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16 SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
17

18 IN THE MATTER OF:

19
20 VIOLATION REPORT/COMPLAINT FOR THE
21 IMPOSITION OF ADMINISTRATIVE CIVIL
22 PENALTIES No. ER2010.013
23

24 PROPOSED CEASE AND DESIST AND CIVIL
25 PENALTY ORDER No. CDO 2017.04
26

27 MARK SANDERS AND
28 WESTPOINT HARBOR, LLC
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RESPONDENTS' OBJECTIONS TO LETTER AND
ATTACHMENT FROM CITIZENS COMMITTEE TO
COMPLETE THE REFUGE

1 Respondents Mark Sanders and Westpoint Harbor, LLC (“Respondents”) object to the
2 letter and attachment submitted by Citizens Committee to Complete the Refuge (“CCCR
3 Letter”). The CCCR Letter is being used to introduce new purported evidence that should have
4 been included with the Violation Report/Complaint for the Imposition of Administrative Civil
5 Penalties (Enforcement Investigation No. ER2010.013) (“VR/C”), and that Respondents should
6 have had an opportunity to address in their Statement of Defense. The CCCR Letter has been
7 submitted less than two weeks before the Enforcement Hearing, and Respondents received the
8 CCCR Letter a mere 10 days before the Enforcement Hearing. Far from merely taking the form
9 of a “public comment letter,” the letter is essentially improper testimony in the form of multiple
10 assertions of unverified purported facts, improper purported expert opinions, as well as annotated
11 purported exhibits allegedly supporting the same.¹ Under BCDC’s regulations, the CCCR Letter
12 cannot be used as evidence to support any factual findings or any enforcement decision.
13 Furthermore, as detailed in the specific objections below, many of the purported factual claims in
14 the CCCR Letter are additionally inadmissible statements due to hearsay, improper opinion,
15 speculative assertions, and lack of personal knowledge.

16 Respondents request that the Enforcement Committee strike the entirety of the CCCR
17 Letter, or in the alternative, strike purported factual claims improperly contained in the CCCR
18 Letter and exclude statements that are inadmissible under the Evidence Code.

19 **General Objection to the Entire CCCR Letter**

20 Respondents object to the entirety of the CCCR Letter as improper under BCDC’s
21 regulations regarding hearsay evidence and introduction of new evidence. The CCCR Letter
22 contains much alleged evidence being offered to support factual findings in of itself, including
23 but not limited to: the effects of alleged lack of tree removal and buoy installation on the listed

¹ For example, the CCCR letter characterizes its own contents as “ample evidence” of a claim. (CCCR Letter, p. 4.)

1 clapper rail, western snowy plover, and salt marsh harvest mouse living on nearby Greco Island
2 (CCCR Letter, pp. 3, 7-8); the characteristics of the Monterey cypress tree and Lombardy poplar
3 tree that allegedly do not meet the requirements for high-suitability designation (CCCR Letter,
4 pp. 3-4); the allegedly “ample evidence” that the Monterey cypress tree is used by predatory
5 raptors (CCCR Letter, p. 4); the alleged lack of records regarding Westpoint Harbor found by the
6 Coast Guard Commander (CCCR Letter, p. 6); the alleged level of activity and wakes generated
7 by ferry services (CCCR Letter, pp. 6-7); and the alleged failure to provide a shorebird roost
8 habitat and the alleged effects this had on shorebirds this year (CCCR Letter, pp. 8-9, 12-13). In
9 addition, the letter includes what amounts to be newly created trial exhibits in the form of
10 annotated and manipulated images designed by CCCR, such as images allegedly annotated with
11 the locations of 85-foot setback requirements in the marina. (CCCR Letter, p. 11.)

