

December 5, 2018

VIA E-MAIL TO INFO@BCDC.CA.GOV

San Francisco Bay Conservation and Development Commission
Attn: Commissioner R. Zachary Wasserman, Chair
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019

Kevin Vickers
TEL: 4152916107
FAX: 4152916307
kevin.vickers@bakerbotts.com

Re: Westpoint Harbor – Proposed Settlement

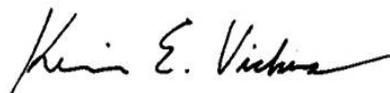
Dear Chairman and Commissioners:

At the November 8, 2018, Enforcement Committee meeting, Westpoint Harbor agreed to provide the Commission with some additional materials concerning shorebird roosting in Pond 10 and the signage alerting boaters that Westpoint Slough is a no-wake zone. I have enclosed the following photographs and documents addressing those matters:

- Enclosure A contains a map and photographs of no-wake signage.
- Enclosure B contains photographs of shorebirds roosting in Pond 10, excerpted from Enforcement ER2010.013, Administrative Record No. 84.
- Enclosure C is a report prepared by WRA, Inc., which includes additional photographs of shorebirds and analyzes roost habitat conditions at Pond 10. Based on review of historical data, shorebird observations, an assessment of landscape conditions, and a site visit by an ornithologist, WRA concludes that Pond 10 continues to provide roost habitat for shorebirds adjacent to the Westpoint Harbor marina.
- Enclosure D is an example of a Boat Owner License Agreement, in which boaters agree: “The Westpoint Slough Channel (from the main Redwood Creek Channel to the marina entrance) is also a ‘no-wake’ zone. Greco Island is home to several sensitive and endangered species, and boaters must not approach this area.”

Counsel for Westpoint Harbor will discuss these materials at the Commission’s December 6 meeting.

Sincerely,



Kevin Vickers

cc: Marc Zeppetello (marc.zeppetello@bcdca.gov)
Navi Dhillon (Baker Botts)
Chris Carr (Baker Botts)

Enclosure A

Path of Boat to and from Westpoint Harbor

"No Wake Slow 10 MPH"

"SLOW NO WAKE ZONE"

"Westpoint Channel is a 'NO WAKE' zone"







WESTPOINT
HARBOR CLUB
CALL (650) 701-0545 FOR GUEST BERTHING

SLOW
NO
WAKE
ZONE





SLOW
NO
WAKE
ZONE

Pandion

DIGITAL Raymarine

DIGITAL Raymarine

G

WESTPOINT HARBOR BOAT LAUNCH

REMEMBER, SAFE BOATING IS YOUR RESPONSIBILITY!

- ALWAYS wear lifejackets!
- Boat sober! Drinking and boating don't mix.
- Keep equipment and required safety gear in shape

OBEY NAVIGATIONAL RULES AND RESPECT THE ENVIRONMENT

- Westpoint Channel is a "NO WAKE" zone
- Public Access is restricted on Greco Island, Bair Island, and other wetland areas of the Bay Wildlife Refuge
- Do not discharge solid or liquid materials in the Bay

OBSERVE BOAT-LAUNCH COURTESY!

- 15 Minute time limit for boat launch and retrieval
- No moorage on the launch ramp dock
- After launch and retrieval, quickly and carefully move off the boat ramp to the designated parking area
- Display daily Ramp Permit on dashboard
- Permits available in harbor office (\$10/day)

Enclosure B



18 01. 2014 12:14

Shorebirds roosting in another area of the adjacent salt pond on the same date. Matt Leddy



Shorebirds roosting on the southern levee of Westpoint Marina. February 11, 2017, Matt Leddy

Enclosure C

TECHNICAL REPORT
Pond 10 Shorebird Roosting Habitat Analysis
Westpoint Harbor, Redwood City, CA

Prepared for:

Westpoint Harbor LLC
101 Westpoint Harbor Drive
Redwood City, CA 94063

Project 28118

November 26, 2018

Purpose

The purpose of this technical report is to summarize available information on the use of Pond 10 within the Cargill Redwood City plant site by shorebirds for roosting habitat. Pond 10 is a 42-acre diked area formerly used as part of solar salt production within the Redwood City salt plant site. Pond 10 is located directly south of Westpoint Harbor (attachment 1).

WRA evaluated existing conditions, available data on bird utilization, aerial imagery and other descriptive information as part of this assessment to determine if Pond 10 is effectively providing suitable roosting habitat for portions of shorebird life history.

Background

Roosting habitat provides an essential component of life history for shorebirds in the San Francisco Bay and its neighboring marsh habitats. During high tide, when the mud flats that provide feeding habitat are inundated, shorebirds take refuge at roost sites prior to resuming feeding at low tide. These sites are isolated from tidal hydrology, and thus are unlikely to fully flood though they may hold water as a result of precipitation events. Though roost sites may hold water, they are also characterized by an overall flat but somewhat variable topography that provide areas that are shallowly ponded or dry during periods of inundation. Lastly, these areas are ideally isolated by landscape barriers that prevent or hinder the trespass of predators.

Basins constructed as part of the solar salt production process, such as Pond 10, have been documented in the Bay Area as providing important roost habitat for shorebirds (USFWS, 2013). Studies have confirmed that these habitats, including the levees that often surround them, are highly selected by shorebirds as high tide roost habitat (Warnock 1995). As climate change continues to potentially impact coastal habitats through sea level rise, maintenance of roosting habitats is important to maintaining migratory stopover sites that account for all portions of shorebird life history.

Assessment Summary

Prior to conducting a site inspection, WRA reviewed historical photos and available data on the use of Pond 10 by shorebirds. Photos from past years show extensive use of the pond by roosting shorebirds, notably when Pond 10 is at least partially inundated. A photoset from January 2018 shows large groups of shorebirds using both the shallowly ponded areas and the levees that surround them. Photos that demonstrate usage of Pond 10 by various avian species can be seen in Attachment 2.

Recent photos of the site also indicate that topography within Pond 10 is consistent with providing effective shorebird roost habitat. Though during the wet season the pond is partially inundated, water levels within the pond appear to be shallow and areas both surrounded by water and against the levees remain dry. A topographic map of Pond 10 prior to the excavation of the Westpoint Harbor (Attachment 3) indicates at least two notable high points within the Pond that are likely to remain dry when the pond floods. Attachment 1 also shows aerial imagery representing varying degrees of flooding in Pond 10, where dry roost locations can still be identified.

