

Executive Director's  
Recommended Enforcement Decision

Cease and Desist and Civil Penalty Order  
No. CDO 2017.04

Mark Sanders and Westpoint Harbor, LLC

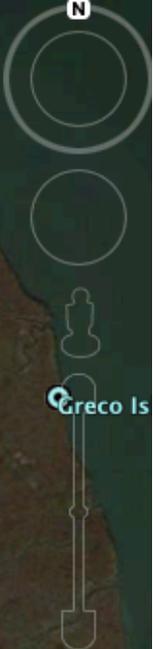
Marc Zeppetello, Chief Counsel  
Adrienne Klein, Chief of Enforcement

November 16, 2017



*Making San Francisco Bay Better*

# Greco Island, Don Edwards SF Bay National Wildlife Refuge



Greco Is

Westpoint Slough

Pacific Shores Center

Westpoint Harbor LLC

Westpoint Slough

First Slough  
Tour Guide

› Pedestrian Connection between PS and WPH



Pacific Shores Development

Phase 3 Area

Guest Docks

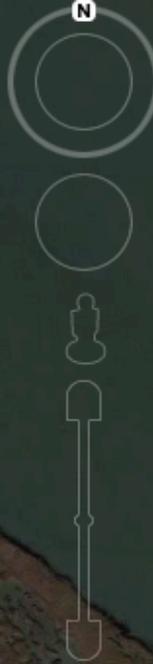
Vehicular Entrance

Surf 101 Sports  
Rowers Dock

Phase 2 Boatyard

Westpoint Harbor LLC