12 The introduction of hearsay evidence offered to support factual findings in of itself is
13 explicitly barred by BCDC’s procedural rules at this stage. Section 11329(b) of Title 14 of the
14 California Code of Regulations states: “Hearsay evidence may be used for the purpose of
15 supplementing or explaining other evidence but **shall not be sufficient in itself to support a**
16 **finding** unless it would be admissible over objection in a civil action or unless it is in the form of
17 a declaration under penalty of perjury or in the form of another document **referred to in a**
18 **violation report or complaint for the imposition of civil penalties** and the declarant or author
19 of the other document is subject to cross-examination as provided in Sections 11321, 11322, and
20 11327.” Cal. Code Regs. tit. 14, § 11329(b). In addition, Section 11321(b) requires: “The
21 violation report shall refer to all documents on which the staff relies to provide a prima facie
22 case.” Cal. Code Regs. tit. 14, § 11321(b).

1 Here, the CCCR Letter was never “referred to in a violation report or complaint for the
2 imposition of civil penalties”—indeed, at the time the VR/C was issued, the CCCR Letter did not
3 exist. Cal. Code Regs. tit. 14, § 11329(b). Instead, the letter was submitted *more than three*
4 *months after the VR/C was mailed*, and appears to be used to assert new purported facts to rebut
5 Respondents’ Statement of Defense. Because the CCCR Letter was not submitted in compliance
6 with proper procedures, under the California Code of Regulations, the letter is hearsay evidence
7 that “shall not be sufficient in itself to support a finding” and therefore cannot be used as it is
8 here to serve as the sole evidence of several factual claims. *Id.* In addition, BCDC staff cannot
9 rely on the CCCR Letter in providing a prima facie case. Cal. Code Regs. tit. 14, § 11321(b).

10 “A public entity has a ministerial duty to comply with its own rules and regulations
11 where they are valid and unambiguous.” *Galzinski v. Somers*, 2 Cal. App. 5th 1164, 1171 (Cal.
12 Ct. App. 2016); *see also Gregory v. State Bd. of Control*, 73 Cal. App. 4th 584, 595 (1999)
13 (including duties codified in the California Code of Regulations). A duty is ministerial when
14 there is a clearly defined rule. *Redwood Coast Watersheds All. v. State Bd. of Forestry & Fire*
15 *Prot.*, 70 Cal. App. 4th 962, 970 (1999). As discussed above, Section 11329(b) and Section
16 11321(b) are valid, unambiguous, and clearly defined rules that do not allow hearsay evidence
17 such as the CCCR Letter to be the sole evidence used to support a finding of fact when the letter
18 was not referred to in the VR/C (and the author is not subject to cross-examination). Respondents
19 therefore request the Enforcement Committee require BCDC staff to comply with its rules and
20 strike the CCCR Letter in its entirety.

21 **Evidentiary Objections to CCCR Letter**

22 In addition, Respondents submit the following evidentiary objections to the CCCR Letter.

1 Objection Number 1

2 Letter Text: “BCDC must assume that it is equally true that Westpoint Harbor’s
3 consistent failure to implement the protective measures required in the BCDC permit creates
4 unacceptable risks, and possibly illegal impacts, to these species threatened by extinction and to
5 their sensitive habitats.” (CCCR Letter, p. 2.)

6 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
7 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
8 §§ 800, 803). The statement is an improper opinion because CCCR members have not been
9 established as experts on what constitutes “unacceptable risks” or “possibly illegal impacts” to
10 species. CCCR members have not established that they have personal knowledge of the same,
11 and therefore the statement lacks foundation and is speculative.

12 Objection Number 2

13 Letter Text: “To date, Respondents have failed to remove trees which act as a potential
14 perch for raptors that can then prey upon listed clapper rail, western snowy plover and salt marsh
15 harvest mouse living on nearby Greco Island.” (CCCR Letter, p. 3.)

16 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
17 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
18 §§ 800, 803). CCCR members have not established that they have personal knowledge of the
19 alleged failure to remove trees, and therefore the statement lacks foundation and is speculative.
20 The statement about raptors is an improper opinion because CCCR members have not been
21 established as experts on the habitats and prey of raptors. CCCR members have not established
22 that they have personal knowledge of the same, and therefore the statement lacks foundation and
23 is speculative.