Lastly, as observed by a WRA ornithologist during a site visit at Pond 10 on November 13, 2018, it should be noted that the pond offers protection from predators due to the presence of a “borrow ditch” along the mainland-side levee. These borrow ditches, which are excavated to provide soil for levee construction and fill for salt ponds, remain perpetually flooded (as compared to the salt ponds themselves, which are ephemeral) and provide a barrier to access for terrestrial predators that might harass or depredate shorebirds during roosting periods.

eBird Data Query

To confirm the potential presence of shorebird species at the site, WRA additionally pulled data from the citizen science website eBird (eBird 2012) for “Salt pond 10”. eBird data is often used by professionals, academics, and recreational birders in the absence of abundance data from scientific studies. Occurrence data is often verified by photographs that can be used to accurately identify bird species, and is quality controlled by expert moderators with specific regional knowledge. Queries on occurrence data for this assessment were executed based on a date range of 2008-2018 to be representative of the period since construction of the marina. A histogram was produced showing the presence of species on the site (by month) as they were reported by birders that submitted checklists for visits at that site (Attachment 4). Most observations were submitted by local birders Matthew Leddy and George Chrisman.

Data from the last 10 years demonstrate that several species of shorebird are regularly observed at Pond 10, chiefly during the winter months when the pond would be most likely to hold water due to increased precipitation. Observed high counts within Pond 10 in the last 10 years range from ~1000 birds (September 2017) to ~3000 (April 2013) birds for common shorebird species on the site. Other observations indicate total numbers around 5,000 birds for a single observation day (April 2011), but without definitive species id. Common species include marbled godwit (*Limosa fedoa*), American avocet (*Recurvirostra americana*), and dowitcher (*Limnodromus spp.*) among others. Though eBird data does not describe behavior, the observation of these species and their consequent attribution to this site are suggestive of Pond 10’s use as a roost site.

Conclusions

Based on review of historical data and landscape evidence, as well evidence from a recent site visit, WRA concludes that Pond 10 continues to provide roost habitat for shorebirds adjacent to Westpoint Harbor marina. The site is commonly used by shorebirds, demonstrates topography characteristic of roost sites, and is nearby to known foraging locations.

References

eBird. 2012. eBird: An online database of bird distribution and abundance [web application]. eBird, Ithaca, New York. Available: <http://www.ebird.org>. (Accessed: Date [e.g., February 2, 2012]).

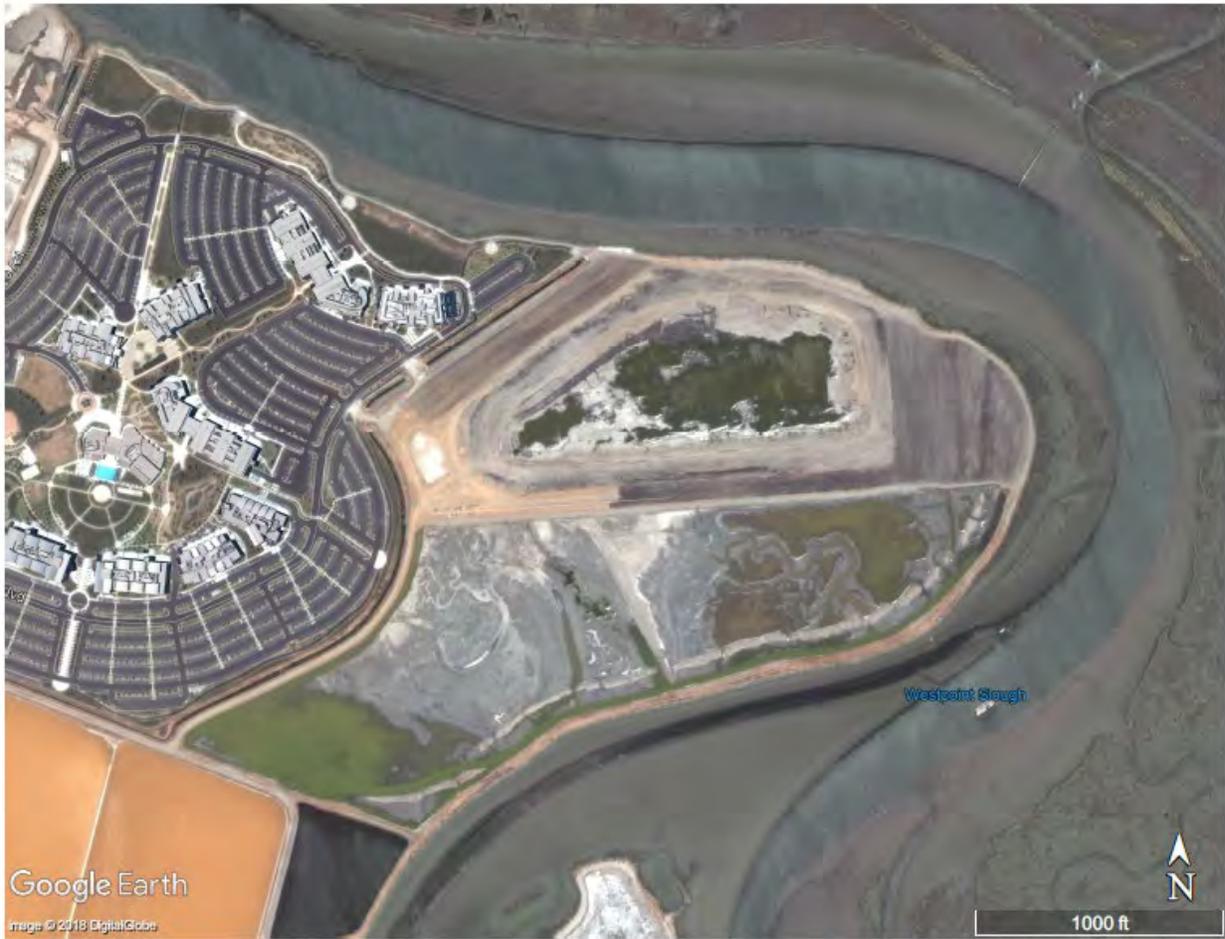
[USFWS] United States Fish and Wildlife Service. 2013. Recovery Plan for Tidal Marsh Ecosystems of North and Central California ,Volume 1. Most recently accessed: November 2018.

