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California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Interviews with

Howard L. Cogswell
John M. Thorpe
Robert C. Douglass
Steve Foreman
Karen G. Weissman
Peter C. Sorensen
Carl G. Wilcox
Roberta G. Cooper
Janice Delfino

Interviews conducted by
Malca Chall
in 1996, 1997, and 1998

Since 1954 the Regional Oral History Office has been interviewing leading participants in or well-placed witnesses to major events in the development of Northern California, the West, and the Nation. Oral history is a method of collecting historical information through tape-recorded interviews between a narrator with firsthand knowledge of historically significant events and a well-informed interviewer, with the goal of preserving substantive additions to the historical record. The tape recording is transcribed, lightly edited for continuity and clarity, and reviewed by the interviewee. The corrected manuscript is indexed, bound with photographs and illustrative materials, and placed in The Bancroft Library at the University of California, Berkeley, and in other research collections for scholarly use. Because it is primary material, oral history is not intended to present the final, verified, or complete narrative of events. It is a spoken account, offered by the interviewee in response to questioning, and as such it is reflective, partisan, deeply involved, and irreplaceable.

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THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999, 2000, x, 393 pp.

Interviews with eleven persons involved in controversy over plans to build a racetrack and business park (denied) on a wetland site along the Hayward shoreline and approval to restore it as a wildlife sanctuary. Leslie Salt Division (Cargill Corporation); environmental regulations; compilation of Environmental Impact Reports/Statements; correspondence, memoranda, research papers appended. Interviews with: Howard L. Cogswell (b. 1915), retired professor, ornithologist; Janice Delfino (b. 1926), community activist; John M. Thorpe (b. 1932), developer; Roberta G. Cooper (b. 1937), mayor of Hayward; Robert C. Douglass (b. 1943), property manager, Leslie Salt Division, Cargill; Steve Foreman (b. 1953), Karen G. Weissman (b. 1947), environmental consultants; Peter C. Sorensen (b. 1950), staff, U.S. Fish and Wildlife Service; Carl G. Wilcox (b. 1950), staff, California Department of Fish and Game. Unreviewed draft transcripts of interviews with Carolyn Cole and Richard Murray are available for research in The Bancroft Library.

Interviewed 1996-1998 by Malca Chall, Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

TABLE OF CONTENTS--THE BAUMBERG TRACT: FROM THE PROPOSED SHORLANDS
DEVELOPMENT TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE),
1982-1999

PREFACE by John Letey, Jr.	i
INTRODUCTION by Malca Chall	iv
INTERVIEW WITH HOWARD L. COGSWELL	
<i>College Professor, Ornithologist, Active Citizen</i>	
CONTENTS	1
INTERVIEW HISTORY	2
BIOGRAPHICAL INFORMATION	4
I A BRIEF DETAILED BACKGROUND ON THE HISTORY OF THE BAUMBERG TRACT AND THE LESLIE (CARGILL) SALT COMPANY	5
Salt Production and the Leslie (Cargill) Salt Company	5
Wetlands and the Public Trust Doctrine	10
The Proposed Shorelands Development: Howard Cogswell's Interest and Analysis	12
Defining a Wetland and Consequent Mitigation Requirements	16
Agencies Involved in the Complex Permitting Process	20
Baumberg Tract Restoration Plan the Result of Mitigation	23
II EDUCATION: PREPARATION FOR A CAREER IN ORNITHOLOGY	29
Early Interest in Birds	29
Whittier College, 1947-1948	33
UC Berkeley, 1948-1952; 1962	33
III THE ACADEMIC CAREER	36
Mills College: Assistant Professor, 1952-1964	36
National Science Foundation Fellowship: Pennsylvania State University, 1963-1964	38
Site Studies with Starlings	40
California State University at Hayward, California, 1964-1980	43
Studying Garbage Dumps, Birds, and Airports: Howard Cogswell Learns to Fly	45
Author, <i>Water Birds of California</i>	55
Early Studies of Water Birds in the Hayward/San Leandro Area	56
IV IN RETIREMENT: CONTINUING ACTIVITY AND CONCERN FOR THE ENVIRONMENT	59
John Thorpe's Mitigation Proposals for the Shorelands Project	59
Plans for the Baumberg Tract Restoration Project	61
Helping to Set Bay Area Regional Wetlands Goals	64
Analyzing Environmental Regulations for Environmental Protection	65
INTERVIEW WITH JOHN M. THORPE	74
<i>The Shorelands Project: The Unattained Vision</i>	
CONTENTS	75
INTERVIEW HISTORY	77
BIOGRAPHICAL INFORMATION	80
I FAMILY BACKGROUND: THE COLORFUL LIVES OF JOHN THORPE'S GRANDPARENTS	81

	The Maternal Side: The Schwabs	81
	The Paternal Side: The Thorpes	81
II	EDUCATION: HAYWARD, MENLO PARK, STANFORD, BOSTON, AND OTHER EXPERIENCES	89
	Herman Mark and Albert Einstein	90
III	ESTABLISHING A LAW PRACTICE IN HAYWARD	92
	Winning Important Lawsuits	93
	Workman's Compensation	93
	The National Assessors' Bribery/Property Tax Scandal:	
	The California Class-Action Suit and Its Reward	93
	Long-Term Interest in Property Development	96
	From Whence the Special Thorpe Spirit?	97
IV	THE SHORELANDS: ITS ORIGINS AS A SOLUTION TO TRAFFIC PROBLEMS	99
	Working with the Leslie (Cargill) Salt Company	102
	The Response of the City of Hayward	104
	The Baumberg Tract: Marginal Open Space Value	105
V	A BRIEF HISTORY OF THE BAUMBERG TRACT; SALT PRODUCTION; AGRICULTURE; WETLANDS; REPUTED VALUE OF BAUMBERG TRACT TO WILDLIFE	109
VI	THORPE'S PLAN FOR THE SHORELANDS AND THE ULTIMATE DEFEAT, 1982-1992	118
	The Basic Plan	118
	Problems with the Environmental Community	122
	Plans for the Racetrack	124
	The City of Hayward: A Roadblock	127
	Attempts to Overturn the Jeopardy Opinion of 1987	129
	Meetings with Representatives of Environmental Agencies	131
	Attempts to Solve the Predator Problem	133
	Lack of Support from the City of Hayward: Thorpe Drops the Shorelands Project, 1992	133
	The Finances: The Limited Partnership, Bankruptcy, and Subsequent Continuing Litigation	134
	John Thorpe's Personal Loss: The Historic House, the Classic Cars	139
	Background on Interested Commercial Developers for Shorelands	141
	More on the Racetrack	142
	The Corps of Engineers	143
	The U.S. Fish and Wildlife Service	145
	The State Department of Fish and Game	146
	The Bay Conservation and Development Commission	146
	The East Bay Regional Park District	147
	The Media	148
	"The Wild Edge" TV Documentary on the Baumberg Tract	148
INTERVIEW WITH ROBERT C. DOUGLASS		151
	<i>The Cargill Company (Leslie Salt Division) and the Shorelands Project</i>	
	CONTENTS	152
	INTERVIEW HISTORY	153
	BIOGRAPHICAL INFORMATION	155
	Background: Education and Career with the Cargill Company	156
	John Thorpe Takes an Option on Leslie (Cargill) Salt Property to Build the Shorelands Project	158

Major Problems Concerning Mitigation	160
Environmental Agencies: Their Mission, Their Personnel, and Their Effect on Local Control	163
Local Activists and the Environment	166
Cargill Accused of Reconstructing the Land	167
The City of Hayward and the Shorelands Project	168
The End of the Stretch for the Shorelands Project	169
Baumberg Tract Purchased by the California Wildlife Conservation Board, 1996	170
INTERVIEW WITH STEVE FOREMAN	174
<i>Principal Author, "Biological Assessment for the Proposed Shorelands Project," 1987; Project Manager, Baumberg Tract Wetlands Restoration Project</i>	
CONTENTS	175
INTERVIEW HISTORY	176
BIOGRAPHICAL INFORMATION	178
I BIOLOGICAL ASSESSMENT STUDIES FOR THE PROPOSED SHORELANDS PROJECT	179
Background: Education and Career	179
Requirements for the Environmental Impact Reports/Statements	183
Interpreting the Endangered Species Act	188
Mitigation and Jeopardy	192
Trying to Achieve a Balance Between Habitat and Species Needs	196
Predation and the Fences	197
Further Research: Reconsidering Mitigation and Jeopardy	199
II THE BAUMBERG TRACT WETLANDS RESTORATION PROJECT	201
Acquisition by the California Wildlife Conservation Board	201
The Selection Process: RMI Wins the Bid; Steve Foreman Project Manager	203
Restoration Project Staff	205
Many Factors Involved with Restoration	206
Other Restorations Projects Around the Bay	212
INTERVIEW WITH KAREN G. WEISSMAN	214
<i>Final Biological Assessment and Mitigation Plan for the Shorelands Project, 1988-1990</i>	
CONTENTS	215
INTERVIEW HISTORY	216
BIOGRAPHICAL INFORMATION	218
Karen Weissman's Background and the Origin of Thomas Reid Associates	219
Establishing Contact with John Thorpe and the Shorelands Project	220
Preparing for the Task Ahead	224
Overcoming the Hurdles: Mitigation Due to Loss of Wetlands Area	225
Planning and Working Toward a Successful Outcome	227
Habitat Mitigation Issues: The Snowy Plover, the Salt Marsh Harvest Mouse, the Clapper Rail, the Least Tern	228
The Concern for the Future of Wetlands	230
Attempts to Control Predation of the Clapper Rails	232

The Second Draft Jeopardy Opinion Means Defeat for the Shorelands Project	236
The Frustration of a Consultant Failing to Reach the Desired Goal	237
The Current Status of the Baumberg Tract	238
Examining the Processes Required to Restart the Project	239
Critique of Government Environmental Regulations in General and on the Shorelands Project in Particular	242
INTERVIEW WITH PETER C. SORENSEN	244
<i>Author, Jeopardy Opinion on the Shorelands Project</i>	
CONTENTS	245
INTERVIEW HISTORY	246
BIOGRAPHICAL INFORMATION	248
Background: Education and Career with the U.S. Fish and Wildlife Service	249
The Shorelands Project: Interagency and Other Contacts	250
Mitigation Concerns for Shorelands: Legal and Scientific Considerations	253
Reviewing the Environmental Impact Report/Statement	254
What Constitutes Jeopardy of an Endangered Species?	255
Predation: Everyone's Concern	257
Response to Arguments Regarding Non-Jurisdiction on the Baumberg Tract	258
Analyzing the Government's Role in Protecting the Environment	259
Jeopardy Opinions and the Process, 1987, 1990	261
Looking Back on the Shorelands Project and the Ramifications for the Bay Area Environment	265
INTERVIEW WITH CARL G. WILCOX	269
<i>The Baumberg Tract Wetlands Restoration Project</i>	
CONTENTS	270
INTERVIEW HISTORY	271
BIOGRAPHICAL INFORMATION	273
Background: Education and Career Path to the California State Department of Fish and Game	274
Department of Fish and Game: Lead Manager for Review of the Shorelands Project	275
The Shorelands Project: An Ill-Conceived Plan	277
Developers and Environmental Regulations	279
Development Plans for the Oliver Property	281
The Baumberg Tract Wetlands Restoration Project: Carl Wilcox, Project Manager	282
Site Selection	283
Fixed Commitments for the Species' Habitats	284
Funding for Restoration and Long-term Management	287
Additional Constraints	288
The Public Comment	290
The San Francisco Bay Area Wetlands Goals Project	292
Historic Preservation and the Baumberg Tract	294

INTERVIEW WITH ROBERTA G. COOPER	297
<i>The Hayward City Council and the Shorelands Project</i>	
CONTENTS	298
INTERVIEW HISTORY	299
BIOGRAPHICAL INFORMATION	300
Background: Education, Career and Route to Mayor of Hayward	301
The Shorelands Project	303
Early Considerations	304
Final Decisions of the City Council	307
The Ballot Measure HH and Land Use Plan on the Weber Tract and Oliver Properties	308
The Role of the City Managers and the Shorelands Project	310
INTERVIEW WITH JANICE DELFINO	312
<i>Activist for the Environment</i>	
CONTENTS	313
INTERVIEW HISTORY	314
BIOGRAPHICAL INFORMATION	316
I BACKGROUND	317
Education and Career in Nursing	317
Genesis of Activism for the Environment	319
II CONCENTRATION ON THE HAYWARD AREA SHORELINE	323
The Hayward Area Shoreline Planning Agency [HASPA]	323
John Thorpe and the Shorelands Project	324
The Public Trust Issue	329
The Eventual Purchase of the Baumberg Tract for the Wildlife Restoration Project	330
Analyzing the Restoration Project	332
III ASSESSING THE CONSEQUENCES OF CITIZEN ACTIVISM	338
The Value of Vernal Pools	339
Opposition to "Re-creating" Creeks	340
Roberts Landing: The Toxic Soil Issue	342
Citizens for Alameda's Last Marshlands [CALM]	345
The Suit Against Leslie (Cargill) Salt Company	346
Save San Francisco Bay Association, The San Francisco Airport, and Other Matters	348
TAPE GUIDE	353
MAPS	
Map 1	355
Map 2	356
Map 3	357
Map 4	358
GLOSSARY	359
APPENDICES	
A Pages Selected from the Biological Assessment and Mitigation Reports of WESCO [Western Ecological Services Company] and TRA [Thomas Reid Associates] for the Proposed Shorelands Project	362

B	The Leslie Salt Division of the Cargill Company: Its History; Current Legal, and San Francisco Airport Issues	370
C	The Don Edwards San Francisco Bay National Wildlife Refuge; Bair Island; The Hayward Shoreline Interpretive Center	377
D	Proposition HH	381
INDEX		390

PREFACE

The Water Resources Center of the University of California established a California Water Resources Oral History Series in 1965, to be carried out by the oral history offices at the Los Angeles and Berkeley campuses. The basic purpose of the program was to document historical developments in California's water resources by means of tape recorded interviews with men who have played a prominent role in this field. The concern of those who drafted the program was that while the published material on California water resources described engineering and economic aspects of specific water projects, little dealt with concepts, evolution of plans, and relationships between and among the various interested federal, state, and local agencies.

To bridge this information gap, the Water Resources Center, during successive direction of Professors Arthur F. Pillsbury, J. Herbert Snyder, Henry Vaux, Jr., Don Erman, and John Letey, Jr., has provided funding in full or in part for interviews with individuals who have been observers and participants in significant aspects of water resources development.

Interviewees in the Berkeley series have been pioneers in western water irrigation, in the planning and development of the Central Valley and California State Water Projects, in the administration of the Department of Water Resources, and in the pioneering work of the field of sanitary engineering. Some have been active in the formation of the San Francisco Bay Conservation and Development Commission; others have developed seminal theories on soil erosion and soil science. But in all cases, these individuals have been deeply concerned with water resources in California.

Their oral histories provide unique background into the history of water resources development and are valuable assets to students interested in understanding the past and in developing theories for future use of this essential, controversial, and threatened commodity--water. Bound copies of these oral histories are preserved and made available to the public by the Water Resources Center Archives and The Bancroft Library located on the Berkeley campus.

John Letey, Jr., Director
Water Resources Center

March 2000
University of California, Riverside

April 2000

The following Regional Oral History Office interviews of have been funded in whole or in part by The Water Resources Center, University of California.

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California Water Project, 1955-1961. 1967, 82 pp.

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Gianelli, William R. (b. 1919)

The California State Department of Water Resources, 1967-1973. 1985, 86 pp.

Gillespie, Chester G. (1884-1971)

Origins and Early Years of the Bureau of Sanitary Engineering. 1971, 39 pp.

Harding, Sidney T. (1883-1969)

A Life in Western Water Development. 1967, 524 pp.

Jenny, Hans (1899-1992)

Soil Scientist, Teacher, and Scholar. 1989, 364 pp.

Langelier, Wilfred F. (1886-1981)

Teaching, Research, and Consultation in Water Purification and Sewage Treatment, University of California at Berkeley, 1916-1955. 1982, 81 pp.

Leedom, Sam R. (1896-1971)

California Water Development, 1930-1955. 1967, 83 pp.

Leopold, Luna B. (b. 1915)

Hydrology, Geomorphology, and Environmental Policy: U.S. Geological Survey, 1950-1972, and UC Berkeley, 1972-1987. 1993, 309 pp.

Lowdermilk, Walter Clay (1888-1974)

Soil, Forest, and Water Conservation and Reclamation in China, Israel, Africa, and The United States. 1969, 704 pp. (Two volumes)

McGaughey, Percy H. (1904-1975)

The Sanitary Engineering Research Laboratory: Administration, Research, and Consultation, 1950-1972. 1974, 259 pp.

Robie, Ronald B. (b. 1937)

The California State Department of Water Resources, 1975-1983.
1989, 97 pp.

The San Francisco Bay Conservation and Development Commission, 1964-1973.

Interviews with Joseph E. Bodovitz, Melvin Lane, and E. Clement Shute.
1986, 98 pp.

The Central Valley Project Improvement Act Oral History Series

Beard, Daniel P. (b. 1943)

Passage of the Central Valley Project Improvement Act, 1991-1992: The Role of George Miller. 1996, 67 pp.

Boronkay, Carl (b. 1929) and Timothy H. Quinn (b. 1951)

The Passage of the Central Valley Project Improvement Act, 1991-1992: The Metropolitan Water District Perspective. 1999, 152 pp.

Golb, Richard K. (b. 1962)

The Passage of the Central Valley Project Improvement Act, 1991-1992: The Role of John Seymour. 1997, 136 pp.

Graff, Thomas J. (b. 1944) and David R. Yardas (b. 1956)

The Passage of the Central Valley Project Improvement Act, 1991-1992: Environmental Defense Fund Perspective. 1996, 133 pp.

Nelson, Barry (b. 1959)

The Passage of the Central Valley Project Improvement Act, 1991-1992: Executive Director, Save San Francisco Bay Association. 1994, 88 pp.

Peltier, Jason (b. 1955)

The Passage of the Central Valley Project Improvement Act, 1991-1992: Manager, Central Valley Project Water Association. 1994, 84 pp.

Somach, Stuart (b. 1948)

The Passage of the Central Valley Project Improvement Act, 1991-1992: The Central Valley Project Water Association Perspective. 1999, 99 pp.

For other California water-related interviews see California Water Resources list.

INTRODUCTION by Malca Chall

BACKGROUND OF THE ORAL HISTORY PROJECT ON THE BAUMBERG TRACT

The status of wetlands in the San Francisco Bay Area, became, in the mid 1960s, a growing concern among persons and groups intent on "Saving the Bay", and, by inference, adjoining wetlands. This concern was spawned by the increasing encroachment into Bay waters of major urban business, housing, sea and airport development, for which there were seemingly no controls. By the end of the 1970s, a spate of state and federal agencies, environmental laws, and regulations restrained development into wetlands: the San Francisco Bay Conservation and Development Commission, the California Environmental Quality Act, the National Environmental Policy Act, the Environmental Protection Act, the Clean Water Act, the Endangered Species Act. In addition, research proved the value of wetlands for maintaining viable ecosystems. By the 1990s activity on behalf of wetlands, endangered species, and habitats had assumed greater urgency for environmentalists both within and outside government agencies. While all of this activity certainly slowed down unrestrained development, saving species and wetlands remains controversial and is a continuing subject of debate. Today, it is claimed that 92 percent of wetlands in the San Francisco Bay-Delta have disappeared--that only 45,000 acres remain.

Given this background, the Baumberg Tract became an ideal choice for an oral history project. Historically, a tidally-influenced salt marsh comprising 835 acres along the Hayward shoreline, it was the object of contention between development and regulatory forces. With its wetlands focus, the Baumberg Tract fit the ongoing interest of the Regional Oral History Office in California water policy issues. Furthermore, this study provided an excellent example, in one limited area, of the impact of the federal Clean Water Act and the Endangered Species Act on developers, professional environmentalists, and concerned citizens alike when a builder applies for a permit to place a major development on a wetlands area.

To assess a project's potential harm or jeopardy to endangered species, the developer must pay to have extensive data compiled detailing any potential jeopardy and indicating how such harm could be mitigated. The compilations, written by professional environmental scientists/consultants, are portions of the Environmental Impact Statement (EIS), in compliance with the requirements of the National Environmental Policy Act (NEPA), and the Environmental Impact Report (EIR), in compliance with the California Environmental Quality Act (CEQA). The final determination regarding jeopardy to endangered species is the responsibility of the staffs of the U.S. Fish and

Wildlife Service and the U.S. Army Corps of Engineers. This oral history points to gray areas in defining the regulations.

Many professional environmentalists began their careers in this new environmental management field in colleges during the 1960s and 1970s, where they majored in ecology and environmental science, after which they honed their skills on the staffs of state or federal agencies. This oral history offers insight into the backgrounds of the men and women in government who influence the decisions on permit applications, and those in private employment who devise studies and advise on methods by which development might comply with regulatory standards. The consultants, an important part of the regulatory process, whether on government staffs or employed by small to large companies, are deeply committed to the environment and to implementation of the regulations. The oral history suggests that there may be a difference in the outcome of the permit process depending on who is assigned to a project.

Finally, active citizens engage in all stages of the process, particularly the public hearing phase following the completion of the draft EIS/EIR. The oral history points up the vitality and influence of the citizen activists on the outcome of a proposed development and, conversely, the reasons why developers consider the environmental regulations onerous and why they are constantly under attack in the Congress, state legislatures, and the courts.

CHRONOLOGY OF THE BAUMBERG TRACT

The Baumberg Tract had been, for more than a century, a site for salt production. In 1971, the Leslie Salt Company (now the Cargill Corporation), stopped production there, but continued to use the shoreline for its crystallizer ponds. The company offered the tract, for a price, to the East Bay Regional Park District (and others) for recreation purposes. None accepted the offer.

From 1982-1993, John Thorpe, a Hayward attorney, proposed the controversial Shorelands racetrack/business park development for the site. Mr. Thorpe applied to the city of Hayward for a permit to develop 736 acres on which to build his project. By requesting to place fill material on the site, he triggered the required permission under Section 10 of the Rivers and Harbors Act, and Section 404 of the Clean Water Act. In addition, his project had to insure, under Section 7 of the Endangered Species Act, that it would not threaten any federally listed or threatened endangered species--specifically the salt marsh harvest mouse, the least tern, the clapper rail, and the snowy plover. In 1993, Mr. Thorpe's application was denied a second time. Like the first, in 1987, it was rejected by the Fish and Wildlife Service on the basis that

the project would jeopardize the species and their habitats, and did not provide measures to compensate for these adverse impacts.

In 1996, it was purchased by the California Wildlife Conservation Board for conversion as a permanent open space wildlife site--renamed the Eden Landing Ecological Reserve--to serve as mitigation for adverse developments in nearby communities. Following several years of study and the public comment period on the draft EIS/EIR, the California Department of Fish and Game expects to turn the first shovel of soil on the restoration project by July 2000.

DEVELOPING THE PROJECT: RESEARCH AND INTERVIEWS

The goal of the oral history project was to "flesh out" the known facts of the Baumberg history (1970 to 1999) by linking them with the stories of persons who knew about its past history and current status.

When I began the Baumberg Oral History Project in 1996, with a grant from the Centers for Water and Wildland Resources of the University of California, I knew only that the Baumberg Tract was considered a wetlands on the Hayward shoreline; that it had been the scene of a controversial battle over the Shorelands development project; that it was currently the site of a restoration project. Because I was a member of the Hayward area chapter of the Audubon Society I knew Howard Cogswell, Janice Delfino, and others actively concerned with the local environment. I knew John Thorpe, an attorney who had cracked an assessors' scandal during the sixties, a developer of homes in Castro Valley, and a local benefactor who generously allowed charitable groups to use the "carriage house" of his historic landmark house/office building for fundraising events. I had been aware of his plans for Shorelands but had not followed the story to its conclusion. Although I knew about various federal and state environmental policy acts, I did not understand how they were implemented. By interviewing eleven persons who had held key roles in the Baumberg story, I gradually pieced together a history (by no means definitive) of the Baumberg Tract.

October 6, 1996; Howard Cogswell: I began my research by interviewing retired Hayward State University biology and ornithology Professor Howard Cogswell. He gave me the benefit of his extensive knowledge of the Baumberg Tract, including background on the methods of salt production, essential historic and current legal issues, and information about specific endangered birds and their habitats. He discussed the potential impact of the Shorelands development on the tract, and explained the reasons why John Thorpe's project had failed to pass jeopardy. He broadened the scope of his story to consider the city of Hayward's upcoming interest in housing on adjoining Baumberg property (Proposition HH), and plans of the San Francisco Airport to build new runways into the baylands. Finally, he permitted me to look through his

collection of papers on Shorelands and select those I wanted to study: newspapers clippings from 1983-1987; correspondence between himself and John Thorpe, and between Mr. Thorpe and his backers; and various biological, mitigation, and other studies related to the EIS/EIR.

May 10, 1997; John Thorpe: The information provided by Dr. Cogswell led me to my interview with John Thorpe who had spent ten years and millions of dollars seeking permission to build Shorelands. He talked eagerly about his dream for Shorelands, providing additional facts about his attempts to pass the environmental hurdles, especially to satisfy mitigation requirements posed by the Fish and Wildlife Service. He related his encounters with local environmental activists and those on the staffs of regulatory agencies. In fact he thought he had approval to develop Shorelands but his own financial difficulties made it impossible for him to continue.

(July 10, 1997; Baumberg Tract Field Trip; Digression: When I called Janice Delfino, local environmental activist, to find out what she knew about the Baumberg Tract, she informed me that within the week, the Baumberg restoration team was leading a field trip on the tract for those with specific interests in the restoration. She suggested that I attend. I did so, along with a large group of persons representing various public and private agencies. Here I met restoration managers, Steve Foreman and Carl Wilcox, each of whom I later interviewed. That evening I attended the first meeting of the Technical Advisory Committee, at which I saw Howard Cogswell, Robert Douglass, property manager of the Leslie Salt Division of the Cargill Company, Janice and Frank Delfino, and others with specific technical concerns about the plans for the restoration project. I attended a second inter-agency meeting, November 20, 1997.)

November 4, 1997; Karen Weissman: Karen Weissman, partner in the environmental consulting firm, Thomas Reid Associates, candidly discussed how she had attempted to work with John Thorpe and other consultants to overcome jeopardy. She criticized the rationale of the Fish and Wildlife Service and their claims that Shorelands would jeopardize endangered species, at the same time making clear the serious problems inherent in the project. Ms. Weissman enlarged my understanding of environmental laws and the role of agency personnel trying to enforce them. She gave me copies of her "Revised Biological Report", correspondence, and memoranda related to her work on the Shorelands Project. She provided questions to use with other interviewees. More recently she agreed to review and revise my draft of the glossary.

February 24, 1998; Robert C. Douglass: Robert Douglass is property manager for the Leslie Salt Division of the Cargill Company. Leslie owned the Baumberg Tract and had given John Thorpe an option on which to build Shorelands. Mr. Douglass discussed his relationship with John

Thorpe and his interest in seeing him succeed. He criticized the staff of the regulatory agencies and the city of Hayward for their treatment of Mr. Thorpe. He questioned the need for certain environmental regulations and the close relationships between some agency staffs and local environmentalists. His concerns as a businessman and an official of the Leslie Salt Division, a major local industry, still harvesting salt in the Bay Area, provided useful questions for other interviewees.

March 11, 1998; Steve Foreman: Steve Foreman, author of the "Biological Assessment" for the EIS/EIR on Shorelands in 1987 and currently manager of the Baumberg Tract Restoration Project, provided background spanning the years encompassed by the oral history project. He discussed the methods by which he and others studied the Shorelands Project. As project manager of the restoration project, he explained what prompted the decision to establish it on the Baumberg site rather than Bair Island near Redwood City. He talked about the challenges inherent in refashioning Baumberg into a wildlife preserve, answering questions which had come to me during my attendance at the technical committee meetings.

April 21, 1998; Carolyn Cole: Carolyn Cole, responsible for compiling the Shorelands EIS/EIR, offered a fascinating glimpse into the world of young women graduate students in the field of environmental science who moved easily from graduate school to business. She explained how she and her business partner, Caroline Mills, divided their work, and the process by which she selected the authors for the various EIS/EIR studies. She then loaned me her only copy. I regret that Ms. Cole, by declining to review her edited transcript, made it unavailable as a chapter in this volume. It will, however, be available for research in The Bancroft Library.

June 1, 1998; Richard Murray: Landscape architect Richard Murray was hired by John Thorpe to develop mitigation plans for Shorelands. He had come to John Thorpe's attention because he had developed a snowy plover habitat in Parajo Dunes in California. His detailed "Shorelands Biological Mitigation Master Plan--revised 12/12/87" was in Howard Cogswell's collected papers. I talked by phone with Mr. Murray who explained the difficulties in trying to create an acceptable mitigation plan for Shorelands. Because he did not review his edited transcript, regrettably, it cannot be included in the volume. It will, however, be deposited in The Bancroft Library for research.

June 10, 1998; Peter Sorensen: Peter Sorensen, on the staff of the regional office of the U.S. Fish and Wildlife Service, was author of both the 1987 and 1992 jeopardy opinions which spelled failure for the Shorelands Project. Speaking to me by phone from his present post in Carlsbad, California, he enunciated clearly his reasons for considering that Shorelands would jeopardize several endangered species and their habitats. He responded to criticisms leveled against his conclusions,

and his agency's treatment of John Thorpe which had been expressed by other interviewees.

July 20, 1998; Carl Wilcox: Carl Wilcox, environmental services supervisor with the California Department of Fish and Game, is currently manager of, and responsible for, the Baumberg Tract Restoration Project. We talked by phone. Although he had worked on the Baumberg Tract during the Shorelands Project, and expressed his opinions about that development, we concentrated on his plans for the restoration. He expanded upon the information supplied by Steve Foreman, indicating what problems prevented the project from moving ahead as rapidly as anticipated. Recently, by phone, he told me that the project had had other problems causing delays, but that they intended to put down the first shovel in July 2000. He took time to help with definitions for the glossary.

July 21, 1998; Janice Delfino: Janice and Frank Delfino have been active on the local environmental scene for some thirty years. Several interviewees had spoken about Janice. She agreed to be interviewed. She discussed Shorelands and the current restoration plans. But she broadened the scope of the interview to talk about the Delfinos' other activities on behalf of the local wetlands, about protecting streams from encroachment of housing and golf courses, about her legal suit against Leslie Salt, and about her work with the Committee to Complete the Refuge. She provided maps, newspaper clippings, memoranda, correspondence, and bulletins to add to the collection of material on the Baumberg Tract and other local wetland issues. She remained available from time to time to assist with maps and other queries.

October 14, 1998; Roberta Cooper: Roberta Cooper, mayor of Hayward, had been a member of the city council during the debate over the Shorelands Project. Because of the need to reconfigure the streets leading into Shorelands, the city had a stake in the project and was the lead agency involved in the permitting process. At different times during the Shorelands decade, staff and council members took differing positions on the project. Much of this information was available in the press. Along with her recollections of the relationships between the city and the Shorelands Project, Mayor Cooper responded to criticisms that the city had not dealt fairly with John Thorpe. Before completing her brief interview, she discussed Hayward's current plans for housing on land adjoining the Baumberg Tract--Proposition HH.

COMPLETING THE PROJECT

Once the interviews were transcribed, edited, and reviewed by the interviewees, nine interviews were compiled into one volume, linking them chronologically to the Baumberg history--not necessarily to the dates of the interviews.

In sum, these interviews, while highlighting the Baumberg Tract, point out implications beyond the San Francisco Bay Area: the complex interaction between the conflicting goals of urban development and the conservation of wetlands and endangered species and habitats.

ADDITIONAL AIDS FOR RESEARCH

Because many interviewees referred to specific areas of the Baumberg Tract, numbered maps have been placed, for easy reference, after the final pages of the interviews. The glossary contains definitions of unfamiliar terms. The appendix includes information on other topics important to the Baumberg history. The tables of contents and the index should assist readers to locate items of specific interest.

ACKNOWLEDGMENTS

I wish to thank those who helped produce this oral history: The Water Resources Center for continuing interest in our water-related projects and the funds to develop them; the interviewees for their commitment of time and the gifts to The Bancroft Library of papers which enriched the history; Jill Singleton, public affairs officer for the Leslie Salt Division, for material on the history of salt production in the Bay Area; Sara Diamond for her much appreciated editorial assistance.

Malca Chall
Senior Editor

Regional Oral History Office
The Bancroft Library
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March 20, 2000

Regional Oral History Office
The Bancroft Library

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Berkeley, California

California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Howard L. Cogswell

COLLEGE PROFESSOR, ORNITHOLOGIST, ACTIVE CITIZEN

An Interview conducted by
Malca Chall
in 1996 and 1998



Howard L. Cogswell

TABLE OF CONTENTS--Howard L. Cogswell

COLLEGE PROFESSOR, ORNITHOLOGIST, ACTIVE CITIZEN

INTERVIEW HISTORY	2
BIOGRAPHICAL INFORMATION	4
I A BRIEF DETAILED BACKGROUND ON THE HISTORY OF THE BAUMBERG TRACT AND THE LESLIE (CARGILL) SALT COMPANY	5
Salt Production and the Leslie (Cargill) Salt Company	5
Wetlands and the Public Trust Doctrine	10
The Proposed Shorelands Development: Howard Cogswell's Interest and Analysis	12
Defining a Wetland and Consequent Mitigation Requirements	16
Agencies Involved in the Complex Permitting Process	20
Baumberg Tract Restoration Plan the Result of Mitigation	23
II EDUCATION: PREPARATION FOR A CAREER IN ORNITHOLOGY	29
Early Interest in Birds	29
Whittier College, 1947-1948	33
UC Berkeley, 1948-1952; 1962	33
III THE ACADEMIC CAREER	36
Mills College: Assistant Professor, 1952-1964	36
National Science Foundation Fellowship: Pennsylvania State University, 1963-1964	38
Site Studies with Starlings	40
California State University at Hayward, California, 1964-1980	43
Studying Garbage Dumps, Birds, and Airports: Howard Cogswell Learns to Fly	45
Author, <i>Water Birds of California</i>	55
Early Studies of Water Birds in the Hayward/San Leandro Area	56
IV IN RETIREMENT: CONTINUING ACTIVITY AND CONCERN FOR THE ENVIRONMENT	59
John Thorpe's Mitigation Proposals for the Shorelands Project	59
Plans for the Baumberg Tract Restoration Project	61
Helping to Set Bay Area Regional Wetlands Goals	64
Analyzing Environmental Regulations for Environmental Protection	65

INTERVIEW HISTORY--Howard Cogswell

I met Howard Cogswell some thirty years ago when he led a field trip for members of the recently organized Hayward area chapter of the Audubon Society. It was a fascinating introduction to birds, and through the years, whenever possible, I have opted to tag along on a Cogswell-led field trip. At the time of my first field trip, Dr. Cogswell was a professor of ornithology, vertebrate zoology and ecology on the faculty of California State University at Hayward. I knew that he flew his own plane, that he was considered an authority on western birds, and was the author of Water Birds of California. One of his projects had been studying the habits of birds on garbage dumps in the San Francisco Bay Area. I assumed, therefore that he would have some knowledge of the Baumberg Tract and its history. He agreed to talk to me; we made a date for an evening meeting on September 6, 1996, in his home, not far from mine in the Hayward hills. Initially, I did not intend to record this background briefing for the oral history project, but I took my tape recorder to ensure accuracy.

At the time I knew virtually nothing about the Baumberg Tract; Howard Cogswell was an overflowing fount of information. He produced historic and current maps, pointing out sloughs and streams, revisions to topography, public trust issues, changes in salt harvesting methods in the Bay Area, changes in property ownership, and much more. He discussed his reactions to John Thorpe's Shorelands Project, and those of some of his Audubon colleagues. That preliminary recorded "background" meeting was so full of essential information on the history of the Baumberg Tract up to its current designation as a wildlife preserve that it necessarily became Chapter I of this volume.

During that first meeting I also learned that Dr. Cogswell had a box full of material he had collected on Shorelands. I returned a few weeks later; spent a few hours looking through his collection, gradually selecting items I wanted to take with me to study. I listed them and signed a "mini-contract" to ensure their safe return. It is my hope that Dr. Cogswell will eventually deposit this collection in The Bancroft Library. Some of the material has been inserted in this and other chapters throughout this volume, or is included in the appendices. After reading the transcription of this interview, I realized that Dr. Cogswell would have to identify on small maps those locations he had specifically pointed to. The locations were an integral part of his story, but would not be understood without visual documentation. Since Howard Cogswell's account would come first, the geography of the various private property boundaries in the area had to be clear. We reviewed these maps several times to ensure accuracy. They follow the final chapter.

I gave Dr. Cogswell a lightly edited transcript and asked him to review it carefully to be sure it was accurate, since at the time of his first interview neither he nor I thought it would be a part of the volume. He did this with the attention to detail one might expect of a scientist.

Ultimately, I realized that Dr. Cogswell's story would not be complete without some information about his personal background. How had he arrived at his knowledge of birds, wetlands, and the history of Baumberg? He agreed to a second interview. We met on July 12, 1998. The lightly edited transcript of this second interview required only a few minor revisions, dealing mainly with spelling of names and the insertion of important dates.

Dr. Cogswell's home, which he shares with Betsy, his wife of sixty years, includes an office which has been converted from the former dining room. It houses boxes, books, and a computer on which he keeps detailed information on birds of the area, the Audubon chapter's membership list, and other data, including his family tree. Windows look out into the trees, shrubs and all types of feeders designed to attract different species of birds. As we sat at the table in the breakfast nook, we tried to keep our attention focused on the interview, but sometimes our attention strayed to the birds at the feeders.

These interviews set the framework for the ongoing chapters on the history of the Baumberg Tract. My assumption that Dr. Cogswell would know something about it was, happily, a correct one.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer/Editor

January 2000
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BIOGRAPHICAL INFORMATION

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 Date of birth 19 Jan. 1915 Birthplace ^{Adrian & Cordier} Susquehanna Co., PA
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 Occupation ^{Farmer, later a} machinist, etc. Birthplace ^{Lynn} Susquehanna Co., PA
 Mother's full name ELIZA ADDIE LAFRANCE
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 Your spouse BESSIE WILBY
 Occupation retired ^{was admin. asst. for A.R.C. (A.R.C.)} Birthplace ^{London} SASK., CANADA
 Your children DENIS LYMAN COGSWELL ^{(married) Paul Alt}

Where did you grow up? Susquehanna Co., PA
 Present community Hayward, Alameda Co., CA
 Education B.A. Whittier College, Whittier, CA (1937) / M.A. Biology
M.A. (1941) & Ph.D. (1942), Univ. of Calif., Berkeley / Zoology
 Occupation(s) college/university teaching, a limited amount
of research. (1964-1982)
 Areas of expertise ornithology, ecology, vertebrate
zoology, animal behavior.

Other interests or activities Since ca. 1985 have served on Citizens
Advisory Commission for Bay Area National Parks (CENRA & PAN)
- appointed by Sec. of Interior from 1985-1991
of East Bay Regional Park District (which was director-1971-82)
 Organizations in which you are active Cooper Ornith. Soc. (was history chairman
then member) & Board member
Amer. Ornithologists Union (was member)
Wilson Ornith. Soc.
Assoc'n of Field Ornithologists
Northern Audubon Soc., with W. A. C. chapter, Illinois A.O.S.
Point Reyes Bird Observatory
San Francisco Bay Bird Observatory (past-pres.)
Coyote Creek Riparian Station

INTERVIEW WITH HOWARD L. COGSWELL

*COLLEGE PROFESSOR, ORNITHOLOGIST, ACTIVE CITIZEN***I A BRIEF DETAILED BACKGROUND ON THE HISTORY OF THE BAUMBERG TRACT AND THE LESLIE (CARGILL) SALT COMPANY**[Interview 1: September 6, 1996] ##¹Salt Production and the Leslie (Cargill) Salt Company

Chall: Whom could I contact in Cargill who would know something about the history of the Baumberg Tract?

Cogswell: Robert C. Douglass. He's a property manager or something like that, for their non-operating things. He also has, I believe, under his jurisdiction the environmental team for Cargill Salt. So they have finally come around to recognizing that they do have to meet environmental laws. [chuckles] Jill Singleton is their actual environmentalist, but she's under his supervision I believe. But he's called a manager. He's better than a supervisor, but he himself reports, of course, to the overall manager of the Cargill Salt Division.²

Chall: Where are they located?

Cogswell: Newark. The salt division is headquartered in Newark. Cargill is headquartered in Minnesota. Leslie Salt became the Salt Division of Cargill Incorporated.

Chall: Before Leslie, according to newspaper accounts, the Baumberg Tract had been for a hundred years or so, really diked for salt. Maybe not for the last few years, but a hundred years

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

²In 1999 the corporate listing was: Jill Singleton, Public Affairs Manager; Catherine Gump, General Manager; Robert C. Douglass, Property Manager.

ago, other salt companies--not Leslie--began to put the dikes in there and develop salt. [See Appendix B]

Cogswell: Over a hundred years ago. There were salt ponds at Alvarado, which is further south, and salt ponds at Baumberg in the 1890s. They had already been there for some time and there are some very ancient, historic maps that show some of those old, small salt companies, numerous small salt companies. Janice and Frank Delfino of Castro Valley have been interested in this for a long while, have gotten some of these old maps, and have provided some copies to me. So I have some of those if I can dig them out.

Chall: Janice might be somebody to talk to, you think?

Cogswell: I don't know what she knows. She's done some research simply on what there is available in the way of maps and things of that sort. Almost probably all of the Baumberg Tract proper, the 838 acres or so, was originally salt marsh to begin with under natural condition.

Chall: Years ago, Oliver Salt played a role in the area here. Was Oliver Salt, or any part of their holdings, ever taken over by Leslie?

Cogswell: Well, I don't know the complete history of the property changes. Oliver's name appears on some of those old maps which Janice uncovered for part of the area in general along Mt. Eden Creek, which borders the Baumberg Tract. Whether or not Oliver had any property within what is now state property, the Baumberg Tract proper, I'm not sure.³ They certainly had salt ponds down there. [See Map 1]

I understand Leslie Salt became incorporated as a separate company in 1933. They started in Newark, what is right now by Jarvis Avenue; the Coyote Tract was their Plant Number One site. They started by buying up a number of these small salt companies, and then they progressed rather rapidly, buying more and more and more. And at what point Oliver sold out or whoever may have sold out in the Baumberg area, I don't know.

³State property refers to the fact that the state California Wildlife Conservation Board [CWCB] purchased the Baumberg Tract in 1996 to develop as a wildlife refuge. The 129 acres of more recent Oliver property to the east are not within the CWCB, nor the 150+ acres of "Oliver Brothers" salt ponds north of Route 92, recently acquired by HARD [Hayward Area Recreation and Park District]. --H.C. Letters B on the map refer to Baumberg.

When I came to Hayward in 1964--on my first trip in there [Baumberg]--it was a separate operating unit of the Leslie Salt Company then, with a plant and crystallizers--which are part of this purchase now. The old crystallizers, a major part, were still being used to harvest the salt from all the ponds north of the New Alameda Creek, until about 1972. All the water from the evaporators north of Coyote Hills, in other words, was funneled into this Baumberg plant.

Over on the west side of the Bay, Leslie Salt had a Redwood City plant still operating then, which they still have now but there's a story to that, too.

Chall: Yes.

Cogswell: Previous to that, they'd had a plant down in Alviso, which was the first one to have been closed and the water transported somewhere else. I don't know just when, but it was closed before I came to Hayward, so certainly before the 1964 period. But in 1972, both the Baumberg plant and the Redwood City plant were closed.

Chall: I see. Both of them.

Cogswell: The company decided to funnel all the water into the Newark plant, their headquarters. They changed the structure. They didn't really build any new dikes to speak of; they simply changed the water flow sequences--it's all flat anyway--and they put new pumps in certain strategic locations so that the water moved in different directions through the ponds.

For example, pond number one, which is what you face when you go up to the National Wildlife Refuge headquarters and look out toward the Bay, is Pond 1.⁴ That was their intake pond before then; it's now their final pond before the crystallizers. So they changed the whole sequence of movement of water. That's when they closed these outlying plants. The actual crystallizer ponds, the final stage ponds, and what they call wash ponds and pickle ponds associated with them, were taken out of use. They're not using them in the Baumberg area. They have not used them since '72. That's when they placed that property on the market--I think it was about '73--that they offered the Baumberg Tract to, among other agencies, the East Bay Regional Park District.

⁴The San Francisco Bay National Wildlife Refuge, located near Highway 84 in Fremont, is now officially known as the Don Edwards San Francisco Bay National Wildlife Refuge.

Chall: Oh, they did?

Cogswell: They offered it for \$5,000 an acre. And I happened to be on the board of directors of East Bay Regional parks then, and I remember that situation.

Chall: And how many acres--?

Cogswell: It's 838 acres. The state is paying more than that.⁵ Because between '72 and '96, the value of land has gone up.

Chall: So they were offering it to you for--

Cogswell: Five thousand dollars an acre.

Chall: What did the East Bay Regional Park District decide to do?

Cogswell: It wasn't worthwhile. We decided that it was not worth that much. They had no way of seeing that there were park values in it beyond what they were already acquiring along the Bay north of Route 92. Over a million dollars was spent for the Hayward Regional Shoreline as it exists now, and it would have been another \$10 million or so. I agreed with the rest of the board at the time that there was no way that we could spend all of our money available for land acquisitions in one location, you see, when you have a two-county system of parks to be fair to.

Chall: So then where did they go?

Cogswell: Leslie Salt didn't get a buyer. No other public agency wanted it at \$5,000 an acre either, apparently.

Chall: When did John Thorpe get into it? Were there any other people, other developers, besides John?

Cogswell: I don't know, because Leslie Salt wouldn't come out with public information. I happened to know about this offer because I was on the East Bay Regional Park board. And they apparently offered it at similar price to all other public agencies. They claimed they wanted to give park agencies the preference to it, but I'm sure it was offered to any other public agency that would come up with the money.

And at that time, I didn't think it was worth \$5,000 an acre myself. You know, it's obviously mostly wetland; you

⁵The California Wildlife Conservation Board paid \$12.5 million for the property; about \$15,000 an acre.

can't really develop on it unless you can get a permit from the proper agencies, and that was already in force. It wasn't quite in force in '72, but it came in force in '75--the Clean Water Act. The wetlands provision--all these protections for the wetlands--comes as a result of the passage of the Clean Water Act which was indeed passed by Congress in 1972, but then was subject to immediate litigation and didn't get enforced until about 1975. So where along the line John Thorpe's corporation came in--I don't know.

Chall: But you have that in your collection of papers maybe?

Cogswell: Well, I don't know that the date is there. I have just documents that came after he was underway. When Leslie Salt first gave him an option I can't tell you. But they did option the entire 838 acres to him, or they optioned most of it, and they added the gun club. I don't know whether you know the property subdivisions or not [moves to get a map]. There's a former gun club section.

Chall: No. I don't know much about the land yet. You are my first source.

Cogswell: I'll get a map here I hope in a minute. [Presents map, and points out areas under discussion.] Here is a blow up of this particular section of this original Nichols and Wright map, which was done from the earliest hydrographic charts ever done. They're mostly 1848 to 1870 at the latest. [See Map 2] In the Baumberg Tract, you can see there are a lot of creeks. There is the San Mateo Bridge in its present conformation [circled large A on Map 2]. Dumbarton Bridge down here [D]. The New Alameda Creek comes out there [N], which is along what used to be just an overflow channel of Alameda Creek.

The original main Alameda Creek swung in through here [O], and a couple of what I call "distributaries." Under flood conditions or winter storm conditions, it would overflow in the marsh and run out these various other channels. Mt. Eden Creek [M] is one of those. Sometimes during its original, pre-managed history, Alameda Creek probably flowed out via Mt. Eden Creek Channel; other times, it flowed out down here [1 1/2 miles to south, at O]. Other times it flowed out by Plummer Slough down here, and through Coyote Hills Slough, most of which became the new leveed channel in the early 1970s. Well, now it's all channeled so it all goes out down here. [Through this leveed channel to the Bay at N.]

Wetlands and the Public Trust Doctrine

Chall: Now why does the state own--did you say the state owns part of the Baumberg Tract?

Cogswell: There's a long, long story about property ownerships. This is the most complex set of property ownerships under original title anywhere in the San Francisco Bay region. It was not settled with the state from the standpoint of the public trust in the first round of negotiations which did settle title disputes around most of the South Bay in the 1960s.

There are several kinds of property involved. Different kinds of bay lands or submerged lands. I think the technical term for one type is submerged lands. These are always state property; they're never private. Second, there are tidelands which may be purchased by people, but the title is subject to the public trust for the rights to navigation and "fisheries," which has been interpreted by the courts as including all wildlife oriented uses. And, third, there are swamp and overflow lands, which are also wetlands depending on how long they are wet. The original title was set up to take care of those properties which seasonally would flood and other times would not. They might be farmed in between times and so on. So, on such swamp and overflow land there's no public trust involved.

Theoretically, the submerged lands are out here in the west, in the Bay proper; the tidelands are in this zone between high and low tides, including into the marshes that are up to the ordinary high water mark in the marshes--not the highest high tides, but up to the ordinary one [broad zone of Map 2 showing many marsh channels]. The lawyers will argue about what is ordinary. And then the swamp and overflow lands are those which only get flooded under extreme conditions. Well, if the designation of properties was proper, you would have a succession from submerged lands to tidelands to swamp and overflow lands as you moved landward from the Bay. But that isn't the way the property was, in fact, bounded when the state sold it.

In the 1860s and 1870s there was so much graft in the state giving these titles to people--and they actually essentially gave them away for such a pittance, a matter of a few cents an acre sometimes--there is a whole hodgepodge. I can get another map to show you if you wish.

Chall: Not today!

Cogswell: A whole checkerboard, a real checkerboard arrangement. So the state could claim wherever the original title said it was tidelands, they could claim an interest. Where the original title said it was swamp and overflow lands, they could not. Well, some of those swamp and overflow lands are located out here [in the outer marsh zone or even in the Bay], and others are way in here [along the inner side of the original marshes], where they should be. There was just a checkerboard, because it was all done from Sacramento without anybody ever coming out to look at the place.

Chall: Just calling it--

Cogswell: Just designated it this and selling it.

The state settled some time in the early 1980s, late seventies perhaps. It was around 1980, 1982, that the state and Leslie Salt finally came to an agreement on all the properties in Hayward except some parcels out on the Bay front where there are still arguments. [See Map 3 and Map 4]

Chall: So then Leslie Salt--

Cogswell: So Leslie Salt did acquire full and free title to most parcels in this entire Baumberg area and gave up their claim to the bed of the tidal part of Mt. Eden Creek [M2 on Maps 1 and 3]. At one point, they had diked off Mt. Eden Creek out here [M1 on Maps 1 and 3, 1/3 mile from Bay]. That partial dike is still there. But they had to break through it again because it was illegal for them to dike it. So Mt. Eden Creek is a tidal channel again, 2 1/4 miles long up to this point [just east of Eden Landing Road on M2, Maps 1 and 3], except it is such a restricted channel and not much water comes all the way up there any more. But from near Eden Landing Road on the east and south, the State gave up all title to the old channel and I guess, all title there to the meandering original channel farther south called North Creek [M3 on maps 1 and 3].

This is all part of the salt pond system now, up to that point. The one pump, this one pump [at east end of evaporators 12, 13, & 14, and north end of 15 Map 3], moves all the water among all these ponds. It has access to this pond down here [8A], which is connected through this incomplete dike, so it can draw water or send water south. In this case, all the water from this in intake Pond 10 is moved along here by a brine ditch, a narrow ditch parallel to Mt. Eden Creek, into the non-tidal part and down to the pump which can take or send water from or to Pond 12, Pond 13, Pond 14, or Pond 15, and so on south.

Chall: I see, so these are their ponds that they are still using.

Cogswell: They're still using.

Chall: Now where is the Baumberg Tract?

Cogswell: This dark red line on Map 1 [or heavy dash line on Map 3], bounding the tract as purchased by the state. But now it has been extended. The gun club, which triggered my getting the map, was labeled Lattig, but is now shown as Weber on Maps 1 and 3. Lattig sold to Weber. That's one of the other private parcels still in the area.

Chall: And they still use it as a gun club?

Cogswell: No, they don't. They want to develop it, and there's another whole story there.

If you've not kept up with what's been happening in the city of Hayward, the last six months, there's been argument over it. The Oliver brothers, the Oliver Estate--all the brothers are dead. Gordon Oliver, who was the recipient of all the properties, also died, leaving his estate to the Congregational Church, Mt. Eden Church, plus the Hayward Historical Society. These two entities comprise the Oliver Trust. They still are hoping to sell to a developer who would build on those properties. [Proposition HH, See Appendix D]

But this piece, at the east end of the Baumberg Tract [small v on Map 3 and so labeled on Map 1], which was called the Perry Gun Club, was never used for salt production. It was owned by Leslie Salt Company and is a part of the tract which was now acquired by the state [CWCB]. The state acquired that and also at least a major portion of this strip from the old crystallizers through the salt ponds leading to the old channel of the Alameda Creek [east end of Pond 8A on Maps 1 and 3]. So they have access for water inflow or outflow purposes to this old Alameda Creek, a channel which is still tidal. It's not the present Alameda Creek channel. It's the old one. But it's still open to the Bay.

The Proposed Shorelands Development: Howard Cogswell's Interest and Analysis

Cogswell: One of the items on the definition of Baumberg Tract, you'll encounter if you get into these various documents, is the tremendous confusion, particularly on the part of people who

did not read the documents involved, and that includes a lot of Audubon people. Didn't bother to read them, they just came out against it [Baumberg/Shorelands development], because they had read about such and such birds of great value. And they heard about the thousands of birds and the terns and everything else that are in the Baumberg Tract or the Baumberg area. They just saw the word Baumberg.

Well, there's this little village of Baumberg, it's right up here just northeast of the tract that is now state-owned and next to Weber's property [Maps 1 and 3]. The Leslie Salt Company has for years called the entire area north of New Alameda Creek their Baumberg unit because all of its water used to funnel into that Baumberg plant. The actual plant was right in here on Arden Road, a site now occupied by the new industries just west of the old Baumberg village.

I first started going in there in the 1960s. You have to be very careful if you're dealing with wetlands values, particularly bird use and fish use and so on. Are the animals that you're talking about in the outer salt pond operations or in the marsh nearby, or are they in the tract proper? I fought that battle and I lost, because--[sighs]--a lot of people simply will not pay attention to that fact. And the company couldn't care less.

Chall: So what was your part in the battle?

Cogswell: When John Thorpe was involved, he had an option on all this property, and he had the Perry Gun Club area added to the option later on--

Of course, he wanted to develop the entire area of his original option. He added the Perry Gun Club so that he could possibly do some mitigation there. He recognized the fact that he would have to mitigate a lot of wetlands destruction on the rest of his optional area. So he was always seeking mitigation. He came up with mitigation package after package after package which would involve various ones of these outer salt ponds between the outer parts of Mt. Eden Creek and the old Alameda Creek. He finally took Gordon Oliver into his company, because Gordon wouldn't sell him this Oliver property up here--the former salt ponds by the Interpretive Center north of Route 92--except for a very high price.⁶ He wanted even

⁶The Interpretive Center at the Hayward Area Shoreline, a restored wetland on the north side of the approach to the San Mateo Bridge. The Hayward Area Recreation and Park District was given the area north of

higher than Leslie Salt wanted for their ponds. But Thorpe was interested in getting a mitigation. He wouldn't provide for a partial development with mitigation on site within his optional 800 acres.

Chall: In other words, he would purchase some of this and give it away--

Cogswell: It was always vague whether he was going to purchase it or that somehow it was going to magically appear.

Leslie Salt never came out over the years, as far as I know, saying yes, they would agree to having islands made, and a big portion of this pond, south of Mt. Eden Creek [9 on Map 1], was to be cut off and made into a snowy plover habitat. But of course that wasn't Thorpe's company's optioned property. They would have to have obtained Leslie Salt's agreement to do that, and Leslie never said they would.

Chall: You and the Audubon had differences of opinion?

Cogswell: I led an Ohlone Audubon trip into this area in 1983, I think it was--I can check it for you--with permission from Shorelands corporation; we had John Thorpe's special permission. It was announced in the Audubon bulletin.⁷ Seventy-some people came on that field trip because of the golden opportunity to get into the property. Among other things, we did find on this pickle pond area [P on Map 3], which was all bare ground in those years, 330-some snowy plovers; 323, as I recall, in one flock, just resting. So it was the biggest flock ever in recent years. People from PRBO [Point Reyes Bird Observatory], when they heard about it, came right out to check it, because it was a bigger bunch than they had ever encountered before.

At the same time, I was conservation chair for Ohlone Audubon. Anna Wilcox, who was president, entreated me to take it on. She wouldn't become president unless she could get some help. I don't blame her. [chuckles]

Highway 92 by Leslie Salt Co., which had been leased to a gun club. HARD later obtained outside funding for and built the Interpretive Center on its southern end. Map 1.

⁷The Ohlone Audubon Society is a chapter of the National Audubon Society, with an assigned membership area encompassing southern Alameda County. The chapter's bulletin is the Kite Call.

Chall: I don't blame her either.

Cogswell: So she prevailed upon me to be conservation chair. Well, I started writing and I published two maps about properties near the Bay north of Route 92, annotated, about the conservation values of the properties. I never got around to do the ones south of 92 because I did mention that the Shorelands Corporation had a new mitigation package being offered which had some elements that I thought were worth being looked at. That's all I said. And that's when they had the snowy plover habitat, tern nesting islands being proposed--all these features being mentioned.

The Audubon people, some of them, including Art Feinstein--currently now staff member for Golden Gate [Audubon Society]--he was then president or maybe he was their conservation chair--he was irate over it, over my comment. He got the other Audubon societies involved, I'm sure, and they asked for a conference with me. So I invited them here, to my house. And with representatives from at least five societies from around the Bay, I met at my house and was raked over the coals just as though I had sold out.

In fact, Art Feinstein's own words were--the words were not quite this, but they had the implication: "If you can't toe the Audubon line, get out." What turned me off so much, at that point, was I wanted to get the facts of the case publicized, have people consider the facts whether it was better overall for the wildlife future in this area to even consider these mitigations, or not have them considered. He said, "Don't worry about facts. You don't have to worry about facts." He told me so in the presence of all these other people in so many words. That was my reason for abandoning my efforts to have the Audubon members consider anything in the way of overall effects on the habitats of the area, since they seemed to prefer a confrontational, project by project, stance.

