint Harbor, LLC.	57
 <u>Presentations</u>	
<u>BCDC Staff</u>	
Counsel Marc Zeppetello	74
 <u>Permittee</u>	
Counsel Kevin Sadler	78
 <u>Public Speakers</u>	
Maureen O'Connor Sanders	83
Kenneth Parker	84
Jingli Wang	85
Bob Wilson	86
Doug Furman	87
Michelle Bonhof	88
Gordon Muwat	89
David Hattery	89
Brenda Hattery	90
Carol Sheetz	91
Louis Adamo	93
Pauline Ruijssenaars	94
Stephen Estrada	94
Sonya Boggs	95
Dean Hyatt	95
Whitney Newton	96
David Wells	97
Marianne Barolich-Tracy	98
Jonathan Morris	99
Edward Stancil	100
Terey Quinlan	101
Nicole Sasaki	103

I N D E X

	<u>Page</u>
<u>Public Speakers (continued)</u>	
Peggy Raun-Linde	104
Fernanda Castelo	105
Paula Bozinovich	106
David Laird	107
Lisa Belenky	108
Gail Raabe	109
Sheila Finch	110
Barbara Pierce	111
Diane Howard	112
Miles Dawood	113
 Committee Members' Questions and Deliberations	 114
 Motion to Close the Public Hearing	 114
Vote	114
 Motion to Send the Proposed Order Considered in November to the full Commission for its Consideration	 114
Vote	116
 8. Report of the Chief of Enforcement	 --
 9. Adjournment	 116
 Certificate of Reporter	 117

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 cab 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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