



# SAVE WETLANDS

## Citizens Committee to Complete the Refuge

Issue 48

Advocates for the Don Edwards San Francisco Bay National Wildlife Refuge

Fall 2019



*A portion of the alignment of the defunct Dumbarton Rail line on the east side of the Bay runs through tidal marsh habitat. Photo courtesy of Cris Benton.*

## Protecting the Future of San Francisco Bay

**What do you envision for the future of San Francisco Bay? Will we be successful in maintaining a resilient ecosystem complete with tidal marshes?**

Concerns about the reality of climate disruption, and for the Bay Area, sea level rise are becoming interlaced into the fabric of our lives as well they should. Where once the topic was barely considered in the press, it now dominates headlines.

Cities are scrambling to protect their shorelines — Foster City residents approved \$90 million in taxes in the hopes that rising Bay waters can be halted at the City’s surrounding levees,

and San Francisco voters approved a \$425 million Embarcadero Seawall Earthquake Safety general obligation bond to keep out tide waters that are already overtopping this barrier. San Francisco International Airport has a \$587 million dollar plan to surround the airport with a 10-mile sea wall. The costs of protecting infrastructure developed before we were aware of sea level rise will be astronomical.

In addition to concerns of protecting our communities from the consequences of rising sea levels, cities and regional transportation agencies are looking to reduce traffic congestion

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# *What CCCR Did in 2019*

**CCCR advocates devoted 4000+ volunteer-hours defending potential and current Refuge lands, special-status species, wetlands, watersheds and more, at meetings and workshops, in project plan analysis, in document and field research, with written comments, and at times working with expert contractors and nonprofit partners.**

## **Actions protecting threatened lands that lie within the Refuge Acquisition Boundary, particularly:**

- Cargill-owned Ponds, Redwood City: Clean Water Act Jurisdictional Determination litigation against U.S. EPA; arranged speaker for Redwood City Rotary.
- Monitoring Menlo Park wetlands threats (Ravenswood Triangle; Adams/University): Facebook Willow Village, Dumbarton rail
- Newark Area 4: urging Supplemental EIR be circulated for a project that will consume upland transition zone habitat

## **Actions to avert threats to lands held by the Refuge including:**

- Clean Water Act permit non-compliance issues
- Dumbarton Corridor Feasibility Study, Palo Alto General Plan/Transportation Element: Build in Refuge. Attendance at community meetings
- Facebook Expansion Project: consultation regarding Pedestrian/Bike Bridge
- Monitoring of Caltrans areas in Redwood City to prevent debris entering adjacent Refuge waterways
- Port of Redwood City, presentation to Commission on potential ferry wake impacts to Refuge endangered species habitat
- Redwood City Ferry Terminal Economic Feasibility Study, communications with city project manager on wake impacts
- Support Park Ranger services, Menlo Park: Bedwell-Bayfront Park, adjoining the Refuge

## **Actions on Bay/Regional Projects:**

- 410 Airport Blvd, Burlingame: signatory on joint letter to State Lands Commission in support of restoration/public park proposal
- 557 East Bayshore Road Project (Century 12 site), Redwood City, potential impacts to Bair Island — comment letter on revised project
- Coyote Hills Regional Park; Restoration and Public Access Plans for 296-acres of donated lands — comment letters regarding the proposed project, hired a consultant to discuss adverse impacts to willow habitats

- Bay Road Office Project, East Palo Alto: Four 8-story buildings adjoining Ravenswood OSP
- Creek/riparian encroachment, Santa Clara County/SCVWD: Residential use of publicly-owned lands.
- Facebook Projects, Menlo Park and Redwood City: Advisory role, impact avoidance and mitigation of proposed and existing real estate and transportation projects
- Google Projects, Mountain View, Sunnyvale, Alviso: Advisory role on development, on impact avoidance and mitigation of proposed and existing real estate and trail projects
- Mountain View: Revisions to the North of Bayshore Precise Plan (would allow adding ~ 10,000 housing units)
- Palo Alto Baylands: Regional Water Facility horizontal levee project in existing endangered species habitat
- Riparian and Bird-safe Design Policy Update, City of San Jose
- South Bay Salt Pond Restoration Project, Phase 2 EIR/S (West/South Bay and Eden Landing documents)
- TopGolf at Terra, San Jose: Monitor development of entertainment/retail/hotel center, 170' high net, next to lower Guadalupe River

## **Actions commenting on Bay Region, State and Federal Plans and Policies:**

- California Wetlands and Riparian Area Protection Policy — Stakeholder/contributor
- Caltrans Advanced Mitigation Program - comment letter
- CDFW Regional Conservation Investment Strategy Guidelines - comment letter
- Comprehensive Conservation Management Plan, San Francisco Bay Estuary - Stakeholder
- East Bay Regional Conservation Investment Strategy - comment letter
- Farallon Islands Invasive House Mouse Eradication Project - support letter
- Newark Slough Mitigation Bank Proposal — periodic check-in with agencies
- Regional Advanced Mitigation Planning - Stakeholder

## The future of the Bay ...continued from front page

and greenhouse gas emissions by revitalizing commuter rail lines, which could have consequences for adjacent tidal marshes.

The protective measures described above (sea walls and levees) harken back to traditional approaches to stopping the sea. In some locations we will have no choice; we haven't left enough room between the Bay and developed areas to implement mitigation measures that also benefit the environment. In those areas, tidal marshes, the drivers of the Bay's biodiversity, will likely be lost.