Chall: In short then, you might have been have been willing to allow--

Cogswell: --at least some development--

Chall: --Thorpe's development somewhere in here, maybe not all but some.

Cogswell: I didn't argue for the development. I didn't argue to turn it off completely. I said there were some elements; and he did have some very good ones. He hired some biologists that came up with these plans if Leslie Salt would have agreed to them. That was always an unanswered aspect. If Leslie Salt would

from Kite Call,
January 1988

While it may well be decided before you read these lines, I'd like to make an observation about the largest development proposal — that of the Shorelands Corporation's plans to develop most of the former salt crystallizer, bittern, and pickle ponds in the Baumberg Tract [but not any of the salt evaporator ponds to the west of these]. As I indicated last month, a new mitigation proposal has been put forth which is, in my opinion, a very good one for wildlife in the area in general. Particularly the provision of numerous islands in two of the bayward salt evaporators is a feature of very high value for most nesting birds — although they would have to be kept largely free of upland vegetation for terns, Snowy Plovers, etc. to use them, as would be the case also for high-tide roosting by massed shorebirds. The plan also includes two large areas to be diked off from two salt evaporators farther from the shore and dried out (except from winter rains) as habitat specifically for Snowy Plovers, the species that would be most directly impacted by the development. These two areas total about 1/2 the acreage of good Snowy Plover habitat in the area proposed for development. If these features were established as habitat improvements in the area unconnected with a development proposal, there is not a doubt in my mind but that bird life in the area would be much more diverse and abundant than it is now.

The U.S. Fish and Wildlife Service has written the Corps of Engineers indicating that in its opinion the development project would jeopardize the survival of the endangered Calif. Clapper Rail, the Calif. Least Tern, and the Salt Marsh Harvest Mouse. While I am all in favor of extending every effort likely to help preserve endangered species, none of these three species is found on the area proposed for development because of lack of suitable habitat there. It could become suitable habitat with different management over time, of course, and it is included in the very large area recommended for protection to assure Recovery of the rail and the mouse to non-endangered status. But such Recovery Plans (U.S. Fish and Wildlife document) do not even address the cost of implementing their recommendations -- and in this case nearly all the area recommended is private property used for salt production or (as is the Baumberg Tract) abandoned from such use but still subject to taxes.

In spite of opposite opinions from some Audubon members, I do not believe it fair to deny a permit on the basis of endangered species not directly

impacted and doubtfully even indirectly affected any deleterious way. Certainly for the least tern the number of islands proposed in the bayward salt evaporators would be a great boon.

We do not know, of course, whether the Leslie Salt Co., owners of the salt evaporators, would allow all of the newly proposed mitigation features. If not, then my former opinion still holds, that the mitigation offered was just too inadequate to compensate for the area and habitat values that would be lost (prime habitat chiefly for the Snowy Plover, also good wintering habitat for various other shorebirds and ducks). Such assurance should be guaranteed by Leslie Salt Company and made a condition of any approval of this project or major portion of it. If the project is not acceptable for other reasons, such as the traffic problems already bad in the area being made worse, then features of that sort should be the deciding factors instead.

1548 East Ave.
Hayward, CA 94541

9 Feb.1988

Mr. John Thorpe
Shorelands Corporation
P.O.Box 4258
Hayward, CA 94540

Dear Mr.Thorpe:

Along with the official Ohlone Audubon Society Conservation Committee letter, dated yesterday, which we wrote asking for your clarification of misinterpretation of things I wrote in the January Ohlone Audubon bulletin about the Shorelands, I thought I should add some personal comments in a separate letter. These all pertain to the same topics which I discussed briefly in that January column, and do not represent any over-all evaluation of the Shorelands project or its various mitigation proposals.

First, I still stand by everything I wrote in that January column, and I trust that everyone wishing to comment on it will read the entire column (or the part that pertains to Shorelands). I learned only recently from Mr.Moore, at a HASPA meeting, that the August 1987 mitigation package [as well as the subsequent December 1987 one] was not intended to be a document on which the public was expected to comment; but rather was a negotiation document between Shorelands and the U.S.Fish and Wildlife Service. Yet I was supplied with two copies of the August document (1 from you, 1 by the City) and you yourself wrote about its contents extensively. It was also the document which detailed various measures [proposed] that I felt, and still feel, would increase the diversity and populations of various water bird species in the general area. I made particular mention of the numerous islands proposed in the bayward salt evaporators (which would benefit nesting and roosting shorebirds, terns, etc., if kept largely free of vegetation) and the proposed mostly dried-out parts of two salt evaporators (which would be in partial compensation for the Snowy Plover habitat that would be destroyed in the pickle pond and vicinity if the development of that area was allowed). I am not as confident of the benefit that might be attained for wildlife by the proposed brine-shrimp "farm" or culture pond, so made no mention of it in that column. Along with some other biologists, I guess I feel that experiment would have to prove itself to be awarded any mitigation credits.

Second, knowing the normal habitat-needs of the three endangered species about which a jeopardy opinion letter was written by the U.S.Fish and Wildlife Service, and knowing that the habitats now existing in the area proposed for development do not equate to any of those habitat needs [perhaps marginally so for the Harvest Mouse along parts of the diked-off Mt.Eden Creek, which is also subject to deep inundation by Leslie Salt Co.operations], I still feel that the direct impact of the proposed development on the populations of the Calif.Clapper Rail, the Calif.Least Tern, and the Saltmarsh Harvest Mouse in the areas nearby where they are found would be unlikely sufficient to measure. The crux of the matter with regard to those endangered species therefore comes down to the various indirect effects the project might have on their populations, such as through expanded predation, uncontrolled human interference, etc. Alternatively, there seems to be a concern that development of the Baumberg Tract [excluding the salt evaporators to the west and the gun club areas to the south] would be a threat to the survival of these species because it would remove the property from that which is potentially restorable to suitable habitat condition. This removal of potential would most likely apply to the Salt Marsh Harvest Mouse, since the level of the land involved is so high that the lower intertidal, cordgrass marsh upon which the rail depends would not be expected here even if the area were reopened to tide action. Neither is an area of open, fish-bearing water and barren islands likely here, short of engineering and building of such through a development that would in turn itself jeopardize the benefit the area might provide for the Harvest Mouse. Hence, my comment that no habitat for the least Tern is to be found or to be expected in the Tract itself -- even though valuable habitat is found just to the west. The westernmost of the 3 "bittern" ponds might be an exception

to that, since it has seen an increasing amount of use by various birds over the years I have known it -- and would likely quickly revert to fish-bearing status if the dike between it and the salt evaporator (no.11) to the west were breached.

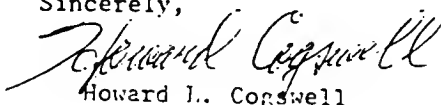
However, the jist of my comment about the endangered species pertains to the fairness of the announcement [which I read only in the public press] that your corporation's application for a COE permit was about to be denied on the basis of unresolved concerns over the survival of these three endangered species. When none of the three is actually present on the property, and there is absolutely no habitat for two of them there, and only very marginal habitat for the third, there really would be no impact on the survival of the populations over what exists today. That was before I had seen the "jeopardy opinion" letter from the FWS. I subsequently obtained a copy of that letter and note their extensive emphasis on indirect effects, which I admit I had not considered to be serious. With Red Foxes now present throughout the Baumberg area, it seems that a predator far more effective than house cats is already a factor to be dealt with. [The Snowy Plover count team this past Saturday, of which I was a part, found the Fox den along the south side of the dike between the pickle pond and the first crystallizer to the south, where we saw 3 animals the previous Saturday. This week one animal was seen trotting northward along the far west side of the pickle pond, and their tracks are widespread throughout the area. Various bird wing and leg bones, one lower back of a bird skeleton, and several bird wings (feathers still attached) were picked up near the burrow opening.] From the standpoint of human intrusion into the salt evaporator areas west of the Baumberg Tract, I have always felt that it should be and could be kept under control by an appropriate public agency that would administer the trail that is projected through the area [for a long time, by the East Bay Regional Park District, e.g.]. By proper routing of such a trail, there need be no real disturbance of tern colonies or main roosts of shorebirds -- particularly if there were a variety of islands available for use by these birds.

All of the above does not mean that I support the Shorelands Corporation's proposal to develop nearly 700 acres of land in the Baumberg Tract. There are many other facets of that proposal that are, in my mind, very important to consider -- especially that of traffic and the "cumulative impact" of development that would then be proposed for all other nearby lands still having wetlands or wildlife values. If the 718-acre tract is indeed properly designated as wetlands under COE jurisdiction, then the fact that the development proposed is in no way really related to the adjacent waters of the United States would seem to be a serious point on which to judge the question of granting of a permit -- rather than hinging everything on endangered species not actually found on the site. There is also the unproven need to keep the R&D development next to a racetrack.

I have not made any thorough study of the December 1987 "mitigation" package, of which you supplied a copy. Again, it differs from the previous version in ways that might well make a difference if I were on a decision-making body.. As a member of two organizations that would like to contribute to the decisions that are made, I did feel that the public should have the opportunity of input when the mitigation offered is very different from that on which our previous comments were based. But it seems that a loop-hole of the law allows for such subsequent input only when there has been a notably revised application, and hence a new EIS/EIR.

I cannot say that I "look forward" to a revised proposal for the area. But if such is in the offing, I trust that all interested parties will pitch in and consider all pertinent factors in combination before arriving at their comments and recommendations to the agencies having permitting authority for development here.

Sincerely,



Howard L. Cogswell

cc: USFWS(Endangered Species Office,Sacramento)
USCOE(San Francisco District Office)

have agreed to them, they would have been very good for the future wildlife values of the area. They included a number of things which the state is now going to have to try to do on this more limited piece of property. The state, by the way, owns about a half of this outer salt pond, north of Mt. Eden Creek-mouth [10 on Map 1, see dotted lines on 10, Map 3], but there's no sharp line; they simply have an undivided half interest in this outer pond.

The northeast part of the Baumberg Tract is higher level land, so you couldn't get the low level salt marsh ever started here. You'd have to pump water to maintain it.

Chall: Then, over the years, what happened to the Shorelands Corporation?

Cogswell: They finally went bankrupt.

Chall: Why?

Cogswell: Probably because they spent more money than they had taken in.

Chall: Did anything come of the plans he had for the industrial buildings and the racetrack?

Defining a Wetland and Consequent Mitigation Requirements

Cogswell: Well, nothing ever came of it because he never subdivided the property nor tried to develop just a portion of it. He had two different plans that he put forward and requested a permit for. Each time, there were so many questions, so much controversy. The first time, the Corps of Engineers made the wetlands determination. And that was, I believe, 1983. There was a combination of circumstances that year, so that according to the rules of the Clean Water Act that the corps was following and enforcing, they had to declare essentially the whole area-- I think it was 87, or 83, or 89 percent, somewhere in that neighborhood-- was wetlands under their rules.

During that particular year there was an almost solid growth of ditch grass throughout the whole area. Because the previous summer, Leslie Salt had flooded the area with water and kept the water on it. They claim, anyway, that it was because of complaints about dust blowing. The people in the nearby industries and downwind had dust blowing on them and they complained. So Leslie Salt pumped water, or admitted

water from these other ponds into the old crystallizers [a-f, p, s, t, and g-k on Map 3], on the abandoned pickle and crystallizer ponds and let it sit there.

Chall: That was before John optioned it?

Cogswell: No, I think it was during the time that he had it optioned.

Chall: That sort of undercut his plan, didn't it?

Cogswell: I don't know the details of the option.

Chall: The Corps of Engineers--

Cogswell: Well, let me finish. The previous summer they had all that water in there, and it hadn't dried up yet when the '82-'83 winter came along, the rainiest winter in many years. And so when the Shorelands Corporation's plan was put forward and the engineers were asked to come out and evaluate the wetlands, they couldn't get on the property; it was all under water. They couldn't walk around and look at the plants. They have to look for plants among other things, rooted plants, of which ditch grass is one indicator of wetlands. Pickleweed is another.

Anyway, they did finally come out and make the jurisdiction way along in the summertime, after the water had gone down some. In a way, it was that combination of circumstances. This is my personal opinion: had they chosen a dry year to make the determination, and hadn't pumped any water on it previously, it would be my judgment that much of the area would not have been designated a wetland. If you go down and look at it now, there's a lot of upland plants growing on these former crystallizers as well as pickleweed mixed in.

Chall: This puts the Clean Water Act and the wetlands into a rather gray area, doesn't it?

Cogswell: It does. It does. There is a gray area. Where do you draw the line on the upper limit?

Chall: Because sometimes there might have been an accident of timing--

Cogswell: Another thing that happened that's part of the history: these rectangular ponds are the crystallizers [a-f, and g-k on Map 3]. They have a specially prepared gravel substrate so that they don't have bumps up and down when they go to reap the salt.

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Cogswell: When I worked as a consultant for Leslie Salt Company on other properties down in the Newark-northwest Fremont area, in the following year [1984-1985], they plowed--I think Leslie Salt arranged for this, I don't think Shorelands wanted it done--various of their properties, including some of those that I was studying in the Newark area. They plowed this set of north crystallizers--deep plowed them. Some people raised questions about that process; and it turns out that as far as the Corps of Engineers and EPA [Environmental Protection Agency] were concerned, plowing is a normal activity for agricultural lands anyway, so nothing was done about it. So they couldn't stop them, in other words; they had no legal basis for stopping the plowing.

They did not plow these crystallizers down here, the southeast crystallizers of the Baumberg unit [g-k on Map 3]. Well, the difference is so amazing now: these north crystallizers [a-f], are being covered rather heavily by vegetation--partly upland, partly pickleweed that has come in since the plowing. However, unplowed south crystallizers are still largely solid bare ground. They are a similar substrate otherwise and I believe similar height, although there may be a slight difference. The pickle pond in the middle never was used for harvesting; it was the means by which the final brine from the evaporator ponds was distributed to the crystallizer ponds, that's all. And it was bare during those years. It has since become covered with vegetation. These south crystallizers [g-k] are the only really bare ground now.

From the snowy plover standpoint, for example, they provide good habitat for foraging, but they're too smooth for their nesting preferences, although they use nearly bare ground. The north crystallizers [a-f, Map 3] are no longer bare enough for the plovers. That plowing episode--I don't think Cargill, or Leslie Salt, it was then, really knew what they were doing when they hired the plowing done. It looks as though--it looked to everyone--as though they were trying to destroy wetlands vegetation by the process, and temporarily they did so. But there is a hardpan underneath all of these ponds; it's down a variable distance I think.

There was a former crystallizer by the National Wildlife Refuge headquarters. I tried to drive some net poles in there to capture some birds for banding one time; you had to use a hammer and an iron rod to break through that hardpan. So, if they deep plowed and broke through that hardpan, that makes a lot of difference in the percolation of water.

Chall: If I got it right, the Corps of Engineers came in earlier, at Baumberg, and--

Cogswell: Well, '83.

Chall: And it was all wet, so they said it was a wetland.

Cogswell: Well, when they finally made their determination, they no doubt gave the Shorelands Corporation a map of what portions were wetlands. They claimed 80-some percent, nearly 90 percent of the whole property all the way out was jurisdictional wetlands, and any alteration of that would have to be mitigated.

Chall: I see. So that was the problem: it needed to be mitigated?

Cogswell: They couldn't grant a permit unless there was adequate mitigation.

Chall: So that was one of the major problems.

Cogswell: The second time the application came up, after they recognized that fact, and the Shorelands Corporation was still proposing development of the entire area--they had a plan for a street to join Industrial Boulevard down through the Baumberg Tract, coming off Route 92 up here at a new interchange. The present one [at Eden Landing Road] might have to be closed, but they would have a new interchange farther west. The racetrack was to go in the pickle pond and vicinity [Map 3], but the racetrack itself, Thorpe would repeatedly say, would not pay for itself. The reason they needed all the other industrial development was to make ends meet in developing the racetrack.

The corps doesn't keep records of what properties are wetlands on an ongoing basis. They don't have the staff to do so. They only come out and make a determination when there is an application. So the next time the application came up--I don't remember what year it was--somewhere around '87, '88, '89, or '90. After Thorpe had come up with all these other more elaborate mitigations elsewhere, he then submitted another application. I don't know whether the corps even came out then or not. There were so many questions about it by that time, that what I've heard--and it's only hearsay, because Thorpe himself didn't tell me this--but other people said that people at the corps simply told him, "Under present circumstances, your present plan, we will have to deny it."

So he withdrew; he didn't actually get a denial because he withdrew the application.

Each time he withdrew the application.

Chall: My! He must have gone out of his mind.

Cogswell: And all this time he was spending money hiring people, office, maintenance, and so on.

Chall: Now, as far as you know, it was his money; it wasn't a limited partnership that he was setting up--

Cogswell: It was a partnership. I don't know how many partners he had. It wasn't all his money, but I'm sure he probably lost a lot of his own money, too.

Agencies Involved in the Complex Permitting Process

Chall: What other agencies have been involved in this over the years? Primarily it was the Corps of Engineers, but then what?

Cogswell: They're the agency designated by federal law to enforce the Clean Water Act. They are actually supervised on a policy basis by the EPA. So, I know there was question in the litigation over the Coyote Tract in Newark, whether EPA had any jurisdiction there or not. But the Supreme Court essentially affirmed that they do by refusing to consider the appellate court's decision [chuckles].

Chall: So that's a federal agency. Now, the state?

Cogswell: The state gave up its original claim to the Baumberg Tract proper. They gave that up in the 1980s sometime when they settled this question of public trust. They agreed to give the Leslie Salt Company full and clear title to the Baumberg Tract. They had previously claimed some degree of public trust interest there as well as on these various other ponds and marshes to the west of the Baumberg Tract [points on Map 3]. They even gave up state claim to public trust on these tidal marshes out here [the Whale's Tail marsh, Maps 3 and 4], which made some of us in Hayward rather irritated.

Chall: Why did they do that? Do you know?

Cogswell: The attorneys for the state Attorney General's office, who met with us from the Hayward Area Shoreline Planning Agency [HASPA]--we had a separate committee meeting and entertained the attorney's representatives from Sacramento--said that the

land titles were so complex in this area--this checkerboard that I referred to earlier--that it was the best they could get. Even if they went to court, they doubted they would get anything more.

Chall: So giving up the public trust meant that they just gave it up, no funds--?

Cogswell: That the state--no funds involved--Leslie Salt gave up their claim to the Mt. Eden Creek channel; Leslie Salt did agree to about half of this outer salt pond [Pond 10, Maps 1, 3, and 4] being owned by the State Lands Commission. But no line was ever drawn; there's no dike down the middle of it; there's an acreage figure but it is not a set number of acres. It's an undivided partial interest in that pond.

Coupled with that, the state gave Leslie Salt the right to continue using that pond for salt production--the same sort of arrangement that the National Wildlife Refuge has on all the ponds they have. A lot of the salt ponds in the South Bay south of New Alameda Creek--all the way down through Alviso, around through Mountain View, not Palo Alto but again some other properties in Menlo Park, and Redwood City--are owned in fee title by the federal government as part of the National Wildlife Refuge. But it's a modified fee title, so to speak; it was written into the title agreement when the federal government purchased those properties that the Leslie Salt Company could continue to use them for salt production as long as they wanted. And of course, the government did not pay, then, the full price that they would have had to have paid if they put the company out of business.

Now, there is additional federal involvement in wetlands. If there is any plan to alter the wetlands status in any way, the U.S. Fish and Wildlife Service's advice has to be sought.

Chall: My word!

Cogswell: Any developer. Thorpe had to have advice from them, because he couldn't get a permit. The Corps of Engineers is not allowed to issue a permit having anything to do with any alteration of fish or wildlife habitats without getting an opinion from the Fish and Wildlife Service.

Chall: And can they be at odds about the proposal?

Cogswell: Oh yes, they can. But it's been rather customary that the corps does not issue a permit if the Fish and Wildlife Service says no. They don't really have veto power, but if they put a

strong opinion out that there is tremendous damage being done which is not properly mitigated, I think the corps almost never issues a permit.

Chall: I see, so that in the corps' denial, behind it was the advice of the Fish and Wildlife Service?

Cogswell: Oh yes, yes, very much so.

Chall: So they're involved.

Cogswell: The state Fish and Game Department also.

Chall: Tell me about the state Fish and Game Department.

Cogswell: Well, there's a state environmental law also, CEQA [California Environmental Quality Act]. It's similar to the federal government laws, and a permit has to be obtained. All they have to do is get a clearance, I think, for wetlands from two bodies. One of them is the Water Resources Control Board and the other one is the state Fish and Game, I believe.

Chall: Well, it gets very complicated with all of these agencies involved.

Cogswell: Oh, yes. I think Thorpe figured he had something like fourteen different agencies he had to get permits from. Of course there's the Coast Guard--if there's any navigable water involved, they're involved. There's the earthquake hazard aspect; I don't know how he was going to meet that because this is all right at the borderland, the five-foot contour (depth of bay mud). This is considered to be about the most bayward point where building on less than five feet of bay mud is more or less normal. You just put down ordinary pilings and you've got the building supported something like that. But west of that, where the bay mud gets deeper and deeper as you go out there--this western part would certainly be subject to possible liquefaction, so it would take special building techniques to put any building of any weight out there.

Chall: So that's the state's concern.

Cogswell: Yes, well it's local, the city of Hayward, too. Strictly from the endangered species approach, another office in Sacramento is also involved. I don't know who's in charge of that now. Because this is a part of the property that was designated in the recovery plan that was developed for two endangered species, the California clapper rail and the salt marsh harvest mouse. This was the whole Baumberg area, not just the Baumberg

Tract, but this whole area all the way down to New Alameda Creek. Baumberg is 838 acres, nearly a thousand. Twenty-five hundred acres or thereabouts, in the entire Baumberg area, was designated in that plan as high priority for development of critical habitat for each of those species.

Chall: That's Baumberg Tract plus--

Cogswell: Plus adjacent areas, yes. But the recovery plans that are developed for endangered species like that don't have any money attached to them, so such a plan cannot be implemented unless there's money.

Chall: You mentioned the name of Carl Wilcox.

Cogswell: He's the one now in charge of seeing to it that there is an enhancement plan developed, adopted, and implemented for the property bought by the California Wildlife Conservation Board.

Chall: And he's with the state Fish and Game.

Cogswell: State Fish and Game, the district office in Yountville, near Napa. They are in charge of the implementation plan.

Baumberg Tract Restoration Plan the Result of Mitigation

Chall: Now, I understand from one article that I read that one of the reasons the Baumberg Tract was bought by the conservation board is because of mitigation in San Jose due to a sewage effluent problem, and in the Fremont/Milpitas area due to widening 880, along the Nimitz freeway.

Cogswell: They are building an overpass and destroying small wetlands areas in the process. All of these changes damage the wetlands. The San Jose-Santa Clara Water Treatment Plant in Alviso is, I think, one of the most mammoth ones anywhere in the Bay Area. It empties its sewage effluent by one channel out into the south end of the Bay. The cities down there in the South Bay did not do what the cities from Fremont, Newark, north through San Leandro did--get together and build a big pipe to run this sewage effluent all the way into deep water into the central bay. Instead, down there they're still running their separate effluents; each sewage plant is running separate effluents into channels.

Well, in the San Jose-Santa Clara area, Silicon Valley development and everything having grown so big, that water is now--it was 180 million gallons a day ten years ago. I'm sure it is maybe 250 million gallons a day or more now. Flowing out in one channel, it has converted what was typical spartina or cordgrass and pickleweed marsh into tall tules--essentially freshwater marsh. As you get to the outer end of the marsh, there is some alkali bulrush which indicates a little more alkalinity, a little more saltiness. I've been out there on a boat fairly recently.

There was a court case and at some point they were ordered to mitigate that damage because the fresh water has converted what was clapper rail habitat, an endangered species, to a freshwater habitat which is not clapper rail habitat. So they had this big mitigation duty, so to speak, and they therefore contributed--what is it?--40-some percent of the cost of the Baumberg Tract. That erased their mitigation obligation.

Chall: By providing funds. The same thing that the Fremont-Milpitas people did with the freeway.

Cogswell: Much smaller complement there.

Chall: Five hundred thousand dollars I understand.

Cogswell: Yes, but that's compared to \$12.5 million. The total cost is over \$12 million.

Chall: Now I also understand that the East Bay Regional Park District is going to go in there and develop trails.

Cogswell: They've contributed some money. You can't get an answer out of them in public meeting, anyway, about why they are contributing the money. But apparently they hope to have a trail through there. Right now the Bay Trail comes to an abrupt end right here by the HARD Interpretive Center [north of Route 92, Map 1]. Bicyclists won't have to come over here and bicycle and go around through this route [Industrial Boulevard] and busy streets through Union City. The next place they can get out towards the shore is the New Alameda Creek and then they can go three and a half miles to the Bay Shore, but they have to come right back again to Coyote Hills.

The idea of a Bay Trail was to surround the Bay, not to have to go on city streets. See. So, the East Bay Regional park sought to have a trail; but whether that will be done depends on whether the state Fish and Game and the federal Fish

1548 East Ave.
Hayward, CA 94541-5313. tel. 510/581-2201
3 February 1996

Wildlife Conservation Board
Dept. of Fish and Game
801 K St., suite 806
Sacramento, CA 95814

Re: BAUMBERG TRACT, Alameda Co. -- item 15 on 2/8/96 Agenda

Dear WCB Members:

Having listened to and participated in various discussions of the future of this property including the quite recent proposals by consultants responding to property owners in the vicinity and to the City of Hayward, and being unable to attend your February 8 meeting, I trust that my views set forth herein will be considered as a part of the record and borne in mind when you make your decision on the proposed acquisition.

First, I give a synopsis of my background pertinent to this matter. I joined the Biological Sciences Department faculty at California State University, Hayward, in 1964 and was immediately drafted by the Department of Fish and Game to coordinate the San Leandro-Hayward sector of a Bay-wide inventory of waterbirds. This included the Baumberg Tract (on which a salt crystallization plant site still operated) as well as all the salt evaporators westward to the Bay. This study continued until mid-1966, but I continued to have intermittent access to the area for instructional purposes with Ornithology and Ecology classes which I taught at CSUH until my retirement in 1982.

As the elected Director for the area on the East Bay Regional Park (EBRPD) Board, I was a proponent and ultimate maker of the motion by which that agency adopted the plan put together by the City of Hayward to acquire most of the baylands properties north of route 92 (San Mateo Bridge approach) in cooperation with the County of Alameda, the City, and the Hayward Recreation and Park District (HARD). At the start of the Hayward Shoreline Planning Agency (HASPA), a joint agency then involving the City, the County, HARD, and EBRPD, I was the alternate trustee and later the trustee representing the EBRPD. After I left the EBRPD Board at the end of 1982 upon completion of three terms, I have continued serving on the Citizens Advisory Committee (HASPCAC) for HASPA.

In 1968-71, I also carried out with the help of up to six assistants a bay-wide (south San Jose to Antioch & Travis AFB) study of solid-waste disposal and bird hazard to aircraft under a grant from the Environmental Protection Agency. This is pertinent because it was the experience that brought to my attention how unique the Baumberg Tract is in the total picture of the bay-related habitats about the whole Bay. We visited nearly all parts regularly by 4-wheel drive vehicle and by small airplane at low altitude, and some parts also by boat.

While serving on HASPCAC, I reviewed the various plans of The Shorelands corporation which had an option on the Baumberg Tract, and commented on the mitigation measures they offered to offset the nearly 100% destruction their proposed development would inflict on the jurisdictional wetlands the property was then (1983?) found to contain. Many of the conflicts that arose over that proposal were based on inaccurate delineation of the exact places of occurrence of several listed species -- especially the California Clapper Rail and the California Least Tern. There was (and still is) essentially NO habitat for those two species within the Baumberg Tract, although both were found using typical habitats in the broader "Baumberg Area" of the salt-pond system to the west. The Shorelands corporation, however, withdrew its application for development without ever coming up with an on-site mitigation plan.

The natural history guide "Water Birds of California" (Univ. of California Press, 1977) was authored by me, and I have continued since 1991 studies of such birds, particularly through censuses of shorebirds and colonially-breeding waterbirds (mostly terns in my assigned areas) through the San Francisco Bay Bird Observatory, Alviso, CA 95002, of which I am current president. These later studies have not included any data from the Baumberg Tract, however, by agreement with the Cargill Corporation, owner. Nevertheless, my acquaintance with the site and its surroundings is longer than even the company's current personnel, and I offer it in support of the recommendations I make.

Although I mention various agencies and organizations in the synopsis above, the recommendations and rationale which follow are from me as an individual. They are made entirely with an interest in seeing the optimum practicable combination of wildlife habitats around San Francisco Bay, which you as a Board have the opportunity to move significantly toward in this instance.

RECOMMENDATIONS:

1. If the appraised price per acre for the Baumberg Tract is considered a fair price based upon its location, geologic conditions, and adjacent property values, I urge the Wildlife Conservation Board to authorize the suggested cooperative agreement to purchase it NOW.
2. Advantage should be taken of the partial funding available as mitigation for the impacts of highway development and saltmarsh habitat alteration elsewhere in the South San Francisco Bay area to develop a plan for restoration of a full range of salt-marsh types on the Baumberg Tract; but if such funds are used for pure acquisition costs, a commitment with date certain for the production and initial implementation of such a restoration plan should be given by the WCB.
3. Some indication should be given now, perhaps to be confirmed as a part of the restoration plan, of what agency or agencies would be responsible for the management of the property during and after the restoration work is performed.
4. If any adjustments of the boundary are made to accommodate access requests for adjacent property owners, the integrity of all large blocks of lower-, middle-, and high-tide level marshes should be maintained, as well as continuity among these types.
5. Consideration in the future should be given to obtaining title to the "Whale's Tail Marsh" (tidal marsh areas from north of Mt.Eden Creek-mouth south to the original Alameda Creek-mouth, about 250 acres, most of which is owned by Cargill).

RATIONALE:

The BAUMBERG TRACT's 838 or so acres are so situated, by connection to the tidal Mt.Eden Creek and the "Whale's Tail Marsh" beyond it and by virtue of the highest portions of the Tract being at or near highest tide levels, that there is opportunity for restoring a more complete range of saltmarshes here than anywhere else around the Bay south of San Francisco and Oakland. It's true that parts of Bair Island in San Mateo County would be easier to restore to low and middle marsh levels because they were salt evaporators for a shorter time and the old saltmarsh channels are still evident in them. However, there is no real high-marsh zone there since that point is occupied by highway 101. Furthermore, as the WCB Staff reported to us a year ago, they have been unable to obtain any agreement by the owners to sell.

At Baumberg, tide action of limited sort could be restored to the northern set of old crystallizers by opening a few dikes and putting culvert pipes under existing levees necessarily retained by Cargill for access to their remaining property [see attached map for ponds and locations mentioned]. The brine ditch which parallels Mt.Eden Creek on the north from salt evaporator 10+11 to near Eden Landing Road would have to be bypassed or relocated for tide action to be brought to former "bittern ponds" 2 and 3 (those with low dikes -- see comments on bittern ponds below). Cargill conveys brine by siphons under quite large bodies of water elsewhere, and I can see no reason why they could not do so under Mt.Eden Creek to reach evaporator 12 just to the south and thus eliminate the need for the circuitous route to and under Eden Landing Road to their pump at the east junction of ponds 12, 13, and 14. This would enable return to tide action of everything from the pickle pond northward except for the high-diked older bittern pond #1.

The "bittern ponds" themselves are part of the Baumberg Tract. They, of course, contain only whatever chemicals were in the bay water from which the bulk of the sodium chloride was crystallized. As I understand it, the chief high concentrations are calcium and magnesium salts. The western bittern ponds 2 and 3 already flood during rainy winters so that their low separating dike is often overtopped, and they also receive a modest amount of use by shorebirds and ducks, some of which are obviously feeding. It's my assumption therefore, that they could be rehabilitated within Water Quality Board guidelines by gradual flushing with bay water and then returned to tidal status if that was desired. Bittern pond #1, with its high dike, just west of Eden Landing Road, is another matter. Over the years that I had access to this property for bird study, I looked at that pond many times, but never saw a bird on its surface or along its shore even when there was rainwater accumulated in it. The concentration of chemicals here may be so great that either of two measures might have to be adopted before restoration is possible: 1) excavate and remove the material to a

suitable upland disposal site; or 2) cover it and cap it with an essentially waterproof seal. Decision should be made on this difficult area as an actual restoration plan is developed, which should be by a competent hydraulic/marsh restoration engineer.

The "pickle-pond", the large nearly circular area in the mid-eastern part of the Tract, is at the highest level. Twelve years ago it was a major pre-breeding assembly area and a moderately good breeding area for the Western Snowy Plover since it was then mostly barren with slight irregularities of surface and very sparse low plants. On a November 1995 trip through the area with HASPCAC (with Cargill officials along) a very great expansion of the vegetation on this area was noted. Hence, it is rapidly becoming less favorable for the Snowy Plover and instead will soon be suitable for the endangered Saltmarsh Harvest Mouse, a few of which were found in the 1980s in the nearby Mt.Eden Creek bed. If true "high-marsh" versions of intertidal marshes are to be restored in any significant amount in the area, the pickle pond is probably the best place for it to be centered. Only an up-to-date topographic study to 0.1 or 0.2 foot intervals of the area would tell what the over-all limits of such marsh could be.

The southern crystallizers (south of the pickle-pond) have remained essentially barren and are thus attractive to Snowy Plovers for foraging at some seasons. If minor irregularities of surface were established on them, the habitat would be enhanced for that species to nest here; but major disruption would only encourage the growth of pickleweed -- as happened after the mid-1980s when the north crystallizers were deep-plowed. The Snowy Plover's ancestral preferred habitat, of course, was the supratidal area of ocean beaches, but they did also occupy drying salt pans of natural origin in the upper parts of coastal marshes. If that sort of habitat can be incorporated into a restoration plan that looks beyond 10 years at a time, then this habitat could also be arranged for in the Baumberg Tract somewhere.

The southeasternmost part of the Tract, the former Perry Gun Club, is already largely covered by perennial pickleweed -- and so probably harbors Saltmarsh Harvest Mice.

One difficulty of developing adequate tidal prism to allow complete flushing of a large intertidal marsh throughout a majority of the Baumberg Tract would be the very narrow existing channel of Mt. Eden Creek, most of the original rather wide Slough having grown up to dense pickleweed marsh in the past 30 years that I have known the property. It could be dredged out, of course, but that in itself would destroy SMHM habitat, and some of the CCRail habitat in the outer reach. A supplemental channel that would perhaps permit less dredging of Mt.Eden Creek, or perhaps substitute for it entirely, has been suggested from State property south of the San Mateo Bridge toll station along the northernmost boundary of salt evaporators 10+11 and the Baumberg Tract. Although the western part of evaporator 10 is owned by the State, there was an agreement when title to it was cleared that Leslie Salt (now Cargill) could continue using it for salt production purposes. Additional negotiations with Cargill or alternatively with the Oliver Trust that holds property just north of evaporator 11 might be able to allow for such an additional entry/ exit route for bay water. A further alternative would be a channel from the southwest corner of the south crystallizers to and along the east side of salt evaporator 8A, as was envisaged in the Shorelands development plan for the disposal of rainwater runoff to Old Alameda Creek (Alvarado Channel).

The several difficulties I have enumerated for a thorough marsh restoration plan on the Baumberg Tract do not really interfere with the ultimate establishment of a full range of wildlife habitats from open mudflat and tidal slough through cordgrass and pickleweed marshes, to those with gum-plant (*Grindelia*) along the minor, sinuous channels that would be optimum habitat for the Alameda Song Sparrow (*Melospiza melodia pusillula*) endemic to east-central and south San Francisco Bay, to the high-tide marsh intergrading with upland vegetation that has been destroyed elsewhere throughout nearly all of the South Bay.

Respectfully yours,



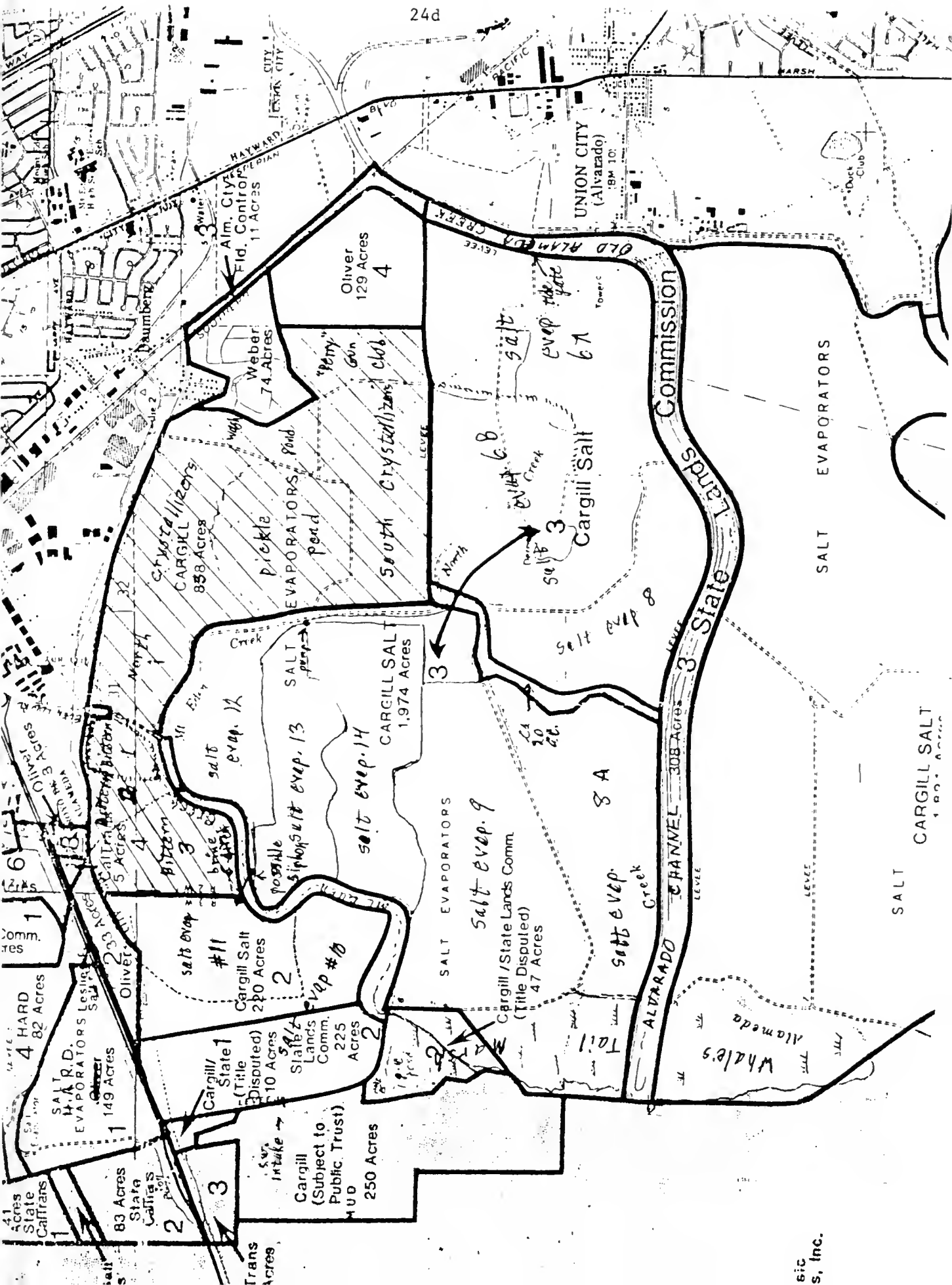
Howard L. Cogswell, Ph.D.

[Prof. Emeritus, Biol.Sci., Cal-St.Univ., Hayward]

cc: HASPA
HASPCAC
City of Hayward
Carl Wilcox, DFG

• Barbara Shockley

Encl.: HASPA property map of Baumberg Area, with sites annotated.



and Wildlife people, particularly Fish and Game, will allow it or not.

Chall: I see. So there's a lot yet to be done. But I have a little background now about why the restoration of the Baumberg Tract has come to be. Initially what happened then is that John Thorpe gave up.

Cogswell: Well, his company went bankrupt. The option expired.

Chall: The option expired, so it still belonged to Leslie--

Cogswell: Still belonged to Cargill which acquired the Leslie Salt Company.

Chall: Then they were willing to sell it?

Cogswell: Leslie Salt had it for sale since 1973 at least. They'd been paying taxes. They will tell you that they'd been paying taxes on it all this time, as they do their other surplus properties. So they've elected to dispose of it.

Chall: What is the California Wildlife Conservation Board?

Cogswell: They are a separate entity associated with the state Fish and Game Department, but not really--I'm sure they're not answerable to the head of the Department of Fish and Game. But their whole purpose of being is to acquire or improve properties for the benefit of wildlife. They're under the state Resources Agency as is the Fish and Game. They're sort of an auxiliary agency to that.

And they do have money; from time to time, some large amounts of it. They were the designated state agency to spend money from Proposition 70 a few years ago.⁸ It was passed by the voters of the state; it included x million dollars to be spent acquiring wetlands in San Francisco Bay south of San Mateo Bridge, specified in the law that was passed. That's the reason why the Citizens to Complete the Refuge thought that they were going to get Bair Island purchased from that. [See Appendix C] The Wildlife Conservation Board people, the actual board members, according to their staff--we never met their board members--claimed the board will not exercise eminent

⁸Proposition 70, June 1988. Wildlife, Coastal, and Park Land Conservation Bond Act. Initiative statute sponsored by Californians for Parks and Wildlife. \$776 million to acquire, develop, rehabilitate, protect, and restore parks, wildlife, coastal and natural lands in California.

domain though they have the power to. They don't want to run the risk of an adverse court decision or something.

Chall: So it was easier to get this--

Cogswell: It was easier to get this because we had a willing seller; when the appraisal was done, Cargill said okay.

Chall: In addition to that, they were able to get these monies from mitigation, to provide part of the funds.

Cogswell: Yes. It wouldn't have been possible otherwise, because there's not enough in the bond money.

Chall: So these folks in California Wildlife Conservation Board must have been out working to find out how this could be accomplished.

Cogswell: Oh yes. Their staff worked together to put this package together, sure. I have a record of the staff person who was at this meeting I attended, uninvited. I heard by the underground about the meeting. They had invited Florence La Riviere's group, the Citizens Committee to Complete the Refuge, because they knew that that was a group that was going to oppose them. They wanted to sound them out or let them know in advance before it was actually done; but in fact, what they told us was essentially, it's all done. It hadn't actually transpired yet, but they were about to close it.

Chall: Can you tell me something about Bair Island. [This interview took place a few months before POST {Peninsula Open Space Trust} concluded their successful negotiations to purchase Bair Island.]

Cogswell: The Citizens Committee to Save the Refuge needs to get this Japanese firm to give us the outer two pieces of Bair Island. These are the only parts I think really that are quite valuable from the wildlife standpoint. The innermost, smaller portion is next to development anyway. It is an island. Bair Island is really three islands, or islands separated by two sloughs, whichever way you want to consider it. The inner part, other people have championed for development.

It's all left over from Leslie Salt's attempt to go into the real estate business in the 1970s. When they closed the Redwood City plant, they started their own real estate company there. John Passarello was the manager of that at the time; he later became head of the Northern California Nature Conservancy. He was the one from whom I sought admission for a

couple of research projects I had. He told me he was surprised that I was asking for research access to their entire system. I said, "Yes, that's right." [laughter]

Chall: Why not? [laughs]

Cogswell: He said, "Well,"--after discussing it with me on the phone--he said, "I guess we'll be sending you a letter; it'll be okay." Within the next week, I spoke to the Sequoia Audubon Society about the proposed new national wildlife refuge, giving it my full support; it was a wonderful thing that was being proposed at that time. I never got the letter from Leslie Salt Company. My research grant was in the offing; it came. I had to live for three years with access over the Leslie Salt property but not through it. I flew over it. [laughter]

Chall: Yes, well, you spoke out of turn! [laughter]

Cogswell: I can't prove there's a connection, but I never got the letter.

Chall: Regarding Bair Island, there have been articles about that area in Save the Bay bulletins. They gave me some information.

Cogswell: It's good, but--. You should have a copy of my letter to the Wildlife Conservation Board at the time that they were considering this. At Bair Island, restoration of the uppermost tide levels, where high tide marsh would reach upland borders, is not possible because Highway 101 occupies that position over there with development along it. It's been destroyed.

In the Baumberg Tract there is a possibility up in the north and east parts of that sort of a thing, particularly in the area near Arden Road, and by Baumberg Village [Map 3]. And this area as a whole, the way it was being talked about when we first met with the Wildlife Conservation Board staff, was that they were going to acquire some property all the way down through the tidal Whale's Tail marsh out north and south of the old Alameda Creek-mouth [Maps 1 and 3].

As it turned out, when they got down to brass tacks in their dealings, they didn't have enough money to do this. Nevertheless, in the Mt. Eden Creek-Baumberg Tract area, it is possible to develop from bayside low level tidal marsh all the way up to that upland in one of the most unique situations in the South Bay. It hardly exists anywhere else.

Chall: I guess there's a future in it.

Cogswell: Yes. Carl Wilcox has got his job cut out for him to get a consulting firm that can make a nice design that's going to be possible for them to implement.

The state owns an approximate half-interest in the outermost salt evaporator [Pond 10, Maps 1 and 3], but they can't alter it. The salt company's still going to use it. What they are thinking of is dredging, because Mt. Eden Creek, from this point [M1 on Maps 1 and 3] landward, especially, is practically filled up with salt marsh. Even this channel, bayward from the same point [M1], is now very narrow. But they would dredge the part inland from point M1 to M2 [Map 3]. Carl's idea, he told me once, is simply to let the surge of water scour out the outer channel, southwest of M1. This little low dike across there would have to be removed. In their very implementation, they have to damage some salt marsh; but they'll probably get a permit to do that because the ultimate result will be a great increase in the acreage of the tidal marsh.

II EDUCATION: PREPARATION FOR A CAREER IN ORNITHOLOGY

[Interview 2: July 17, 1998] ##

Early Interest in Birds

Chall: All right. We start. What I wanted first from you, Howard, was something about your educational background and then your career path. Where did you get your education and your interest in ornithology.

Cogswell: Well, my interest in ornithology goes way back to boyhood. I kept my first bird list when I was ten years old.

Chall: Where were you living?

Cogswell: Pennsylvania. Northeast Pennsylvania. I always give credit to Thornton W. Burgess's bird book for children. I don't remember the date of publication, but it was in the Montrose Public Library. I had read two or three books by him about other animals in grade school--that would have been in fourth grade before I moved to town. And when I was in fifth grade we moved to the county seat.

Chall: And that has a name?

Cogswell: Montrose, Pennsylvania. The county library there in the county seat had this book by the same author. I had read other books by him from the traveling library in the two-room school house where I was in the third and fourth grades. So that's what started me.

And this was a book that was written deliberately for children. It personifies the animals, but it doesn't change their ways of life. Peter Rabbit is the operator: he goes

about and he can talk with any animal the language that they speak. He always runs from Farmer Brown and Farmer Brown's dog, and so on, so their life is really like the animal's. Peter Rabbit met all these birds and describes them and so that's what really captured my interest early on.

That was a year or two before I discovered a better book at the library, Eaton's Birds of New York which was published in 1924, I believe--'23 or '24--with excellent color plates of most of the birds by Louis Agassiz Fuertes, a famous bird artist of Cornell. And that two-volume book had instructions for keeping notes and so on in the front, so that's what got me started in keeping a list.

Chall: Really?

Cogswell: All I did at first was to keep the usual bird list. Most birders start out that way. But by the time I graduated from high school, I was a dedicated birder already.

I graduated from Montrose High School in 1931. I was the valedictorian of a very small class. [laughter] There were only 200 in the whole high school.

Chall: Did you have any friends who cared as much about birds as you did?

Cogswell: No, not as much. I never did have a tutor. I was the tutor for a friend of mine, Zelman Klonsky, now Zel Kelvin. He and I were both in the Boy Scouts and we needed the bird study merit badge. Well, I got mine with a breeze because I knew the birds already. At that time it was knowing, I think, forty species of birds, and four or five other requirements. He had real difficulty, so he needed help. And I helped him and he got his bird study merit badge, too.

Our scout master lived on a farm. He was a gentleman farmer; he didn't operate the farm, but he lived on it and owned it next to Lake Montrose which is near the golf course where we caddied sometimes. And the scout master was mildly interested in birds, knew a fair number of them, but I don't think he kept any records. But he did give us permission to bird all over his properties. That was very helpful. [laughter] Next to the lake, of course.

Chall: So that's your beginning.

Cogswell: Well, that's the beginning.

Chall: When you went to college?

Cogswell: I left Pennsylvania after high school and came to California that following fall. I couldn't afford to go to college even though I had thought of going to college at Penn State University. I couldn't afford it. This was 1931, it was the depths of the Depression.

Chall: Right.

Cogswell: And I wound up in California living with a man that I called uncle. He was really no direct relation, but he had been raised by my grandfather as his foster son. He was a nephew of my grandfather's second wife--not my grandmother, who was his third wife. So anyway, that man, L. B. Luce, was a successful building contractor for years in Pasadena and I came to California and lived with the Luces.

Chall: So that's where--in Pasadena?

Cogswell: In Pasadena, California. I went to junior college there, including two different stints. I didn't stay with the Luces more than, well, one year at most, then I was out working on my own odd jobs. It didn't cost much to go to junior college in those days. It didn't cost much to live.

Chall: Right.

Cogswell: But it was hard to get any money. Anyway, I went to junior college as a chemistry/math major, so to speak, because that's what everyone expected me to do. That's what I had indicated in high school. I was going to be a chemist.

Chall: Oh, I see.

Cogswell: But I only lasted a year and a half in that. Didn't like it, dropped out for just about a year, and when I went back I majored in biology. Went back to Pasadena another year and a half--Pasadena Junior College--it's now city college, Pasadena City College--and majored in biology. Graduated from there, in that major in 1936.

Chall: So it took you a number of years to get through?

Cogswell: Well, because of the change of major, yes. I started a year, quit a year--I couldn't go on to a four-year college. I'd already visited UC Berkeley once; I knew about Joseph Grinnell, thought wonders of him, didn't meet him, however. I came to campus, but just couldn't afford to go in '36 to Berkeley,

besides which I was beginning to get interested in other aspects of life--'37 to '38, particularly '38, I was courting Bessie. [laughter]

Chall: I see.

Cogswell: So we got married.

Chall: Wow, that's a long time! You've been married a long time.

Cogswell: Well, it'll be sixty years this year. So I didn't go back to college until after World War II under the G.I. Bill. The G.I. Bill was available and one of my Pasadena Junior College instructors resumed bird study--he had been a birder earlier. I did not know it when I took a course from him. He gave the general biology lectures and was an excellent lecturer. But he took up bird study again from the standpoint of bird listing; he wasn't interested in anything except life birds [species he hadn't previously seen]. [laughs] But he urged me to--he said, "You ought to be in college." He knew about the G.I. Bill being available. He said, "You ought to go back to college." And I was, by that time, working.

Chall: Had you been in the service?

Cogswell: I was in the navy--World War II--served twenty-two months, including in the Pacific Theater, Hawaii to Okinawa. I was there when the war ended.

Chall: I see.

Cogswell: Anyway, Dr. Max deLaubenfels was this man. He was a world expert on sponges and that's how he got his own Ph.D.

By that time I was working part-time for the National Audubon Society, in a sense. I had agreed to move onto a property that they had acquired while I was gone in the navy. I was supposed to be the first director of their first sanctuary in southern California which was along San Gabriel River near El Monte--fifteen miles due east of Los Angeles. They acquired the property of seven acres for the headquarters when I was gone in the navy.

And some ladies from various Audubon chapters--well, chiefly Mrs. Richardson from Berkeley--active in what was then the Audubon Association of the Pacific, now Golden Gate Audubon, came down and lived in the house until I got out of the navy--and for a while longer because I wasn't able to change. We owned a house in Pasadena by that time, which we

had built, a tract house. Anyway, we finally wound up selling our house when this idea of going back to college materialized and I moved into this Audubon property where we got free rent and utilities for me being part-time warden of the place.

Whittier College, 1947-1948

Cogswell: And I had arranged, then, to enter Whittier College in February of that year. We moved in October, but I entered the college in February, quit my job. The job I had had when I was drafted, which was a U.S. mailman in Pasadena. It was quite a decision to make. Those of us who lived through the Great Depression know how hard jobs were to come by and a government job--such as the U.S. mail is going to go on--

Chall: Yes, forever.

Cogswell: Forever, and so it was a permanent job.

Chall: Did you have children by that time?

Cogswell: Yes, our son was born in 1940, so we had him before I was in the navy--our only child. Anyway, I did quit my job completely at the post office to go back to college. So I had to make the break, depending on the G.I. Bill to pay most of my way, which it did. I had so many units from the junior college, I only needed to go a year and a half to complete the baccalaureate degree at Whittier.

Chall: In biology?

Cogswell: In biological science--I think it was called biology, there. I'm not sure. I graduated from there in June of '48 and transferred that fall to UC Berkeley in zoology.

Chall: Zoology?

UC Berkeley, 1948-1952; 1962

Cogswell: Zoology. And spent four years at Berkeley--the last three in sort of breaks, because I spent the spring semester periods in southern California on the field research for my Ph.D. and took courses in the fall at Berkeley. The first year I was entirely

at Berkeley including one summer session; the second year where I had some field work at Hopkins Marine Station, at Pacific Grove. I took a field course there. It was required for the Ph.D. to take a course including field work at the seashore. It didn't matter what course, as long as it was a zoology course of some kind at the seashore. It was a good requirement and I liked it.

For my term report for that course--it was an undergraduate course in invertebrate zoology--I did a sampling of the mud flat--the organisms of the macrofauna in the mud of Elkhorn Slough just east of what was to become the PG&E [Pacific Gas and Electric Company] cooling water intake which is now operating. They were getting set up to establish that plant at that time, that big power plant at Moss Landing. It is an oil-powered generating plant. They had to cool something--they had to take water in to cool it at great quantity and there's no great quantity of water there except salt water, so they built a system that used salt water for cooling.

Chall: Oh, I didn't realize that.

Cogswell: So they take it out of the slough and I think they discharge it back into the main slough near the yacht harbor, or at the yacht harbor. Anyway, I did that mud flat study which introduced me to mudfauna--shorebird food and all that.

My Ph.D. work, though, was in another field--nothing to do with water birds--it was territory size in chaparral birds in the San Gabriel Mountains of southern California. I started out not knowing what species I was really going to settle on. I was taking data on all species, but only after the three years of field work did I narrow it down and see which ones I had the best data on and analyzed and studied territory size in the wren tit, the bewick's wren, and the rufous-sided towhee. Now known as the spotted towhee. [laughter]

Chall: One in my yard this day. I'm not going to be able to remember the change of name.

Cogswell: But the G.I. Bill benefits were exhausted. The last year I had some state veteran's benefits that I used and we were getting very low on money. We had sold the house in Pasadena when I enrolled in Whittier College. We had sold that house for nearly four times what we paid for it because of the inflation --it was pre- to post-World War II. And yet that money was just about gone, so I had to go to work, desperately.

And even though I had finished the field work--almost finished the field work--I had finished the actual data gathering on the birds in six different plots of chaparral in southern California--I didn't have the vegetation measured. But I was desperately looking for a job, and finally one was offered at Mills College, so I went there. I was an assistant professor.

III THE ACADEMIC CAREER

Mills College: Assistant Professor, 1952-1964

Chall: Teaching biology?

Cogswell: Teaching zoology with miscellaneous other--general biology, also, at first--courses in the biology department. They only had three biologists, of which I was one. But that was so time consuming. I went back to southern California the following summer, finished up the measuring of the vegetation that I needed. I was measuring territory size against vegetation density and I needed to finish that vegetation density measurement. It should have been done the same years I was measuring the birds, but I didn't finish it up until the following year.

Chall: Fortunately it didn't change.

Cogswell: It didn't change that much. They didn't have a fire in the interim.

Chall: Yes, that's right. [laughter]

Cogswell: So I had all this raw data and just didn't get around to analyze it, what with the job, the full-time job. So it took me a long while to finish the Ph.D., to get the dissertation done.

Chall: So when did you finish?

Cogswell: I finally got the degree in '62.

Chall: And how did you enjoy the Mills experience?

Cogswell: Oh, it's a good college. The limitations there are that they provide almost no help whatsoever for a professor to set up

labs and so on. The only course I had any help in was the big freshman course. And that was true of the first year or two--didn't have any help at all. You do the flunky work which big universities all have helpers to do. Big universities have readers to read exam papers and so on; not at Mills. [laughter] Not at Cal State Hayward [California State University at Hayward], either. But academically it's a good institution and I had some very bright girls there.

Chall: Yes. So you moved to Oakland?

Cogswell: Yes, we moved to Oakland right away when I got that job. And when I was doing the field work in southern California, we were breaking household three times each year. It was a terrible ordeal for our son. We didn't realize at the time, but it was preventing him from making long-time friendships, because every time he'd get friends established where we lived and where he went to school--he went to two different schools: one school up here and the other school in southern California--and it wasn't always the same school down there.

Chall: In Berkeley did you always rent someplace different?

Cogswell: Yes, well, we lived in the veteran's village, the UC veteran's village, but it wasn't always the same place because of the breaks.

Chall: Yes. The one in Albany?

Cogswell: The one in Albany. We stayed there for a year and a half on the Gill tract. That was not the current one. It was on the Gill tract which is the agricultural tract next to the Western Agricultural Research Lab. That was the year that I took my summer work at Pacific Grove. We kept the apartment even though I was down at Pacific Grove for five, six weeks--six weeks I think it was.

Chall: So, you got your degree.

Cogswell: I finally got the degree in February of '62, with this dissertation on territory size and the three species of birds. And after that I was expecting to get a promotion at Mills College because the reason I wasn't promoted was because I didn't have the degree. That was understandable: it's the normal process, and that's what I had been told by them when I went there.

National Science Foundation Fellowship: Pennsylvania State University, 1963-1964

Cogswell: But after I got the degree, still no promotion. They didn't give a reason that year. The following year, '63-64, I got a National Science Foundation Science Faculty Fellowship. It's essentially a science education scholarship. It's not a research fellowship. The purpose was to improve my ability as a teacher. I took a sabbatical leave from Mills at half-pay and the scholarship paid essentially the other half of my salary plus quite a number of other expenses.

