



SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

DECLARATION OF MATTHEW LEDDY

VIOLATION REPORT/COMPLAINT FOR THE IMPOSITION OF ADMINISTRATIVE CIVIL PENALTIES NO. ER2010.013

MARK SANDERS AND WESTPOINT HARBOR, LLC

I, Matthew Leddy, hereby declare and state under penalty of perjury that the following facts are true and correct:

1. The facts set forth in this declaration are based on my personal knowledge and if called as a witness, I could and would competently testify thereto under oath. As to those matters that reflect an opinion, they reflect my personal opinion and judgment upon the matter. I submit this declaration in regards to Violation Report/Complaint For The Imposition Of Administrative Civil Penalties No. ER2010.013.

2. I have a Master's Degree in Ecology and Systematics from San Francisco State University. My graduate thesis was on shorebirds on San Francisco Bay and on Pacifica ocean beaches.

3. I have been observing birds on San Francisco Bay for over 40 years. Since 2012, I've been driving out to the Pacific Shores Center in Redwood City to observe birds along Westpoint Slough. This section of the Bay is a great place to see shorebirds foraging on the mudflats during low tide, to see other waterbirds such as brown pelicans and terns, and to occasionally see raptors such as marsh hawks and peregrine falcons. Sometimes I have even seen harbor seals. For these visits, I park at the Pacific

1 Shores Center public parking lot, and walk along the public trail next to Westpoint Slough. Having spent
2 a lot of time along Westpoint Slough, I'm very familiar with this section of San Francisco Bay,
3 including nearby Greco Island and Westpoint Marina (Harbor). I often take photos in order to compare
4 the water height published in tide tables with the actual height in the field, so I have many photos of
5 Westpoint Slough extending from Redwood Creek to the Westpoint Marina entrance. I have taken
6 photographs of the area both from the land and the water. When I take pictures with either my cellphone
7 or my regular camera, both phones note the time the photograph was taken.

8 4. On March 10, 2017, I wrote to Mr. Larry Goldzband, Executive Director of BCDC
9 regarding my observations of the conditions in Westpoint Slough and Westpoint Marina and provided
10 18 photographs I had taken over a six-year period of Westpoint Slough between 2012 and 2017. The
11 Law Offices of Brian Gaffney submitted my letter and photographs to BCDC.

12 5. On May 23, 2017 and May 24, 2017, the Law Offices of Brian Gaffney also submitted
13 letters to Mr. Goldzband on behalf of Citizens Committee to Complete the Refuge regarding violations
14 of BCDC Permit No. 2002.002.06. Mr. Gaffney's letters contain photographs I had taken of Westpoint
15 Slough and Westpoint Marina on January 18, 2014, February 11, 2017, April 9, 2017, April 11, 2017
16 and May 8, 2017. I am a member of the Citizens Committee to Complete the Refuge.

17 6. I have reviewed the Statement of Defense submitted by Mark Sanders and Westpoint
18 Harbor, LLC in this matter and understand Westpoint Harbor has made an issue of the fact that my
19 previously submitted photographs and statements were not made under penalty of perjury. I write to
20 address these issues.

21 **Absence of Buoys in Westpoint Slough**

22 7. Based on my personal observations of the Westpoint Slough from February 2012 through
23 2017, and as documented in the attached photos, I have never seen a buoy system installed adjacent to
24 the navigation channel of the Westpoint Slough identifying a "No Wake" speed zone. Other than a
25 single set of red and green buoys at the confluence of Redwood Creek and Westpoint Slough, and a
26 single set of red and green buoys marking the entrance to Westpoint Marina, I have not seen a buoy
27 system delineating the center of the channel for adequate draw and to discourage boats from deviating
28

1 off the navigable channel.

2 8. Further, I have never observed a buoy system in Westpoint Slough 100 feet from Greco
3 Island with signs informing the public that access into Greco Island or into the marshlands of the San
4 Francisco Bay National Wildlife Refuge is prohibited.

