



Sequoia Audubon Society  
PO Box 620292  
Woodside, CA 94062-0292  
<http://www.sequoia-audubon.org>

November 7, 2018

Via email: [marc.zepetello@bcdc.ca.gov](mailto:marc.zepetello@bcdc.ca.gov)

Enforcement Committee  
Bay Conservation and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102-7019

RE: Executive Director's Recommended Enforcement Decision Regarding Westpoint Harbor: Proposed Settlement Agreement between the Commission and Westpoint Harbor

Dear Mr. Greg Scharff, Ms. Marie Gilmore, Mr. Sanjay M. Ranchod, Ms. Jill Techel and Mr. John Vasquez:

Sequoia Audubon Society is writing in regard to Item 6 of the BCDC Enforcement Committee's November 8, 2018 Agenda. Our mission is to protect native birds and other wildlife and their ecosystems in San Mateo County. We urge the Enforcement Committee **not** to approve the enforcement decision as currently proposed for Westpoint Harbor.

Our organization provided written comments and oral testimony to the Enforcement Committee and to the Commission over the past year on BCDC's proposed enforcement action regarding Westpoint Harbor.

We are concerned about a number of significant problems with this proposed enforcement decision:

1. The decision proposes to permanently relieve Westpoint Harbor of any obligation to create 3 acres of shorebird roosting habitat with functions and benefits for shorebirds similar to the habitat lost when this project was built and the harbor basin was excavated. Not only was this part of BCDC's original conditions for approval of this controversial bay fill project, it was also a mitigation requirement in Redwood City's project Mitigated Negative Declaration, the US Army Corps of Engineers' Westpoint Harbor Permit, LSA's August 2001 Project "Biotic Resources Report", and was included in substantive comments by resource agencies and the public.

2. The decision proposes to amend the existing permit to relieve Westpoint Harbor of any obligation to install and maintain signage to protect sensitive habitats from the boat wakes of vessels traveling up Westpoint Slough from the confluence with Redwood Creek. The proposed permit amendment would add new language stating that the Westpoint Harbor is in full compliance with identifying Westpoint Channel as a "No Wake" zone, even though BCDC has provided no documentation that signage is in place at the entrance to Westpoint Slough alerting boaters that they must reduce their speed. We are concerned that boats traveling at high speeds along the shoreline of the National Wildlife Refuge at Greco Island - unaware of the "no wake" zone - will cause significant adverse impacts to the endangered Ridgeway's Rail and Salt Marsh Harvest Mouse and their fragile habitat. "No Wake" buoys and signs were part of the BCDC original Westpoint Harbor permit as a means to protect Westpoint Slough mudflats and endangered species tidal marsh habitat on Greco Island from erosion caused by boat wakes. This condition was also included in the Redwood City Mitigated Negative Declaration at the request of the U.S. Fish & Wildlife Service – the agency with enforcement authority under the federal Endangered Species Act.

3. The proposed permit amendment will authorize Westpoint Harbor to dredge 150,000 cubic yards of sediment within a 24-month period from Westpoint Slough without any environmental review. It was BCDC's position in November 2017 that dredging an average of 50,000 cubic yards per year for ten years was not exempt from CEQA. Yet now, dredging 75,000 cubic yards per year for two years may be approved by BCDC without any environmental review.

4. BCDC's proposal to amend this permit in this manner conflicts with its public trust obligations and statutory duties. The proposed changes show a blatant disregard on the part of BCDC to uphold the agency's legislative mandate to protect Bay resources. The proposed permit changes establish a terrible precedent, and jeopardize the public's trust in BCDC's willingness to protect the Bay and its resources. Further, BCDC's proposed backsliding is inconsistent with original permit Findings that "the project will result in the protection of Bay resources including marshes and fish and wildlife because Special Conditions ensure the protection of surrounding valuable habitat and require mitigation for any impacts to wildlife or habitat at the project site."

5. The public has not been afforded an adequate opportunity to review the drastic proposed changes in the Enforcement Decision. This matter was previously before the Committee on November 16, 2017 and January 18, 2018, and before the Commission on March 15, 2018. At the November 16, 2017 hearing, the Enforcement Committee adopted the Executive Director's recommended enforcement decision including the proposed cease and desist and civil penalty order for \$513,000. After six months of confidential settlement discussions - that the public was not privy too - BCDC has allowed the public only 10 days to review and comment on proposed changes to the permit that relieves Westpoint Harbor of numerous mitigation requirements, reduces the civil penalty by over 70% to \$150,000, and allows dredging without environmental review. Our organization has not had an adequate opportunity to consult with scientists, wildlife agency personnel, and policy makers about the impacts and precedent set by these proposed permit amendments.

6. The Enforcement Committee is not restricted from modifying the terms of the proposed settlement agreement. Even the Settlement Agreement negotiated behind closed doors provides that if the Enforcement Committee makes recommendations to be incorporated into the permit, the Executive Director and Westpoint Harbor agree to address such recommendations.

In conclusion, we urge the BCDC Enforcement Committee not to approve the currently proposed Westpoint Harbor enforcement decision. Instead, we urge the Committee to protect critically important Bay habitats and uphold the permit conditions to protect these resources.

Thank you for the opportunity to provide comments on the proposed enforcement decision.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Flint".

Leslie Flint  
Conservation Committee  
Sequoia Audubon Society

**Subject:** Comment Letter Via Email Regarding Enforcement Committee Meeting 11/8/18  
**Date:** Wednesday, November 7, 2018 at 8:25:50 PM Pacific Standard Time  
**From:** Bob Wilson  
**To:** Zeppetello, Marc@BCDC  
**CC:** Navi Dhillon

The following press release was made on November 5, 2018 by the SF Bay Stewardship Alliance (legal name The Alliance 1849). It is submitted ton the BCDC Enforcement Committee via email.

Enforcement Committee  
Bay Conservation and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco California 94102-7019

RE: Proposed Settlement Agreement between the BCDC and Westpoint Harbor

**FOR IMMEDIATE RELEASE** Contact: Felix Rodrigues Lima  
Phone: (818) 731-0649  
E-mail: [farodrigues.lima@gmail.com](mailto:farodrigues.lima@gmail.com)

### **San Francisco Bay Stewardship Alliance Urges Bay Conservation and Development Commission To Adopt Westpoint Harbor Settlement**

*-Statement from Bob Wilson, SF Bay Stewardship Alliance Co-Founder*

“On October 26, the San Francisco Bay Conservation and Development Commission (BCDC) and Westpoint Harbor announced a proposed settlement that would resolve a years-long dispute. The Alliance supports the settlement and recommends approval by the BCDC’s commissioners.”

“Westpoint Harbor claimed that BCDC is abusing its enforcement authority and has improperly threatened draconian and unsupported penalties and injunctive relief. While the settlement appears to be a positive step, the fact that a private party was forced to spend millions of dollars to defend itself and a public agency devoted limited resources to a dispute that should have been avoided is troubling. This follows on millions of dollars wasted in the Buckler Island litigation, which BCDC lost at the trial court and where the court described BCDC’s enforcement tactics as ‘vindictive.’ None of this is in the public interest.”

“As the State of California continues to investigate BCDC in its audit, the Alliance urges the State Auditor to look closely at BCDC’s conduct with respect to enforcement actions. Based on information currently available in the public domain, it appears a major overhaul is needed in the leadership of the BCDC, its governance and oversight process.”

“The Alliance continues to fight for the release of public records, which BCDC has refused to produce for months. In response to a motion filed by the Alliance, the San Francisco Superior Court recently entered an order directing BCDC to comply with certain requirements of the Public Records Act. BCDC has also produced some additional documents in response to the lawsuit, but continues to hide other records, such as e-mails and text messages.”

To learn more, and assist in this important work, please visit The San Francisco Bay Stewardship Alliance website at [www.baystewards.com](http://www.baystewards.com) .



COMMITTEE FOR  
GREEN FOOTHILLS

November 7, 2018

The Honorable Enforcement Committee  
San Francisco Bay Conservation and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102-7019  
Via email: [marc.zeppetello@bcdc.ca.gov](mailto:marc.zeppetello@bcdc.ca.gov)

**RE: Item 6 - Recommended Enforcement Decision Regarding Westpoint Harbor; Proposed Settlement Agreement between the Commission and Westpoint Harbor**

Dear Commissioners:

Thank you for your thoughtful consideration on the proposed settlement. The Committee for Green Foothills represents over 1000 households that advocates on behalf of our members for the protection of open space, farmlands, and natural resources in Santa Clara and San Mateo Counties. We recognize the importance of keeping the San Francisco Bay accessible to all, while protecting this resource as designated by the California Constitution. We appreciate the opportunity to comment on the Westpoint Harbor proposed settlement.

Given our mission, we are concerned with the proposed enforcement decision due to the precedent it could set for future environmental mitigations. The proposal allows Westpoint to continue to cause damage to fragile environmental habitat by failing to post 'No Wake' signs. By ignoring this simple mitigation, the endangered Ridgway Rail nesting grounds on Greco Island in the adjacent Don Edwards National Wildlife Refuge could be severely compromised. This special condition was incorporated into the original Westpoint Harbor permit to protect slough mudflats and endangered species habitat from erosion caused by boat wakes; by ignoring this earlier requirement, future development could assume that all mitigations are voluntary. Please require the installation of 'No Wake' signs.

Additionally, we urge the Enforcement Committee to amend the proposal to ensure that all mitigations are fully proportional and enforceable. For example, in Permit Amendment 10, BCDC has relieved Westpoint Harbor of all obligations to provide the required mitigation for the loss of shorebird roost habitat destroyed when the harbor basin was excavated. Again, this pattern ignores appropriate environmental mitigations that were set at the time of permit approval. This mitigation requirement was included in the original MND for the project, and needs to be enforced to ensure that future mitigations are taken seriously.

Thank you for your consideration.

Sincerely,

Helen Wolter  
Legislative Advocate, Committee for Green Foothills



## CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto, CA 94306

Tel: 650-493-5540

www.cccrrefuge.org

cccrrefuge@gmail.com

November 7, 2018

Via email: [marc.zepetello@bcdc.ca.gov](mailto:marc.zepetello@bcdc.ca.gov)

Enforcement Committee  
Bay Conservation and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102-7019

**RE: Executive Director's Recommended Enforcement Decision Regarding Westpoint Harbor; Proposed Settlement Agreement between the Commission and Westpoint Harbor**

Dear Commissioner Scharff and Members of the Enforcement Committee,

We write in regards to Item 6 of the BCDC Enforcement Committee's November 8, 2018 Agenda. We urge the Enforcement Committee not to approve the enforcement decision, proposed Permit Amendment Ten, as currently proposed for Westpoint Harbor.

Citizens Committee to Complete the Refuge ("Citizens") is dedicated to the protection of the environment, and is particularly concerned about impacts to the Don Edwards San Francisco Bay National Wildlife Refuge, its ecosystem and affected species.

As reflected in the record, Citizens provided written comments urging BCDC to bring Mark Sanders and the Westpoint Marina into compliance with the permit issued for the Westpoint Marina on March 10, 2017, May 18, 2017, May 19, 2017, October 26, 2017, November 2, 2017, November 3, 2017, January 15, 2018 and March 8, 2018. Citizens provided oral testimony to the Enforcement Committee on November 16, 2017 and January 18, 2018, and to the Commission on March 15, 2018 regarding BCDC's proposed enforcement action regarding Westpoint Harbor.

As explained further below, there are a number of significant problems with this proposed enforcement decision:

**1. Proposed Elimination of Shorebird Roosting Habitat Mitigation.**

The currently proposed enforcement decision would permanently relieve Westpoint Harbor of any obligation to create 3 acres of shorebird roosting habitat with functions and benefits for shorebirds similar to the habitat lost when this project was built and the harbor basin was excavated. There are a number of serious problems with BCDC's proposed approach.

The August 17, 2001 LSA Biotic Resources Report prepared for the Westpoint Marina project stated that during a March, 2001 site inspection over 1,000 birds were observed roosting on the high ground in the southwest corner of the site and that shorebird use of the salt ponds had been documented since late 1980.

The 3.0 acres of roost habitat was to be high ground remaining exposed year-round, provide isolation and limited disturbance, and serve as an island, surrounded by open water, to provide shorebirds and other waterfowl with a protected roost. This important mitigation has never been provided. No habitat with similar functions and benefits as the original habitat has been created - in part because the required consultation and approval of habitat plans never occurred.