Remainder of Salt Pond 10



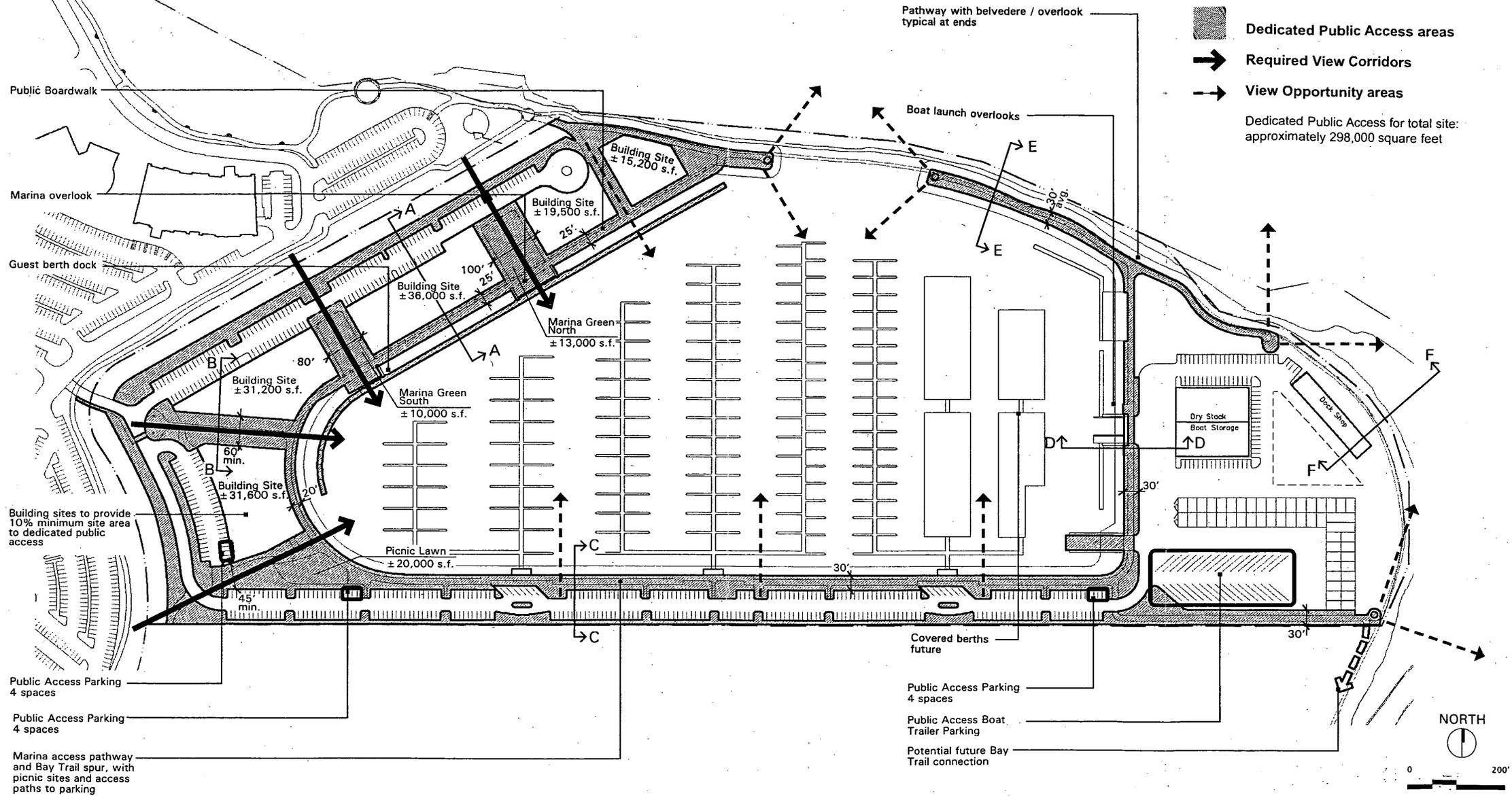


EXHIBIT A

**Westpoint Marina and Boatyard**

**Public Access Plan**

Redwood City, California  
27 June 2003

# Timeline

- Permit Issued August 21, 2003
  - Phase 1 – construct marina with 416 slips and public access improvements
  - Phase 2 – boatyard
  - Phase 3 - commercial/retail
- Amendment Three issued November 1, 2006
  - Amendment Three Split Phase 1 into Phase 1A and Phase 1B
    - Phase 1A – portion of marina (3 docks with approximately 145 slips)
    - Phase 1B – remaining docs for approximately 271 slips and public access improvements

# Amendment Three – Public Access Requirement

**PERMIT No. 2002.02**

(Issued On August 21, 2003 As  
Amended Through November 1, 2006)