5 9. From the Pacific Shores Center public access walkway, adjacent to Westpoint Marina, I
6 have observed, and taken photos of, Westpoint Slough, *inter alia*, on the dates listed below:

7 August 3, 2012 - See attached Photo A;

8 July 12, 2013 - See attached Photos B1 and B2;

9 July 17, 2014 - See attached Photos C1 and C2;

10 November 19, 2014 - See attached Photos D1 to D3;

11 February 10, 2015 - See attached Photos E1 to E4;

12 December 11, 2016 - See attached Photos F1 and F2.

13 February 27, 2017 – See attached Photos G1 through G4.

14 10. Photographs A through G4 are copies of the same photographs that were submitted to
15 BCDC on my behalf on March 10, 2017, and inform my opinion about the absence of buoys and
16 required signage in Westpoint Slough.

17 11. I took Photo A on August 3, 2012, at 10:18 a.m. The photo was taken from the Pacific
18 Shores Center looking towards the Westpoint Slough confluence with Redwood Creek. No buoy system
19 identifying a “No Wake” speed zone or delineating the center of the channel were visible in the Slough.
20 A true and correct copy of that photograph is attached hereto as Exhibit A.

21 12. I took Photo B1 on July 12, 2013, at 1:24 p.m. The photo was taken from the Pacific
22 Shores Center looking towards the Westpoint Slough confluence with Redwood Creek. No buoy system
23 identifying a “No Wake” speed zone or delineating the center of the channel were visible in the Slough.
24 A true and correct copy of that photograph is attached hereto as Exhibit B1.

25 13. I took Photo B2 on July 12, 2013, at 1:27 p.m. The photo was taken from the Pacific
26 Shores Center. The photo is of Westpoint Slough looking towards the entrance to Westpoint Marina. No
27 buoy system identifying a “No Wake” speed zone or delineating the center of the channel were visible
28

1 in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit B2.

2 14. I took Photo C1 on July 17, 2014, at 12:20 p.m. The photo was taken from the Pacific
3 Shores Center. The photo is of Westpoint Slough looking towards confluence with Redwood Creek. No
4 buoy system identifying a "No Wake" speed zone or delineating the center of the channel were visible
5 in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit C1.

6 15. I took Photo C2 on July 17, 2014, at 12:20 p.m. The photo was taken from the Pacific
7 Shores Center. The photo is of Westpoint Slough looking towards the entrance to Westpoint Marina.
8 No buoy system identifying a "No Wake" speed zone or delineating the center of the channel were
9 visible in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit C2.

10 16. I took Photo D1 on November 19, 2014, at 11:45 a.m. The photo was taken from the
11 Pacific Shores Center. The photo is of Westpoint Slough looking towards the confluence with Redwood
12 Creek. No buoy system identifying a "No Wake" speed zone or delineating the center of the channel
13 were visible in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit D1.

14 17. I took Photo D2 on November 19, 2014, at 11:45 a.m. The photo was taken from the
15 Pacific Shores Center. The photo is of Slough looking towards Greco Island. No buoy system
16 identifying a "No Wake" speed zone or delineating the center of the channel were visible in the Slough.
17 A true and correct copy of that photograph is attached hereto as Exhibit D2.

18 18. I took Photo D3 on November 19, 2014, at 11:45 a.m. The photo was taken from the
19 Pacific Shores Center. The photo is of Westpoint Slough looking towards the entrance to Westpoint
20 Marina. No buoy system identifying a "No Wake" speed zone or delineating the center of the channel
21 were visible in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit D3.

22 19. I took Photo E1 on February 10, 2015, at 4:02 p.m. The photo was taken from the Pacific
23 Shores Center. The photo is of Westpoint Slough looking towards confluence with Redwood Creek. No
24 buoy system identifying a "No Wake" speed zone or delineating the center of the channel were visible
25 in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit E1.

26 20. I took Photo E2 on February 10, 2015, at 4:02 p.m. The photo was taken from the Pacific
27 Shores Center. The photo is of Westpoint Slough looking towards confluence with Redwood Creek. No
28

1 buoy system identifying a "No Wake" speed zone or delineating the center of the channel were visible
2 in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit E2.