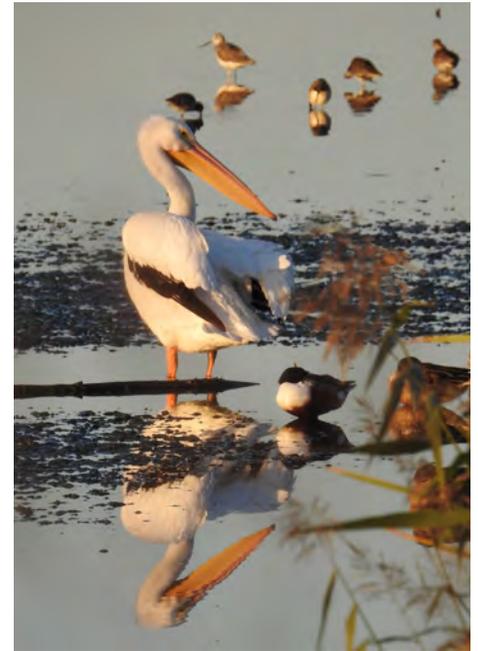
Over 90% of our Bay tidal marshes have been lost to development, or diked off from the Bay for agriculture, salt extraction and landfills. In the 1990s, Bay Area scientists, academics, and regulatory and resource agencies released the *Baylands Ecosystem Habitat Goals Report* that recommended large-scale restoration efforts to achieve a total of 100,000 acres of tidal marsh for a healthy

Bay ecosystem. We've been working diligently towards that goal, but have only achieved less than half the acreage that is needed.

If we wish to secure the health of the Bay for future generations, we must look for opportunities to protect lands that can provide accommodation space for tidal marsh species. We must switch from hardened forms of protection wherever possible to nature-based solutions (e.g. restoration of beaches, submerged aquatic vegetation, tidal marsh ecotone levees, etc.) that support ecosystem function. We should be creative and look for partnerships to accomplish nature-based solutions. For example, in the case of the rail projects, can hydrologic connections in existing marshes be restored or upland migration space provided?

The articles in this edition of *Save Wetlands* present the full spectrum of approaches to planning and how today's decisions might affect the

future of the Bay — from forward thinking strategies and projects to land use plans that are firmly entrenched in the past. 🦢



*American White Pelican grooming in Adobe Creek. Photo courtesy of Carin High.*

### **Actions on projects impacting special-status species and water quality impacts in the Bay Region:**

- Clean Water Act/Endangered Species Act violations
- Carnegie SVRA, Tesla Park, Alameda County: Extreme special-status species habitat destruction
- Upper Berryessa Creek Flood Reduction Project, Milpitas: Monitor outcomes of built project.

### **Actions of CCCR as Facilitators, Stakeholders, Representatives at meetings/conferences and on Boards:**

- Adapting to Rising Tides — Stakeholder and host for presentation to environmental groups
- Alviso Neighborhood Community Meetings
- Baylands Comprehensive Conservation Plan
- BCDC Fill for Habitat Amendment
- BCDC Rising Sea Level Workshops
- CCCR-Hosted, Capitol Corridor presentations
- CrossBay Transit - Stakeholder
- East Bay Regional Conservation Investment Strategy
- East Palo Alto and Dumbarton Corridor Resilience Study, Metropolitan Transportation Authority, Stakeholder

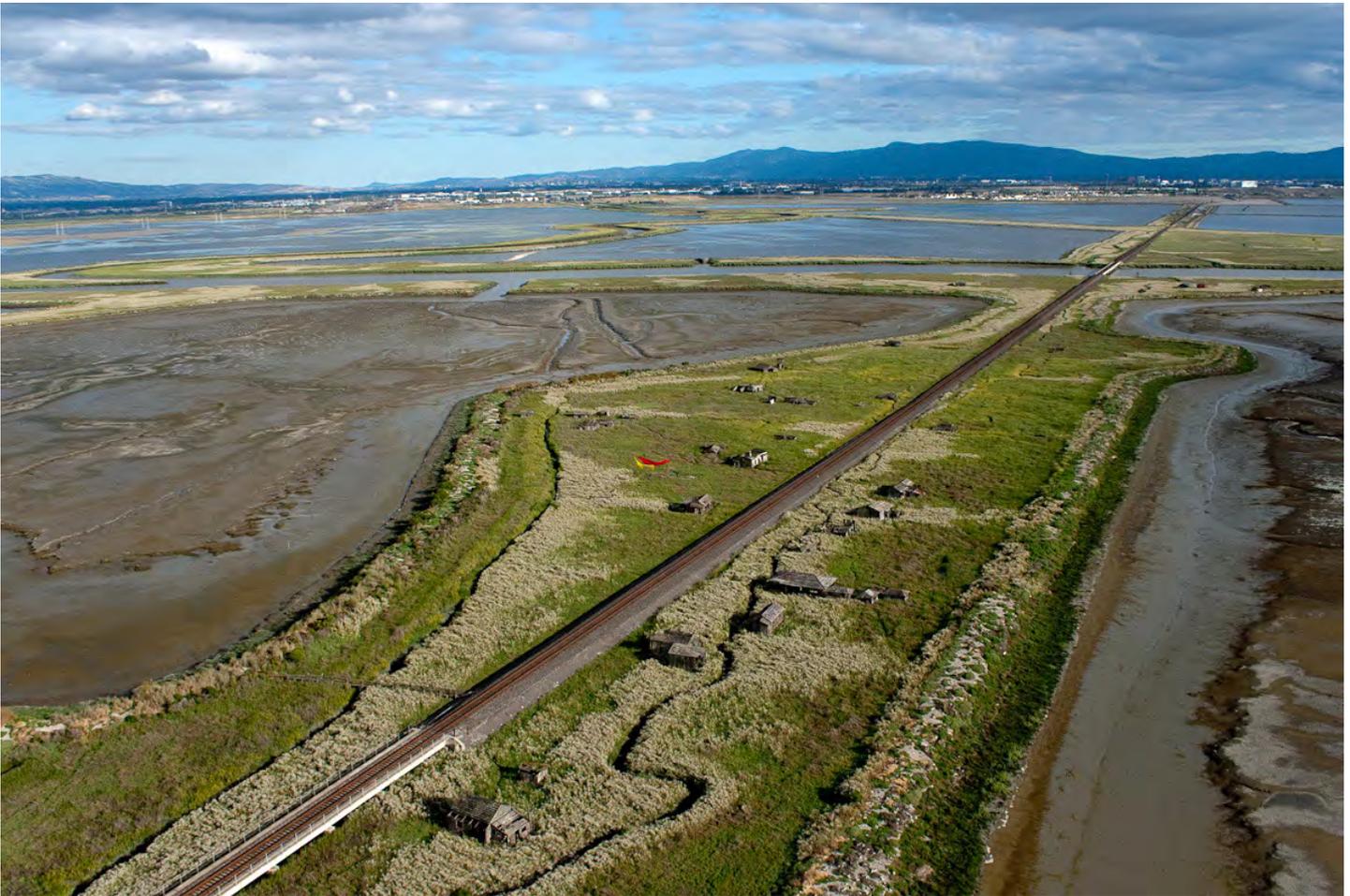
- Facebook Environmental Community Group Representative, Advisory role, Corporate Real Estate Planning
- Friends of the Estuary Board Member
- Google Ecology Club Member, Advisory role, Corporate Real Estate Planning
- Menlo Park Stakeholder, Bayfront Bedwell Park Master Plan Oversight Committee
- Resilient by Design — served as “Local Leader” speakers for tours at various locations
- San Jose Environmental Services Division, Environmental Community Group Representative
- Santa Clara Valley Conservation Council Member
- Santa Clara Valley Water District: Stakeholder, Reverse Osmosis Concentrate County-wide planning
- San Francisco Bay Joint Venture Management Board
- San Francisco Estuary Partnership Implementation Committee
- Shoreline Advocacy Workshop
- South Bay Salt Pond Restoration Project
- State of the Estuary Conference (Sponsor)