**AMENDMENT NO. THREE**

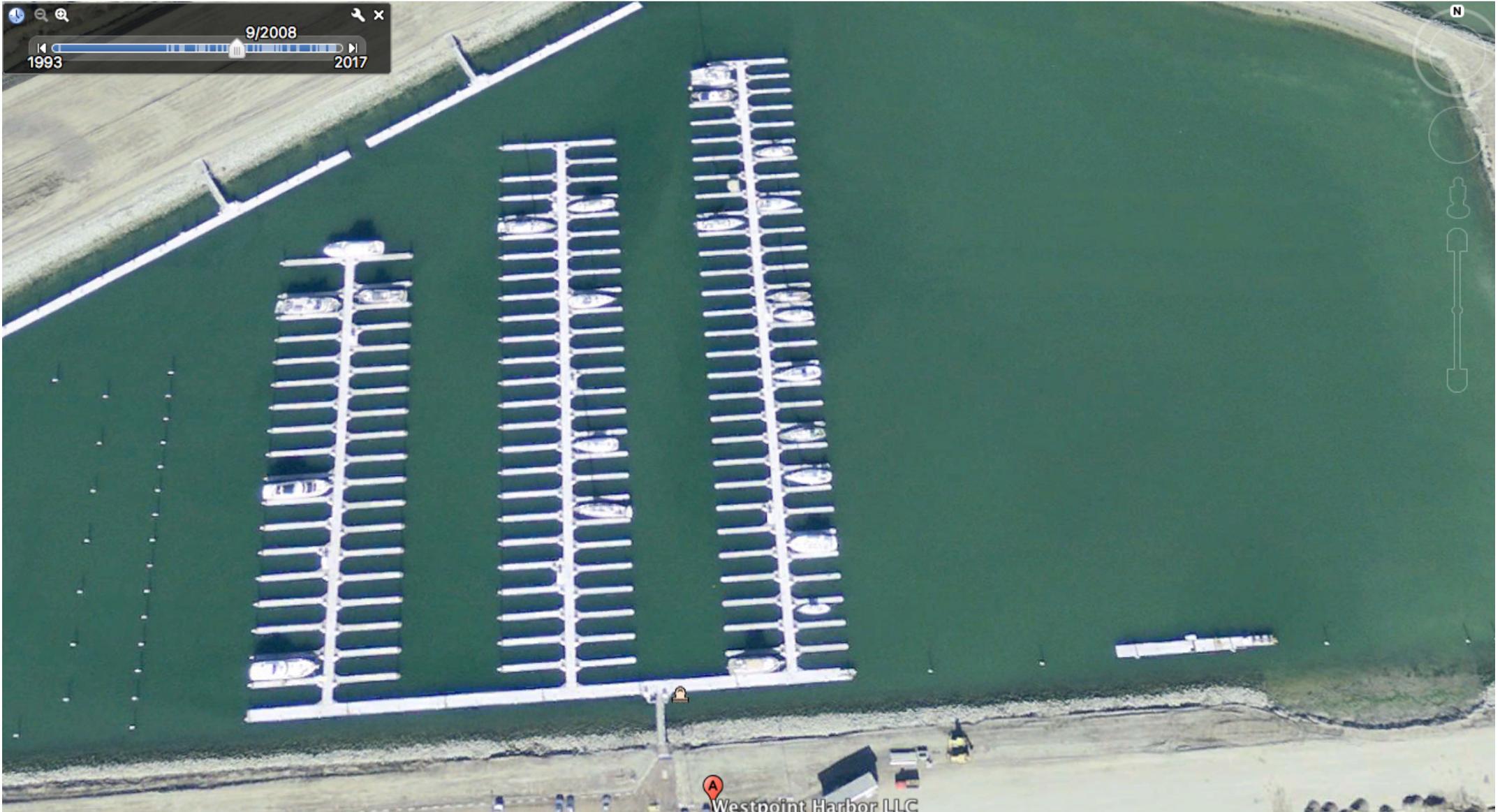
## **Special Condition II.B (Public Access)**

### **4. Improvements Within the Total Public Access Area**

**Phase 1B.** Prior to the use of any structure authorized herein (including the marina berths) under Phase 1B of the project, the permittee shall install the following improvements, as generally shown on the attached Exhibit A:

# September 2008 Google Earth Image

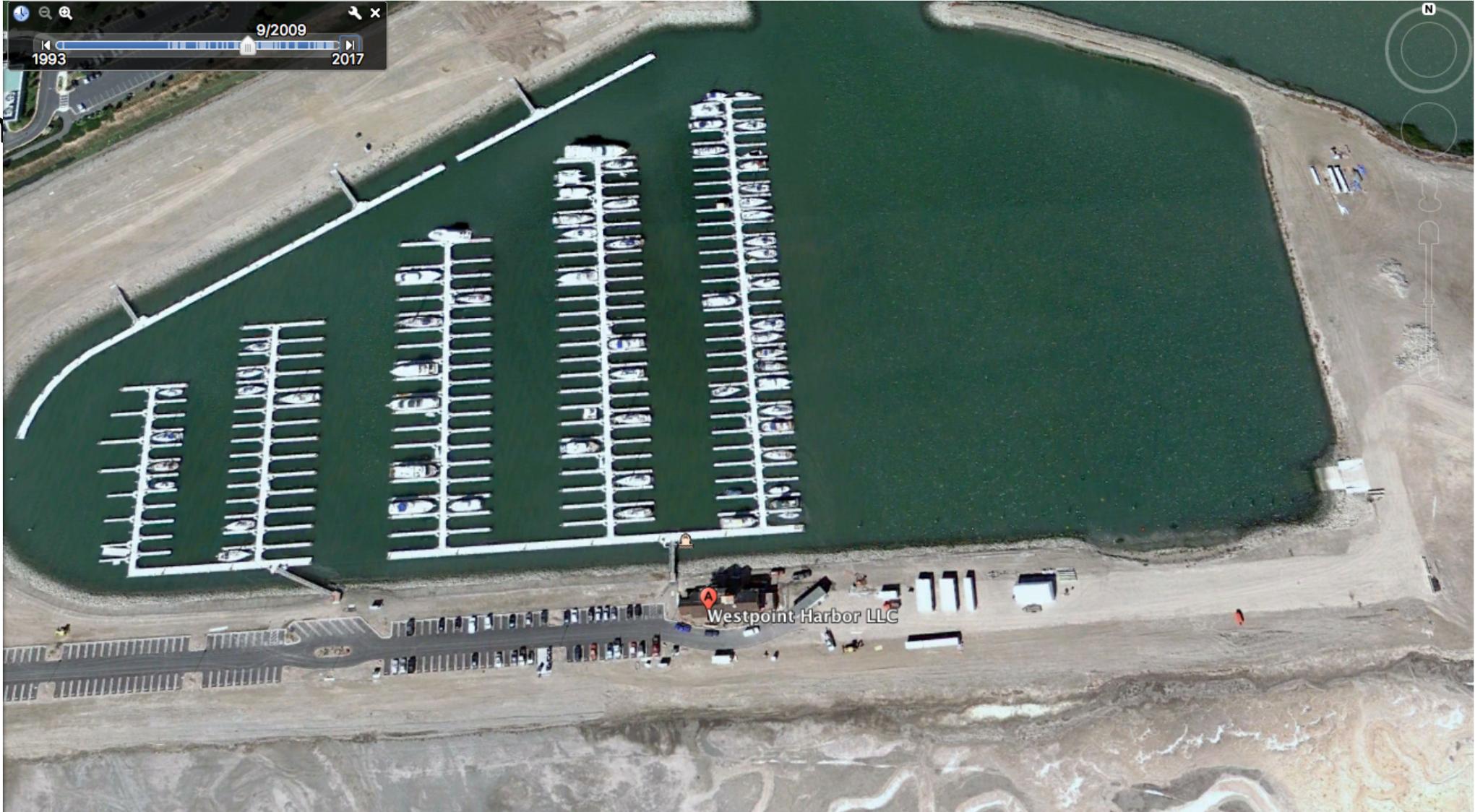
Completion of Phase 1A Berths:  $37 + 50 + 60 = 147$



# September 2009 Google Earth Image

## Commencement of Phase 1B Berths: $19 + 30 = 49$

In



# Timeline

- May 4, 2011 BCDC Staff Notifies Mr. Sanders of Violations
- June 22, 2011 – Amendment Four (Time Extension)
- Early 2012 – Agreement to Allow Installation of Temporary Fencing of Phase 3 Areas
- September 9, 2012 -- Proposed Amendment Five, Version 1 (Authorized Temporary Fencing)
- May 20, 2013 -- Proposed Amendment Five, Version 2
- June 6, 2013 -- Proposed Amendment Five, Version 3

# Timeline

- August 15, 2014 – Deadline to complete all work (per Amendment Four time extension) expires
- September 4, 2014 -- Proposed Amendment Five, Version 4
- September 14, 2015 -- Proposed Amendment Five, Version 5
- August 16, 2016 -- Amendment Six – Authorizes Phase 2 (Boatyard) construction activities but did not incorporate provisions of Proposed Amendment Five

# Timeline

- December 8, 2016 BCDC staff site visit; informed Mr. Sanders that staff preparing Violation Report/Complaint
- January 5, 2017, Mr. Sanders applies for permit amendment to install temporary fencing in Phase 3 areas
- May 9, 2017, Amendment Seven issued, authorizing temporary fencing
- July 5, 2017, Unauthorized signs restricting public access removed and all Phase 1B public access areas opened except guest docks

# Terms of Proposed Order

- Cease and desist from all activity in violation of the Permit and the MPA
- Make All Phase 1B and Phase 2 Public Access Areas Available For Unrestricted Public Access
  - Remove unauthorized gates and “Members and Guests Only” signs from gangways to the guest docks and provide public access to guest docks (including to pedestrians)
  - Remove unauthorized "Westpoint Harbor Boat Launch" sign
  - Charge no fee to use public access improvements