BCDC is poised to relieve Westpoint of any shorebird roost mitigation obligation based simply on a November 26, 2003 letter from Cargill. However, review of Cargill's June 22, 2018 correspondence (Attachment B to the proposed Enforcement Decision) reveals that Cargill seriously refutes the assertions made by Westpoint Harbor upon which BCDC is prepared to rely. Cargill points out that the November 2003 letter was not a contract or other binding commitment from Cargill. The November 2003 letter was not signed by the person at Cargill with authority to do so – the leader of Cargill's California Land Management business; Westpoint Harbor likely knew this because at the time Westpoint Harbor was “in the midst of negotiating the sale of a final parcel of Cargill land to Westpoint.” The November 2003 letter was not incorporated into the November 2003 purchase and sale agreement for the final parcel of Cargill land, which purchase closed in December 2003. Over fifteen years have passed, and Westpoint Harbor never followed up with Cargill to review any proposed habitat mitigation plans.

The habitat creation plans were to be "reviewed and approved by or on behalf of [BCDC] after consultation with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife." There have been no habitat creation plans for BCDC to review now or then, and there is no evidence that Westpoint Harbor has consulted with U.S. Fish and Wildlife Service or the California Department of Fish and Wildlife. Such consultation was not only required in the Westpoint BCDC's permit, but also in the Regional Water Quality Control Board's May 16, 2003 Water Quality Certification requirements for habitat mitigation issued to Westpoint Harbor.

Not only was this shorebird roost mitigation part of BCDC's original conditions for approval of this controversial bay fill project, it was also a mitigation requirement in Redwood City's project Mitigated Negative Declaration, the US Army Corps of Engineers' Westpoint Harbor Permit, LSA's August 2001 Project "Biotic Resources Report", and was included in substantive comments by resource agencies and the public.

The shorebird mitigation was specifically conditioned on habitat creation prior to commencement of Phase Two work. Phase Two commenced in 2015 and included authorization for the boathouse; that structure has now been built. Thus, Westpoint Harbor ignored timely implementation of the mitigation.

Westpoint Harbor should be consulting with BCDC and the other and resource agencies now to find an alternative to the Cargill pond mitigation site. Even a payment to help fund an approved shorebird roosting habitat enhancement project with similar size, functions and benefits could be considered. There may be opportunities within the South Bay Salt Pond Restoration Project at nearby Ravenswood Pond 3 or Pond R5-S5. Rather than ensuring Westpoint Harbor provides an

alternative site, or an alternative that would help fund habitat enhancement, BCDC has abrogated its responsibility to “require mitigation for any impacts to wildlife or habitat at the project site”. This egregious dismissal of the resource protections outlined in Permit Special Condition F. is unacceptable.

## **2. Proposed Elimination of Signs from Westpoint Slough.**

BCDC’s proposed enforcement decision would amend the existing permit to relieve Westpoint Harbor of any obligation to install and maintain signage to protect sensitive habitats from the boat wakes of vessels traveling up Westpoint Slough from the confluence with Redwood Creek. Specifically, Proposed Permit Amendment Ten adds new language to Special Condition H asserting that Westpoint Harbor’s placement of three signs near the marina basin entrance “satisfy the requirement to identify Westpoint Channel as a ‘no wake’ zone.

BCDC has provided no documentation that signage is in place at the entrance to Westpoint Slough alerting boaters that they must reduce their speed. In fact, the attached photo taken by San Francisco Baykeeper on November 2, 2018 shows that no signs are currently in place at the entrance to Westpoint Slough.

Citizens is concerned that boats traveling at high speeds along the shoreline of the National Wildlife Refuge at Greco Island - unaware of the “no wake” zone - will cause significant adverse impacts to the endangered Ridgeway’s Rail and Salt Marsh Harvest Mouse and their fragile habitat. Rail nests can be present from mid-March through August, and rails will abandon nests if disturbed by noise or other human activities.

“No Wake” buoys and signs were part of the BCDC original Westpoint Harbor permit as a means to protect Westpoint Slough mudflats and endangered species tidal marsh habitat on Greco Island from erosion caused by boat wakes. This condition was also included in the Redwood City Mitigated Negative Declaration at the request of the U.S. Fish & Wildlife Service – the agency with enforcement authority under the federal Endangered Species Act.

The Executive Director’s Recommendation justifies these changes based on Permit Amendment Five. However, it is important to note that Permit Amendment Five was proposed, but never adopted as a binding change to the Permit. Amendment Five would have made egregious changes to Special Condition H by eliminating Westpoint Harbor’s requirement to place buoys identifying Westpoint Slough as a no-wake zone, by eliminating buoys to delineate the center of the channel, and by eliminating buoys 100 feet off Greco Island to inform the public that access into the marshland of the wildlife refuge is prohibited. This proposed amendment was never reviewed by the public, nor adopted, and thus should not serve as justification for the elimination of necessary protective measures.

Further, new language added in the Authorization and Findings sections by Permit Amendment Ten states that the permittee will **install, use, and maintain no wake zone markers at the channel entrance to Westpoint Slough in cooperation with the Port of Redwood City.** This language must be added to the Permit Special Condition H to ensure that this requirement is enforceable and will be implemented.

## **3. Dredging Near and Into Westpoint Slough Without Any Environmental Review.**

BCDC's proposed enforcement decision will authorize Westpoint Harbor to dredge up to 150,000 cubic yards of sediment within a 24-month period from the marina and entrance channel to the marina from Westpoint Slough - without any prior environmental review.

It was BCDC's position as far back as May, 2017 that dredging an average of 50,000 cubic yards per year for ten years was not exempt from CEQA. As late as June 1, 2018, BCDC was prepared to require an environmental assessment. Yet now, dredging 75,000 cubic yards per year for two years may be approved by BCDC without any environmental review.

In its May 17, 2017 response to Westpoint Harbor's proposed dredging, BCDC stated that

Longfin smelt (*Spirinchus thaleichthys*) was declared a threatened species under the California Endangered Species Act on June 25, 2009. As a result, a take permit may be required for your project since hydraulic dredging is proposed. We cannot file an application complete without proper take authorization from the California Department of Fish and Wildlife (CDFW), if it is required, or the applicant's biological assessment and determination that the project will not result in take of longfin smelt.

Please forward a copy of the water quality certification or waste discharge requirements from the San Francisco Bay Regional Water Quality Control Board (Water Board) when it is available. Our regulations prohibit us from filing an application that includes dredging and disposal prior to the applicant submitting such documentation.

Essential Fish Habitat. In 2009, the LTMS Program Managers completed a programmatic consultation with NMFS for Essential Fish Habitat as required by the Magnuson Steven Fisheries Management and Conservation Act. As a result of that consultation, protective measures for eelgrass were agreed to and implemented for dredging projects adjacent to or containing eelgrass beds. Please note that if eelgrass is present in your dredge footprint or within 45 meters of your dredge footprint, a pre-dredge eelgrass survey will be required. Further, if eelgrass is within 250 meters of your dredge footprint, then use of a silt curtain or light monitoring of turbidity resulting from your project may be required.

Provide a statement as to how the maintenance and new work dredging project you have requested is consistent with [the San Francisco Bay Plan Policies.] Policies that may be applicable to your project may include, but are not limited to, the Bay Plan policies on Dredging, Recreation, Subtidal Areas, Water Quality, and Fish, Other Aquatic Organisms and Wildlife.

It is unclear where this dredged material will be placed. Proposed Amendment Ten (p. 8) states that the dredged material may be disposed of at undefined "authorized location." Whereas the original permit stated that the "project would result in approximately 447,077 square feet of new Bay surface," i.e. approximately 10.25 acres, proposed Amendment Ten seems to double the Bay surface, stating that the "project would result in approximately 26.6 acres of new Bay surface." (p. 9.)

It appears that rather than require environmental review prior to project approval as CEQA requires, BCDC is going to allow any potential harm to occur first and then collect information during a survey after dredging is completed. This backward approach will not allow BCDC to assess biological harm and avoid such harm before it occurs.

The Executive Director's Recommended Enforcement Action claims that the dredging would fall within CEQA Categorical Exemption 15304 and 15306. We dispute that these exemptions are applicable as there is a reasonable possibility that the dredging activity will have a significant effect on the environment due to unusual circumstances, and because the cumulative impact of successive projects of the same type in the same place, over time is significant. See 14 CCR 15300.2. A categorical exemption is inapplicable here because (1) the adjacent wildlife refuge and the habitat for listed sensitive species constitute unusual circumstances, and (2) there is evidence of significant impacts, and (3) the cumulative impact of successive projects of the same type in the same place over time is significant.

In addition to the Longfin smelt and eelgrass, there are three listed species which "occur in areas adjacent to the project site" including the federally endangered California clapper rail (*Rallus longirostris obsoletus* - also known as California Ridgway's rail), the salt marsh harvest mouse (*Reithrodontomys raviventris*) and the California least tern (*Sterna antillarum browni*).

In a September 18, 2001 comment letter on the Redwood City Notice of Negative Declaration and Use Permit for the original Westpoint marina project, Refuge Manager Clyde Morris stated:

we are concerned that increased tidal flows from dredging/opening the marina acreage could cause erosion at Greco Island and the project site's salt marshes. We also believe **any future maintenance dredging of the Westpoint Slough channel would have serious impact on the Refuge and wildlife at Greco Island. We recommend a requirement that no dredging be allowed in Westpoint Slough** in the future except the Port of Redwood City's historic dredging of the bar at the entrance of the Slough to Redwood Creek. We suggest that potential erosion impacts from the proposed dredging of the entrance to the marina and increased tidal flow be evaluated and eliminated. We recommend that the Marina offset any unavoidable permanent loss of mudflat and marsh habitat which will result from the dredging project and tidal flow increase. These mudflats are frequently used by feeding shorebirds and as we have stated previously, the marsh provide habitat for endangered species in addition to a variety of other wildlife.

In a June 14, 2002 comment letter on the original project, Jan Knight, Chief of the Endangered Species Division, Sacramento U.S. Fish and Wildlife Office, stated:

Increased tidal flows from dredging/opening the marina acreage could cause erosion at Greco Island and the project site's salt marshes. **We also believe any future maintenance dredging of the Westpoint Slough channel would have serious effects on the Refuge and wildlife at Greco Island.**

For these reasons, Citizens urges BCDC not to approve dredging without proper environmental review.

#### **4. No Set Implementation Dates Are Included for Numerous Protective Measures.**

First, there is no date by which Westpoint Harbor must install channel markers to restrict boats to the center of Westpoint Channel. (Proposed Amendment Ten, Special Condition H.)

Second, there is no date by which Westpoint Harbor must coordinate with the San Francisco Bay National Wildlife Refuge to install a signage system along the edge of Greco Island along Westpoint Slough up to its confluence with Redwood Creek. (Proposed Amendment Ten, Special Condition H.)

Third, there is no date certain for Westpoint Harbor to install signs at its boat launch informing the public that access restrictions to Greco Island and the San Francisco Bay National Wildlife Refuge is restricted, and that Westpoint Slough is a "No Wake Zone".<sup>1</sup> (Proposed Amendment Ten, Special Condition I.)

Channel markers and signs advising of Greco Island's sensitive nature were supposed to be part of Phase 1A of the project. Document 25 in the record shows that in March, 2007 Westpoint Harbor promised to install channel markers by April, 2007. Given the intransigence of Westpoint Harbor in complying with its permit over the past fifteen years, Citizens believe inclusion of such specific dates in any permit amendment is essential.

#### **5. Conflicts with Public Trust and Statutory Duties, and Environmental Policies.**

BCDC's proposal to amend this permit in this manner conflicts with its public trust obligations and statutory duties. The proposed changes show a blatant disregard on the part of BCDC to uphold the agency's legislative mandate to protect Bay resources. The proposed permit changes establish a terrible precedent, and jeopardize the public's trust in BCDC's willingness to protect the Bay and its resources. Further, BCDC's proposed backsliding is inconsistent with original permit Findings that "the project will result in the protection of Bay resources including marshes and fish and wildlife because Special Conditions ensure the protection of surrounding valuable habitat and require mitigation for any impacts to wildlife or habitat at the project site."

BCDC relied on the project providing wildlife habitat in its findings that Westpoint Harbor was consistent with the McAteer-Petris Act, San Francisco Bay Plan salt pond policies, CEQA, BCDC's amended coastal zone management program, and would result in the protection of Bay resources. Permit 2-02 Findings III.A and III.F. In the absence of the shorebird mitigation, Citizens believes that the project, and BCDC's approval thereof, are not consistent with these environmental laws and policies.