3 21. I took Photo E3 on February 10, 2015, at 4:02 p.m. The photo was taken from the Pacific
4 Shores Center. The photo is of Westpoint Slough looking towards Greco Island. No buoy system
5 identifying a "No Wake" speed zone or delineating the center of the channel were visible in the Slough.
6 A true and correct copy of that photograph is attached hereto as Exhibit E3.

7 22. I took Photo E4 on February 10, 2015, at 4:02 p.m. The photo was taken from the Pacific
8 Shores Center. The photo is of Westpoint Slough looking towards entrance to Westpoint Marina. No
9 buoy system identifying a "No Wake" speed zone or delineating the center of the channel were visible
10 in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit E4.

11 23. I took Photo F1 on December 11, 2016 at 4:20 p.m. The photo was taken from the Pacific
12 Shores Center. The photo is of the Slough looking towards confluence with Redwood Creek. No buoy
13 system identifying a "No Wake" speed zone or delineating the center of the channel were visible in the
14 Slough. A true and correct copy of that photograph is attached hereto as Exhibit F1.

15 24. I took Photo F2 on December 11, 2016 at 4:20 p.m. The photo was taken from the Pacific
16 Shores Center. The photo is of Westpoint Slough looking towards entrance to Westpoint Marina. No
17 buoy system identifying a "No Wake" speed zone or delineating the center of the channel were visible
18 in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit F2.

19 25. I took a Photo G1 on February 27, 2017 at 12:09 p.m. The photo was taken from the
20 Pacific Shores Center public trail of Westpoint Slough, looking towards the confluence with Redwood
21 Creek. No buoy system identifying a "No Wake" speed zone or delineating the center of the channel
22 were visible in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit G1.

23 26. I took a Photo G2 on February 27, 2017 at 12:09 p.m. The photo was taken from the
24 Pacific Shores Center public trail of Westpoint Slough, looking towards the confluence with Redwood
25 Creek. No buoy system identifying a "No Wake" speed zone or delineating the center of the channel
26 were visible in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit G2.

27 27. I took a Photo G3 on February 27, 2017 at 12:10 p.m. The photo was taken from the
28

1 Pacific Shores Center public trail of Westpoint Slough, looking towards Greco Island. No buoy system
2 identifying a "No Wake" speed zone or delineating the center of the channel were visible in the Slough.
3 A true and correct copy of that photograph is attached hereto as Exhibit G3.

4 28. I took a Photo G4 on February 27, 2017 at 12:10 p.m. The photo was taken from the
5 Pacific Shores Center public trail of Westpoint Slough, looking towards the entrance to Westpoint
6 Marina. No buoy system identifying a "No Wake" speed zone or delineating the center of the channel
7 were visible in the Slough. A true and correct copy of that photograph is attached hereto as Exhibit G4.

8 29. The only buoy with signage I have ever observed in Westpoint Slough is a single buoy
9 with "10 MPH" signage. That buoy is captured in Photo H which I took on June 5, 2016 at 3:03 p.m.
10 The photo was taken from the Pacific Shores Center. A true and correct copy of that photograph is
11 attached hereto as Exhibit H.

12 **Absence of Information Signs at the Westpoint Marina**

13 30. In September 2016, while in the Westpoint Marina parking lot, I noticed a cargo
14 container for a new business, 101 SURF SPORTS, had been installed on the Westpoint Marina parking
15 lot and the company was open for business.

16 31. I looked up 101 SURF SPORTS on the internet. In the website photos of their business
17 operations at Westpoint Marina, I could see no visible signs on the dock advising customers of the
18 sensitive nature of Greco Island area or access restrictions on Greco Island and other wetlands in the
19 Refuge.

20 **Commercial Ferries in Westpoint Slough**

21 32. I became aware of commercial ferries operating in Westpoint Slough around February
22 2016 as the result of several news stories at that time.

23 33. On June 6, 2016 at around 9 a.m., I observed a PROP catamaran ferry operating in
24 Westpoint Slough. I was on the public walkway at the Pacific Shores Center property adjacent to
25 Westpoint Marina when I saw the ferry. Based on my kayaking experience and observations of boats on
26 a regular basis, I believe this ferry was traveling at a high speed (which I estimate at greater than
27 10mph), and generating a substantial wake en route to Westpoint Marina (see Photos I1 and I2 attached
28

1 hereto). True and correct copies of the photos I took of the ferry at that time are hereto as Exhibits I1
2 and I2.