I applied to three places. This was to study animal behavior. I'd gotten interested in animal behavior as a specialty and had been doing some reading on it. I built a bibliography in the summer time--I went to UC Berkeley biology library and got quite an extensive card file on animal behavior, which was a developing science then. I applied to work with William Thorpe at Cambridge University in England, he turned me down [laughs]. He wrote me a handwritten letter, not a typed letter, a handwritten letter saying he was swamped with people, and just couldn't take on any more. My second choice was Ekhardt Hess who had been doing excellent work with imprinting with chicks and some other birds, but mostly baby chicks.

Chall: Where is he?

Cogswell: At the University of Chicago. He never answered in time. He finally answered but it was after I had closed the deal with my third choice. So Hess would have taken me, but he didn't answer in time. I had already committed to go to Penn State University which is where I was going to go to college anyway when I was a farm boy back there.

I chose Penn State simply because they had three people listed under animal behavior. I didn't know any of those people at the time. Didn't know much about what work they had done--except Carpenter--Charles Carpenter, I think--I've forgotten his first name, now--had done excellent work on howler monkeys. By the time I got there, though, he was no longer doing any teaching. He was a dean, so wouldn't take anybody. He wasn't involved in teaching any more.

The other two persons I did work with. David Davis, who is not really in animal behavior, was my main guide there. He took me on very gladly and arranged for me to have space. In fact, I was designated--I created a new designation at Penn

State: I was a visiting scientist [laughter] with faculty privileges, although no responsibilities, of course. I paid them, in fact. My grant--see, the indirect costs.

I shared an office with Merrill Wood, their ornithologist, in a big work space. I audited two courses. And one of those courses was their course in animal behavior. So I essentially took, without being required to take the exams, their full course in animal behavior taught by Dr. Martin Schein.

Well, his interest in behavior was with captive animals, chiefly domestic animals. He had access--they have a big poultry science department at Penn State and so we had baby chicks and we could inject them with testosterone and everything else so they would crow like an adult except their voice was very high. And we looked at bulls and cows in their pens and stuff like that.

Chall: My, my.

Cogswell: But I was interested in wild animals' behavior. I had been reading in great detail about the courtship of ducks and everything that was going on right out there less than a mile from campus--a mile! But he wasn't interested in taking the class out or anything else. We never had a field trip in the entire course, except to the poultry husbandry department on campus.

Chall: Times have changed.

Cogswell: Dr. Schein advised me on a little bit of research which I undertook to do. I was interested particularly in space related behavior, partly due to my Ph.D. work on territory but also because I had been capturing birds in my dooryard at Mills College and I was really struck with the fact that birds are very responsive to particular sites where they experience--in this case it was capturing them in the mist net--they're so responsive to that site, that even though they live in the area, they check that site out every time. You put a mist net --and I caught birds without any problem when the mist nets became legal--in my dooryard at Mills College. In Oakland, we lived on campus most of the years there and we had a suet log which the birds came to. It was in a mulberry tree in our backyard and when I put a mist net up there and the bird was coming to the suet log, I caught them of course. Chickadees. Chickadees are terrible to take out of the net. They grab the net, they won't let go, they bite your cuticle around your fingers if you're handling them, [laughter] so it was quite an ordeal for the birds, too.

Chall: Of course.

Cogswell: But they got released, okay.

Chall: But they always came back.

Cogswell: They came back to that suet log, but they would not make the direct flight.

Chall: Oh, I see.

Cogswell: They would stop and call and call and they'd look up, and look, look, and look, and they'd finally go up through the top of the tree and down to get to the suet log rather than fly straight through underneath.

Chall: Interesting. They obviously learned something.

Cogswell: They learned that spot very thoroughly with one experience. And so that's the kind of behavior I was interested in doing something quantitative with.

Site Studies with Starlings

Cogswell: I captured starlings at Penn State out in the fields. They're easily captured, and it's perfectly legal to keep starlings in captivity, there's no law protecting them. And Penn State had a beautiful animal behavior lab that had just been built. They gave me one cubicle in it for use. The rest of the whole lab was all occupied by another professor, in psychology I think. He was studying cats. So you had cats in all these other six or seven--seven other cubicles I think--and I had starlings in one.

Chall: [laughs] The cats and the birds.

Cogswell: But no, the cubicles were such that they couldn't see one another. I don't know whether the starlings could smell the cats; I certainly could.

But they also had test chambers and I had access to one of those test rooms with a one-way glass on the door. Put the animal in and then you could stay outside and you could see what it does in the room. Well, I was testing the starlings to see if they would respond to things in the environment the way the chickadees did.

So my principle was to put bushes in--it was a rectangular room so I had four bushes. I went out in the field and got four very different kinds of bushes. One was a young pine tree, one was a broad leaf tree of a different sort, one was a dead bush with just branches, and one was--I forgot what the others were, but they were different bushes. I put them up in the corners of the room.

First, in their home cage where the birds lived, I had to teach them to knock--I had food dishes with little round tops with a lid on it. They had to learn, which they did very readily, to knock the lid off so they could have the food.

So then I put these four dishes around the corners with food at first in all of them. And then in the experimental room I had to--

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Cogswell: Anyway, the test situation was to have them learn that the food is by a bush of a certain sort. Of course the room stays put.

By the time they had learned the food was by a pine tree--in one corner of the room--then I moved the bushes in a random fashion. The food was now still by the pine but it isn't where it had been. Well then, some of the birds went to where it had been even though the pine tree was now over here [gestures], and some of the birds went to the pine tree and did not go to the other corners.

I had devised a scheme of taking them in a bucket which was turned upside down, essentially, with a bale of wire around the bottom, so I had a means where I can exit from the room without the birds being released and then I could pull this string which would lift the bucket off of the birds and there they were on the floor. Well, then they all flew up right away, of course. They flew up to the perch I had provided in the room and that made them look down at the situation and proceed. After they'd calmed down, they would go to the food.

Chall: Interesting.

Cogswell: The results were mixed.

I tried starlings in a simple T maze, also, but they fought it. They wouldn't perform in a simple wire T maze where the narrow passageway leads to a T junction and you have a choice, right or left, and there's food at one end. And you can rotate the whole maze--the same principle, you see, so that the room

stays put and you rotate where the food is going to be. But starlings wouldn't behave and I wound up doing that phase of the study with Japanese quail which are a starling size bird.

They're domestic birds which Penn State had lots of. And the Japanese quail performed very well, running along this little tube--a wire T maze--and making a choice. Well, the net result of all that was that Japanese quail are like white rats.

This sort of experiment had been done with white rats years ago and some rats learned the location of things in their environment by looking at the environment, other rats learn how to get there by learning to turn right or turn left--in other words, go through the maze by following a road map, so to speak, rather than looking at the environment. So Japanese quail were mixed also. That's all I learned. That was the whole thing. [laughter]

Chall: You were learning something, obviously.

Cogswell: Well, anyway, to cap it all off, Mills for other reasons--explained to me by the president, Easton Rothwell--couldn't promote me, despite the fact that I had fulfilled, at long last, my promise to finish the Ph.D.

Chall: And by the way, did you learn something about teaching while on this fellowship?

Cogswell: Oh, I did. I taught animal behavior. I taught animal behavior three times at Cal State Hayward.

Chall: I'm talking about the fact that your grant sent you off to Pennsylvania--

Cogswell: To learn animal behavior.

Chall: But weren't you also supposed to be learning how to teach?

Cogswell: No, no, to learn more of the subject matter.

Chall: Oh, that was it. All right, I guess I must have misunderstood.

Cogswell: It was to make me a better teacher of biology by training me in a field that I had no training in.

Chall: Oh, I get it. All right, I misunderstood you. So you really did get some background to go back and teach?

Cogswell: Yes, I did, including these patterns in captivity which were not my specialty but I did them.

Chall: So Easton Rothwell said that he--

Cogswell: Well, he explained that in a department as small as ours--the other two members did have tenure. At Mills the arrangement was when you got promoted to associate professor you also had tenure. He felt that my interests, even though I had come to the department earlier than the other professor who was also somewhat interested in ecology and birds--although that other professor taught primarily physiology--and physiology was their big course, one of their big courses--he felt he needed a cellular biologist, which they didn't have any in a department of three, the third one being a botanist. They had a botanist: the man who had been chairman when I was hired and the other person was hired. So two of us with overlapping interests were hired, and the other one already had his Ph.D. so he got promoted in the due course of time and I didn't.

Chall: That was what year?

Cogswell: This was while I was gone on sabbatical--'63, '64--spring of '64 when it came to a head. Rothwell was back there visiting Washington D.C. so I went down and met him where he explained how it was to me. And he said, well, I could come back as an assistant professor, be there indefinitely--

Chall: Forever. [laughs]

Cogswell: And I said, "That doesn't sound very attractive. What if I seek another job?" When you go on sabbatical you're not supposed to--you're supposed to come back for a year, you see, at least a year because the college has paid you half-salary for no work that year to help you reinvigorate your mind. But he said, well, under the circumstances, he would have to release me, that's all. Anyway, within six weeks of that interview, I had another job.

California State University at Hayward, California, 1964-1980

Chall: And where was that? Here at Cal State?

Cogswell: Cal State Hayward.

Chall: They were just--

Cogswell: They were just underway on the hilltop. I came in their second year on the hilltop. They had several years down on at the old Hayward High School.

Chall: That's right.

Cogswell: But I came in '64, the fall of '64, as associate professor up here. I got my promotion, in other words.

Chall: Right here.

Cogswell: And of course I still had to prove myself at Cal State Hayward --and five years later to be promoted to professor.

Chall: Which you did.

Cogswell: I did.

Chall: And what were you teaching? What were you starting out to teach?

Cogswell: I started out teaching general biology, general zoology, and ecology. I had to have the first two courses only a couple of years while they were still growing. I didn't do well in the general biology course which is for non-majors. Somehow I am not a dynamic lecturer. Tom Groody was and he came and took that over. He was already there, I believe, when I came. He was famous for making biology interesting to the non-major.

Chall: Yes, I think he was on television.

Cogswell: He was the first head of Science in Action for the California Academy of Sciences, yes. He took it over gladly and I gladly gave it up. [laughter]

Chall: You have to find your own niche in this world.

Cogswell: But I taught various ecology courses, worked in the general zoology course after a number of years of lecturing in it. I taught labs in it, even though someone else was lecturing. And we organized more or less the system they still have of second-level courses, sophomore-level courses: one of which is ecology, one of which is genetics, one of which is embryology--developmental biology, I think, one of which is evolution, and the fifth one was physiology. Biology majors had to take the beginning courses, plus those five courses. They're only one-quarter courses, each course, so I worked in several of those.

But I wound up in later years teaching animal behavior along the way--three times, before they got an animal behaviorist. He happened to be in psychology, so it dropped out of the biology department. And I wound up in the later years teaching primarily ornithology and other vertebrate zoology courses such as mammology.

I complained to Cal State Hayward at one point. Some of my students wanted to take mammology and they never offered it except in the summer, and they had to work in the summer and couldn't take it. They always hired somebody from off campus to teach it and about every other year it was offered. Well, I said, "Why don't you offer it in a regular term?" And he said, "Fine. You do it."

Chall: And there you were.

Cogswell: So I did it even though I never had a course in mammology. But I taught it four times, I believe, three or four times, three times at least. I don't know whether I did a good job of it or not, but some people survived it and learned something about mammals, I'm sure. I never taught the herpetology and ichthyology courses because it's not my interest, and they had Dr. [Samuel] McGinnis who is an expert in those. He came at the same time I did.

Chall: How long were you at Cal State?

Cogswell: From '64 to 1980, therefore sixteen years. I taught again in '82. I officially retired in 1980 but went back one quarter in '82.

Studying Garbage Dumps, Birds, and Airports: Howard Cogswell Learns to Fly

Chall: Now, during that period of time you were you flying a plane? When did you start flying, Howard?

Cogswell: I flew--I had a grant. My only major research grant during my years at Cal State was 1968-71. It was originally from the U.S. Public Health Service but it got transferred to EPA when

that was set up. It was on the study of solid waste disposal and bird hazard to aircraft.⁹

I had written the proposal for that grant following an initial study at Mills College. I did a one-year study without any funds my last year at Mills before my sabbatical. I had about four or five students working with me in the field work at the Oakland Airport. The new Oakland Airport with the jet runway had just been built in Oakland. I wrote to the Port of Oakland saying, "You have a garbage dump on each side and there is a potential hazard."

At that time it was in the news because of what had happened a year or two earlier--that a four-engine jet taking off from Logan Airport in Boston had crashed into the Bay killing everybody on board after having struck a flock of starlings that flew up from the dump on the airport. American airports and airlines don't like to talk about this problem, but it's a problem in many situations.

So I had done that one-year study there for the Port of Oakland and my department chairman at Cal State Hayward, Art Smith, knew about it when he hired me, I guess, or he found out from material I supplied about what I had done at Mills. So he urged me to send in the proposal because he got the announcement of these research grants available under the Solid Waste Act. And I applied for the grant and was notified that it was approved, but not funded.

Chall: Well, that's a great help.

Cogswell: I had to ask, "What does this mean?"

"Well, this means the grant is approved and if the funds last it will be funded this year."

But they couldn't say when. They had to go down--I was way down the priority list, I guess, with funds. So in 1968 I agreed to teach summer quarter at Cal State Hayward. And I think the first of May they let me know that the grant was funded [laughter]--after I had already agreed to summer quarter. So I hired John Luther who had then just finished his master's degree at Cal State Hayward, or was just finishing.

⁹In governmental circles, the term "dump" is used only for sites that are essentially lacking management for health or pollution-control aspects. Managed sites are "solid waste disposal sites" but are included in the term "dump" herein. --H.C.

Chall: He was one of your students?

Cogswell: He was my first graduate student to complete--or second one. The first one did a plan B study, a laboratory study--didn't do any field work. And Luther did field work for his thesis. Anyway, he sort of ran my team of people. We hired a bunch of observers and got the thing organized. And he operated it really for me--with lots of conference with me because I had very little time to go into the field with him. Started up in the summer of '68. And we studied all the garbage dumps around San Francisco Bay except two that wouldn't let us in.

Chall: Those are right down here--South County?

Cogswell: Thirty-seven of them around the Bay. Thirty-seven of them there were then.

Chall: Both sides of the Bay?

Cogswell: All sides, all the way up to Suisun Bay, in fact.

Chall: Okay.

Cogswell: San Pablo Bay, the entire Bay Area. We added two more in the second year of the study--three more dumps near Travis Air Force Base, because Travis Air Force Base--after my grant was underway and in the first year of the study--it would be '68, '69, I guess it was in the winter of '69--there was almost a disaster in Travis from striking birds. And the Public Health Service--it was still under the Public Health Service then--representatives came out and they visited Oakland Airport with me and they visited Travis Airport. Those were the only two--or at Hamilton. No, we didn't go to Hamilton. Hamilton Air Force Base was cooperative; we got in there and they didn't have a dump right near by but they did have some birds transiting to the area.

Chall: And most of these birds were gulls?

Cogswell: Gulls. Most of them were gulls. But anyway, you asked me how, when did I start to fly?

Chall: Yes, exactly. [laughter]

Cogswell: From the time I submitted my grant application for this study--and before it was funded, long before it was funded, I won a free flying lesson at a drawing at Southland Shopping Center.

Chall: [laughs]

Cogswell: They had a small airplane in the shopping center one time when I went down there and were giving out tickets, you know.

Chall: Sure, why not?

Cogswell: So my first free flying lesson was then worth five dollars or something. It only lasted twenty minutes, that flying lesson.

Chall: You took off from where? The Hayward Airport?

Cogswell: From Hayward Airport. We'd fly around a little bit and come back down, that's all.

Chall: Well, but it must have intrigued you?

Cogswell: So I signed up to become the pilot. I had put in the grant application requesting money for rental of an airplane with pilot. And I was to be the observer, to observe gulls at the dumps and their flight routes.

Well, by the time I got the grant funded, I already had my pilot's license, but I was not a commercial pilot. I still intended to follow through as I had specified in the grant. So I hired a commercial pilot with his plane once. We went around parts of the South Bay which I knew intimately already. I had flown--by that time I had my own private pilot's license, could fly a plane. I didn't have an airplane yet; I flew the rental airplanes.

And I had applied--I don't remember just at what point--whether I had applied for special routes at that time or not, but anyway, we were trying to go down to see how he would work and we flew over the Hayward dump which was right close to Hayward Airport. We couldn't circle there without special permission, so I don't remember whether we circled there or not, but we went on down to Turk Island which is outside of the control area and in the Fremont Airport vicinity and Newby Island Dump, a big dump was adjacent in Milpitas. But this commercial pilot, very competent pilot, couldn't recognize things from the air, did not understand at all, "I want to circle that dump over there." I wanted him to do it without conflicting with the air traffic which was also coming to this small airport, uncontrolled airport. You have to watch the traffic, so you'd get in the pattern and you'd go around, touch and go. It was so foreign to him we spent all the time almost arguing about where to go. It was an utter waste of time!

Chall: He was just used to flying from A to B.

Cogswell: He was good at taking off, and flying, and going to the destination, coming down, and landing.

Chall: Exactly.

Cogswell: That's what he was trained to do. But to use the airplane for observation--he paid no attention to the ground. In fact, it's dangerous of course for the pilot to be looking at the birds when he is flying in a situation like this, so I didn't want him to look at the birds. I would look at the birds and he would fly the route.

Chall: That didn't work. So you began to do both?

Cogswell: That didn't work so I wound up being the pilot throughout this three-year grant from then on.

Chall: And observing?

Cogswell: At first I was using a student--no, I had an observer with me. I couldn't do the observing.

Chall: But you knew where to fly?

Cogswell: I knew where to fly. And I could see birds, you know, out of the corners but I couldn't tally their numbers or follow their routes or anything else.

Chall: So you took your graduate students?

Cogswell: I had graduate students for a while until partway--I think the rest of that year, almost the first year I had been using students. Not all of them grad students, some of them were undergrads.

Chall: Do you have to get a tremendous amount of liability insurance for this?

Cogswell: That's what I got called on. I got a call from the grant's office, the foundation office which administered my grant, and they had somehow or other--they got insurance for me, even though I was not a commercial pilot. They did take out insurance liability. Paid a very stiff rate for it--though the hours that I flew were very limited, of course. They had to look down their insurance liability categories and the only thing having anything to do with birds was a bird herder.

Well, a bird herder is sometimes exposed to dangers in the air. That's a pilot who uses the airplane to scare birds off

of croplands, and so on, you see? So you're getting the birds all flying up in alarm, they've been deliberately trying to scare the birds. We were trying not to scare birds--fly high enough--500 feet up. We didn't usually scare the gulls at all.

Chall: That's what you were trying to find out.

Cogswell: So anyway, but that's the insurance they had to pay. However, I had to lay off all the people as observers and hire non-students when the chancellor's office learned what I was doing. I didn't know there was any rule, but the grant administrator from the foundation called up one time: "Dr. Cogswell, I understand--we've been notified by the--requested from the chancellor's office to verify whether you are violating trustee regulation number..." whatever it was--fifty or something. I didn't know what trustee regulation number fifty was--never heard of it!

And it seems that years back state colleges used to use chartered airplanes to transport their athletic teams. And Cal Poly's--Cal Poly San Luis Obispo's football team coach and everybody went down in a crash which I think killed either all or most of them and so they were faced with this huge problem. It turned out that the chartered airplane they had was not really insured, at least inadequately. So they passed this regulation that it was absolutely forbidden for any student or faculty member--I think it's any student--to fly in college or university sponsored activities, except in a scheduled airline.

It didn't keep me from flying, but it kept all my students from flying. I hired Sharon Daehler. She was good. She flew with me from the start, even when I was still learning how to land, believe it or not. And I didn't always land well. I remember once we bounced at least thirty feet in the air.

Chall: Terrible! [laughter]

Cogswell: At Fremont. It's all right, you keep right on flying then. We were doing touch and goes, is what we were doing, because you stay in the pattern and you don't conflict with other traffic, you see. Here's the airport and here's the dump [gesturing]. If you touch and go here, you come around and you go right around the dump, see? Around, just went around. So you had to when the dump was right next to the airport like that. Anyway, she became the record keeper and secretary for the project after that.

I just hired non-students as observers. John Winter, who was a Forest Service lookout, he was one of the best I've ever

met at reading a map. For years he had been a summer forest lookout--he knew maps thoroughly. And he could follow a map as you flew at eighty to ninety miles an hour; he knew right where he was all the time. Not everybody did.

And Rich Stallcup was one of the helpers. He was a student at the time but then he dropped out--I think he was in that first year. I don't remember who else I had after it because John Winter was my observer when we flew the North Bay, all the time. And he wound up taking over the whole Marin/Sonoma County area for ground operations, too.

Oh, I know who another observer was--Mel Hixon, who married Sharon Daehler while my project was going on. [laughs] They were both working for me.

But that's how I began flying. This was a two-seat airplane which Bessie and I had bought which I used in the project. It was our personal aircraft; the grant did not buy the airplane. After the grant was over, the three years were over, we began to use it for trips ourselves. We went once to Vancouver in it and back to see our cousin.

Chall: Does Bessie fly?

Cogswell: No, well, she flies as a passenger.

Chall: I see, but she didn't learn how to pilot?

Cogswell: No. No, she took a pinch hitter's course, once, theoretically to enable her to land the airplane in case I passed out or something. But that two-seater was so limited for baggage; we could hardly go any distance because we could take almost no baggage in it. Two people are almost a full load, so we finally bought a four-seater, which, when we traveled by ourselves, had ample room for baggage. If you had four people as we did on a trip to Mexico once, we had very limited baggage, again.

Chall: Are you still flying?

Cogswell: No, no.

Chall: Now, was there any change? They did get rid of garbage dumps around the airport, didn't they? Is that a result of your study?

Cogswell: Not all of them. Moffett Field still has one on each side, I believe, and certainly on the Sunnyvale side they do. The

Oakland Airport ones were finally closed. Oakland had a potentially disastrous situation. San Francisco airport had dumps to the north--very small dumps to the south but two major ones to the north. And in the first year of my study--one of those was closed after the first year, the other one was closed after the second year and the number of gulls just dropped at San Francisco airport very dramatically because of that. But there are still some dumps operating around the Bay.

Chall: But your study really had an effect, you think?

Cogswell: I don't know.

Chall: You don't know?

Cogswell: I don't know. I published two papers out of it. There was never a campaign nationwide. Another phase of the project was for me to travel to various other parts of the country, primarily coastal areas, which I did all the way along the Gulf Coast up the Atlantic Coast to Maine--Pacific Coast up to Seattle. I visited various airports and evaluated them in a very quick fashion relative to the dumps that were there.

And they'd vary. There were some very bad situations at Norfolk, Virginia which I understand finally got cleaned up. Charleston, South Carolina had a situation when I visited there where they'd dump a quarter mile from the end of the main runway. The dump was not on the airport, it was just across the road from the end of the runway. They had a strike on the average once every day.

Chall: Oh, my!

Cogswell: A strike where they struck a bird. Most strikes do not cause any real disaster. They cause damage in many cases to the airplane but not major damage, most of it. But if a bird is ingested in the engine, at that time it was then a \$65,000 task to tear the engine apart, clean it all up, and replace the broken blades and so on. That's if it doesn't bring the plane down.

Chall: Yes.

Cogswell: And the situation at Travis that almost caused a disaster was a hospital plane from Vietnam loaded with wounded headed for a hospital in southern California. They had to land at Travis for some reason, I don't why, and they were to go on down to southern California. They took off full of fuel and everything for the flight to southern California under conditions in which

the tall control tower was up in the clouds. The clouds were low, though.

##

Cogswell: At Travis the hospital plane was cleared for take-off, and just as he reached the point where he was lifting off from the runway, he encountered a flock of gulls which all milled up in the front of the airplane. But the gulls won't fly into clouds either, see?

Chall: Oh!

Cogswell: So the jet airplane was going up into the clouds. Well, he struck some of the birds and by the time the pilot had reacted to what had happened, he was already through the dense layer of low overcast. And at the top of these low overcasts that are common in the Bay Area it was only less than 2000 feet up, commonly less even than 1500 or 1200 feet up. So he was up above the clouds but he only had two engines. The other two he had to shut down because they'd each ingested a bird.

Chall: Ooh.

Cogswell: Had he not taken the act of shutting the engine down, the engine may have exploded and then there's real disaster. When there's a blockage in a jet engine it overheats right away and red lights start flashing. It overheats very rapidly and the pilot immediately shut it down. He had two engines out of four operating a full-loaded airplane. But he was flying.

Okay, why didn't he come back to Travis? Because the clouds are below the minimum for relanding with anything other than full power.

Chall: Gracious!

Cogswell: With that circumstance: we haven't lost power, it's an impaired airplane, but it'll still fly. He flew all the way to southern California on two engines and landed safely.

This was a situation when we interviewed the powers that be at Travis. The commanding officer wouldn't meet with the Public Health Service people that came. The commanding officer sent his executive officer, a man on duty.

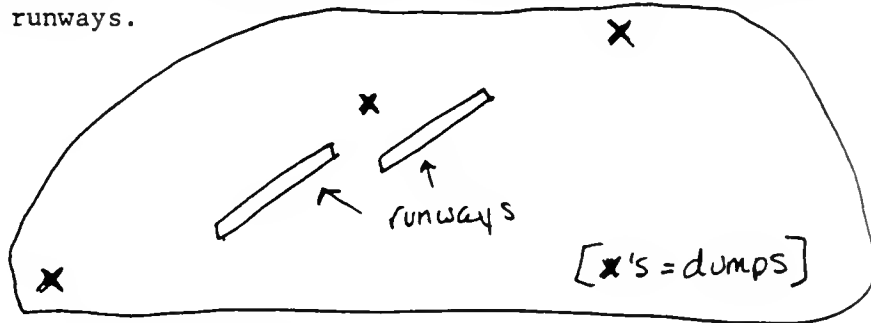
And the Public Health Service people asked him after this situation was reviewed, "What do you think, sir, is the degree of hazard from bird strikes at this airport?"

His answer was, "Deadly."

He was an honest man.

Chall: Yes.

Cogswell: But Travis had a dump on this side and then they had two long runways offset. They're not parallel--they're parallel in a sense, but they're not next to one another so it's a long runway. It's a mile and a half, two miles--no, it's nearly two miles each of those runways. That's four miles long, the actual runway system is. Then they had a dump to the southwest beyond the end of their runway, and they had another dump beyond the end of the runway to the northeast in the opposite direction. The local communities operated those dumps, but the air force had its own dump right in the middle almost between the two runways.



Chall: Ye gods! So what happened?

Cogswell: My recommendation was they close that dump right away.

Chall: Sure.

Cogswell: Which they didn't do.

Chall: Oh.

Cogswell: They operated according to all the rules--it was a clean dump as military dumps go. But it still had some gulls attracted to it, especially because of the two bigger dumps at either end.

Chall: Yes, surely they'd be flying--

Cogswell: And they'd go from one to the other right down the runway.
[doorbell] Sorry about that. [tape interruption] I don't know what happened because I never followed up on that.

Author, *Water Birds of California*¹⁰

Chall: Now, I want to ask you, about when it was that you wrote your book?

Cogswell: Water Birds of California?

Chall: When did you do it?

Cogswell: It was published in 1977. I started it while I was at Mills College. It was a different book then. It was to be Water and Large Land Birds of the Bay Area. The first natural history guides that UC Press had were focused on the Bay Area and then they had some just focused on southern California. I submitted--in fact, one--I forgot whether it was complete--no, it was just species accounts, I think, that I had submitted when it was Water and Large Land Birds of the Bay Area.

But the press by that time was beginning to take a more statewide view, and so they finally--they didn't reject it in a sense; they said, "Can you do one of expanded coverage across the central California including the Sierra?" So you had that. And Ken Stager of the Los Angeles Museum was to do a southern California one, comparable. Two books. Water and Large Land Birds would be one and Small Land Birds would be another book. Anyway, I did work on it on and off for years, but when I came to Cal State Hayward I was finishing up the text of the first one.

Art Smith was the series editor. He was my department chairman at Cal State Hayward and he and I had several discussions about it. I finally went back to work on it when it became statewide and was narrowed down to just water birds. There were to be two books on land birds, then, statewide. So it got postponed and postponed and postponed many times, but the last year or year and a half or so was when I wrote it.

Chall: When you were still on faculty?

Cogswell: Oh, yes. '76-77.

Chall: Did you have your students helping you then?

Cogswell: No, they didn't help on the book.

¹⁰Howard L Cogswell, Water Birds of California (Berkeley: University of California Press, 1977).

IV IN RETIREMENT: CONTINUING ACTIVITY AND CONCERN FOR THE ENVIRONMENT

John Thorpe's Mitigation Proposals for the Shorelands Project

- Chall: When John Thorpe came into the Baumberg Tract area--now you gave me, during our first interview, a lot of information about your interest in his plan, at least with respect to snowy plover--the snowy plover islands, I guess. Is that what they were called?
- Cogswell: His proposed mitigation. His first mitigation offers were very poor, but as time went on and he gradually realized--even Richard Murray and others told him, "Yes, we've got a lot of wetlands, and you've got to do something to mitigate destruction of it." And he became aware of that, convinced of it. He did come up--Murray came up with these concepts for islands--I think they were debating whether they would take over whole sections of some of the Leslie Salt ponds to the west, not in the Baumberg Tract but out in the area to the west, and modify them for the mitigation activities. The major trouble was that Leslie Salt never let it be known that he could even do that. He didn't have any option on those other properties.
- Chall: But you felt that if he could be granted this property, that it might work, that this might be a possible solution.
- Cogswell: I thought it was worth looking at, that's all. That's all I ever expressed. I thought that several people of unbiased opinions about the ground objective but competent to evaluate the habitat should have evaluated the proposed mitigation--whether it could be done and maintained--that's all.
- Chall: When all of this was going on, besides your own contacts with Thorpe--and there was in your material, letters that he sent you--were you in contact with the people who were doing and

evaluating the biological studies like Steve Foreman, Paul Kelly, Peter Sorensen?

Cogswell: Paul Kelly was a student of mine at this time. And then after he finished his master's degree, he went to work for the Fish and Game Department and was the representative to visit properties in Alameda County, anyway--perhaps Alameda and Contra Costa County--to evaluate each proposal for development in this area and report to his superiors in the Fish and Game Department. So that's one reason he got in there; he had been in there when he was a grad student of mine.

Chall: But you weren't in contact with these so-called third party people?

Cogswell: No. Foreman was not involved. He wasn't involved until very recently.

Chall: Well, he did one of the first biological studies for Thorpe--for background for the EIR/EIS [Environmental Impact Report/Environmental Impact Statement].¹²

Cogswell: For Thorpe?

Chall: Well, for the company that he worked for, WESCO.

Cogswell: For the consulting firm.

Chall: Yes, right. And his work in the biological study was then used by the people who did the later study. Karen Weissman and Tom Reid--Thomas Reid Associates.

Cogswell: You've contacted more consultants than I ever have. [laughs]

Chall: All right. Now were you ever in touch with Mr. Storm, who was with the city [Hayward] planning staff?

Cogswell: Martin Storm, sure.

Chall: You knew him from HASPA?

Cogswell: HASPA, right, because he was the city's representative to the HASPA agency. Their staff recommended him.

¹²"Biological Assesment for the Proposed Shorelands Project," Prepared by Western Ecological Services Company [WESCO], June 1987.

Plans for the Baumberg Tract Restoration Project

Chall: Now, in terms of the restoration, since you know intimately the Baumberg area and the Baumberg Tract, you are one of the public persons who gets an occasional notification, I guess, of a meeting. Do you have any input into what is being planned? Do they ask you? Do you submit--

Cogswell: By Foreman's group now?

Chall: Yes, and Wilcox? Yes, Foreman is, again, in charge.¹³

Cogswell: Yes, his firm is now coming up with a plan for restoration which the Fish and Game will accept or not accept as the case may be.

Chall: Fish and Wildlife Service, too, I presume.

Cogswell: No, it's for the state Fish and Game Department.

Chall: Fish and Game, that's right.

Cogswell: Primarily. The U.S. Fish and Wildlife Service will probably look at it, but the money is coming from the state for his study.

Chall: That's right.

Cogswell: I've been to two meetings. They had one early on to sort of ask people what their concerns were.

Chall: Yes.

Cogswell: And then they had another one after they had made some progress with, "These are the sorts of things we're looking at," and possibly this and possibly that.

Chall: Yes.

Cogswell: But they weren't yet saying this is alternative A, B, and C. In general, they're proposing to open more than half of it I think to tide action--make tidal marsh out of it, which means

¹³Steve Foreman, now with LSA Associates, is project manager of the Baumberg Tract Restoration Project. Carl Wilcox, Environmental Services Supervisor with the Department of Fish and Game, also has the title project manager.

in order to do that they will have to excavate Mt. Eden Creek--quite a bit of it.

Carl Wilcox told me that they have been thinking--I don't know whether he means the consultants have been thinking, or they, the Fish and Game have been thinking--that they won't have to get a permit from the BCDC [Bay Conservation and Development Commission], for example, because they are not going to dredge the lower tidal portion--the part that is now fully tidal--they're hoping just to dredge only the upper muted tidal part.

His idea was to dredge the upper part which is not fully tidal because it's been banked up by Cargill Salt years ago--Leslie Salt--and then let it scour the outer channel by itself in other words. Well, that would be a long process if they do it. I think Foreman's group, if they haven't investigated that, they'll have to decide how much excavation is necessary. They've got to get water there in quantity in order to have tide flow adequate to develop good tidal marsh.

But the whole thing is they're trying to provide habitat for the salt marsh harvest mouse and the clapper rail, both of which are best served by having tidal marsh, the clapper rail absolutely requiring it. They're also trying to have habitat for the snowy plover.

Chall: Right, [laughter] which has a different habitat.

Cogswell: Which has a very different habitat. So they've got to decide how much of each type of habitat they're going to have and how it's going to be maintained.

Chall: That's really a problem because there weren't that many plover areas there. Well, you saw what there was. But to set it up for very specific plover habitat--

Cogswell: Well, it has to be managed. As it was, the reason that snowy plovers were there in such quantities is because for a time it was excellent habitat. The area that was excellent habitat is no longer excellent habitat because the plants are growing in it now and snowy plovers don't get along with any significant number of plants.

Chall: So do you think that they can turn this into something that is habitat for three species, two of which require a different habitat as the land is now?

Cogswell: No, they'd have to manage it.

Chall: And that's expensive.

Cogswell: Yes, yes, they'll have to manage it. To maintain snowy plover habitat, they've got to have bare ground and bare ground with certain special features. They can't keep it bare ground as long as it rains on it and the salts are leached out of it. If the rain water is drained away--

There's some excellent work going on at the Oliver Brothers North, north of Route 92, in those salt ponds. [Map 1] That's a different consultant firm. They've come up with a plan there which is hopefully going to work. And there, they're going to try to maintain snowy plover habitat over most of the property because that's what it is now. That's where many of the snowy plovers have gone. And in order to maintain the quality there, they're going to plan to flood the area in late September, just after the nesting season's over--flood it with salt water--and maintain moisture in the area and then drain it off again to allow it to dry up. And of course you have to allow for rain water, also.

Chall: Who's managing that? Is that being run by HASPA?

Cogswell: It's HARD [Hayward Area Recreation and Park District] who has authorized the study. It's a big, thick study, now.

Chall: So that's the Hayward Area Shoreline?

Cogswell: For the Shoreline Interpretive Center--just west of that.

Chall: Is that HARD property now?

Cogswell: It's HARD's now.

Chall: Okay, then I know where that is.

Cogswell: Francesca Demgen is the leader of that team--Woodward-Clyde Consultants, downtown Oakland. I went to two of their work sessions, but didn't go to all of them. I was representing--Ned Lyke and I were the two members of the citizens advisory committee. Ned Lyke from Cal State Hayward. L-Y-K-E--Edward B. Lyke. He goes by Ned, even though his name is Edward. [walks away and returns] I have so much unfiled it's terrible, but I have here a document, the EIR--the plan for this--it's large; they just completed it a month or so ago.

Helping to Set Bay Area Regional Wetlands Goals

- Chall: Well, I think since we're now moving off Baumberg, maybe that's about all we need to do. I just wondered, however, where you were in terms of the environment as a private citizen, as it were.
- Cogswell: I have worked for the past three years intermittently on the Regional Wetlands Goals. I don't know whether you know about that project or not. It's a multi-agency study. They have just now, this week, been holding their public workshops, public hearings so to speak. They're not called hearings but workshops, on the wetlands goals for the entire Bay.
- Chall: I see.
- Cogswell: [walks away and returns] I know I have a public review of that.
- Chall: That's a major undertaking.
- Cogswell: Somewhere here--these are the proposals.¹⁴ This is the primary one. But then for each broad area they have alternate views. These are just different ways. My comments here--here's a map of the original historic conditions: 1770 to 1820, approximately. And present conditions to compare with these, you see.
- Chall: I see. Tell me about Regional Wetlands Goals. Is there an administrative--a state or a national--structure?
- Cogswell: It's being administered by the San Francisco Bay Area Wetlands Goals Project.
- Chall: Is that a private--
- Cogswell: No, it's a multi-agency thing. The head people are the--the resource managers group include San Francisco Bay Conservation and Development Commission--BCDC, in other words, state Department of Fish and Game, the San Francisco Bay Regional Water Quality Control Board, U.S. Fish and Wildlife Service, National Marine Fishery Service, state Coastal Conservancy, state Department of Water Resources, well, these are all representatives.

¹⁴Regional Wetlands Goals' Draft Report for Public Review, June 26, 1998.

Chall: All the agencies of the Bay Area.

Cogswell: Practically, yes.

Chall: I see. And you are a representative, also?

Cogswell: I'm just one of the volunteers who has worked in the development of this. I'm a member of their "other wetland birds" focus team. They have five focus teams that they worked with as they were developing these goals. They subdivided the work, in other words. They had a shorebirds and waterfowl team; they had a mammals, amphibians, reptiles, and major invertebrates--some of the invertebrates--terrestrial invertebrates, they say--team; they had another birds team; they have a fish team; and they have a plant team.

Chall: Oh, my!

Cogswell: Five teams. And when they each developed the goals for their own group of species we had to try to merge them. We had integration sessions where we had all these teams together trying to argue back and forth and get it out. So this is the document that came out. This is not a thing that will be--there'll be no enforcement of it possible, because there are so many agencies involved. It will be the expressed goal and hopefully local agencies will make decisions in land use to try to approach these goals. These are long-range goals, not just for ten years, but fifty to a hundred years is the time frame.

Chall: So that's your present activity?

Cogswell: Well, my present activity is mostly other things. Bird records. [sighs]

Chall: Well, you certainly are keeping those.

Analyzing Environmental Regulations for Environmental Protection

Chall: Howard, I've read the biological opinions in the EIR/EIS and found out what developers like John Thorpe had to go through and what the agencies had to go through in order to make decisions on the Baumberg Tract. I wondered how people--all of the agency people, as well as you on another side of this problem--feel about the regulations that are involved in these studies--passing all the so-called hurdles for the EPA and Fish

and Wildlife, Fish and Game, BCDC. It takes a lot of time, it takes a lot of money. The regulations might seem too difficult. How important are these regulations for the preservation of the ecosystems?

Cogswell: Well [coughs]--I had a cough drop and hopefully it will work.

Chall: It worked for me.

Cogswell: From the standpoint of environments in general, there is a move now becoming more and more widespread of plans to preserve "whole ecosystems." The people who are so proposing sometimes don't understand what an ecosystem is--whole communities would be a better way of putting it: commonly, large communities and in a large quantity--and therefore preserve all of the animals and plants that are a part of that community, at least in an adequate amount.

Now, Orange County is famous for having done a lot of that through the Irvine Ranch and so on where they have a huge ranch area being subdivided gradually for development purposes. They establish large areas of adequate habitat for the native vegetation which they are otherwise destroying in large areas. That may be a better route in the long run. Some people think it is--to preserve more than they ever would if they just take each piecemeal development and argue about that particular location.

Well, all of that's fine if it is a widespread, large, area-type habitat. Wetlands are not that kind of habitat. I don't think it will work well with wetlands simply because wetlands by their very nature are border communities. They're a border between water and land and you don't have big acreages of them available to do that with, for the most part. It's true that on the San Francisco Bay, if you had that approach--and partly this wetlands goals project has that approach. But they're making the assumption there will be no more productive salt ponds, that the whole salt company will cease operation. Cargill Salt has already spoken to this document. I was at the meeting where they did. And there's no alternative in here to continue to save wetlands of this marsh sort with the salt ponds still in operation.

Chall: Well, now, isn't that rather short-sighted?

Cogswell: I think they ought to have had an alternative, or an interim goal, let's say. They could have called it an interim goal, but the people who worked on this for the most part felt that in the long run there is not going to be a salt company

operating in the San Francisco Bay Area. They've already closed in the North Bay, they've closed Moss Landing, they've closed part of San Diego Bay, and so they look at these situations and they make the assumption that in the long range future it's going to happen here also.

Chall: Well, fifty years from now, maybe that's true, but in the meantime--

Cogswell: But as far as Cargill is concerned, Paul Shepherd at the meeting in San Carlos this past week Monday night said, "Salt operations in San Francisco Bay have been here for 150 years. Why do you expect it to change in the next fifty?" [See Appendix B]

Chall: But besides the salt aren't they concerned about development, building, housing, or whatever might be?

Cogswell: Yes, but I'm just saying that they don't have a big area in which you can take the habitat conservation approach of, "We'll set aside this whole area, if you let us develop this." That's really how that happens in Orange County. "If we can have this big area to develop, we will give you this area over here." But it takes big land ownerships and the only such big land ownership around San Francisco Bay is Cargill Salt--big ownership.

Chall: I get it.

Cogswell: So it won't work so well. And wetlands, in general, are by nature either linear or spotty in their distribution, so they're increasingly impacted despite the fact that we've had several administrations of our government--federal and state governments now, both parties, Republicans and Democrats--that have adopted "no net wetland loss." But it has continued to be lost. Not as rapidly, not nearly as rapidly as it used to be, but there's still some loss going on.

Chall: And is that loss because even with all the studies, EIR/EISs, that--

Cogswell: Partly. Partly it's because mitigation is required but is either never completed or does not work the way it was supposed to work. Partly because the development is allowed to proceed and the mitigation comes later and in the meantime the wetland value has been lost for that particular location.

Chall: So it means that despite all the regulations and the work that goes into studies that sometimes they're not enforced?

Different administrators look at enforcement in a different way?

Cogswell: The Clean Water Act, which is the primary one that preserves wetlands--

Chall: Right.

Cogswell: Section 404 I think it is of the Clean Water Act has had little pieces cut out of it--or not cut out of it, but modifications made. One of which I didn't learn about until recently with regard to an area immediately adjacent to--almost immediately adjacent to--the Baumberg Tract. It is adjacent on the eastern most portion.

Chall: That's the Oliver--

Cogswell: Oliver West property. The Oliver West [Oliver Hayfield] property west of the railroad, just east of the eastern most part of the Baumberg Tract. [See Map 1 and Appendix D] It used to be that the habitat there was very comparable to that eastern most part--had pickleweed, had ponds, gun club ponds which were in there, and wetland values. It has been claimed now by the consultant for the city of Hayward--although, I believe, paid for by the proposed developers who were never named--that there's less than a half-acre of wetlands in that entire property.

The basis for their claiming--they don't say in their report, but I believe is a clause of the Clean Water Act called "prior converted wetlands". Under that clause, if wetlands were converted to agricultural production prior to 1985, they are exempt. That was a weakening of the Clean Water Act that was passed. If converted prior to 1985, then, they are exempt. I believe that it was the intent of that aspect of the law to let farmers off the hook who had converted to farm production and therefore they wouldn't be required to mitigate their damage to the wetlands if they did it before 1985. But now we have a situation in the Oliver West where: oh, yes, it was farmed intensely, so intensely, in fact, that most of the wetland indicator vegetation was not there because it was farmed deliberately out of existence. This winter it was flooded with a solid sheet of water over the whole property, but they pumped water out of it rapidly. Ron Barklow can give you pictures of it, he says.

But you go there two weeks later after the big heavy storms and there's not a shred of water on it because they pump it all

off. Okay, so it's farmed intensely. As long as it's farming, it's legal.

Chall: I see.

Cogswell: But now they're proposing to build 578 houses on it. We, at HASPA, the citizens advisory group, recommended against it. HASPA, in a weak fashion, recommended against it because other components of HASPA wanted the development. On the rest of the property, particularly on the east side of the railroad, the proposal is for light industry plus a sports park. Dick Sheridan, head of the HASPA agency--right now he's trustee of HARD, board member of HARD--they need a sports park, he says. Well, okay, the developer promises a sports park to them. [Weber Property, Map 1; Appendix D]

Chall: I see.

Cogswell: But only if he gets 578 houses on the west side. They have to fill that west side land any where from two to eight feet deep with earth from the hills in order to bring it above the level where it will survive a hundred-year flood.

Now this is what the city of Hayward is going to do. This is an instance of--I think--I can't prove it, but they farmed that property so intensely since Alden Oliver died. Gordon Oliver took over the property--I don't know--Gordon took over the Salt Company. I think he inherited all of this.

Adolph Oliver, also a nephew of Oliver, is a member of the HASPA citizens advisory board. He teaches geology at Chabot College.

Chall: Oh.

Cogswell: But he's not an owner of the property. Gordon inherited the property.

Chall: Well, the property was in the hands of the Congregational church, I think.

Cogswell: Well, that's because Gordon died and that was in his will.

Chall: He left it in the trust. So what you're saying is that the regulations that have been set up by the Clean Water Act and other agencies are not always as strict as originally drafted.

Cogswell: There are numerous little ways in which people can get around them.

Chall: So you feel that citizens and others should be watchful.

Cogswell: Very watchful, very watchful, yes.

Chall: So do you think that those regulations are not so onerous that they shouldn't be reduced in scope?

Cogswell: No, I'll cite another instance. It isn't in the Baumberg area but it's in an area that I knew very well because I studied the bird population of it for Leslie Salt Company before '85. That's the area that became a test case up to the Supreme Court of the United States--the Coyote Tract in Newark which is right across Thornton Avenue from the National Wildlife Refuge headquarters.

In '84-85, Leslie Salt Company started to build drainage ditches on that property. They built a small basin to receive the water where it could drain into an adjacent Caltrans [California Department of Transportation] ditch next to the freeway. They got stopped right away because--I don't know who it was that reported it--either somebody from the refuge or Margaret Lewis from Newark who lives nearby and was always watching. So they had a cease-and-desist order issued, first by the Corps of Engineers [USCE] and then confirmed by EPA that, yes, it's proper that this should not be done without a permit from the USCE. Leslie Salt claimed they didn't need a permit and that the United States had no jurisdiction over this. Okay? So they took it to court.

And part of my study--and three other consultants were doing other studies. Michael Josselyn was studying the plants, a soil scientist from Louisiana or somewhere, supposedly tops in his field, was studying these soils, and I was studying the birds. Maybe that's all that was going on. But we each studied separately; we never saw what the other consultants were doing. We each gave our separate reports to the company.

I was not to evaluate it for wetlands at all--just to observe what birds were using it and what habitats they were using and how many of them--which is what we did.

It went to the U.S. District Court because the company sued the government for having issued a cease-and-desist order. They complied with the cease-and-desist order, but they wanted to get started on the development for industry. Anyway, this is a 150-some acres property, the western portion of which was by all indications obviously a wetlands: pickleweed in parts of it, tidal water even reached part of it because of a pipe that had been laid there. It originally had been diked off. It had

been salt crystallizers in the early years, the first Leslie Salt Plant that ever existed. It was right there. But in the district court which I appeared in as a witness along with the other consultants--I was there by myself, just before Judge [Charles] Legge--Judge Legge wound up granting the company more than they really asked for.

But as a result of urging from the environmentalists that were knowledgeable about it, the Corps of Engineers finally got the U.S. Attorney to appeal the decision just within the nick of time. They had thirty days or forty days, or whatever it was, to appeal it. The government did appeal the decision. The appeals court reversed Judge Legge's decision and said, "Yes, there's evidence that there are wetland values there that the company is disregarding. And the U.S. therefore does have an interest in it."

The company still maintained through their attorneys that the U.S. has no business here. That's what Legge agreed with, that it is not wetlands, that it is not connected to tide action. Or, it wouldn't be connected except, as Legge put it in his decision, he says, "Water backing up through the pipe which Caltrans put in without any special permission. Without asking permission from Leslie Salt, Caltrans put a pipe under their road when they put the road there. There wouldn't be tide if there hadn't been for that pipe and therefore the government is responsible for it being tidal."

Well, water in my opinion doesn't flow uphill; it always flows downhill. [laughter] So the pipe is there, fine. The level is lower than the high tide and it's evident that in high tide water comes in there. It's only the west part--10 to 15 percent of the property that gets wet at any high tide. There's another piece of wetlands that was excavated at the old salt operations which gets water and stays wet for a long while. Although the company appealed the appeals court decision, and the appeal was filed with the Supreme Court, the Supreme Court refused to hear it.

Chall: This is the State Supreme Court?

Cogswell: No, this is the U.S. Supreme Court. They refused to hear it, which leaves the appeals court decision standing. Finally, the company applied for a permit. They wouldn't apply for a permit all this time, see?

They had a wetlands evaluation. The acreage was decided--how much of it was wetlands. And it included this depressed area that had been excavated--artificial wetlands because it

had been excavated many years ago. They had to mitigate for that. They had to preserve the wetlands that existed on the west side, and they had to add to that.

I wrote an opinion as consultant to Michael Josselyn's firm (Wetlands Research Associates) about the consolidation. I agreed. In my opinion it's better for the wildlife in the area and everything if the wetlands are all consolidated in a larger area rather than having one little piece stuck over here in the middle of urban development. Seven to eight acres over there, I think, were to be added to the fifteen over here [gestures]. So they now had a wetlands being developed along the west side.

Some people say--well, the rest of it, they did get their permit. They got their development permit on the other 100 plus acres. Big, new industrial buildings are going up there now. So here was an area, where had the company paid attention and finally accepted the fact that there was a Clean Water Act that did pertain to part of the property. They could have gotten their permit without spending the hundreds of thousands of dollars if not millions that they spent on attorneys' fees. They wound up having to do the same thing. They won't admit that there was a waste, I feel, because they have other properties they want to do the same thing with.¹⁵

Chall: So there's a value in these restrictions, even though they seem onerous to people like maybe Leslie Salt?

Cogswell: They're more onerous to those who don't wish to comply.

Chall: But they do have--you feel that they have value to the environment and for the preservation of wildlife?

Cogswell: Yes, they do.

Chall: And they should be honored?

Cogswell: If it's done properly. And Thorpe's problem with the mitigation aspects--one aspect--was he never could bring himself to do any mitigation on site. And he didn't have permission from Leslie Salt--at least, they never let it be known he did--to use their property adjacent for his mitigation.

¹⁵This case is described by Gordy Slack, "Wetlands or Just Wet Lands," Sierra Club Wetlands Reader, Sam Wilson and Tom Moritz, editors, in Sierra Club Books, San Francisco, 1996, pp. 215-223.

Chall: And then there were other problems having to do with predators and all sorts of things.

Cogswell: Hello! [greeting his wife]

Chall: Well, okay, I think we have company and just in time! Thank you very much.

Cogswell: Okay.

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California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

John M. Thorpe

THE SHORELANDS PROJECT: THE UNATTAINED VISION

An Interview conducted by
Malca Chall
in 1997 and 1998



John M. Thorpe

TABLE OF CONTENTS--John M. Thorpe

THE SHORELANDS PROJECT: THE UNATTAINED VISION

INTERVIEW HISTORY	77
BIOGRAPHICAL INFORMATION	80
I FAMILY BACKGROUND: THE COLORFUL LIVES OF JOHN THORPE'S GRANDPARENTS	81
The Maternal Side: The Schwabs	81
The Paternal Side: The Thorpes	81
II EDUCATION: HAYWARD, MENLO PARK, STANFORD, BOSTON, AND OTHER EXPERIENCES	89
Herman Mark and Albert Einstein	90
III ESTABLISHING A LAW PRACTICE IN HAYWARD	92
Winning Important Lawsuits	93
Workman's Compensation	93
The National Assessors' Bribery/Property Tax Scandal:	
The California Class-Action Suit and Its Reward	93
Long-Term Interest in Property Development	96
From Whence the Special Thorpe Spirit?	97
IV THE SHORELANDS: ITS ORIGINS AS A SOLUTION TO TRAFFIC PROBLEMS	99
Working with the Leslie (Cargill) Salt Company	102
The Response of the City of Hayward	104
The Baumberg Tract: Marginal Open Space Value	105
V A BRIEF HISTORY OF THE BAUMBERG TRACT; SALT PRODUCTION; AGRICULTURE; WETLANDS; REPUTED VALUE OF BAUMBERG TRACT TO WILDLIFE	109
VI THORPE'S PLAN FOR THE SHORELANDS AND THE ULTIMATE DEFEAT, 1982-1992	118
The Basic Plan	118
Problems with the Environmental Community	122
Plans for the Racetrack	124
The City of Hayward: A Roadblock	127
Attempts to Overturn the Jeopardy Opinion of 1987	129
Meetings with Representatives of Environmental Agencies	131
Attempts to Solve the Predator Problem	133
Lack of Support from the City of Hayward: Thorpe Drops the Shorelands Project, 1992	133
The Finances: The Limited Partnership, Bankruptcy, and Subsequent Continuing Litigation	134

John Thorpe's Personal Loss: The Historic House, the Classic Cars	139
Background on Interested Commercial Developers for Shorelands	141
More on the Racetrack	142
The Corps of Engineers	143
The U.S. Fish and Wildlife Service	145
The State Department of Fish and Game	146
The Bay Conservation and Development Commission	146
The East Bay Regional Park District	147
The Media	148
"The Wild Edge" TV Documentary on the Baumberg Tract	148

INTERVIEW HISTORY--John M. Thorpe

Between 1982 and 1992, John Thorpe, a Hayward attorney specializing in real estate, was inextricably linked with the Shorelands Project. Mr. Thorpe was already well known as a developer of Columbia homes in the Castro Valley hills, and for his role in uncovering the assessors' scandals in Alameda and San Francisco counties during the 1960s. But it was his attempt to build Shorelands on the Baumberg Tract in Hayward that kept him in the headlines of the local newspapers for a decade.

The Shorelands Project can be summarized as follows: According to his brochure, Mr. Thorpe proposed to "develop approximately 706 acres on the former Baumberg Salt Plant site, and to offer approximately 500+ acres as wildlife habitat mitigation land." He planned to build, among other things, a racetrack and ancillary facilities, an industrial research and development complex, a hotel, restaurant, and family-oriented recreation park. Five hundred or so acres of adjoining marshlands and special habitat would be dedicated, for mitigation purposes, to birds and other wildlife which his project might endanger. Although this plan would encompass some 1200 acres, he had taken an option on less than half that acreage from the Leslie Salt Division of the Cargill Company.

Although the city of Hayward initially approved and perhaps even encouraged this plan, the project faced trouble when it was examined under the various state and federal environmental guidelines, and closely scrutinized by local environmentalists. Never doubting ultimate success, Mr. Thorpe pushed ahead with his ambitious plans for a decade. He took out permits, got the necessary supporting documentation for the Environmental Impact Reports/Statements (EIR/EIS), established an office and staff, organized a partnership, raised funds, hired his own land, bird and mitigation experts, revised his plans to meet objections, and kept up a steady flow of correspondence on behalf of his project with his partners, city staff, and many others.

Yet, in spite of spending millions of dollars, and exhaustive efforts in many directions, Mr. Thorpe could not overcome the objections of the Fish and Wildlife Service--not to mention the environmental community--to the construction of a racetrack on the Baumberg site, without being able to provide the necessary mitigation on another site. Fish and Wildlife Service and environmental activists felt that development would jeopardize the real or potential existence of the salt marsh harvest mouse and several threatened and/or endangered species of birds. After redesigning and resubmitting his development plans, and facing severe financial hardship, Mr. Thorpe finally withdrew in 1992

his application for a permit to develop Shorelands. As late as 1998 a lawsuit against some of his original backers was pending.

Four years later (1996) Cargill sold the Baumberg Tract to the California Conservation Board. Now under the management of the state Department of Fish and Game, the Baumberg Tract is the setting for a wildlife restoration project (Eden Landing Ecological Reserve), a project created to satisfy mitigation requirements of developments in neighboring communities.

John Thorpe agreed to record his story about the rise and fall of his vision of the Shorelands Project. His story is essential to understanding the history of the Baumberg Tract as well as the impact of the Clean Water and Endangered Species acts on developments which threaten habitat, plant and wildlife species.

During our first two-hour interview, held in his office on Saturday morning, May 10, 1997, Mr. Thorpe began by launching into a discussion of the history of the Shorelands Project from 1983 through 1992. My knowledge of the Shorelands Project as that time came from the extensive collection of material lent to me by Howard Cogswell, which went only through December 1987, the date when Mr. Thorpe withdrew his first permit application. I learned during this interview with John Thorpe that he had continued to pursue his goal until December 1992.

Mr. Thorpe discussed his experiences dealing with Cargill Company, with the personnel in the Fish and Wildlife Service, the Department of Fish and Game, and other regulatory agencies, and with the experts he had hired on mitigation, birds, predation, and biological assessment to help him pass the regulatory hurdles. We also discussed his ongoing lawsuit, the bankruptcy, and the resulting loss of his magnificent, historic house/office and his renowned collection of vintage cars. I left with two hours of tape and a notebook full of additional data.

We had a second two-hour interview on Saturday morning, February 2, 1998. During the first hour we concentrated on John Thorpe's personal background as a Hayward native, and his family history. Both his parents were doctors, and his forebears were gifted; one of his ancestors was a noted political radical. We also discussed his education, and his business and professional interests in the Hayward area. The reader of this interview may find that these personal details explain his vision of Hayward and his dedication to the Shorelands Project. During the second interview we discussed the Shorelands Project by focusing on his attempts to circumvent the Fish and Wildlife's Service's 1992 draft jeopardy opinion, his belief that he had actually received a favorable opinion from the Fish and Wildlife Service, and his feeling that the city of Hayward failed to give him the necessary final approval. He looks back philosophically on the whole experience.

Mr. Thorpe is a tall, large-framed, intelligent and restless man. His presence fills a room. He would often get up during the interview and move about the room to demonstrate a point. Eager to tell his story, he would shift from event to event, seeming at times to stray from the subject at hand, but eventually, never really losing the thread, get right back where he intended to be when he began. It is easy to understand why newspaper reporters, following his activities, could see him as interesting copy. Although his manner of telling a story is easily followed in person, it needed a bit of editing to make it understandable to the reader. Therefore, where I felt it necessary for the sake of clarity and continuity, I revised the transcript. The substance remains unchanged. I also chose to place the second interview first. In reviewing his transcript, Mr. Thorpe filled in names and made minor corrections.