1 Objection Number 3

2 Letter Text: “The Monterey cypress does not exhibit any of the three characteristics
3 required for High Suitability. The height at maturity is ‘80 feet’, well over the 25-foot limit
4 (<http://dendro.cnre.vt.edu/dendrology/syllabus/factsheet.cfm?ID=191>), the shape is not
5 columnar, but ‘generally broadly spreading,’ ([http://www.conifers.org/cu/Cupressus_](http://www.conifers.org/cu/Cupressus_macrocarpa.php)
6 [macrocarpa.php](http://www.conifers.org/cu/Cupressus_macrocarpa.php)), and this species does not have fine limbs or closed, dense crown structure, but
7 rather, ‘fairly sparse, often composed of few major limbs from near ground.’
8 ([http://www.conifers.org/cu/Cupressus_](http://www.conifers.org/cu/Cupressus_macrocarpa.php)
[macrocarpa.php](http://www.conifers.org/cu/Cupressus_macrocarpa.php)).” (CCCR Letter, p. 3.)

9 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
10 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); hearsay (Evid. Code, § 1200);
11 lack of authentication (Evid. Code, § 1401). The statement is hearsay because it is an out of court
12 statement submitted for the truth of the matter asserted. In addition, the alleged information from
13 the websites has not been verified or authenticated. CCCR members have not established that
14 they have personal knowledge of the Monterey cypress tree, and therefore the statement lacks
15 foundation and is speculative. In addition, the statement is an improper opinion because CCCR
16 members have not been established as experts on the Monterey cypress tree.

17 Objection Number 4

18 Letter Text: “The Pacific Shores Center Landscape Tree Suitability Index contradicts
19 Respondents’ assertions:

**Pacific Shores Center
Suitability Analysis for Preliminary Landscape Palette
Relative to Minimizing Raptor and Raven Nesting Suitability**

Tree Species	Tree Characteristics ¹	Landscaping Suitability Index ²
<i>Populus nigra</i> Lombardy poplar	40 to 100 feet; dense columnar shape with upward reaching branches	Poor to Very Poor

(CCCR Letter, p. 4.)

Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); hearsay (Evid. Code, § 1200); lack of authentication (Evid. Code, § 1401). The statement is hearsay because it is an out of court statement submitted for the truth of the matter asserted. In addition, the alleged information from the Pacific Shores Center Landscape Tree Suitability Index has not been verified or authenticated. CCCR members have not established that they have personal knowledge of the Lombardy poplar tree, and therefore the statement lacks foundation and is speculative. In addition, the statement is an improper opinion because CCCR members have not been established as experts on the Lombardy poplar tree.

Objection Number 5

Letter Text: ““The property also provides potential foraging habitat for a variety of birds, including raptors, and bats that may forage or nest/roost within the adjacent Monterey cypress (*Hesperocyparis macrocarpa*) trees on site...’

‘Furthermore, raptors such as the Ferruginous hawk (*Buteo regalis*) and Northern harrier (*Circus cyaneus*) are known to winter in the Monterey area. The grove of Monterey cypress trees would be suitable for stopover or winter roosting for raptors...’

‘Peregrine Falcons nest in the Monterey cypress trees around the Hearn farm house.’”

1 (CCCR Letter, p. 4-5) (internal citations omitted).

2 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
3 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); hearsay (Evid. Code, § 1200);
4 lack of authentication (Evid. Code, § 1401). The statement is hearsay because it is an out of court
5 statement submitted for the truth of the matter asserted. In addition, the alleged information from
6 the cited websites has not been verified or authenticated. CCCR members have not established
7 that they have personal knowledge of the Monterey cypress trees or the habitats of raptors, and
8 therefore the statement lacks foundation and is speculative. In addition, the statement is an
9 improper opinion because CCCR members have not been established as experts on the Monterey
10 cypress trees or the habitats of raptors.