#### **6. No Adequate Public Review and Comment Period Provided.**

The public has not been afforded an adequate opportunity to review the drastic proposed changes in the Enforcement Decision. This matter was previously before the Committee on November 16, 2017 and January 18, 2018, and before the Commission on March 15, 2018. After six months of confidential settlement discussions - that the public was not privy too - BCDC has allowed the

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<sup>1</sup> Citizens also objects to the proposed limitation of such signs to the boat launch, and elimination of such signs at "other public access areas."

public only 10 days to review and comment on proposed changes to the permit which relieves Westpoint Harbor of numerous mitigation requirements, reduces the civil penalty, and allows dredging without environmental review. Our organization has not had an adequate opportunity to consult with scientists, wildlife agency personnel, and policy makers about the impacts and precedent set by these proposed permit amendments.

**7. Proposed Civil Penalties are Inadequate.**

Civil liability may be administratively imposed by BCDC for violation of any permit condition or term in an amount up to \$2,000 for each day a violation persists, not to exceed \$30,000 for a single violation. California Gov't Code §§ 66641.5 (e) & 66641.6. Violation of any of the terms of the Permit shall be grounds for revocation. BCDC may revoke the permit for such violations after a public hearing is held with reasonable notice to the permittee. If the permit is revoked BCDC may determine, if appropriate, that all or part of any fill or structure placed pursuant to the permit must be removed. Permit 2-02, Section IV. M.

The currently proposed enforcement decision drastically reduces proposed civil penalties. At the November 16, 2017 hearing, the Enforcement Committee adopted the Executive Director's Recommended Enforcement Decision including the proposed cease and desist and civil penalty order for \$513,000. The Enforcement Committee adopted the Executive Director's Recommended Enforcement Decision with the modification that if BCDC and Westpoint were able to mutually agree on proposed revisions to the cease and desist provisions of the proposed order, the penalty would be reduced 50% from \$513,000 to \$256,500. The currently proposed enforcement decision reduces the civil penalty by over 70% to \$150,000.

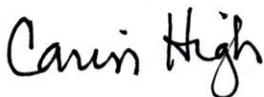
**8. Settlement Agreement Does Not Deprive the Enforcement Committee of its Oversight Obligation or Power.**

The Enforcement Committee is not restricted from modifying the terms of the proposed settlement agreement. Even the Settlement Agreement negotiated behind closed doors provides that if the Enforcement Committee makes recommendations to be incorporated into the permit, the Executive Director and Westpoint Harbor agree to address such recommendations.

In conclusion, we urge the BCDC Enforcement Committee not to approve the currently proposed Westpoint Harbor enforcement decision. Instead, we urge the Committee to protect critically important Bay habitats and uphold the permit conditions to protect these resources.

Thank you for giving our concerns your careful consideration.

Sincerely,



Gail Raabe  
Co-Chairs

Carin High

Citizens Committee to Complete the Refuge

Attachments



November 2, 2018 photograph of the entrance to Westpoint Slough at the confluence with Redwood Creek. A set of green and red channel markers are in the foreground, and the Port of Redwood City and Pacific Shores Center further down Westpoint Slough are in the background. No signage identifying a “No Wake” Zone was found in the area.

Photo taken by Baykeeper Patrol Boat Field Investigator.



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

IN REPLY REFER TO:

1-1-02-I-2142

	Init.	Date
Author	PW	6-14-02
SSS	Buford	6-14-02
AFS-EC		
AFS-ESD	cl	6/14
AFS-HC		
AFS-WR		
ADMIN		
PM-CUP		
Signed	June 14, 2002	
File Ref:		

Ms. Phelicia Gomes  
U.S. Army Corps of Engineers  
Regulatory Branch  
333 Market Street  
San Francisco, California 94105-2197

Subject: Comments on U. S. Army Corps of Engineers Public Notice # 22454S for Construction of West Point Marina in Redwood City, San Mateo County, California

Dear Ms. Gomes:

This letter is in response to the U.S. Army Corps of Engineers' (Corps) Public Notice # 22454S for Mark Sanders' proposed marina (West Point Marina), to be located at Westpoint Slough in Redwood City (City). These comments by the U.S. Fish and Wildlife Service (Service) are pursuant to the Endangered Species Act of 1973, as amended (Act), and will relate the Service's opinion as to effects that endangered species might incur as a result of this project. Species which occur in this region include, but are not limited to, salt marsh harvest mouse (*Reithrodontomys raviventris raviventris*) (harvest mouse), California clapper rail (*Rallus longirostris obsoletus*) (clapper rail), and California least tern (*Sterna antillarum browni*) (least tern). These comments will also provide recommendations to assist you in meeting the standards of the Act through thoughtful project design, construction, and operation. These comments will not take the place of any formal comments that may be required under the provisions of the Act.

The proposed West Point Marina project site is located at the end of Seaport Boulevard, in Redwood City, California. The 42-acre parcel is bordered on the east by the Pacific Shores Center, currently under construction, and borders Westpoint Slough to the north and east. Salt evaporator ponds border the project to the south. The 42-acre project site is located in a portion of a large, shallow pond known as Pond 10. This pond has been traditionally used for "bittern" storage by Cargill Salt Company and their predecessor, Leslie Salt Company, as part of the salt production process. Historically, the pond 10 site was part of a large salt marsh. Project components includes a 408-slip marina, attendant boatyard and other marina services. The project will provide the only marine fuel facility in the south bay and will increase overall San Francisco Bay berthing capacity. The 14-acre marina basin will be connected to Westpoint

M:\ESD\COASTBAY\Wooten\West Point Marina.wpd

mailed 6/17/02 TD



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

IN REPLY REFER TO:

1-1-02-I-2142

June 14, 2002

Ms. Phelicia Gomes  
U.S. Army Corps of Engineers  
Regulatory Branch  
333 Market Street  
San Francisco, California 94105-2197

Subject: Comments on U. S. Army Corps of Engineers Public Notice # 22454S for Construction of West Point Marina in Redwood City, San Mateo County, California

Dear Ms. Gomes:

This letter is in response to the U.S. Army Corps of Engineers' (Corps) Public Notice # 22454S for Mark Sanders' proposed marina (West Point Marina), to be located at Westpoint Slough in Redwood City (City). These comments by the U.S. Fish and Wildlife Service (Service) are pursuant to the Endangered Species Act of 1973, as amended (Act), and will relate the Service's opinion as to effects that endangered species might incur as a result of this project. Species which occur in this region include, but are not limited to, salt marsh harvest mouse (*Reithrodontomys raviventris raviventris*) (harvest mouse), California clapper rail (*Rallus longirostris obsoletus*) (clapper rail), and California least tern (*Sterna antillarum browni*) (least tern). These comments will also provide recommendations to assist you in meeting the standards of the Act through thoughtful project design, construction, and operation. These comments will not take the place of any formal comments that may be required under the provisions of the Act.

The proposed West Point Marina project site is located at the end of Seaport Boulevard, in Redwood City, California. The 42-acre parcel is bordered on the east by the Pacific Shores Center, currently under construction, and borders Westpoint Slough to the north and east. Salt evaporator ponds border the project to the south. The 42-acre project site is located in a portion of a large, shallow pond known as Pond 10. This pond has been traditionally used for "bittern" storage by Cargill Salt Company and their predecessor, Leslie Salt Company, as part of the salt production process. Historically, the pond 10 site was part of a large salt marsh. Project components includes a 408-slip marina, attendant boatyard and other marina services. The project will provide the only marine fuel facility in the south bay and will increase overall San Francisco Bay berthing capacity. The 14-acre marina basin will be connected to Westpoint

Slough. Land uses for the project will include marina facility buildings and paved parking areas. Features include a restaurant, yacht club, and additional business activities consistent with water-oriented public facilities.

Since the mid-1800's, 79 percent or 583 square kilometers of the original tidal marshlands of the San Francisco Bay area have been eliminated through diking, filling, or conversion to salt evaporation ponds. The Don Edwards San Francisco Bay National Wildlife Refuge's (Refuge) Greco Island is approximately 500 feet across Westpoint Slough from the project site. This island is one of the few remaining large marshes left in South San Francisco Bay that support populations of the endangered southern subspecies of the harvest mouse. Greco Island also supports clapper rail. Although other marshes can be found in South San Francisco Bay, most are narrow, interrupted strips along sloughs and bayside dikes, or highly saline, diked-off marshes with areas of sparse pickleweed. Harvest mice and clapper rail may occur in some of these areas, but the status and vigor of the populations are unknown. Much of the habitat value of Greco Island is due to its isolation, and care must be taken to insure that habitat values remain unaffected by this project. The West Point Marina project site itself contains excellent salt marsh habitat on the outboard side of the current salt pond levee on the Slough. This marsh has high potential to also provide habitat for these endangered species. Due to the presence of listed species at these nearby properties, extreme care must be taken in the planning, construction, and maintenance of this project.

Section 9 and the implementing regulations in section 4(d) of the Act, prohibit the "take" of any federally listed species by any person subject to the jurisdiction of the United States. As defined in the Act, take means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct." "Harm" has been further defined to include habitat destruction when it kills or injures a listed species by interfering with essential behavioral patterns such as breeding, foraging, or resting. "Harass" has been further defined in the Act as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required, if it is determined that the proposed project may affect a federally listed species. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved with the project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a) of the Act would need to be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be affected by the project.

The Service is appreciative of the obvious effort and forethought that Mr. Sanders have made to reduce effects from the proposed project, but believes the importance of nearby wetlands to the harvest mouse and clapper rail, requires additional precautions be implemented if take is to be minimized. The Service supports all of the mitigation elements found in the City's Draft Biological Resources Report dated June 25, 2001, but believes additional measures and the strengthening of some existing measures should be incorporated into the project. Regardless, the Service believes that this project is likely to result in the take of endangered species and would recommend the Corps initiate formal consultation as described above.

Filling of the salt evaporation pond represents a loss of feeding/resting habitat for the least tern. The salt evaporation pond (pond 10) where this construction is planned, contains a 3-acre island that is a well-known resting area for many species of birds, including the least tern. Refuge employees have even observed feeding behavior in the pond within the last year. Part of the attraction for birds at this site is its aspect within an open water area, while also being close to mud-flats and open water areas of the Bay. Thus, creation of an island of similar size does not necessarily mean that the habitat will be equivalent. Clapper rail will also occur at the location of pond 10, and adjacent Cargill salt ponds, following any tidal marsh restoration that could occur there. We also question if compensation in the adjacent Cargill pond will result in long-term protection if the surrounding ponds are developed instead of restored to tidal marsh. Any compensation site that is selected must be guaranteed to be protected from impacts from development of the surrounding land. Construction of West Point Marina will also degrade existing salt marsh/pickleweed communities along the southern edge of Westpoint Slough, as well as along the drainage canal between the project site and the Pacific Shores site. Loss of mud flats and other shallow water areas of Westpoint Slough, due to dredging activity, also represents a loss of feeding habitat available to least tern and other shorebirds. These losses of habitat would necessitate acquisition, or creation of suitable habitat to offset losses to listed species.

The marine fuel facility is of heightened concern to the Service due to the potential effect to listed species and their associated habitat in a large area surrounding the proposed project site. The Service's concern about the marine fuel facility is the major concern among other project details that could cause degradation of water quality with concurrent negative impacts to listed species. Other concerns would be sewage leaks from house boats, storm water runoff and the storage and use of up to 400 motorized aquatic craft at the proposed marina. The marina should locate the fuel storage site in an area secure from leakage into surrounding waterways. This planning should take into account natural catastrophes as well as accidental spills. This would require installation of proper containment berms and development of a "hazardous materials Cleanup Plan" and participate in the "Oil Spill Prevention and Response" program managed by the California Department of Fish and Game. The Service would also recommend the implementation of "Best Management Practice" (BMP) for treatment of storm water runoff from parking lots, vehicle service and storage facilities. This treatment should include the installation and maintenance of a storm water filtration system that will capture and remove oil and grease in addition to trash, debris and coarse sediment before parking lot runoff discharges to the storm drain. Sewage releases from boats in the marina should be prohibited. All materials dredged,

uncovered, or otherwise used in the course of construction of this site, should be tested for hazardous materials.