# Terms of Proposed Order

- Make All Phase 1B and Phase 2 Public Access Areas Available For Unrestricted Public Access
  - Keep Public Restrooms at Harbormaster's Building and Boatyard Open at All Times (subject to approved rules and restrictions)
  - Require 101 Surf Sports to Cease and Desist from Storing Boats or Conducting Activities on Public Access Areas

# Terms of Proposed Order

- Submit Signage Plan for Plan Review and Approval, and Install Approved Signs
- Submit Plans for Public Access Improvements for Plan Review and Approval, and Complete Approved Improvements
  - Plans for Public Walkways
  - Plans for 170,500 square feet of landscaping, irrigation and drainage
    - Remove trees planted without approval along Westpoint Slough
- Submit Plans for Plan Review and Approval for All Site Furnishings, Including Lighting, Seating, Tables and Trash Receptacles
- Submit As-Built Plans for Phase 2 Improvements Installed Without Plan Review and Approval

# Terms of Proposed Order

- Maintenance of Public Access Areas and Improvements
  - Inspect All Public Access Areas and Improvements and Submit Written Inspection Report
    - Describe condition of public access areas and improvements
    - Identify necessary repairs or maintenance
    - Identify specification or standard for repairs or maintenance
    - Schedule for conducting repairs or maintenance

# Terms of Proposed Order

- Remove Unauthorized Improvements
  - Unauthorized Gate and Fence at NW Portion of Site (at Property Boundary with Pacific Shores Center)
  - Unauthorized Wood-Enclosed Changing or Storage Area Associated with 101 Surf Sports in Public Parking Spaces
  - Unauthorized Fenced Area, Wood Storage Shed, Planters and Construction Materials in Dedicated Public Access Area
  - Unauthorized Asphalt Pad in Dedicated Public Access Area
  - Unauthorized Trees Planted along Westpoint Slough

# Terms of Proposed Order

- Submit Application to Amend Permit to Request After-the-Fact Authorization
  - PG&E transformers or utility structures and any other obstructions in dedicated public access areas
  - Unauthorized rower's dock
  - Use of rower's dock (if authorized) by a business to rent boats to public
  - Any accessory facilities or structures associated with use of rower's dock (storage container, changing area, picnic tables, portable toilet)
  - Unauthorized solar and wind-powered container in parking lot
  - Three unauthorized floating docks supporting large storage tents
  - Use of guest docks or other location to moor public agency boats
  - Unauthorized gates installed on gangways to private docks

# Terms of Proposed Order

- Install Signs and Buoys in Westpoint Slough
  - Buoys to identify "no wake" speed zone, delineate center of channel, and discourage boats from deviating out of channel
  - Buoy system 100 feet from salt marsh on Greco Island with approved signs informing public of access restrictions to Refuge
- Submit Plan to Provide Visual Barriers to Adjacent Salt Pond, and Complete Visual Barriers
- Provide Shorebird Roost Habitat Mitigation
- Provide Non-Tidal Wetlands Mitigation

# Terms of Proposed Order

- Provide Annual Reports on Live-Aboards
- Provide Certification of Contractor Approval
- Submit Monthly Status Reports and Further Review by Enforcement Committee
  - Monthly Status Reports Commencing February 15th Re: Activities Undertaken to Comply with Order
  - Enforcement Committee Hearings No Later than April 30th and October 31th to Report on Status of Compliance with Permit and Order

# Administrative Civil Penalty

- Staff aggregated 34 separate violations into a total of 23 violations and did not propose any penalty for three violations
- Proposed penalty of \$543,000 for 20 violations (all but one capped at \$30,000 statutory maximum)

# Penalty Factors

- Respondents actively prevented and discouraged public access for six years
- Violations had substantial adverse impacts on required public access
- Violations had and continue to have adverse impacts on bay resources
- Violations knowing and intentional; Mr. Sanders has consistently refused to cooperate with staff
- High costs to state
- Respondents benefitted economically from violating permit

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Pacific Shores Development

Phase 3 Area

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