11 Objection Number 6

12 Letter Text: “The Westpoint Marina has been operational since 2008. Yet, today
13 Respondents have not installed and maintained a buoy system adjacent to the navigation channel
14 of Westpoint Slough to identify the ‘No Wake’ speed zone, delineate the center of the channel
15 for adequate draw, and discourage boaters from deviating out of the navigable channel.” (CCCR
16 Letter, p. 5.)

17 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
18 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702). CCCR members have not
19 established that they have personal knowledge of the alleged failure to install and maintain a
20 buoy system, and therefore the statement lacks foundation and is speculative.

1 Objection Number 7

2 Letter Text: “In fact, there is undisputed testimony under penalty of perjury by Matthew
3 Leddy that no buoys stating ‘no wake’ exist anyplace in Westpoint Slough and recent
4 photographs attesting to that fact.” (CCCR Letter, p. 5.)

5 Grounds for Objection: Cal. Code Regs. tit. 14, §§ 11329(b), 11321(b); improper opinion
6 (Evid. Code, §§ 800, 803). Under BCDC’s own regulations, any hearsay evidence including
7 testimony from the Matthew Leddy declaration “shall not be sufficient in itself to support a
8 finding” such as the existence of signs or the authenticity of photographs allegedly attesting to
9 the same. Evidence from the Matthew Leddy declaration also cannot be relied on by BCDC staff
10 to establish a prima facie case. In addition, the statement that the Matthew Leddy testimony is
11 “undisputed” is an improper opinion.

12 Objection Number 8

13 Letter Text: “Respondents claim that ‘no wake’ buoys could not be installed in Westpoint
14 Slough as a result of meetings with various agencies, and Coast Guard regulations... There is no
15 evidence from government agencies, including the Coast Guard, about this Sanders claimed
16 ‘agreement.’ BCDC included the buoy requirements in the permit in 2006 – so clearly no such
17 non-buoy agreement had been reached.” (CCCR Letter, p. 6.)

18 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
19 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
20 §§ 800, 803). CCCR members have not established that they have personal knowledge of
21 whether Respondents met with various agencies or reached an agreement with those agencies,
22 and therefore the statement lacks foundation and is speculative. The statement that “clearly no
23 such non-buoy agreement had been reached” is an improper opinion because it is an assumption

1 not rationally based on the perception of CCCR members, as the buoy requirements could have
2 been included despite an initial or later agreement otherwise.

3 Objection Number 9

4 Letter Text: “Citizens Committee sent a FOIA to the Coast Guard for all records
5 regarding placement of buoys in Westpoint Slough, and records regarding buoys/signs near
6 Greco Island. After a thorough search the Coast Guard Commander responded on October 17,
7 2017 that it had no records regarding Sanders, West Point Harbor Marina, or buoys in Westpoint
8 Slough or near Greco Island for the period 2001 to the present.” (CCCR Letter, p. 6.)

9 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
10 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
11 §§ 800, 803); hearsay (Evid. Code, § 1200). The Coast Guard Commander’s alleged statement is
12 hearsay because it is an out of court statement submitted for the truth of the matter asserted. The
13 characterization of the Coast Guard’s search as “thorough” is not based on personal knowledge,
14 lacks foundation, is speculative, and constitutes improper opinion.

15 Objection Number 10

16 Letter Text: “The evidence submitted on the PROP high speed private ferry service is
17 highly relevant as it shows that the existing red/green buoys, and single ‘10 MPH’ buoy, is not
18 working in refraining boats from creating substantial wakes. Not only have Respondents failed to
19 ensure the installation and maintenance of required buoys identifying Westpoint Slough as a No
20 Wake speed zone, they have allowed a commercial high-speed ferry service to operate at a
21 harbor that was specifically approved for recreational boating.” (CCCR Letter, p. 6.)