3 34. As a result of internet research, I learned that PROP, a private commercial ferry service,
4 began operating ferries in February 2016 between Tiburon, Emeryville and Westpoint Marina. Based on
5 review of the company's website earlier this year, I believe that more ferries are being contemplated for
6 routes between Redwood City and Alameda, Berkeley and San Francisco.

7 35. Based on reading articles about the effects of high speed ferries, including articles printed
8 by the nearby Redwood City Bair Island Aquatic Center website, I am concerned that small boats and
9 marine- dependent wildlife risk injury both from direct contact with such high speed ferries. I am also
10 concerned that the wakes caused by such ferries can alter habitat, including erosional damage to slough
11 mudflats and Greco Island which is part of the Don Edwards SF Bay National wildlife Refuge

12 36. My concerns about risks to the public and wildlife resulting from this Westpoint Marina
13 ferry activity in only exacerbated by the absence of buoys delineating the center of the Westpoint
14 channel and a "no wake" zone.

15 **Absence of Fencing Along the South Side of Marina to Prevent Access to Adjacent Salt Pond**

16 37. On January 18, 2014, while looking for roosting shorebirds in the Cargill salt pond
17 adjacent to the south side of Westpoint Marina, I observed and photographed three people walking out
18 on the Cargill pond. I observed the people subsequently return to the Westpoint Marina. I was at a
19 labeled public parking space at the Westpoint Marina, looking for birds, when I observed the people
20 walking out on the Cargill pond. True and correct copies of the photographs I took on January 18, 2014
21 of people on the Cargill pond are attached hereto as Exhibits J and K.

22 38. Based on this visit and my other observations at Westpoint Marina, it is my opinion that
23 fencing along the southern boundary of the Westpoint Marina has never been installed.

24 **Absence of Fencing Along the East Side of Marina to Prevent Access to Adjacent Marsh**

25 39. I have been canoeing and kayaking for years. On April 9, 2017, I kayaked Westpoint
26 Slough. From my kayak in Westpoint Slough, I took a picture of the east side of the Westpoint Marina
27 with my cellphone. My cellphone notes GPS coordinates and embeds these coordinates into the photo. I
28

1 know the geographic location was 37°30'38.48"N, 122°11'21.04"W 37, and the time was 11:04 a.m. I
2 enlarged, divided and cropped the photo into two photos (Exhibits M and N) in order to show detail of
3 the fencing along the east side of Westpoint Marina. I observed fencing in some areas and have inserted
4 the locations of fencing observed in Exhibit M. I did not observe fencing in other areas and have
5 inserted the locations where fencing was absent in Exhibit N. True and correct copies of that photograph
6 are attached hereto as Exhibits M and N.

7 40. On April 11, 2017, from the Pacific Shores Center, on the public trail I was attempting to
8 observe shorebirds. From this vantage I could see the east side of Westpoint Marina. I did not observe
9 fencing on the east side of the Marina. I took a photo which shows the area to the left of the mooring
10 bollard which demonstrates the absence of fencing on the on the east side of the Marina. A true and
11 correct copy of that photograph is attached hereto as Exhibit O.

12 **Absence of Visual Barriers to Adjacent Salt Pond to Protect Waterbirds from Disturbance**

13 41. Based on my observations, it is my opinion that Westpoint Marina has never installed
14 visual barriers between active Westpoint Marina areas and the adjacent salt pond. Based on my
15 observations, it is also my opinion that the failure to install such visual barriers results in disturbance to
16 waterbirds using the salt pond.