Warnock, S.E., Takekawa, J.Y. 1995. Habitat preferences of wintering shorebirds in a temporally changing environment: Western sandpipers in the San Francisco Bay estuary. The Auk. 112(4):920-930.

Attachment 1. Aerial Photographs of Pond 10, Redwood City, CA.



Date unknown, provided by Westpoint Harbor Marina.



Aerial photograph from June, 2006 (Google Earth, 2018)



Aerial photograph from April 2010 (Google Earth, 2018)



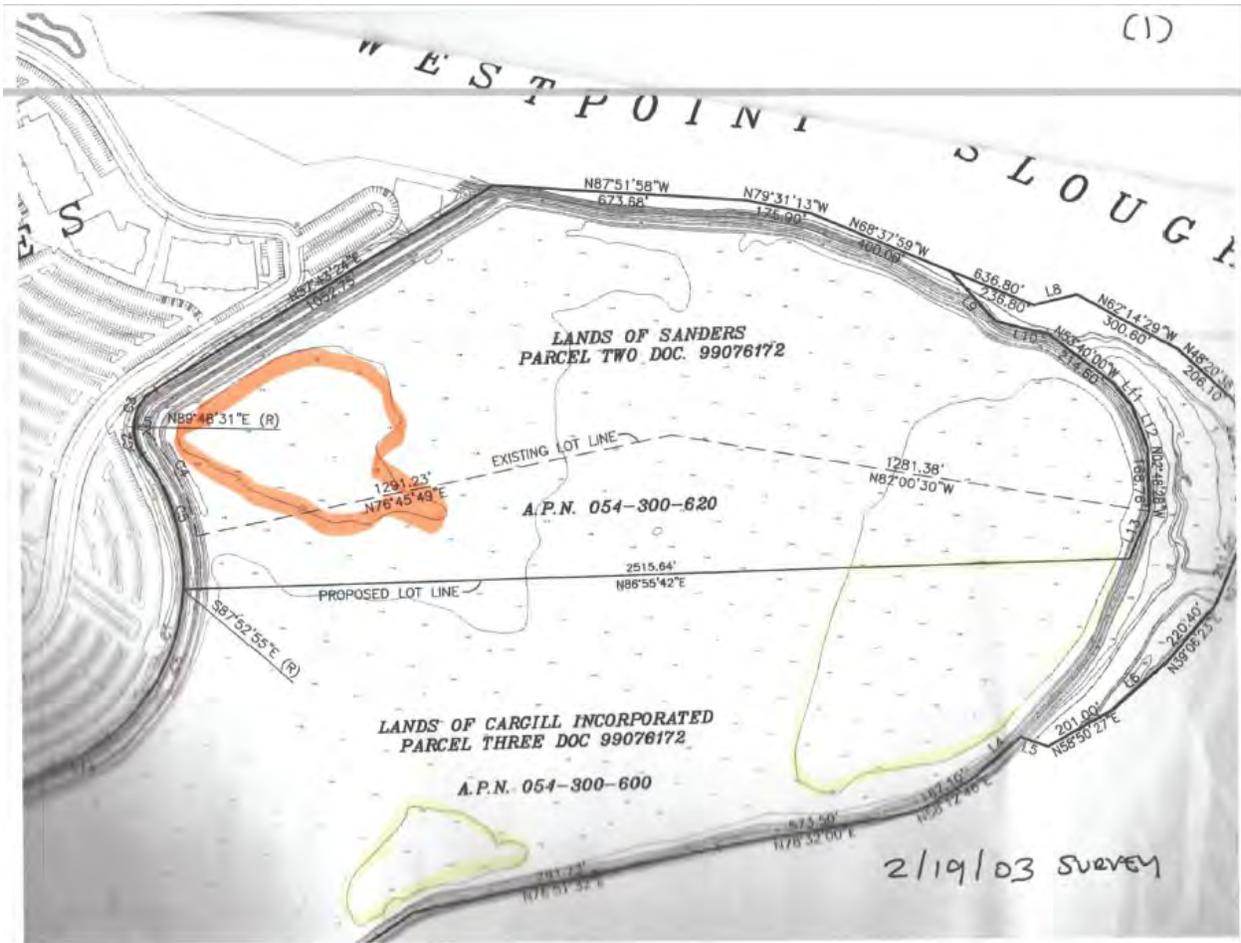
Aerial photograph from May 2017 (Google Earth, 2018)

**Attachment 2. Photos of shorebird usage of Pond 10 as a roost site. Taken
January, 2018**





Attachment 3. Topographic map of Pond 10 and surround area. Northern portion of site (north of "proposed lot line") on this map has since been converted to Westpoint Harbor marina. Provided by Westpoint Harbor from historical survey.



Attachment 4. Chart showing bird species observations from eBird (2018)

Attachment 5. Most recent occurrence of species identified at Pond 10, with count and observer (eBird 2018).

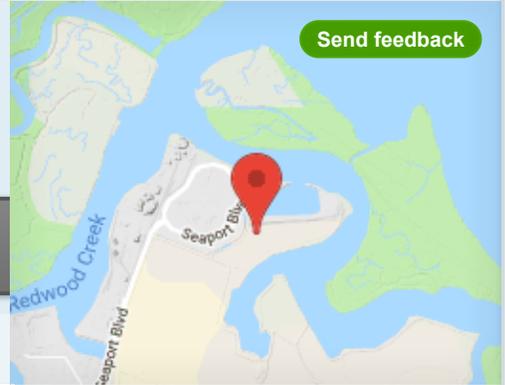
< [Hotspot Map](#)

Salt Pond 10

San Mateo County, California, US — [Get Directions](#)

All Months ▾ Last 10 Years ▾ [Set](#)

[Submit Data](#)



- Overview**
- Recent Visits
- Illustrated Checklist

52 Species | 80 Checklists

Updated 9 sec ago.