John Thorpe generously provided copies of his excellent brochure on the Shorelands development so that one copy could be placed in an envelope in the back cover of each volume. Material used to illustrate his chapter came from various sources. As stated earlier, this volume on the history of the Baumberg Tract could not have been complete without the interview with John Thorpe. What makes it particularly valuable is his "let the axe fall where it may" candor--whether in regard to himself or the many other persons, helpful or aggravating, with whom he came into contact.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer/Editor

January 2000
Regional Oral History Office
University of California, Berkeley

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Room 486 The Bancroft Library

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Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name JOHN MILTON THORPE

Date of birth 9/23/32 Birthplace HAYWARD, CA

Father's full name MILTON WILLIAM THORPE

Occupation MEDICAL DOCTOR Birthplace ALAMEDA, CA

Mother's full name JENNY THORPE

Occupation MEDICAL DOCTOR Birthplace CHICAGO, IL

Your spouse PAULETTE N. THORPE

Occupation LEGAL SECRETARY Birthplace SAN FRANCISCO, CA

Your children NELSON VICTOR THORPE

Where did you grow up? HAYWARD, CA

Present community HAYWARD, CA

Education B.A. STANFORD UNIVERSITY - 1954

LL.B. BOALT HALL, UNIV OF CALIF. - 1957

Occupation(s) ATTORNEY AT LAW

Areas of expertise PROPERTY

Other interests or activities _____

Organizations in which you are active _____

INTERVIEW WITH JOHN M. THORPE

*THE SHORELANDS PROJECT: THE UNATTAINED VISION***I FAMILY BACKGROUND: THE COLORFUL LIVES OF JOHN THORPE'S GRANDPARENTS**[Interview 2: February 28, 1998] ##¹

Chall: I always like to know how people got where they are, so I'd like to know a little bit about your family background and your education and something about your own career that brought you into development projects. I know two of them: Shorelands and Columbia [Castro Valley]. You're an attorney as well. Did you grow up in Hayward?

The Maternal Side: The Schwabs

Thorpe: Actually, I was born in Hayward in 1932. I was born on the front porch of a house on what was then Soto Street. It's now Montgomery. Somehow they renamed Soto Street. My father and mother were both doctors. My mother graduated from UC medical school second in her class in 1924. My father graduated also from UC med school. They were both unusual in Hayward in that they were both on the staff of both Stanford University hospital and UC med school hospital. My mother had graduated second in her class from the University of California, missing the University Medal by one point because she flunked PE [physical education] [laughter].

My mother's mother came to California just before the earthquake, to San Francisco. My mother's father [Michael Schwab] was one of seven unfortunate Americans who were the first defendants convicted of sedition in peacetime in American history. My mother's father had given a speech in Chicago at the first

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcripts.

Labor Day picnic in American history, at what became Haymarket Square--someone threw a bomb that killed and maimed some policemen. There was a police group who had been used for the purpose of being strikebreakers at earlier strikes, so they came in on this Labor Day picnic. They didn't appreciate the concept of labor organization. My grandfather had given a speech, and they arrested him for having stated something in his speech--or since he was editor of a German language newspaper, the Arbeiter Zeitung, which means the "Daily Worker," having said something in his paper that may have incited some person or persons unknown to throw the bomb.

Of the seven, the seven were convicted and sentenced to death. Their defense counsel was a rather well-known attorney by the name of Clarence Darrow--the Scopes Trial, the "Monkey Lawyer". My grandfather and the others were trundled off to Joliet Penitentiary for execution. Three were hanged, and a fourth allegedly committed suicide by chewing off a dynamite cap while in his cell. Of course the question of how one acquires dynamite while in one's cell is an interesting one. But in any event, my grandfather's sentence was finally commuted by the then-governor of Illinois to life imprisonment. I am named after that governor. His name was John Peter Altgeld. I am named John after him. My mother's name was Johanna after--

Chall: Is your name John Peter?

Thorpe: No. But my mother's name was Johanna Altgeld Schwab Thorpe. My mother was also named after Altgeld. Eventually Altgeld pardoned my grandfather. He couldn't pardon him initially, he said, because they were about to have the Democratic convention in Chicago. He said, "If I pardon you there's going to be such an awesome outcry that the other side will get elected. It would have a deleterious impact on the election." That's why he commuted the sentence instead of pardoning him initially.

Then during the convention an unknown stole the podium and uttered a remarkable speech--one of the most famous speeches in American history. William Jennings Bryan. The podium was empty, and so he just jumped on it and started speaking. He uttered a very famous speech. "Thou shalt not encircle the brow of mankind with a crown of thorns. Thou shalt not crucify mankind upon a cross of gold." He was nominated by acclamation.

Altgeld went back to Chicago and pardoned my grandfather, saying, "No one of the American public gives a damn about the silver standard, whether money is supported by gold versus silver. Nobody cares. It's an absolute non-issue. It's the worst issue for the Democratic party. It has nothing to do with trust, with

labor, with any of the things we stand for. We don't have a chance. So we can go ahead and pardon you because it doesn't matter." So he pardoned my grandfather, and there was a hue and a cry, and the papers had some awful stuff. There was a cartoon in one of the Chicago papers of my grandfather standing on top of the prostrate body of liberty. It was covered with an American flag. He was holding a round bomb with a lighted fuse in one hand and a bloody sword in the other. The press had quite a field day. Altgeld gave a speech at a theater in Chicago explaining why he pardoned him. He was being pelted with rotten vegetables and eggs and things, and he suffered a heart attack and died. So much for being a good guy.

Chall: So your grandfather--

Thorpe: But my grandfather was pardoned. However, when he was released from Joliet, it was raining, he caught pneumonia, and he died. The pardon didn't do him much good.

Chall: How long had he been in prison? Do you know?

Thorpe: Yes. Almost five years.

Chall: I see. So your mother then came with her mother?

Thorpe: My mother's mother then, and my mother and two sisters came to San Francisco. Then my mother's mother got a job in San Francisco working as a scrub woman for the city and county of San Francisco. And my mother used to help her, and she said that she and her sisters would take hand brushes and they'd scrub the steps of city hall with buckets and brushes. My mother went to school--got interested in nursing and became an RN [registered nurse].

Chall: How did they manage to do this?

Thorpe: I have no idea. They just all worked like hell. My mother, I know when she went to Cal, she worked as what they then referred to as a governess--but it was really a babysitter--for a professor at Cal by the name of Laura Adams Armer. I have a painting of my mother that Laura Armer did. Laura Armer was an enormously talented woman who wrote a series of children's books on Indians and American Indian history. I have Waterless Mountain and Hoshki the Navajo. She was a very, very talented artist. A very great illustrator. So while my mother worked for Laura Adams Armer she lived there at their home and went to the university during the day. She became a nurse. My mother's two sisters and my mother, coming from their background with my grandfather who was a union organizer, put together a little union called the California Nurses Association. So the nurses who currently go out on strike

at Kaiser are members of the association my mother and her sisters put together.

The Paternal Side: The Thorpes

Chall: Your mother was a nurse first?

Thorpe: Yes. And then she got so fascinated with medicine she became an M.D. My father's entire family also went to Cal Berkeley. My father got his M.D. at Cal and his brother got his M.D. at Cal. Two other brothers were teachers, my father's sister was a teacher here in Hayward--Marian Thorpe was her name. My father's father's father walked out here originally from Wisconsin. He married in a place called Spring Grove, Wisconsin, to my great-grandmother. The early wagon trains--the movies show the pioneers riding on the seat of the wagon. They didn't do that. They walked, because the wagon was heavily enough loaded that they couldn't take the weight of the people. So all these early pioneers walked out here. You think of walking 3,000 miles, that's not a minor little thing. They got out here as far as San Jose. My great-grandfather wanted to buy a farm there in San Jose, and there were no surveyors at the time in this part of the country.

Chall: What year was this?

Thorpe: I guess just prior to the Civil War, around 1858. It was after the Gold Rush, but not much after.

He went back to Salt Lake City and picked up a surveyor, and the surveyor has his name on a town east of Salinas--I can never remember the name of the bloody town. In any event, he was a millwright. He used to make wagons and things, and he's kind of a fascinating historical character, because his traveling companion on the boat coming over from Scotland kept a very complete diary.

Chall: Now you're talking your great--

Thorpe: My father's father's father.

Chall: But you said something about coming around on a boat?

Thorpe: Yes, he originally came to the United States from Liverpool, England, on a boat. The first interesting thing about that, I think, is that they landed at New Orleans. Many more pioneers came from England and Ireland and Scotland via New Orleans than ever did by via New York. And the reason why is because you would

get in to the shelter of Florida and into the Gulf, and the water was a lot less rough. You try to dock a sailboat in New York. So actually there were many, many more people who came in via New Orleans. So in New York, of course, you see all this stuff about Ellis Island and things, and it's all bull, because many, many more people came by New Orleans. But he kept a very complete diary, and the diary itself is fascinating reading.

Chall: You have that?

Thorpe: Yes. That's my father's father's father. Then my father's mother's father came to Nevada and built the first brewery in the state of Nevada and the first house of ill fame. He built this place and discovered that if you build a house eleven miles outside of town the circuit riders, the sheriff, only rides ten miles out of town to enforce the law. So you could have a place with ladies and booze and what have you twenty-four hours a day eleven miles outside of town and nobody bothered you. So he founded a chain that became very famous, what was known as the Ten Mile Houses. The Ten Mile Houses were all eleven miles outside of town. There was one in Coyote, which is eleven miles outside of San Jose. There was one in San Bruno, eleven miles outside of San Francisco. They were all over the West.

Many years later his wife, who was a proper Victorian, told him it was a terrible business to be in, and so he sold out and went back to New York and bought a seat on the New York Stock Exchange. His history is kind of reminiscent of mine. A year later he was absolutely broke. He came back from New York with his wife and two daughters and said--and this is written--"Madam, I bought a house for you here in San Jose. I'm leaving you here with our two daughters. I shall send you a check once each month for their support. I shall never speak to you again. Hopefully I shall never see you again. You insisted that I sell out and that I go back and live an honest life buying a seat on the New York Stock Exchange. I have never, ever run into a man in any of my houses who was one-tenth as dishonest as the most righteous member of the New York Stock Exchange." [laughter]

Chall: Let's bring you down here to Hayward. Your parents apparently met in medical school?

Thorpe: Yes, but I've got to tell you one other thing. At any rate, the son of that union, my grandfather, was quite an inventor, and he invented the cylinder lock. Every lock you see in every door and every lock you see in every automobile was invented by my father's father. He also invented a thing called a rotary tub washing machine, like the Bendix. Instead of having a center thing that goes back and forth, the whole tub rotates.

He also went to work and got a job at one point working for a professor over at Santa Clara University. The professor's name was Montgomery. Professor Montgomery was a glider enthusiast, and the Jesuit priests decided that if man was going to fly an airplane in the sky, up where the angels are, they would kind of like to be there first before anybody else and see what was up there. So they hired Mr. Montgomery to become the first professor of aviation in American history, at Santa Clara University. He was a glider enthusiast, so his job was to construct a powered airplane. He hired my grandfather to do the physical construction and to do the specific design.

The Wright Brothers' and earlier airplanes were controlled by two things: the pilot would have his seat on a track that goes across perpendicular to the fuselage, and if you want to go this way [gestures] with the airplane, the pilot would swing out on the seat and shift his weight, and he would bend the wings and bend the other surfaces. They were bamboo frame with cloth covers, and you would bend them by pulling cables. My grandfather said to Montgomery, "If the purpose of this particular operation is to bend this surface, why don't we cut it and hinge it?" He said, "I've built boats, and for example, this vertical piece on the tail--we can call it a rudder just like a boat--and hinge it. It's so much easier. This horizontal piece on the tail we'll call an elevator because it does the same thing that an elevator in a building does. It makes it go up and down. And we'll hinge it. We'll take these two section of the wing and cut them and hinge them and we'll call it ailerons after your good friend Professor Aileron from Paris, who invented the wing technology."

So my grandfather put in all these hinges, and they ended up of course with all these cables where the wretched pilot is. He's got all these cables. How would he handle them? Well, my grandfather during Christmas would build for the Christmas trade a kid's coaster called an Irish Mail, and it had pedals. The child would push the pedals to make the coaster go. My grandfather takes a couple of those pedals, puts them in the cockpit and ties them to the rudders so that by doing this with the pedals [demonstrates], he could control the rudder. He then takes a mopstick, a gimbal--a gimbal is a thing you use to hold a glass in a ship. It's mounted to a bulkhead, you put a glass in it, and it swings every which way holding the glass level. So he took a gimbal, ran the mopstick through it, and tied the strings from the cables from the ailerons and the elevator to this stick. In short, he had unwittingly devised the control system for an airplane, which lasted to and including today.

Chall: Patented?

Thorpe: Oh, no. He couldn't have patented it anyway, because he was working for the University of Santa Clara. And they didn't patent it because they were interested in the angels. Now that airplane that they made--the story that continues is even better. There is a movie about Montgomery and I would love to get a copy of it. And there's a monument to Montgomery in Santa Barbara called the Pylon of the West. Why Santa Barbara I have no idea. I think he came from Santa Barbara up to Santa Clara--he would fly gliders down in Santa Barbara where they had cliffs, and the thermals would help the lift.

At any rate, they get this airplane done, and they have it finished before the Wright Brothers have theirs finished. This is a great story about history. They get the airplane finished, and Montgomery, like Edison, was an experimenter: trial and error, trial and error--try it this way, try it that way. He would make models. The buildings at Santa Clara were three stories high. He would go up on the roof of the building and throw the model airplane off the roof and watch it, and then modify it slightly and do it again. He would go up on the roof and he would get dizzy. He had developed this height business where he'd get dizzy. So he couldn't fly the bloody airplane. So he said to my grandfather, "You fly the airplane." My grandfather said, "I built it. If you think I'm going to fly it, you're nuts. No way." I suggested to my grandfather he fly, and my grandfather told me, "I have never been in an airplane in my life. I don't intend to start now."

So the point is here is Montgomery and my grandfather won't fly. The Wright Brothers fly. My grandfather then goes with Montgomery to the Santa Clara County Fair, and there's a balloon ascensionist, where the balloon goes up and they take people for rides. He goes to the balloon guy and says, "How would you like to fly an airplane where you could land it where you want to?" And the balloon guy says, "That is marvelous. That's a grand idea." So they get the balloon guy to fly it. In short, the airplane flies over twenty times as high, over twenty times as far, as the Wright Brothers ever did. A much better airplane. That airplane, by the way, hangs in the Museum of Air and Space [National Air and Space Museum] next to the Wright Brothers'.

The other part of the story is that I took my son back--my brother-in-law [Hans Mark] was at the time the deputy director of NASA [National Aeronautics and Space Administration], and I took my wife and son back to Washington, D.C., and took my son to the Museum of Air and Space, showed him the airplane, and told him the story. At the end of my story there was a round of applause. I looked around and there was a bunch of people. They were taking a tour--they thought I was a tour guide. So they applauded my

story. I looked around for Nelson. He's way in the far corner looking inside the nose cone of a satellite. He wasn't interested in the old airplane at all [laughter]. The moral of all that is that history is what somebody writes down. History is what somebody says is history; it isn't what necessarily happens.

I was telling you about the diary. The diary is marvelous because it has some great stories. They land at New Orleans, and the first thing they see--this is my paternal grandfather's father--is a slave market. Some of the slaves are in cages, and they're all manacled, and my grandfather is appalled. He said it was a terrible, terrible thing. He said, it is as John Mill has written--they really do do this. They really do imprison people and put them in cages. He says there was one sleek black guy in a cage who says to him, "Hi, Massuh [Master]. Want to buy me? I'm only \$1,800." He said, "Looking at me, knowing I had just gotten off the boat, knowing I didn't have two dollars let alone 1,800--" this slave was putting it to him. The guy with him said, "Now wait a minute. Think back to where you just came from. Think back to Scotland. Think to the line of over a hundred men standing in line at the mill hoping someone will drop dead at his job so they can get that job so that they can feed their family. Look at this slave, who is well fed and sleek and well cared for, because he's worth \$1,800. Tell me, who's the slave and who's the free man?" Isn't that interesting? In 1855 or '56 he's saying, "Who's the slave?"

II EDUCATION: HAYWARD, MENLO PARK, STANFORD, BOSTON, AND OTHER EXPERIENCES

Chall: We must get down to you. Your parents were both practicing all the time you were growing up? You had a couple of sisters?

Thorpe: I had a couple of sisters. My mother practiced kind of part-time. She was the unpaid doctor for the Hayward Unified School District. My dad practiced the whole time. My mother practiced in the sense that--we had quite a library at home--she was my dad's research assistant. She would trundle over to UC Berkeley and try to figure things out when they had unusual cases.

Chall: You went to school here in Hayward. What were your schools at that time?

Thorpe: My father's sister, Marian Thorpe, was a teacher in the Hayward School District. I went to Markham, and my mother and Aunt Marian didn't think much of Bret Harte, so they snuck me into Castro Valley Grammar School. I used to walk from Prospect Street to Castro Valley every day and back. Then I went to Hayward High, and I was at Hayward High for one semester. The teachers were of course all buddies of my mother's, and they told my mother that Hayward High School was not a real challenge to me, that I was making book reports by picking up Reader's Digests and scanning them on the way from the back of the room to the front. When it was time for a book report I'd pick up the Digest on the way and give my book report. They thought a school that was a little tougher probably was in order, so I was then sent to Menlo School in Menlo Park.

Chall: And you lived there?

Thorpe: I lived there for four years, yes.

Chall: How did you like that?

Thorpe: It was a very good school. Menlo was a first-class school and they had first-class faculty. From Menlo I went to Stanford. My sophomore year I went on a program where I cross-registered at Harvard, Boston University, and MIT [Massachusetts Institute of Technology] for a year. That was kind of fun. There was a program where you could go to school at Harvard, Boston University, and MIT, and take courses at each. So I was there [Boston] for a year.

Chall: What were you studying?

Thorpe: You know, I don't even remember [laughter]. Very little, frankly. I didn't pay a lot of attention [laughs]. I got a job while I was back there. I worked first as a librarian and then as a reporter for the Boston Record-American, which was a marvelous tourist newspaper.

Herman Mark and Albert Einstein

Thorpe: My brother-in-law's father, Dr. Herman Mark, was a professor at a school called Brooklyn Polytechnic. He was a fascinating guy. Dr. Herman Mark came over here from Vienna with his buddy who was another professor. They were both professors at the University of Vienna, and they left just ahead of Hitler. They took their money. He got platinum somewhere and extruded the platinum into wire, dipped it in black paint and made wire coat hangers out of the platinum.

They got here and one of them went to the Brooklyn side to a little school called Brooklyn Polytechnic, and the other one went to the New Jersey side. The first thing Dr. Mark invented when he got here was plexiglass, because the B-17s were getting shot down at that time, and they desperately needed to develop gun turrets. So he invented plexiglass. From that he invented literally all modern plastics. He invented polystyrene, polyvinyl, a blood plasma substitute. He was a fascinating guy.

He made a deal with Du Pont where Du Pont gave 80 percent of the profit to Brooklyn Poly which is now known as the Polytechnic Institute of New York. It has a high-rise downtown Manhattan campus instead of a Brooklyn campus. It's quite a big school now because of Mark's invention of plastics. He had nine Nobel Laureates as students, and his son Hans, my brother-in-law, became a nuclear physicist.

Dr. Mark, I got to visit with him in Brooklyn, and then we would go on Sunday sometimes and visit with his friend--the other professor from the University of Vienna whose name was Albert Einstein. Einstein and Mark, their idea of a Sunday was to flip a coin. The winner would ceremoniously unroll a roll of butcher paper on the floor. They would have Bach or Beethoven or Brahms on the phonograph in the background. The winner would take the crayon and he would do an equation to see if he could stump the loser. The loser then, if he could solve it, got to do an equation to see if he could stop the winner. They would construct their own mathematics. They would have mathematics you've never dreamt of. They had three-dimensional, four-dimensional, five-dimensional mathematics. They would elevate, elevate, elevate--math you've never dreamed of. Watching these people was unbelievable.

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Chall: Did you graduate from Stanford?

Thorpe: My undergraduate was Stanford, yes.

Chall: And then you decided to go to law school?

Thorpe: I was admitted to both Boalt and Stanford law schools, and I decided that Boalt flunked out a smaller percentage. So I decided my survival chances at Boalt Hall were better. Stanford flunked out about 40 percent in the first year, and Boalt only flunked out a third. So I figured I had a better shot at getting through Boalt [laughs].

Chall: You didn't think that you were that bright even though all along the line you were considered a very bright person?

Thorpe: No, I was nervous. You never know. I think life generally is something where you never know.

Chall: That may be true, but when you're very young--Well, so you went to Boalt and finished there? What year would that be?

Thorpe: In '57.

III ESTABLISHING A LAW PRACTICE IN HAYWARD

Chall: Did you decide then to practice here in Hayward?

Thorpe: Yes. I figured Hayward was a small town, and I figured I was again safer in Hayward. It was a conservative approach.

Chall: Did you open up your own practice or did you start with somebody else?

Thorpe: I went to work for two brothers who had come out here from Chicago: Milton and Jerome Sills. Their real name was Silberg, but when they came out to California they called it Sills. They had been in Chicago. They're both dead, so I can tell it now-- Milton had had a circumstance where he was drafted in Chicago by the mafia. He didn't care to represent the mafia, and you didn't have a choice. So by changing their name and coming to California they avoided what was in essence a form of imprisonment. As he said, they paid you very well but it was kind of nerve-wracking [laughs]. They had an office up at 572 Main, the old Bank of California building upstairs.

Chall: You practiced with them for a number of years?

Thorpe: Two or three years, yes.

Chall: And then?

Thorpe: Then I discovered that my father, in all the years that he practiced medicine, never paid much attention to collecting bills. He had two or three office girls. The mail came in, they would work on the mail until it was time to go home, they would take anything that was left and put it in a cardboard carton. When the cardboard carton was full of unopened mail they put it in the closet. When the closet was full they would start on the second closet.

Chall: What happened to the bills?

Thorpe: He paid the bills. The point is if you sent a bill, the odds of getting paid were pretty good because you sent it two or three times. But patients who sent money by way of check or insurance companies and stuff, the mail was full of checks that were stale and stuff like that, and of course the books were kind of a shambles because there weren't any to speak of. My father really wasn't interested in money; he was interested in medicine.

Winning Important Lawsuits

Workman's Compensation

Chall: But how did he manage to keep the house and children and all that?

Thorpe: He worked eighteen hours a day. So he made a fair amount of money on, say, collecting half his income. But I discovered that, and so I became a collection agency for my dad [laughs], which was a good source of work. And I did a fair amount of personal injuries and stuff. Then I got into doing odd things. My dad one time had a patient, Mr. Elvenholl. He said, "Mr. Elvenholl dropped dead while mowing his lawn in his backyard. His wife doesn't have any money; you've got to help them." I said, "What do you propose I do? Sue God?" He said, "What about workman's compensation? He was a machinist and did a lot of heavy work." I said, "Well, it's kind of a push, but I'll try it." I filed a claim and went to a hearing and damned if I didn't win, much to my surprise. It was the first stress-caused heart attack case. The insurance company didn't contest it because they didn't want a record of it, and so then a second one came along and a third one. By the time I got the third one, the insurance companies all got together and they raised bloody hell. I had to go to the Supreme Court twice. But I still won. Those were the first stress cases.

The National Assessors' Bribery/Property Tax Scandal: The California Class-Action Suit and Its Reward²

Thorpe: I had another case where I ran into this guy, a fascinating case, who tells me this tale, which I didn't believe at all, about how

²For background on John Thorpe, the tax scandal, and his plan for the Baumberg Tract, see the Hayward Daily Review, October 18, 1987.

all the assessors all across the United States are taking bribes to reduce property taxes. It's all across the United States; they're all taking bribes. The second time he comes in he brings canceled checks. He shows me that for a fact they were taking bribes. The third time he comes in he shows me the assessors all make a deal where they cut your property taxes--and of course the big companies are the primary beneficiaries. If they guarantee the reduction for three years, they will not be disturbed for three years, which clearly they couldn't do without a collusion. Their fee is 40 percent of the amount of reduction but just applied in the first year. So you get 60 percent of the savings the first year and they get 40 percent. Of the 40 percent, 15 percent went to the assessors until the assessors had their national convention one year at Denver, Colorado, at which point it went up to splitting it equally down the middle between the assessor and the property taxes.

Chall: This was all done almost out in the open?

Thorpe: All across the United States. So I took my whistleblower and the first thing I did was call a buddy of mine at the San Francisco Chronicle, Mike Harris. We got an attorney general guy, Marsh Mayer, from the California State Attorney General's office, because this involved tens of millions of dollars. It was a little scary. You never quite know what's going to get used against you. When you're dealing with a lot of politicians you're talking a lot of political power. So it was really funny.

In Alameda County, Frank Coakley, the D.A., was really mad at me because I had gone to the attorney general's office and he wanted the glory. Secondly, he was mad at me because he was to get an award as district attorney of the year. Coakley's number-two man was Ed Meese, who became attorney general to President Ronald Reagan. But Frank Coakley was ticked because he was to get this national award as district attorney of the year in Florida, and he couldn't go because of this awful mess. But Marsh Mayer soothed him by having him call a meeting of all the district attorneys in California and Mike Harris saw that the Chronicle took this big picture of Coakley in the middle surrounded by D.A.s and American flags and things, so Coakley got some good press, so then he backed off.

Then the senator [William Knowland] who was the owner of the Oakland Tribune at the time got ticked off because here's the Chronicle coming out every day with this big story. The Chronicle increased their permanent circulation by a third on this series of stories. So he was ticked off, saying, "What is a good Alameda County boy like you doing giving all this to the Chronicle?" So my friend at the Chronicle, Mike Harris, then would write a story

for the Tribune every day, without Mike Harris's name on it of course. That got the Tribune off my back.

I had so many wiretaps in my office--Coakley had a wiretap, the attorney general just to be on the safe side had a wiretap. The parking lot across the street was full of cars with wiretapping equipment and directional microphones. My phone got to the point where I couldn't hear myself. I said, "Frank, why don't you give me a couple of secretaries and they can sit right here in my office, and they can transcribe everything I do. They can listen on the phone calls. Get some of the taps off so I can hear myself on the phone." He said okay. Coakley was a wily guy. I made a demand to reassess the taxes in Alameda County, and Coakley promptly caused the board of supervisors to reassess, so I couldn't do anything.

The city attorney of San Francisco was [Thomas] O'Connor. Mr. O'Connor was a marvelous man who refused to do anything because the political boss in San Francisco was the assessor [Russell Wolden]. So O'Connor refused to do anything. So I got to sue the City and County of San Francisco, and that was the first class-action suit in California history. There was no class-action statute at the time. No enabling statutes. So I filed a suit saying that I am a private attorney general, that I've made a demand, the district attorney won't do anything, the city attorney won't do anything, and therefore I'm serving as a private attorney general. The plaintiff was Ida Knoff, who was my mother's sister, which really ticked off O'Connor. He said, "You're contending you represent a class action of plaintiff taxpayers, then the plaintiff's your aunt." I said, "Well, she's the only taxpayer I know." [laughs] Much to my surprise I got an attorney's fee award of a million dollars. It was a record attorney's fee, against the City and County of San Francisco, which they had to pay. That really frosted O'Connor. It was a record attorney's fee.

Chall: That case changed the whole property tax assessment process.

Thorpe: We then went to Sacramento, and we did all the legislation. I put the legislation together to have these appellate review boards so that if you don't like your taxes you can go down and have a hearing before the review board. I wrote all that because there was no mechanism for it. But that class action, I tell you, that was another one--that was like the workman's comp case, the heart attack case. I never thought I'd get away with it. I thought I'd try it but it's not going to stick. But law is something where you really cannot forecast ahead of time what's going to happen--especially now because our courts now have deteriorated to where

they're bureaucratic, administrative, and political creatures rather than really judicial creatures. A lot of them.

Long-Term Interest in Property Development

Chall: Of course you unearthed an incredible scandal, and then you had this money for the first time I guess in your life. Is that when you moved into development?

Thorpe: No, I started doing real estate work almost when I got out of law school. I got interested in it, and I built an FHA [Federal Housing Administration] Section 207 100-unit apartment house in West Sacramento when I was maybe thirty. I got a license as a contractor. My grandfather, my father's father, had been a contractor. He was the one I told you about who invented the cylinder lock. He was also the first one to put a room on the outside of a house plan: I can build five houses and the room is in the back of this house, it's on the front on that house, it's on this side of that house, and it's on that side of this house. He built the first tract house. He built the first tracts in California. Go down Lincoln Avenue in Alameda; you can never tell they're tract houses because he would modify the architecture. One is Norman, and the next one is French, and the next one is Italianate and so forth, but in fact they're all the same house. But you can't tell by looking at them.

My grandfather was the first one to pre-lay sash, just like the window locks. When he started building around the turn of the century, you would haul the panes of glass out to the house and you would put them in the window frames after the window frame was in the frame. My grandfather, in the wintertime when it was raining, in the basement, would construct windows and put the glass in the window frame, put the sash together and make it as a unit.

Chall: He was a creative man.

Thorpe: He was the first one to do ready-hung doors. Now if you buy a door [gets up, goes to door to demonstrate], you would buy this door, for example, the frame comes with the door and you wedge it all with the framing as a unit. You don't try cutting the door down to fit the door frame. The whole thing is manufactured as a unit and then put in the frame. It's called a ready-hung door, and he was the first one to do that.

He did patent the cylinder lock. He patented some of his stuff but never enforced the patents. But he did not patent the ready-hung doors and he did not patent the glazed sash. He liked to build, and he brought me up with tools and saws and things. I thought it was kind of fun.

Chall: So you went off and--

Thorpe: --and built stuff. I built apartments. And of course Columbia was 540 homes in Castro Valley, but they were built by Blackwell Homes. That project would be way big for me--if you figured \$200,000 a house times 500 houses, that's a lot of money.

Chall: So the Columbia project was one of your large ones.

Thorpe: I built lots of smaller things. I built this small shopping center in West Sacramento.

Chall: You've talked about Sacramento a couple of times. Why did you go there to build?

Thorpe: Cheap land, and it was a fascinating area. It didn't work out. West Sacramento still hasn't blossomed very much, but the growth-- The thing about California, and partly the environmental thing, is California since World War II has not grown logically. It has grown politically rather than logically. People will say, "Not in my backyard," and so the builders will jump to someplace where it's easy to build. So as a result you have this horrible urban sprawl and slurb and just an awful mess. But I thought Sacramento would develop to the west, because it was the logical place for Sacramento to expand. It didn't [laughs].

From Whence the Special Thorpe Spirit?

Chall: Over the course of time, you're considered--sometimes they call it flamboyant, ebullient--

Thorpe: And crazy.

Chall: How do you account for your great optimistic spirit and all that goes with it?

Thorpe: I don't know that it is optimism. I think it's sort of not caring, in a sense. In the first place I was brought up where both of my parents were what I would say were old-fashioned communists, from the antique meaning of the word. The original

communists are really sort of like the original Christians. "The rich man can't inherit the earth--" and "the poor will inherit the earth," and "the poor are good and the poor do nothing wrong." So I grew up, and I'm still helping poor people. Over half my practice is working for people for nothing. I get criticized by various people for doing that, because I don't have any money now, and so I really should be accumulating money. I think helping other people is something that you do.

I think you can call it flamboyance helping Mrs. Elvenholl whose husband had dropped dead of a heart attack. Okay, I was lucky. So I got a lot of publicity out of it, right? Going after the assessors--I was angry. I didn't think public officials should take bribes. And that was a crazy thing. I can tell you. I sent file folders full of information back to Chicago that were mysteriously lost in the mail. They never did do anything whatsoever in Chicago. They never did anything in Augusta, Maine. They never found anything wrong. Their assessors--we sent them files of canceled checks showing bribes, and they did nothing. I think you can call it flamboyance because you take a risk, or you do something that somebody else wouldn't do. But you may just do it because you're a nut. Or because your lights tell you you should.

Chall: Well, you've certainly had a good roll here.

IV THE SHORELANDS: ITS ORIGINS AS A SOLUTION TO TRAFFIC PROBLEMS

Chall: I wanted to ask you just a couple of questions about the Shorelands that I'm not quite certain about.

Thorpe: Shorelands was kind of a crazy idea. Talk about flamboyance. Shorelands was an idea where a portion of the project was enormously profitable and would have funded a whole lot of nonprofit operations that had social significance. Of course, nobody who didn't know me would ever assume that's what I was going to do. But that's what I had in mind. I had all sorts of parks and recreational and open space ideas that I was going to fund with the rest of it.

Chall: The problem was what land you were going to do it on, I guess.

Thorpe: Let me say this. The problem is that human beings all operate on the basis of perception. The problem was that the land I was operating on was perceived to be of enormous wildlife value. The thing is, any open space anywhere may have enormous wildlife value. Over the next hundred years, or maybe 200 years, we will find out if that land has wildlife value. We will not find out this week. We won't find out this month, we won't find out this year, because it's been soaked in salt and it won't provide anything for any wildlife for many years. It might recover. Rains and what have you may cause it to recover eventually. We simply don't know. It's a fascinating thing. I've represented a lot of Chinese people over the course of the years, and a lot of the classic Chinese folks don't think in the instantaneous terms we think in; they think in terms of generations. So maybe they're right. Who knows?

Chall: I needed to get some background on the origin of the Shorelands, and I'm taking this from a book that you had printed called The Shorelands that was for your investors--to raise money. The Introduction is dated October 1985; you probably sent it out in '86. In the Introduction, you say that, "In mid-1982, a successful Hayward developer/attorney, John Thorpe, was approached

with an opportunity to develop a parcel of land on the Hayward shoreline. The City of Hayward suggested that a 700-acre-plus portion of the 'Baumberg Tract' be developed to a mix of commercial/recreation, and hotel/commercial/business park and light industrial park uses." My question to you is, who approached you? You say, "John Thorpe was approached." Who approached you with this concept?

Thorpe: I have to guess a little bit, because I don't really recall. What I think happened was this: in the old days before the decline and fall of Hayward, which is over the last ten or fifteen years, Hayward had a Division of Advanced Planning and had an advanced planner. They called it a Program Planning Department. The program planner was a fellow by the name of Martin Storm. He was a very, very bright guy. Hayward no longer has a Department of Program Planning and no longer has a Martin Storm. His job was to try to look at Hayward and say what its problems are and how to solve them, how to make this place work, or how to clean up the traffic. One of its problems was how to construct an overall traffic solution.

One of the things--and this was his concept, not mine--and I think he was dead right--was that the problem with Hayward as a matter of traffic is that Hayward is a crossroads. It has been a crossroads historically since people would come out from Oakland and go out to Livermore to the spas and the Haywards Hotel and so forth. It is a crossroads, so you have all this traffic that follows through Hayward and clogs Hayward but doesn't really contribute to Hayward. They're not buying anything, they're not living here, they're just going from one end through the other end.

Every city in the United States or anywhere that has this sort of a traffic problem has solved it with a loop, with a circumferential traffic system. Houston has the Houston Loop, and Chicago has the Chicago Loop. By creating a loop around the city, it's like in Boston on a small scale: you have what are called rotary traffics instead of interchanges, where you go around a circle and out. So he said, "Hayward, we can create a loop traffic street."

The way to fund that loop is a mixture of state and local funding as far as the Foothill Freeway, for the upper section of it, and the Shorelands Project, which in essence builds about a quarter of that loop. It really was a very good idea. They're still talking about the flyovers that the people don't want. Well, it would have avoided the flyovers. It was a very good solution, it was a very good planning solution.

Chall: That's a traffic solution, but what about building on the Baumberg Tract?

Thorpe: If you figure you come down Industrial Boulevard and you come down through the Baumberg Tract, you've got quite a distance through the Baumberg Tract where that loop is being constructed by Shorelands, on down to Route 92. That whole section--about a sixth of the entire loop, is on the Baumberg property. Plus the interchange of 92 is funded out of the racetrack. The racetrack does happen to fund that interchange. It's like there's a Bay Meadows interchange. That was part of the reason for it.

Chall: That was part of the reason for developing that land?

Thorpe: Part of the reason was the traffic solution. Another was the creation of a boundary line for Hayward. The Baumberg Tract essentially goes to the southern boundary of Hayward. Hayward doesn't extend beyond the Baumberg Tract, by and large. If you think in terms of a quarter circle, by developing this quarter circle, you build your loop street in such a way as to have it serve as a boundary and you do not develop anything outboard of that street. You cut off the Leslie property, outboard of that street. Part of what we designed was the trail system. You know the trail around the Bay? That was part of the vision of this project. We came up with the concept of the trail around the Bay, and this would build that portion of it. It provided a means of doing a portion of the trail around the Bay. And they don't have a solution for it now because without building an interchange it won't exist. I don't know that the trail around the Bay is really that necessary or essential or desirable anyway.

Chall: I know that your book tells how you went to Bechtel and did quite a bit of pre-planning. You wrote in your brochure that the Shorelands Project is "a major Mixed-Use Planned Development in the City of Hayward, combining two distinct properties totaling over 1,200 acres." As I understand it you took an option from Cargill.³

Thorpe: Two options: one from Oliver, one from Cargill [Leslie Salt Division].

Chall: I didn't realize that you had an option from Oliver.

Thorpe: Yes.

³Copies of detailed promotional flyers on the Shorelands Project: "A New Racetrack for Northern California." Inserted in pocket in back cover.

Chall: Simultaneously?

Thorpe: Yes.

Chall: So that's what led to this so-called 1,200 acres, more or less?

Thorpe: Yes.

Chall: What happened with Oliver? They withdrew the option? Is that the time when they didn't like anybody walking on their land which you told me about in our first interview?

Thorpe: Gordon Oliver. It's an interesting thing. I've seen two or three people who get bad strokes, and there's something about it that cuts off the blood supply to the brain and these particular types of people get very mean and very cranky and bizarre in their behavior--that's the only word I can use. I got some letters from Gordon Oliver that were real prizes. On the one hand, he wanted me to succeed. Half of him wanted us to succeed because that of course would give him some money. On the other hand, he sort of wanted me to fail because of his anger and his hostility generally as a result of his stroke and so forth. So he would just go back and forth, but he was hopelessly unreliable the last few years. Who was the historian in Hayward?

Chall: Sandoval.

Thorpe: John Sandoval worked with Gordon, and they had an office together. Sandoval was trying to accumulate all the historical data that the Oliver family had, which was enormous. On occasion, Gordon would just come unhinged at John and make all sorts of wild accusations and terminate the relationship and say that the whole thing's over and he didn't care about history, and "I'm going to burn everything." At any rate, that's what happened to Oliver.

Chall: I understand eventually you didn't have that property on which to do the mitigation. That was part of it.

Thorpe: We could have had other mitigation land. Leslie certainly would have provided it.

Working with the Leslie (Cargill) Salt Company

Chall: You had some mitigation possible with Leslie, but as I understand it they never stated so with certainty.

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Thorpe: I have to say that my relationship with Leslie was absolutely first class. Of course they're no longer Leslie; it's now Cargill. In those days it was Leslie Salt.

Chall: You were working with Mr. [Robert] Douglass mostly.

Thorpe: Bob Douglass and Paul Shepherd. Let me tell you a little something about Leslie. Cargill as a company had a long genesis as--even though it was the largest private company in the world--as a handshake company. They would go out in the field, the farmer would have corn, and they'd say, "I'll give you \$3.50 a bushel for your corn," and shake hands and that was the deal. Cargill has absolute integrity. They have a freakish thing about integrity; they tell the people who go to work for them, "If you make a mistake, if you screw up and promise something you shouldn't have, even though it costs us a lot of money, we will stand behind it and we take the loss--not the customer. Our word is our bond. We stand by what we say." They're very Midwestern in that they're sort of suspicious at first. It took me several years to begin to get a good relationship. The first few years, every time there was a minor modification to the agreement it was two inches of paper. After that it was virtually all verbal. They trusted me, I trusted them. They were an absolute pleasure to work with. If they said they'd do something, they would. If they said they wouldn't, they wouldn't. I know I never had any problem with Cargill. Never. Not after the first few years.

The mitigation thing we could have worked out. We got to the point where we had the mitigation worked out. There was no federal agency opposing the project. We got to the point where all the federal agencies said okay.

Chall: You mean even the Fish and Wildlife Service? I thought that Peter Sorensen and Fish and Wildlife were totally opposed to the plan.

Thorpe: Sorensen had nothing to do with it. Sorensen was a low-ranking person.

Chall: Didn't he write the jeopardy opinion or the draft jeopardy opinion?

Thorpe: He signed it. Who signs it and who writes it are two different things. The fact of the matter is at the tail end they even announced in the newspapers that we could proceed. There was a press announcement by Peggy Kohl of Fish and Wildlife in Sacramento that we could go forward. Maybe I'm telling tales out of school here, but the fact of the matter is that they announced

we could go forward. Then the city was dragging their feet and dragging their feet; we could not get public hearings. By then we had a different administration.

The Response of the City of Hayward

Chall: Was that basically over the 92 interchange?

Thorpe: No. Politically the city had changed. The city manager in Hayward always reads the mayor and council and he's doing what he thinks they're going to want to see, because that protects his job. It's a job protection mechanism. The city manager--and this is not just Hayward--controls the council, and the bureaucrats control the elected officials by a very simple regimen. If you give them enough paper and do it just before a meeting, they'll never read it and they have to do what you want done. That's a very simple mechanism of control.

In any event, the politicians decided they were afraid of the size of the project, they were afraid of the political and environmental squawk. It didn't matter whether it's a good squawk or a bad squawk; politically it was a bad squawk. So they simply didn't want us to get to hearings. We had a hearing on the circulation where allegedly the PA system didn't work, and there was enormous feedback every time I tried to talk. When the city people talked they could be heard fine; when I tried to talk there was feedback. Leslie was appalled, our investors were appalled.

The investors at that point thought: Okay, this isn't going to happen. The city doesn't want this. It doesn't matter. So you have all the federal approvals--what's the difference? If the city's not going to do it it's not going to happen. So then they cut off funding. That's the thing that killed me. The thing that killed me had nothing to do with any agency; it had to do with investors giving up in despair. Were they right?

Well, as it turned out it was less than a year after the project fell apart that the real estate market collapsed. In other words, you couldn't have rented an industrial space for all the tea in China for a period of four or five years. In '91 we had an enormous real estate collapse. We still are in the midst of what is gradually becoming a worldwide depression, just like in the thirties. Asia is now collapsing, China is just now collapsing. The Chinese economy is just now going to hell. We have now this splintered economy where half our population--we have people who are homeless, we have people who are hungry, and

we have all this press saying how good the economy is. It's b.s. Half the economy is fine, half is awful. We have a split economy.

The Baumberg Tract: Marginal Open Space Value

Thorpe: The fact is that the environmental thing is a matter of perception. Man is a critter that sometimes we're right and sometimes we're wrong. The perception was that it was environmentally sensitive. There was never any endangered species found out on that property. Not one. There was not one mouse ever found out there. There were innumerable trappings, innumerable studies. My God, we did hundreds of thousands of dollars worth of studies and they couldn't find any of it. The only value of that property environmentally, and it may have some value environmentally--it may have a very substantial value environmentally--but the value, if any there be, is serving as a buffer. Wildlife doesn't like people. Wildlife doesn't want anything to do with people. As a buffer, it is so foreboding and forbidding that it keeps people from getting near the Bay. So there's a whole section of the Bay that in essence it protects because it is a forbidding poisoned piece of real estate. It is soaked in salt. Nothing grows, nothing moves. So it may have value as a buffer.

Chall: I guess the environmentalists thought that it would provide a place for wildlife that was being destroyed in other places.

Thorpe: The reason it won't work is if you have no growth of plant life, you have no shelter for wildlife. You have no food for wildlife. So you can say it's 1,200 to squat on. It's a place to rest. Well, so is any place else in the world. Any place is a place to rest. The high-rise is a place to rest. The fact is it's got very marginal open space value.

I had a long talk with [Congressman] Don Edwards. Don Edwards happens to have been an old, old friend of mine. Don Edwards is the founder of all the refuges. Don Edwards at one point said something very telling to me. He said, "John, I want you to know something. I really am reluctant to tell you this, but I am a politician. I know you don't realize that. I know you're a super-nice human being whom I've known for years. Try to understand that I'm a politician." He was telling me something. I said, "Well, that sounds like you're saying 'I'm a used car dealer'." He said, "It's not much better." He called me from Washington, D.C., and told me that.

Then Fish and Wildlife, I got very friendly with some of the people at Fish and Wildlife. There was a fellow by the name of [Wally] Steucke up in Portland. There were two or three people in Portland who were decent. The chief counsel in Portland was a real gent. I got clubby with him. After the thing collapsed he said, "Politically it is highly desirable for us to buy the Baumberg Tract. What is your position?" I said, "Hell, I'm so broke I don't know that my position makes a lot of difference [laughs]." He said, "We know you're still talking to Leslie, and you and Leslie are still very friendly." I said, "Yes. But my position is that as a practical matter if right now today economically--" this was '84 or '85, somewhere in there. "Right now today the economy wouldn't support any development out there anyway."

Chall: The people at Fish and Wildlife that you were telling me about-- Steucke and others--said to you that they might--

Thorpe: The fact that Fish and Wildlife was thinking very strongly of buying the Baumberg Tract.

Chall: And that would have been in--?

Thorpe: I don't know, but I think it's '84 or '85.

Chall: That was when you were just starting?

Thorpe: Oh, excuse me--what am I saying? I meant '94 or '95.

Chall: You had already given up.

Thorpe: Oh, yes.

Chall: You were through.

Thorpe: Yes. One of their people called me originally.

Chall: I see, because it was bought by the state of California.

Thorpe: No. The way the acquisition worked--it was a complicated deal--is that Fish and Wildlife did all of the evaluation of the property, and Fish and Wildlife did the appraisals, and Fish and Wildlife put the deal together. It's the kind of thing where Fish and Wildlife says, "Okay, we're going to pay for this, and you buy that." It was part of a complex overall thing.

Fish and Wildlife would end up as the owner whether the state put up the money or whoever put up the money. In the long run it would be part of the San Francisco Bay National Wildlife

Refuge. I've worked on lots of these park deals with East Bay Regional parks and others, where one entity will buy it and lease it to another for an operation. The East Bay Regional parks, for example, the property around the racetrack down in Emeryville that they bought--the bay frontage there--the state bought that and turned around and leased it to East Bay Regional Park [District] for an operation. You can have more than one agency involved even though the acquisition, on the face of it, the money is coming from here--it's multiple agency involvement. The key player in deciding whether it was to become in public ownership was Fish and Wildlife. The concept was that it would end up as a part of the San Francisco Bay Refuge, the Don Edwards Refuge. They were kind of saying, What was my attitude and what was I going to do, if anything [laughs]. I said, "As strange as it seems, I don't think anybody else will develop it. So I don't think I'm being unfair to Leslie or hurting them any. In fact, I suspect they just as soon would sell to Fish and Wildlife as sell to whomever, because it doesn't do them any good either--a surplus parcel. So they'd like to unload it." So then I talked to Leslie, and they confirmed that yes, they are talking to Fish and Wildlife and they are interested in doing something with it.

Chall: So now it's being restored.

Thorpe: Have they done anything out there?

Chall: Oh, yes. They have a team working now to restore it with mitigation money and money from the state. They're working on 835 acres.

Thorpe: What are they doing, physically?

Chall: Physically they're dividing it into sections that would be habitable for the clapper rail, the snowy plover, and the salt marsh harvest mouse. Steve Foreman with RMI is in charge.

Thorpe: Oh, Foreman is with RMI now?

Chall: RMI is Resources Management International. They have a year in which to set up the plan, and they're really working on it.

Thorpe: They're just planning it right now. I'll tell you bluntly, it will be a complete failure for the harvest mouse unless you have vegetation. You cannot have the harvest mouse out there without vegetation, and you cannot have vegetation without flushing the salt, and you cannot flush the salt out of the dirt without water. Therein lies the problem. The problem is the water available to that, you'd have to take fresh bay water--it's not fresh in the customary sense, but it's not brine, either; it's bay water.

You'd have to flush the thing with bay water, you'd have to tidally flush it, you'd have to flush it two or three or four times a day.

Chall: That's all in their plans, I suspect.

Thorpe: The problem was--now maybe something has changed--that the brine channel of Leslie Salt, right around the perimeter of that place, down to the salt plant in Newark, and the outboard water are salt evaporation ponds of Leslie. So you have to go clear to the outer edge of those salt ponds, miles and miles out, if you're going to bring fresh bay water in. It's a tough problem. It's not an easy problem.

Chall: It's a tough problem. They're going to have difficulties with it.

Thorpe: I think eventually what will happen is this. Gradually the chemical plants have been driven out of the Bay Area, and 90 percent of the sale of salt is to chemical plants. Less than 10 percent is for human consumption and animal consumption. More than 90 percent is for chemical companies. When you drive all the chemical plants out of the area, the transportation cost makes it inefficient to produce salt for somebody way far away. So I think eventually the salt company will go out of business. When that happens, then you can restore this area because you don't have the salt evaporation ponds. I don't say you can't do it, I just say you can't do it economically without doing something about Leslie.

V A BRIEF HISTORY OF THE BAUMBERG TRACT; SALT PRODUCTION;
AGRICULTURE; WETLANDS; REPUTED VALUE OF BAUMBERG TRACT TO WILDLIFE

[Interview 1: May 10, 1997] ##

Chall: [Referring to discussion off tape while installing recording equipment] You wanted to say something about your relationship with the conservationists, the environmentalists, before we get started on the nitty gritty here.

Thorpe: I guess the first thing I want to say is that this project was very educational to me. I learned an awesome amount of things from it, some of which are philosophical in nature.

History, of course, is what is written down or remembered, rather than what necessarily happened. [laughter]

Chall: Truth is elusive.

Thorpe: Yes, and that we took up this project in an era which may have subsided some. You have to kind of look at I guess the overall history of what's taken place in recent years. We were just finishing an era of relative economic plenty. And so the environmental community was reacting to a situation. And of course, people act and react based on their perceptions rather than what necessarily is the fact.

Life is just full of an incredible number of ironies, and in this part of California generally, the antis, the anti-development forces, I think probably had the most negative impact on the environment of any group, as well as a positive impact. The negative impact was that by focusing on where they were, and next door to where they were, they created a situation where the developers leap-frogged literally all over the state. We now have this massive traffic problem coming up from Tracy, and the air quality problems inherent in two- to four-hour commutes and that sort of thing, which in part were caused by the well-intentioned environmentalists who said, "Well, we don't want something right

next door to us." Nobody took an overall look at northern California as a whole. They just looked at their area. They looked at Livermore, or they looked at Pleasanton, or they looked at Castro Valley, or what have you.

The thing we learned, or I learned, is that with a lot of the environmental community, not just the environmental community, a lot of what happens has--is, and has become even more so, a creature of politics and a creature of political perceptions. We've just had Tony Blair win in England, who is an absolute centrist. He has divorced the Labour party from anything remotely connected with labor. He has not only copied [President William J.] Clinton, he has--they purchased the computer programs of the Clinton group on politics to run the election, and were very successful.

We've gone from a [Franklin D.] Roosevelt era in part because of population growth and in part because of tremendous media impact--television, in large part. We've gone from not just locally but to a nation of people who are reactive to what they politically perceive rather than necessarily the fact.

We tried to sit down and negotiate something that we felt was environmentally positive overall. Our goal was to try to produce, in a development project in California, we wanted to take an area and produce a more positive wildlife impact with that area than was the case before the development.

We retained the services of a fellow by the name of Richard Murray down in Carmel. Richard Murray--and we got Murray because one of the key concerns in the area was the snowy plover. Murray had built--was the only one who had built artificial plover habitat. He did that down at the Pajaro Dunes. His Pajaro habitat was successful. He was the only one who had done that; he was the only one who we could find. We didn't restrain him in any way with economics, we didn't say, "You have a dollar limit of what you spend in your plan."

We came up with a plan that Howard Cogswell, the professor at Cal State, found pretty good. Cogswell interfaced with us in modifying it. The environmental community reacted with total distrust. Now, it's true, we have a society where most development is done by people who are motivated entirely by greed.

I had a prior experience in Castro Valley. I did a development called Columbia where we built--it's this picture over here--we built 540 houses on a ridge. We worked with East Bay Regional Park District. We took the canyons on both sides and put it into parks. We developed a trail system. We developed a park,

the Cull Canyon Park, over what had previously been a mud collector for the storm sewer system.

And I should have learned from that, because in that project, some of the people absolutely mistrusted our arrangements with regional parks. And so both ourselves and regional parks had to sort of sublimate the fact that we were largely in agreement. The public, the environmental community, never did, some of them, realize that in fact what we did, we did by agreement, and we did it because we were trying to create a positive result.

I think if I buy a house, and I am next to--I have a view of a park and I'm right next to a park, which is open space and trees and stuff, I think that house is worth more. I think if I can furnish a nice area, that's a greater economic value. Even if it weren't, I don't think, we did a--. About eight years before we developed the property, we commissioned Hammon, Jensen, and Wallen down on Edgewater Drive to do a tree survey, to do a forestry survey. We had something like 5,000 trees, of which 400 had trunks greater than four feet in diameter.

Well, I think one would have to be an absolute boob to cut those down. [laughs] Where I come from, I think that's a marvelous asset. Now, maybe it's not an asset you could sell for money, but I think it's a great asset. But we could never convince the opponents that we viewed this as having value.

The Baumberg Tract is itself an enormously more complex piece of real estate. I mean, I like Castro Valley, I really fell in love with it. It's just a fascinating piece of real estate. This is--I don't know if--I could donate this to the project if you could take it--[shows enlarged photograph approximately 12 by 15 inches, on hard board].

Chall: I'll have to ask if the Bancroft Library could take it.

Thorpe: This is a fascinating thing. This is an early example of a photograph taken with a process that was developed by NASA. Now, I'm kind of a NASA fan in that my brother-in-law was deputy director of NASA for some years. They developed this infrared photographic process.

What this does, it really I think is kind of fascinating. This is [points]--the Baumberg Tract is right here, and this is the San Mateo Bridge. Now, what it does: growing plants--you could get different kinds of pictures at different seasons of the year--but growing plants, in the growth process, they are consuming and/or creating calories, and calories are heat. So if vegetation is growing, you get red. Okay? That's what it boils

down to. This thing is a very graphic picture. Now, here are the wetlands. In other words, if it's not doing anything, it's just water. If it's a dry salt flat, it's not doing anything. You can see, if you take a magnifying glass, you can see around the edges of this.

This piece of property, this particular piece of property, historically--you see this line here. That line is the supersewer. Okay? If you look at that closely, you can see that the power towers march right along the supersewer line.

The supersewer line--I don't know if it's true; I think it is generally true. The supersewer line is a line which denominates a relatively stable subsurface soil area so that they can install the pipeline and not have it crack or go up and down. The lands inboard of that, generally speaking, were grain farmed, historically. The early farmers came to this area, and the very first ones, of course, discovered a certain number of Indians living in the area. If you've gone across the Dumbarton Bridge and you see the fluff that lands all over the ground when the wind is blowing, well, that fluff is salt, of course, and the fluff settles in declivities. If you've got a low spot in the dirt, it will settle in the hole, and you build up salt.

The Indians would take it and scrape that, and they would then go up into the hills toward the east, and they would trade the salt for things they wanted. The Indians along the edge of the Bay were sort of the least productive of any in the sense of what we think Indians do. They didn't make baskets, they didn't do pottery, they didn't do much of anything.

Of course, the natives in Hawaii or Tahiti didn't do much of anything either, because they were in a nice warm climate. They didn't have a lot of weather problems. They didn't need to do a lot, and necessity is sort of the mother of invention for all of us.

In any event, the missionaries came along, and Father Serra's group, which did terrible things to Indians, did come up with one positive thing. The early ones told the Indians, "Look, if you put a stick in that declivity, let the salt fluff blow on the stick and crystallize on the stick, the wind and the sun will dry it faster, you get salt quicker. If it gets on the stick, you can then lay it out your blanket, you can beat your stick on the blanket, and you have clean salt instead of salt with dirt in it." It's a way to get clean salt.

And that, believe it or not--this true story--that is where the expression "Not enough salt to shake a stick at" comes from. Which initially I didn't believe, but it is true.

The later people came along, and the farmers discovered that they could build what I call giant shallow bathtubs around the Bay and crystallize salt, and they could literally grow salt in the lowlands next to the Bay. Then the first tier next to that they used for grain crops of one kind or another. Inboard, closer to the hills, they had tree crops. The reason for that is glacial activity and rains. The heaviest soils sink right next to the ridges, and then the lighter soils come out as you get to the edge of the Bay, and the very finest are right at the edge of the Bay.

The fine soils will not support a tree crop. They're also less fertile. The heavier soils will support a tree crop. The wetland description initially was a description that was made not by environmentalists or not by tree people or fish and wildlife people; it was made by Soil Conservation Service people. The basic categorization of a wetland was made by the soils people. The soils people up in Sonoma produce books of the various soil types. Then the wetlands evolved, and then the fish and wildlife types came along and said, "Hey, those are kind of nice. We've got birds, we've got what have you." And so they picked up the wetland designation from the soils types.

And another similar thing we talk about here in the Bay Area is the earthquake failures of the soils in the San Francisco Marina. That is due partly to the fact that after the [1906] earthquake, they sort of bulldozed anything they could find, and partly because they are very fine soils. The best building soils are a mix of soil types, where you've got the heavy granular material mixed with fines, because that's the most stable. The least stable would be all fines.

There are pictures in the EIR [Environmental Impact Report] essentially at the point where the bittern pond is at the end of Eden Landing Road, as a matter of fact. They called that Eden Landing because they have a little barge landing there. And that barge landing essentially was right here, and that's the point really at which the wetlands have pretty well disappeared. The wetlands are all outboard of that.

If you look down here [continues using photo], these wetlands all sort of--if you drew a line like that, these are the sewer ponds. See, that's a wetland area. There was a fellow by the name of Osterloh who came to Hayward, and as a matter of fact, the house at 21800 Hesperian, the big blue house next door, was built by Osterloh, Sr. Osterloh was a salt trader in San

Francisco, and in the book on Hayward, it mentions Osterloh. It's the book written by the fellow that used to do stuff for the [Hayward] Review--[John] Sandoval. Sandoval's book on Hayward mentions Osterloh.⁴

At any rate, Osterloh had a couple of these big flat-bottomed barges, and he had a--I don't know what you call them--a warehouse and--you can't call it a store for something like that, but he had a place where he sold his salt, sort of a warehouse market where he sold salt.