22 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
23 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,

1 §§ 800, 803). CCCR members have not established that they have personal knowledge of the
2 alleged existence of “commercial high-speed ferry service” in the harbor or that Respondents
3 allegedly “allowed” such operation, and therefore the statement lacks foundation and is
4 speculative. The statement is an improper opinion because CCCR members have not been
5 established as experts on what constitutes a “substantial wake.” The assumption that the current
6 buoys and signage are allegedly not working is also not based on personal knowledge, is
7 speculative, lacks foundation, and constitutes an improper opinion.

8 Objection Number 11

9 Letter Text: “Last year, PROP’s high-speed catamarans were making four round trips/day
10 during the work week, generating a significant wake from excessive speeds as they traversed a
11 mile of Westpoint Slough along the shoreline of Greco Island between Redwood Creek and the
12 harbor.” (CCCR Letter, pp. 6-7.)

13 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
14 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
15 §§ 800, 803). CCCR members have not established that they have personal knowledge of the
16 alleged activity of “PROP’s high-speed catamarans,” and therefore the statement lacks
17 foundation and is speculative. The statement is an improper opinion because CCCR members
18 have not been established as experts on what constitutes a “substantial wake” or “excessive
19 speeds.”

20 Objection Number 12

21 Letter Text: “Respondents have failed to install and maintain buoys along Greco Island
22 with signage prohibiting public access into the marshlands of the Refuge.” (CCCR Letter, p. 7.)

1 alleged failure to implement a permit condition is an improper opinion because CCCR members
2 have not been established as experts on shorebird habitats.

3 Objection Number 17

4 Letter Text: “However, the only place in the marina where this particular parking pattern
5 matches Bohley’s Section A on Google earth is marked A in highlight below: [image annotated
6 with alleged location of Bohley’s Section A].

7 “The measurement on Google Earth confirms the 89-foot distance measured by Bohley at
8 Location A. However, Bohley apparently measured the distance from the edge of the parking lot
9 to the salt pond bottom where the levee is at its widest in the active Marina area. The Marina
10 does not meet the 85-foot requirement at Locations B, C, D, E, F, G, H, I or J below. Here are
11 other measurements using the same methods in Google earth: [image annotated with alleged
12 locations that do not meet requirements].” (CCCR Letter, p. 11.)

13 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
14 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
15 §§ 800, 803). The images included have been manipulated and annotated by CCCR members to
16 allegedly indicate the locations of 85-foot setback requirements in the marina. The statement and
17 accompanying images, including those annotations, constitute improper opinion because CCCR
18 members have not been established as experts on GPS coordinates or geographic calculations.
19 The statement and accompanying images therefore also lack foundation and are speculative.
20 CCCR members have also not established that they have personal knowledge of the locations of
21 85-foot setback requirements in the marina, and therefore the statement and annotations inserted
22 on the images lack foundation, are speculative, and constitute improper opinion.

1 Objection Number 18

2 Letter Text: “To date, Respondents have not provided 3 acres of shorebird roost habitat
3 with similar functions and benefits.” (CCCR Letter, p. 12.)

4 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
5 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
6 §§ 800, 803). CCCR members have not established that they have personal knowledge of the
7 alleged failure to provide 3 acres of shorebird roost habitat, and therefore the statement lacks
8 foundation and is speculative.

9 Objection Number 19

10 Letter Text: “The August 17, 2001 LSA Biotic Resources Report prepared for the
11 Westpoint Marina project stated that during a March, 2001 site inspection over 1,000 birds were
12 observed roosting on the high ground in the southwest corner of the site and that shorebird use of
13 the salt ponds had been documented since late 1980. The 3.0 acres of roost habitat was to be
14 recreated on the south side of the levee separating the marina from the remaining bittern pond.
15 The recreated roost habitat was to be high ground remaining exposed year-round, provide
16 isolation and limited disturbance, and serve as an island, surrounded by open water, to provide
17 shorebirds and other waterfowl with a protected roost.” (CCCR Letter, p. 12.)