[Last Seen](#) [First Seen](#) [High Counts](#) [Bar Charts](#) [Printable Checklist](#)

[Show All Details](#)

	SPECIES NAME ▾	COUNT ▾	DATE ▾	BY	
1	Snowy Plover	38	7 Sep 2018	Matt Leddy	
	peep sp.	180	7 Sep 2018	Matt Leddy	
	gull sp.	17	7 Sep 2018	Matt Leddy	
2	Semipalmated Plover	450	22 Aug 2018	Matt Leddy	
3	Mallard	2	24 Apr 2018	George Chrisman	
4	Anna's Hummingbird	5	24 Apr 2018	George Chrisman	
5	Dunlin	502	24 Apr 2018	George Chrisman	
6	Least Sandpiper	21	24 Apr 2018	George Chrisman	
7	Western Sandpiper	301	24 Apr 2018	George Chrisman	
8	Short-billed Dowitcher	4	24 Apr 2018	George Chrisman	
9	Caspian Tern	2	24 Apr 2018	George Chrisman	
10	Forster's Tern	2	24 Apr 2018	George Chrisman	



Recent Visits

Checklists submitted within the last hour are not shown.

OBSERVER	DATE	SPECIES
Matt Leddy	7 Sep 2018	1
Matt Leddy	22 Aug 2018	2
Matt Leddy	9 Aug 2018	2
Matt Leddy	8 Jul 2018	1
Matt Leddy	9 Jun 2018	1
George Chrisman	24 Apr 2018	15
Matt Leddy	31 Oct 2017	1
Matt Leddy	14 Oct 2017	3
Matt Leddy	17 Sep 2017	2
Matt Leddy	15 Sep 2017	2

	SPECIES NAME ▾	COUNT ▾	DATE ▾	BY
11	Black Phoebe	1	24 Apr 2018	George Chrisman
12	Barn Swallow	1	24 Apr 2018	George Chrisman
13	Bushtit	1	24 Apr 2018	George Chrisman
14	Northern Mockingbird	1	24 Apr 2018	George Chrisman
15	European Starling	2	24 Apr 2018	George Chrisman
16	House Finch	2	24 Apr 2018	George Chrisman
17	Dark-eyed Junco	1	24 Apr 2018	George Chrisman
18	Eurasian Collared-Dove	4	5 Jul 2017	Malia DeFelice
19	American Crow	2	5 Jul 2017	Malia DeFelice
20	Canada Goose	6	31 Mar 2017	Adam Dudley
21	Greater Scaup	3	31 Mar 2017	Adam Dudley
22	Bufflehead	1	31 Mar 2017	Adam Dudley
23	Greater Yellowlegs	2	31 Mar 2017	Adam Dudley
24	Willet	30	31 Mar 2017	Adam Dudley
25	Lesser Yellowlegs	1	31 Mar 2017	Adam Dudley
26	Red-tailed Hawk	1	31 Mar 2017	Adam Dudley
27	Tree Swallow	2	31 Mar 2017	Adam Dudley
28	Lesser Goldfinch	4	31 Mar 2017	Adam Dudley
29	White-crowned Sparrow	2	31 Mar 2017	Adam Dudley

More Recent Visits...

Top eBirders

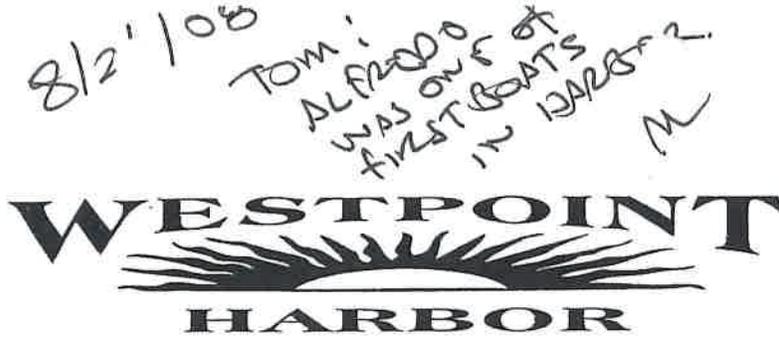
BY SPECIES | BY CHECKLISTS Updated 9 sec ago.

1	George Chrisman	35
2	Adam Dudley	31
3	Matt Leddy	23
4	Jennifer Rycenga	12
5	Malia DeFelice	11
You		0

	SPECIES NAME ▾	COUNT ▾	DATE ▾	BY	
30	Northern Shoveler	2	7 Feb 2017	Adam Dudley	
31	Canvasback	50	7 Feb 2017	Adam Dudley	
32	Common Goldeneye	1	7 Feb 2017	Adam Dudley	
33	Rock Pigeon	40	7 Feb 2017	Adam Dudley	
34	Black-necked Stilt	37	7 Feb 2017	Adam Dudley	
35	American Avocet	300	7 Feb 2017	Adam Dudley	
36	Marbled Godwit	93	7 Feb 2017	Adam Dudley	
37	Long-billed Dowitcher	10	7 Feb 2017	Adam Dudley	
38	California Gull	3	7 Feb 2017	Adam Dudley	
39	Bewick's Wren	1	7 Feb 2017	Adam Dudley	
40	American Pipit	40	7 Feb 2017	Adam Dudley	
41	Western Meadowlark	18	7 Feb 2017	Adam Dudley	
42	Great Blue Heron	1	6 Dec 2016	George Chrisman	
43	Great Egret	1	6 Dec 2016	George Chrisman	
44	Northern Flicker	2	6 Dec 2016	George Chrisman	
45	Say's Phoebe	1	6 Dec 2016	George Chrisman	
46	Common Raven	2	6 Dec 2016	George Chrisman	
47	Golden-crowned Sparrow	3	18 Mar 2016	George Chrisman	
	Short-billed/Long-billed Dowitcher	145	23 Dec 2014	Matt Leddy	

	SPECIES NAME ▾	COUNT ▾	DATE ▾	BY	
48	Song Sparrow	3	2 May 2014	Jennifer Rycenga	
49	Whimbrel	1	19 Apr 2013	Matt Leddy	
50	Lesser Scaup	4	16 Mar 2013	Matt Leddy	
51	Ruddy Duck	8	16 Mar 2013	Matt Leddy	
52	Killdeer	1	9 Feb 2013	Matt Leddy	