# The Tracks Run Th ough...

**On our cover page we mentioned two rail transportation projects in different stages of planning that could have profound impacts on the wetlands and waters of the Don Edwards San Francisco Bay National Wildlife Refuge.** They could be built atop raised and widened earthen berms, resulting in the potential filling of tidal marsh, salt ponds and baylands. Alternatively, these projects could provide unique opportunities to improve the resilience of the adjacent tidal marshes — a direction toward which these projects could be headed.

discussions related to how the rail project could provide opportunities to increase resilience and connectivity for the habitats of the Refuge. Options included elevated tracks on trestles or piers versus raised berms, and rails elevated on trestles/piers with low benches to provide future escape habitat for wildlife below. The ultimate design could include a combination of all of the above.

Capitol Corridor envisions triple tracking the rail route and potentially raising the existing Union Pacific Railroad tracks



*The Union Pacific Railroad tracks run through the tidal marshes surrounding Drawbridge and salt ponds beyond in the Don Edwards San Francisco Bay National Wildlife Refuge. Aerial kite photo courtesy of Cris Benton.*

CCCR has been included as a planning stakeholder for both. To broaden participation, we have hosted project meetings involving fellow environmental groups and, at this time, are working to organize yet another.

Capitol Corridor Expansion Project: The planning team for this project reached out to CCCR early in the study process, recognizing that impacts to the Refuge will raise significant concerns. The three CCCR-hosted meetings between the planning team and local environmental groups included exchange of questions, elaboration of concerns and

from Newark to Alviso to provide resilience to sea level rise on lands immediately adjacent to or through the Refuge. The plans to triple track the rail line stem from the 2018 California State Rail Plan which sets the ultimate goal of running commuter trains on this line every half hour during peak business hours and bi-hourly in non-peak hours. Triple tracks provide dedicated lines for passenger rail without disrupting freight rail traffic. One alternative proposed contemplates abandoning a portion of the existing rail alignment for a new and straighter path through Refuge salt ponds. Meeting

# the Refuge

discussions included potential alternative construction techniques that could improve hydrologic connections or provide sea level rise accommodation for tidal marsh species.

The final report for the *Alviso Wetland Railroad Adaptation Alternatives Study* is slated to be released before the end of 2019, summarizing the findings of the planning team. It will not recommend a preferred option but would lay the foundation for potential alternatives to be studied as the process moves forward.

**Dumbarton Rail Project:** The team of Cross Bay Transit Partners (a Facebook and Plenary Group partnership), the lead agency SamTrans and the Federal Transit Authority (federal lead agency) is moving forward quickly towards formal CEQA/NEPA environmental review. The goal of this project is to establish some form of commuter rail across the Bay within the derelict Dumbarton Rail right-of-way. At least six public workshops were held this year as were meetings with technical and community stakeholders. After initial concerns that the significant natural resources of the Refuge were not being discussed, we are pleased that outreach to Refuge staff and to regulatory and resource agencies has occurred. CCCR hopes to soon host a joint meeting of the Cross Bay team with other environmental groups.

Alternatives are still being developed regarding the mode of rail transportation that will be implemented. Three different modes are currently being considered — an electric/ battery powered commuter rail train, light rail trains, or autonomous vehicles.



*The Dumbarton Rail line, damaged by the Loma Prieta earthquake and subsequent fires, passes through some of the largest intact tidal marshes in the South Bay. This marsh complex supports Ridgway's Rail and the salt marsh harvest mouse, federally endangered species. Photo courtesy of Cris Benton.*

The rail line will be reconstructed along the SamTrans right-of-way. Many details are yet to be discussed publicly: how high the berm might be; whether it will need to be widened; how many tracks will be constructed; and, whether there will be any fill in adjacent wetlands. A decision has been made that two sections of the bridge will be elevated to allow boat traffic to pass underneath, expediting commuter rail by eliminating interruptions at swing gates. One section to be elevated crosses Newark Slough located within Refuge boundaries and tidal marshes.

Of particular interest to CCCR was a Cross Bay comment that it was looking at ways to improve hydrological connections within surrounding tidal marsh. Existing Refuge marshes are bisected by the rail line berm. As in the Capitol Corridor study in Alviso, we hope tidal marsh enhancement opportunities are given substantial consideration in the Cross Bay analysis.

Formal public environmental scoping for this project is, at this writing, projected to occur in the first quarter of 2020 with the release of a DEIR/EIS scheduled during the third quarter of 2021 and an FEIS/Record of Decision in the fourth quarter of 2022.