Chall: Sold the salt?

Thorpe: Yes. And he was a big salt merchant. That was basically all he did, was salt. Then in later years, a series of companies came along which merged and became eventually Leslie. The Schilling spice family. Schilling was an early German immigrant in this area. In later years, you had the Leslie Salt Company. The salt farmers artificially determined--and I suspect that it was a function of how much money you made mining salt versus how much money you made growing grain--how much area you would take up for salt versus how much area you would take to grow grain.

But what's interesting is just to the south of the Baumberg down here--yes. [points to enlarged map on wall] If you go down here, right here, you can see a house protruding from the salt pond just to the south of the Baumberg. And it's still there. Then there's a cattle pen that you can see in that area. This area was artificially flooded, and it wasn't flooded until, oh, the 1950s at some point. Of course, it was farmed prior to that. It was flooded either by Leslie or Schilling. And this was the original sweep of the slough going like this. And this way, from the slough was swamp, and there was probably then an area, and I just artificially take this area in here, which I would say is sort of a boundary area--it's pretty damn wet when you're growing grain--and this up in here is an upland which is a farm.

In any event, none of it, although historically--a significant portion of it was historical wetlands--it didn't legally qualify as wetlands by the time we came along. Here, since 1860, these ponds from Eden Landing to the Bay had been used as largely bittern storage. Bittern is the material left over

⁴John S. Sandoval, Mt. Eden: Cradle of the Salt Industry in California, (Hayward: Mt. Eden Historical Publishers, 1988). [On pages 173-174 Sandoval discusses Henri and William Osterloh and their families, and the historic farmhouse on Hesperian Boulevard owned by John Thorpe--Shorelands Company offices.]

after you make salt. It's one of the, kind of the legal ironies, that bittern is not classified as toxic by the law or the government, and yet bittern is the material they use to spray at the edge of the roads in Tahoe to kill the weeds which also kills the trees. Bittern, if you walk out on this stuff without plastic galoshes on, if it's wet, about a day and a half later, your uppers will separate from the soles, because it has literally eaten the string out. But it's not toxic. It will kill anything that gets vaguely near, and toxic means kill. But legally, it's not toxic. Which I found rather bizarre.

We had environmentalists who would absolutely swear that there was life out here in these bittern areas. They would absolutely swear there were wonderful things to acquire, and I would say, "For what?" God, that's the most god-awful--I compare it to a waste dump, I mean, a garbage dump. It's an area that man has absolutely destroyed. It's going to take a lot of money to clean this up.

I think Fish and Wildlife [Fish and Wildlife Service] and the government bought this largely, again, and for political means, and to make a lot of folks happy. I don't think they have a clue what they're going to do with it, as far as restoring it. We did a bunch of studies on--if you wanted to restore this Baumberg Tract--what it would take. You see, the stuff out in--right out in the edge of the Bay, this area here had a--I don't know where the salt came from, but a lot of salt was dumped out there years ago. This little triangle area still hasn't recovered. This stuff has recovered, and very well, and there is a beautiful marsh. But it has daily ebb and flow of the tide to clean it.

To get the tide into this area, you'd have to of course cut out all the salt-making operation outboard. That's the first thing you'd have to do, to get tide in there. And second thing, you'd have to grade it in some fashion. Or, you'd have to build some sort of canal. Murray did the studies on how big a canal it would take, and then our engineer, Jack Stewart, who just died, did studies on how big a canal it would take. It would take a pretty whumping canal to get that volume of water in to ebb and flow to cleanse it.

The areas that are most inboard--the way this is classified [points], these were the bittern ponds. These were crystallizers. Crystallizers are long, flat ponds where they bring the water in, let it drop. This was a central pond that was used to put stuff in the northerly and southerly crystallizing, to pump water both ways. This is sort of a regular ground. This stuff is very flat.

What's happened in these crystallizers, and I suspect in the bittern ponds too--in the crystallizers, the constant settling of salt in these areas over damn near 100 years has created an impervious layer of soil. The higher ridges, if you plow it, which was done by Leslie which disked it at one point, in a couple of years the upper soils will leach out a little and you get a little bit of growth on it, so it looks as if it's coming back. Because the rain leaches it out.

But basically, what you've done is you take salt and you soak this area in salt. Salt contains a lot of sodium. Sodium acts as a soil sealant. That is why the darn water won't drain from here, why it collects water. It's just like concrete. It makes the soil impervious. So you've created with these two crystallizers this impervious layer of dirt.

So to restore it to any kind of use, we did a lot of studies on that in part because if you're going to landscape it, if you're going to landscape it and grow a tree or something, you've got to recover the soil. And we came to the conclusion it's just--it's very near impossible, unless you do away with the salt-making and put tidal flow on it and wait 100 years. That's the best way to do it.

It is good, it has some fish and wildlife uses. The plover nests on soil. Plovers don't nest in trees, they nest in the soil. The plover historically nested on the beaches. That's why Dick Murray's project down in Watsonville in Pajaro Dunes was successful. It nests on beaches, and the beaches around northern California have all been pretty well occupied by humans over the last, I don't know, fifty years. So the plover can't nest on the beaches.

The environmentalists are absolutely insane when they fight with the dog types in San Francisco, because wildlife goes where wildlife wants to go. It doesn't go where you want it to go. If you say, Okay, I'm going to take the dogs off this chunk of the Golden Gate Beach, the plover's not going to go there just because you think it's nice. Plovers go, like most wildlife, they go in large areas, large areas, big, big areas, where they are left alone, where they don't have human competition. So if you want to take a couple of miles of the Ocean Beach, that's nothing.

Chall: I think there was a large plover area down there where you were planning to develop.

Thorpe: Well, there were not. The interesting thing is, if you look in the EIR when we did the studies, we didn't find any plovers, any salt marsh harvest mice, any wildlife on the project site at all,

ever, and that was over a multiple period of years. The nearest plovers were about a mile away. Now, this is not to say that they like a huge band of noncompetitive space. I mean, they probably do. I can't gainsay that. It's just as far as the project site, there weren't any.

VI JOHN THORPE'S PLAN FOR THE SHORELANDS AND THE ULTIMATE DEFEAT,
1982-1992

The Basic Plan

Chall: I wonder now if we could just go back and start to talk about your project. You've given good background here, but let me get started with some facts. You have your map out, and I've got this map. The Baumberg Tract per se, as I understand it, is something like 800 or 835 acres. You say in your initial brochure on the Shorelands that it's a major mixed-use plan development in the city of Hayward combining two distinct properties totaling over 1,200 acres.

Thorpe: Well, that includes the open space areas.

Chall: The open space areas?

Thorpe: Okay, the 1,200 areas, we wanted to buy--that's back in 1983 or so. We wanted to purchase from Leslie, and we contracted to purchase this outboard area which was known as the Whale's Tail. We thought that ought to be dedicated open space. Don Edwards is an old friend of mine. I talked to Don Edwards about how that outboard area plus the Whale's Tail could be incorporated into the bird refuge. [The Don Edwards San Francisco Bay National Wildlife Refuge]

Chall: I see. But that belonged to Leslie?

Thorpe: Yes. All this belonged to Leslie. Leslie owned, or owns, about 6,000 acres in that area.

Chall: So you were planning to take an option on 1,200 acres, is that it?

Thorpe: We did take an option.

Chall: You took an option on 1,200 acres.

Thorpe: Yes.

Chall: And you were planning to build, then, your project on about 600 of those acres, and leave 500 open for open space?

Thorpe: Yes, 500-some-odd acres, was developable land. Yes, 530 or something.

Chall: All right, I'm just trying to pull in figures that I get here and there. So that your project was, in a sense, within your option, allowing 500 acres for open space, which was there already.

Thorpe: Well, the 500 of open space, plus about 200 acres of what I would refer to as inboard developed open space of one kind or other.

##

Thorpe: We wanted to purchase this. This is marshy habitat here in this--

Chall: I see. I've got this big map too here, that maybe we can--

Thorpe: Okay. [much unfolding of maps]

Chall: You were optioning up here, this area that's enclosed in red.⁵

Thorpe: Right. Not this originally. Not that piece.

Chall: You weren't taking the Perry Gun Club.

Thorpe: No.

Chall: It was just this that's down here [along Mt. Eden Creek] to the levee.

Thorpe: Right. And then this strip here--

Chall: Along Mt. Eden Creek [in blue ink].

Thorpe: Yes, and it went out here and took the Whale's Tail.

Chall: I see, this is the Whale's Tail out in here.

Thorpe: Yes. If you look at it in the--in there--you see how it looks kind of like a whale's tail?

⁵Looking at a large map outlined in color, designed by Howard Cogswell.

[During the next few minutes, Mr. Thorpe and Mrs. Chall discuss the map. He roughly describes the areas set aside for mitigation in the early stages of his project. Mr. Thorpe was recalling as much as possible. The information can be seen on Map 1.]

Thorpe: In those days, there was no requirement that you construct artificial mitigation. You could buy mitigation lands. Now again, you can buy mitigation lands and dedicate it. So that area is kind of foggy. You see, this area here--

Chall: Yes. The Whale's Tail.

Thorpe: These were areas that we recognized as having significant vegetation, and therefore, significant--yes, it goes on down here --okay. These were areas that we saw as having significant vegetation. And we widened this channel, with the theory that you've got to make it wider if it's going to have any value [hatch marks, Map 1].

Chall: For trails. Or whatever.

Thorpe: Well, this was for open space.

Chall: Open space, yes, I see.

Thorpe: The trails would go inboard of that.

Chall: I see, so that was your open space. And your area that you had taken an option on then went from--

Thorpe: We worked up with Cogswell a plan, and I don't have--I don't know that I have a--maybe it's in the EIR--the original plan, the original mitigation plan-- [pause] I don't seem to have a map of the original one.

Now, let's see, the original mitigation plan was to go down to this area 5 in here. [B8 on Map 1]

Okay, so the original plan would have been down here.

Chall: That's the original plan we're talking about for--

Thorpe: The original mitigation plan. Yes, and we had worked this out with Cogswell.

Chall: That was for what--the plover area?

Thorpe: No. Plovers--the reason--even though there have been historically no plovers here in years, we have all kinds of plover studies. We

did plover studies coming out the ear, and we could never find any plovers on the site. Plovers nest on substrate, they nest right on the dirt. But you see, wildlife, as I was saying earlier, wildlife go where the wildlife wants to go. I mentioned the Golden Gate Recreation Area and the dogs, and that being silly. You can't tell plovers where to nest. You can create an area, and whether or not they go there is problematical. Okay? Right here, see? See, right here is this area right here, yes.

Chall: All right, and we're talking about this area, then, here. [B9 on Map 1]

Thorpe: I believe it was--and I don't have a map--but I believe it was this whole area here. They would take, for example, a pond here, and fill it and turn it into an island.

Chall: Is that the original mitigation, with the islands?

Thorpe: Yes, various islands and things. And Cogswell said, "You know, you'd probably have more wildlife in that whole general area in here after mitigation than you have now." He thought it was very positive.

Chall: Okay. I think I see your plan. This is the 600 and some acres that you were going to build your racetrack on--this upper area in here.

Thorpe: Yes, 520 or 530.

Chall: It was in this upper area in here. [Map 1, outlined in red]

Thorpe: Yes, the racetrack went right here. Racetrack right there. Okay.

Chall: All right. Racetrack went there, and then your various buildings and things went there. [See Shorelands Project promotional material, back envelope]

Thorpe: Industrial, yes, right.

Chall: There was--let me see if I can--on these--there was a gun club, and then there were Oliver Salt--

Thorpe: Okay, this is mitigation plan 2.

Chall: So originally you hadn't planned to--

Thorpe: We were down here originally.

Chall: And you had not planned to do anything in this area, you hadn't planned to take in the [Perry] Gun Club or the Oliver Salt land?

Thorpe: No. We increased our option to include the Gun Club, which was going to be mitigation.

Chall: I see. That was your second mitigation plan.

Thorpe: And we proposed to turn over the back 129 acres of Oliver to mitigation. [Oliver Hayfield, Map 1]

Chall: But you proposed it. Was Oliver amenable? How did you deal with Oliver?

Thorpe: [laughs] Gordon Oliver was never amenable for more than two days on much of anything. Gordon was a very cranky person. We got an option. When the option expired, Gordon would not renew it.

Chall: I see. You did have an option.

Thorpe: Yes. What happened is some Fish and Wildlife people came out. We tried to explain to Gordon that the Fish and Wildlife people had to go out on the property and look at it in order to decide whether or not they wanted it. And Gordon felt very strongly that they should not walk on his land. And so when we got the option for two years, the Fish and Wildlife people went out and said okay. At the end of the two years, Gordon said, "They had absolutely no right to walk on my land."

Chall: And this was the Oliver acres down here, this 129 acres?

Thorpe: Yes. Gordon was not an easy man to deal with.

Chall: So you never tried--you didn't want the Oliver acres up in here? [North corner of commercial area, HARD, Map 1]

Problems with the Environmental Community

Thorpe: We offered to acquire it for HASPA [Hayward Area Shoreline Planning Agency]. Well, we tried various combinations of various things. It was a case of the politicians were trying to cause the environmental community to accept something, and the environmental community by definition wouldn't accept anything ever.

Chall: Well, all right. Now that we've sort of outlined your problem--

Thorpe: [laughs] Well, that's the fact. But whether one wants to acknowledge it or not, it was the fact that you had a certain number of people. We had--oh, what was her name in Castro Valley?

Chall: Janice Delfino?

Thorpe: Janice. Now, Janice. When I did Columbia, Castro Valley, there was an old dead tree next to where we were going to put an access road. The deal we did in Castro Valley with the East Bay Regional Park District--that's very instructive. In Castro Valley, the East Bay Regional parks had planted eucalyptus down this canyon here which they didn't want. They had planted them, and they had a PR problem, because the Oakland Tribune had bought the eucalyptus in a publicity thing.

Chall: The Oakland Tribune had bought it?

Thorpe: The Oakland Tribune contributed a dollar to buy eucalyptus for each subscription they got back some years before. The Oakland Tribune caused the planting of dozens and dozens of eucalyptus. On the one hand, regional parks didn't really want to come out and say, "The Oakland Tribune has saddled us with a terrible fire hazard." On the other hand, they wanted to get rid of them.

So we were going to put our entrance road down that canyon and take out the eucalyptus. In turn, we would not take out the natural trees which we had in our canyons. You see, we could have come up from Cull Canyon Road up our canyon, but that would have taken out decent trees.

Chall: Cull Canyon Road?

Thorpe: Cull Canyon, yes. And the point is, neither Mr. [Richard] Trudeau nor myself wanted to carve up a bunch of really nice oaks and bays and laurels, and it was much better to take out the eucalyptus.

Well, so then we had completely entered into the agreement with the district, which was all signed, by the way. At that point, Janice came out in a public hearing, had a slide--it was a very nice slide--of a woodpecker in this dead tree. I pointed out the tree is dead. And Janice said, "Well, it's full of worms, and the woodpecker--it's a food source for the woodpecker." I said, "Well, tell you what we'll do. We will saw it off with a chainsaw, we will move it out of the area so it's maybe twenty feet away, and we'll plant it in concrete, and the woodpecker can continue eating it. Or, the woodpecker can cruise down two miles of Cull Canyon and select another tree. It's up to the woodpecker."

Janice did not think it was funny. Janice knew that I never would have done anything with regional parks if she hadn't forced me. She knew that their battle had done it. Of course, Trudeau and I both knew that it was all agreed to ahead of time. My mother was an open space and tree and wildlife and nature nut, which I am. And my mother had told me when we bought that Cull Canyon property that if I ever cut any of those trees, she'd come back and haunt me from her grave. And she would. She would. So then Janice got on this one.

Chall: Yes, on the Baumberg.

Thorpe: Oh, yes, we had Janice--did we have Janice on the Baumberg. Janice and a lady in San Lorenzo--

Chall: Barbara Shockley.

Thorpe: Barbara Shockley. Of course, those people did a lot of good. Janice has done a lot of good in her time. I can't--. Because Janice stays on the city councilmen, she stays on the supervisors, and she--

Chall: Yes, she does.

Thorpe: And she fastens her jaw into their calf and never lets go. And you need some of that. Most of the development community wouldn't do a thing for mitigation if they didn't have to. You see, I don't know. I look back at the Baumberg Tract and say, "Well, on the one hand, yes, it's a matter of economics," and I'm desolated, I lost money. But I take the position that I did on the onset of our tape session, that it's not going to make any difference 200 or 300 years from now. It will be whatever it's going to be.

Plans for the Racetrack

Chall: Well, I want to get some of these facts. You have an outline? Well, I have it.⁶ But let me go back to the plan. As I understand it, you had thought of putting in Marine World Africa-USA and a horse racetrack--

Thorpe: Originally, yes.

⁶Mrs. Chall delivered an outline of the interview to Mr. Thorpe several days prior to the interview session. It was on his desk in another room in the office. Later he retrieved it. --M.C.

Chall: --originally. And was it on that same property?

Thorpe: Yes.

Chall: You had then, you had an option with Leslie Salt or the Cargill people at that time?

Thorpe: Yes. We had an option all during this time.

Chall: And for that whole acreage, that 1,200 acres.

Thorpe: Yes.

Chall: With whom were you dealing at Leslie?

Thorpe: At Leslie? With two people, Paul Shepherd, and Bob Douglass. Very nice people.

Chall: Is that the Mr. Douglass who's there now?

Thorpe: Yes. And I think Howard Cogswell would second the motion that they're really decent human beings. I had a wonderful relationship with them. I have never run into capitalistic types who are as straight and honest as the folks at Cargill. I mean, you can absolutely accept their word. They're very rare birds, and they've worked a lot with Howard over the years.

Chall: Yes, they have. So these are the people with whom you took a ten-year option.

Thorpe: Maybe it was five, another five, I don't know.

Chall: So you started that plan in about 1981?

Thorpe: Right.

Chall: All along, then, the racetrack was a part of the deal?

Thorpe: Yes. You see, the racetrack was an economic gain, and the statewide and political gain legislatively. The Marine World was a heavy cost element. And I liked Marine World, I really did. Marine World then through time--. You see, they were in the process of losing their present premises.

Chall: Yes, so they were going to have to move.

Thorpe: Yes. But they could not--you can't put a cork in the camel's mouth and wait a few years. There's an awesome cost to maintaining them [the animals], and we knew--after a while, we

knew we couldn't produce anything in any short period of time. We had done a bunch of big studies like this on Marine World. We gave those studies--we gave them--to Vallejo, and Vallejo acknowledged on numerable occasions that they could not have done Marine World if we hadn't made it possible.

Chall: I see, so it went there. And that left you with the option on the land, and so at that point, you decided to put in a hotel and the other commercial developments?

Thorpe: We were always going to do hotels.

Chall: So nothing changed.

Thorpe: Hayward is a place where there is no "there" here. We were trying to put some "there" in Hayward. We were trying to do something that would support a hotel development and therefore permit us to create a visitor program for Hayward. We were trying to do something to help generate some economic push in Hayward. Something which it still needs.

Chall: Ah--[laughs] In all the work that went into setting this up, then, you checked with the horse people and thought that there were some possibilities.

Thorpe: Well, there still would be. You see, if you just geographically look at Golden Gate Fields [Albany], Golden Gate Fields is owned by Catellus. Catellus has piecemeal sold that property to the state for its parks and open space. There was a bill passed. There is a plan for the area being developed by the East Bay Regional Park District. That is slated to become a park. That is not going to be racetrack, longterm.

Chall: That's part of the area. [The planned East Shore Park.]

Thorpe: Oh, yes, yes. And part of its problems in development as a park is you see, underlying the racetrack was a World War II military airstrip, and it is full of toxics, and it is full of eight feet of concrete. [laughing] I mean, land they are taking here is a quarter under concrete. So that's a tough thing to turn into a park.

Chall: But you had problems just getting--eventually just getting them to accept the fact that you might not succeed in this development?

Thorpe: No, we didn't need the folks at Golden Gate Fields. Bay Meadows [San Mateo] is even now as we speak--they're both now as we speak being phased out. Bay Meadows has come up with this theoretical plan to build barns in the infield. They have sold off the

training track area and the barn area to Franklin Resources to build an industrial park and so forth.

Racetracks are basically an agricultural use. Racetracks have a lot of horses, and 2,000 horses smell. And you do not put hotels and office buildings next to piles of manure if you have any sense at all. So Bay Meadows is going to be developed. Bay Meadows has been sold for \$300 million to a company that's in a development business. So we knew there wasn't going to be a racetrack in the Bay Area if ours didn't get built. That was the basic engine behind that.

The City of Hayward: A Roadblock

Chall: But the time was not right, because it's just happening now rather than when you had your option some sixteen years ago.

Thorpe: They are folding now, but they would have--we had a contract with Bay Meadows. We had a contract with Bay Meadows. They would have entered into a contract any time. Our problem was very simple: it's called the city of Hayward. We got permits through each and every federal agency; we got permits from each and every federal agency. We got through the entire federal planning process.

Chall: For the racetrack?

Thorpe: For the racetrack, for the whole thing, for the Baumberg development. We got each and every permit we needed. Leslie can tell you that. We got all the federal permits. We were through with Fish and Wildlife, we were through with EPA. And not the final, final, final, but we were 90 percent through with EPA. We got a written letter from Fish and Wildlife that we could proceed, that their jeopardy opinion was dropped. And Corps of Engineers. Our problem was simply the city of Hayward.

Chall: I don't understand that, because from everything that I read, you didn't have any final approvals on any of this.

Thorpe: You don't--under the federal permit process, you have to have the city approval before they issue a final permit.

Chall: I thought the city was all for it.

Thorpe: No.

Chall: What happened? I didn't see any correspondence with relation to the city.

Thorpe: The city manager's office kept losing our permit application. We could have sued the city of Hayward. Maybe in retrospect I should have, I don't know. But the city dropped the permit application, the city closed our files at one point. The city was hostile, negative.

Chall: I can't--I find that hard to relate to.

Thorpe: Talk to Leslie. Talk to Leslie, they'll confirm it. During the Alex Giuliani era, the city was very supportive.⁷ The city was supportive, and the city was not supportive during the Bertie [Roberta] Cooper era.⁸ No, Alex Giuliani was positive. When we got to Michael Sweeney, it became very, what I would have to call neutral, all right?⁹ Neutral if not mildly negative. When we hit the--you can talk to the engineers, you can talk to Leslie, I can tell you, the city kept asking for more studies and more this and more that. The city stalled us out during the--. And it was, the tail end of it was with Cooper, no question about it.

You see, city politics are largely, and the relationship of developers is largely set by the city manager, and the city manager's office.

Chall: And who was the manager at that time?

Thorpe: We had a good relationship with [Don] Blumbaugh. The instant we got Jesus Armas, we had problems.

Chall: But it seems to me that these people came after the 1987 when you had given up primarily.

Thorpe: We didn't give up in '87! We didn't give up until 1991.

Chall: I see. I don't have any information, any material in my files beyond '88.

##

⁷Alex Giuliani, mayor, 1982 to 1990.

⁸Roberta Cooper, former city council member, 1992-1994; mayor, 1994-1998; 1998-2002.

⁹Michael Sweeney, mayor, 1990 to 1992. [Elected to California Assembly 1992-1998]

Chall: I'm trying to get the story, John, of how this all came about.

Thorpe: My files are in sufficient disarray--you asked about the tail end of this story--

Attempts to Overturn the Jeopardy Opinion of 1987

Chall: Yes, I would like to start at the beginning. I did ask about the tail end, because you were telling me about the city, which confused me, because I didn't have anything about the city in my material.

Thorpe: Okay. Just briefly, basically what we did: after the jeopardy opinion, we focused just on the jeopardy opinion until we got by the jeopardy opinion.

Chall: Oh, you did get by it?

Thorpe: Yes.

Chall: How did you do that? There must have been mitigation.

Thorpe: We hired a company--Thomas Reid Associates over in Palo Alto. There was a newspaper article where one of the Fish and Wildlife people said, "Yes, they can now proceed."

Chall: So the Fish and Wildlife allowed you to proceed?

Thorpe: They did announce that we can proceed. We were by the jeopardy opinion.

Chall: I would like to see that.

Thorpe: I don't know that I could dig out the press clipping.

Chall: But you must have something from your files that would--

Thorpe: I--hmm. I have no idea if I could find that or not. I haven't kept all this stuff in apple-pie order. I don't have any money. I do not have any money to fund the secretaries to take care of files.

Chall: Yes, but I would expect that they would be in a paper box somewhere, in a carton.

Thorpe: You know how many cartons of Shorelands files we have?

U.S. Prohibits Shore Project In Hayward

Daily Review - Nov. 7, 1987
By Edward Iwata

Federal officials yesterday refused to allow development of a racetrack, hotel and business park at the edge of San Francisco Bay in Hayward.

The U.S. Army Corps of Engineers, which has authority over federal wetlands acreage, denied Shorelands developer John Thorpe permission to build his dream project. The corps said the \$500 million, 637-acre development may be dead unless he drastically revises it.

Colonel Galen Yanagihara, the corps' district engineer in San Francisco, told Shorelands officials yesterday morning that he agreed with U.S. Fish and Wildlife biologists that the project would harm wildlife and the bay environment.

Endangered Species

In October, the Fish and Wildlife Service found that the Shorelands would threaten three endangered species: the least tern, the clapper rail and the salt marsh harvest mouse. The agency issued a strict "jeopardy opinion" and urged the Corps of Engineers to reject a permit to develop.

"The corps will not issue a permit in face of the jeopardy opinion," said Army spokesman Frank Rezac. "It will take some major revamping."

David Nesmith, conservation director of the Sierra Club's San Francisco Bay chapter, said, "We're very satisfied. This project is simply wrong for the area. Anybody who wants to build a project that destroys wetlands is going to have a very hard time."

"The longer it takes, the more apparent it becomes to everyone that the Shorelands won't fly," said Barbara Shockley of the Hayward Area Shorelines Planning Agency. "It's a fantasy, a pipe dream."

Developer's Response

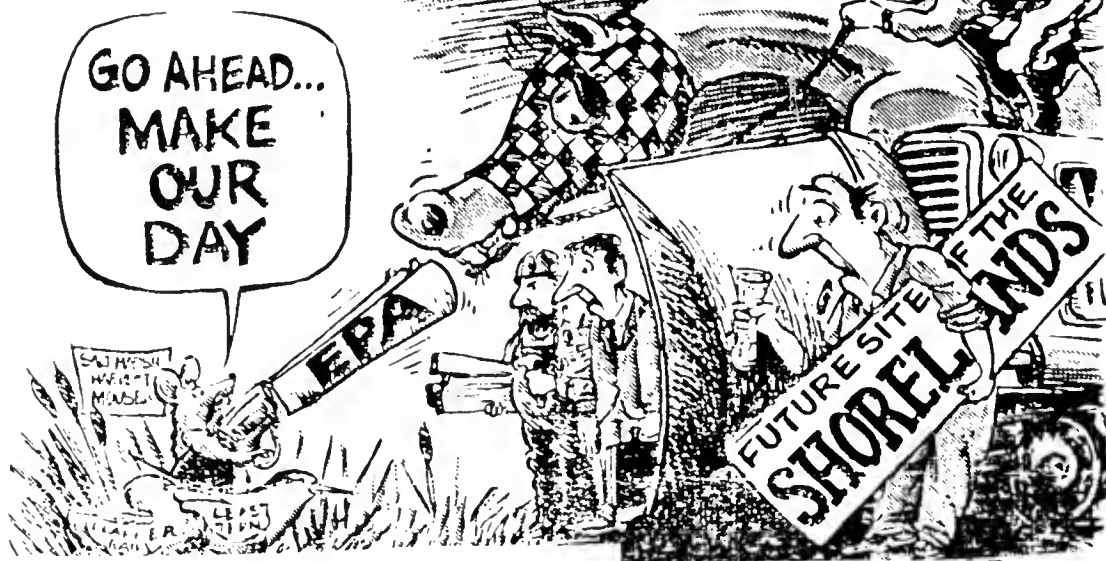
Thorpe, a real estate attorney, played down the setback. He characterized yesterday's action as merely another step in a long, tiresome regulatory process with government agencies.

"Clearly, this will impact the size and costs of mitigation," said Thorpe. "And very clearly, the corps strengthened the hand of the Fish and Wildlife Service. The land has very little value. ... We'll have to offer a solution that will be better for the wildlife than what's there now."

He said he will meet with Fish and Wildlife biologists in Sacramento next week to see if a new proposal is possible.

"We seem to keep rising from the ashes," said Thorpe. "We'll just have to keep meeting until we work something out."

Failing a solution, Thorpe can appeal the ruling to the Corps of Engineers' regional office or challenge it in court.



Shorelands good for the East Bay

THE PROPOSED 637-acre Shorelands race track and industrial development will enhance both Hayward and the East Bay.

We think the benefits from developer John Thorpe's project near the Bay shore outweigh the potential negatives.

And, we believe it's time that government agencies quit jerking around the Hayward developer. He deserves a straight answer concerning his six-year quest to build a major development along Hayward's shoreline, south of the Hayward-San Mateo Bridge.

Thorpe's proposed \$469 million project includes a horse racing track, theme park, hotels, commercial-industrial buildings and plenty of open space.

Unfortunately, Shorelands is near the scarce wetlands of San Francisco Bay and provides a home for three endangered species — a mouse and two birds.

That has brought opposition from environmental groups and government agencies empowered to protect environmentally sensitive areas.

We, too, value the environment. The protection of dwindling natural resources and recreational areas throughout the Bay Area must be high on everyone's priority list.

HOWEVER, THORPE'S Shorelands property is not Yosemite Valley. The wetlands and plants that grow in the area formerly used for salt harvesting won't be incinerated on any Bay Area scenic tours.

The Shorelands is an appropriate waterfront area to develop. Why let an essentially unaesthetic area remain barren when a suitable development could create many jobs, generate valuable tax revenue for the city of Hayward, and actually improve the aesthetics of the land?

Thorpe's project would fit that bill, as long as reasonable mitigation measures are employed to protect the environment. He has often proposed such mitigations.

The Hayward developer must also satisfy the public that he will be able to meet the increased traffic demands that the huge development would generate in an area that already often experiences gridlock. He must demonstrate that before any phase of his project is completed, the additional roads and highway interchanges needed to handle the increased traffic will be in place.

Currently, the Army Corps of Engineers won't consider granting Thorpe a construction permit to build Shorelands unless the U.S. Fish and Wildlife Service removes its objections. The federal agency fears the project would harm three endangered species: the salt marsh harvest mouse, the California clapper rail and the least tern.

THAT'S THE way it has been for Thorpe since 1981 when he first proposed Shorelands. He has changed his project a number of times over the years in hopes of making his project environmentally acceptable to state and federal agencies.

A number of government agencies must give their blessing before construction near a waterway can proceed. That's the way it should be to ensure that valuable natural and recreational resources are protected, and not destroyed, when the bulldozers start moving the dirt.

What we object to is the process, the incredible bureaucracy that has prevented Thorpe from getting a straight answer. One can be assured that when Thorpe introduces mitigation measures to appease one agency, there will always be another ready to shoot it down.

Six years and \$10 million later, Thorpe still doesn't know whether any type of development will be allowed on his shoreline property.

That's absurd.

The Hayward developer should have his day in court where he and all the regulatory agencies can present their facts at a public hearing and argue why Shorelands should or shouldn't be built.

TO DATE, all government agencies involved have yet to come together, interact and render a reasonable judgment as to the merits of Shorelands. Instead, the agencies keep passing the buck, which has effectively placed the project in a bureaucratic limbo.

It's time to shake the project out of the bureaucratic spider web and let Thorpe demonstrate its considerable merits to the public.

We think Shorelands is good for the East Bay and good for Hayward.

We urge the competing bureaucracies to get together and give Thorpe some straight answers so the project can proceed through the approval process.

Chall: [laughs] I can believe it. Up in your attic somewhere.

Thorpe: No! For example, just by way of brief example, I've got a whole garage full of them there, each and every one of these is full of the Shorelands files. All these, the garage there and my garage at home--¹⁰

Chall: Are they dated?

Thorpe: Well, they're numbered, and they've got some sort of system. The fact is that basically, we have focused on some litigation with some partners, and we haven't focused with historically saying what happened.

Chall: So you got through those fourteen-some permits?

Thorpe: [moves away, long pause, returns with several volumes of mitigation-EIR/EIS reports] There was Thomas Reid and Associates in Palo Alto, and Richard Murray Associates.

Chall: Now [looking at plan books] this is the draft of March 1987; this one is dated September 1990, Volume I.¹¹ It says here, "Shorelands Response to Thomas Reid Association, June 15, 1989, Letter Regarding Scoping." So in other words, what happened is that you went back again to get your--you went back through the permit procedure, is that right?

Thorpe: We hired Richard Murray Associates in Carmel--

Chall: Yes, that was the first--

Thorpe: --Monterey. But we rehired them, along with Thomas Reid Associates in Palo Alto--

Chall: And what was the reason for doing that?

Thorpe: They prepared a series of books--[walks away, tape interruption]

Chall: You hired?

Thorpe: Thomas Reid and Associates of Palo Alto. Richard Bailin, our attorney, advises me that in a file cabinet here we have all those

¹⁰Mr. Thorpe opens a wall closet to show some fifty numbered file boxes, only a small portion of the total number stored elsewhere.

¹¹"The Shorelands Project Environmental Impact Statement Information," (Thomas Reid Associates) September, 1990. Volumes I, II, III.

contracts, and that he has maintained all those files. Murray and Reid prepared numerous plans, drawings, and engaged in studies. We hired a plover lady from Alameda [Leora Feeney].

Chall: A plover lady!

Thorpe: Plover lady. We spent hundreds of thousands of dollars on this stuff. She did a bird study which among other things showed there were no plovers. We prepared alternate mitigation plans. We negotiated with Fish and Wildlife in Sacramento, and they finally gave us a letter. The letter stated that with the revised mitigation, we could in fact obtain the permits. There was an article in the Daily Review, and they did ask the lady in Sacramento, and she did state, "Yes, they can proceed." Okay? [See article, following page]

Chall: I'll have to find those. That was probably about 1990 or 1991, if this came out in 1990. Because these are all responses to all of the previous studies and comments.

Thorpe: Yes. I would think--where is this sheet that had the different people we contracted with, Reid, for example?

Meetings with Representatives of Environmental Agencies

Thorpe: [leaves room, tape interruption] It was a misunderstanding that the federal authorities stopped the project, not the city of Hayward. But by that time, it didn't matter, and so we simply didn't bother correcting people.

The final thing that was issued--you see--I have to explain this. The jeopardy letter is contained in a document called the Preliminary Biological Opinion. The Preliminary Biological Opinion is not a final biological opinion. We met with a whole slew of people. In May of 1990, we had a meeting at the corps, with Calvin Fong and Irene Ulm of the Corps of Engineers; Pete Sorensen, Wayne White, Peggy Kohl, from the Fish and Wildlife Service in Sacramento. Wayne White was the then head of the Portland office of the Fish and Wildlife Service, along with two field workers, Peggy Kohl and Pete Sorensen.

Chall: They were also with Fish and Wildlife.

Thorpe: Right. Bob Ruesink [spells] and Don Sundine, Fish and Wildlife Portland regional office. Tom Reid and Karen Weissman [spells] of Thomas Reid Associates.

HAYWARD DAILY REVIEW

9-10-90

Shorelands moves closer to approval

Race track learns what it must do to protect endangered species

By Dennis J. Oliver
STAFF WRITER

HAYWARD — The Shorelands project — now proposed as nearly 600 acres of race track, industrial park, and theme park on the Hayward shoreline — is closer today than it ever has been to becoming a reality.

The U.S. Department of Fish and Game last week decided the development would threaten three types of endangered species, but listed a number of ways that those concerns may be alleviated.

Developer John Thorpe believes he can accomplish that.

The answer lies in a pile of wordy government documents that pave the way toward Thorpe's permit to fill an area of sensitive wetlands in exchange for a mitigation plan.

Maps of the development show

Please see **Track**, next page

Track: Developer could give up more for wetlands

Continued from previous page
about 1,000 acres of land, half relegated to endangered creature, the other to concrete.

"There are a number of hurdles that can still be overcome," said Peggie Kohl, a fish and wildlife biologist. "Things are not crystal clear. We could issue an opinion that it can be built without risk to the animal(s)."

If that happens, Thorpe will come a step closer to obtaining a permit from the Army Corps of Engineers to fill an area of wetlands.

Fish and wildlife officials told Thorpe that his project would jeopardize the salt marsh harvest mouse, the California clapper rail and the least tern.

To repair the problem, a number of suggestions were made, including the suggestion that Thorpe remove 60 acres of crucial development land from his project.

Thorpe says he can deal with the demands federal biologists have made, and that an area of compromise is in the horizon.

A letter mailed from Shorelands to fish and wildlife officials lays the ground work for some of that compromise.

Setting up a successful predator control program aimed at protecting the endangered species is the

only remaining obstacle before Thorpe applies for his permit from the corps.

Once a satisfactory plan is accomplished, Thorpe feels the benefits his project would provide to the community in revenue and help with financing a Hayward traffic plan would make Shorelands attractive to local government.

The City Council is largely undecided on how it feels about the Shorelands project, according to council members questioned last week.

Councilman Matt Jimenez said he has been in favor of the project from the beginning.

"I was raised in Hayward all my life and I used to go down to the salt flats all the time and I've never seen a salt water harvest mouse out there," said Jimenez.

Council members Roberta Cooper and Shirley Campbell said last week that they were largely undecided and uninformed about the

project. Mayor Michael Sweeney said he was concerned about the project and that he would ask some "tough questions" before forming an opinion.

The Shorelands track and industrial park would provide an estimated 15,000 jobs in Hayward and would fill an assessment district.

Chall: And was there somebody from the state?

Thorpe: There was myself, Nori Hall, and Dick Bailin from Shorelands. There was Bob Douglass from Leslie Salt Company. There was Dave Ivestor from the attorneys for Leslie, Washburn, Briscoe, and McCarthy. [spelling all] There was Jack Stewart from Kregan and DeAngelo, our civil engineers.

Chall: Well, I'll tell you, maybe we should just copy that so I don't have to take the time writing all the names.

Thorpe: Okay. There was Steve Foreman of WESCO, there was Jeff Peters of Questa. Okay. Now, we had hired--oh, dear, this--better take the names, because I'm not going to copy it, because it's two-sided and it's an old one. Or I can copy it for you later.

Chall: Yes, some time later would be fine. Now, where is the state Fish and Game in this? Were they there?

Thorpe: They don't have a role in it. The jeopardy opinion is solely a creature of federal law. Now, this is the meeting following which we were told we can obtain a permit, and they wrote us a letter--. [looking through files] Is this the letter? Let's see. This letter is May 21, '90--no. I don't know where that letter is, I don't think. But the point is, this--I believe this is the meeting just prior to the letter that says you can obtain--.

Bottom line, what happened is simply this. We could not get the Sacramento office of Fish and Wildlife; they had done this jeopardy opinion, and it was absolute B.S. None of the creatures that they said we jeopardized with the project were in fact on the site. We couldn't get them to do a damn thing. Fish and Wildlife's regional counsel told them, "That isn't going to fly. That will simply not fly. If this thing is litigated, you're going to lose."

Chall: That they would lose, or you would lose?

Thorpe: That they would lose. Wayne White was then transferred to Washington, and he was sent to a special school, a management school. Wayne White came back and was made the new manager of the Sacramento office, in part because of this mess, okay? And meanwhile, we got Thomas Reid, we had the plover studies, et cetera, and they then said, "Okay, you can obtain a final biological opinion," and there was an announcement in the paper.

Then, because we were ready to drop the thing and Leslie was ready to drop the thing, we were all saying it was hopeless, let's face it. At that point they said, "No, it's okay."

Attempts to Solve the Predator Problem

Thorpe: We also hired another company, Wildlife Control Technology. You see, what happened is the preliminary biological opinion said that what the project is going to do is multiply rats and they're going to go outboard and destroy the plovers. What happened was it developed that there is a surplus of predators.

The range carrying capacity for skunks and other predators--rats, every kind of predator--out on those outboard areas is exceeded. There are more predators out there than the range carrying capacity in the area. And the only predator problem we would have is predators coming in that are already there.

Fish and Wildlife Service then hired this outfit, and they went out and they shot red squirrels. This is the killer--this is the CIA for Fish and Wildlife. This is the company that they use to shoot red squirrels that all the environmentalists think are lovely but they're in fact awesome predators. Okay?

Lack of Support from the City of Hayward: Thorpe Drops the Shorelands Project, 1992

Thorpe: In any event, it then became evident that we had zero support from the city. We just didn't have any support from the city whatsoever. We then said, "Look, it's going to take another couple of million bucks to conclude this thing, and it simply--there's no point if we can't get any help from the city." That's when we dropped it. The same, every major project in the city of Hayward. What has happened up in the Hayward hills? They were lied to, just the way we were.

The Baily property lies just below Hayward 1900. Both Hayward 1900 and the Baily property were told, "If you work with the city and come up with a design for the appropriate number of units that will be between X and Y, we will go forward." And they have screwed around for years just the way we did, and they've gotten nowhere. Is there any development? No. Are there any permits? No.

What happened on the golf course? Same thing. I mean, the city keeps telling you, "We will go for X and we will support X," and then they don't.

The point is, you cannot hold a successor city council for the commitments of a prior city council.

Chall: That's right.

Thorpe: So what do you have in Hayward as a result? You have absolutely no one trying to develop anything major. They're not going to do it. It's too risky. The point is, we showed that you can spend millions of dollars, and you can do a well-intentioned effort, and it's not going to get there.

But the point is, people must understand the process. The process is one where, in finalizing the EIR and issuing permits, the corps does not issue a permit until after the city issues a permit. That's the way the process works. You don't get the final permits from the federal agencies until you have the initial permits from the city.

Chall: I see. And I thought that early on, you did have the initial support--in the Giuliani era?

Thorpe: The Giuliani era, we had enormous support. Parenthetically, even though Alex is a perfectly nice guy, Alex would support anything, whether it made any sense or not. [laughs] But then you got Michael [Sweeney]. You have a bunch of politicians, and in Hayward, to understand Hayward politics is very simple. The mobile home park tenants, who are older, the police and firemen associations. If you have those three, you have elections. Okay?

Now, nobody wants to raise any controversial issue in Hayward politically. You have a bunch of people, all of them happy being reelected, and they get reelected if they do nothing. So they make the mobile home park tenants happy with vestigial rent control. You know, they do those things that do elections.

The Finances: The Limited Partnership, Bankruptcy, and Subsequent Continuing Litigation

Chall: I'm about ready to finish now, but before I do, tell me--just to get this financial thing understood--you had to set up a partnership. As I understand it from reading your partnership material, that you originally thought you might have, what, maybe eighteen or nineteen limited partners, and ultimately, according to the newspapers, at the end of the time you had about fifty, is that correct?

Thorpe: Well, seventy.

Chall: And you in fact put in about \$2.75 million of your own money?

Thorpe: And my wife and son put in another million. We had about half the money in it. But the total project investment was really about \$8 million.

Chall: About \$8 million total. I had \$10 million in my data.

Thorpe: Well, there was \$8 million, plus we ended up with about \$10 million in debt.

Chall: How did you get the people together? How many did you say you ultimately had?

Thorpe: Seventy.

Chall: Seventy. So how, ultimately did you get those people? Who were they?

Thorpe: Originally it was all my money. And then I saw I wasn't going to have enough, and I got friends.

Chall: Yes, you had plenty of those around, I'm sure.

Thorpe: Yes. And then, made a real error. [laughs] Which is an attorney. Dick Bailin here had been in a law firm in the city [San Francisco] called Dunne, Phelps, and Mills for many years. In San Francisco. They were one of the oldest law firms in the city. Then both Phelps and Dunne folded their tent. The senior partner one day, Arthur Dunne, did not return to work and never returned again. He was one of the foremost appellate lawyers in San Francisco; he just quit. So they all looked at each other for a while wondering what the hell's happened to Arthur.

And then Lou Phelps left and joined with a fellow by the name of Ted, Theodore Kolb. Kolb was the senior partner of a San Francisco law firm called Sullivan, Roach, and Johnson. I made two mistakes at that point. One was that I thought that Phelps was straight, which he turned out not to be. And I had known him for years. And so Phelps joins with Kolb. Well, Sullivan, Roach, and Johnson, the Sullivan was Walter Sullivan. He was the brother of the Sullivan who was the cofounder with Crocker of Crocker Bank. The Johnson was the late Senator Hiram Johnson, senator and governor of California.

And so here are these prestigious people. At any rate, Phelps brought in this Kolb, and Kolb brought in the Sullivans.

They live in a house in Pacific Heights where there's a wooden round plaque on the door that says "Consul of Consulate, Kingdom of Monaco." Mrs. Sullivan is the consul general to Monaco. She's a nice person. She had the good luck to inherit Beaulieu--

Chall: Oh, the winery?

Thorpe: Yes, and they are very wealthy people. I should say major San Francisco types.

You see, I had made an awesome mistake by forming a limited partnership, because I was the general partner, and the general partner is personally liable for all the debt of a limited partnership. When the jeopardy opinion came along, the people stopped putting in money, saying, "The jig is up." And yet Kolb said, "If you can get by the jeopardy opinion, we will put money in. We will again fund it."

So what I did as a big boob, you see, I borrowed against the building next door. I borrowed against my antique and classic cars. I borrowed every nickel I could put my hands on, and I paid Tom [Reid] and all these people to do all this work to get by the jeopardy opinion. I then had a partnership meeting one day and said, "Now, we're by the jeopardy opinion. We need some money."

Well, at that point, they hemmed and hawed. Well, I ran into a British firm, Grand Metropolitan. Grand Metropolitan, PLC, very decent British investors, and they put a couple million in, which carried us a while. But Grand Metropolitan then bought a company called Pillsbury--the Pillsbury "Doughboy." They paid \$5 billion for Pillsbury.

Well, the folks at Pillsbury said, "My God, you're investing in a racetrack in California? Racetracks are not consistent with the image of mom and apple pie that we at Pillsbury like. Gambling is bad." Well, Grand Metropolitan--it happened to many other companies in Britain--they owned the firm which is the bookmakers to the Queen, where gambling is accepted. So they sold their gaming houses, they sold their casinos, they sold their--all that sort of thing, and they cut us off at the pockets.

So however, I had gotten by the jeopardy opinion. At this point, the San Francisco folks said, "I'll tell you what we will do." See, I never dropped the project as such. But they said, "Tell you what we're going to do. We're going to bring in a guy who's a great turnaround expert." And I thought, What the hell do we need a turnaround expert for? I was up to here [points to nose]. I was about to lose everything I had. So they said, "Well, we will bring in this wonderful guy to reorganize the

thing, cut the budget, slash the things and so forth." And I tend to spend money, so I couldn't quibble about that.

So they brought in Albert J. Miller, and Albert J. Miller went to Leslie and negotiated a new deal with Leslie. And they formed a corporation called Shorelands Park, and they took over the assets, and they were going to pay the liabilities.

I began to smell a distinct odor of dead fish, and I went down to San Jose, and I found twenty-two judgments for fraud against Al Miller. I found that Al Miller was a charlatan who had screwed investors for a period of years. I went to San Francisco and said, "My God, what have you folks done? This is a fraud." At which point they all said, "He's a wonderful man." What he had told them is that he would--

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Thorpe: He didn't give me the line of b.s. he gave them. But he said, "I can get people in Hong Kong to put millions into this because they like racetracks, and they will put up the money, and they will buy you out at an enormous profit, and you'll make millions of dollars."

So they actually paid for a trip of Miller's to Hong Kong. In any event, because I then found out he was negotiating with creditors, he was promising payment plans--it was all fraud. Just the whole thing was a big fraud. So I then put Shorelands and the limited partnership in bankruptcy, in Chapter 11, and that gave me a tool that we could use. And I retained counsel. The counsel I got is Rick Simons, with Furtado in Hayward. The law firm is Furtado, Jasporice and Simons. Furtado has been here for years.

Now, Rick, it happens, is this year's president of the California Trial Lawyers Association, the state association of trial lawyers. They are very good; Rick is a very good trial lawyer. They have an associate counsel by the name of William Lockyer. [laughter]

Chall: I know him. [Senator Bill Lockyer]

Thorpe: Now, does it ring a bell? Now does it go around the circle?

Chall: Right.

Thorpe: Okay. We filed suit in the district court, and that lawsuit is still pending. The first judge we got, [Barbara] Caulfield, decided that she wasn't making enough money, her daughter got some

horrible illness that takes a lot of money; so she resigned. We were put in limbo for six months. [See article, following page]

We were then transferred to the second judge, [Eugene] Lynch. Lynch meanwhile recused himself. He recused himself (which is excused himself) from serving. He recused himself when Clayton Jackson was put in jail. The managing general partner of Sullivan, Roach, and Johnson was Clayton Jackson. Clayton Jackson is the one who bribed Alan Robbins and others. Biggest lobbyist in the state. I got myself into a nest of thieves without--it was just stupidity. I mean, Sullivan, Roach, and Johnson? You know, you just don't--I didn't think that the biggest San Francisco law firm would be a bunch of crooks. It's just not what I thought.

In any event, Clay went to jail, and so Lynch recused himself, because Clay is a big Republican. Clay, when he gets out of jail in a couple of years, will become a big Republican power again. Clay Jackson, before he got prosecuted, Clay Jackson spent New Year's Day with Governor [Pete] Wilson down in Palm Springs. They spent the day together at Wilson's place, and Wilson is very clubby with Clay. Oh, yes.

In any event, in any event--

Chall: So your suit is against whom? Miller?

Thorpe: No, I sued--we sued Miller, we sued Theodore Kolb, we sued Walter Sullivan--

Chall: Oh, the whole firm--

Thorpe: The San Francisco limited partners who got us into this mess. They didn't put up the money, as they said they would. The second judge, Lynch, recused himself when Clay went to jail, and another six months in limbo. The third judge that's assigned to the judge in Oakland. At that point, Illston, Susan Illston is appointed to the bench, and she is finally confirmed by the Senate. You know, there's a horrible mess in the federal courts which most people don't know about, and the mess in the federal courts is that there is 100 vacancies currently. The Republicans haven't been approving anybody. So no judges.

At any rate, so then we get the fourth one, Illston.

Chall: Susan Illston?

Thorpe: [spells] We are now I think about--well, let's see, '90, '91, I guess '91, '95--

HAYWARD DAILY REVIEW 10-4-91

Developer sues — wants company back

■ Man wants to stop his ex-partners from transferring assets

By Rich Riggs
STAFF WRITER

HAYWARD — Belaguered developer John Thorpe has filed a lawsuit charging that former partners in his bid to build a horse-racing track on the city shoreline have hijacked his company to avoid paying a multimillion-dollar debt.

Thorpe's lawsuit says his former partners and associates have set up a new company, Shorelands Park, and transferred the assets of his Shoreline Associates development firm to the new company.

The assets were transferred to Shorelands Park "to hinder, delay, and defraud the creditors of Shoreline Associates and to escape the liability of the creditors of Shoreline Associates," the suit says.

Please see **Developer**, A-18

Developer: Says company hijacked

Continued from A-1

Thorpe said he wants the bankruptcy court to nullify the transfer of assets to Shorelands Park or to require Shorelands Park to take on the debts for the project as well as the assets.

Lawrence Brookes, an attorney who once worked for Shoreline Associates and who helped establish Shorelands Park, said Thorpe is trying to destroy efforts of Shorelands Park to produce a successful shoreline development.

"Now, rather than see a successful project, he'd rather see no project at all," Brookes said.

Thorpe said Brookes introduced his 120 partners, who he says have invested about \$18 million, to a "corporate turn-around expert," Albert J. Miller.

Eighty of the 120 partners in Thorpe's Shoreline Associates voted on March 22 to transfer all of Shoreline's assets to Shorelands Park. Thorpe is the managing general partner in Shoreline Associates, but under the partnership bylaws all the partners had a right to vote on a transfer of assets. Thorpe said he abstained from the vote.

Miller said he did not want to comment until he has seen a copy of Thorpe's lawsuit.

On July 1, Shorelands filed for protection of the bankruptcy court under Chapter 11, a section of the law meant to salvage a business while arrangements are made to pay off debtors. Thorpe's court papers listed \$5.8 million in debts and \$1.6 million in assets.

Thorpe now says that the "assets and equity" transferred to Shorelands Park were worth about \$9 million.

Chall: My goodness, it's '98 already!

Thorpe: So yes, we've spent six years in the federal court being buffeted. We had a ruling we didn't like, we've appealed that. We'll go to trial probably in another year. So then I may be unbroke. I may not be unbroke, but I may be unbroke.

Chall: In the meantime, Shorelands is still a dream?

Thorpe: It's kaput. Well, the corporation bought it, and then we sued the corporation and they spit it back. There's one thing I hate. I'm not a crook, I'm not a liar. I cannot go to investors and say put some money in something that I don't think is going to happen. And the city of Hayward in the last nineteen years has not supported anything. They've opposed everything, it's politically safe. They've opposed everything except to build useless and ridiculous city halls. [laughs] Well, the first one never fell down. Do you know there are no cracks in the first city hall, the old Hayward city hall [on Mission at D Street]? There are no cracks in the hall? The City Center building [Foothill Blvd.], do you know that when the earthquake came, it wasn't hurt a bit? Not a bit! There's not a crack in the damn thing! And yet they say, "Oh, dear, we have to build something earthquake--" they're just a bunch of nits.

John Thorpe's Personal Loss: The Historic House, the Classic Cars

Chall: Tell me what happened to all of the fifty, sixty, seventy people, aside from you and your family, who put in money, sometimes 2,000 units at \$1,000 a unit or whatever it was. Have they lost everything that they've put in?

Thorpe: It depends on the lawsuit, but probably so.

Chall: That's a chance you take when you enter into a partnership.

Thorpe: Yes. Most of them, like the Bailys who own the 400 acres on the hill, the Bailys are all family. They were a big investor, and they lost a couple of million bucks, and Norman is still a client from time to time.

Chall: Oh, I'm talking about your limited partnership. Baily wasn't part of yours?

Thorpe: Yes, Baily was one of the limited partners, sure. The Baily family was.

Chall: You say he lost a couple of million dollars on your--

Thorpe: The Baily family lost a couple of million dollars on Shorelands, sure. Well, we put in \$8 million. It ain't there any more. Sure.

Chall: Wow. What's happened to your house next door, then? Is it just in limbo also?¹²

Thorpe: The house next door---no, no. The house was kind of a comic story. The lenders who had loaned money on the house had made some severe documentary errors, and I am a reasonably decent real estate lawyer. And so the savings and loan went to foreclose, and I fought them. And of course, they weren't getting paid, and they were not happy with the fact that they weren't getting paid, and I wouldn't let them foreclose. They tried a second time. We had a series of potential buyers. One was a couple of crazy women who were going to sell cruises to the elderly out of it, and they were going to have them come by bus to the bus stop on the corner and walk down at night? Can you imagine that? That's the craziest thing I ever heard. Who needs a great big house like that to sell cruises? But these people were just nuts.

There was another guy who was going to operate another thing that didn't make any sense at all.

Then along came Mr. Stout, Edward Stout. Edward Stout is a guy who restores pipe organs. Right there in the coach house right now there is a huge pipe organ which they're restoring for the Palace of the Legion of Honor in San Francisco. They've restored the pipe organ for the Grace Cathedral and he maintains it. They've restored the pipe organ for the San Jose--the huge Catholic church there in San Jose.

And Stout is a craftsman, and the coach house lent itself beautifully to the pipe organ restoration business. So at that point I gave up and let him have it.

Chall: I see, so he has it.

Thorpe: I owed \$800,000 on it, and he bought it at a fire sale for three. Which is why I was fighting with them: if someone was going to get it at a fire sale, I wanted somebody that I thought was

¹²Mr. Thorpe's law office and the Shorelands Corporation were housed in an historic building on Hesperian Boulevard in Hayward. Behind it, in the old carriage house he kept his collection of classic automobiles. Thorpe's office is now in a small cottage next door to the old building.

appropriate. Because I wanted somebody who was going to maintain the old building and take care of it. [See article, following page]

Chall: Yes, it's beautiful. And what about the automobiles?

Thorpe: The automobiles all got--including the Dusenbergs that I gave to my son [Nelson] on the occasion of his eleventh birthday--all got taken.

Chall: What is Nelson doing now?

Thorpe: Nelson has gone into the auction business in Berkeley, works for Harvey Clar. He is their expert on various kinds of antiques and classic cars and stuff. And he likes it. He evaluates them and appraises them and so forth.

Chall: Good. I'm glad he's found a niche.

Thorpe: Yes. He's found something that fits him. He has a problem that we didn't recognize as early as we should have, finally did. He's extremely bright, he's a very, very bright kid, but he wasn't doing well in school. It was about the sixth grade, I guess; he just wasn't doing well in school. Couldn't figure it out. Turned out he has dyslexia.

So there's a Catholic school operated in the hills [The College of the Holy Names].

Chall: Yes, exactly. I know they have had a very fine reading program.

Thorpe: They did a tremendous job with him.

Background on Interested Commercial Developers for Shorelands

Thorpe: You've asked some questions [looking at the interview outline].¹³ Chatham. Chatham died. Bob Chatham was an interesting guy. Chatham got out of the army at the end of World War II with another guy. The other guy took his kids on a cross-country tour of the United States and really didn't like the hotels at all. He

¹³The question dealt with the persons or corporations who might be interested in the commercial side of Shorelands. Chatmar, Inc., was a hotel chain, owned by Robert Chatham. --M.C.

FORECLOSURE ON A DREAM



John Thorpe's office is in this Victorian house at 21800 Hesperian Blvd.

Creditors nip racetrack developer

■ John Thorpe is forced to sell his Victorian home

By Ben Charny

STAFF WRITER

HAYWARD — Beleaguered developer John Thorpe, who once dreamed of building a horse-racing track, amusement park and industrial complex on the Hayward shore, now is fighting creditors foreclosing on his dream.

Thorpe's office building at 21800 Hesperian Blvd. will go on the auction block Jan. 14 because he failed to pay one set of creditors \$56,000, said Sally Fey, assistant vice president

of AIG Trust Deeds Services Inc. in Lafayette.

The announced sale of the light-blue Victorian-style home is the latest foreclosure for the man who spent nine years and \$12 million in a failing effort to build the Shorelands complex.