Enclosure D

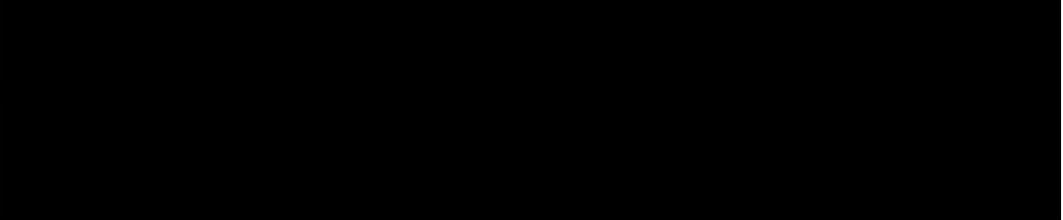


RECEIVED
OCT 12 2011
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

BOAT OWNER LICENSE AGREEMENT

I. REGISTERED OWNER

- Name
- Home address
- Home telephone
- Business address
- Business telephone
- Emergency contact



II. MORTGAGEE OR LEGAL OWNER

- Name
- Address
- Telephone



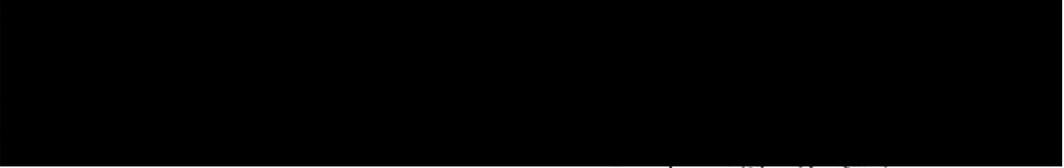
III. DESCRIPTION OF VESSEL

- Vessel name
- DMV/Doc number
- Year of registration
- Home port
- Vessel type
- Vessel make HA
- Length (LOA)

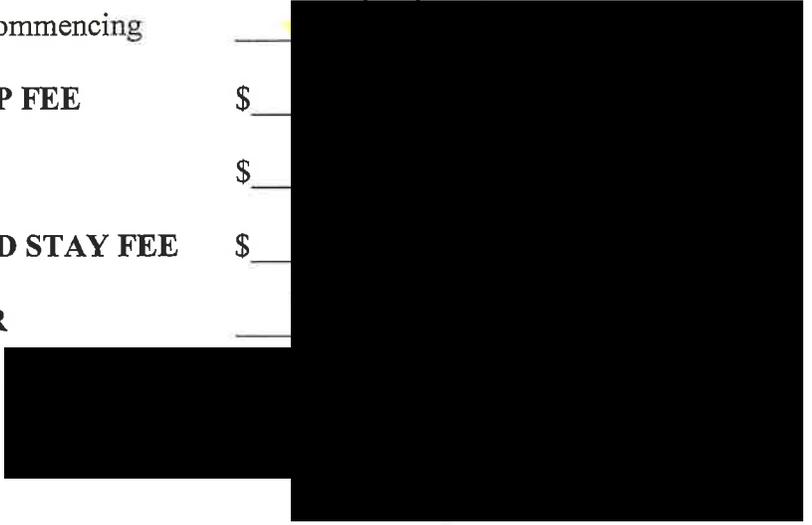


IV. INSURANCE CARRIER

- Company
- Policy no.
- Coverage type
- Pollution coverage



- V. TERM Month-to-month commencing _____
- VI. FIRST FULL MONTH SLIP FEE \$ _____
- VII. SLIP DEPOSIT \$ _____
- VIII. LIVEABOARD/EXTENDED STAY FEE \$ _____
- IX. ASSIGNED SLIP NUMBER _____



THIS LICENSE AGREEMENT (the “**agreement**”) is made as of 8/26/08 between Westpoint Harbor (the “**marina**”) and the person(s) named as **registered owner** of the vessel as described in Section I above (the “**vessel**”) and is hereinafter referred to as “**owner**” of the vessel under the terms and conditions set forth below:

Owner and Westpoint Harbor hereby agree:

1. **Vessel.** Owner warrants that he/she is the owner of the vessel and is authorized to bind all joint owners of the vessel to the terms of this Agreement. If the person signing this agreement is an agent for the owner or any joint owners, the agent represents and warrants that he/she is authorized to enter in to this agreement on behalf of the owner and to bind any and all joint owners of the vessel.
2. **Vessel Documentation.** Owner warrants that the vessel is properly documented or registered as set forth in Section III above and that the vessel is in compliance with all applicable California and U.S. Coast Guard safety regulations.
3. **Vessel Condition.** Owner represents and warrants that the vessel will be maintained in a seaworthy, operable condition and will maintain the vessel’s appearance including regular cleaning, maintenance and replacement of painted and varnished surfaces, all rigging, safety equipment and other appurtenances of the vessel. Westpoint Harbor shall be the sole judge of the adequacy of the vessel’s condition, maintenance and appearance.
4. **Vessel Inspection and Approval.** The vessel shall be inspected and approved by Westpoint Harbor upon its arrival. Failure to obtain Westpoint Harbor approval shall automatically terminate this agreement. Failure to cure any deficiencies in the vessel’s condition or appearance as required under this agreement within 30 days of notice shall automatically terminate this agreement.
5. **Slip.** Westpoint Harbor licenses to owner the use of the slip set forth in Section IX above (the “slip”), and its storage box under the terms contained herein. Owner shall use the slip only for mooring the vessel and for no other purpose, and the vessel shall be used solely for owner’s recreational purposes.
6. **Limitation of Renting Slip to Others.** Owner warrants that while the vessel is moored at Westpoint Harbor, owner will not rent or charter the vessel for any purpose, and will not engage in any commercial activity with the vessel, nor allow any other person to use the vessel for such purposes.
7. **Right to Move or Re-Assign Vessel.** Westpoint Harbor reserves the right to reassign the vessel to another slip in the marina at any time. This may be done for safety or marina management reasons, without prior notice to the owner, and **Westpoint Harbor shall be exempted, held harmless and indemnified for any**

damage to the vessel arising out of or relating to such relocation, even if such damage is caused by the negligence of the marina. Owner agrees that Westpoint Harbor may temporarily reassign the slip when the owner is not using it without compensation. Owner warrants that he/she will maintain walkways, gangways and docks around the slip in a clean, unobstructed condition at all times.