We encourage everyone to keep eyes on both rail projects and help us ensure that the resources of the Refuge are adequately considered and protected and that opportunities are seized, improving the conditions and resilience of our marshlands. 🐦

*Ground-level view of a tidal channel in Audubon Marsh, located on the north side of the Dumbarton Rail line, looking towards the northwest. Photo courtesy of USFWS, Rachel Tertes.*



# Save Wetlands in Mayhews

## *Newark City Council Approves Development in Area 4*



*Newark Area 4 was included among the lands the USFWS identified as suitable for potential addition to the Refuge, because of the unparalleled opportunity they offer to restore habitat for listed species and connect Refuge lands. Photo by Carin High.*

**On November 14, 2019, the City of Newark approved development in Area 4** in a 4:1 vote, disregarding concerns expressed by agencies, scientists, environmental groups and residents. For over two decades, landowners and the City of Newark have sought to fill and pave over Area 4 with housing and infrastructure. The final incarnation calls for 469 houses, built adjacent to a busy rail line and laid out atop islands of fill in a FEMA floodplain connected by four bridges that span wetlands.

The development claims to avoid wetlands and yet adverse impacts will be far-reaching and significant. Nearly 40 acres of wetland will be surrounded by development rendering them useless for wildlife. Development up to the margins of surrounding wetlands totaling approximately 200 acres would leave them at the mercy of human disturbance. 1.67 million cubic yards of fill (roughly 100,000 truckloads) will be imported to raise the developed areas (to 15 feet) out of the 100-year floodplain. Riprap is proposed to prevent erosion from wave action on the steep 2:1 western facing slopes and concerns have been raised regarding potential slumping of the slopes into wetlands. By developing all

higher elevation uplands within Area 4, wildlife, including the endangered salt marsh harvest mouse, will have nowhere to shelter during high tide or flooding events.



*Salt marsh harvest mouse, which needs shelter in uplands during high water events. Photo by USGS.*

The project ignores State and regional guidance that has been provided regarding sea level rise resilience. It is irresponsible to approve a project in an area that has been identified as being vulnerable to future sea level rise when we already know the consequences of such actions include fiscal implications for future flood protection and the potential inability of residents to secure flood insurance and/or home loans in the years ahead. With rising sea level and its impacts to the Bay

Area shoreline, many communities are moving development away from harm's way. Newark is taking a different approach by encroaching farther toward the Bay on lands that would actually protect the city. Filling lands that would provide flood protection and a buffer from sea level rise for the rest of the city is an unsustainable path as evidenced by the recurring headlines of the costs of protecting existing Bay Area infrastructure. Destroying habitat that would provide upland refuge for wildlife as sea level rises forecloses this opportunity to recover listed species and provide for marsh migration, and threatens the health of the Bay's ecosystems. The impacts of this project will be felt region-wide.

Newark would be better served by the developers and the City working together to protect and save this unique ecosystem from permanent destruction.

We will continue fighting to protect these lands! 🐭

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# Fremont: *Public Access Plan Threatens Patterson Ranch*

We are disappointed to report that the East Bay Regional Park District (EBRPD) has voted to move ahead with a Land Use Plan Amendment (LUPA) that could implement construction of public access features in close proximity to the historic willow groves. We consistently expressed concerns about this infringement upon the habitat throughout the planning process. CCCR submitted extensive comments to the Draft Environmental Impact Report (DEIR) and final EIR (FEIR) and hired a wildlife ecologist who submitted comments on behalf of CCCR to both EIRs. He laid out all the scientific research pertinent to the human disturbance impacts of public access features on the populations and species diversity of wildlife adjacent to these facilities.

While restoration of the historic willow grove is proposed, an overlook is still proposed immediately west of the existing Patterson Slough riparian corridor, and the maintenance road that has been closed to the public will be repurposed as a trail immediately adjacent to Patterson Slough. The overlook and trail will be within the designated 'Patterson Slough Special Protection Feature' proposed for restoration. A paved 100-vehicle parking lot, restrooms, picnic facilities, and a one-acre flexible space area that could accommodate up to 100 additional vehicles are all still planned in close proximity to the lands that we hope will ultimately restore the lost willow grove habitat that once extended beyond the boundaries of Coyote Hills Regional Park all the way to the Ardenwood Historic Farm.



**CCCR urged that these changes be made to the proposal to protect sensitive species and habitat along Patterson Slough. Mauve: existing trails. Orange: proposed trails. Red: trails that should not be implemented; facilities that should be relocated. Yellow: proposed relocation area.**

CCCR and other environmental groups and residents fought for decades to protect Coyote Hills from the adverse impacts of development and to preserve the tremendous restoration opportunities that exist within the Patterson Ranch Lands. We recognize that this park has been categorized as a "regional park" and not a "refuge," and we do support other public access facilities proposed in the (LUPA). However, within the boundaries of the regional park, facilities and trails should be situated where they will do the least damage to the natural resources that currently exist or could be restored. EBRPD did remove one overlook and trail to the east of Patterson Slough and may consider removing the remaining overlook that is located within the area to be restored. The parking lot might be shifted slightly west away from the historic willow grove. Our position remains — it is inappropriate to situate facilities near unique habitat areas when other options are available.

**Carin High**, [cccrrrefuge@gmail.com](mailto:cccrrrefuge@gmail.com)



**Warbling Vireo** in the Coyote Hills Willow Run Area. Photo by Sam High.

# San Francisco Bay Shoreline Nature-based Resilience Opportunities at Newark



**An important new publication** released this year provides additional compelling reasons for CCCR to continue fighting for the protection and restoration of the Redwood City Cargill salt pond site and the mosaic of wetlands and uplands in Newark Area 4. *San Francisco Bay Shoreline Adaptation Atlas: Working with Nature to Plan for Sea Level Rise Using Operational Landscape Units* provides a science-based framework to identify suitable areas where “nature-based approaches can be used to create a resilient shoreline with multiple benefits”, enabling shoreline communities to identify effective sea level rise adaptation strategies for their particular part of the Bay. Nature-based approaches, such as

restoring marshes, fortifying beaches and creating subtidal reefs, have many biological and social benefits, can cost less over time than traditional engineered alternatives and can provide co-benefits such as public recreation and habitat for native wildlife.