At an undisclosed time, Thorpe said, the Bank of Hayward foreclosed on a loan it had extended to him, forcing him to raise funds by selling a home in Hayward that his grandfather had built.

"I hated to do that," Thorpe said. "The latest foreclosure action may not happen," said Thorpe, who is known to display optimism no matter how bad the situation.

He would not say when the foreclosure was scheduled or where the sale would take place. In 1985, Thorpe planned to build the track on 500 acres north of the State Route 92 approach to the Hayward San Mateo bridge, reached their apex with 200,000 sq. ft. and \$18 million in construction.

But last September, the City of Hayward closed the files on the track and industrial complex, and Thorpe can no longer claim the time he wanted to build the complex. The company formerly would the complex filed for bankruptcy protection in court last July. The company owned the land and the

called them hotels. Chatham is the Chatham Mills--towels, pillowcases and stuff in Tennessee?

Chall: Oh.

Thorpe: The other guy who went across the United States, stayed at hotels, didn't like them, went to Bob and said, "Bob, I want to borrow a million dollars, I want to build a hotel." So he loaned him the money and he built a hotel. He came back and he said, "I want to borrow another million, I want to build another hotel." Chatham said, "I've got a board of directors, they're not going to like my just giving out money to my friends." He said, "Either you're a friend of mine or you're not," so Chatham gave him the money.

Well, the other guy ended up building a chain of hotels called Holiday Inns. And every Holiday Inn had in it Chatham towels, blankets, pillowcases, and a Tennessee Tall Case Grandfather's clock in the lobby. (They also owned the Tennessee Tall Case Grandfather Clock Company.) But Chatham was kind of a fun guy.

You mentioned the labor thing. We had a lot of support from labor unions.

Chall: Yes.

Thorpe: And I still work a lot with labor unions, but part of that is because of the fact that what I was trying to do was something that has some social sense to it. We wanted something that had environmental balance, we wanted something that had social balance. And of course, developers don't try to do that. Developers just worry about money. Which is maybe why I'm not in the business any more.

[reading names of limited partners from the outline] Brusk, Burt Brusk was a local Hayward contractor. [Richard] Ehrenberger is an architect in Berkeley. Murray we discussed. Richard Murray is a very, very talented guy. Funny, a lot of these folks are still my friends. Engineers--Jack Stewart just died.

More on the Racetrack

Thorpe: You have a couple of things here [looking at outline]. You mention lack of cooperation from the horse racing industry. We had enormous support from owners, breeders, trainers. Racetracks are a mixed bag. You look at San Francisco with the 49ers. You

look at Oakland with the Raiders. You get into--and the racetracks are a similar thing.

DeBartolo, the senior DeBartolo happens to be the Cleveland Mafia. He's now dead. [Edward] DeBartolo owns--they own gambling facilities all over hell's half-acre and racetracks. We discussed DeBartolo funding this thing, and DeBartolo said, "Well, our concern is that the league might get upset about our having a gambling thing right across the water from the 49ers. Even though we've got gambling things in other states, but the public doesn't associate it, so we're clean."

But the racetracks--it's really kind of fascinating. The racetracks, about half of them are mafia organizations. The Golden Gate Fields was always related to the mafia. About half are clean, half aren't. That's kind of an interesting thing.

Chall: You know, I have some information that at one point, you were not given--I guess the dates that you wanted--in 1985 or so.

Thorpe: Oh, that's a different issue, okay. That's the state of California Horse Racing Board.

Chall: Yes, that's right.

Thorpe: Right. Well, it's a funny thing. They--that's politics. Politics. When they came back, they were actually willing to let us run racing dates at Bay Meadows. The fact is, if you don't have a racetrack, what are we going to do with the racing dates?

Chall: That's correct, and so you--

Thorpe: So we dropped that.

Chall: It was uncertain, a lot of it.

Thorpe: Yes.

The Corps of Engineers

Thorpe: [continuing on the outline] The Corps of Engineers. I'm going to comment on them briefly. The Corps of Engineers--by and large, the colonels were helpful.

Chall: Now, you dealt with two different colonels, [Andrew] Perkins and [Galen] Yanagihara.

Thorpe: The ones that are good go back to command school. This is sort of a step up the ladder thing, this post. But the colonels by and large were helpful. And I tell you, the people, once I got to know them, most of the people, most of the upper echelon people in the corps were helpful. Most of the staff people were helpful. I mean, they regarded this whole scene as bizarre too. Anybody who's at all fair, when they see you've got a jeopardy opinion on three things that aren't there, they realize the system isn't functioning.

You see, the Fish and Wildlife Service serves as the biologist to the corps. The biological opinion is an opinion delivered to the corps that says, Okay, this is all right, or no, it's not all right. But the corps people, generally speaking, I found helpful.

The U.S. Fish and Wildlife Service

Thorpe: Fish and Wildlife. You see, we had a choice. Maybe I made the wrong choice, I don't know. When we got the jeopardy opinion, we could have litigated. We could have litigated, we could have shot them down. I figured it would take four or five years, by the time you have a trial and appeals and all the rest of it. If I could negotiate my way around it, it's politically better; it's probably the same cost, when you come right down to it. What are you going to do, if you're litigating? What do you do? Shut down the whole operation while you litigate? And here's something where you're dealing with, what, fifteen, twenty agencies--you're going to shut all that down just so you can go fight with somebody?

Chall: And you would have litigated against the corps?

Thorpe: No, Fish and Wildlife, because you see, they issued an opinion that our project would jeopardize endangered species. But the endangered species weren't there. They weren't there. There were no mice, no least terns, they simply weren't there. But the point is, the upper echelon people at Fish and Wildlife realized it was nutty too, and in essence, they said, "Look, we'll work with you, we'll send Wayne White back to school in Washington, we'll get a new head in Sacramento, we'll get by some of these lunatics."

Basically what you had, what happens in these environmental agencies, you get a pecking order that develops. The point is, a given Fish and Wildlife or a given Fish and Game person wants to be perceived as important, as having power, and he wants to be the

big--what does my wife call them?--the lead gorilla. He wants to be the lead gorilla, and he wants all the environmentalists to say oh, how clever he is, and how nice he is, and so forth. And so you develop these sort of biological coteries that have nothing to do with the wildlife.

And Fish and Wildlife saw, "We've got a problem," because you see, parallel to this problem at the same time, you have the farmers. Now, the farmers have the developers. The farmers never want to work with Fish and Wildlife, and the developers never want to work with Fish and Wildlife. And so here you have like the trout problem, which is a similar thing. It's partly real and partly not real.

And so the people at Fish and Wildlife that really cared. There was a guy Wally, Wally Steucke, who was the acting regional director. Wally retired and went up to Oregon. He got a job. Right now, he's a fish person. Wally has been setting up, for the last five years, he's been setting up hatcheries and fish programs for Indian tribes. I mean, he's died and gone to heaven. Okay? And he's a hell of a nice guy, and I got to know Wally pretty well. I mean, if I had spent all my life working for Fish and Wildlife, I would much rather resolve this sort of a problem in a way that sort of gets the troops working positively, you know? Which is a good thing, I thought.

The State Department of Fish and Game

Thorpe: Now, the state government--you have Paul Kelly. Paul Kelly is one of the ones whom I regard as wanting to be the lead gorilla in Fish and Game. Van de Camp, the attorney general--John Van de Camp tended just to be a politician.

Chall: Well, there wasn't much he could do, was there?

Thorpe: Oh, well, yes. Van de Camp set up an environmental office within his attorney general's department, and the head of it was a gal down in L.A. Van de Camp was running for reelection at the time. And we had some problems with that. Basically, they would politically advise us on how to solve our problems in such a fashion that didn't interfere with his electoral chance. Then, of course, that sort of thing is now rampant with Pete Wilson and with the now attorney general we have. [Dan Lungren]

The Bay Conservation and Development Commission

Thorpe: BCDC [Bay Conservation and Development Commission] essentially was very peripheral to our process.

Chall: Yes, right. I saw just one letter.

Thorpe: BCDC is one of these agencies. If I am a bureaucrat who wants to see to it that my paycheck is well protected, and wants to see to it that I am left alone, I want an agency that has as many directors as possible. You say, "This is your agenda for this meeting." You give it to them an hour before the meeting. That way, nobody knows anything, and they all have to do what I tell them.

Now, the city of Hayward has some of that in that the city manager does that, and these people are fed stuff, and the city council people don't want to say, "I don't have a clue." They just don't want to say that. So they tend to go along. But it's a power thing.

The East Bay Regional Park District

Thorpe: The regional parks. The former director of East Bay Regional, in part over the flap that was developing during this time, went back to S.F. State as a professor.

Chall: Oh, and who was that? Was that Trudeau?

Thorpe: Trudeau, Dick Trudeau, yes. He just got tired. The environmental community--I mean, the first thing we had was this thing in Columbia. It was a hell of a deal for them. It was a wonderful deal for them. I was giving them about ten times more than any developer ever had, and he could use it as a footprint for the next developer that comes along and say, "Hey, what are you going to do for us?"

I, when they built the little park around the mud puddles down there--

Chall: Cull Canyon?

Thorpe: Yes, the Cull Canyon Park. The year after I was out of that project, it was closed. The East Bay Regional parks screwed up, and they plowed out the pumps for the swim hole and knocked down

the fence, and they fixed it and put it back, and they ran out of money. I got a call saying, "You don't have to do anything, but I know you're sort of fond of this park and it's kind of your child." Because I built the bridges and stuff in there. "Would you be willing to replace the fence for us?" I said, "Tell you what I'm going to do. I know how if East Bay Regional builds a fence, it costs millions of dollars a foot. Will you tell the people down there that if somebody shows up with a truckload and some fencing, to turn their backs for a couple of days?" They said yeah. So I went down, and we rebuilt the fences for them. But it wasn't contracted through East Bay Regional parks, so it was much cheaper.

The Media

Thorpe: The newspapers by and large--I have on the Chronicle, or had a friend who's now retired. He's writing a history of the San Francisco Chronicle, Mike Harris. Mike is writing a history of the Chronicle. But he tried repeatedly to get a good Chronicle writer to come over and to try to understand our project. We're trying to do a balanced project, we're trying to do something that developers don't normally do. And among all the environmental writers, none of them would do it, because the environmentalists are good, the developers are bad. Period, end. Getting around copy slant is just the next thing to impossible. Everybody's got their copy slant.

Chall: The [Hayward] Daily Review had a lot of articles.

Thorpe: Yes, the Daily Review--Karen Holzmeister. Of course, there is no Daily Review any more. There is the Alameda newspapers who have decimated virtually all the papers [Alameda Newspaper Group--ANG]. But Karen is still there; Karen is a very, very skillful writer. And I never knew when Karen walked in whether she had been assigned to cut off my head or whether it was positive. One article was very supportive, the next article was very hostile. That's just the way it was.

The TV interviews were very interesting, because the TV people, they always have copy ahead of time which make the newspapers look mild. Of course, I prefer the print press. I think the print press, at least when they had one, did a better job. They were more balanced. The [TV] media tries to do

everything in ten-second sound bites, and so you can't get the story.

"The Wild Edge" TV Documentary on the Baumberg Tract

Chall: Speaking of media and TV, there was this article in--let's see, it was in the Express, I think, and it dealt with the Baumberg Tract. It was about a documentary by Stephen Fisher called "The Wild Edge."¹⁴

Thorpe: Yes, that's interesting.

Chall: Remember that one?

Thorpe: Yes, "The Wild Edge." This guy Stephen Fisher entered into a contract with KQED, and in that era, I was a KQED supporter. And what he did is he did something just incredible. He was a buddy of Paul Kelly's. They wanted to show that the project was an awful project. So what they did is they went out there. I said, [quoting from the documentary] "As far as habitat, this doesn't serve as habitat for much." And then they said, [quoting in sonorous tone from the documentary] "But standing on the identical spot just a few short months later--"

Chall: [chuckles]

Thorpe: Have you seen the thing?

Chall: I must have seen it; but I read the article.

Thorpe: "But standing on the identical spot a few short months later." Well, here [demonstrating] is Paul Kelly. Now, here am I on this absolutely barren piece of dirt right here, okay? Now, when you look at the documentary, he's got grass that's three feet high. Well, if you go out there later, you'd find some evidence of there having been grass there, right? There is no grass. And he's in water up to his ears. And here's this massive bunch of birds behind him.

So I didn't know what to do, but I got hold of folks at Sunset magazine who do documentaries. And what they did is they

¹⁴Dennis Drabelle, "Life on the Edge," Express, September 13, 1985.

took a freeze frame of where I was standing and a freeze frame of where Paul Kelly was standing. The guy comes over, and he's laughing, and he says, "Now, you see this power line back here? The power towers are here. See this power line behind you? And this power line over here behind you?" I said yeah. Now, let's move to the freeze frame on Paul Kelly.

And he said, "You notice they're enormously further apart."

Chall: Oh, standing in different places?

Thorpe: Paul Kelly actually was out here in the marsh. He was over a mile away in the water. Well, I knew he had to be someplace different, because of all the grass. There is no grass here. Okay? So the identical spot is in fact--it's fraud, thing.

So this is when Trudeau was still there. I think Trudeau was still there. Whoever was there, and they said, "Look, we've spent hundreds of thousands of dollars on this damn documentary." It's a big long documentary, Shorelands is only two minutes out of the huge documentary. "And we really would like to show it." I said, "Well, if you don't show it to local groups around here, then as far as I'm concerned you can use it." They wanted to use it to promote KQED and raise money for KQED, I said, "Fine." So at any rate, they said, "But we'll bear that in mind the next time this guy Fisher comes and tries to flog something to us." But I could have sued KQED. But I love "the identical spot."

I found out about what Sunset could do through Dick Bailin. Yes, Dick Bailin, the attorney, Dick Bailin was the one. Dick is a director, with Rich Murray--Murray does a lot of parks. Bailin is a director with Murray of the place where the 49ers want to build their stadium. DeBartolo is out where the football stadium is [Candlestick]. In any event, it's a heavily black, very bad area.

Chall: Oh, yes, I know where you mean--Bayview/Hunter's Point.

Thorpe: Okay. Well, Bailin is a director of a nonprofit group that built and operates the children's play park out there. Murray built the children's play park out there. And Sunset magazine did the sponsorship, and that's how they knew Sunset, and that's how we got the guy to do the thing. Isn't that kind of interesting?

Chall: That is.

Well, I think I've come to the end of the tape, and I think I've come to the end of the interview. Thank you very much for the time you have given to discuss the many aspects and ramifications of the Baumberg Tract/Shorelands history.

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Berkeley, California

California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Robert C. Douglass

THE CARGILL COMPANY (LESLIE SALT DIVISION) AND THE SHORELANDS PROJECT

An Interview conducted by
Malca Chall
in 1998



Robert C. Douglass, 1998.

TABLE OF CONTENTS -- Robert C. Douglass

THE CARGILL COMPANY (LESLIE SALT DIVISION) AND THE SHORELANDS PROJECT

INTERVIEW HISTORY	153
BIOGRAPHICAL INFORMATION	155
Background: Education and Career with the Cargill Company	156
John Thorpe Takes an Option on Leslie (Cargill) Salt Property to Build the Shorelands Project	158
Major Problems Concerning Mitigation	160
Environmental Agencies: Their Mission, Their Personnel, and Their Effect on Local Control	163
Local Activists and the Environment	166
Cargill Accused of Reconstructing the Land	167
The City of Hayward and the Shorelands Project	168
The End of the Stretch for the Shorelands Project	169
Baumberg Tract Purchased by the California Wildlife Conservation Board, 1996	170

INTERVIEW HISTORY --Robert C. Douglass

Robert C. Douglass is the property manager for the Leslie Salt Division of the Cargill Company in Newark, California. Leslie Salt is a solar-salt production and refining company with a long history in the San Francisco Bay Area. Mr. Douglass was interviewed for the Baumberg Tract Oral History Project because he had close ties with John Thorpe during the years when Mr. Thorpe was striving to obtain permission to build his Shorelands Project on former salt ponds on the Baumberg Tract. Currently, Mr. Douglass is closely watching the progress of the plans to restore the tract as a wetlands under the aegis of the state Department of Fish and Game.

His position has made him acutely aware of federal, state, and local legislation, as well as the many regulations and agencies which deal almost exclusively with the environment: The Clean Water Act, the Endangered Species Act, the Corps of Engineers, the Fish and Wildlife Service, the Department of Fish and Game, and the local recreation and park agencies. He is also acquainted with the personnel of these agencies. Moreover, he knows the grassroots environmental organizations and activists. He has had close encounters with them all, and he has strong opinions about the environmental movement and its meaning for both the environment and development.

Mr. Douglass agreed to be Leslie Salt's spokesperson for the Baumberg Tract Oral History Project. We recorded the interview in his office on February 24, 1998. He discussed his association with John Thorpe's unsuccessful Shorelands Project, and Cargill's successful Gateway Technology Centre. He touched on problems inherent in dealing with environmental regulations, regulators, and activists. Although he was willing to answer all my questions, he occasionally paused and carefully considered his answers before replying. His opinion that many environmental regulations are onerous, that some agency personnel were extremely unfair in their dealings with John Thorpe, and that some activists wield too much clout and have too much access to the agency staffs, helped me to prepare questions for subsequent interviewees.

At the time he reviewed and made minor corrections to his lightly edited transcript, Mr. Douglass gave me permission to insert, in the volume, correspondences between Leslie Salt, the Fish and Wildlife Service, and the Corps of Engineers. Cargill's cooperative manager of public affairs, Jill Singleton, sent important historical and current material for the volume Appendix and for deposit in The Bancroft Library.

This interview with Robert Douglass adds an important element to the history of the Baumberg Tract with its focus on the uneasy relationship between developers and those who are committed to the preservation of endangered species and habitats.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer/Editor

January 2000
Regional Oral History Office
University of California, Berkeley

Regional Oral History Office
Room 486 The Bancroft Library

University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name ROBERT CHARLES DOUGLASS

Date of birth 2/21/43 Birthplace SACRAMENTO

Father's full name ROBERT CLINTON DOUGLASS

Occupation GENERAL Worker Birthplace ANTIOCH

Mother's full name (DECEASED) GRACE OLIVE DOUGLASS

Occupation Homemaker (Deceased) Birthplace SAN FRANCISCO

Your spouse DIANE PATRICIA DOUGLASS

Occupation ELEMENTARY SCHOOL TEACHER Birthplace S.F.

Your children JEFF 31, JENNIFER 26, CHRISTY 27

Where did you grow up? ANTIOCH

Present community FREMONT

Education BSC E SACRAMENTO STATE

MSC E SAN JOSE STATE

Occupation(s) CIVIL ENGINEER

Areas of expertise Urban Planning, Storm Water

MANAGEMENT

Other interests or activities UNITED STATES MARINE CORPS RESERVE (ret)
CITADON COLLEGE ENGINEERING ADVISORY COMMITTEE - CHAIR

MISSION VALLEY ATHLETIC LEAGUE FOOTBALL OFFICIAL

Organizations in which you are active Am Soc of C.V. L ENGINEERS

SOUTHERN ENGINEERS CLUB

ROBERT C. DOUGLASS

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Current Position
 Since 1985

Manager of Real Property, Cargill Salt, Western Division.
 Responsible for management of 30,000 acres of property
 along edge of San Francisco Bay. Responsible for permits
 for solar-salt operations and land-use entitlements.

Professional Registration

Registered Civil Engineer in California.

Education

B.S. Civil Engineering, Sacramento State College
 M.S. Civil Engineering, San Jose State University

Previous Employment

Principal in the Oakland office of Greiner Engineers of
 California -- Northern California office of nation's fifth
 largest consulting firm. Designed public works and land
 development projects in Alameda and Contra Costa counties.

Community Involvement

Chairman, Chabot College Engineering Advisory Committee
 Member, American Society of Civil Engineers
 Member and Past President, Southbay Engineers Club
 Past Chairman, City of Fremont Planning Commission
 Past Member, City of Fremont Civil Service Board
 Past Vice President, Treasure Island Museum Board of
 Directors
 Lecturer on Marine Corps history, Treasure Island Museum

Military Service

Decorated Marine Corps combat veteran of Vietnam War
 Colonel, United States Marine Corps Reserve
 Activated during "Desert Storm" - served in Thailand
 Currently, Officer in Charge, 10 reserve units across U.S.

INTERVIEW WITH ROBERT C. DOUGLASS

THE CARGILL COMPANY (LESLIE SALT DIVISION) AND THE SHORELANDS PROJECT

[Date of Interview: February 24, 1998] ##¹

Background: Education and Career with the Cargill Company

Chall: First I always like to find out a little bit about the person I'm interviewing. So could you give me some background about how long you've been with the company, Cargill, and what your present and past career positions have been here.

Douglass: I have been with the company twelve and a half years now. I joined Cargill in October 1985. I'm a civil engineer, and I'm registered to practice civil engineering by the State of California. I have a bachelor's from Sacramento State and a master's from San Jose State. Prior to my employment with Cargill, I was with a consulting/engineering firm in Oakland and started as a junior project engineer and rose through their corporate ranks to the point where I was a managing principal and a small stockholder.

Chall: What was that company?

Douglass: That company started out as Murray and McCormick. It went through a number of name changes. It was publicly held, so we went through the stock rollercoasters. Other corporations bought us. The final name change, until just recently, was Greiner Engineering, which is one of the nation's largest engineering firms.

Chall: So you left them in about 1984 or 1985?

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

Douglass: In 1985, yes. Leslie Salt was owned by Cargill at that time, but the name was still Leslie Salt. Leslie Salt was a client of our company. We did engineering work for the salt company.

Chall: I see. So you knew it, and they knew you.

Douglass: Actually I knew a little bit of it. At that point my project engineers were doing most of the work for Leslie Salt; I was aware that they were a client, but I didn't do any of the actual work. But my predecessor, Ray Thinggaard [spells], left to open his own consulting business. So I basically traded places with Ray.

Chall: So you came here as a civil engineer?

Douglass: I'm called a manager of real property.

Chall: And you've always been a manager of real property?

Douglass: That's right.

Chall: Is there quite a bit of property that you're selling or optioning or changing or something of this kind here?

Douglass: Not quite a bit. The parcels we have are significant--the Baumberg Tract being one of them. That was a former salt plant, and I'm in the last stages of the construction of a former salt plant called Plant One in Newark [California] that was taken out of production the same time Baumberg was.

Chall: Which was 1970-something?

Douglass: Late sixties.

Chall: And what's Plant One going to be?

Douglass: Plant One is now the home of Sun Microsystems. It went through many of the same hurdles that the Baumberg Tract faced, but we were successful in that regard. We kept that property for our own portfolio, so to speak, and we were the project managers. We did all the permit processing. We never optioned it to anybody. We pursued it. And we just won an award from the Association of Water Quality Engineers for our design of it. So we're rather pleased with it.

Chall: That would mean, I assume, that even though you were in charge of it you still had to go through some of the hurdles with the Fish and Wildlife Service and all the rest?

Salt wetland creation too slow, critics say

FROM STAFF REPORTS

NEWARK — A Cargill Salt wetlands project approved after a 10-year court battle is off to a slow start, according to figures reported last week.

The 16.8-acre vacant property off Gateway Boulevard, which is supposed to be transformed into wetlands to compensate for those destroyed by the construction of the Sun Microsystems campus, appears far from fulfilling the Army Corps of Engineers' requirements for time, environmentalists say.

The wetlands project is the result of an agreement between the corps and Cargill Salt, which owns the property where the Sun campus was built.

After a long court battle, the corps permitted Cargill to fill in 16.8 acres of wetlands on the condition that Cargill create an equal number of tidal wetlands on an adjoining property.

Also, the corps mandated that 60 percent of the new tidal wetlands be covered with vege-

lation within two years. Some critics say the progress has been slow, particularly in the area of native vegetation, according to figures by Wetlands Research Associates, which has been monitoring the project.

Environmentalist Margaret Lewis of Newark says this is an indication the project will not be successful. "Cargill is still working in the ground," she says.

But Mike Josselyn of Wetlands Research Associates says the first year is always slow.

Refuge.

The site was a former salt plant that had been decommissioned in 1959. Despite pressure from developers to sell the land for housing, the salt company stuck to the ideal that the property should remain industrial and contribute to Newark's economy. When the company began taking steps toward developing an industrial park on the property in 1985, legal battles with the federal government ensued. Cargill won the right to develop 90 percent of the land and proposed an innovative consolidation of the

disputed acreage into a functional wetland habitat, which allowed the Gateway Technology Centre to become a reality.

"We worked hard to prove that a former salt plant could be redeveloped as an environmentally friendly, high-tech business park," says Bob Douglass, Cargill's design engineer and project manager. "We've developed a wetland habitat that reflects the values important to us. It's a bridge between industrial use and wildlife, enhancing both the workplace and the refuge next door."

CARGILL SALT WINS WETLANDS ENGINEERING AWARD

Cargill Salt has won the 1997 California Water Environmental Association's Engineering Award for the drainage design and creation of wetlands for the Gateway Technology Centre in Newark.

"Cargill's careful and creative engineering went the extra step

to integrate development with an improved environment," says Lindsay Roberts, executive director of the CWEA.

The 143-acre high-tech industrial park near the eastern entrance to the Dumbarton Bridge features a series of grassy swales to filter out sediment and pollutants from stormwater, protecting neighboring sloughs and marshes. The design also creates 17 acres of tidal wetlands to provide habitat for several endangered species found across the street at the Don Edwards San Francisco Bay National Wildlife

from "The Bay's Edge," a Cargill Salt Report, vol. 9, no. 1, July 1998.

Douglass: All of them.

Chall: That sort of gets us to the Baumberg Tract, which seemed to have greater complications involved in it than maybe Plant One? Plant One will be manufacturing software? I mean, Sun Microsystems will be--

Douglass: They're manufacturing hardware. That's just a use that Sun Microsystems made after it was developed, after we made our way through the process that John Thorpe tried very hard to wind his way through but was unable to. I answer in response to your question about the other properties we have. In round numbers, 30,000 acres in the South Bay. Almost all of it is in salt production. But in my job I pay the property taxes, I keep the fences intact. I do all the kind of things that a property manager does. I deal with all of our neighbors and cities and counties and flood control districts. I'm staff civil engineer to the solar operations people that use the land for production of solar salt.

Chall: It must keep you rather busy doing all that.

Douglass: It does.

Chall: Are you taking other areas out of salt production? Or is it just Baumberg and Plant One? Are there others?

Douglass: No, there are no others, and those were taken out of production years ago.

John Thorpe Takes an Option on Leslie (Cargill) Salt Property to Build the Shorelands Project

Chall: Now if we go back to about 1981, John Thorpe I think at that time took his option for ten years on the Baumberg Tract to build his project. You weren't here at that time, so with whom did he deal to set up this plan to option this land?

Douglass: Paul Shepherd.

Chall: Paul Shepherd I know is still here.

Douglass: Yes.

Chall: When one takes an option on land, what does that mean? They have to pay rent to you?

Douglass: The terms are always negotiable. John's option involved annual payments plus payment of property taxes and whatever extraordinary maintenance is required on the site. So that was the arrangement with John. Quite often options are initially free. If someone wants to look at a piece of property, the landowner can say, in the vernacular, we can give you "free look": you can look at it for ninety days. What the option does is protect the potential buyer so that the property is no longer on the market. We agreed to negotiate solely with John, and we were not talking with anyone else. In return for that protection, he gave us compensation, which was to be counted towards the ultimate price of the property.

Chall: As I understand it he took out about 1200 acres--these are sort of round figures--which combined two districts with 500 acres of open space. Is that how you see it? The 1200 acres being the Baumberg, which was 800 and something, plus other properties?

Douglass: No, I think that 1200 is probably high. I think initially he had an option on 790 acres--and these numbers could be wrong--with an option for another fifty, which would have brought it to 840. That was primarily the former salt plant. It became obvious very early in the process that he was probably going to need additional mitigation land. All the salt ponds surrounding the tract were in production and are still in production, so they were not really an option for his mitigation lands. We did discuss with John possible open space uses or open space reserves, but my recollection of the primary option, though, it was the former salt plant entirely.

Chall: So all his material that we see that talks about 1200 acres or 1100-something--I don't think I brought my major piece of material, but I think he divides into x number of acres of building, et cetera, plus about 500 acres of open space. [shows Mr. Douglass Shorelands brochure, "A New Racetrack for Northern California." See envelope insert, back cover]

Douglass: It does say 1200 acres here.

Chall: Yes, it does. That brochure says that the development combined two distinct properties. I've always wondered what they were.

Douglass: I'm not sure what they are either. The acreage outlined here does not total 1200 acres.

Chall: There are many maps around. This is the one that John Thorpe more or less outlined for me. I guess it shows his various mitigation plans.

Douglass: Those areas that he's outlined may total 1200 acres, but John never had an option on these parcels.

Chall: That's correct, he did not. He did not have an option on what he calls the Whale's Tail or this other little place [B8, Map 1]. Did he have an option on expanding this area in here for maybe trails, or was it just what he outlined? [Area outlined in red, excluding channel, Map 1].

Douglass: That's primarily what John had an option on.

Chall: So that's really basically 800 and some acres.

Douglass: Yes, 850 acres or so.

Chall: All right. So we're agreed on that.

Now by the time you got here, he was not planning anymore to put in Marine World Africa-USA.

Douglass: Marine World was not in the picture.

Chall: So what was left on the 800-some acres was his idea of the racetrack and trails and hotels and playgrounds and all that? Did you think this could be successful? Or did you think that there were going to be problems with it?

Douglass: I always considered it possible. Very difficult, but possible, yes.

Major Problems Concerning Mitigation

Chall: Eventually, of course, he had to do a lot of mitigation, and his plan was to mitigate with the so-called Whale's Tail and these other areas that you pointed out had not been in the option. Were you ever planning to provide that land for him?

Douglass: We were supportive of John, and we probably would have done whatever it took within reason to help him. The problem was that there were avowed opponents of his project within the agencies, and they always selected mitigation that struck at the salt business, and we were not agreeable to that.

Chall: By that you mean what?

Douglass: Taking salt ponds out of production and turning them into marshes.

Chall: If he mitigated on the site and included all those other acreages that we were talking about, he would have to use the salt ponds. That meant setting up little ponds in one area for the snowy plovers and things of this kind?

Douglass: Yes.

Chall: That's interesting, because his scheme always included the possibility of using these other areas. Dr. [Howard] Cogswell told me that you--that is Leslie Salt--had never come out over the years agreeing to have the islands made or the use of the other property, so that he [Thorpe] was always sort of stuck. I think he had in mind the Oliver property, which of course he couldn't get his hands on at all. So where was he? I mean, if you were supportive, how would you have supported him? At what point would you have said, "Okay, John, you can have the Whale's Tail and you can have this other land for your plovers or for whatever other reasons you need the land."

Douglass: We probably would have supported him if we could have seen evidence from the agencies that said, "John, if you do this, we will give you the permits." And if this involved the Whale's Tail we would have probably made that available to him. However, you need to be aware that the Whale's Tail was not necessarily sufficient mitigation. It was already a wetland. Transferring the ownership would have given him some credits, but it certainly wouldn't have given him true mitigation.

Chall: Right. He was permitted to mitigate on site, as I understand it, if it would compensate for whatever would be lost by the project.

Douglass: That was our encouragement for John to make a project that would stand on its own, that he could control within the confines of his option.

Chall: Which meant what?

Douglass: Which meant shrinking his project down and mitigating on site to the extent possible.

Chall: As I understand it, he never was agreeable to that.

Douglass: Oh, I think he would have been agreeable if he would ever have been given assurances from the agencies that he could have a reduced project on that site. But he never got those

assurances. I don't think John was treated fairly by anybody in the process, except the salt company.

John is an interesting fellow, an attorney. We did things, even though we're a major corporation, we did things with a handshake with John. We trusted him, and he trusted us. We gave him as much leeway as possible. It was in our interest for him to succeed. He was going to write us a very large check if he succeeded. So within the goals of continuing to make salt and selling John a major chunk of property, we tried our best to help him. But it was always behind the scenes. We did not want to ever appear publicly opposed to anything he suggested. So John floated a lot of schemes, and we were basically very quiet about that.

Chall: You mean the schemes for--

Douglass: Mitigation.

Chall: But as he floated them--and they are detailed in the EIR/EIS and biological and mitigation studies--he was never assured either up front by you, or it was never made certain by the people who were checking on the studies or setting up the jeopardy opinion that he could do them. It was never focused. Is that a problem?

Douglass: That was a problem, yes. The position we took was that we gave John just about all the rights he had and let him be almost, in effect, the property owner of the option property. Then we made it clear to him that if it ever came down to the point--I do not think that our silence on the subject ever hurt him. It never got down to the point where he came to us and said, "Cargill, if you will sell me the Whale's Tail, the project goes." It never reached that point.

Chall: In terms of mitigation, there were all kinds of plans for plover ponds which couldn't happen unless you gave the land. What about the predator fence? That seemed occasionally like something out of science fiction.

Douglass: The predator fence was probably one of the worst examples of how the agencies mistreated John, just by sending him on these wild goose chases. I'm sure the individuals within the agencies think they acted honorably, but basically there was if not a public strategy then certainly informal strategies to drain John, to send him down corridors with wild goose chases and continually chase project approval but knowing full well they were never going to give him project approval.

Chall: Did you think that the whole subject of predators per se was not an important subject or it could've been handled some other way?

Douglass: It could have been handled some other way. Predators are major factors when you have urbanization right up next to natural resource properties. While John was probably going to bring predators close, there were already numerous feral cats, dogs, skunks, red foxes, rats; they were out there anyway. You could make the argument that John's project may have provided them more opportunities than the marshlands, and it may have had a positive impact. It was just one of the many hurdles they put up in front of John.

Environmental Agencies: Their Mission, Their Personnel, and Their Effect on Local Control

Chall: What is your general opinion of these environmental agencies following their own regulations, like Department of Fish and Game, Fish and Wildlife Service, EPA [Environmental Protection Agency], and others? They are scientists and they are trained in environmental science. What has been your opinion of them in general? You're dealing with them now in the [Baumberg] restoration project. I realize you're working with these people all the time, so by now you probably have some kind of opinion of how they operate, who they are, and their merits or demerits, or of the regulations they deal with.

Douglass: If there is a collective judgment within the agencies that a project is not going to get approved, then it's not going to get approved. The thing that I object to--I am a staunch believer in local government, and there is a sub rosa or shadow regional government that resides in the hands of young men and women who are very low-level federal and state employees but wield an awesome amount of clout in the Bay Area as far as land use. I strongly object to that.

Mitigation, for example, is very, very difficult in this immediate vicinity, in the San Francisco Bay Area. My own personal opinion, shared by many others in my capacity, is that the reason mitigation is so difficult is because mitigation really means a project is being approved. If someone can really mitigate their project they're going to build it. Therefore the agencies have chosen to make mitigation the battleground as well. That was one of John's problems: he

could never in their mind fully mitigate the impacts of the project.

His famous triple-jeopardy opinion was one of the most farfetched fantasies I've ever been involved in, and the jeopardy opinion went something like this: the global warming is going to raise the sea level and destroy marshes, which is the habitat for endangered species, and the only restorable land left is the Baumberg Tract. Therefore it would jeopardize the species if that was developed, assuming global warming was going to happen. And that was absolutely preposterous. I argued long and hard internally in the salt company to take that one on. And we did not. Speaking personally and professionally I was very disappointed. We let John try and fight that battle when it was really aimed at us.

Chall: Really? So you think that to some degree the scientific work or the final decision was really aimed at salt production?

Douglass: No, not salt production. The agencies were very afraid that if we let John buy this tract and develop it we would drain another pond and sell it to another developer. They drew a line in the sand saying that we can't let anything proceed. John was handicapped. We are still in the salt business and we're going to be in the salt business. The evidence did not support their fears.

Chall: I notice that toward the end--I guess it was 1990 [July 5]--Leslie Salt's vice president William Britt sent a letter to Mr. [Marvin] Plenert, who was then the regional director of the United States Fish and Wildlife Service, with quite a detailed legal opinion from Edgar B. Washburn outlining objections to the draft jeopardy opinion, and part of it was concerned with this idea of global warming. Also his objection to the concept that even though there had been no use of the habitat over the years for the so-called endangered species, except the salt marsh harvest mouse, that allowing the Baumberg Tract to be developed would mean that one other area that might be useful for habitat restoration would be destroyed. It is a most complex set of issues that he set forth.

What about these kinds of letters and arguments that went off to the Fish and Wildlife Service or in some cases to the Department of Fish and Game, or the Corps of Engineers? What was the response? [See following pages]

Douglass: Quite often they were ignored. We sent that letter to protect our position on the record but never really joined the argument after that.

ERD/DG
XAFWE 7/9**Leslie Salt Co.**
A CARGILL CO.7200 CENTRAL AVENUE
NEWARK, CA 94580 • (415) 797-1820

July 5, 1990

Mr. Marvin Plenert
Regional Director
United States Fish & Wildlife Service
1002 N.E. Holladay Street
Portland, Oregon 97232-4181

Dear Mr. Plenert:

As we discussed during my recent trip to Portland, I am requesting a legal review of the Fish & Wildlife Service's Preliminary Biological Opinion with respect to the proposed Shorelands' Project. As you know, Leslie Salt is the owner of the property in question and has optioned that property to Shorelands.

I am enclosing a copy of a legal analysis prepared for Leslie Salt by the law firm of Washburn, Briscoe & McCarthy. That analysis concludes that there is no legal basis for the Service to issue a jeopardy opinion. I ask that you furnish a copy of the legal analysis to the Service's Solicitor and request a legal opinion concerning the Service's stated basis for its draft jeopardy opinion.

I would like to emphasize again that our concern as the owner of the property is with the breadth of the draft opinion and its attempt to find jeopardy on the property regardless of what use the property is to be put to.

I request that you inform me of the outcome of the Solicitor's review. If the Solicitor agrees with Leslie's analysis, we request that the draft opinion be withdrawn and that the October 14, 1987 opinion (No. 1-1-87-F-47) be officially withdrawn as well.

Thank you for your cooperation in attempting to resolve this issue without the need to resort to litigation.

Sincerely,



William C. Britt
Vice President & General Mgr.

JUL 16 1990
FWS-ENH-NCME
SACRAMENTO FIELD C

JUL 10 1990

WCB:jb
enclosure

Leslie Salt Co.

A CARGILL COMPANY

7200 CENTRAL AVENUE
NEWARK, CA. 94560 / (415) 797-1820

March 22, 1985

RECEIVED

MAR 25 1985

PLANNING DEPT.

Andrew M. Perkins, Jr.
Lieutenant Colonel
Department of the Army
San Francisco District Corps of Engineers
211 Main Street
San Francisco, CA 94105

Subject: Shorelands Corporation
Your File No. 15283E49

Dear Colonel Perkins:

This letter is written to you by Leslie Salt Co. ("Leslie") out of concern for what appears to be a claim of jurisdiction asserted by the Corps over certain lands owned by Leslie. This claim is reflected by your letter of January 29, 1985, to Mr. John Thorpe of the Shorelands Corporation. The land that is the subject of your January 29, 1985, letter is owned by Leslie, although the Shorelands Corporation has an option to purchase the property at some later date. Whether or not that option will in fact be exercised is unknown at this time.

We have reviewed your jurisdictional determination and find it to be erroneous in terms of the facts relied upon as well as in your interpretation of the reach of section 10 of the River and Harbors Act of 1899 and section 404 of the Clean Water Act. While the purpose of this letter is not to recite in detail all of the facts which lead to the conclusion that your jurisdictional assertion is an error, we do wish to point out a number of the more significant factors which you apparently did not consider. These facts, together with others, are the result of an intensive study that has been undertaken by Leslie relative to this site over the past ten years.

A. The Section 10 Jurisdictional Claim:

1. The entire area landward of the most bayward levees was in its natural state above the elevation of mean high water. The only exception to this statement is certain former slough beds.
2. The sloughs that formerly traversed the property were not extensions of San Francisco Bay, but were separate waterbodies and were so treated by the Corps up until at least 1972. With the exception of a portion of Mt.

Andrew M. Perkins, Jr.
 March 22, 1985
 Page 2

Eden Slough bayward of the former location of Eden Landing, none of the former sloughs were navigable in fact in their natural condition.

3. Most of the former slough beds within the subject property were reclaimed prior to the adoption of the Rivers and Harbors Act in 1899, and that act is not retroactive.
4. From 1899 to 1972 the Corps administratively determined that none of the sloughs that traversed this site were navigable in fact and therefore all portions of the site were beyond its jurisdiction. Reclamation and development of the property for solar salt works and agriculture occurred under those circumstances. As a result, the Corps surrendered whatever section 10 jurisdictional claims it may have had. (See United States v. Stoeco Homes, Inc., 498 F.2d 597 (3rd Cir. 1974).
5. The areas claimed along the northerly portion of the property were, in their natural state, a combination of freshwater marsh and ponded water. The freshwater marsh was not a part of any water body but was upland. Similarly, the ponded water was not a part of any navigable water course and was not connected to the San Francisco Bay.

For information bearing upon the foregoing, I suggest that you review the 1857 and 1897 U.S. Coast Survey topographic and hydrographic charts together with the descriptive reports accompanying these charts; the 1861 survey of the salt marsh in Alameda County performed by Dyer and its field notes; the survey and field notes of the boundaries of the Rancho de Alameda performed by the General Land Office; the testimony of Augustus Rogers of the Coast survey in the action of United States v. Peralta (Nos. 98; 100 U.S.D.C., Cal. 1871); and the testimony of Alameda County Surveyors James W. Bost and Horace A. Higley in that same trial.

B. The Section 404 Jurisdictional Claim:

1. No part of the site is water of any sort, much less waters of the United States. During certain times of the year some water is ponded in the former crystallizer ponds from the winter rains due to lack of any drainage connection to the bay.
2. With the exception of the banks of Mt. Eden Slough, the areas over which you claim section 404 jurisdiction landward of the bayside levees do not presently

Andrew M. Perkins, Jr.
March 22, 1985
Page 3

possess a prevalence of vegetation typically adapted for life in saturated soil conditions. In fact, virtually all of the site is devoid of vegetation.

3. None of the area is inundated by tidal waters at any stage of the tide and has not been tidally affected for nearly 100 years.
4. The presence of any saturated soils or wetland vegetation on any portion of the site is not the result of inundation by or a hydrologic connection to waters of the United States. It is merely the result of temporary and occasional ponding of rainwater.
5. None of the areas over which you claim section 404 jurisdiction on the basis that they are wetlands are adjacent to waters of the United States.

We consider your assertion of jurisdiction to be beyond what the law provides. Although we have no objection to the Shorelands Corporation processing a permit application, we do not consider that application to be an admission or acquiescence by Leslie that your claim of jurisdiction is proper. Leslie does not intend to be bound by your determination and, whether the permit to Shorelands is granted or not, Leslie reserves the right to challenge your assertion of jurisdiction by any proper and available means.

Yours very truly,


Paul P. Shepherd
Vice President & Land Manager

PPS6:hey

cc: Mr. John Thorpe, President
The Shorelands Corporation
P. O. Box 4258
Hayward, CA 94540

City of Hayward, Ron Gushue
Honorable Fortney H. Stark
EPA, Region IX
USFWS, Sacramento, CA
NMFS, Tiburon, CA
CA BCDC, Oakland, CA
CF&G, Yountville, CA
Save San Francisco Bay Assn.

Chall: There's quite a bit of information here for the record.

Do you think that these regulations that spawned from the Fish and Wildlife Service, the EPA, the Clean Water Act, et cetera, have some important benefits in terms of the environment? You've been dealing with them in some areas that have been quite well accepted--the San Francisco Bay National Wildlife Refuge.

Douglass: That's on both sides of the Bay. Twelve thousand acres of our salt ponds are in the Don Edwards National Wildlife Refuge.

Chall: Now you had to work that out also with these folks.

Douglass: Yes.

Chall: That's been very satisfactorily handled. I mean, it gives you a good name.

Douglass: It doesn't necessarily give us a good name. It is satisfactory; I wouldn't characterize it as very satisfactory. We continue to have to negotiate various items of maintenance and access and so forth, and the refuge staff use it as a refuge, which it is, and we view it as a salt production facility, which it is. And those two goals sometimes come into conflict, but on the whole it is satisfactory.

Chall: Do you find the regulations onerous?

Douglass: Quite often they were onerous. The interpretation of them is the difficulty. The regulations are really restrictive and prohibitive; they are not proactive. My real concern over the agencies is that they're good about saying no, and they can't bring themselves to say yes, and they are not very proactive when it comes to protecting the species.

If the clapper rail is diminishing they should be breeding the clapper rail. They should be taking proactive measures to expand the endangered species. They don't restore marshes themselves; they ask private property owners to do it. The whole Endangered Species Act is very negatively drafted and construed. If endangered species are so important, then the act should reward property owners that have endangered species on their property. That would be the positive thing to do. We would want property owners lined up to make sure they had endangered species on their property. But that's not the case. That's a personal opinion.

- Chall: In terms of your working with people like Richard Murray or WESCO, who drew up the biological background for the EIR/EIS, what were your dealings with those people? And Thomas Reid Associates?
- Douglass: I didn't have too much dealings with Tom Reid. They came in sort of late in the project. I enjoyed working with Richard Murray; he's a very creative fellow. The difficulty is keeping Richard on the option parcel.
- ##
- Douglass: Richard would talk to an agency, and before I knew it he would be drawing mitigation plans on property that wasn't in the option, and I'd have to counsel Richard. [laughs]
- Chall: He was feeding ideas to John and vice-versa, and this is how it was all coming out?

Local Activists and the Environment

- Chall: Then you had some dealings--and probably always have--with volunteer private citizens like Barbara Shockley. I found a letter in someone's files that you had written to Barbara about some kind of question she had, I think, about pumping water out of crystallizers. Janice and Frank Delfino. Howard Cogswell--he's really one of the scientists, but he's also active as a private citizen in terms of the environment. How were your dealings with people like that? Do you think that they have a place as gatekeepers or whatever you might want to call them?
- Douglass: I think in general they have a place, and again in the Bay Area they are given far too much access to the agencies. They wield far too much clout. That's my own opinion. Now with Howard Cogswell I would say something different; we have the utmost respect for Dr. Cogswell. He's a true scientist, and the truth is what's always important for Howard. Citizens like him are absolutely invaluable advocates for endangered species. But other citizen activists wield too much influence and are often not as knowledgeable as they should be and have too much access to the agency staff.
- Chall: The agency staff people take them seriously, do you think?
- Douglass: Very seriously.

Chall: Why is that?

Douglass: Their interests are probably more compatible certainly with the citizen activists than they are with Cargill Salt, for example. At least they perceive their interests as being mutually beneficial.

Cargill Accused of Reconstructing the Land

Chall: There was a concern about Leslie's activity at different times, and since it was in the news from time to time I just thought maybe you could clarify them. There was a time when Leslie plowed north of the crystallizers. A deep plow someplace. The question was, was that plowing done to make it appear agricultural rather than as a wetland?

Douglass: That was done before I got here, but I believe it was for dust control primarily. We had the same problem on Plant One site, which is a former salt plant. We did not plow here, but yet in the summertime we were cited for blowing dust off of what the agencies were calling a wetland. So we were always on the horns of a dilemma. That's a good example of the attitude the agencies took on the property. We were the property managers, and we needed to do something to that property. As it turns out, we couldn't even plow it without arousing the ire of the agencies and citizens. Yet if we didn't do something, we were cited by the Bay Area Air Quality and Management District for blowing dust. It's illustrative of the dilemma that major property owners face.

Chall: So sometimes if you would disk or plow as you did from time to time, that would change the kind of land--I mean, perhaps grass would grow where it hadn't grown before.

Douglass: That's what some people claimed. That's absolutely not what happened. What happened is that active plowing grew wetlands indicators. Where wetlands didn't exist before, wetlands did exist after we plowed.

Chall: So if the excuse was that you plowed because you wanted it to look like agricultural land and it turned into wetlands or marshlands, that destroyed your argument that this was land that could be developed in a different way.

Douglass: It certainly didn't help.

- Chall: The same with flooding. If you used water to keep out the dust, and a solid growth of ditch grass developed, that also made it look like a wetland instead of upland or whatever you might have called it.
- Douglass: What is unique about our properties is that they are so highly saline they will not support uplands grasses, the high salinity--the ambient salt after fifty or sixty years of salt production--just kills anything else other than salt-tolerant plants which are wetlands indicators. Adjoining properties can and do support uplands grasses and that is a normal circumstance.
- Chall: There was a criticism that at one point you were draining some land, and not to show it you put in a pipe which you camouflaged so that nobody would know it was a pipe [laughs].
- Douglass: I don't really know about that. We did have one major pipe that one of the contractor's employees spray-painted for fun--I think it was a joke.
- Chall: Oh, well, I think it was taken seriously by people as if you were camouflaging the fact that you were draining land.
- Douglass: No. There were "No Trespassing" signs all over the site, yet people had pretty much free access. So they would report what they chose to report.

The City of Hayward and the Shorelands Project

- Chall: Now John says that there was a meeting in May 1990 of everybody who was concerned with that late jeopardy opinion that he was trying not to accept, and that included even the Leslie Salt people. Then, he says that after some change of management or whatever it might have been with the Fish and Wildlife Service --I'm not quite sure about that--his project did pass the jeopardy opinion, but then the city [of Hayward] wouldn't give him a permit. I'm not sure whether that had to do with a permit--on the exchange of land for his road into the property off the San Mateo Bridge. Is that something that you are familiar with?
- Douglass: I can't recall the specifics, but the city of Hayward was not particularly helpful in the whole process. I contrast their support of John in that particular project with the city of Newark's support of our project down here on Plant One. It was

like night and day. That could have been and should have been a major asset for the city of Hayward; the idea of a transportation corridor bypassing the 880/92 interchange makes all the sense in the world. It was the single largest flat piece of land left west of the Nimitz freeway from Oakland to Fremont, yet it could have been developed into a good economic use and mitigated on site, but the city council and city staff were divided on how best to approach it. As a result the support was not there.

Chall: So even though John claims that everything passed in terms of his getting his plan approved--I'm not even sure that that happened--

Douglass: No. John never got approval of anything that was really significant.

Chall: So the interchange was moot. At the time in 1991, this had to do with the interchange--I think this information was in the newspaper--Cargill says that Thorpe can proceed with Cargill authority. That's for the interchange. If Thorpe wanted to reopen his file it would cost him \$650. Leslie would help with mitigation if the exchange were in the right place close to the bridge.

Douglass: That's true.

Chall: So that's when you actually were willing--that's part of your land, is that it?

Douglass: Yes.

The End of the Stretch for the Shorelands Project

Chall: By that time it was pretty late. How did you feel about another group of people taking over John's assets to become Shorelands Park? Did you have to deal with them? I don't know that that lasted very long, because then he filed for bankruptcy shortly thereafter.

Douglass: We met with them on a couple of occasions. I can't recall the gentleman's name; if you told me I would probably remember it. [Laurence Brooks] How did we feel? Very uncomfortable.

Chall: Because you had been dealing with John.

Douglass: We felt badly for John because we knew he was in dire straits. It was disappointing because John--I don't think he'd be upset with me--was eccentric to a fault and was his own worst enemy. But he was an absolute man of integrity. His word was his bond. Had he been allowed to do what he said he was going to do, he would have done what he said he was going to do. We all felt personally very disappointed at the turn of events for John. We all respected him, we were all very fond of him. It got down to the point where John was scrambling to make option payments to us and we wondered whether we even wanted to accept the money at that point.

Ethically, knowing what we knew, since we were confronting some of the same obstacles in our own projects, how difficult it was--should we terminate the option whether John wanted us to or not? We ended up accepting his money and extending the option, knowing at the end that it was like rearranging deck chairs on the Titanic.

Chall: None of these possible options, you think, would have passed the jeopardy? Whether you had just come out and said, "You can have all these extra 600 or 800 acres," do you think that that would have done any good?

Douglass: I doubt it. But that question was never posed to us.

Chall: At one time John was approached to move his racetrack to Las Positas or someplace in Livermore or Pleasanton. Did you ever think that that was something that John should have considered seriously?

Douglass: I don't think we were ever involved in that discussion. There aren't a whole lot of areas in the Bay Area that would accommodate a racetrack.

Baumberg Tract Purchased by the California Wildlife Conservation Board, 1996

Chall: Between 1992 when he gave up, and 1996 you just held on to the property? Did you try to sell it to anybody else?

Douglass: No, we did not.

Chall: Howard Cogswell told me that in 1973--that is, of course, long before your time too--Leslie offered it to the East Bay Regional Park District for about \$5,000 an acre.

Douglass: That's true.

Chall: But they couldn't afford it, so they let it go.

Douglass: We offered it to any number of open space resource/
environmental agencies.

Chall: And it was always too expensive for any of them at the time?

Douglass: In doing some research I never saw a response to any of our
letters.

Chall: Really? Even from the East Bay Regional Park District?

Douglass: I can't recall a response. I was a little surprised. It was a
very generous offer at the time, and it would have saved lots
of heartache and grief on everybody's part.

Chall: So now we are into 1996, and the California Wildlife
Conservation Board purchased it as a result of mitigation in a
couple of neighboring communities.

Douglass: Yes.

Chall: Now as I understand it, they paid \$12.5 million for it. Was
that \$12.5 million to Cargill?

Douglass: Yes.

Chall: So between the time it was offered to the East Bay Regional
Park District and it was purchased by the California Wildlife
Conservation Board the price had tripled. That's pretty good
[pause] but I suppose that's life. How does one assess or
estimate the price of property like this?

Douglass: There are appraisers in the market that do this for a living,
and Cargill does not sell property without an appraisal. It
serves as a point of departure for negotiations. It gets
everybody looking at the same range of values, and then the
rest of it is a real estate negotiation.

Chall: And you're in on things like that.

Douglass: Yes.

Chall: You are now attending the same meetings that I'm invited to--
and probably some that I'm not invited to--where you're
hassling out how the Baumberg Tract is going to be turned into
a restored wetlands. Is that what they're planning to do?

Douglass: Yes.

Chall: Is that a good use of the land as we see it today?

Douglass: I think it is a good use. I think it's proving more difficult than they anticipated. That's what it was purchased for with public funds, and that's what it absolutely has to be used for. There's no question that they need to proceed.

Chall: You are still planning, as you were before, to harvest salt from--

Douglass: We don't harvest salt there. We concentrate brines and move them south to Newark.

Chall: That's part of the process of salt production there. So that's not changing at all.

Douglass: No.

Chall: So you're attending the planning meetings because your interest is in keeping that land and that water pure for what you need to use it for.

Douglass: That's true. They have an interest in bringing more bay water into the site and an interest in relocating some of our facilities which the agreement provides for, at their cost, to make their restoration project more manageable or easier, so we have that sort of relationship. The project seems to be moving slowly. We are not really part of the process. We hear from them infrequently. I really can't tell you what stage they're at now.

Chall: They have maps to show various places where different types of water will go and what kind of wildlife it will be suited for. They seem to have several options.

Douglass: It looked as though they were leaning towards one option, but I wasn't sure they've selected that option.

Chall: We'll know sooner or later. How do you think it's going to work out? These young men and women--these scientists--it is part of their mission to make this work. Is it a learning experience?

Douglass: I think a project this size is a learning experience. I think they're somewhat handicapped with lack of funding for the next phase. Projects this size are not inexpensive in any way you

approach them. I don't know that there's sufficient funding available, but that's my own opinion.

Chall: I noticed when I was at the last meeting that they were concerned they had only \$1.3 million to spend, and they didn't think that they could do what they wanted to do with that amount of money. I just wondered who's deciding how much money they can have. You don't know that?

Douglass: I don't know that.

Chall: Just within the last week the Oliver property, next to the Baumberg Tract, that Thorpe could never get hold of is now being planned partly for development and partly to remain open. [Proposition HH, See Appendix D] How do you think that's going to impact any of this?

Douglass: I don't think it'll impact it at all. I think a well-designed project would have fit nicely next to the Baumberg Tract. I don't think that that's an issue.

Chall: We've got a little time left. Do you have anything that you'd like to add?

Douglass: No.

Chall: I really appreciate your time. It's been a good interview. Thank you very much.

Transcriber: Gary Varney
Final Typist: Shannon Page

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California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Steve Foreman

PRINCIPAL AUTHOR, "BIOLOGICAL ASSESSMENT FOR THE PROPOSED SHORELANDS PROJECT,"
1987; PROJECT MANAGER, BAUMBERG TRACT WETLANDS RESTORATION PROJECT

An Interview conducted by
Malca Chall
in 1998

TABLE OF CONTENTS--Steve Foreman

PRINCIPAL AUTHOR, "BIOLOGICAL ASSESSMENT FOR THE PROPOSED SHORELANDS PROJECT," 1987; PROJECT MANAGER, BAUMBERG TRACT WETLANDS RESTORATION PROJECT

	INTERVIEW HISTORY	176
	BIOGRAPHICAL INFORMATION	178
I	BIOLOGICAL ASSESSMENT STUDIES FOR THE PROPOSED SHORELANDS PROJECT	179
	Background: Education and Career	179
	Requirements for the Environmental Impact Reports/Statements	183
	Interpreting the Endangered Species Act	188
	Mitigation and Jeopardy	192
	Trying to Achieve a Balance Between Habitat and Species Needs	196
	Predation and the Fences	197
	Further Research: Reconsidering Mitigation and Jeopardy	199
II	THE BAUMBERG TRACT WETLANDS RESTORATION PROJECT	201
	Acquisition by the California Wildlife Conservation Board	201
	The Selection Process: RMI Wins the Bid; Steve Foreman Project Manager	203
	Restoration Project Staff	205
	Many Factors Involved with Restoration	206
	Other Restorations Projects Around the Bay	212

INTERVIEW HISTORY--Steve Foreman

Steve Foreman, after receiving a degree in wildlife management from Humboldt State University, in 1976, worked briefly with the Bureau of Land Management. From 1978 to the present he has worked in and around the San Francisco Bay Area focusing on environmental projects.

An employee of WESCO (Western Ecological Services Company), he was responsible, from 1985-1987, for the preparation of the "Biological Assessment for the Proposed Shorelands Project." His research provided much of the data crucial to the decision by the U.S. Fish and Wildlife Service to deny John Thorpe a permit to build his racetrack/business venture, Shorelands, on the Baumberg Tract. In 1996, the California Wildlife Conservation Board purchased the site, now known as the Eden Landing Ecological Reserve, in order to establish it as a wildlife habitat for several endangered species. Currently, Steve Foreman is Wildlife Biologist Project Manager for this restoration project.