8. **Term.** This agreement shall create a license commencing on the date set forth in Section V above and shall continue from the first day of the month immediately following on a month-to-month basis until default under the provisions of this license or until terminated by either party in writing. Written notice of termination shall be no less than thirty days prior to the effective date. Owner shall surrender the slip immediately upon the expiration of the term in substantially the same condition it was upon the commencement of the term. Upon termination or default owner agrees to remove the vessel from the slip immediately. If owner fails to do so, owner hereby grants Westpoint Harbor or its agents the right to remove the vessel, without notice, at owner's sole risk and expense for the purpose of relocating the vessel to another slip or dry storage area. **Owner shall exempt, hold harmless and indemnify Westpoint Harbor from and against any claims for damages, including subrogation, arising out of or relating to removal, relocation or storage of vessel, even if such damage is caused by negligence of Westpoint Harbor.** Owner also agrees to pay all expenses and charges arising out of or related to the surveying, inspection, maintenance and preservation charges. For each day after termination or default that the vessel remains on marina premises, owner agrees to pay the current daily guest fees as established by the marina.
9. **Slip Fees.** For each calendar month, owner agrees to pay Westpoint Harbor the monthly slip fee then in effect based on the length of slip or vessel LOA, which ever is greater, in advance on the first day of each month. Owner also agrees to pay as an additional fee all excises and other taxes that may be levied by a government agency and to maintain such taxes current. All slip fees not paid by the tenth day of the same month shall be deemed delinquent.
10. **Fees for Late Payment or Returned Checks.** Owner agrees to Pay Westpoint Harbor a \$25.00 fee for late payment of slip fees. Fees paid by means of a returned check shall not constitute timely payment, and owner agrees to pay a \$20.00 fee for returned checks. Late fees will be charged until all slip fees are paid, and repeated late fees or returned checks may result in default or termination.
11. **Adjustment of Fees.** Westpoint Harbor may change the slip fee at the end of any calendar month by notifying the owner in writing at least thirty days in advance of the effective date of the change. In the event the owner fails to pay any new slip fee after its effective date, Westpoint Harbor may terminate this agreement.

12. Slip Deposit. At the commencement of this agreement, owner shall pay Westpoint Harbor the deposit (and any subsequent increase set forth in Paragraph VII below, the "slip deposit"). Owner agrees to pay the additional sum necessary for the owner's deposit to equal the currently posted deposit. If the owner fully and timely performs owner's obligation, Westpoint Harbor agrees that upon termination of this agreement and after vessel has vacated the slip, Westpoint Harbor will refund the deposit paid less amounts necessary to clean or repair the slip, or any other fees owed by the owner. Owner may not use the deposit as, or deduct it from, the slip fee for any month.

13. Access. Owner agrees that the Access Agreement attached as Exhibit B is an integral part of this agreement. Owner warrants that owner will comply and shall cause owner's family, agents, licensees and invitees to comply with the Access Agreement. Should any person violate the Access Agreement, owner hereby agrees that Westpoint Harbor may terminate this agreement immediately, remove the vessel from the slip at the owner's risk and expense and retake possession of the slip.

14. Liens. Westpoint Harbor shall have all liens provided for in the California Harbors and Navigation Code and such other liens, rights and remedies, including the right to sell the vessel at public auction, and under California or Federal Law, as each may be applicable. Westpoint Harbor shall have the right to take the vessel into its possession to secure all sums that become due under this agreement. Owner hereby agrees that Westpoint Harbor may assign its liens and possessory and other rights and remedies to a third party.

15. Liveaboard and Extended Stay. Owner agrees that no person shall reside ("liveaboard") on the vessel at any time without written permission from Westpoint Harbor. In the event that written permission to live aboard is granted, it shall be limited to two people, and an additional monthly fee shall apply. The term "liveaboard" is defined as any vessel that is occupied in excess of four consecutive days. "Extended Stay" is defined as periodic stays not exceeding three consecutive days, and owner maintains a separate permanent residence. Pets are not allowed in liveaboard vessels in the marina.

16. Liability and Indemnity. IMPORTANT--PLEASE READ CAREFULLY.

A. Owner, as a material part of the consideration to be rendered by Westpoint Harbor (and the lower slip rental rate offered by Westpoint Harbor in exchange for the following consideration), expressly agrees that vessels, marina and area in and around marinas can be hazardous to both property and persons, thereby posing a substantial risk of damage and injury. Such hazards include but are not limited to slips, falls, drowning, prop wash damage, winds, waves, storms, fires, vessel collisions and vessel sinking.

Owner Initials APF

As a result of the Owner's recognition of the risks associated with being present in or around vessels, Westpoint Marina and its common areas, **owner expressly agrees to assume any and all risk for, waive and exempt Westpoint Harbor, as well as hold harmless and indemnify Westpoint Harbor from and against any and all claims including subrogation by owner's insurer, against the marina for damages to the vessel or its appurtenances, or for injury or death to owner, owner's family, relatives, guests agents, employees, contractors or licensees that may occur on, in or about the vessel or common areas, or arises out of or relate in any way to the vessel or the common areas. The forgoing waiver includes any and all claims, damages or injuries that may be caused or asserted solely or partially as a result of premises liability or the negligence of the marina.** Owner also agrees to exempt, hold harmless, and indemnify the Marina from and against any and all claims for damages, including subrogation, that may be asserted by an person, including the owner, against the marina, , including claims that the marina was negligent. Solely for the purpose of this Paragraph 16, the term "common areas" shall mean all areas in, on or around the vessel, the slip, the dock areas, the walks, floats, gangways, boatyard and dry storage areas, restrooms and other convenience facilities, parking areas, and roads in, around, and leading to Westpoint Harbor.

Owner Initials APC

B. Owner acknowledges that Westpoint Harbor has not made any representations or warranties with respect to the nature, suitability, merchantability, fitness or condition of the slip or common areas, except as expressly set forth herein, and that no such warranties or representations shall be implied.