Funded primarily by the San Francisco Bay Regional Water Quality Control Board, the *Adaptation Atlas* was prepared by the San Francisco Estuary Institute (SFEI) and the San Francisco Bay Area Planning and Urban Research Association (SPUR). The *Adaptation Atlas* builds on the *Baylands Ecosystem Habitat Goals Update* published in 2015 by the State Coastal Conservancy, which updated the original



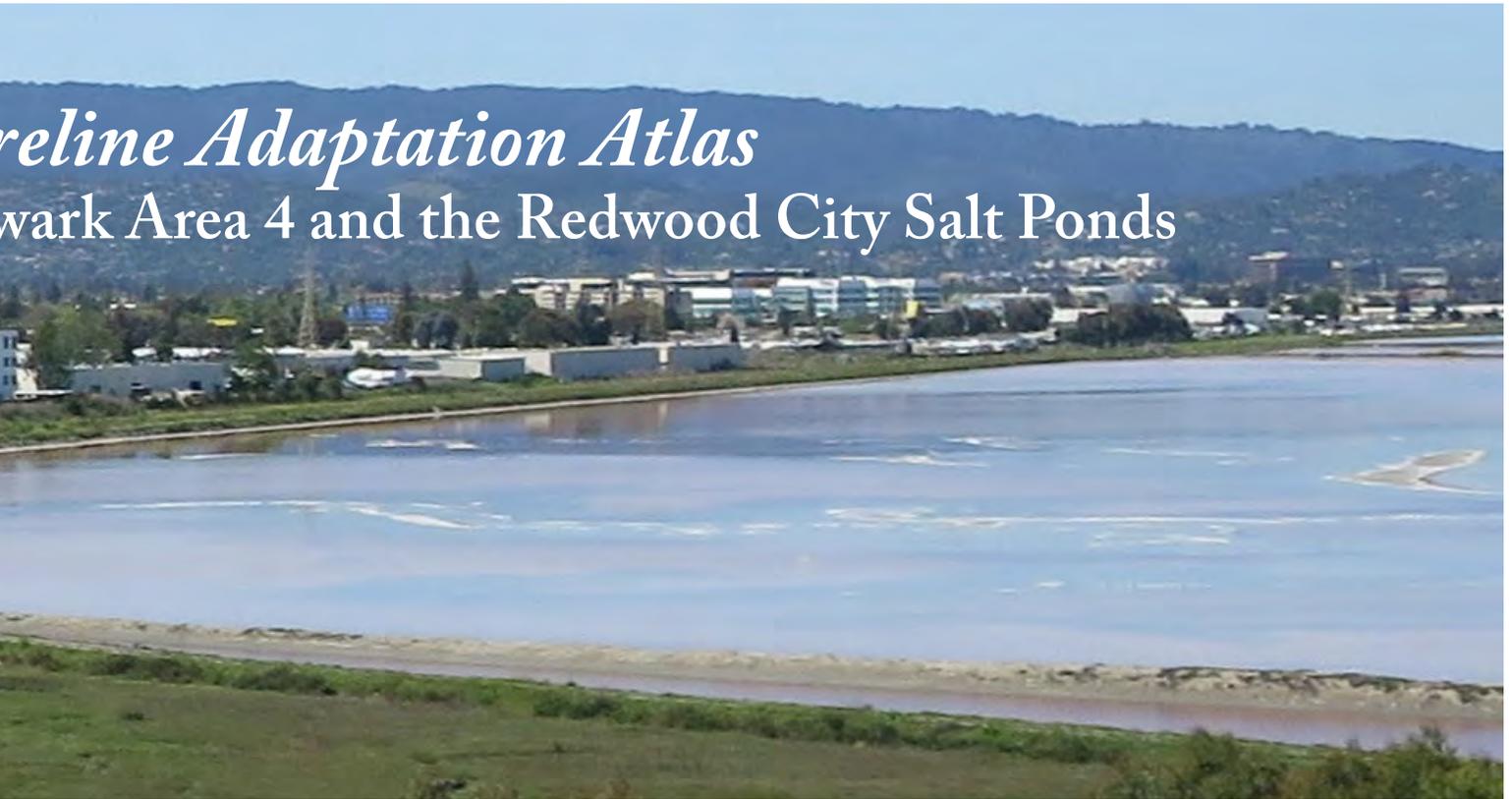
**Google Earth image of Newark Area 4** showing its proximity to Mowry Slough, salt ponds, and the lands of the Refuge, and the urban development and railroad track along the east side. Imagery date March 11, 2017.

## Mowry Operational Landscape Unit (OLU)

The baylands in this OLU provide “a rare buffer between the Bay and developed communities, and should restoration opportunities become available they can be used to increase the climate resilience of both ecosystems and those developed communities.” The Nature-Based Adaptation Opportunities Map depicts Newark Area 4 as having Conditions Suitable For: Tidal Marsh, and Migration Space Preparation.

# Shoreline Adaptation Atlas

## Newark Area 4 and the Redwood City Salt Ponds



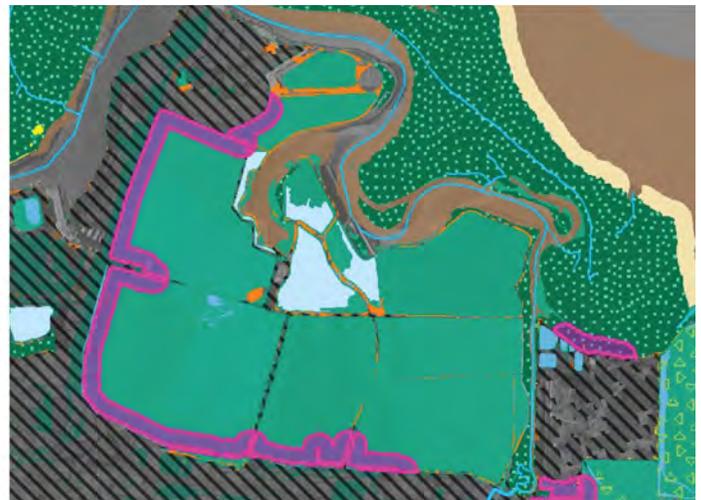
**Cargill's Redwood City salt ponds** extend right up to hundreds of new apartment units needing protection from sea level rise. This 1400-acre site presents an exceptional opportunity for nature-based SLR adaptation on a large scale.

comprehensive restoration goals outlined for the San Francisco Bay Estuary in 1999, in order to address the threats from climate change.