We divided the two-hour interview, recorded in my home on March 11, 1998, into two segments: during the first hour we discussed Steve Foreman's work as the lead biologist for the EIR/EIS on the Shorelands Project. He explained clearly the rationale behind the environmental impact studies, and discussed how he used background sources and extensive field work to formulate the biological assessment. Coming as it did after my interviews with John Thorpe and Robert Douglass, Mr. Foreman was able to respond to a number of the questions they raised concerning the need for the environmental regulations; the relationship between the developers, the scientists within the agencies who had authority to grant or deny permits, and the citizen activists whose opinions seemed to carry great weight. His interview provided the links to my upcoming sessions with Karen Weissmann and with Carl Wilcox. During the second hour he outlined the complex problems and possibilities the restoration staff face in their endeavors to create a wildlife preserve on the former Baumberg Tract.

Steve Foreman returned his lightly edited transcript with a few added corrections and clarifications. His careful analysis of what is involved in bidding on and obtaining contracts to do EIR/EIS studies, in acquiring and analyzing data, and in dealing with others involved in the processes provide insights into how and why a development project like Shorelands or a restoration project like the Eden Landing Ecological Reserve may take many years to reach a final outcome.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA

Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer/Editor

January 2000
Regional Oral History Office
University of California at Berkeley

Regional Oral History Office
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University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name Steven Albert Foreman

Date of birth 7/12/53 Birthplace King City, CA

Father's full name Veal Albert Foreman

Occupation Service Station Owner Birthplace Bowlegs Oklahoma

Mother's full name Florence Ellen Foreman

Occupation Housewife / Book keeper Birthplace Marked Tree, Ark.

Your spouse Marilyn Hayame Foreman

Occupation Elementary School Teacher Birthplace San Francisco, CA

Your children Jeremy Steven Foreman, 3/4/85

Timothy Toshio Foreman, 2/1/90

Where did you grow up? King City CA until age 6, San Jose CA

Present community Fairfield CA

Education B.S. Wildlife Management, Humboldt State University, Arcata, CA

Occupation(s) Wildlife Biologist LSA Associates

Areas of expertise Habitat Restoration, Wildlife Surveys, Section 404 Permitting

Other interests or activities Hunting, Fishing, Children's sports

Organizations in which you are active Fairfield Atlantic Little League
Fairfield Soccer Youth Soccer League

INTERVIEW WITH STEVE FOREMAN

PRINCIPAL AUTHOR, "BIOLOGICAL ASSESSMENT FOR THE PROPOSED SHORELANDS PROJECT;" PROJECT MANAGER, BAUMBERG TRACT WETLANDS RESTORATION PROJECT

I BIOLOGICAL ASSESSMENT STUDIES FOR THE PROPOSED SHORELANDS PROJECT

[Date of Interview: March 11, 1998] ##¹

Background: Education and Career

Chall: What I'd like to do first is to find out something about your own background: where you grew up and where you went to school and how you happened to be involved in this kind of work?

Foreman: Okay. Well, I was born in King City, California, and lived there until I was about six or seven--something like that--six, I believe. Then moved to San Jose about 1960, and grew up there until I went to college in 1971. And in '71 I went to Humboldt State University at Arcata. Graduated there in 1976, with a degree in wildlife management. From there I went to work for the Bureau of Land Management as a seasonal worker for a couple of years.

Chall: Right here in the area?

Foreman: That was in eastern Montana. They transplanted a native California coastal boy to the prairies.

Chall: Right.

Foreman: And then I started working back in the Bay Area in, probably, February of '78. I was looking for part time work, seasonal work, any work I could get! I happened to stop at the company called Western Ecological Services [WESCO]. The company doesn't exist any more. It was bought by Resource Management

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

International [RMI], who I work for now.² A number of years ago I stopped in there; they needed somebody for a couple of days and I have sort of been there for twenty years.

Chall: So Resource Management International bought out WESCO?

Foreman: Right. Bought WESCO in, I believe, 1992. Kept it as a separate company until 1995, and then we merged together with the environmental group in their Sacramento headquarters where they're based--RMI, environmental division.

Chall: So you've been with that one company, then, all of these years?

Foreman: Since '78, yes.

Chall: And doing the kind of work that you are doing now, with respect to Baumberg? You know, the biological assessment kinds of things?

Foreman: Yes, basically. It's a variety of types of projects. A lot of the work has been focused around the edge of the Bay. A majority of our work has been in the Bay Area, but it goes from bay, to ridgetop, to wherever, for our residential developments. We work, you know, with power lines, with reservoirs, highways, open space groups.

Chall: Now, I see that RMI is really all over the country, if not all over the world.

Foreman: Yes. They're an international corporation.

Chall: They're in England, in Denmark, Australia, and Czech Republic. Have you gone abroad with them?

Foreman: No, I haven't. The majority of RMI's work is in the energy development field.

Chall: Energy development?

Foreman: Yes, like electrical energy. Two other things, but the majority of their work is related to electrical energy production, regulation, how it works, particularly like right now, with all the deregulation that's going on. That's a big part of the work that they do.

²Shortly after this interview, Mr. Foreman went on the staff of LSA Associates, Inc. [April 1998]; he continues to work on Baumberg restoration.

Chall: That has nothing to do with nature, the environment?

Foreman: Very little. We were purchased by RMI, or WESCO was purchased by RMI, I'd say in '92 with, I think, the basic idea that we could somewhat support ourselves. Do our own work, but we would be kind of like a captive subconsultant to them for doing environmental work as it came up. The founder of RMI dreamed up this idea or saw this need to construct a high voltage power line to bring energy out of the northwest from the production end to central California. So a lot of RMI was involved with designing, building, permitting this power line that runs from southern Oregon down into Tracy. And at the time that we were purchased, they were actively starting construction of that line. So we provided some of the monitoring, the mitigation requirements, that were to do with that power line.

Chall: I see. That's interesting. Now, I'm going to read the title page of your report on your study of the Baumberg Tract, June 1987. [See following page] "Biological Assessment for the Proposed Shorelands Project," Hayward, Alameda County, California. Then it goes on: Prepared for U.S. Army Corps of Engineers San Francisco District Under Contract to: Cole/Mills Associates, in Martinez, followed by Prepared by: WESCO. [laughter] How does that all work out?

Foreman: Okay, WESCO was a subconsultant to Cole/Mills Associates.

Chall: And they are still in existence?

Foreman: Not as that.

Chall: I see.

Foreman: But there's still a Mills Associates. Carolyn Mills works out of--I believe her office is still in Martinez. Carolyn Cole was a partner. It was basically two women running a business. Eventually--actually during Shorelands--Carolyn Cole left that group and came to work for WESCO and stayed there for a number of years. Carolyn's currently with a traffic planning group. I can't remember if its--I think it used to be the Goodrich Traffic Group or something like that. Now it's something else.³

Chall: I see. So there's no more Cole/Mills Associates.

Foreman: No, but Carolyn was the main manager-coordinator for the EIR/EIS for Shorelands. Basically, their group was a small partnership.

³The Crane Transportation Group.

BIOLOGICAL ASSESSMENT
FOR THE PROPOSED
SHORELANDS PROJECT
HAYWARD, ALAMEDA COUNTY, CALIFORNIA

Prepared for:

U.S. Army Corps of Engineers
San Francisco District

Under Contract to:

Cole/Mills Associates
1110 Alhambra Avenue
Martinez, California 94553

Prepared by:

Western Ecological Services Company (WESCO)
14 Gall Drive, Suite A
Novato, California 94947
(415) 883-6425

June 1987
CMA 8401

And they tended to sub out the specialty areas. And if they needed biologists they would hire a biological firm or an individual. They worked a lot with Sam McGinnis who's a professor at Hayward State [University] and who did some of the earlier work on Baumberg. And then they'd contract for traffic consultants, historians, whoever they happened to need.

So when the Shorelands came along, the city of Hayward published an RFP, that's a Request for Proposals, to have independent contractors come in and prepare the environmental documentation for the Shorelands Project. Essentially, it's a third party--it's supposed to be a third party--document. Carolyn [Cole] had done some early planning studies for John Thorpe in the early eighties, like I would say '81, '82.

Chall: Oh, when he was just beginning?

Foreman: When he was just beginning. And I think that Sam McGinnis's early bird studies were done like in 1982 or something like that, under contract to Carolyn. When the RFP came out, there were some other issues--and plus the time frame was something Sam couldn't do--she requested that we join their team to bid on the project. And when she was ultimately selected--I think that was around 1985--the first work I remember doing at that time was trapping for salt marsh harvest mice. I believe it was summer of 1985.

Chall: That's what I think this report indicates. And because you were working for WESCO at the time, they assigned you to the project?

Foreman: Right. I was the primary field biologist of the company.

Chall: Who is Greg R. Zitney, who was listed on the staff as the Principle/Certified Wildlife Biologist, Project Manager and technical review?

Foreman: Greg was one of the main owners of the firm. There were basically three primary partners at that time. It was Greg, another man, Scott Cressey [spells], and then a Jeff Peters.

Chall: So they are with RMI, now, is that it?

Foreman: No. They were the owners of WESCO. Jeff left WESCO in the late eighties. I don't remember the exact year, went to another firm and sold his interest. When RMI bought WESCO in 1992, it was because Greg wanted out of the business. He was basically the majority shareholder-president of the firm. So he left the firm then and Scott is actually still with RMI.

Chall: And Kirk Ford, Wildlife Biologist, was about at your level? You were listed as Principal Certified Wildlife Biologist.

Foreman: Yes. Somewhere in the--I don't even remember that day or year, it had to be--probably about '87 I would guess--I was made a principal of the firm, given a small portion of the stock, I think like 3 percent, or something. That put me in charge of a number of biologists. Greg dealt pretty much more with promotional activities, administrative activities. I dealt a lot with the coordination of the field work, report progress, and that sort of thing.

Chall: So it would look as if you were in charge?

Foreman: I was probably more the direct day-to-day manager, where Greg had the more administrative authority. And we also tried to have a policy where everything that we prepared was really read by one of the three main principals.

Chall: All right. I've got that one solved. Now, when you were given this assignment, had you known much about that area, the Baumberg area?

Foreman: No, very little.

Chall: So you go out, in this case, not knowing the area and with no particular mindset? Is that correct, generally speaking?

Foreman: Correct. Yes, we're basically hired to develop--prepare information on an independent basis: evaluate it--whatever the environmental effects were--report it. And again, it was a joint document between the city of Hayward as the California state lead agency. The document [EIR] was a joint document with a federal document, the EIS. The Corps of Engineers was the lead agency there; they pretty much deferred everything to the city.

Requirements for the Environmental Impact Reports/Statements

Chall: While you were doing this study, what was going on with respect to the EIR/EIS? I've never been quite sure which comes first in this kind of case.

Foreman: Well, they were prepared at the same time.

Chall: With your data?

Foreman: With a lot of people's data, right. The difference between the two--there are some differences in the type or level of information you have to put into an EIR versus an EIS. EISs are required for major federal actions. And the big difference is that EIS has to look at alternatives to projects and with a fair amount of detail--theoretically, the same level of detail as the proposed project. So if there are other sites or other potential uses, you're supposed to treat each one of those alternatives equally.

Under CEQA, the California Environmental Quality Act, you don't have to do that level of detail for all of the alternatives. Typically, you look at the main project, you analyze that at great detail and then alternatives are addressed, but usually at a much lesser detail. So the joint document basically meant that you have to expand the analysis of the alternatives that are available. And there are some timing differences on public comments that you can integrate into making one single document.

A lot of our early work was to develop some baseline information. Sam McGinnis had done some bird studies looking at water bird use of the various ponds out there. There was also a lot of information available from the Department of Fish and Game and the U.S. Fish and Wildlife Service. They used to fly and count birds all around the Bay Area. Again, our principal role was to initially come in and deal with the harvest mice. We were one of the few groups that were permitted to trap and look for the mouse. You had to have some special federal permits and I think, at that time, there was only our firm and one other.

Chall: That could do the trapping?

Foreman: That had the permits.

Chall: So when you began a study of this kind did you study the literature that was available? I noticed that you have a bibliography. Then you do your field work?

Foreman: Yes. We look at what information's available. Specific information then was pretty much the work that Sam McGinnis had done on this preliminary analysis from like '82 to '83. We looked at the site developed and said, "Okay, this is the additional information we need." and generated that. And again, I think that was '85. I don't think there was an actual--there was a break from '85 to later, before we really got going on the

EIR/EIS. I don't think that was prepared until '87.⁴ The EIR was designed to address the public. It's basically public interest review. So that the facts, the environmental effects of a project, are presented for people to review and comment on; so they know. It's an information document, it's not a decision document.

Chall: And the EIS is?

Foreman: The EIS is essentially an information document so that people can make and form decisions. The later work, like the biological assessment and other things, they're designed to address specific regulatory requirements, be it the biological opinions or the federal Endangered Species Act. That's a specific requirement, under the consultation requirements that the corps [Corps of Engineers] or any federal agency has to do with the Fish and Wildlife Service. And it really only has to address the project that has been proposed.

Chall: So that, in effect, is what you did in this particular project report that I have right here in front of me. When you were doing this study, you also, in your report, dealt not only with the harvest mouse but the clapper rail and the snowy plover. And what was the other bird?

Foreman: The main ones were those. The least tern, that was a concern.

Chall: As you were working, doing your own study, were you also having some relationships, in terms of gaining information, with Hayward officials, city officials, like Martin Storm and others?

Foreman: I didn't have a tremendous amount of interaction with the city officials, that would have been mostly Carolyn Cole.

Chall: Well, what about John Thorpe? Was he, at the time you were working on this, was he revising his mitigation plans from time to time?

Foreman: Yes, there was a lot, a tremendous amount of interaction between the people working on the EIR and Thorpe's group--and John--and also with some of his employees. Probably more than is typical. Usually it depends on the jurisdiction. A lot of jurisdictions limit the amount of interaction that a third party EIR consultant has with the actual project applicant.

⁴The draft EIR/EIS report, "The Shorelands," prepared by Cole/Mills Associates, is dated March 1987.

In Hayward's case, I think, basically we dealt most directly with John and his group. The money went to the city, came to us; the proposal would go from us for work, back to the city, to John. He would approve them. So the money always flowed through the city, or 99 percent. There were a couple of things, I think, they had us do separate because they didn't want to deal with the contracting issues.

Chall: I think that John Thorpe also paid for this study?

Foreman: Yes. The developers always end up paying the cost of these studies. And, in fact, what they usually do is they pay above what the consultant contract is, because the city is taking some percentage to manage it and deal with it. But in this case, I think that was pretty much of a--a lot--a tremendous amount of work was done with the significant involvement of John Thorpe and his group.

Chall: Which means that when you were concerned with mitigation, as you were all the way through here, you were dealing with mitigation as it might be revised from time to time?

Foreman: Yes. Through the EIR, particularly, we identified what we believed to be impacts. You know, there were also comments from the various agencies about what they were concerned about, so all that was incorporated into the EIR.

Chall: That means that you had personal interaction with, let's say, Peter Sorensen [U.S. Fish and Wildlife Service]?

Foreman: Right.

Chall: Paul Kelly [California State Department of Fish and Game]?

Foreman: Yes, they were the two main people. I'm trying to remember--also from the Fish and Wildlife Service--Karen Miller was probably involved.

Chall: And their agencies had already in the past come out with their own plans for the restoration of endangered species in that area?

Foreman: Well, I think what you're referring to, which is commented upon a lot in the documents, is the recovery plan for the harvest mouse and clapper rail. That was a joint document. Another requirement of the Endangered Species Act is that the service is supposed to develop these recovery plans. And it's a pretty broad planning document. They go through--they identify areas that they believe should be returned to habitat for whatever species. And they tend to designate areas that are essential for

that. There are a variety of terms that they use. And the Baumberg Tract did fall into an area that they saw as critical to the recovery of the species. I think the reality of that document is probably all of the historic bay lands that were undeveloped, all the existing salt ponds, fell into that category.

Chall: My understanding is that at the end that played a very important part in the decision, the jeopardy decision in 1992. At the time what were you dealing with?

Foreman: We were dealing with--a large part with--what were the potential direct impacts. The definition of jeopardy relies both on--it's really directed to two elements. One is survival of the species, and to argue you're going to cause something that is going to cause the species to go extinct. That's the primary test. There is a secondary test: Are you affecting the potential recovery of the species? But I don't believe you can base a jeopardy on the fact that what you're doing would prohibit recovery by itself. There's a lot of legal terms on that one. It's a difficult concept. It gets debated by lots of lawyers.

Chall: [laughter] I can believe that because this is really an interesting study in the law, the vagaries, the permits--

Foreman: Yes, there were a lot of other things that we did relating to other laws for that project, not just endangered species issues. One of the elements we worked on was a jurisdictional determination for the corps. Even though the corps was lead agency--they started off, you know, requiring an EIS--there had never been an official jurisdictional determination on site. What was the geographic limits of their jurisdiction? So that was another study we did.

That led into some other work. Oh, there were some cases going on where Leslie Salt--at the time, which is now Cargill--was involved in some suit with the corps over determining corps jurisdictions, Section 404 jurisdiction, over some salt ponds over in Newark, I believe. And there was some language in the case when it first came out: it was the first verdict where the judge's decision had some comments that the land could not grow plants. You couldn't call it a wetland. John got into this--dug out his chemistry book.

This is one of the things because down here it is so salty that there weren't very many plants growing. So we did this big study looking at the chemical characteristics of the soils throughout the whole area, basically to show that it was too salty in a lot areas to grow plants. That was largely what we

came out with. So his conclusion was that, well, those weren't wetlands.

Chall: In other words, it's not wetlands if you couldn't grow anything--

Foreman: If you couldn't grow plants. So technically, you couldn't call it a wetland. That was the [Section] 404 definition. There were some other broader definitions--that you really don't need plants to function as a wetland. John tended to ignore that and we launched off on this great soil study to look at those relationships. The map didn't change. The amount that we mapped that was actual Section 404 Clean Water Act of wetlands was relatively small, but most of the rest of the area was jurisdictional because it ponded water for an extended period of time and was used by migratory birds. And those are some other classifications of Waters of the United States which came under--

Chall: Which came later than the boats?

Foreman: Yes. But that was a fun, interesting study. Didn't help John any, but he was bound and determined not to use the word wetlands wherever he could.

Interpreting the Endangered Species Act

Chall: Well, let's just analyze a bit what is in your report. With respect to the harvest mouse--

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Chall: With the mouse--one of the statements in here is that, "The majority of the project area, however, was historically tidal salt marsh and, as such, likely supported large populations of small mammals, including the salt marsh harvest mouse." [p. 18]

And there we have the word, "likely."

"Although isolated populations, such as occurs at the Shorelands project area, likely suffer from inbreeding, they may be important in preserving unique genetic characteristics..." [p. 19]

What I find here is the word "likely." Let's just start here with the word "likely."

Foreman: Biologists hate to make commitments. [laughter] If we weren't there, didn't see it, we always like to hedge our bets. That's probably the best explanation. Again, the issue with what the historic conditions were: a lot of the historic information about the Bay is very sketchy, so we make the assumption that if it was within the areas that had been mapped as tidal wetlands, it probably was habitat. By inference, they're there now, so they most likely were then.

Chall: Even though you trapped only a very few mice in that whole area?

Foreman: The issue would be that the area was so radically changed from its historic conditions. Like, you know, at one point Eden Landing was established there. Boats could come up, basically to where Eden Landing Road is now. A lot of that land was diked for salt production and the channels silted in. So actually most of what we have now for marsh in the areas that we trapped were really open water in historic times, in the 1800s. So it's an assumption based on what we anticipate used to be either with the records, or--

Chall: Therefore, you decided that, "Purchase and donation of existing habitats would meet some of the goals outlined in the salt marsh harvest mouse recovery plan (F.W.S. 1984b) but would yield no direct long-term gains in habitat value." [p. 20]

And you wrote that there would be long-term loss. So the concern was that while there was nothing much there, the long-term loss, the recovery--

Foreman: The recovery aspect--

Chall: Was important.

Foreman: Was important.

Chall: Because it could be--as you're doing now, you could change the habitat and recover?

Foreman: Yes, I guess. And I think a lot of the justification for Fish and Game going forward with purchasing the land has certainly been to implement the recovery aspects for the mouse and clapper rail.

Chall: Now, let's see, we have sort of taken care of the mouse problem. Unless you want to say a little bit more about it. With respect to predation, that was a concern with the mouse and--

Foreman: Well, with all the species.

Chall: Well, let's go to the least tern.

It was classified as endangered by the Fish and Wildlife Service and then also by the Department of Fish and Game so it was considered quite important.

Foreman: The mouse was also state and federally listed.

Chall: And you describe very well, and I guess you need to, with charts and very careful language, how they live. You would get this information from somebody, say, McGinnis, or [Leora] Feeney, or other people?

Foreman: A lot of the least tern information came from Leora. Most of the birds--the least terns there were nesting up around the Oakland Airport and the Alameda Naval Air Station. They would come down here after nesting to do what they called a staging area, pre-migratory, post-fledging staging area. So Leora was hired, I think, maybe by the Department of Fish and Game. I think she was under contract with them to do a lot of the monitoring and evaluation work.

Chall: I see. So her report is included.

Foreman: Everything is. Every piece of information that we got from her, what we gleaned from other sources, the literature about the values, information from Fish and Game, and the Fish and Wildlife Service would be incorporated in all of these documents.

Chall: We were talking about the least tern. This is page 32 of your report. "Construction of the proposed Shorelands development would not directly impact known colonial nesting areas of least tern, however, construction and operation of the project could significantly affect the pre-migratory staging area immediately west of the project site." And you go on--what the problem was--possibly, as we said--predators.

Foreman: Primarily, it was the predators, if I recall.

Chall: And then, the clapper rail.

Foreman: The clapper rail, in many instances, is very similar to the harvest mouse. Essentially they're both San Francisco Bay tidal marsh endemic species. This is the only place they occur, at least that subspecies of clapper rail. Clapper rails are a little more sensitive than the mice in that they seem to be pretty restricted to tidal areas. They need the tidal action and the fluctuation of the water to provide the food sources that they need and the plant cover that they nest in. The harvest

mice can do pretty well in altered places, areas that have been diked that have altered conditions.

Chall: Here, on page 33, you say, "Adjacent salt ponds (including the proposed Shorelands development site) are identified in the plan as having a high potential for restoration, and currently are being 'threatened' with development." That's also noted as from Fish and Wildlife Service--Peter Sorensen, personal communication.

So the clapper rail seems to be important. It might have been an important loss there.

Foreman: Yes, and in particular, with an aspect of recovery for the site, itself. The predation, or indirect impacts, are a major problem with the clapper rail. They are more endangered than the mouse; their habitat is more limited. And they're very subject to ground predators like cats, red fox, and other things like that.

Chall: Yes, that's what is here on your report, on page 37 with respect to predation. So, basically, those are the three important areas.

Foreman: They were the three listed species at the time.

Chall: The plover?

Foreman: The plover certainly was a candidate at that time. It was finally listed as threatened a few years ago.

Chall: So that's why, in your restoration project, you're quite concerned with the plover. That's the snowy plover, right?

Foreman: Right. As a candidate species, like the plover was then, it has no protection under the federal Endangered Species Act. There's no regulatory mechanism to say, "You can't do this because you're impacting a plover." We typically include, and the Fish and Wildlife Service typically requests, that you include candidates, so that you've addressed all that. So that if the species gets listed before the project's done, or even in the middle of your permit process, you're not going to have to start over again.

Chall: On page 45 of your report you write, "The Applicant has proposed creating several snowy plover nesting islands, totalling approximately 17.2 acres. Another 10 to 15 acres of islands would also be constructed as part of the proposed brine shrimp pond."

Mitigation and Jeopardy

Chall: Now, there you're dealing with his mitigation proposals?

Foreman: Right.

Chall: With respect to the mitigation in the long term--(page 70)-- you're now sort of at the summary of your report: "The Applicant's plan also includes the purchase of approximately 332 acres of existing tidal salt marsh habitat at the mouth of the old Alameda Creek." Also, "Donation of the salt marsh meets some of the Fish and Wildlife Service's goals described in the Salt Marsh Harvest Mouse and California Clapper Rail Recovery Plan, but provides no direct, long-term gain in habitat value to offset project impacts."

Was this important at that time? I know that you have a restoration plan now because of mitigation off site. Was he required to mitigate all of this off site, at the time?

Foreman: Well, he would have only been required if he had been approved. It would have been whatever the agencies ultimately required. Again, our job here was to analyze his proposal and make suggestions. And the conclusion to what you're reading there, was that what he had proposed addresses some of the issues but not all of the issues related to the impacts to the listed species.

Chall: Of course, one of the problems was that he was "mitigating" or planning to mitigate on land that he probably didn't own.

Foreman: Didn't own or control.

Chall: Or control. And might not get, like the Oliver property which he was never able to get hold of or adjacent gun clubs. That was also uncertain.

Foreman: Yes. And John had a lot of--there was a lot of discussion at that time that he didn't have that other property. And a lot of the areas that we looked at were owned by Leslie [Salt].

Chall: And you weren't sure that they were going to commit?

Foreman: Right. And they basically stated that they weren't sure that they would commit. But they also had made statements that if they did get approved, that they probably would. It was in their long-term interest. Leslie has always had--and now Cargill--has always had an interest in seeing development in their salt

production ponds. It increases the value of the lands for them. So it's a commodity. And I think a lot of what went on with Shorelands and their dealing with John was that he was the first really big project to try to go through the federal gauntlet to get approvals to do that.

Chall: That was quite a bit--the hurdles were incredible.

Foreman: Right. And John, he was a very good salesman. He had a very strong presence and didn't want to take no for an answer. One of the things I always remember about John was that when the first jeopardy opinion came out for the four species from the Fish and Wildlife Service, he thought it was a positive letter. We weren't quite sure of that. But I just sort of remember being in a meeting in that big old office he had in San Lorenzo. And he said, "This has many positive aspects."

Chall: Well, that's great. And he hung on for another four years. There has been some concern that the people in the agencies having to do with the EIR or EIS, that maybe they--the Fish and Wildlife Service--were hostile to John and his project, and would never have given it to him. In fact, some people feel that they really wanted to bankrupt him, and did. Do you think there was that much hostility toward John and his project?

Foreman: I don't know if it was that or inadvertent. But I'd say that's a pretty typical technique that the government will use. They very seldomly come out and say, "No, we just won't permit this." And a final tactic, not only of the agencies but a lot of environmental groups, is just to string something out until people go away. And I think it was, in part, John's fault. There are time frames for getting specific answers like a jeopardy opinion. He would string out asking for that answer.

Chall: Setting up new mitigation?

Foreman: Change ideas. We'd go through--he was trying to deal with stuff in compartments: you know, "Let's deal with what the city wants. We'll deal with the feds here. There's some overlap, but we won't ask for this consultation." If you ask for a consultation with the biological assessment, there's a document that it's part of--what they call a Section Seven Consultation Process. Technically, the Fish and Wildlife Service is supposed to give you a yes or no answer in 135 days. So that was always kind of pushed out there. The only reason why we ultimately did it, I think, in whatever articles in '87 was that the corps required it to be addressed as part of the EIS. And those results incorporated into the EIS.

Chall: You have a mitigation chart here [page 71, table 3] which indicates just about every--at that time--proposal that he'd made, and then the advantages and the disadvantages. One of the aspects that I noticed--number one--was the proposed purchase of 332 acres. And the disadvantage was that, "There would be no direct long-term gain in habitat value to offset project impacts." That was number one on your list, which, I guess, always was crucial.

Foreman: Yes. Basically, he was just buying something that was already there. And in my opinion and a lot of people's opinions--I guess since its in our document--our firm's opinion--was there was already existing safeguards for that habitat. Yes, the [Fish and Wildlife] Service wanted to acquire and protect those. So that was the one goal we were meeting. Whether he would have met it as part of the recovery plan--but protecting existing habitat doesn't give you any restorative value. There's nothing added to what's lost.

Chall: Then there were other items here with respect, let's say, to the brine shrimp feeding pond. You claim that it's an "experimental design and operation; long-term maintenance and operational costs and commitment; island loss through wave erosion."

But I noticed that several of your disadvantages dealt with costs: costs of maintenance, high acquisition costs. And I wondered why you would be concerned with the costs? After all, John, if he wanted to put the money into it, could do it.

Foreman: There's always a concern. Developers are always willing to put up money, but one of the things is that John never identified his source. Developers will identify and will often pay to start something, usually because they're building and they still need permits, so they comply very well with permit conditions. But once something's up and running--. He never identified a mechanism that would fund that cost. Because it was for managed systems. He never said how he would deal with it, you know: was it going to be an assessment district on the development; would there have been an endowment? He never addressed that issue.

So without some identification of a way to pay for it, just for somebody to actually go out and make sure they manage these systems, it's a big concern. If you don't have that management aspect, the system that you would have set up wouldn't work. And then you've lost whatever mitigation you might have got from that. That's why what we're trying to with Baumberg, now, is to design it so we can get by with as minimal maintenance as possible.

Chall: When you were finished, June 1987, did you then have any opinions which you didn't have when you started out with respect to Shorelands? Was it viable in terms of wildlife management?

Foreman: I think I always felt that there was a potential with enough money and resources to develop a system that would replace the use and values that would have been lost from water birds, for endangered species. It would have been, I think, certainly feasible to go out to restore enough habitat to show a net benefit to the species over time, based on what they have now with no changes and continued degradation of existing habitat. So some restoration, better management of the salt ponds certainly could increase bird use out there to offset what they would lose from this unmanaged site. And I think that, certainly, was a conclusion, I believe, we expressed in the EIR/EIS, that you could deal with this loss of use or value to the wildlife.

The issue that couldn't be addressed, which I still believe is valuable, is that he could never replace that space, that element for recovery, the "acreage." That was something that he could not replace or did not try to address.

Chall: Yes, he could have replaced it, I suppose, by going across the Bay, to Bair Island? [See Appendix D]

Foreman: Right, but Bair Island, again, is an existing area with the same similar values.

Chall: So, it's pretty hard, then, to develop something that isn't already around the Bay?

Foreman: Yes. This segment of the Bay, from San Jose to the Bay Bridge--space is critical. There aren't really any large blocks left that aren't functioning in some value. There's a little bit of land down around San Jose that has some potential, I guess. But it's very expensive land, now. John had explored going up into Napa, Petaluma River, pieces of San Pablo Bay. There, there are a lot of historic bay lands that are currently farmed. And that could have given you this "wetland" space back. Except, the use and values of the wetlands of the North Bay are very different than down here. There's a difference of species that use that area versus the South Bay.

Chall: So actually, if he were to mitigate off site, he would have had to mitigate for the mouse, the rail, the plover, the very ones that are endangered here?

Foreman: Now, while the mouse and the rail occur up there, too--you probably could have got the mouse and rail--well, actually it's a different subspecies of mouse up there than is down there. And the one in the southern Bay is a lot scarcer, more endangered than the one in the North Bay, it's assumed. So it is a real geographic problem in the availability of land.

Trying to Achieve a Balance Between Habitat and Species Needs

Foreman: And the other issue, which to be honest with you, everybody is still struggling with even to this day, is that if you are doing something within the remaining bay lands, which to a large part are salt ponds; values are there; you affect some other value that it has. That's the issue still bothering us. "Okay, we restore this to tidal marsh; we're affecting the values this has for shorebirds, waterfowl."

Chall: Ah, nature! It's pretty hard to fool around with nature, and make sure that what you are doing is going to work?

Foreman: Yes, it's a balancing act. There's a whole process going on right now trying to develop a set of goals for the Bay ecosystem, and it's a major balancing act. We've had, oh god, it's been going on for two or three years. And we've had some big meetings over the last six months: big groups of different individuals talking, "Oh, this is what we want to see." Well, to do that, you effect this, and so it's a real balancing act. How much can you restore without wrecking--?

Chall: Well, you can do nothing. But if you do nothing, something will happen even if you do nothing, won't it?

Foreman: Well, even doing nothing is doing something. But it's probably the wrong thing because even if you let the Bay kind of go, the quality will degrade over time. We're not doing anything to recover the mouse, the clapper rail--they need more space, they need more habitat, they're pretty pushed from a lot of different factors! So something's got to give. And its where can you find that balance to get them a little more habitat, a little more secure versus how you might affect birds that are more mobile, and not as endangered.

Predation and the Fences

Chall: I just want to get into one more aspect of this report of yours. You talk about predation and you have pictures here of, you know, fences, the so-called "vaulting varmit" fence. The ideas for the fences, I gather, came from Richard Murray Associates. Is that correct?

Foreman: And John.

Chall: John and Richard Murray. Now, you looked at it, but as far as I can tell, you didn't do any experimentation with it?

Foreman: Later, there was.

Chall: But did you do it? Did WESCO do it?

Foreman: Yes.

Chall: I wondered whether you were involved in trapping the rats and putting up the fences. And yes, you did?

Foreman: Yes.

Chall: Well, tell me about it.

Foreman: Yes, that was one of the things with John, you know. A lot of the concern from the agencies was that he would go in and say, "Well, you know, we can build this." Their response was, "Prove it." So that's how the fence thing came up.

He and Richard came up with the designs for these fences that he would build around the development to keep everything inside; nothing would get out. So the agency said, "Prove it."

Chall: Which agencies?

Foreman: Fish and Wildlife Service, principally, I think at this time. Since they had listed the jeopardy opinion, they had the big hammer. That was the primary group of people that we were dealing with.

So they built the fences. We conducted the studies for them, you know, again, third party studies. I don't remember how many--but we captured several wild cats. We trapped them in live traps. We trapped rats from the area, brought them in, put them in the cages to see what would happen.

Chall: They got out?

Foreman: Yes. The first couple designs I think the--

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Chall: Go ahead.

Foreman: All right. We put the cat in, opened the trap door, and I think it was out of the--it went out, over, hit the side, went over the top of the fence in about two seconds. I don't think I was even out of the pen, yet. And it was gone. And it went out, cleared over the top, took off running, ran through a ditch, started swimming off across one of the flooded ponds, and was gone.

Chall: What a shocked cat! Well, I'm sure you were shocked, too.

Foreman: No, we had a feeling that it was going to get out. I forget, it was probably a six, seven foot tall fence. I have to admit, I was surprised at how high a cat could jump. I mean, I think that cat did about a six foot vertical leap.

Chall: So it didn't climb the fence, it jumped.

Foreman: It jumped up, grabbed the top and then kicked itself over. I think after that cat--I don't know how much John spent on these fences, I'm sure it was a fortune. They were pretty big, well-constructed fences. We went, got another cat. He redesigned it [the fence], put an overhang over it, and we put some aluminum things around there so they couldn't get a foothold. And I think the next cat got out within an hour.

Chall: Dug under, or something?

Foreman: No, he got out the same way. It finally got enough footholds. And then we put more aluminum--basically we were creating a solid sheet so they just didn't have any--I think that the next time that we put a cat in there it never got out.

We were more effective with rats; we were able to keep those in. I forget how many rats we did. And I think somewhere along the time, it started raining and it flooded up. We kind of stopped after three cats and maybe half a dozen rats.

Chall: General opinion was that was not going to work? Or would it be just too expensive to maintain?

Foreman: I think it got to the point that we felt that you could probably build a fence that you could keep stuff from getting over, if it

was well maintained. It was going to be big and ugly, and that was sort of the time when a lot of this was winding down. I think John was starting to run short on cash. The agencies wanted to see more, but we never did any more after it dried out.

Further Research: Reconsidering Mitigation and Jeopardy

- Chall: When Karen Weissman of Thomas Reid Associates got the project--to revise--I guess John decided that he would make another try at it. They used your original report, they just simply made some revisions and added to the information. I guess they had to because the EIS/EIR was already completed. Did they contact you in any way for more studies? Or was this report just based upon their own research?
- Foreman: We worked with them. Again, what happened was that our role was as a third party. We reviewed stuff, we provided them with suggestions, but in large part it was ideas that they would come up with. They would react to some of our ideas, but even though there was a lot of integration, we were still somebody else's client. We were still the city's and the Corps of Engineers' client. They [Shorelands] brought in Thomas Reid because they wanted somebody that was for them and more of an advocate for them rather than this third party thing. So that's when they brought in Thomas Reid.
- Chall: I see, and that was in 1989?
- Foreman: Right. And again, we provided technical information. We worked with them. And they incorporated a lot of our information, and repackaged it, and resubmitted it. And I think they came up with the same opinion.
- Chall: Generally speaking, I think they felt that under certain conditions that Shorelands could have had the permit.
- Foreman: Right. I think the Service came back with the same thing. I believe there was--I don't know that it ever came out with a formal biological opinion, but I think there was a draft that also concluded jeopardy.
- Chall: Their concern was with restoration and mitigation. Which is very interesting in terms of what you're now doing. And I think they felt that it could be developed--I guess with a lot of mitigation; that there would not be any great loss of habitat or

loss of species, because they felt there was not that much already there.

Foreman: I think from the aspect of dealing with what was directly impacted at this site, it is pretty minimal: the amount of habitat, at least for the mouse. And there are certainly projects that have probably affected as much or more habitat for the mouse that have been approved. But they were also able to deal with some of the other issues of recovery and that sort of thing.

Chall: The road?

Foreman: Yes, the roads and different things.

Chall: Well, it's a very interesting report. A quotation from it will lead into what you will be doing on the Baumberg Tract. "There is nothing unique about the subject property that makes this specific piece of land particularly critical to the recovery of endangered species compared to other former tidelands. The property may appear to be more readily restorable than similar sites which currently have an economic use, such as active salt production, but the economics of restoration itself are uncertain."⁵

⁵"Biological Assessment for the Proposed Shorelands Project," revised by Thomas Reid Associates, August 1989, p. S-5.

II THE BAUMBERG TRACT WETLANDS RESTORATION PROJECT

Chall: Why don't we go into the restoration of the Baumberg Tract that you are now working on.

Foreman: Okay.

Acquisition by the California Wildlife Conservation Board

Chall: Now, John Thorpe's plan fell apart. I mean he couldn't go on anymore. And I know that the present Baumberg Tract restoration project came into being because of mitigation.

Foreman: Well, some of the funding, I'm not sure of the exact percentage of it, but some of the funding for the acquisition and restoration of the site is as mitigation for some projects. In part, there's a highway interchange with CalTrans, with a Fremont-Newark interchange.

Chall: Fremont-Milpitas, I think.

Foreman: Right, Milpitas, whatever. Some of those, it might even be all three, I might have to go back and look. And then the other aspect is the city of San Jose or Santa Clara Valley's sewer--waste water discharge. All the fresh water flowing into the Bay has changed the characteristics of the salt marshes down there. They've become more brackish--different vegetation's grown. It's changed the plant and animal life. And it has decreased habitat suitable for the clapper rail and harvest mouse. The Regional Water Quality Control Board, as mitigation for their continued discharge, required restoration of 350 acres, I believe. That's what they figure had been affected. So they said, "Okay, you restore 350 acres to tidal action."

Chall: So that's why even your restoration plan, I noticed, requires you to restore acreage for particular species. It's really difficult, I suppose?

Foreman: Right. So that's the mitigation requirements. So Fish and Game has parlayed that into the ability to buy the land from Cargill, and then also fund the restoration activities.

Chall: And then the East Bay Regional Park District has put money in for trails? About a million dollars, I think?

Foreman: Yes. They have an interest in open space, habitat preservation, but they are also interested in public access. That's one of their major mandates. Fish and Wildlife Service also put in money. Yes, you probably should ask Carl [Wilcox], but I think it's in the range of a half million dollars. I think that's for endangered species habitat restoration, wildlife values. [See article, following page]

Chall: Altogether, they paid about \$12.5 million to Cargill for this piece of land? And some of the money, \$5 million, came from Proposition 70 and the Wildlife Conservation Board.⁶ So was there, as far as you know, an attempt to put this money for this mitigation in other places besides Baumberg?

Foreman: I don't know how much they looked. I'm sure they would. I know there has been searches for a long time particularly for the Santa Clara Valley, San Jose, whichever it is, for their mitigation. I know they looked at a lot of places. There were different evaluations going on. Part of the problem is that a lot of the salt ponds are still in active production, so if you take them out of active production you're affecting Cargill's operation. And even though I think there's historically been a fair amount of animosity between Cargill and the regulatory agencies, they also understand, they both--at least the agencies understand they need Cargill.

Chall: So, finally, various mitigation proposals and the money came together and Baumberg was selected for this restoration?

Foreman: Right.

⁶Proposition 70, June 1988. Wildlife, Coastal, and Park Land Conservation Bond Act. Initiative statute sponsored by Californians for Parks and Wildlife. \$776 million to acquire, develop, rehabilitate, protect, and restore parks, wildlife, coastal and natural lands in California.

Hayward wetlands project to receive \$500,000 in unique replacement deal

By Scott Andrews
STAFF WRITER

Taken
4/23/96

OAKLAND TRIBUNE

The 18 acres of wetlands surrounding the Interstate 880/Dixon Landing Road interchange on the Fremont-Milpitas border are no pristine wilderness.

Six lanes of traffic barrel past. San Jose's Newby Island landfill wafts a scent of rank garbage. Nearby, weeds crack the tarmac of the defunct Fremont airport. The shallow wetlands themselves seem more like stagnant puddles than wildlife habitat.

The interchange is scheduled to be widened and improved by 2002, but the untrained observer would expect little environmental damage from paving over this barren sliver of slightly soggy land.

Salt marsh harvest mouse home

However, 6.5 acres of the wetlands are home to the salt marsh harvest mouse, an endangered species. And state and federal laws require replacement of any destroyed wetlands, no matter how pathetic.

After the improvements are complete, there will be only one acre left of the current 18 acres of wetlands. So Fremont and Milpitas, which are paying for the im-

provements, were required to find replacement land elsewhere. They quickly found themselves in a bind.

Land costs out of range

The cost of buying land reached over \$1 million. Furthermore, each site they found was nixed by the state Fish and Game Department as environmentally unacceptable, Fremont Assistant City Engineer Allen Shelley said.

But in a unique deal, the cities have agreed to locate their replacement wetlands in the Baumberg tract, 835 acres of former salt evaporation ponds in Hayward that the state plans to restore to prime marshland.

State strapped for funds

The state, which was short on money to buy the tract, is happy for the extra \$500,000 the cities will give. Shelley was equally satisfied, calling the deal an "excellent solution" in part because it will save the cities at least \$500,000.

Paying for part of the larger tract makes more sense environmentally than creating a separate 17-acre pocket of wetlands, said Carl Wilcox, the state Fish and Game environmental service supervisor for the Central Coast.

"You're always looking for the

opportunity to create larger units and have habitats that are going to be more broadly productive — not just creating habitat for mice but for other species as well," he said.

Upgrading wetlands

He said upgrading from the low-quality, seasonal wetlands at Dixon Landing Road to the rich Baumberg tract is barely more expensive than buying another patch of low-quality marsh.

The Baumberg tract will have 500 to 600 acres of habitat for the salt marsh harvest mouse. The larger amount of land makes the land easier to manage and less susceptible to drought and flood damage, Wilcox said.

The Fremont and Milpitas money is expected to be combined with about \$1 million from the East Bay Regional Park District for trails and about \$6 million from San Jose to mitigate sewage damage, said state Wildlife Conservation Board assistant executive director Georgia Lipphardt.

The money will push the state over the \$12.4 million it needs to buy the tract, she said.

Work on returning the barren marshes to their original state will begin during the summer of 1998, Wilcox said. It is expected to be a flourishing habitat within five to 15 years.

The Selection Process: RMI Wins the Bid; Steve Foreman Project Manager

Chall: Now, how is it that you got into this? You're in charge?

Foreman: Well, I'm the project manager.

Sort of like the way we got into it the first time: Fish and Game put out a request for a proposal. It was a competitive bid process. I don't recall, I think there were maybe five firms that bid on the project. [sarcastically] It's a joyful process.

The project was originally awarded to a different firm, Levine and Fricke [spells], which I think now goes mostly by the name of RECON. But they're in Emeryville. They were originally awarded the first contract, or the initial selection was for them. One of the other groups that had bid on it--it's Jeff Peters, one of the former WESCO owners--with a group of other consultants. He had gone, looked over the ranking sheets, and he was mad because his firm wasn't selected and didn't even make the technical qualifications. Two firms had made the technical qualifications: ourselves and Levine-Fricke, of all the groups I think that had put in. He threatened to protest the award because there were some ambiguities in the ranking system--in the way different people rated the proposals.

And it appeared that there was, I guess, some strong bias from one of the people towards Levine-Fricke. So Fish and Game pulled the award and reissued the RFP with some different characteristics and different evaluation criteria. And the second time we won. Levine-Fricke threatened to--considered objecting to the award, but didn't protest it.

Chall: My, there's a lot of competition out there for these things.

Foreman: Yes, it was amazing. To be honest with you, you know, the budget is so tight, it's not a tremendously profitable thing for a private firm. I'm largely in it because I'm interested in the site.

Chall: And you knew the site.

Foreman: I knew the site. For me it's kind of a nice circle to work at it from the aspect of seeing it close to development to being restored, which is really what I think it was suitable for.

Chall: It must be a great kick, really, to do what you had watched maybe being undone or maybe not being done by the other project?

Foreman: Well, I think that this may go back to some of your earlier questions about the animosity towards John. I don't know that it was to John, personally, maybe not even to John's project, per se. I think what they--particularly, the agency saw this thing as: this is the first big development project on a large tract of former bay lands, unused salt ponds. And I don't think they wanted to see a precedent set there.

I think they're happy with Cargill and salt production. There's a lot of value that generates to the Bay from that, to the resources around the Bay. But they also don't want to see that land ever developed. To them, it's salt production or it's restored, or managed in some other manner for wildlife. And I think that was their big thing with this project. You know, over here it was fine, you go on the other side of the historic bay line, he could have had it.

Chall: But he wanted it there--in Hayward?

Foreman: There was a location issue. And a long-term recovery of the Bay issue. They just didn't want to set that precedent. And I think that's a large part that's led to the Fish and Game buying the land from Cargill. They want to show that, "We'll buy the land from you; you have value for that land."

Chall: So it was Fish and Game that bought the land with the money that came in?

Foreman: Well, really--see, the Conservation Board--it's a separate agency, but it's basically an arm of Fish and Game that buys land. Fish and Game can't go out and buy land. They manage lands and do other things, but the Conservation Board buys it, gives it to Fish and Game.

Chall: And since the jeopardy opinion went through Fish and Wildlife Service, which is a federal agency, do you have to deal with Fish and Wildlife Service, now, to set up your plan?

Foreman: Yes.

Chall: You still have to pass their--?

Foreman: We have to go through the same regulatory process. And that's why there's a lot of information there, a lot of the concerns for the snowy plover where we're dealing with restoration, the tidal salt marsh. There's clear long-term benefits for recovery for the clapper rail and salt marsh harvest mouse. If you create the tidal marsh, they will come. They're around the edges and you're addressing their needs.

But by restoring tidal marsh to these old salt ponds, the salt ponds are what the snowy plover uses. It's not a natural habitat for them. But some of the old salt ponds mimic the historic types of habitats that the birds had, which were some salty ponds. Most natural marshes have a mix of ponds, salt pans, within the areas that get poor circulation. So in portions of the Baumberg Tract, those ponds mimic the historic conditions and are what the birds rely on. They're artificial, they're maintained, but they're critical to the current survival of the species. So we're trying to balance that out.

Restoration Project Staff

- Chall: I do appreciate being on your mailing list and being allowed to come to your meetings. They've been most informative. The team members whom you introduced--I think it was at your meeting July 10 [1997]--were George Molnar, a wetland biologist from RMI, and Carl Wilcox, who's an environmental services supervisor for California Fish and Game. He's in charge of whatever you do?
- Foreman: Right.
- Chall: You report to him, but he doesn't do the studies?
- Foreman: No. Well, Fish and Game has done some studies out there. Carl, and a seasonal technician for Carl, did do some extensive bird studies last year, counting, you know, doing bird censuses, looking at how the ponds behaved, how they flooded up, how much it flooded, that sort of thing. Fish and Game doesn't have the manpower to put together these plans and go through the whole process. Stuff's usually contracted out.
- Chall: And then, there's you, the Wildlife Biologist Project Manager, RMI, and Janet Green, Landscape Architect--Studio Green. What's her place in this?
- Foreman: Janet also does a lot of public review, or public interaction. So, she's helping us with that. Plus, she's also dealing with the access issues for the East Bay Regional Park: the trail, landscaping issues around the trail, and how would the trail be set up. It's not a big role in the overall project, but that's the aspect of what she's doing.
- Chall: I see. I think I saw her when she came in the night of the meeting.

Foreman: Yes.

Chall: Well, this first meeting that you had followed the field trip, which I certainly found interesting. You can't simply see all of this on a map and understand the scope of the project.

Foreman: There are a lot of other people involved. There's a guy, Gary Page. He is with Point Reyes Bird Observatory. He is a snowy plover expert and actually had done some of the early censuses around the Bay, including the Baumberg Tract. A lot of the information on snowy plovers in the Biological Assessment was from the study that he and his wife did.

Another is Larry Fishbein, a hydrologist. He's working on the project--a critical role. Then there's a man named Andy Leahy. [spells] He's an engineer, does a lot of the engineering work. He's done a lot of wetland work. I worked with him extensively on a number of projects, so he's dealing with the engineering aspects. And there's a list of other people.

Chall: You call them as you need them, is that it?

Foreman: Right.

Many Factors Involved with Restoration

Chall: Now, as I attended the meetings, I noted there are plenty of problems. You listed some in one of the exhibits here under Commitments and Constraints: the commitments are to, "Provide X number of acres of land per harvest mouse and the clapper rail." You note that their habitat is somewhat similar. And then, "Creation of seventeen and one-half acres of new jurisdictional wetlands including some for the mouse." And then you need, "Restoration of tidal marsh and enhancement of seasonal wetlands." But you also have to deal with the plover, and that isn't in here. Is there a certain amount of land for the plover?

Foreman: Well, the constraint really is that we cannot jeopardize the continued existence of the snowy plover. In the definition of the continued jeopardy and the continued existence, the wording--the definition--includes survival and recovery.

Chall: Oh, I see it's under constraint. You also have--what's been interesting to me--is this whole problem of the access to the sewer lines, facilities and property of Cargill, PG&E and

transformers. There are all kinds of things out there, physical things that you can't not deal with.

Foreman: Well, basically, we can't afford to move them.

Chall: No, you can't afford to move them and that sewer line--might sometime in the next fifty years--might have to be checked or repaired?

Foreman: Checked, or it might break, or something. Right.

Chall: So you don't want anything over the sewer that could be destroyed. I mean, if it were destroyed it would destroy an important habitat?

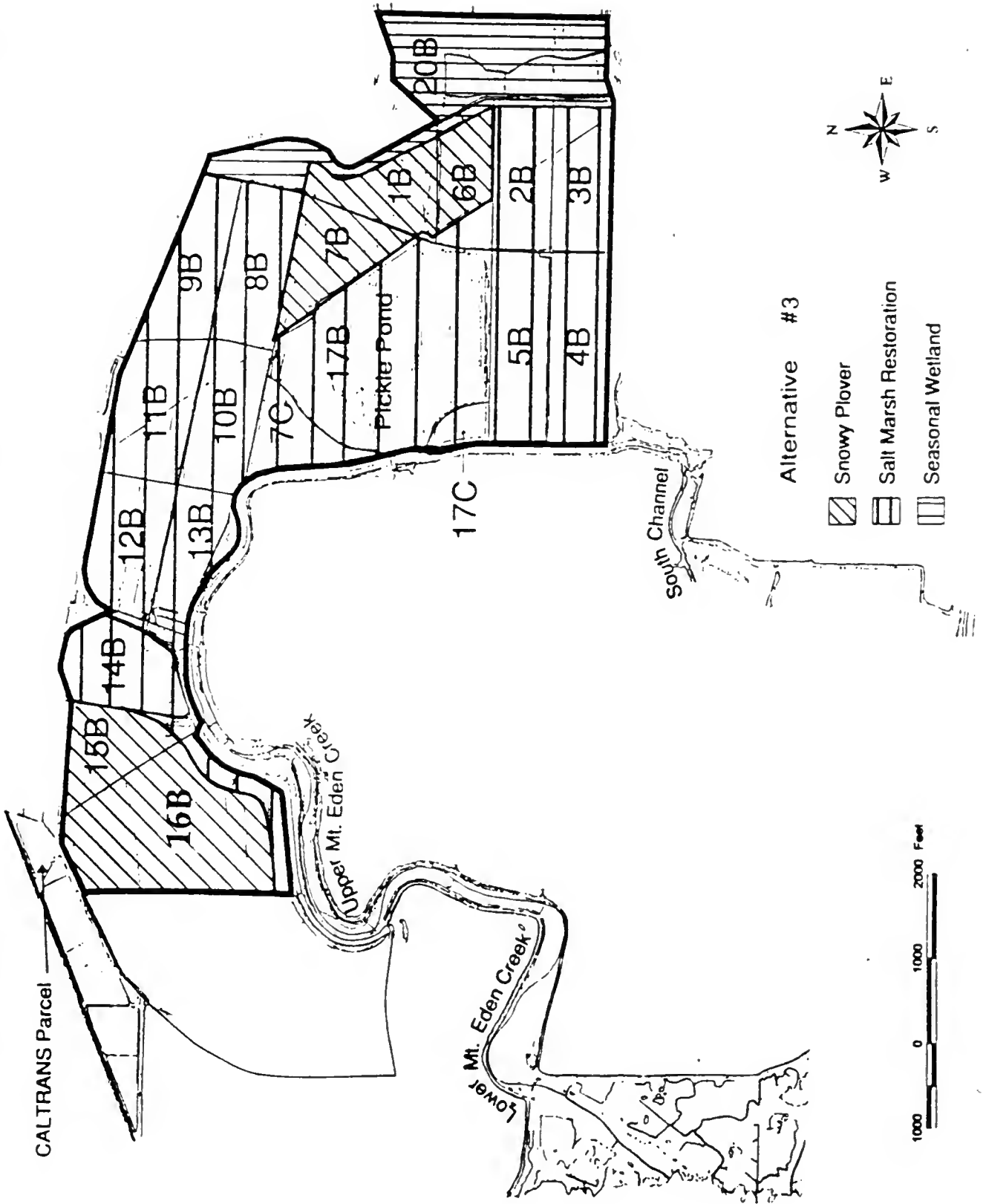
Foreman: Yes. We want to be able to restore it back. It certainly is a challenge.

Chall: And you have available just so much funding? It's only \$1.3 million. How was that determined?

Foreman: Carl, I think he said he spent \$12 million--\$12.5--he basically had \$1.5 million left over after the purchase. That was his initial estimate on how much he thought it would take to do the restoration work. Our contract is roughly \$185,000 to do all the work, somewhere in that range. So that I think we just took off --kind of two--so, yes, \$1.3--that was what he had available. We've done some preliminary estimates of costs. And he's working to find more money. So, we're trying to refine the costs a lot, so there's not a lot he has to ask for. He will go back to the cities, the people doing the mitigation. They'll be responsible for parts of it, so they can maintain their commitments.

Chall: At your November 6 [1997] meeting, which was mainly for the agency people involved, you had a number of alternative maps. There were Map One, Map Two, Map Three, and this three-page draft of Conditions, Constraints, and Opportunities Summary. It just boggles the mind--particularly a mind like mine. I like to go for a walk and look at birds [laughs]. But I can see that each one of these maps is different with respect to how much land would be used for the snowy plover, how much for marsh restoration, how much for seasonal wetlands. There are some significant variations and some of them look just like nuances. I think that the group finally came up with alternative number three, at least that's the one I have my marks all over. But I'm not sure whether you really had made a decision at that point. [See two early alternative plans, following pages]

Foreman: No, we hadn't.



Chall: Do you want to look at this?

Foreman: No, I've committed it to memory. There are probably 500 variations of ways that we could do things. We tried to show-- well the first one was Carl's first idea.

Chall: Carl's idea was number One?

Foreman: Well--number One. It was kind of his original idea to show how he saw it being done. Two and Three were variations off of that to look at other physical constraints, regulatory constraints, and did it make sense.

Chall: I can see where you've listed the physical constraints, the hydrologic considerations, the salinity of the soil, the mean elevation, and all of that kind of thing. There is so much involved here!

Foreman: They all relate to how the area may be restorable or what problems you may have. And again, you know when Carl did his first idea, it was based on one set of knowledge. As part of our work, we've developed a whole additional set of information to bring into the equation. In principle, the pond elevation is a critical element to what can be restored.

Chall: That's why you need your engineer?

Foreman: Right, and the hydrologist. Because the hydrologist will tell us, "Okay--

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Foreman: So, there's this change in elevation, and the marshes will behave differently depending on the elevation. If they're very subsided, very low, when you first open the tidal action, you're going to get open water; and you get one set of conditions that way. And if there's enough silt, they'll silt up, and that's a very desirable component. So we have to make sure there's enough sediment moving in the water, variable sediment, to give us the proper elevations.

Chall: Now, we've just had enormous rains. I bet everything looks a little different on the ground right now.

Foreman: It's wet. [laughter] There's a lot of sediment in the water. This would have been a great year to have it open because we would probably gain some extra because of all the washout from the hills, and the uplands, and moving around. There's a lot of sediment in the Bay and it has a lot to do with the mudflats.

Mud will tend to move around and sediment will tend to move around. One of the concerns is, if you're in the sediment depths and you open up too many big areas and the sediment gets sucked into there, you might affect the size of the mudflats out in the Bay. And those mudflats are critical feeding resources for shorebirds at low tide. There seems to be available information in this area of the Bay that we have plenty of sediment, that we won't have that problem. But it's also a timing issue. If you've got to wait for four feet of sediment to come in that might be X number of years before you get a marsh established.

Chall: And how many years are you allowed to have?

Foreman: We're not on a time frame.

Chall: You just have to do the best that you can.

Foreman: We just have to do the best we can. I think the original--I guess I wouldn't say that we are not on a time frame, because there is some assumption in the board's assessment--the regional board's assessment--for the waste water. The assessment was that it might be fifteen to twenty years before we had that clapper rail habitat. If it takes thirty--I don't think it's written as a permanent condition, but there are some assumptions that once the habitat's restored, we will get a usable clapper rail habitat within fifteen years.

Chall: Well, I hope we're all around to see it. [laughter]

Foreman: Hopefully, it will be faster than that. But I think what we're trying to do now--to be honest, the plan we're moving forward with isn't really one of the three of those you saw.

Chall: You have another one?

Foreman: We've modified Three a bit, just by looking at some additional information, and comments from the meeting, that made sense.

