



RBOC
Protecting your boating interests.™

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November 15, 2017

BCDC Enforcement Committee Members and BCDC Commissioners
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Via email: marc.zepetello@bcdc.ca.gov

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

Dear Enforcement Committee Members and BCDC Commissioners:

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

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

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

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

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

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

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

Thank you for your consideration.

Sincerely,

Peter Robertson, RBOC President