The report divides the Bay shoreline into 30 planning units called "Operational Landscape Units" or OLUs. For each OLU, there is detailed information on environmental variables including topography, elevation, shoreline characteristics, sediment supply and land use, and a discussion on appropriate adaptation measures. A *Nature-Based Adaptation Opportunities Map* illustrates where natural and nature-based measures can be applied.

Excerpts from the *Adaptation Atlas* show the information for the specific OLUs that include the Redwood City salt ponds (Belmont-Redwood OLU) and Newark Area 4 (Mowry OLU). Our photos illustrate the proximity of both sites to the urban edge.

The wildlife habitat and conservation value associated with these baylands is well-documented. With the *Adaptation Atlas*, we now have a science-based



25 NATURE-BASED ADAPTATION OPPORTUNITIES MAP  
**Belmont-Redwood**

**Belmont-Redwood Operational Landscape Unit** showing Cargill's Redwood City salt ponds with Conditions Suitable For: Ecotone Levee (pink) to protect development along Seaport Blvd. and East Bayshore Rd., and Tidal Marsh (solid green).

planning framework that identifies the value of these sites to adjacent shoreline communities for critical flood protection, marsh migration, and as a buffer for sea level rise.

The *San Francisco Bay Shoreline Adaptation Atlas* is available for download at [adaptationatlas.sfei.org](http://adaptationatlas.sfei.org) or in printed copy (\$35.95 on Amazon).

# Friends of Redwood City: *CCCR Joins Lawsuit Against EPA Decision on Redwood City Salt Ponds*

**On September 24, 2019, Citizens' Committee joined with San Francisco Baykeeper, Save the Bay and Committee for Green Foothills in a lawsuit** to overturn the U.S. Environmental Protection Agency's recent determination that Cargill's Redwood City salt ponds are not under federal Clean Water Act (CWA) jurisdiction. The agency's decision eliminated important federal regulatory protections that have been in place at this site for many decades. The legal Complaint was filed in the U.S. District Court in San Francisco by Cotchett, Pitre & McCarthy of Burlingame, and Earthrise Law Center, based at Lewis and Clark Law School in Oregon, on behalf of the four plaintiff organizations. California Attorney General Becerra filed a similar lawsuit on the same day.

CCCR has worked hard to protect these salt ponds for many years. This 1400-acre site is included as a "potential addition" within the Don Edwards San Francisco Bay National Wildlife Refuge expansion boundary because the ponds have significant conservation value, both for wildlife and for potential restoration back to tidal marsh. The Redwood City salt ponds currently provide crucial seasonal habitat for thousands of resident, migratory and



*Gail Raabe speaking on behalf of CCCR at the press conference for litigation against Trump's EPA, September 24, 2019. Photo courtesy of Josh Sonnenfeld.*

overwintering waterbirds on San Francisco Bay. Surveys by state and federal wildlife agencies have documented significant numbers at this site. One single-day count recorded over 27,000 birds! Over the past ten years, Matt Leddy has documented 25 species of waterbirds using these ponds for roosting and feeding when they fill with rainwater, and on one observation day, he counted over 9,000 shorebirds in a single pond.



*Cargill's 1400-acre site in Redwood City has significant conservation value and is a potential addition for the Refuge. In March, the EPA removed federal oversight of these lands, a decision the lawsuit seeks to overturn. Photo courtesy of Matt Leddy.*

After an initial massive "Saltworks" development project was rejected by Redwood City in 2012, Cargill and developer DMB requested a new determination on CWA jurisdiction. In 2016, EPA Region 9 in San Francisco completed a Draft Jurisdictional Determination finding that the majority of the Redwood City site does contain "waters of the United States" and are therefore subject to CWA protections. The 65-page report, based on years of study and extensive legal and scientific analysis, was submitted to the EPA administration headquarters in Washington DC for final approval; however, when Scott Pruitt was confirmed as Trump's new EPA administrator, he implemented a policy change that took away regional



*Cargill Pond 10, Redwood City. Northern harrier flushes shorebirds. Photo courtesy of Matt Leddy.*

authority over all jurisdictional determinations. In March 2019, EPA Headquarters issued their own Final Jurisdictional Determination that “there are no ‘waters of the United States’ for purposes of the CWA”, thereby removing federal regulatory oversight on the Redwood City salt ponds.

The decision by the Trump EPA Administration is only 13 pages long, and ignores the documentation that EPA Region 9 compiled to support their conclusion on CWA jurisdiction. The headquarters decision instead concludes that the CWA does not apply because the site was filled and converted to dry upland or “fast land”. As outlined in both lawsuits, this is obviously not true: with the exception of the levees and small building pads, the ponds have not been filled. In fact, the Redwood City ponds would once again be subject to the natural tides if the surrounding artificial levees were breached.

There are very serious implications for the salt ponds from this Trump Administration decision. In addition to protection from other pollutants, the federal CWA prohibits fill from being indiscriminately placed in “waters of the United States”; therefore, any development project proposal triggers an environmental review to evaluate the probable impact which the proposed activity may have on the “public interest”. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal must be considered (including the cumulative effects), and among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and water

quality, energy needs, safety, food and fiber production, mineral needs, and considerations of property ownership. The real strength of the CWA lies in the requirement that impacts from fill must first be avoided, then minimized and finally fully mitigated if fill is allowed under permit.

In removing these CWA protections, EPA has abrogated the agency’s responsibility to prevent the loss or degradation of a part of San Francisco Bay, a natural resource that is of national and international importance to migratory waterbirds. The EPA decision has also likely made the 1,400-acre salt pond site more profitable to develop, and thus more difficult to purchase for tidal marsh restoration. And the threat is real — within seven days of the EPA’s final decision, luxury housing developer DMB issued a “Reimagine Saltworks” press release announcing their intentions to re-engage the community on plans for the salt ponds.