C. Owner shall, at his/her own cost and expense, maintain liability and property damage insurance (which shall provide primary rather than secondary coverage) with liability limits in amounts sufficient to ensure performance by owner of all of the exemption, waiver, hold harmless and indemnity provision contained in this Agreement, **including claims involving premises liability or the marina's negligence, and shall have Westpoint Harbor expressly identified in the insurance policy as an additional named insured.** Owner shall, in any event, carry liability insurance and property damage insurance, with accidental pollution coverage, with limits of at least \$300,000. The marina requires owner to provide satisfactory evidence of compliance with owner's obligations to insure. Owner's failure to comply with or demonstrate compliance with this provision does not in any way constitute a waiver by Westpoint Harbor of this provision.

Owner Initials APC

D. Even if every other subparagraph contained in this agreement is deemed invalid, inapplicable or unenforceable, Owner nevertheless agrees that Westpoint Harbor's liability for any claim that arises out of or relates to this agreement, including claims based on the marina's negligence, shall be expressly limited to no more than \$1,000 or one month' slip fee, which ever is greater.

Owner Initials APC

E. Should the owner wish to be relieved of the effects of Paragraph 16 A-D, owner may do so by agreeing to an increased slip rental rate of 100% of the otherwise applicable monthly slip fees to cover the additional potential liability that the marina may incur, and the insurance the marina will have to purchase in order to accept such potential liability. Owner must initial acceptance of the terms of this Paragraph 16 of the Agreement as written. Otherwise the increased rental fee appearing in Paragraph 16 E will be assessed.

Owner Initials APC

17. **Utilities.** In addition to slip fees, the marina reserves the right to charge for utilities. Owner agrees to pay all utilities charges for electric service and other such services. If owner fails to pay such charges when due, owner agrees to pay a \$25 late fee in addition to the charges, and understand that failure to pay such charges constitutes a violation of this agreement, and the marina may cancel the agreement.

18. **Transfer and Ownership.** No right of owner associated with this agreement may be assigned or transferred, and any attempt to do so shall give Westpoint Harbor the right, but not the obligation, to terminate this agreement. If owner sells, charters, or transfers all or any portion of the owner's interest in or possession of the vessel, or in any corporate or partnership or joint venture entity which owns the vessel, all owner's rights under this agreement shall terminate automatically. Owner warrants that he/she will represent to third parties that owner's rights in the slip are not transferable, and will hold the marina harmless from any claims, including subrogation, resulting from any such representation.

19. **The parties hereby agree that with the exception of claims for possession of the Slip or satisfaction of liens against the vessel (i.e. unlawful detainer, ejection and actions for sale of the vessel to satisfy the marina's rights in Paragraph 14, etc) any dispute, claim or controversy arising out of or relation to this agreement must be settled by binding arbitration pursuant to the Rules and Procedures of the American Arbitration Association ("AAA"), then in effect in San Mateo County, California.**

The parties also hereby waive their right to discover (except as allowed under AAA rules), a trial by jury and the right of appeal that would normally apply to court proceedings and judgments. The substantive and evidentiary law applicable to all controversies decided by Arbitration shall be the Federal Maritime Law and the Federal Rules of Evidence. This agreement shall be enforceable and judgment upon any award rendered by any AAA Arbitrator may be entered by any court having jurisdiction.

Initials _____ Initials _____ Initials APF

20. **Attorney's Fees.** If either Westpoint Harbor or owner obtain legal counsel or bring an action against the other based on any dispute arising out of or relating to this agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs.

21. **Rules and Regulations.** Owner agrees that **Westpoint Harbor Rules and Regulations** attached, hereto as Exhibit A, are an integral part of this agreement. Owner shall comply, and shall cause the owners' family, invitees, agents, and licensees to comply with the then current Marina Rules and Regulations. Should any person violate any marina rule or regulation, marina may terminate this agreement immediately, remove the vessel from the slip at owner's risk and expense, and retake possession of the slip. The marina reserves the right to modify, amend or supplement the Marina Rules and Regulations from time to time upon written notice to the owner.

22. **Parking.** Owner shall comply with all vehicle parking restrictions set forth in the then current Marina Rules and Regulations. Westpoint Harbor, its officers, agents and employees shall not be liable to the owner or owner's agents for any loss or damage to any motor vehicle or other personal property in or on the building, parking areas, or other marina premises.

23. **Entire Agreement.** This agreement, the Rules and Regulations set forth in Exhibit A and the Access Agreement set forth in Exhibit B constitutes the entire agreement and understanding between the parties. Should any portion of this agreement be ruled invalid, such invalidity shall in no way affect the validity of this agreement or any other portion thereof.

Each signatory to this agreement represents and warrants that he or she is fully authorized to execute this agreement, either for himself or herself, or on behalf of his or her principle.

Westpoint Harbor

By _____

Date

8/28/08

Owner or Owner's Authorized Agent

By _____

Date _____

TOM - EARLIEST VERSION OF RULES/REGS. M

RECEIVED OCT 12 2011

SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION

EXHIBIT A

HARBOR RULES AND REGULATIONS

Thank you for choosing Westpoint Harbor as your "homeport" in the San Francisco Bay. Westpoint Harbor is a private harbor, boatyard and marina complex, established to provide a safe and comfortable haven for those who enjoy boating and water-oriented activities (or would like to.) The following rules are for the safety and comfort of everyone, and are mostly restatements of government ordinances. The Marina reserves the right to update lease rates as well as to revoke permission to enter the marina at any time. This applies to tenants, guests and visitors.

huh?

Provide a Marina sewage?

Owner agrees to comply with all applicable laws, ordinances, rules, regulations and instructions of the U.S. Coast Guard and other Federal, State and Local authorities. "Owner" includes any person associated with the owner of a Vessel including family members, invitees, agents, employees and licensees on Marina premises. We are concerned about the local marine environment and remind you that there are numerous Federal, State and Local regulations regarding discharge of any kind of material into the Bay. This includes treated and non-treated sewage. All vessels are required to have a holding tank, and be pumped out regularly. Any vessel found to have caused an improper discharge into the Bay will be asked to leave the Marina.