This project will likely result in increased human interface with sensitive wildlife areas in the vicinity. Long-term indirect effects to clapper rail's is expected to occur through increased unauthorized public access to clapper rail habitat on Greco Island, the salt marsh on the outboard side of the current salt pond levee on Westpoint Slough on the project site, and adjacent Cargill salt ponds following their future restoration. Pedestrians could depart from authorized paths and establish informal access points for Bay views, or may establish an informal trail along the periphery of the wetland. The Service has documented this phenomenon at numerous marshes throughout the Bay, including the Corte Madera Ecological Reserve and Benicia State Recreation Area. A buoy system to discourage unauthorized entry should be installed and permanently maintained 100 feet from Greco Island or signage along the Refuge boundary of Greco Island. Proper signage should be installed and maintained at all access points, as well as along Greco Island and entryways into sloughs or other passages of Greco Island. We recommend that the project applicant coordinate with the Refuge on the information signs as they are developed. The Service would recommend a 85 to 90 - foot vegetated buffer with a visual screening berm be maintained along the drainage canal on the west side of the project site, along the salt marsh on the project site on the outboard side of the salt pond levee on the Slough, as well as the Cargill salt ponds to the south. The Service would also recommend that no public access be allowed on the portion of the levee on the project site that is adjacent to the salt marsh. Appropriate signage explaining the reason for closing this area to the public would also be appropriate. Boating activity will likely contribute to erosion of existing marsh and mud-flats at Greco Island. The Service would therefore recommend a "no wake" policy be incorporated as a permanent part of any present or future operation of this site.

Any increase in lighting of salt marsh habitats is likely to result in the take of harvest mouse and clapper rail. Studies have shown that harvest mice respond to increased light levels, such as a full moon, by limiting movements and exhibiting a heightened degree of caution. This change in behavior is temporary in nature when caused by a full moon. Artificial increases in lighting would permanently limit movements and alter normal social aspects of harvest mouse behavior, such as locating mates and building nests. In addition, tidal amplitudes are much greater in the South Bay than in San Pablo or Suisun Bays. Consequently, many tidal marshes are completely submerged during high tides and lack sufficient escape habitat, likely resulting in nesting failures and high rates of predation. High tides will force harvest mice and clapper rail to abandon the relative security of pickleweed undergrowth and seek upland areas. Increased lighting would make these displaced harvest mice and clapper rail extremely susceptible to predation from feral cats, owls and other nocturnal predators. Directional lighting with baffles, non-reflective tinting on windows, and other mechanisms could possibly eliminate light amplification to nearby sensitive areas. The Service would suggest a lighting study in which the goal should be, no increase in lighting due to the project, on Greco Island, Cargill Salt Evaporator Ponds to the south, salt marsh on the south and southwest edge of project site (south side of Westpoint slough), or the canal bordering the west side of the project site. Project landscaping should be of

a type that will limit opportunities of avian predators to affect listed species. Review of the Pacific Shores landscaping plan would provide insights toward alleviating this concern. The marina's salt marsh is reported to contain exotic cordgrass, a species which is rapidly spreading in South San Francisco Bay. If this plant is allowed to expand in the area, it could degrade the quality of habitat for listed species in the Refuge and other marshes along Westpoint Slough. A management plan and funding should be established for an ongoing exotic cordgrass (*Spartina* spp) control programs. When the marina is opened to tidal action, seeds from nearby exotic cordgrass plants will invade. If not controlled, exotic cordgrass will take over mud-flat areas, causing rapid sedimentation which will necessitate frequent dredging as well as degrade wildlife habitat.

Increased tidal flows from dredging/opening the marina acreage could cause erosion at Greco Island and the project site's salt marshes. We also believe any future maintenance dredging of the Westpoint Slough channel would have serious effects on the Refuge and wildlife at Greco Island. We recommend that the applicant initiate a study on the effects of erosion and increased tidal flows that will result from the proposed dredging of the entrance to the marina. Results from this study would facilitate the formulation of a maintenance plan for dredging between the marina and the opening of Westpoint slough. Construction and/or other activities associated with this project occurring on or between the south levee of the project site and the outer boundary of Greco Island should be done outside of the clapper rail breeding season.

Because of the predictable increase in the predator population that comes from human development and the increase on the predation on the sensitive wildlife next to the marina, we recommend that an active predator trapping program be required for the life of the project. The Refuge can assist the Marina in the design of this program. Outdoor pets and the feeding of pets outdoors should not be allowed. All outdoor pets should be on leashes at all times. A waste disposal program should be initiated that would eliminate scavenging behavior and/or attraction of predacious wildlife such as opossums, skunks, coyotes, fox, raccoons. Particular attention should be paid to restaurant and other food vendor operations at this site. Garbage should be removed on a regular basis to prevent overflow. Public areas should be monitored regularly and be kept free of garbage to prevent wildlife from scavenging. These rules should be strictly enforced. This restriction should be part of any lease/rental/use agreement for tenants of the development and marina. Because rip-rap increases denning opportunities for rats, foxes and cats, we recommend that alternatives to the use of rip-rap be investigated. If possible, a more gradual slope (4-5H:1V) should be created and native vegetation planted on newly graded areas to provide transitional habitat for high tide refugia for listed species. If rip-rap is necessary, it should consist of small materials that will not create habitat for exotic rodents. Rip-rap should not be placed on existing marsh vegetation.

Ms. Phelicia Gomes

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Thank you for the opportunity to comment on the proposed West Point Marina. If you have any questions regarding these comments, please contact David E. Wooten or Dan Buford at (916) 414-6625.

Sincerely,



Jan C. Knight  
Chief, Endangered Species Division

cc:

SFBNWR, Newark, CA (Clyde Morris)

EPA, Region IX, San Francisco, CA

NMFS, Santa Rosa, CA

CDFG, Yountville, CA

BCDC, San Francisco, CA

Mark Sanders, Woodside, CA



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July 3, 2017

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RE: Proposed Westpoint Harbor Dredging, Corps' Public Notice Number 1996-224540, Westpoint Harbor, LLC, through its agent Anchor QEA, June 9, 2017

Dear Ms. O'Leary,

This responds to Public Notice Number 1996-224540, for the proposed Westpoint Harbor Dredging Project, dated June 9, 2017 and submitted by Westpoint Harbor, LLC ("the applicant"). Citizens Committee to Complete the Refuge ("Citizens") has concerns regarding potential impacts to endangered species not identified in the Public Notice, the inclusion of new project elements that were not covered by the original Westpoint Marina environmental analysis, and cumulative impacts to wildlife habitat and endangered species due to the applicant's failure to comply with mitigation measures required for the original Westpoint Marina Project.

Citizens is a regional environmental advocacy organization with an ongoing interest in wetlands protection, restoration and acquisition. Our efforts have led to the establishment and expansion of the Don Edwards San Francisco Bay National Wildlife Refuge, including the addition of 1600 acres at Bair Island in Redwood City, and our advocacy includes working to protect existing Refuge lands and surrounding habitats. We have taken an active interest in Clean Water Act, Endangered Species Act (ESA), National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) regulations, policies and implementation at the local, state and national levels, demonstrating our ongoing commitment to wetland and wildlife issues.

Proposed Project: According to the Public Notice, Westpoint Harbor, LLC through its agent Anchor QEA has applied to the U.S. Army Corps of Engineers (Corps) San Francisco District, for a 10-year Department of the Army Permit to dredge 500,000 cubic yards from Westpoint Harbor, in Redwood City, California, and dispose of the dredged material at the Alcatraz Disposal Site (SF-11) in San Francisco Bay. The purpose of the proposed dredging is to return the Westpoint Harbor and entrance channel to its originally permitted depth, to allow safe navigational depths for recreational boats and to construct a silt basin. Westpoint Harbor is located adjacent to Westpoint Slough which is a tributary of Redwood Creek in northern

Redwood City. Westpoint Harbor was constructed from a former salt works bittern pond. There are wetlands located south and east of the harbor. The harbor contains 416 berths, a boatyard and marine services.

As shown in the drawings attached to the Public Notice, the applicant plans to dredge approximately 500,000 cubic yards of sediment from the 22.6-acre harbor including a 0.688-acre sediment trap over the 10-year life of the permit. The applicant proposes to dredge the sediment trap to a depth of -10 feet mean lower low water (MLLW) plus two feet of overdepth allowance. The remainder of the harbor would be dredged to a depth of -7.5 feet MLLW plus 2 feet of overdepth allowance. Existing depths in the harbor range from -3 to -7.5 feet MLLW. The majority of the dredged material would be removed using a clamshell. However, a small amount of the dredged material would be dredged by a diver using a small hydraulic dredge. All the dredged material would be placed in a barge for disposal at the Alcatraz Disposal Site (SF-11).

### **Dredging Impacts to Listed Species**

The original 2004 Corps Permit 22454S for the construction of Westpoint Marina documents that three listed species “occur in areas adjacent to the project site” including the federally endangered California clapper rail (*Rallus longirostris obsoletus* - also known as California Ridgway’s rail), the salt marsh harvest mouse (*Reithrodontomys raviventris*) and the California least tern (*Sterna antillarum browni*).

The Public Notice for the proposed Westpoint Harbor Dredging Project states under the Project Site Description: “There are wetlands located south and east of the harbor”. The Notice does not disclose that Greco Island is located across Westpoint Slough from the Westpoint Marina and the currently proposed dredging project. The Notice also does not disclose the environmental setting and biological importance of the surrounding area. Greco Island, part of the Don Edwards San Francisco Bay National Wildlife Refuge (“Refuge”), has one of the largest populations of Ridgway’s rail in San Francisco Bay. According to the Invasive *Spartina* Project 2016 Ridgway’s Rail Surveys, submitted herewith, breeding season surveys at the expansive tidal marsh on Greco Island detected 43 rails.

The U.S. Fish & Wildlife Service (“USFWS”) 2013 Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California lists **human disturbance** as one of the existing threats to tidal marsh ecosystems and the California clapper rail.

...Numerous routine human activities that can cause disturbance to sensitive species, include: for example, maintenance activities for levees, flood control, dredge locks, [these activities require the use of a dredge] pipelines, and utility rights-of-way; vegetation control activities; recreational uses including hiking, biking, dog-walking, bird watching, horseback riding, and water sports such as boating and kiteboarding; human and domestic and feral animal incursion from adjoining developments; ditching or spraying for mosquito control; and use of all-terrain/off-road vehicles in baylands (Goals Project 1999)...

...The ramifications of disturbance related to human traffic during breeding season primarily include effects on eggs and chicks or the season's reproductive effort. In addition, anthropogenic noise may also impact survival of adults. Adults may be more responsive to noise during the breeding season, as their mating system is based primarily on auditory signals. Loud noises may elicit calling or prevent advertising calls from being heard, which could disrupt pair bonding and mating efforts. Studies of noise criteria suggest that noise levels above 80 to 85 decibels (dB) are disruptive to normal behavioral patterns in birds (Transportation Noise Control Center 1997). Clapper rails may be sensitive to noise throughout the year, as rails were heard calling in response to a nearby jackhammer in September (Evens *in litt.* 2009)...

Based on Figure 2: Dredge Footprint-2017 Dredge Episode and 10-year Programmatic in the project site plans, the proposed dredging footprint extends out into Westpoint Slough approximately 275 feet towards Greco Island, and covers about .6 acres of the slough. Given this, and given the adverse impacts from human disturbance, including dredging activity, on the rails, harvest mice and terns, the Corps is required under the Endangered Species Act, NEPA and Clean Water Act Section 404 (Section 404) to consider whether the proposed project will adversely impact these species and their habitat, and whether the proposed project should be mitigated or denied based on such impacts.

Both the Don Edwards San Francisco Bay National Wildlife Refuge and the USFWS Endangered Species Division have expressed serious concerns regarding impacts to wildlife habitat and listed species from dredging at the time the original project for the construction of Westpoint Harbor was undergoing environmental review and permitting.