The lawsuits filed by the environmental groups and the Attorney General both state that the EPA headquarters decision violates the Administrative Procedures Act which “governs the procedural requirements for agency decision-making, including jurisdictional determinations made pursuant to Section 404 of the CWA.” Both Complaints ask the court to hold unlawful and set aside the final jurisdictional determination because it is “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law”. We are hopeful that the lawsuit will result in the return of CWA protections to these salt ponds. 🐦

**Friends of Redwood City**  
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# Alameda Wildlife Reserve

**Volunteers and staff prepared for our Least Terns and when mid-April came along, we had no Least Terns.** They were a month late in arriving and that was a long and worrisome wait. They finally came home and prepared nests. Trials with predators and fish too big for chicks, perhaps due to the late start, added to our concerns, but we had well over 300 nests and at season's end 150 young Least Terns were fledged. The late start meant we didn't have fledglings for our *Return of the Terns* event in mid-June, but we were happy to have hatchlings emerge just in time for the event.

Brown Pelicans were also later than usual this season. Numbers didn't reach over a thousand until the end of July. The Synchronous Pacific Roost Count on September 14 did not disappoint. Our initial count was 1,989 pelicans roosting on the breakwater's north side before sunset. Fly-ins added another 3,496 for a



*California Least Tern searching for food for its nestlings. Photo courtesy of Carin High.*

total of 5,485 by dark. This number makes for a crowded breakwater. Considering we counted from shore and not the blind side, the levee certainly hosted many more birds. They use both sides!

Caspian Terns continue to nest on the West Wetlands. Counting the colony from the levee is not easy, but there were hundreds of adults in the colony. Young birds hide well in vegetation so numbers are not valid without closer approach. We did see fledglings numbering into over a hundred.

Like other locations in San Francisco Bay, Elegant Terns visited our site

too, sometimes over a thousand, making surveys a challenge. We find them entertaining, and the raucous vocalizations of so many birds lingers in our ears for hours after a survey.

Migratory Burrowing Owls reached their highest number this year, with eleven seen on a couple of surveys. We appreciate their winter visit and also their leaving just in time for Least Terns to arrive. They are brutal predators for tern colonies.

An Osprey female, which I believe was the same as the 2018 bird, returned this year with a new and perhaps inexperienced mate. He was slow to build the nest and didn't share his fish at the start. We wondered how this season would end. Recall that Dawn was widowed mid-season in 2018 and managed to raise her brood of three to fledge as a single parent! This year they had one youngster and it fledged. It may have been best for them to have only one youngster.

Many other birds use and breed on the site. Alameda Wildlife Refuge (AWR) continues to warm our hearts with good nature stories and surprising visitors. We had our first Sea Lion ever seen hauled out on AWR rocks recently, and a humpback whale named Allie spent three weeks in the Seaplane Lagoon last spring delighting crowds of people. 🐋

**Leora Feeney**  
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**Photographer Rick Lewis** captured this incredible photo of Allie the humpback whale who showed up near Alameda at the end of May and left around the middle of June. No one knows what became of Allie; we all hope she safely made it back out the Golden Gate and headed to winter grounds. Photo courtesy of Rick Lewis.

# Baylands Conservation Committee

**Palo Alto Measure E site.** In 2011 voters in Palo Alto voted to undedicate 10 acres of Byxbee Park for exclusive use as an organics conversion facility. Subsequently, Palo Alto decided on another alternative. Most of the 10-acre site was filled as part of the landfill closure and about two acres remain as a habitat corridor between the bay and the Renzel Wetlands. Now the Regional Water Quality Control Plant is eyeing the habitat corridor as a possible site for a water reclamation facility. This would require another public vote. Stay tuned.

**Renzel Wetlands.** Last year the City completely reworked the beneficial use project using treated wastewater for marsh restoration on the 155-acre former ITT site. CCCR provided input on the project. That project has been completed and the jury is still out on how effective the wetland restoration will be. Many of the old structures have been removed and the large transmission building has been cleaned up and secured. There is general consensus that most of the site should be returned to wetlands and no determination has yet been made with respect to the fate of the large building.

**Horizontal levee for sea level rise resilience.** Encouraged by the Regional Water Board and qualified advisors like Jeremy Lowe and Peter Baye, the Palo Alto Regional Wastewater Facility has proposed a horizontal levee altering the Baylands' Harbor Marsh. The principle followed arises from the experimental and adaptively managed Ora Loma wastewater facility in San Lorenzo, where final treatment seeps through recreated brackish wetlands then into a tidal channel, adding treatment attractive to the Water Board to reduce water quality impacts. Palo Alto arranged a staff and public tour of Ora Loma in which CCCR participated. While that project seems well suited to its site, building it did not disrupt existing tidal wetlands as Palo Alto's experimental project would do. Harbor Marsh is used by Ridgway's rails and as habitat for the salt marsh harvest mouse. The final plan and its actions must be watched!

**Dumbarton Rail Corridor.** CCCR persuaded Menlo Park to add the following language to their position paper on the Dumbarton Rail Corridor: The project considers and is designed to minimize impacts related to sea level rise, natural resources, and habitats adjacent to the Dumbarton Corridor, including the wetlands in the Don Edwards National Wildlife Refuge and San Francisco Bay. 🐾

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*Point Molate and its scenic and biological beauty should be preserved and protected. Photo courtesy of Patricia Jones.*

## Citizens for East Shore Parks: *Saving Point Molate*

**Citizens for East Shore Parks and our allies are still in the middle of a tough and long battle to save Point Molate** in Richmond — the most important remaining open space along our East Bay shoreline — from becoming a high-end housing development.

We can't allow spaces like this to be paved over, buried under asphalt and concrete, obliterated, and not fully accessible to the public. We could not only lose this irreplaceable headland, but also the best eelgrass beds in the entire Bay that are vitally important for the water quality of San Francisco Bay and for helping fight climate change.

Saving Point Molate is for the benefit of generations to come. It is exactly these kinds of ecosystems that must be preserved. Once they are lost, they are gone forever.

We are working on several fronts. We have challenged the City of Richmond for entering into agreements granting development rights behind closed doors. This litigation is still ongoing. The City Council recently voted to keep the unsound housing deal on track despite public opposition. We are fighting for thorough environmental review of Richmond's plans and for fiscal sustainability, public safety, and social equity consequences. We are pushing to direct housing in Richmond to where there is need, infrastructure, and public transportation. We are looking at all options to keep Point Molate in public hands.