17 42. On February 11, 2017 I drove to the Pacific Shores Center and walked out on the public
18 trail to look for shorebirds in the Cargill salt pond adjacent to Westpoint Marina. From my vantage point
19 on the public trail I could observe the Cargill salt pond and the Westpoint Marina parking lot. There
20 were no visual barriers between the Westpoint Marina and the adjacent salt pond. The tide was high and
21 I observed numerous birds roosting on the water side of the narrow levee separating the Westpoint
22 Marina parking lot from the (at this point tidally-flooded) salt pond. Using the magnification of my
23 spotting scope I counted 45 black-necked stilts, 400 marbled godwits, and 600 willets. I observed a
24 person exit from their automobile in the Westpoint Marina parking lot, and in the seconds that followed
25 the birds flushed from their roost. I observed all the godwits and willits, and about half of the stilts
26 completely flush from their roost at waters edge next to the Westpoint Marina parking lot and fly out
27 over the salt pond levee towards First Slough. True and correct copy of the photographs I took of this
28

1 event on February 11, 2017 are attached hereto as Exhibits P, Q, R and S. In photographs Q and R, I
2 have circled in red the location of the person exiting their automobile that I mention above.

3 **Prohibition on Public Access.**

4 43. On August 14, 2012, I sent an email to Adrienne Klein at BCDC regarding signs and a
5 barrier denying public access to Westpoint Marina. I have reviewed Document No. 45 in the
6 Administrative Record for this matter. Document No. 45 is a true and correct copy of my August 14,
7 2012 email to Adrienne Klein at BCDC.

8 44. On May 8, 2017, when I turned off Seaport Blvd to drive out to Westpoint Marina, I
9 observed a sign at the entrance to Westpoint Marina stating, "Members and Guests Only." I took a
10 photo of this sign at 12:11 p.m. A true and correct copy of that photograph is attached hereto as Exhibit
11 T.

12 45. On that same day, proceeding further along the road into Westpoint Marina, I observed a
13 second sign at the entrance to Westpoint Marina again stating, "Members and Guests Only". I took a
14 photo of this sign at 12:13 p.m. A true and correct copy of that photograph is attached hereto as Exhibit
15 U.

16 **Further Evidence of the Absence of Buoys and Signage in Westpoint Slough**

17 46. As I described in paragraph 39 above, on April 9, 2017, I kayaked Westpoint Slough.
18 Starting at the confluence of First Slough and Westpoint Slough, I paddled along Westpoint Slough
19 around the Westpoint Marina until Westpoint Slough meets Redwood Creek. I stopped to take
20 photographs approximately every 500 feet. As I paddled I looked for any and all signs placed on Greco
21 Island or elsewhere on the water. I had my cellphone with me, so each photo has its location
22 documented with GPS coordinates.

23 47. Based on my April 9, 2017 observations and photographs, I have noted the locations
24 where I stopped to take photographs and make observations on a Google Earth aerial photo of Westpoint
25 Slough. I have numbered the locations 1 through 22 inclusive. I have also noted whether I saw any
26 signage or bouys, and if so the character of those signs and bouys. A true and correct copy of this
27 Google Earth aerial photo of Westpoint Slough, noting my observation locations and summarizing my
28

1 observations is attached hereto as Exhibit EE.

2 48. On April 9, 2017, I observed no signs on Greco Island at locations 1 through 12
3 inclusive, nor at locations 17, 19 or 20. Other than the signs and buoys photographed and described
4 below, I observed found no other signs or buoys from the confluence of Westpoint Slough and First
5 Slough to the confluence of Westpoint Slough and Redwood Creek, nor on Redwood Creek towards San
6 Francisco Bay proper.

7 49. On April 9, 2017 at 11:51 a.m., at location # 13, I observed a USFWS Refuge sign on
8 Greco Island. The photo was taken from GPS coordinates 37°30'59.15"N, 122°11'44.68"W. A true and
9 correct copy of that photograph is attached hereto as Exhibit V.

10 50. On April 9, 2017 at 11:54 a.m., at location # 14, I observed another USFWS Refuge sign
11 on Greco Island. The photo was taken from GPS coordinates 37°30'59.57"N, 122°11'51.04"W. A true
12 and correct copy of that photograph is attached hereto as Exhibit W.

13 50. On April 9, 2017 at 11:57 a.m., at location # 15, I observed a faded sign on Greco Island.
14 The photo was taken from GPS coordinates 37°31'1.03"N, 122°11'59.82"W. A true and correct copy of
15 that photograph is attached hereto as Exhibit X.