In a September 18, 2001 comment letter on the Redwood City Notice of Negative Declaration and Use Permit for the original marina project, submitted herewith, Refuge Manager Clyde Morris stated:

Though we do not anticipate a significant unmitigatable impact from dredging a channel from the entrance to the marina and the deeper Westpoint Slough channel, **we are concerned that increased tidal flows from dredging/opening the marina acreage could cause erosion at Greco Island and the project site's salt marshes. We also believe any future maintenance dredging of the Westpoint Slough channel would have serious impact on the Refuge and wildlife at Greco Island. We recommend a requirement that no dredging be allowed in Westpoint Slough in the future** except the Port of Redwood City's historic dredging of the bar at the entrance of the Slough to Redwood Creek. We suggest that potential erosion impacts from the proposed dredging of the entrance to the marina and increased tidal flow **be evaluated and eliminated.** We recommend that the Marina offset any unavoidable permanent loss of mudflat and marsh habitat which will result from the dredging project and tidal flow increase. **These mudflats are frequently used by feeding shorebirds and as we have stated previously, the marsh provide habitat for endangered species in addition to a variety of other wildlife.** (*Emphasis added.*)

So too here, the Corps under the ESA, NEPA and Section 404 must evaluate the adverse impacts from erosion and increased tidal flows from the currently proposed project, and whether the currently proposed project should be mitigated or denied based on such impacts.

In a June 14, 2002 comment letter on the Corps' Public Notice for the original project, submitted herewith, Jan Knight, Chief of the Endangered Species Division, Sacramento U.S. Fish and Wildlife Office, stated:

The Don Edwards San Francisco Bay National Wildlife Refuges' (Refuge) Greco Island is approximately 500 feet across Westpoint Slough from the project site. **This island is one of the few remaining large marshes left in South San Francisco Bay that support populations of the endangered southern subspecies of the harvest mouse. Greco Island also supports clapper rail.** Although other marshes can be found in South San Francisco Bay, most are narrow, interrupted strips along sloughs and bayside dikes, or highly saline, diked-off marshes with areas of sparse pickleweed. Harvest mice and clapper rail may occur in some of these areas, but the status and vigor of the populations are unknown. Much of the habitat value of Greco Island is due to its isolation, and care must be taken to insure that habitat values remain unaffected by this project. The West Point Marina project site itself contains excellent salt marsh habitat on the outboard side of the current salt pond levee on the Slough. This marsh has high potential to also provide habitat for these endangered species. **Due to the presence of listed species at these nearby properties, extreme care must be taken in the planning, construction, and maintenance of this project.**

Increased tidal flows from dredging/opening the marina acreage could cause erosion at Greco Island and the project site's salt marshes. **We also believe any future maintenance dredging of the Westpoint Slough channel would have serious effects on the Refuge and wildlife at Greco Island.** We recommend that the applicant **initiate a study on the effects of erosion and increased tidal flows that will result from the proposed dredging of the entrance to the marina.** Results from this study would facilitate the formulation of a maintenance plan for dredging between the marina and the opening of Westpoint slough. **Construction and/or other activities associated with this project occurring on or between the south levee of the project site and the outer boundary of Greco Island should be done outside of the clapper rail breeding season.** (*emphasis added*)

Notably, Westpoint Marina never undertook such a study on the effects of erosion and increased tidal flows resulting from dredging of the entrance to the Westpoint Marina. A Section 404 permit should not be issued for the proposed Westpoint Harbor Dredging Project until and unless such a study is prepared by the applicant, and reviewed by state and federal resource agencies. As Jan Knight commented in 2002, only with such a study can a maintenance plan for dredging between the marina and the opening of Westpoint slough be formulated and properly evaluated.

Further, the currently proposed Westpoint Harbor Dredging Project will not occur outside the rail breeding season. The rail breeding season is February 1 to September 1. According to the applicant's April 17, 2017 Consolidated Dredging-Dredged Material Reuse/Disposal Application and Memorandum submitted to the Corps for the Westpoint Harbor Dredging Project, clamshell dredging will occur June 1 through November 20 of each year, and the diver-operated suction dredging will occur throughout the year as needed.

The Mitigated Negative Declaration approved in 2001 by Redwood City for the Westpoint Marina Project included the following measures:

Mitigation Measure 40. The proposed dredging of Westpoint Slough from the Marina entrance to the centerline of the Slough **will be accomplished outside of the Clapper Rail breeding season (Feb 1st to September 1st).** (*Emphasis added*)

Mitigation Measure 47. The proposed connection to Westpoint slough will be dredged in an arc so that flows are directed Westerly toward Redwood Creek and not toward Greco Island. (see attached Redwood City Negative Declaration EA-10913-00, and MMRP)

Neither of these measures is included in the applicant's currently proposed Westpoint Harbor Dredging Project nor mentioned in Public Notice Number 1996-224540.

The USFWS reviewed the Redwood City Negative Declaration mitigation measures as part of its evaluation of the "Marina Project" prior to sending the agency's response to the June 11, 2002 Corps request for an Informal Consultation on the Westpoint Marina. In his response, Michael Fris, Division Chief of the Endangered Species Program, Sacramento Fish and Wildlife Office, concludes:

**Provided the project is implemented as described**, the Service determines that the West Point Marina Project is not likely to adversely affect the harvest mouse, clapper rail and least tern. (*emphasis added*) (Informal Consultation on the Proposed West Point Marina in Redwood City, San Mateo County, California - Corps File No. 22454S, April 11, 2003)

The Corps "Permit Evaluation and Decision Document File No. 22454S" associated with the original permit issued for the Westpoint Marina Project on April 27, 2004, included the following statement in the discussion on impacts to threatened and endangered species on page five:

In their letter dated April 11, 2003, the Service concurred that the proposed mitigation measures were sufficient to ensure that impacts to endangered species were both minimal and unlikely.

Clearly, the expansive and invaluable habitat for the salt marsh harvest mouse and nesting Ridgway's rail found on Greco Island, at a minimum, warrants inclusion of the protective measures identified by both the Refuge and the USFWS Endangered Species Division and required by the lead agency's Mitigated Negative Declaration to avoid impacts from the

proposed Westpoint Harbor Dredging Project. To avoid impacts from noise and other disturbances associated with dredging activity, Citizens urges the Corps to restrict dredging operations during the Ridgway's rail breeding season. The Corps should also include a permit condition requiring the connection to Westpoint Slough to be "dredged in an arc so that flows are directed westerly toward Redwood Creek and not toward Greco Island".

### **Need for CEQA and NEPA Environmental Review of Proposed Maintenance Dredging and New Project Elements**

The application for a 10-year "maintenance dredging" permit implies that this proposed dredging project is consistent with the original permitted marina project evaluated in the 2001 Redwood City Negative Declaration. However, the original marina project did not include maintenance dredging. Therefore agencies, including the Corps, to date have not considered or otherwise evaluated the environmental impacts from the currently proposed dredging operations.

Additionally, according to the Corps' Public Notice, the currently proposed project is different than the Westpoint Marina Project in that the current proposal includes 1) dredging 0.688 acres in the marina basin an additional 2.5 feet in depth (plus two feet of overdepth allowance) to create a new sediment trap; and 2) the use of a diver-operated hydraulic dredge.

The proposed project will remove up to 500,000 cubic yards of sediment over a ten-year span, but up to 89,249 cubic yards will be removed in a single 2017 Dredge Episode according to the applicant's Consolidated Dredging-Dredged Material Reuse/Disposal Application and Memorandum.

As outlined in the correspondence cited previously, when the Westpoint Marina project was first proposed, both the Refuge and the Endangered Species Division voiced serious concerns about impacts from dredging to the mudflats of Westpoint Slough that are used by foraging shorebirds and the resulting increased tidal flows causing erosion of marsh habitat on Greco Island.

In addition to the ongoing dredging proposed for the marina entrance channel that is actually in Westpoint Slough, the marina basin will continue to serve as a sediment sink that could be altering sediment deposition and accretion patterns throughout Westpoint Slough and on Greco Island. The addition of the new sediment trap, and continual removal of sediment from dredging will only exacerbate that process and possibly lead to loss of exposed mudflat for shorebird foraging and the erosion of tidal marsh.

The Corps is obligated to ensure that the serious concerns of the resource agencies are addressed now that the permit applicant, Mark Sanders, is proposing to initiate an ongoing maintenance dredging program at the marina, and create a sediment trap.

### **NEPA Analysis**

The Public Notice states the Corps has made a "preliminary determination" that the project does not require "the preparation of an Environmental Impact Statement for the purposes of NEPA"

for the proposed Westpoint Harbor Dredging Project. Citizens urges preparation of an EIS to evaluate the impacts, mitigations and alternatives to the project as proposed.

The “project” that the Corps evaluated prior to issuing Permit 22454S on April 27, 2004 to Mark Sanders for construction of Westpoint Marina included the mitigation measures in the Redwood City Negative Declaration EA-10913-00 that the applicant agreed to implement. Several of these mitigation measures were specifically discussed in the Corps Permit Evaluation and Decision Document, including measures “to minimize potential impacts to listed species”.

The 2001 Redwood City Mitigated Negative Declaration (and associated MMRP) included the following measures to protect endangered species and their habitat:

Mitigation Measure 21. The applicant shall install and maintain buoys down the centerline of Westpoint Slough to identify the "No Wake" speed zone, delineate the center of the channel for adequate draw, and discourage boats from deviating off the navigable channel. The applicant shall also install and maintain a buoy system 100 feet from the salt marsh on Greco Island along Westpoint Slough and Redwood Creek. The buoys shall contain signs informing the public that public access into the marshlands of the San Francisco Bay National Wildlife Refuge is prohibited. The applicant shall coordinate with the San Francisco Bay National Wildlife Refuge on specific wording and locations of the buoys.

Mitigation Measure 25. The Marina Operator/Harbor Master shall also install and maintain information signs at the boat launch and other public access areas informing the public of the access restrictions on Greco Island and other wetlands in the San Francisco Bay National Wildlife Refuge. The draft wording and locations of the signs shall be coordinated with the U.S. Fish and Wildlife Service San Francisco Bay National Wildlife Refuge and Bay Conservation and Development Commission and shall submit the plans for the locations, layout, and wording for the signs to Community Development Services for review and approval.

Similar mitigation measures are also incorporated into the current BCDC Permit issued to Mark Sanders as Special Permit Conditions “H” and “I”. Attached is correspondence Citizens recently provided to BCDC and FWS in which we document that these mitigation measures/permit conditions have not been implemented or maintained. (See attached BCDC Permit 2002.002.07 and Brian Gaffney/Citizens March 10, 2017 and May 24, 2017 correspondence to BCDC)

In the absence of the required signage at the boat launch, and the buoys and signs off Greco Island, the original Westpoint Marina project permitted by the Corps in 2004 is currently placing salt marsh harvest mouse and Ridgway’s rail at risk from human disturbance and harassment from marina users approaching and accessing Greco Island channels in small boats, kayaks and paddleboards.

Additionally, in the absence of the centerline buoys delineating the navigation channel and the signage designating the “No Wake Zone” in Westpoint Slough, the mudflats near the channel are currently subject to damage from marina vessels veering out of the navigation channel, and

Greco Island is subject to erosion from the wakes of marina vessels (including a high-speed private ferry service using Westpoint Marina last year) travelling at excessive speeds.

These are the existing baseline conditions in Westpoint Slough and at Greco Island that the Corps must consider when evaluating the impacts, including cumulative impacts, of additional disturbance to listed species and erosion to wildlife habitats from the proposed dredging. It would be inappropriate to issue a permit for the proposed maintenance dredging and construction of a silt basin until a study of the impacts of dredging on the adjacent mudflats and tidal marsh edges of Greco Island has been provided and reviewed and approved by the Corps and other regulatory and resource agencies.

### **Endangered Species Act Consultation**

Given the potentially significant impacts to listed species, the Corps must complete formal consultation with the USFWS and NMFS under the federal Endangered Species Act - prior to issuance of a 404 permit for the proposed Westpoint Harbor Dredging Project.

### **Compliance with California Law**

In addition to the requirement that this proposed project comply with CEQA as discussed above, California law protects the California clapper rail (*Rallus longirostris obsoletus*), the salt marsh harvest mouse (*Reithrodontomys raviventris*) and the California least tern (*Sterna antillarum browni*) as “fully protected species” which may not be taken or possessed at any time. Calif. Fish & Game Code §§ 3511, 4700. The California Supreme Court has held that “fully protected species” are subject to an express prohibition on taking that is a stricter prohibition than provided under the California Endangered Species Act, even where such taking of a fully protected species is “mitigation for a project under CEQA.” *Center For Biological Diversity v. California Department of Fish and Wildlife* (2016) 62 Cal.4th 918.