18 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
19 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
20 §§ 800, 803); hearsay (Evid. Code, § 1200); lack of authentication (Evid. Code, § 1401). The
21 statement allegedly from the August 17, 2001 LSA Biotic Resources Report is hearsay because it
22 is an out of court statement submitted for the truth of the matter asserted. In addition, the alleged
23 information from the August 17, 2001 LSA Biotic Resources Report has not been verified or

1 authenticated. CCCR members have not established that they have personal knowledge of the
2 roost habitat or the plans of that habitat, and therefore the statement lacks foundation and is
3 speculative.

4 Objection Number 20

5 Letter Text: “In addition, the habitat creation plans were to be reviewed and approved by
6 BCDC after consultation with the U.S. Fish and Wildlife Service and the California Department
7 of Fish and Wildlife. Respondents never created the required habitat plans, BCDC did not
8 approve such plans, nor did Respondents consult about such plans with the U.S. Fish and
9 Wildlife Service and the California Department of Fish and Wildlife to ensure that the
10 replacement habitat maintained similar functions and benefits for shorebirds.

11 “Three acres of replacement shorebird roost habitat with similar functions and benefits
12 has not been provided on the south side of the levee separating the marina from the remaining
13 bittern pond, or in an alternate location. The ‘replacement’ habitat which has been provided -
14 without consultation with the resource agencies – does not have similar functions and benefits as
15 the original habitat. This is in part because the required consultation and approval of habitat
16 plans never occurred.” (CCCR Letter, p. 12.)

17 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
18 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
19 §§ 800, 803). CCCR members have not established that they have personal knowledge of
20 whether Respondents created habitat plans or whether Respondents consulted with resource
21 agencies about the plan, and therefore the statement lacks foundation and is speculative. The
22 statement that the replacement habitat “does not have similar functions and benefits as the
23 original habitat” is an improper opinion because CCCR members have not been established as

1 experts on shorebird roost habitats. The statement about the replacement habitat therefore also is
2 not based on personal knowledge, lacks foundation, and is speculative.

3 Objection Number 21

4 Letter Text: “Respondents’ ‘replacement habitat’ is at a lower elevation than the original
5 habitat. During the winter as water levels rise the acreage of the replacement habitat shrinks and
6 at certain times of year there is zero roosting habitat. For example, this year as winter rains filled
7 the former bittern pond lying south of the project site, by early spring roosting shorebirds were
8 limited to the levee along the southern edge of Westpoint Marina. By mid-spring, during peak
9 migration, shorebirds had abandoned this now-submerged pond altogether because of the
10 absence of roosting habitat.” (CCCR Letter, p. 12.)

11 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
12 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
13 §§ 800, 803). CCCR members have not established that they have personal knowledge of
14 Respondents’ replacement habitat or the activity of shorebirds in it, and therefore the statement
15 lacks foundation and is speculative. The statement attributing the alleged abandonment of the
16 shorebirds to the elevation level of the habitat is an improper opinion because CCCR members
17 have not been established as experts on shorebird roost habitats.

18 Objection Number 22

19 Letter Text: “Given that Respondents did not create the habitat, nor consult with the
20 required agencies about habitat plans, the Manager’s response does not change that Respondents
21 are responsible for this mitigation and have failed to implement and maintain the shorebird
22 roosting habitat.” (CCCR Letter, p. 13.)

1 out of court statement submitted for the truth of the matter asserted. In addition, the alleged
2 image of “Figure 3” has not been verified or authenticated.

3 **Conclusion**

4 For the reasons set forth, Respondents request that the Enforcement Committee strike the
5 entire CCCR Letter, or in the alternative, strike factual claims improperly contained in the letter
6 and exclude statements that are inadmissible under the Evidence Code.

Dated: November 15, 2017

Respectfully submitted,

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