Citizens for East Shore Parks (CESP) is part of the Point Molate Alliance, a group of organizations and community members banded together to protect Point Molate from unsound development and promote alternatives to the City's destructive plans.

If you would like further information about CESP or our efforts to protect Point Molate, visit [www.eastshorepark.org](http://www.eastshorepark.org) or contact [cespmanager@eastshorepark.org](mailto:cespmanager@eastshorepark.org). 🐾



## *Wetlands in the Far South Bay*

**Alviso Wetlands:** Last year, and again more recently, the County of Santa Clara was considering a project that would expand a boat dock in the Alviso Slough at outrageous cost to wildlife, wetlands and the taxpayer. To our relief, and consistent with our recommendations, the project was shelved. We hope it stays there but know the political impetus remains unfulfilled. Always be wary.

This year we have seen the beginnings of construction of the Shoreline Levee as clean earth is stockpiled to build the first reach, running from Alviso Marina County Park along the existing trail to an intersect with Pond A16 on Refuge lands. Trail users, if you wish to travel to and from the Marina and the Refuge Environmental Education Center, set your mind and time on the nine-mile loop for the duration! It is definitely worth the hike to get out to the point where Coyote Creek and Alviso Slough meet the Bay.

While the levee gets underway, the agency planning for railroad expansion through the Refuge continues, for most projects. The ACE Forward project, which had issued a Draft EIR in 2017, has shelved its project for the time being. But planning for the same route through Alviso wetlands has moved forward in the Capitol Corridor Project. That project team identified CCCR as a stakeholder, meeting with us three times in the past year to hone alternatives for expanding

*Levee repair work is underway to ensure the structural integrity of the A9, A10 and A11 salt pond levees and their ability to maintain wildlife habitat. Photo courtesy of Howard High.*

the Alviso crossing from one to three rails while considering wildlife and wetlands impacts and sea level rise. The planners will be providing a report of their recommendations to their Board, possibly before the year ends. This project will be lengthy and needs watchful eyes from the public.

**Google Expansion:** Since 2012, CCCR has been a member of an "Ecology Club" formed by Google to provide early and repeated environmental "advice" by identifying issues related to proposed Google development, transportation and landscape projects and providing information regarding impacts to avoid, mitigate or improve. Outcomes have included times when we publicly supported Google actions and other times of concern and disappointment. It began with the focus on Mountain View (which continues) while press coverage attests to Google expansion, buying office space or planning development in other shoreline areas in Sunnyvale, Alviso, Palo Alto and Redwood City and notably in downtown San Jose adjoining the Guadalupe River. Yikes! Water, wildlife and climate change connect them all. All public eyes are needed! 🐾

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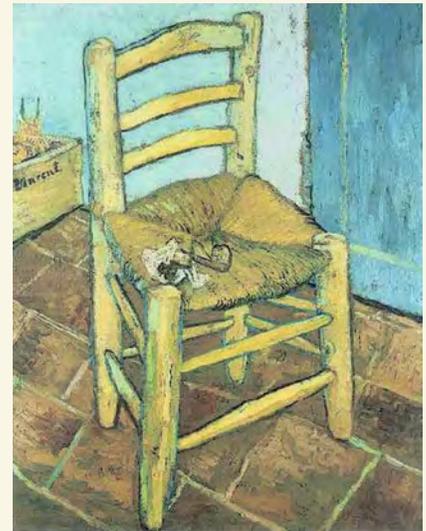
# The Uneasy Chair

**Friends come to my house to tell me how they love to bicycle or hike along the edges of the Bay and how grateful they are to the people who fought to keep those lands undeveloped.** My mind goes back to the early days in the 1960s when we went to the U.S. Fish and Wildlife Service (USFWS) saying we had a splendid idea to save Bay wetlands. "We can have a national wildlife refuge here!" In response, a letter came from the highly respected and admired Director of the FWS, John Gottschalk, saying, "There will never be a national wildlife refuge on San Francisco Bay." And what did we do about that? We ignored it. And so did Congressman Don Edwards and the Portland Regional Office of the USFWS.

We saw the Refuge established in 1972 but we were missing a number of vitally important types of habitat and went back to Congress and did it all over again in 1988. Still, our vision remains to restore every possible acre. Monitors at the Golden Gate have already demonstrated 8" of sea level rise in the last century.

So we are alerted more than ever to the priceless value of lands. Relatively large areas in Redwood City and Newark today are incredibly valuable because they can provide sea level rise accommodation space and due to their size, can recreate the full range of the tidal marsh from the mudflats all the way up to higher ground and uplands.

Surely scientific evidence gives credence to our belief that human life and the lives of the creatures that share the planet with us will depend on decisions we make today. What do you envision for the future of the Bay?



**Florence LaRiviere**  
*Uneasy Chair Emerita*



**Snowy Egret.** Photo by Howard High.

## Thank you to our photographers

We would like to express our heartfelt "Thanks!" to Cris Benton, Howard High, Sam High, Patricia Jones, Rick Lewis, Matt Leddy, Josh Sonnenfeld, and Rachel Tertes for allowing us to share their wonderful photos!

## Treasurer Update

**Thank you Enid!** After fifteen years serving as our esteemed Treasurer, Enid Pearson is stepping down. Along with all her many accomplishments, Enid was willing to take on this responsibility, and she embodied everything you would want in a treasurer for a small non-profit like CCCR. Enid always ran a tight ship and her many years of accounting work on our behalf are greatly appreciated!

**Welcome Denise!** We're pleased to announce that our Board has appointed Denise Raabe to serve as our new Treasurer. Denise recently retired from the Santa Clara County District Attorney's Office where she worked as a prosecutor in the Environmental Protection Unit. She grew up on the Peninsula and gained an early appreciation for the Bay from hiking along Steinberger Slough as a young girl.

**At last - no more scissors!** Check out our new donation envelope that provides space for all the information we need about your tax-exempt contribution to CCCR. No more need to cut up your beautiful copy of *Save Wetlands* to send in your check. Donations can also be made online at our website: [bayrefuge.org](http://bayrefuge.org). 🐾

**Thank you for your support – you make it all possible!**