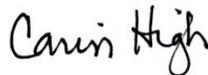
### **Conclusion**

Citizens Committee to Complete the Refuge appreciates the opportunity to comment, and we thank you for giving our concerns about the proposed Westpoint Harbor Dredging Project your careful consideration. We ask that we be kept apprised of any environmental review and NEPA/CEQA comment period, that we receive a copy of the Corp’s ESA Biological Assessment for this project, and receive notice of all Corps’ actions in regards to this proposal.

Sincerely,



Gail Raabe  
Co-Chair



Carin High  
Co-Chair

Citizens Committee to Complete the Refuge

Cc: Kim Squires, USFWS  
Anne Morkill, DESFBWR  
Elizabeth Christian, RWB  
Marc Zeppetello, BCDC  
Steven Turner, Redwood City  
Law Offices of Brian Gaffney, APC

Attachments:

DESFBNWR 2001 Comment Letter to Redwood City Planning (File: USFWS Refuge Letter Westpoint Marina 9.18.2001)  
USFWS 2002 Comment Letter on PN 22454S (File: 20020614 Comments on USACE Public Notice) Redwood City MND for the Westpoint Slough (Sanders) Marina Project EA-10913-00 with Addendum EA 2003-10 (File: Neg Dec with Addendum EA 2003-10 Clean Copy)  
Redwood City Westpoint Marina Mitigation and Monitoring Plan (File: MMRP Clean Duplicate Copy)  
BCDC Permit 2002-002-07, Mark Sanders, Permittee (File: 2002.002.07\_Permit)  
Brian Gaffney/Citizens March 10, 2017 Correspondence to BCDC (File: BCDC Enforcement Letter1 SENT 3.10.17 With Attachment (File: Citizens Letter to BCDC SENT 3.10.17)  
Brian Gaffney/Citizens May 24, 2017 Correspondence to BCDC (File: BCDC Enforcement Letter3 SENT 5.24.17)  
California Ridgway's Rail Surveys for the San Francisco Estuary Invasive *Spartina* Project 2016 (File: RIRAReport2016)

**NEGATIVE DECLARATION**  
**REDWOOD CITY, SAN MATEO COUNTY, CALIFORNIA**

Environmental Assessment 10913-00 was approved by the Redwood City Planning Commission on October 16, 2001 after a noticed public hearing. All changes made to the original environmental assessment by the addendum are underlined in the text below.

---

**Project Description:**

1. **Applicant:** Mark Sanders
2. **Proposed Location:** 1501-1599 Seaport Boulevard
3. **Proposed Action:** Construction of a new 408 slip marina, boat maintenance area, 10,000 square foot restaurant and 20,000 square feet of support retail with approximately 400 parking spaces on 50 acres located south of the Pacific Shores Center project. The project is located in the 'TP' (Tidal Plain) Zoning District.

**Negative Declaration Mitigation Measures:**

1. The application shall require that the applicant obtain a Conditional Use Permit from the Zoning Administrator prior to issuance of a building permit.
2. The applicant shall obtain an exception from the Planning Commission per the requirements of Chapter 30 of the Redwood City Code prior to any construction activities.
3. A maximum of 65 live-a-boards shall be allowed in order to limit traffic impacts.
4. A Soils and geotechnical Report shall be prepared, and submitted to the Engineering Division of Redwood City Community Development Services, as well as to BCDC, the U.S. Army Corps of Engineers (Section 404 permit) prior to issuance of a Building Permit. In addition, a drainage plan, an erosion and sedimentation plan and a storm water pollution prevention plan (conforming to NPDES requirements) shall be submitted and approved by the City Engineering Division, BCDC, U.S. Army Corps of Engineers prior to the beginning of development and construction activities. All disturbed portions of the drainage ditch which separates the project site from Pacific Shores shall be restored to preexisting conditions prior to issuance of final permit by the Redwood City Building Division.

5. A Dirt Hauling Permit shall also be required for the anticipated importation of topsoil to the site. A similar permit will be required in the event that soil is exported from the site, (the bittern materials referred to in section III will be exported by rail but will require that the applicant submit a Closure Plan to the Redwood City Engineering Division prior to the issuance of a grading permit). A Dirt Hauling Permit shall also be required for the soil imported to the site to facilitate site preparation (wicking).
6. The applicant will be required to implement dust control measures during site preparation and construction activity in order to help reduce this temporary impact.
7. The applicant shall provide a second point of access to the perimeter road around the marina basin at a location as shown on figure 2, page 6 of the RKH traffic study for the proposed project, prior to issuance of a Building Permit. The secondary access point could be designated for emergency access only and be controlled by a locked chain gate, as determined by the Redwood City Fire Department. Alternately, the applicant shall obtain approval for an emergency access plan that includes additional access points.
8. The marina access road connection to the Pacific Shores Center perimeter street should be "Stop" sign controlled.
9. A Traffic Impact Fee of \$285.30 per boat berth shall be paid by the applicant prior to issuance of a Building Permit. Traffic Impact Fees shall also be paid for the commercial portion of the development based on the City's adopted fee rate.
10. The applicant shall coordinate with the U.S. Fish and Wildlife Service and California Department of Fish and Game to determine an appropriate location for recreating the roost site. The applicant shall also submit specific design plans for the island to Community Development Services for review and approval prior to obtaining the grading permits for the project. Community Development Services may accept written approvals from U.S. Fish and Wildlife Service and California Department of Fish and Game of roost site mitigation plan as evidence of compliance with this measure. Alternately, since Cargill pond 10 is continuing to function as a roost site, it shall be the responsibility of any future developer involved in the conversion of pond 10 to another use to locate a new roost site.
11. The applicant shall obtain all necessary permits, (including a Section 401 permit or certification) from the San Francisco Regional Water Quality Control Board for all applicable activities, as determined by that agency.

12. The project landscape plans shall require an architectural permit prior to installation and shall comply with the regulations of the concerned agencies (including BCDC and Fish and Wildlife Service and the Department of Fish and Game) and shall also conform to the Redwood City Water Conservation Guidelines.
13. Noise levels shall be kept to a level of compliance with all applicable agency standards (for example, BCDC, Fish and Wildlife Service, Department of Fish and Game) so as not to detrimentally impact any neighboring "habitat". The applicant shall coordinate a wildlife-monitoring program with the Department of Fish and Game and the Fish and Wildlife Service.
14. The applicant shall submit a Lighting Plan with a photometrics study for review and approval by Community Development Services, and all applicable agencies (for example, BCDC, Fish and Wildlife Service, Department of Fish and Game) to insure that the site is adequately, but not excessively lit for night time use and security.
15. The applicant shall coordinate with the Redwood City Fire Department and San Mateo County Office of Environmental Health a Hazardous Materials Plan prior to issuance of a Building Permit for the project.
16. The applicant shall obtain all necessary clearances from the San Mateo County Health Services Agency pertaining to soil contamination on the site prior to construction.
17. The applicant shall obtain an Architectural Permit for site, building, signs, lighting and landscape/irrigation improvements from Redwood City Community Development Services.
18. The project shall meet all necessary requirements of the Redwood City Fire Department which could include the installation of a fire sprinkler system for all applicable buildings.
19. The applicant shall underground all overhead utility lines.
20. The applicant shall obtain a Building Permit from Redwood City Community Development Services prior to construction.
21. The applicant shall install and maintain buoys down the centerline of Westpoint Slough to identify the "No Wake" speed zone, delineate the center of the channel for adequate draw, and discourage boats from deviating off the navigable channel. The applicant shall also install and maintain a buoy system 100 feet from the salt marsh on Greco Island along Westpoint Slough and Redwood Creek. The buoys shall contain signs informing the public that public

- access into the marshlands of the San Francisco Bay National Wildlife Refuge is prohibited. The applicant shall coordinate with the San Francisco Bay National Wildlife Refuge on specific wording and locations of the buoys.
22. The Marina Operator/Harbor Master shall be responsible for maintenance of the buoys and annual reporting to the City Planning Department on the conditions of the buoy system, effectiveness of the buoys, and information on observed or reported intrusions onto Greco and other islands. The Harbor Master shall be responsible for reporting intrusions/unauthorized landings on the island to appropriate enforcement agencies (i.e., San Francisco Bay National Wildlife Refuge, Redwood City Police, Coast Guard, etc.).
  23. The Applicant shall redesign the project to provide a two story Harbor Master's office in a location that will provide a view of the marina as well as Westpoint Slough/Greco Island. The intent of this measure is to provide a regularly staffed observation location for compliance. The location of the Harbor Master's office shall be submitted to Community Development Services for review and approval prior to obtaining a grading permit for the project.
  24. The Marina Operator/Harbor Master shall also adopt appropriate language for all rental contracts for marina slips and for boat launching that include progressive penalties (maximum one warning with the second time expulsion for a minimum of 1 year) for violating access restrictions onto Greco and other islands. The applicant shall submit the wording and draft contract to Community Development Services for review and approval prior to issuing the certificate for occupancy.
  25. The Marina Operator/Harbor Master shall also install and maintain information signs at the boat launch and other public access areas informing the public of the access restrictions on Greco Island and other wetlands in the San Francisco Bay National Wildlife Refuge. The draft wording and locations of the signs shall be coordinated with the U.S. Fish and Wildlife Service San Francisco Bay National Wildlife Refuge and Bay Conservation and Development Commission and shall submit the plans for the locations, layout, and wording for the signs to Community Development Services for review and approval.
  26. The applicant shall erect and maintain a minimum 6-foot tall fence east along Westpoint Slough from the end of the public access area around the eastern and southern edges of the property to prevent informal trail establishment and access to adjacent pond levees and fringe marshes.
  27. The applicant shall provide a written commitment to the City, Department of Fish and Game and U.S. Fish and Wildlife Service San Francisco Bay National Wildlife Refuge to cooperate on any future restoration plans for the adjacent salt ponds. Future restoration plans unknown.

- 
28. The applicant shall provide visual barriers between the active marina areas and the adjacent salt pond to reduce disturbance to water birds using the salt pond. The visual screening can be achieved through setbacks (85 to 90 feet in width) or through a combination of reduced setbacks combined with landscaping or other visual barriers (fence slats) that obscure near range views of the salt ponds (less than 100 feet from the human use areas).
29. The applicant shall select and limit landscaping to species which are not considered to be problematic invasive exotics by the California Exotic Pest Plant Species Council. Trees and shrubs shall utilize the Landscape Tree Suitability Index developed for the Pacific Shores Center project. Only trees and shrubs with a High Landscaping Suitability Index rating (low potential for nest and roost sites) shall be used for general landscaping. High Suitability index trees shall exhibit at least two the following characteristics at tree maturity:
- ◆ Less than 20 to 25 feet in height; columnar shape; fine limbs; or closed, dense crown structure.
30. The Marina Operator and any marina tenants shall implement and maintain best management practices (BMPs) to limit food sources and cover (nesting, roosting, and denning sites) for non-native and urban adapted predators. Applicable BMPs are listed in the following Table.
- 

**Table 1**  
**Best Management Practices to Minimize Urban-Adapted Predators**

**Reduce Or Eliminate Easy Accessibility To Food**

- Tight fitting lids should be kept on garbage cans.
- Pets should be fed indoors or outdoors only during daylight hours.
- Leftover pet food should be removed immediately.
- Water bowls should be emptied or taken in at night.
- Gardens should be frequently harvested.
- Windfall fruit should be frequently picked up.
- Never intentionally leave food outdoors for wild animals.

**Keep Cats Indoors**

- Participate in or promote the American Bird Conservancy's *Cats Indoors! The Campaign for Safer Birds and Cats* program.
- Prohibit cat feeding colonies in or near sensitive wildlife areas.

**Prevent Unwanted Breeding**

- Sterilize cats by neutering males and spaying females.

**Minimize Cover and Denning/Nesting Sites**

- Clean up rubbish and debris piles.
- Reduce outdoor wood piles or stacks; keep fire wood in enclosed, tightly-sealed structures.
- Seal cracks and holes in walls and foundations.

- Screen off covered niches in roofs on homes and commercial buildings to block off access to covered nesting and roosting site.
- Encourage use of landscaping plants that do not provide attractive cover/nest sites for predators; discourage use of low shrubby ground cover, ivy, and palms trees greater than 20 feet in height at maturity.