ON THE DOCKS

1. No running on the docks! Bicycles or scooters are not allowed on the docks, and no item may be placed or stored on the docks or walkways that could obstruct passage.
2. Mooring lines, water hoses and other connections to the dock shall be dressed to prevent obstruction or otherwise create a hazard. When not in use, water hoses must be stowed in the dock box.
3. Storage of acids, batteries, glass, flammable liquids, paint thinners and paint is prohibited on the docks and walkways, and in the dock boxes. Barbecues, plants, bicycles etc. are not permitted on the docks.
4. Dinghies, inflatable boats, kayaks and other watercraft are not allowed on the docks, and when not in immediate use shall be kept on the Owner's vessel, or in an assigned dinghy rack. Use of another slip for non-emergency purposes is prohibited.
5. Temporary, non-affixed dock steps may be placed on the finger, subject to Marina prior written approval. Such steps may be no wider than half the finger width, and no longer than five feet. No portion of any vessel may overhang the walkway at any time.
6. All electrical connections between the boat and slip must be direct. RV connectors, pigtails and other non-standard connections are prohibited, and all connections shall be U.L. approved weatherproof, ground fault detector, three wire grounded types. Cords may not

Allowed Storage? Lockers?

cross walkways nor be affixed to the docks. Automotive battery chargers are prohibited on boats within the Marina.

7. Major BOAT REPAIRS are not permitted in the marina basin. This includes spray painting, stripping, and hull repairs. Such repairs are permitted in the designated boatyard repair area.

6. QUIET HOURS are 10 PM to 8 AM every day. Parties require the harbormaster permission, and in no case will a tenant, guest or individual be given permission to interfere with the comfort of others. Engines may not be run during quiet hours except to enter or leave the slip, and engines may not be operated in gear when attached to the docks. Be especially thoughtful of neighbors when playing music, and insure that halyards are secured to eliminate noise. DOCK LINES shall be of adequate size for the vessel, and replaced when worn. All vessels shall be moored with bow, stern and spring lines to insure there is no overhang on the docks.

7. No solid or liquid material may be thrown, discharged or deposited from any vessel. This includes refuse matter, oily bilges, and flammable liquid or waste materials. Battery acid, hydraulic fluids, oil, paint and thinners, anti-freeze and some tequilas are considered hazardous materials. They must not be placed in or around the dumpsters. Disposal of these items may be facilitated by the Harbormaster's office, and in all cases is the berther's responsibility. Disposal of portable sanitation devices in Marina toilets or lavatories is prohibited.

*all alcohol
no*

8. No FUELING or transfer ^{if type} of fuel from the docks is permitted, except ^{at} a designated fuel dock. No fireworks, firearms or live ammunition are allowed in the Marina.

DOCK BOXES

Dock boxes are provided with each slip, together with a keyed waterproof lock. Marina locks must be used so boxes may be opened in an emergency, and boxes are provided for non-flammable and non-volatile supplies and accessories only. A \$10.00 fee is charged for lost keys, and \$25.00 for lost locks.

PETS

Dogs and other pets must be kept on a leash or otherwise controlled when on the docks, floats and other public areas of the Marina. Pets are not allowed in the restrooms, and must not create a disturbance. Owners must clean up after their pets.

UNDERWAY

The entire Westpoint Harbor is a "no wake" zone. In no case may any waterborne vessel exceed 5 knots. When underway on land, the speed limit is 5 MPH.

The Westpoint Slough Channel (from the main Redwood Creek Channel to the marina entrance) is also a "no-wake" zone. Greco Island is home to several sensitive and endangered species, and boaters must not approach this area.

Handwritten notes and signatures at the bottom of the page.

IN THE MARINA COMPLEX

1. Designated PARKING is expressly for the use of Marina boat Owners and their guests, and violators will be towed at Owner's sole risk and expense. Long-term storage of vehicles (over seven days) is not permitted, and Westpoint Harbor does not warrant the availability or security of parking. Use of parking and leaving of contents in parked vehicles is at the owner's own risk. All tenant vehicles must have a Westpoint Harbor parking decal displayed on the left rear window of the vehicle. Visitors and contracted vendors may obtain a visitors pass at the Harbormaster's Office. The Harbormaster must approve parking of boat trailers, motor homes and other recreational vehicles.

2. There are a finite number of allowed "LIVEABOARD" slips in the marina. This is strictly monitored, and all liveaboards must be approved by the Harbormaster, and conform to the Liveboard Regulations.

What enforcement for sneakaboards?

3. No overnight berthing is allowed at the fuel docks, nor anchoring in the marina basin.

4. Alteration to the docks, piles, walkways, water pipes, electrical connections and TV/telephone connections is strictly prohibited, with no exceptions. No attachment of any kind to the docks is permitted without prior written approval of the Harbormaster.

5. No ADVERTISING or soliciting is permitted without the written permission of Westpoint Marina. "For Sale" signs are not permitted and individuals within Westpoint Marina may not engage in the selling or purchasing of any vessel for the interest of another. Exceptions are licensed salespersons authorized to operate within the marina.

6. GUEST BERTHS are available for visiting boats. Visiting boaters and clubs may organize slips as available by contacting the Harbormaster.

7. SEAWORTHY CONDITION of vessels. All vessels are to be maintained in a sound and seaworthy condition. When the Marina considers there is a risk of sinking, fire, or other hazard, or that the boat has become unsightly, the Marina may at its sole discretion give the Owner two weeks notice to correct the problem(s). Failure to do so will be a default of the Vessel license Agreement. Boats without a means of propulsion, either power or sail, may not be kept in the marina.

8. Use of the picnic tables is for picnicking. Painting and varnishing do not qualify. Open fires and barbecues are not permitted on the docks or aboard boats in the Marina. Gas-fired barbecues are permitted on boats only.

9. FISHING from the docks or riprap is prohibited, as is SWIMMING anywhere within the Marina basin.

10. CHILDREN must be kept under parental control at all times.

11. All YACHT BROKERS, CONTRACTORS, workers, crew or other agents of the Owner must be registered and approved by the Marina, and provide copies of insurance policies and adequate security prior to admittance to the marina, and sign a waiver of liability in favor of the Marina.

**PLEASE NOTIFY THE MARINA OF ANY UNSAFE, UNLAWFUL,
HAZARDOUS OR UNSIGHTLY CONDITIONS THAT COME TO YOUR
ATTENTION.**