16 52. On April 9, 2017 at 12:02 p.m., at location # 16, I observed a faded sign on Greco Island.
17 The photo was taken from GPS coordinates 37°31'3.16"N, 122°12'3.7"W. A true and correct copy of
18 that photograph is attached hereto as Exhibit Y.

19 53. On April 9, 2017 at 12:09 p.m., at location # 18, I observed a faded "Sensitive Wildlife
20 Habitat - No Not Enter" sign in the water off Greco Island. The photo was taken from GPS coordinates
21 37°31'13.03"N, 122°12'11.85"W. A true and correct copy of that photograph is attached hereto as
22 Exhibit Z.

23 54. On April 9, 2017 at 12:18 p.m., at location # 21, I observed a green buoy at the
24 confluence of Redwood Creek and Westpoint Slough. The photo was taken from GPS coordinates from
25 37°31'7.41"N, 122°12'15.89"W. A true and correct copy of that photograph is attached hereto as Exhibit
26 AA.

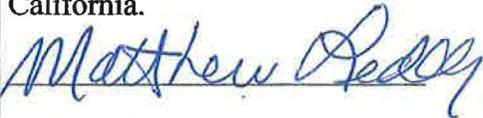
27 55. On April 9, 2017 at 12:21 p.m., at location # 22, I observed a red buoy at the confluence
28

1 of Redwood Creek and Westpoint Slough. The photo was taken from GPS coordinates from
2 37°31'2.72"N, 122°12'13.64"W. A true and correct copy of that photograph is attached hereto as Exhibit
3 BB.

4 56. On April 9, 2017 at 12:25 p.m., at location # 23, I observed a "10 MPH" buoy. The photo
5 was taken from GPS coordinates from 37°30'59.00"N, 122°12'1.22"W. A true and correct copy of that
6 photograph is attached hereto as Exhibit CC.

7 56. On April 9, 2017 at 11:39 a.m., at location # 24, I observed a sign on the end of PGE
8 boardwalk . The photo was taken from GPS coordinates from 37°30'53.5"N, 122°11'24.59"W. A true
9 and correct copy of that photograph is attached hereto as Exhibit DD.

10
11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct and that this declaration was executed on November 2, 2017 in Redwood City,
13 California.

14 

15 Matthew Leddy



Exhibit A



Exhibit B1



Exhibit B2



Exhibit C1



Exhibit C2



Exhibit D1



Exhibit D2



Exhibit D3



Exhibit E1



Exhibit E2



Exhibit E3



Exhibit E4



Exhibit F1



Exhibit F2



Exhibit G1



Exhibit G2



Exhibit G3



Exhibit G4



Exhibit H



Exhibit I1



Exhibit I2



Exhibit J



Exhibit K



Exhibit M



Exhibit N



Exhibit O



Exhibit P



Exhibit Q



Exhibit R



Exhibit S



Exhibit T



Exhibit U



Exhibit V



Exhibit W



Exhibit X



Exhibit Y



Exhibit Z



Exhibit AA



Exhibit BB



Exhibit CC



Exhibit DD

Photo locations and observations on Westpoint Slough and Redwood Creek, April 9, 2017. Matt Leddy



Photo Location No.	Notes
1	No evidence of signs on Greco Island
2	No evidence of signs on Greco Island
3	No evidence of signs on Greco Island
4	No evidence of signs on Greco Island
5	No evidence of signs on Greco Island
6	No evidence of signs on Greco Island
7	No evidence of signs on Greco Island
8	No evidence of signs on Greco Island
9	No evidence of signs on Greco Island
10	No evidence of signs on Greco Island
11	No evidence of signs on Greco Island
12	No evidence of signs on Greco Island
13	USFWS Refuge sign
14	USFWS Refuge sign
15	Faded sign no writing visible
16	Faded sign no writing visible
17	No evidence of signs on Greco Island
18	Sensitive Wildlife Habitat - No Not Enter sign
19	No evidence of signs on Greco Island
20	No evidence of signs on Greco Island
21	Green buoy
22	Red buoy
23	10 MPH buoy
24	USFWS Refuge sign and Redwood City sign on end of PGE boardwalk
A green buoy and a red buoy located at the entrance to Westpoint Marina were observed but not photographed on this date.	

Exhibit EE