Sources of Information:

*Reducing Cat Predation on Wildlife* by Frank Gray. Outdoor California. May-June 1999  
*Cats and Wildlife, A Conservation Dilemma* by J.S. Coleman, S.A. Temple, and S.R. Craven.  
Cooperative Extension, Madison WI. <http://www.wisc.edu/wildlife/e-pubs.html>  
*Managing Raccoon Problems* by Rickert Nature Preserves.  
<http://www.wholoweb.com/cannon/raccoon.htm>

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31. The applicant shall develop and implement an ongoing education plan informing the tenants and public users of the need to follow the BMPs for minimizing predators.
32. Operator/Harbor Master shall prohibit the establishment of feral cat feeding stations on the property.
33. The Marina Operator/Harbor Master shall coordinate with the invasive Spartina control group and shall annually remove invasive cordgrass from marina property until regional control efforts are discontinued.
34. The applicant shall develop a water quality control plan that address the State's NPS/CZARA Marina and Recreational Boating Management Measures and provide a copies of the Section 404 permit and authorization from the San Francisco Bay Regional Water Quality Board (401 certification or Waste Discharge Requirements) to Community Development Services in order to document that the Regional Board has reviewed and approved the plan. The plan and approvals shall be submitted prior to obtaining a grading permit for the project. Copies of any required monitoring for the Regional Board shall be submitted to City Planning Department.
35. Personal watercraft shall not be allowed in the marina.
36. The project will participate in the "oil spill Prevention and Response" program managed by the California department of Fish and Game.
37. The project will incorporate in its design "Best Management Practice" in regard to storm water run-off including complying with the recently adopted requirements of the regional Water Quality Control Board.
38. A buoy system will be installed approximately 100 feet from Greco Island with signs stating that Greco Island is closed to the public.

39. A no wake policy shall be adopted by the developer and enforced at all times by the designated project manager (Harbor master) for the marina as well as for Westpoint Slough.
40. The proposed dredging of Westpoint Slough from the Marina entrance to the centerline of the Slough will be accomplished outside of the Clapper Rail breeding season (Feb 1<sup>st</sup> to September 1<sup>st</sup>).
41. The Marina will have routine garbage collection as required by the City of Redwood City as well as San Mateo County Health ordinances.
42. The developer will coordinate with the Refuge authorities relative to the wording to be placed on signs regarding the protection of Greco Island.
43. The six foot high chain link fence that is proposed along the South side of the Marina to prohibit access to the remaining portion of Cargill bittern pond will be extended northwesterly along the existing levee to prohibit access to the existing marsh. Appropriate signage will also be developed with the appropriate authorities to explain the reason for the fencing.
44. The Developer will support the City in the development and enforcement (as determined by the City and other applicable agencies) of an ordinance prohibiting overnight mooring in Westpoint Slough.
45. An ongoing exotic cordgrass control program shall be developed and implemented within one year of the marina's operation to minimize sedimentation inside the marina.
46. Riprap, as approved for Pacific Shores shall be used for erosion control of levee banks.
47. The proposed connection to Westpoint slough will be dredged in an arc so that flows are directed Westerly toward Redwood Creek and not toward Greco Island.
48. Sewer facilities will be constructed to individual slips that will contain live-a-boards. All of the sewage for the marina shall be constructed to standards approved by City engineering as well as the Coast Guard and the Department of Fish and Game, whichever is more restrictive.

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Project Planner

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Date

The following is an excerpt from the *California Ridgway's Rail Surveys for the San Francisco Estuary Invasive Spartina Project 2016*. The information in the excerpt is specific to surveys conducted in the San Mateo Region of San Francisco Bay. The complete report is available at:  
<http://www.spartina.org/documents/RIRARreport2016.pdf>

**California Ridgway's Rail Surveys for the  
San Francisco Estuary Invasive *Spartina* Project 2016**

Report to:

The State Coastal Conservancy  
San Francisco Estuary Invasive *Spartina* Project  
1515 Clay St., 10<sup>th</sup> Floor  
Oakland, CA 94612

Prepared by:



Jen McBroom  
Olofson Environmental, Inc.  
1830 Embarcadero Cove, Suite 100  
Oakland, California 94606  
Contact: [jtmcbroom@Spartina.org](mailto:jtmcbroom@Spartina.org)

November 30, 2016

## 1. Introduction

Annual monitoring for the endangered California Ridgway's rail (*Rallus obsoletus obsoletus*, formerly California clapper rail, *Rallus longirostris obsoletus*) is an essential component of the State Coastal Conservancy's Invasive *Spartina* Project (ISP). California Ridgway's rails are year-round residents of the tidal wetlands of the San Francisco Estuary and co-occur with native and non-native *Spartina*. The ISP requires information on the number of rails at each site for the planning and permitting of *Spartina* treatment. Additionally, annual breeding-season surveys provide a standardized measure of Ridgway's rail presence and distribution in *Spartina*-invaded marshes throughout the Estuary.

The California Ridgway's rail is classified as endangered by both the U.S. Fish and Wildlife Service (Federal Register 50 CFR 17.11) and the State of California (California Code of Regulations Title 14, Section 670.5). The most recent analysis from Point Blue Conservation Science (PBCS) estimates that the average total population was about 1,167 individuals between 2009 to 2011 (Lin, et al., 2012). The present range of the California Ridgway's rail is limited to the tidal marshes of the San Francisco Estuary, with the exception of occasional observations along the outer coast in Tomales Bay.

California Ridgway's rails occur only in salt and brackish tidal marsh habitat and require vegetative cover suitable for both nesting and refuge during high tide events (U.S. Fish and Wildlife Service, 2013). Marshes where they occur are characterized by unrestricted daily tidal flows through a network of well-developed channels. Channel density has been shown to be the most important landscape feature to positively influence Ridgway's rail density (Lin, et al., 2012). Additionally, large continuous marshes with a low perimeter-area ratio support higher densities of California Ridgway's rail (Lin, et al., 2012).

In collaboration with partner organizations, including Point Blue Conservation Science (PBCS), Don Edwards National Wildlife Refuge (DENWR), Avocet Research and Associates (ARA) and San Pablo Bay National Wildlife Refuge (SPBNWR), Olofson Environmental, Inc. (OEI) conducted surveys for California Ridgway's rails to inform the ISP about rail populations at sites slated for *Spartina* treatment in 2016. Trained and permitted biologists performed standard-protocol surveys at 129 *Spartina*-invaded sites between January 15 and April 15, 2016. The data were gathered in a geodatabase for analysis and summarized on a site-by-site basis.

The results of surveys conducted in 2016 by OEI are presented in this report. The ISP relies on partner organizations to conduct surveys and report results collected at other *Spartina*-invaded sites that are not surveyed by OEI. The summary data presented here represent unique detections of Ridgway's rails within the areas surveyed by OEI. These data should not be misinterpreted to be a range-wide population estimate or a comprehensive count of Ridgway's rails at all *Spartina*-invaded sites. For a complete list of ISP subareas and associated survey organizations, see Appendix I: Complete List of 2016 *Spartina* Treatment Sites and Ridgway's Rail Survey Plans by Site.

Where available, data from 2010 to 2015 are also included in this report. However, caution should be used when comparing survey results between years. Rails are difficult to detect and survey results can be highly variable even when there is a stable population. Weather, timing, observer, and survey effort can all bias results. The best way to understand Bay-wide trends is through rigorous statistical analysis, which is beyond the scope of this report.

#### 4.6 San Mateo Region

The San Mateo region extends from the San Mateo Bridge to the Dumbarton Bridge on the west side of the Bay (Figure 9). This region contains a variety of wetland habitats, including marsh islands, active and inactive commercial salt ponds, large tidal channels, and bayfront strip marshes. The older marsh parcels in the region support a diverse vegetative community and extensive dendritic channel complexes. These large marshes have a low perimeter-area ratio and are disconnected from the urban mainland by wide sloughs. They provide high-quality habitat for Ridgway's rails.

The region includes 20 ISP rail sites, seventeen of which were surveyed by OEI in 2016. The other sites that were not surveyed either did not support any *Spartina* in 2015 or were part of a larger ISP treatment subarea that was surveyed by an adjacent transect, and so rail surveys were deemed unnecessary. OEI detected a minimum of 128 Ridgway's rails in the San Mateo Region in 2016, a continuation of the positive trend in the region (Table 7). Most sites had small to moderate increases, indicating a steady upward trend.

A portion of one site within the region, B2 North (02c), is unique in the Bay in that it is being experimentally treated for invasive *Spartina* using a sub-lethal dose of herbicide (seed suppression) in order to prevent seed set and clonal expansion while still retaining vegetative structure for Ridgway's rails. Rail numbers at this site have been increasing, both within the experimental portion of the site in the north-east and in the fully treated remainder of the site. However, non-native *Spartina* remains a significant component of the overall habitat in the marsh.

Also, the recently restored Pond B3 was surveyed using call counts for the first time this year. However, after repeated visits to the site at mid-to-higher tides, it became apparent that there is too little vegetation and not enough cover to support breeding rails at this site yet. OEI plans to revisit the site using call-count surveys in 2018.

Several avian predators and their nests were observed at Middle Bair (AKA Deepwater Slough) again this year, including red-tailed hawks, peregrine falcons, and common ravens. These observations were reported to DENWR, who planned to remove some of these nests. Several breeding raptors were also observed and reported in 2015, however the Refuge was not able to remove the peregrine falcon nest which probably fledged young last summer. A successful falcon nest last year could be implicated in the decline in detections at this site in 2016. In fact, over the course of the year, rail body parts were found along the boardwalk under the PG&E towers where the falcons and other avian predators were often observed.

The Coastal Conservancy has invested in rail habitat enhancements in the region, including the construction of high tide refuge islands at B2 North, Bird Island, Belmont Slough, Corkscrew Slough, Middle Bair (Deepwater Slough), and Greco Island North. Additionally, the ISP Restoration Program has planted thousands of *Grindelia stricta* seedlings in the region, particularly at Greco North and B2 North. The size of the marshes within the region and the potential habitat available through the restoration of salt ponds should continue to support a stable rail population in the years to come.

#### 4. Survey Results

**Table 7.** Survey results from 2010 to 2016 in the San Mateo Region. Sites that were split according to treatment permissions in 2011 are shown in grey italic font (and are not included in the region totals). *Spartina* control work has been restricted to a low dose of herbicide (seed suppression) in B2 North – NE (02c.1b) since 2011; this site is noted in grey shading.

Site Name (ID)	Highest Minimum Count							Average	Change from Average	Trend
	2010	2011	2012	2013	2014	2015	2016			
Belmont Slough (02a.1)	3	4	3	3	5	7	6	4	2	↗
Redwood Shores (02a.3)	2	2	6	1	0	0	0 <sup>1</sup>	2	-2	↘
Redwood Shores Mitigation Bank (02a.4)	0	0	0	0	0	0	0	0	0	-
Corkscrew Slough (02b.1)	22	12	17	13	16	15	16	16	0	→
Steinberger Slough (02b.2)	0	0	0	0	0	0	0	0	0	-
B2 North Quadrant (02c)	14	22	12	20	5	18	28	17	11	↗
<i>B2 North Quadrant - NW (02c.1a)</i>	0	0	2	2	0	4	6	2	4	↗
<i>B2 North Quadrant - NE (02c.1b)</i>	6	16	11	20	5	19	19	14	5	↗
<i>B2 North Quadrant - South (02c.2)</i>	3	2	4	7	0	2	11	4	7	↗
B2 South Quadrant (02d)	7	6	4	9	3	6	6	6	0	→
West Point Slough - NW (02e)	1	2	0	1	0	0	2	1	1	→
Greco Island - North (02f)	9	3	10	6	6	8	5	7	-2	→
West Point Slough - SW/E (02g)	1	0	1	0	0	0	0	0	0	→
Greco Island - South (02h)	24	22	22	22	32	31	38	27	11	↗
Ravenswood Slough (02i)	3	9	1	2	2	12	8	5	3	↗
Middle Bair N (02k)	10	14	19	24	28	37	19	22	-3	↗
Middle Bair SE (02k)	8	9	2	7	7	0	0 <sup>1</sup>	5	-5	↘
Inner Bair Island Restoration (02l)	0	0	0	0	0	0	0	0	0	-
Pond B3 Bair Island Restoration (02m)	0	0	0	0	0	0	0	0	0	-
Middle Bair West (02o)	0	0	0	0	0	0	0	0	0	-
<b>San Mateo Region TOTAL</b>	<b>104</b>	<b>105</b>	<b>97</b>	<b>108</b>	<b>104</b>	<b>134</b>	<b>128</b>	<b>111</b>	<b>14</b>	<b>↗</b>

<sup>1</sup> No rails were detected at these sites (Redwood Shores and Middle Bair SE) during surveys; however, rails were incidentally detected during *Spartina* surveys later in the year. These detections fell outside of breeding season (after September 1).

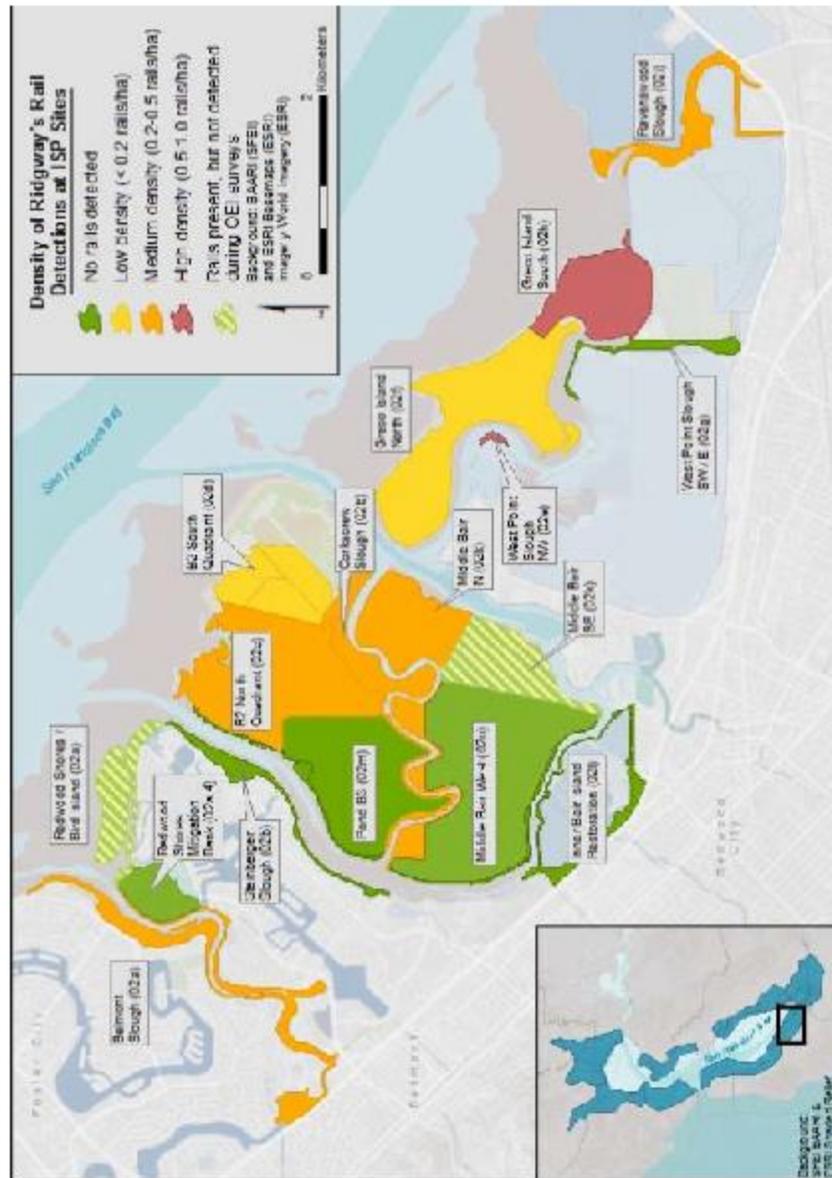


Figure 9. Density of Ridgway's rail detected in 2016 at ISP sites in the San Mateo Region. Density was calculated based on the highest minimum count within the survey area. Rails were not detected at Redwood Shores and Middle Bar SE during regular surveys; however, rails were incidentally detected during *Spartina* surveys later in the year, though these detections fell outside of breeding season (after September 1).



United States Department of the Interior

FISH AND WILDLIFE SERVICE  
San Francisco Bay National Wildlife Refuge Complex  
P.O. Box 524  
Newark, California 94560-0524  
(510) 792-0222

RECEIVED  
SEP 18 2001

CITY OF REDWOOD CITY  
PLANNING AND REDEVELOPMENT

September 18, 2001

Mr. Charles Jany  
Redwood City Planning & Redevelopment Services  
P.O. Box 391  
Redwood City, California 94064-0391

Dear Mr. Jany:

This letter is written in response to the Notice of Negative Declaration and Use Permit for Mark Sanders' proposed marina to be located at Westpoint Slough in Redwood City. The marina is proposed to be built across from Greco Island, a significant wildlife area on the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge). Our comments are intended to address issues directly affecting the Refuge and the wildlife we are mandated to protect. Additional comments addressing issues under the Fish and Wildlife Coordination Act, Clean Water Act, or Endangered Species Act may be sent under separate cover by the U.S. Fish and Wildlife Service's Sacramento Field Office.

The Refuge appreciates the effort Mr. Sanders and the City have made to reduce impacts from the proposed project. While we support many of the recommended mitigation elements found in the draft Biological Resources Report dated June 25, 2001, we have remaining concerns with the project. We hope these concerns can be addressed so the marina can proceed in a way that would protect the Refuge and its sensitive wildlife habitat.

The Refuge's Greco Island is approximately 500 feet across Westpoint Slough from the project site. The island is one of the most valuable remaining salt water marshes in South San Francisco Bay. In part because of its isolation from human disturbance, the island is one of the few remaining strongholds for the endangered California Clapper Rail and Salt Marsh Harvest Mouse as well as a great diversity of other wildlife. The marina project site itself contains excellent salt marsh habitat on the outboard side of the current salt pond levee on the Slough. This marsh has high potential to also provide habitat for these endangered species. On recent visits to the project site, we have observed large numbers of resting shorebirds using the old bittern pond where the marina will be built and have even observed feeding behavior in the pond.

We are concerned that the marina will 1) increase human presence in Westpoint Slough and disturbance on the Refuge's Greco Island and the project's site's tidal marsh, 2) increase erosion of wildlife habitat from boat wakes, 3) increase predator impacts on wildlife, 4) increase the distribution of exotic cordgrass, 5) increase contaminants, and 6) the shorebird roosting and feeding areas on the project site and the Westpoint Slough mud flats will not be sufficiently mitigated.

We support the proposal for buoys to be installed down the centerline of Westpoint Slough channel to discourage boats from deviating out of the channel. While this will help keep the larger boats from encroaching on Greco Island and the salt marsh habitat, it may still result in an unacceptable impact on the endangered species because smaller vessels will still be able to access the island. We recommend that the Marina install and maintain a buoy system 100 feet from the salt marsh in Westpoint Slough with signs stating that the marsh is closed to all public access. We support the installation of interpretative signs at the ramp to educate the public about the sensitive nature of wildlife in the area and to inform them that public access into marshlands of the Refuge is prohibited. At no time should individuals get out of their water craft and walk around the marshland, on berms or levees, or on boardwalks (PG&E does not allow public access to boardwalks). We recommend that the contractor coordinate with the Refuge on the information signs as they are developed.

We also recommend that no public access be allowed on the portion of the levee on the project site that is adjacent to the salt marsh. If that is not possible, we recommend that a physical barrier such as a low fence be built and maintained along the slough side of the proposed levee to prevent the public and their pets from accessing the sensitive salt marsh and mud flat habitat. Appropriate signage explaining the reason for closing this area to the public would also be helpful.

We recommend that the City establish and enforce a no wake zone in all of Westpoint Slough. Personal water craft should be prohibited from launching from the marina. We also recommend the City prohibit overnight mooring in the Slough.

We support the proposed mitigation measures to reduce roosting and nesting avian predators, to reduce construction disturbance and noise, and to reduce light and glare impacts to the Refuge and wildlife. The number of trees and other potential roosting and nesting structures installed in the development should be minimized and placed well back from the tidal areas. Plantings should incorporate low-growing native vegetation or non-invasive exotic vegetation, such as small shrubs, forbs, and grasses whenever possible, instead of trees. The marina's salt marsh is reported to contain exotic cordgrass, a species which is rapidly spreading in South San Francisco Bay. If this plant is allowed to expand in the area, it could degrade the quality of habitat for the endangered species in the Refuge and other marshes along Westpoint Slough. A management plan and funding should be established for an ongoing exotic cordgrass (*Spartina* spp.) control programs. When the marina is opened to tidal action, seeds from nearby exotic cordgrass plants will invade. If not controlled, exotic cordgrass will take over mudflat areas, causing rapid sedimentation which will necessitate frequent dredging as well as degrade wildlife habitat.

Because of the predictable increase in the mammal predator population that comes from human

development and the increase on the predation on the sensitive wildlife next to the marina, we recommend that an active predator trapping program be required for the life of the project. No feral cat feeding areas should be allowed at the project site with appropriate signs posted in public areas. Pets should be restricted to buildings and boats only and not allowed to roam outdoors. These rules should be strictly enforced. This restriction should be part of any lease/rental/use agreement for tenants of the development and marina. The Refuge can assist the Marina in the design of this program.

Because rip-rap may increase denning opportunities for rats, foxes and cats, we recommend that alternatives to the use of rip rap be investigated. If possible, create a more gradual slope (4-5H:1V) and plant native vegetation on newly graded areas to provide transitional habitat for high tide refugia for endangered species. If rip rap is necessary, it should consist of small materials that will not create habitat for rodents. Rip rap should not be placed on existing marsh vegetation.

Increased litter and garbage will attract and provide supplemental food for rats, cats, opossums, raccoons, and foxes which prey on clapper rails, salt marsh harvest mice, and other wildlife. The large amount of garbage produced by the restaurant and live aboards could be especially problematic. All dumpsters and garbage cans should be wildlife-proof to prevent scavenging by animals. Garbage should be removed on a regular basis to prevent overflow. Public areas should be monitored regularly and be kept free of garbage to prevent wildlife from scavenging.

We are concerned that fuel spills, sewage leaks, and storm water runoff would increase contaminant loads in the adjacent sloughs and could affect endangered species and other wildlife. The marina should develop a "Hazardous Materials Cleanup Plan" and participate in the "Oil Spill Prevention and Response" program managed by the California Department of Fish and Game. The marina should install proper containment berms and equipment for fuel storage. Only boats with efficient 4-cycle motors should be allowed to utilize the marina. Sewage releases from boats in the marina should be prohibited. A storm water management plan should be developed to prevent the marina's storm water from contaminating the adjacent sloughs and Refuge.

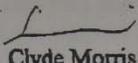
Though we do not anticipate a significant unmitigatable impact from dredging a channel from the entrance to the marina and the deeper Westpoint Slough channel, we are concerned that increased tidal flows from dredging/opening the marina acreage could cause erosion at Greco Island and the project site's salt marshes. We also believe any future maintenance dredging of the Westpoint Slough channel would have serious impact on the Refuge and wildlife at Greco Island. We recommend a requirement that no dredging be allowed in Westpoint Slough in the future except the Port of Redwood City's historic dredging of the bar at the entrance of the Slough to Redwood Creek. We suggest that potential erosion impacts from the proposed dredging of the entrance to the marina and increased tidal flow be evaluated and eliminated. We recommend that the Marina offset any unavoidable permanent loss of mudflat and marsh habitat which will result from the dredging project and tidal flow increase. These mudflats are frequently used by feeding shorebirds and as we have stated previously, the marsh provide habitat for endangered species in addition to a variety of other wildlife.

We support the recommended creation of approximately 3 acres of shorebird roost habitat to

offset the loss of the shorebird habitat in the bittern pond. We question if the proposed mitigation in the adjacent Cargill pond will result in long-term protection and will mitigate the loss of the feeding habitat we recently observed. Cargill has ended its salt production process at its Redwood City plant. The long-term use of this pond and the surrounding ponds is unknown. We recommend the mitigation be adjusted to provide both roosting and feeding habitat for shorebirds and the mitigation site be guaranteed to be protected from impacts from development of the surrounding land.

We believe that the requirement to implement all the mitigation measures recommended in the draft biological Resources Report and the additional measures described in this letter will result in a marina development that would conserve the Refuge's resources and the wildlife we are dedicated to protect. Thank you for the opportunity to comments on this document. If you have any questions regarding these comments, please contact me at (510) 792-0222.

Sincerely,



Clyde Morris  
Refuge Manager  
Don Edwards San Francisco Bay NWR

cc: Dan Buford & Mark Littlefield, FWS-ES, Sacramento, CA