Chall: Some of your meetings--the first one I attended had a lot of agency people, and then in the evening it was open not only to the agency people.

Foreman: The general public.

Chall: The general public. And so the people like the Delfinos, and Howard Cogswell, and others--I didn't know them all--but are they still available for commenting? And do they comment?

Foreman: Oh, sure. We're right now, George and I, working with Carl and the rest of the team trying to finish the plan up.

Chall: Do you have a time limit on finishing the plan and getting started?

Foreman: Yes, we're a little behind schedule for a variety of reasons, but we're trying to get the plan together. We haven't put anything out since the last meeting in November. What George and I have talked about doing is, hopefully, within the next week or two to be putting out kind of a little summary to say, "Okay, this is the preferred plan. This is what we decided, how we decided to proceed forward." A big part of that is that I'm waiting for the hydrologist to finish his work so that I know that it will work, before I say this is what we're going forward with. And then he's comfortable that these are how things may develop, so we can kind of describe that in general detail. And from there, we can put the rest of the plan together with the other environmental documents we need.

Chall: And do you then have to get permission from the Fish and Wildlife Service, and, I guess, the Regional Water Quality Control Board? The city of Hayward--not necessarily?

Foreman: [sighs] I don't think we have to get--actually, I'm pretty sure --we don't have to get city of Hayward permission because it is a state project. The state's not subject to local regulations. The state certainly cooperates with them, but they're not subject to any permits. We do have to apply for Section 404 permits from the Corps of Engineers.

Chall: That's water, isn't it?

Foreman: Yes, the Clean Water Act. That will cover dredging activities, fill, excavation, and any areas subject to their jurisdiction. We will also--as part of that permit process--deal with the Fish and Wildlife Service to address the endangered species issues so that the project complies with the Endangered Species Act from the federal standpoint. Fish and Game will also have to do their own thing to make sure they also comply with the state Endangered Species Act.

Chall: And you have to do all that before you put a spade in the dirt?

Foreman: In the dirt! Yes. And also as part of that process, we deal with the regional board. The regional board has to certify--

Chall: Which regional board?

Foreman: The San Francisco Bay Regional Water Quality Control Board. For any 404 permit they have to say that the project either complies with state water quality standards or they don't have any concerns. For a project this size, they'll have to provide a

certification that this project complies with water quality standards for the Bay.

Chall: How long will all this take?

Foreman: Optimistically, six months. More likely, a year.

Chall: So your shoveling doesn't start until mid-1999, or early 1999.

Foreman: I think--we were hoping to get this done in like three to six months, so late fall, maybe, we could start. For a variety of reasons. One of the big concerns has been a lot of the recent rains.

Chall: Right. Changes.

Foreman: It changed things. But it's also--Carl, Fish and Game, wants to have the East Bay Regional Park District manage the construction, do the bidding, and do the construction.

Chall: Oh, really? Of the whole thing? Is that right?

Foreman: Of the whole thing.

Chall: I guess you have reasons for thinking they can do it?

Foreman: Well, they've done the Ora Loma project. They have some experience doing it.

Chall: And they've also done the Hayward Area Shoreline.

Foreman: Yes. The district has the manpower, some manpower facilities for construction. So they've done a lot of this. And they're a public agency with those capabilities. To be honest, Fish and Game is somewhat lacking in that. It's not their job. I mean, they do have some, you know, refuge managers, and they have a refuge manager arm, but they've got enough of what they already have.

Chall: So, if you turn it over to them for doing the work, is that part of the \$1.3 million?

Foreman: Yes. So one of the aspects is that they'll--

Chall: They might not do it for that amount?

Foreman: Right, right. Well, we have to make sure there's enough money available, or we'll have to scale back what we do, or get the money. Carl's looking to expand the budget to fit what we want done. But they, the park district--many of their facilities have

suffered so much damage in the last two months, they have other priorities. And they won't have the time immediately to devote to the project. So, with some of these delays, and just the time it takes to get through the regulatory process, I think it will be probably '99 before things start happening.

Chall: Well, are you feeling sort of excited about doing this project?

Foreman: Oh, yes.

Chall: Is it very meaningful to you in terms of your career?

Foreman: Yes. A lot of the focus of what I like to do--and professionally, what I've done with this company--is work on habitat restoration. Whether it's for mitigation, for projects, or just for somebody who's got an open space land and they want to improve the values on it. That's a big goal of what I like to do.

Chall: Well, you certainly are doing it, aren't you?

Other Restorations Projects Around the Bay

Foreman: Well, you know, there are lot of projects. There's a number that we're doing around the Bay. They are in various stages. This is certainly the biggest. This is a big project. The one I went to look at this morning--you may have heard of Roberts Landing?

Chall: Oh, yes.

Foreman: I've worked on that for years. We did some mitigation, tidal restoration, this last year. We just finished completing it and have it restored in tidal action. It's about 130-some acres, I believe. So that's one I was looking at today. I think we opened it first last July, and then did some additional work late this fall and reopened it again in December. So it's been moving along. I've some on the West Bay, Palo Alto, Redwood City, that I'm working on that if we can get the permits finalized, would affect another 140 acres next year.

Chall: Well, you're a busy person, doing what you really want to do, and that's fortunate, then, that you can do it.

Foreman: Yes. Yes. It's a--I guess a portion of that is that I get to do what I like to do and I get paid for it.

Chall: Very good. Is there anything you'd like to say about the Baumberg Project or anybody involved in it that we haven't covered? I'm sure there may be.

Foreman: Well, we covered just about everything, seems like. You know, there's lots of little things. If I probably started reading back through these books--I see the cover on that--this starts to trigger back memories of dealing with Richard.⁷ He was always entertaining.

Chall: I'm going to be talking to him next week. Mr. [Robert] Douglass, of Cargill, told me that the problem they had with Mr. Murray was to keep him on the track--[laughter]--because he was making his plans with the mitigation areas that they really didn't have.

Foreman: Well, Richard--he's a very interesting man--a little spacey sometimes, but he had some ideas and he didn't have a lot of training in this.

Chall: No, he's a landscape architect, I understand.

Foreman: Right. But he had done some--I guess he had worked on a mitigation project for snowy plovers at Pajaro River [Pajaro Dunes], or something, and had gotten an award for that, and I think that's how John found him. So he was their principal mitigation person. And in part, we were somewhat the check on his enthusiasm.

Chall: You had two enthusiastic people to deal with. [laughter]

Foreman: Yes. [laughter] A lot of what we did was to respond to his ideas, and some of his ideas probably would work with time--.

Chall: Time and money.

Well, I really appreciate the time you've given for this interview. Thank you very much.

Transcribed by Amelia Archer
Final Typed by Shannon Page

⁷"Shorelands Biological Mitigation Master Plan," (Revised 12/12/87). Prepared by Richard Murray Associates.

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California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Karen G. Weissman

FINAL BIOLOGICAL ASSESSMENT AND MITIGATION PLAN FOR THE
SHORELANDS PROJECT, 1988-1990

An Interview conducted by
Malca Chall
in 1997



Karen Weissman, 1999.

TABLE OF CONTENTS--Karen G. Weissman

FINAL BIOLOGICAL ASSESSMENT AND MITIGATION PLAN FOR THE SHORELANDS PROJECT, 1988-1990

INTERVIEW HISTORY	216
BIOGRAPHICAL INFORMATION	218
Karen Weissman's Background and the Origin of Thomas Reid Associates	219
Establishing Contact with John Thorpe and the Shorelands Project	220
Preparing for the Task Ahead	224
Overcoming the Hurdles: Mitigation Due to Loss of Wetlands Area	225
Planning and Working Toward a Successful Outcome	227
Habitat Mitigation Issues: The Snowy Plover, the Salt Marsh Harvest Mouse, the Clapper Rail, the Least Tern	228
The Concern for the Future of Wetlands	230
Attempts to Control Predation of the Clapper Rails	232
The Second Draft Jeopardy Opinion Means Defeat for the Shorelands Project	236
The Frustration of a Consultant Failing to Reach the Desired Goal	237
The Current Status of the Baumberg Tract	238
Examining the Processes Required to Restart the Project	239
Critique of Government Environmental Regulations in General and on the Shorelands Project in Particular	242

INTERVIEW HISTORY--Karen Weissman

Karen Weissman, soon after receiving a Ph.D. in biological sciences from Stanford University, formed, in 1973, the partnership Thomas Reid Associates [TRA] with fellow student Thomas Reid. They specialize in environmental impact assessment and habitat conservation planning.

During my first interview with John Thorpe he revealed that he had, in 1987, withdrawn his application for a permit to build Shorelands when he realized that the Fish and Wildlife Service had determined the project would jeopardize endangered species. He then hired Thomas Reid Associates to prepare another biological assessment, and to advise him on measures he might take to pass jeopardy so that he could move ahead with his ambitious project.

When I contacted Thomas Reid and asked him to participate in the oral history of the Baumberg Tract, he said that Karen Weissman had been in charge of the Shorelands Project, and that he would prefer to delegate the interview to her. I contacted Ms. Weissman, who agreed to be interviewed. We met in a conference room of the Associates' office in Palo Alto during the morning of November 4, 1997.

When we met for the interview session, Ms. Weissman brought along with her many of the documents, memoranda, and letters from her work on the Shorelands Project between 1988 and 1990. We covered the problems faced by Mr. Thorpe trying to meet the regulations of the Fish and Wildlife Service regarding endangered species. As we have learned from previous interviews in this volume, John Thorpe faced high hurdles overcoming jeopardy--hurdles related particularly to mitigation and predation. Ms. Weissman discussed her work on the project with good humor and with careful attention to detail, expressing her frustration at failing to help John Thorpe overcome the final draft jeopardy opinion of the Fish and Wildlife Service.

When asked whether all the rigorous regulations required by environmental laws were necessary, she said emphatically that they were. Ms. Weissman strongly opposes attempts by Congress to weaken environmental legislation.

Immediately following our brief interview, Karen Weissman generously copied memoranda and letters she thought would be useful for research on the Baumberg Tract, and gave me a copy of the "Biological Assessment for the Proposed Shorelands Project," which she had revised for Thomas Reid Associates in August, 1989. The memoranda and her clear explanation of the various aspects of the environmental regulations laid

the groundwork for my interview with Peter Sorensen. These papers will be deposited with this volume in the Bancroft Library.

Ms. Weissman carefully reviewed her lightly edited transcript, correcting spelling and adding information, where necessary. Her interview provides additional and essential information about the hurdles faced by developers and environmental assessment specialists like TRA as they attempt to design plans acceptable within the framework of complex environmental regulations.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer/Editor

January 2000
Regional Oral History Office
University of California at Berkeley

Regional Oral History Office
Room 486 The Bancroft Library

University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name Karen G. Weissman

Date of birth 1947 Birthplace New York, NY

Father's full name Leslie A. Goldman (deceased)

Occupation Film producer Birthplace New York, NY

Mother's full name Ruth S. Lachow (deceased)

Occupation Housewife Birthplace New York, NY

Your spouse decline to state

Occupation _____ Birthplace _____

Your children 3 children

Where did you grow up? Los Angeles, CA

Present community Palo Alto, CA

Education see Curriculum Vitae (attached)

Occupation(s) see C.V.

Areas of expertise see C.V.

Other interests or activities Scottish Country Dancing, hiking, European travel and walking tours, RV'ing, gourmet food and cooking, exercise.

Organizations in which you are active see C.V. Also Royal Scottish Country Dance Society SF Branch

STAFF BIOGRAPHIES

KAREN G. WEISSMAN, PH.D.

Dr. Weissman has been a Principal of Thomas Reid Associates since she completed her doctorate in late 1972, and Vice-President of the firm since 1982. Her areas of expertise include ecology, population biology, demography, land use, governmental planning and policies and regional environmental issues. As a principal of the firm, Dr. Weissman provides public representation of many of her cases in the EIR process. In the firm's numerous cases for the California Public Utilities Commission, she has provided expert witness testimony in administrative law proceedings.

Dr. Weissman has participated in nearly all of the firm's past work. As CEO of the firm she plays a key role in the conceptualization, planning, contracting and execution of all jobs. She has served as client liaison for technical information transfer and review on numerous cases, and has expert familiarity with the methods of data collection and analysis from diverse sources, including governmental agencies, universities, public service organizations, public and private interest groups, and private industry and commerce. Dr. Weissman has primary responsibility for administering subcontracts and assuring the delivery of acceptable work products by subcontractors. Dr. Weissman also reviews all of the work of TRA staff for CEQA adequacy and overall quality control.

Current case work includes the Santa Clara Valley Water District Sediment/Erosion Control and Vegetation Management Program EIRs. Recently completed studies include the Mount Washington Cellars and Resort Village EIR, the Brisbane General Plan EIR, the Pacifica Wastewater Management Plan EIR, and the Grassland Water District Land Planning Guidance Study. Dr. Weissman was Case Manager and Principal Investigator for the Claratina/Coffee and North Beyer Park Reorganization EIR, Gilroy Hot Springs Resort EIR, Gilton Solid Waste Transfer Station and Outdoor Resorts Recreational Vehicle Park EIR. She has also been Principal Investigator for numerous other TRA studies including the Farm Labor Housing Project EIR, Devers-Serrano Transmission Line EIS/EIR.

Dr. Weissman's expertise encompasses up-to-date knowledge of the requirements of CEQA and other environmental legislation and case law as they pertain to environmental documents. She is frequently hired by private and public clients to provide detailed, formal technical review of numerous EIR's prepared by others, including industrial projects, "new towns" other mixed-use developments, high-voltage electrical transmission lines, sewage sludge disposal, and a solid waste/hazardous waste transfer station.

Projects reviewed include the Dougherty Valley General Plan EIR (Contra

Costa County), Mountain House new town EIR (San Joaquin County), Diablo Grande and Lakeborough New Town EIRs (Stanislaus County), Renaissance Residential Project EIR (San Jose), Evergreen Specific Plan (San Jose), O'Connell Ranch Annexation/Rezoning (Gilroy), Franklin Canyon residential project (Hercules), Signal Energy Biomass Plant EIR (Shasta County), United Technologies Rocket Motor Facility EIR (Merced County), Metropolitan Oakland International Airport Development Plan EIS/EIR, San Jose International Airport Master Plan Update Draft EIR, Chiron R&D Facility EIR (Emeryville), Vacaville Entertainment Center Negative Declaration, and Fourmile Hill Geothermal development (Klamath/Modoc Counties, CA).

A biologist by training, Dr. Weissman has done biological reconnaissance and impact assessment of projects ranging from oil and gas pipelines, transmission lines, marine terminals for oil and liquid natural gas, port expansion, landfill expansion and residential subdivisions. She has worked closely with wildlife agencies in the study of impacts on rare or endangered species in California and other parts of the western region.

Dr. Weissman has had a central role in the firm's many endangered species conservation planning studies. She was a Principal Investigator for the Natomas Basin Habitat Conservation Plan (1994-97), the Southern San Joaquin Valley Habitat Preservation Study (1986-89) and principal author of the Coachella Valley Fringe Toed Lizard Habitat Conservation Plan and EIS/EIR (1984-1985). She provided expertise in theoretical ecology for the Biological Study for Endangered Species and Habitat Conservation Plan for San Bruno Mountain.

Educational Background and Honors

A.B. Zoology, University of California, Los Angeles, *magna cum laude*, with Highest Departmental Honors, elected to Phi Beta Kappa
Ph.D. Biology, Stanford University, Stanford, CA
National Science Foundation Graduate fellowship

Professional Membership

American Association for the Advancement of Science
Corporate member, Association of Environmental Professionals

INTERVIEW WITH KAREN WEISSMAN

*FINAL BIOLOGICAL ASSESSMENT AND MITIGATION PLAN FOR THE
SHORELANDS PROJECT, 1988-1990*[Date of Interview: November 4, 1997] ##¹Karen Weissman's Background and the Origin of Thomas Reid
Associates

Chall: I'd like some background, before we get too far into this, about your education and your career. How did you happen to end up with Thomas Reid, in charge of this Baumberg research?

Weissman: Certainly, I would be happy to tell you. I went to Stanford University between 1968 and 1972, '73, in the doctorate program in biological sciences. It was there I met Tom Reid, who was also in the same program. I got my Ph.D. at the end of 1972, and my specialty was population biology and ecology. My major professor was Paul Ehrlich.

Tom did not finish his graduate program, but he did take an early course in the Civil Engineering Department on environmental assessment. This was in the very early days, right after the passage of the National Environmental Policy Act [NEPA], and the California Environmental Quality Act [CEQA], and the Friends of Mammoth decision, which was in 1972, which extended the authority of CEQA to private projects. It opened up a whole field of professional endeavor that didn't exist before, which was environmental impact assessment.

Tom was one of the early people who had training in this, and he decided to start his own company shortly after that. I was, at that point, getting my doctorate and I did not want to leave the area. He asked me if I wanted to work with him, and I decided that seemed like a very interesting thing to do. We,

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

basically, started this company, and we've been doing it ever since. We're one of the early founding companies in this area.

Chall: What exactly do you call your specific field of endeavor?

Weissman: Environmental impact assessment and habitat conservation planning.

Chall: You have had a lot to learn.

Weissman: The whole industry has had a lot to learn, and the public sector as well, which is the side that reviews all of this information. They have become much more sophisticated, in terms of what they've come to expect.

Establishing Contact with John Thorpe and the Shorelands Project

Weissman: How did we get involved with the Baumberg Tract and John Thorpe? I'm not sure. Someone recommended us to possibly their attorney, Richard Bailin, at the time. I'm not sure exactly what the connection was, but we were contacted by them to basically help them with the permitting because things were getting bogged down. At the time, they had a biological consultant, which was WESCO [Western Ecological Services Company] who they continued with. Their role then became doing field studies and things like the enclosure that they were doing.

Our role was to be the technical liaison with the agencies, with the Corps of Engineers, and with the Fish and Wildlife Service and the California Department of Fish and Game, to negotiate through the permitting process and end up with a proposal that would be acceptable to all the agencies so that Shorelands would end up getting their permits to go forward with the project.

Chall: Was this after 1987 when he withdrew his application because he was afraid he would get a jeopardy opinion and be denied a permit?

Weissman: Turned down.

Chall: Yes, right, his application was all set to be turned down, so he withdrew it, and, apparently, then hired somebody else to see if he could bring it to fruition some other way.

Weissman: That's correct. He came in to us, I think, in 1988.

Chall: Oh, all right, that makes sense.

Weissman: That's right. He wanted to restart the process, which he did. He restarted his application with the Corps, and he restarted his Section 7 consultation with the Fish and Wildlife Service.

Chall: You call that Section 7?

Weissman: That is for the endangered species issues. He also wanted to restart his environmental impact statement. That had to be revised, but that never actually happened. I think that the whole thing fell apart before that document was reissued, and we were giving him advice on that as well.

Actually, there is a document which Tom wanted me to show you, which was the very first letter that we ever wrote John Thorpe. After he decided to retain us, we had a meeting with him and his attorney, and Richard Murray, and all the players at the time. We did an assessment of what his chances were of succeeding with this project. It was our firm conviction that he was going to have a very, very difficult time, that we could not offer him any assurances that this was going to be successful.

Later on through the process, we advised John Thorpe that if he wanted to build the type of project that he had in mind, he would be much better off picking another site that was not in the bay lands. We suggested that he might do it in Pleasanton, that area in the I-580 corridor, because there were some demographic projections that had been done, I think by ABAG [Association of Bay Area Government], and the California Department of Finance, to show that the concentration of the population who would be attracted to his facility, like his racetrack, was going to shift to the East.

He would have a much greater market for his project if he were located in a place like Pleasanton as well as having a lot less problem with traffic, because where he was was sort of the major bottleneck. The whole Bay Area, from the San Mateo Bridge--it was going to be an absolute nightmare of traffic to be there. John Thorpe was a man with a mission. He was on a mission from God; I don't know how to put it but it was this site, it was this project, or nothing.

Chall: That's interesting that you bring this up because I've seen some of his correspondence and he had been asked, it seemed to

me, before 1987 to move his racetrack to the Pleasanton area.² You think you may have been the first people to suggest the change of site?

Weissman: I'm not sure we were.

Chall: Or, you may have been just reiterating the possibilities?

Weissman: Right.

Chall: Yes. He refused to do that.

Weissman: He was not receptive to the idea, and it was a sensible idea. If it were purely a business decision, I think that's the decision he would have made, because at the time he just had an option on the property, he never actually purchased the property. He was always struggling with how to renew this option with Leslie Salt, and it was costing him a lot to have that option. I don't know that much about his history or his family background, but there was something that just really tied him to Hayward; it had to be Hayward. It had to be the Baumberg Tract.

He was absolutely convinced that if he stayed in the game long enough, he would succeed. I think, finally, he just burned through every possible financing option, he used them all up, and he was out of money. The strange thing was that he had created a structure for himself which gave the illusion of a real development business. He had this house, he had a whole staff of people, which was costing him a lot of money. I don't know how many people he had in there, but he had a full-time technical staff. Have you interviewed Nori Hall?

Chall: No.

Weissman: Well, she would be a good one to talk to.

Chall: Nori Hall was whom?

Weissman: Nori Hall was John's right-hand lady.

Chall: His secretary?

²Correspondence between John Thorpe and Colonel Andrew M. Perkins, Jr., District Engineer, U.S. Army Corps of Engineers (February-April, 1985), suggesting an alternative site at Los Positos (Livermore).

Weissman: No, she wasn't a secretary. She was like a technical advisor, assistant. She was his liaison for regulatory affairs, and we worked most closely with her throughout the process. She was constantly writing letters, making phone calls, communicating with all the consultants, with the agencies, tracking what was going on, she attended every meeting. She was very energetic; she was quite good at what she did. The problem is that she was dealing with a hopeless situation.

And then, he had all these other people there, just secretaries, and--. I don't know what all these people were doing.

Chall: It was all Shorelands at that time, probably, because he had built another major project called Columbia Homes in the hills of Castro Valley, maybe a few years before. So, he was known as a developer. Of course, he was known anyway in Hayward. So, some of that might have been still going on, I'm not sure. I think he was finished with the housing development.

Weissman: Well, that's interesting because we asked him what sort of track record do you have to know that you can do this. There was really nothing. He didn't mention--. I don't recall this Columbia Homes Project at all.

Chall: Oh, really.

Weissman: We wondered where he got his initial shot of financing to even consider doing this. What was bankrolling him? This is news to me to know that he built homes in the Castro Valley hills. He certainly wasn't forthcoming about showing it off.

Chall: I'm not sure whether he ended up in some kind of problem with that financially, but it's a going concern; that is a major development in the hills of Castro Valley. There, again, at the time he had quite a bit of altercation with some of the environmentalists in the area who didn't want him going through certain areas where there were trees, cutting down trees, and building a new road. But he got through all that. He was very proud, actually, of what he managed to accomplish at that time. So, yes he does have a track record. Many people really believed in him and gave him a lot of money.

Weissman: That's true, he was very persuasive with the investors. I mean at one point he got--. I remember I think the last major shot of money he had was--. There was a check that they had photocopied and blown up, I think it was for \$1 million. It was sitting on Nori Hall's desk under glass. This was a group

of British investors who invested in racetrack and hotel development. That was one of the last people he went to.

In fact, once Tom and I were on a plane to New York and he was on the same flight, it just so happened--a complete coincidence. I think he was on his way to the UK to try to do more fund raising at that time; that was way at the very end of the project.

Chall: Oh, I see, when he was really desperate. Well, are you saying that when you started out at the very beginning after an early meeting with him, that you sort of warned him that you might not be able to provide anything more than had already been done to get him past the jeopardy opinion? Is that it?

Had you done a considerable amount of research on the other material that had then been finished, like the Murray reports and the report for the Cole/Mills Associates by Steve Foreman? [shows copies of reports]³

Weissman: Oh, that's the early one, yes. And this was the WESCO one, right? You should get a copy of the one that we did. I think this is an extra copy.⁴

Preparing for the Task Ahead

Chall: Oh, good, thank you. I'm just trying to think of how you would go about this task. The first thing you said is that you forewarned him. Now that means that apparently you went over all the literature?

Weissman: We did. We had access to all the materials that had been prepared to date, and we based our assessment on what we saw; in particular, what was the content of the jeopardy opinion

³Richard Murray and Associates, "The Shorelands Biological Mitigation Master Plan." Revised 12/12/87. The original plan is dated 8/31/87.

"Biological Assessment for the Proposed Shorelands Project." Prepared by Western Ecological Services Company (WESCO), June 1987.

⁴Thomas Reid Associates, "Biological Assessment for the Proposed Shorelands Project," (Revision of the report originally prepared by Western Ecological Services Company [WESCO]), August 1989.

that he was about to receive when he withdrew his application. We could see the magnitude of the problems that he faced.

Chall: Did you go on a field trip?

Weissman: Yes, we got the grand tour of the property and the whole thing.

Chall: Tom Reid assigned this to you. Is that it?

Weissman: Well, he and I are the principals of the firm. I have necessary biological background to have done the assessment and prepared the documentation that was needed. I also participated in all the meetings and the meetings with the agencies. The critical factor here was there was one individual who is an employee of the Fish and Wildlife Service who was absolutely determined that this project would fail.

Overcoming the Hurdles: Mitigation Due to Loss of Wetlands Area

Chall: Who was that?

Weissman: His name is Peter Sorensen. He and John Thorpe were just as opposite as they could be. As determined as John was to succeed, Peter Sorensen was determined that he would not succeed.

Chall: Is this a common problem among people in agencies who might not just have a difference of opinion but a difference of personality which can color the final results? You're probably going to tell me a little bit more, but right now it looks as if this might have been based more on their hostility than on scientific evidence.

Weissman: Well, I don't think it was hostility, it wasn't a direct hostility. What it was was essentially a difference of philosophy really. You could take the scientific information and interpret it according to a spectrum. One end being, yes, they could build this project and they could do all the things that were in this document that said that they could mitigate the impacts on all the species of concern and there wouldn't be a problem, which was John's point of view. Peter Sorensen at the opposite end would say, "No, this land is historic wetland, it is part of San Francisco Bay. I won't see one inch of fill put on any more of San Francisco Bay, and certainly not for a project like this."

What it came down to was that the deal that they would have had to negotiate--. There is always a deal waiting in the wings. The deal that the Fish and Wildlife Service wanted was to get a very, very large tract of land set aside as part of the San Francisco Bay National Wildlife Refuge on the order of six or seven thousand acres, essentially the magnitude of the Baumberg Tract. So, they were not going to allow fill on six hundred and sixty acres, which is what he wanted, unless they were going to get six thousand acres.

Chall: And, where would that have come from?

Weissman: That was difficult, right.

Chall: That's quite a deal. That was an incredible deal. [laughs]

Weissman: Well, that's what it really came down to. But, what John was really offering was acre for acre or something.

Chall: And, not off site. Apparently, he had this 800-some acres, or whatever he had, as an option from Leslie Salt and was just going to use that land, build on a part of it and find more--another several hundred for mitigation. That's the only way I can understand what he had in mind.

Weissman: Well, the problem also is that there was going to be a net loss of habitat value because the area that he was using as mitigation already had habitat value as salt ponds, and what he's saying is okay, well, we'll change it into something else, give it a different type of value that has a greater value. But there's still going to be a net loss, and the service was not comfortable with that either because the trade-off wasn't good enough.

Here Sorensen, I think he would have responded negatively. In fact, he did. Every single applicant who came in in that same period of time went nowhere, got nowhere. There was Mayhews Landing, in Fremont. There was another project, the name escapes me, in the Hayward area that essentially ended up in the same situation as Thorpe did. Every developer thinks that they can succeed where somebody else failed because the other guy isn't playing the game right.

The interesting thing is that Peter Sorensen is a staff-level individual, he was not management, he was not the upper levels of that organization, but the project never got beyond him. John Thorpe--either it didn't occur to him, or he was unable to use influence. He tried to use influence, I believe, in Washington at some point, but that wasn't very successful.

In order to have changed anything, it would have required major shifts in wetlands regulation, which the Republicans were working on. They are always working on that.

John Thorpe, himself, was a Democrat and he was pro-union and all that, so what he wanted to do was at cross-purposes with the major part of his political orientation, so that didn't work very well either. He didn't have the kind of influence in Washington that it would have taken to try to get his property somehow exempted from anything.

All the time he was just dealing with the staff level at the Fish and Wildlife Service that was sufficient to basically block him. He never got beyond that, and the same problem with the Environmental Protection Agency.

Planning and Working Toward a Successful Outcome

Chall: Given all this, when your company is hired, you really are expected, I would guess, to do your best to reach the objective, the goal, whatever it is. In this case, to reach the goal was to see that he would pass the jeopardy opinion. Were you able to do anything at all?

Weissman: Well, we took this a long way. The situation that it was in when we got involved was that he had been taking advice from people who really were not very helpful. A really important point of background is I think that he surrounded himself with and used as advisors people who were interested in being participants, themselves, in the project.

We never actually found this out, but we suspected that part of the compensation that he paid some of his other consultants was in what were called "points" in the project. In other words, they were deferring their reimbursement for their work until such time as the project went forward. So, he gave them a certain amount of cash and a certain amount of points. I think that Richard Murray was one of those. I don't know the other people, attorneys, whatever. I don't think that was true of WESCO, the biological consultant, or Cole/Mills.

The problem is that once you have a consultant who has an interest in the project, it's very difficult for that person to be objective any more. Our role was strictly to deal with technical issues and to try to help them through by solving the technical problems that they had. We were not being advocates,

pro or con for the project. We were going to deal with the scientific issues, the technical issues, and see if there was a way to prove that they could successfully build this project and mitigate the impacts that the agencies were concerned with.

We thought that was a real possibility. We told him it would be very difficult. We didn't give him any assurances that this was going to happen. It was his decision that he was going to get good advice from our firm and that he had the best chance of success in working with us, which was probably true.

I don't think anybody else--there isn't a person that I've ever heard of who could have produced a better result. The problem is that the powers that be weren't interested really--. I mean because it was almost as much philosophical or political as it was scientific, why this never went anywhere. It wasn't the weight of the evidence, really, that killed it. It was just the way they chose to interpret the information.

If you read the jeopardy opinion, he did get a draft jeopardy opinion through--the process did get to that point. If you read what's in there, it's very clear what the thinking was. I think one thing is that if he had not insisted on the racetrack as part of the project, he could have succeeded.

Chall: Yes, of course. I mean the racetrack was the end-all and be-all, that's quite right. There wouldn't have been any problem if he had just had a couple of hotels and some office buildings.

Weissman: Exactly, he could have solved the problem if he had not insisted on the racetrack. The other thing was that the racetrack was working to his disadvantage in terms of financing because if he wanted to go to a major financing institution, he would have a hard time showing that would be profitable because most of the racetracks in the Bay Area weren't doing very well. There were Bay Meadows and Golden Gate Fields, and they were struggling to keep their doors open. So that was not the most lucrative part of the project but that was truly the sticking point in terms of what if came down to in the end.

Habitat Mitigation Issues: The Snowy Plover, the Salt Marsh Harvest Mouse, the Clapper Rail, the Least Tern

Weissman: Richard Murray wasn't a biologist, he was an architect, and he had some ideas for mitigation that were completely contrary to

what the Fish and Wildlife Service was interested in. By the time we got involved, that's what John was working from. He had, for example, these islands he was going to build.

Chall: Yes, for the plovers.

Weissman: The plovers, nesting islands. He got this idea that you build these few islands and that's going to be the total haven for snowy plovers. Well, the Fish and Wildlife Service thought that was a laughable idea. First of all, we did research into other projects where people attempted to recreate plover habitat.

We talked to the people at the Point Reyes Bird Observatory; there were some projects that they were familiar with. There was a project I believe in the Santa Cruz area, and there they had thought that they created all the elements of plover habitat and, in fact, plovers did come and nest there for one season and they never came back. They had no idea why, what went wrong. There was something missing, there was something about it.

It was based on a sort of totally unproven hypothesis that you could even recreate plover habitat. And this idea of these islands, that didn't really resemble the existing habitat--it was just a completely flawed concept. At the time, we told John, "You need to re-think this whole thing."

##

Chall: You were talking about the plover habitat. You felt that those little islands wouldn't work.

Weissman: Right.

Chall: Can you think of another suggestion?

Weissman: Well, do you know the ornithologist Leora Feeney?

Chall: Yes, I know who she is. John Thorpe called her the "plover lady."

Weissman: Right. She studied both plovers and least terns.

Chall: They were important too, the terns.

Weissman: She did a multi-year study on the snowy plovers, which was just going on at the time we were working on this. I believe that the final mitigation strategy for snowy plovers was going to

come out of what Leora found out, and her study was completed fairly late on in the process. At that time, the snowy plover had not yet been listed, but I think it was listed after that time, after this whole thing was over with. So, John was being forward thinking in knowing that he would have to address the plover.

Chall: The three that he really had to consider were the mouse--

Weissman: Right, the salt marsh harvest mouse.

Chall: The salt marsh harvest mouse, the least tern, and the clapper rail. Those were the three because they were endangered species. Was there any way beyond what Murray and the others had indicated where you could solve those problems?

Weissman: If you read this document, this was our approach.⁵ It was sort of a multi-pronged approach because not only were we looking at mitigation, but we were looking at the actual impact of the project on the species. In other words, how important was that site to the species at the time, and would the development of the project interfere with the goals for survival and recovery of the species, irrespective of the mitigation? Was the impact reversible, and what would you have to do even in the absence of the project if you wanted to recover the values of that site for those species?

In other words, trying to put the project into its proper perspective and not blow the impact of the project itself out of proportion. I think that the problem, the really basic problem was that here we had 750 acres of historic San Francisco Bay. John Thorpe wanted to put fill on 660 of them. It didn't matter if there wasn't one single plover or tern that had been seen there in the last fifty years, it was potential habitat that was going to be permanently converted to an upland condition and this was intolerable.

The Concern for the Future of Wetlands

Weissman: The service et al was not really as interested in the immediate and direct impacts as they were in the foreclosure of the future.

⁵Thomas Reid Associates, "Biological Assessment (revision)."

He could have argued forever on the merits or lack of merits of the project, and the relative role of his project compared with anything else. The fact is that he was going to put fill on 660 acres of historic San Francisco Bay, most of which had been tidal wetlands and this was just intolerable.

I mean that Peter Sorensen and people like him had made up their minds that there wasn't going to be one single acre of San Francisco Bay that was filled permanently ever again. We had to go in the other direction. We had all these studies by people who had done calculations on the relative amount of historic wetland that were left and how much had been destroyed: was it 9 percent or was it 12 percent left, or whatever it was.

Whatever it was, it was a very small fraction of the original and this value was considered to be too high to sacrifice anything. In other words, if you want to build a project like the one John wanted to build, this was not the right place to build it. He really did not have any component of that project that was water-dependent. If you want to build a project, like a marina, or a port, or something that has to be on water, then the agencies are willing to say, "Okay, you can't have a port without being on the bay front. Then, we'll look at mitigation."

This project didn't have to be on San Francisco Bay, on historic wetlands; it could have been anywhere. That's what we tried to tell him. "John, it doesn't matter." He used the phrase, "Put Hayward on the map. This project is going to put Hayward on the map." Restore Hayward to its former grandeur, or maybe the grandeur it never had. It had to be at this sort of gateway location at the end of Eden Landing Road, that was it.

What we tried to do was inject reason into both sides of the process, and tried to get John to recognize what it was that he had to face to get over the hurdles that were insurmountable. On the other side, we tried to convince the agency people like Peter Sorensen that there was a solution that met their objectives.

Chall: What was it? I haven't read your material, but what was your solution? It looked already impossible. You were dealing with whom, just Peter Sorensen? You didn't have to worry about Carl Wilcox or the Fish and Game people?

Weissman: Well, there were people from Fish and Game, Paul Kelly.

Chall: Any of the Leslie Salt people? He would have had to buy Leslie Salt land.

Weissman: Well, he mainly negotiated. The real estate end of things was really not our concern so much. I have a list in here of who we talked to; Gail Kobetich was the supervisor [Fish and Wildlife Service], Peggy Kohl was involved, a biologist, and Ted Rado also, and then Karen Miller from the Division of Ecological Services. They were all participants in this thing. The heavy hitter was Peter Sorensen. He was really the major one. He was the one who probably actually wrote the biological opinion.

Chall: How did that happen? Was he just there at the right place at the right time, or the right place at the wrong time, or what?

Weissman: I think that they assigned this project to him. San Francisco Bay wetlands was his jurisdiction. It was what he was supposed to deal with. His role was to oversee projects that had impacts on San Francisco Bay endangered species. He was the appropriate person with the appropriate expertise. He did have a lot of expertise.

Attempts to Control Predation of the Clapper Rails

Weissman: To encapsulate, what finally happened, I think what was really the death of this, was that with the racetrack, there was the issue about predators from the racetrack preying on the endangered species. They were very, very worried about the clapper rails. Even though there were no clapper rails close to the project and they were not directly impacted by any of what John Thorpe was going to build, the issue was that there was going to be a huge concentration of new predators associated with the development, primarily the racetrack. They were worried about rats and feral cats.

Peter Sorensen was convinced that there was no way that any human could construct any barrier that would prevent these animals from getting out, going into the marsh, and increasing predation pressure on the clapper rails. They had been doing studies of the clapper rails and apparently the main area that was thought to be the refuge for clapper rails, where there was any hope of recovery, was in the South Bay. This was part of the South Bay and it was very precious.

The clapper rails were declining in numbers. Every time they went out to census them there were fewer of them and they noted predation by rats and also by red fox. Red fox was a major problem, and I guess it still is. There was no problem with red fox associated with the project. In fact, I think one of the things John wanted to do was to help eradicate the red fox as a source of predation as a way of compensating for whatever they were worried about from his project.

The whole thing about the predator enclosure was part of that predation pressure issue, showing that you could build something to prevent the predators from getting out. It turned out it was very instructive that that was done because it showed just exactly how difficult it was to design something that would keep predators from getting out.

Chall: You did try to make something?

Weissman: Well, WESCO did. This is the thing that I wanted to show you the photos of. If you can see this. It will be very interesting for you to see this. They actually built this thing. They had to modify it repeatedly to get it to work. What they did was they built it initially and it had twelve-foot high, heavy-duty chain link, with a cement, concrete barrier that went underground as well. I think they also had a moat around it.

Chall: Yes, they were supposed to have a moat.

Weissman: There was a moat. Then, they put a cat in the enclosure. The cat got out immediately. [laughter] The cat went right over the corner. This was so funny because WESCO had to do a report on what happened with their experiments with these animals. [laughter] The cat just got right out. The cat wasn't in there for five minutes.

Chall: Were you there watching?

Weissman: No, we didn't see this. Then, they had to modify this. They had to put wire going inward, like barbed wire. When they finally got it to work, they sheathed the top of the fence with sheets of aluminum to deny any animal any foothold, and they may have also placed all around the circumference an area of barbed wire. It was probably five feet going in. San Quentin looked like a palace compared to this place. We couldn't imagine you could really build something like this. People were going, "What is this? Am I ever going to get out?"

They finally got to the point where this poor cat could not get out anymore. The cat must have escaped a dozen times before they finally modified it to keep the cat in. We were glad that the SPCA never came out and saw this poor, mangy animal, and the couple of pieces of metal that they put in there for a shelter. This poor thing; I guess they gave him food. They finally established that, yes, if you did this, it wouldn't get out.

Then, they put in rats. That was really hilarious because I think they managed to catch something like four rats and put them in this thing. They were eating each other, of course. Finally, one of them disappeared. The big rat disappeared. They don't know what happened to it; it was just amazing. They said, "This is impossible, what happened to this rat?" They had to dredge the moat, trying to find the rat. They dug, they could not find it; so that wasn't really a very good result. It really was not showing that this was going to work. This was essentially a fiasco.

It was very interesting because I don't think that has been done very often that somebody actually tries to do a field trial of something like this.

Chall: You have to give John credit because he really did try.
[laughter]

Weissman: He did, he tried everything. Did you hear this story? We just heard the story about the time he went into the city council chambers in Hayward with a lion or a tiger.

Chall: Right, I did see the press reports on that. It was a tiger.

Weissman: I didn't understand what the purpose of the tiger was.

Chall: I think, before the racetrack or also along with the racetrack, he planned to put Marine World Africa-USA there. Marine World finally realized that putting it there, while they might eventually succeed, it was going to have to go through all these hoops. The land was available in Vallejo, so they finally just backed down from the Baumberg Tract and went off to Vallejo because they couldn't wait. Then John just went ahead with the racetrack. I think it was at that period when he was still considering the project.

Weissman: Okay, well, that makes more sense. [laughter]

Chall: In Karen Holzmeister's reports--she's the reporter who covered most of this for many years for the Hayward Daily Review--she

occasionally referred to him as flamboyant. He is an interesting person. When you found out you couldn't keep the predators out--.

Weissman: Right, the last thing that we did was to look for recognized predator control experts and try to bring them in. People whose business it was to prevent predators from getting into open space lands or wildlife habitat, or to control pests at places like racetracks. I can't remember the name of the person. We got some wildlife biologist from the Central Valley, whose name escapes me but I could find it if you need to know.⁶

Also, we talked to Crane, the pest control company. What they said was very persuasive to us, which was that they had actually had experience at a number of racetracks, including Golden Gate Fields. They believed that it was possible to essentially prevent almost all of whatever animals were in there from going out on the marsh by rodent proofing the facilities so there weren't a lot of places where they could escape.

The point that they made was that if you have a racetrack where there are animals, and there's feed, and there's safe haven that the rats are going to stay there because that's comfort. They've got everything they need there; they have food, they have shelter, they have water. It's a safe haven compared to going out in the marsh where they have to be exposed to the elements and there's not a lot of food. So why go all the way out to the bay lands and try to find some poor clapper rail egg when you've got troughs full of food.

In their experience, that was the case. What the Crane people said was that the facility itself would be an attractant. In other words, the rats that were in the marsh would go in, rather than the other way around and there really wouldn't be a problem. That was their conclusion as experts. We were convinced. Here were people who had years of experience in dealing with this very problem. It made sense, but that did not convince Peter Sorensen. He said, "No, there's always going to be the occasional rat that's going to get out."

Also, if you find that there's a rat infestation in the stable area, what are they going to do? They are going to try

⁶Lee R. Martin, principal biologist, Wildlife Control Technology, Inc., Fresno, California. See following pages.



June 26, 1990

Nori G. Hall
The Shorelands Corporation
21800 Hesperian Blvd.
Hayward, CA 94540

Dear Mrs. Hall,

Subject: Predator/prey relationship update

Reference: June 22 on-site observation and discussion

Results of the June 22 field inspection revealed that predators and rodents competitive with SMHM have increased in numbers since completion of the 1985 field report. Population dynamics and interspecies relationships have shifted to the extent that the composition of the SMHM population may be much altered. The number of predators observed by our 6/22 group and those documented by Leora Feeney suggest that there has been a significant change in the predator/prey relationship since 1985.

The Shorelands Project needs to know:

1. Predator and prey species currently using the project site.
2. Estimated numbers of predators and range on the project site
3. Locations of rodent populations as defined by burrow and runway systems.

Data is to be collected by four technicians and one supervisor walking the project site and mapping details of all rodent and predator activity (mammal and avian). Identification of species from habitat use patterns is not difficult if one knows the species present. Data will not be definitive in itself but will allow one to visualize the extent of rodent and predator use areas. The mapping will make it possible (if found necessary) to live trap in high and low predation areas to determine the presence and extent of SMHM as compared to the 1985 data.

Service Fees Phase I

2 days and 2 nights walk-thru and observations. Final report to be in map form plus a list of species and any unusual sightings.

Schedule: 4am-10pm and 4pm-10pm

Technicians: 12hrs/day - 2 days - 4 men - \$40/hr - \$3840.

Supervisor: 12hrs/day - 2 days - 1man - \$80/hr = \$1920.

Total = \$5760.

Service Fees Phase II

This phase to be undertaken only if deemed necessary. WCT has no permit to work with SMHM. Live traps would have to be provided by Shorelands for this phase.

Technicians: 8hrs/night - 4 nights - 2 men - \$40/hr - \$2560.

Supervisor: 8hrs/night - 4 nights - 1 man - \$80/hr - \$2560.

Total = \$5120

Note: fees include travel time and per diem

Sincerely,



Lee R. Martin
Principal Biologist

LRM/sm

to eradicate the rats and they are going to remove the food source, or the piles of hay or whatever it is that they're living in and that's going to drive them out into the marsh. It just turned into a debate from which there really was no resolution.

At that point, we didn't know what to do. We figured, "Okay, we have tried to solicit the best scientific information we can get to track this problem. That was our approach, to find the highest level of scientific expertise on the subject and see if that would be persuasive. It should have been, but it wasn't because Peter Sorensen was just intractable on the point, and there was no one who was going to overrule him. I think at that point, John started to run out money.

Chall: I guess he owed lots of people money, at the end.

Weissman: Right, we were among the last to--.

Chall: Yes, the creditors. You said that your particular task was as the liaison with the Fish and Wildlife Service and John Thorpe?

Weissman: And the Corps of Engineers.

Chall: With whom were you dealing in the corps?

Weissman: Sharon Moreland was one of the people. Scott Minor, Radford S. (Skid) Hall, Colonel Calvin Fong.

The Second Draft Jeopardy Opinion Means Defeat for the Shorelands Project

Weissman: Finally, it was Calvin Fong, the one who actually had to sign off on the document at the corps.

Chall: The most important person then would have been Sorensen.

Weissman: I think so. Sorensen was the most influential in what actually happened, the outcome of that whole thing. He was the one who wrote the jeopardy opinion for the service--the second jeopardy opinion. When that second jeopardy opinion came out as a draft, at that point, John had nowhere to turn. It was at that point we were then struggling to determine what the next step was, how to get beyond that. At that point, that's when the whole thing started to fall apart and he ran out of money.

Chall: Yes, he gave up sometime in 1990. I think, also, there was a problem of a road that he wasn't about to accept. I think, then, he got into some difficulty. He claims that he actually could pass, and did, the jeopardy opinion but that then he had problems with the city [Hayward]. They had to grant the final permit and they wouldn't do it. I'm not sure about that.

Weissman: He didn't even get to that point because he had to completely redo his environmental impact statement to incorporate all of the changes that he had made in the project from the time that we got involved. That was also going to require sign off by the city of Hayward, so it was a joint EIR-EIS [Environmental Impact Report-Impact Statement], and he never even got to the point of re-releasing that document. The project access road was just one of the things, and the freeway interchange--how that was going to be designed. My memory of some of this-- I apologize. It's because it was a long time ago.

Chall: No, I think you've done very well. It's one project you probably won't forget in terms of the story.

Weissman: Yes, the story, the highlights of it.

The Frustration of a Consultant Failing to Reach the Desired Goal

Chall: How frustrating was it for you to be dealing with people who couldn't be convinced that you might be on the right track, or that there was a possibility?

Weissman: Well, it was frustrating to not make the type of progress that we hoped to make because that has been the hallmark of our success as a consultant that we usually are able to produce a successful result in a negotiation. We've worked on a lot of habitat conservation plans for endangered species and projects where there is a conflict between like a private sector, landowner interests, resource agency interests, conservation groups, public, so on. In many instances, we've been able to bring that to a "win-win." The first habitat conservation plan we worked on was the San Bruno Mountain. I don't know if your familiar with that one.

Chall: Yes.

Weissman: Most people considered that to be a major success story. We were the scientific advisor through that whole process. Our

actual title that we had when we worked for John was the "Non-Federal Representative" to the Corps of Engineers. That's what we were called so it's the same role basically. It was very frustrating to see that the efforts that we were going to were not producing a result and we were getting to the point where we were running out of options as well.

The point is that if you have the best possible evidence to show something and the other party refuses to accept it and to the point where it's no longer based on science but it becomes more conviction or prejudice, something like that, there's nothing you can do with that. The only way that Peter Sorensen could have been circumvented is if someone above him had said, "No, we don't accept your conclusion. We are going to take this role away from you. Somebody else is going to make the decision." That didn't happen because the people above him supported him. Gale Kobetich was his supervisor, and Wayne White, who was then in the Portland office.

He did not have any opposition from within his own agency. Basically, all the people there were willing to delegate the responsibility of whatever decisions were made to Peter Sorensen. They all signed off on the biological opinion that he wrote. There was nothing to counteract that.

The Current Status of the Baumberg Tract

Chall: You probably know that it's now going to be a wildlife sanctuary.

Weissman: Who was it that actually acquired it?

Chall: The state Wildlife Conservation Board. It was acquired through mitigation, the result of mitigating Highway 880 widening in Fremont and Milpitas, and some sewer system improvements in San Jose. Money came also from Proposition 70 funds. [See Glossary] They have another year or so to develop it as a restored wetland with habitat for the endangered species, and some trails for hiking. Steve Foreman is the lead person.

Weissman: He worked for WESCO at the time.

Chall: He's in charge now, with Resources Management International.⁷

Weissman: Did they acquire all of the Baumberg Tract?

Chall: I think they are working on 835 acres.

Weissman: Did they pay for it per acre, because that was a big issue as well?

Chall: They paid \$12.5 million. There were people who felt they paid more than they should have, of course.

Weissman: There are some interesting things in here among the papers I brought in. There's a letter on pest control.

Chall: I'd like to have this material available to put into the volume and/or into the archives that go along with the volume. We put everything that we collect into The Bancroft Library. If you find anything that you think would be useful and you're willing to copy it, I would certainly appreciate it.

Examining the Processes Required to Restart the Project

Chall: I wanted to ask you some questions regarding a letter from Skid Hall, whom you mentioned before.⁸

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Chall: Skid Hall was writing to Martin Storm, the chief of program planning for the city of Hayward. Did you ever talk to any of those Hayward people?

Weissman: I think we did.

⁷With LSA Associates, Inc., since April 1998.

⁸Memorandum from Radford (Skid) Hall to Martin Storm, "Review of Shorelands Project Status," September 25, 1990. See following pages for Skid Hall memorandum and excerpt from Karen Weissman memorandum on the same subject. The complete documents can be found in The Bancroft Library.

SEP 27 1990

RADFORD (SKID) HALL Ph.D., AICP
Land Planning and Permitting Consultant

TO: Martin Storm, Chief, Program Planning
City of Hayward

FROM: Skid Hall

DATE: Sept. 25, 1990

SUBJECT: Review of Shorelands Project Status

1. As requested by your letters of September 17, and 19, 1990, I have reviewed the various materials provided and am providing an analysis of the current status of the Shorelands Project with particular reference to the Preliminary Biological Opinion and the future processing of a new application through the federal regulatory programs.
2. It is to be clearly noted that these comments are purely my own interpretation of the current situation as requested by the city, and as such they cannot and do not represent those of any agency, applicant or private firm other than my own. nor can they be interpreted to commit any other entity to a particular course of action.
3. Initially I would state that the Summary of Prior Events and Present Status of Shorelands Project, which I was provided appears to be quite comprehensive, accurate and well done. At the time of withdrawal of the initial Shorelands application (Dec. 14, 1987), the Corps of Engineers indicated that a criteria for acceptance of a new application would be the removal of the USF&WS Section 7 jeopardy opinion. On this basis, "early consultation" (pre-application) was initiated on the revised project. This process was concluded with the issuance of the Preliminary Biological Opinion (PBO) on August 31, 1990. The PBO again found jeopardy but included a specific "Reasonable and Prudent Alternative" (R&PA), which the Service "believes would avoid the likelihood of" jeopardy. One can thus assume that if the R&PA were accepted, jeopardy is lifted and a new application could ensue.

At this time it appears that Shorelands finds the R&PA to be manageable, but are unable to accept it totally at face value and are initiating a negotiation process with the Service to reach an agreement on specific definition of the R&PA which Shorelands can

accept and insure implementation. This negotiation process appears legitimate as the regulations clearly state the R&PA must be 'economically and technologically feasible'. Clearly in terms of economics and perhaps technologically (through their consultants) it seems appropriate for the applicant to discuss areas of an R&PA where they may have concerns. I am unable to speculate upon the timing and outcome of this process as to my knowledge similar negotiations have not occurred in the Bay area and I do not know how willing the F&WS is to reconsider its' stated conditions. The applicant has suggested and seems comfortable should the city wish to inquire of the F&WS their position on negotiating the details of the R&PA and that might be the best way for the city to get a feel for the timing and likelihood of success. This is important for the city as I would expect, based on their stated position, the Corps would not be likely to accept and initiate processing of a new application until the details of the R&PA were worked out and accepted and the jeopardy was indeed lifted.

4. The following activities will occur or be required for the processing of a new permit application:

a. Preparation, submittal and acceptance of a new Shorelands Corps of Engineers permit application based on the current project, mitigation and R&PA. The application will of course require project description and drawings.

b. Reinitiation of the EIR/EIS process. Although much of the information in the existing document will be useful, as the project is revised I would expect some significant work will need to be done to arrive at a new draft document and then the review processes (both city-CEQA and Corps-NEPA) will need to begin again. I would not anticipate a revision in preparer would be a problem and would assume the Corps would work with any consultant the city contracts with to prepare the document.

Based on recent conversations, the applicant has indicated that the Corps might allow initiation of work on a revised EIR/EIS prior to acceptance of a new application. Initiation of the EIR/EIS work prior to application is sensitive as the Corps clearly plays a role in the scoping, formatting, content and eventual processing of the document (ie: the EIS actually becomes a Corps document). Thus, if initiation prior to an accepted application is contemplated, my feeling is that the city and the applicant would want to have the

Corps formally state their support for the approach and commit to participation in required activities to insure that the ultimate document being prepared under a city contract complies with Corps directives and needs.

c. A revised alternatives analysis (AA), will be required under the 404(b)(1) Guidelines relating to the current project and will need to be submitted to the Corps along with the application or shortly thereafter. In this instance, since the work to be done is completely by and at the direction of the applicant, and as stated, should be available near the time of application, initiation of work prior to applying is the prudent thing to do. The Corps commonly conducts the Guidelines review concurrent with the other elements of Corps processing (ie: NEPA and public interest review), thus it is unlikely the opportunity would exist for the city to delay action pending the outcome of the Guidelines review.

The 404(b)(1) aspect of the federal process has taken on increasing importance in recent years (witness the recent Apanolio/Ox Mtn. landfill decision in San Mateo County). The guidance for evaluation under the Guidelines has also become more stringent. On the original application, I believe the Corps had stated 404(b)(1) compliance for the racetrack only, with unresolved questions remaining regarding the commercial/industrial components and the overall connections of the Shorelands project. EPA was concerned with all the various aspects of the project in terms of compliance with the Guidelines. Clearly this will be a major requirement for the applicant to address. Although the 404(b)(1) call rests with the Corps and EPA, other agencies most notably the F&WS and the Regional Water Quality Control Board now integrate it into their reviews as well.

I am not familiar enough with the requirements and limitations of retail auto uses to accurately speculate on the impact substitution of such a use might have on the Guidelines analysis. If those uses have very site specific needs which are uniquely served by the Shorelands location then they might be favorable to Guidelines compliance. It would be the task of the AA to demonstrate this, if indeed it is the case. In any event the AA document will need to be succinct and in keeping with current guidance and thinking on Guidelines review and compliance.

d. The application will also need to include the mitigation plan developed for the project. Again this is a critical element of the

project and has become more important in recent years (witness the emphasis on the "no net loss" policy). Clearly this will also be an issue with reviewing agencies. The F&WS, you'll note already alluded to their probable objection over wetlands in the PBO (page 2).

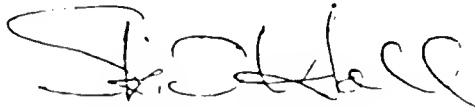
e. Upon receipt and acceptance of the application by the Corps, a new Public Notice would be issued and a 30-day comment period would begin. While this would generate an initial set of agency and public responses, the process would likely remain unresolved until the draft EIS/EIR was distributed for review and comment. In conjunction with this review, the F&WS would be requested to convert the PBO to a Final Opinion, a process which will depend upon the project and impacts remaining as considered in the early consultation process. The issuance of a Final Non-jeporady Opinion is required prior to any permit approval.

5. Prior to any final decision, and keeping in mind the processes described in 3 and 4 above, any required State of California approvals must be obtained. Although the extent of jurisdiction, permit requirements and appropriate processes are potentially in dispute, the two agencies which are most directly involved are the Bay Conservation and Development Commission (BCDC) and the Regional Water Quality Control Board (RWQCB). The city should maintain communication with these agencies to insure that it is aware of their requirements and timeframes with respect to Shorelands so that any activities can be accomplished in a consistent and timely fashion. It would be expected that these agencies would look directly toward the city CEQA process as meeting their own necessary compliance with CEQA (ie: they may choose not to initiate action on required permits until the city CEQA process has been completed).

6. Other items to be considered include, the potential for a Corps public hearing (always an option which can be requested by the public in a Corps 404 public notice issue) which might be considered a strong possibility in a project as significant as Shorelands and the appeal and/or veto processes afforded the various federal agencies in the event they object to a Corps intention to issue a permit.

7. To attempt to summarize this, I would say that the issuance of the PBO and R&PA was a major step forward for the applicant and if the R&PA can be agreed upon, the way should be clear for a renewed

application. In that event, much of the material already available, the project revisions and the mitigation plan should shorten the time required to accomplish the environmental and permit reviews. That said, it should be made clear that in effect the process starts all over again and many difficult, time consuming and potentially controversial issues and processes will be involved. The city will need to constantly monitor activities in order remain current and consistent while not expending time and money needlessly or getting to far out in front of other activities. I hope this evaluation is helpful and if you have questions or need further explanations on individual issues please let me know and I'll do my best to respond.

A handwritten signature in black ink, appearing to read "Radford (Skid) Hall". The signature is stylized with a large initial "R" and a long, sweeping underline.

Radford (Skid) Hall Ph.D.

MEMORANDUM

239f

SUBJECT: Negotiation strategy for Reasonable and Prudent Alternatives
: as stated in Preliminary Biological Opinion

TRA FILE: BSLH
DATE: September 11, 1990
FROM: Karen G. Weissman, Ph.D., Tom Reid

First page of 8-page memo;
entire memo will be deposited
in The Bancroft Library.

TO: Mr. John Thorpe, Mr. Richard Bailin
The Shorelands Corporation
21800 Hesperian Boulevard
Hayward, CA 94541-7004

Tom Reid and I have reviewed the August 31, 1990 Preliminary Biological Opinion (PBO). The new Opinion is a major improvement over the first draft in terms of documentation and specificity with regard to project features. Its principal author, Peter Sorenson, also responded to many of the criticisms raised in our formal comments. However, the PBO still contains many logical inconsistencies, as well as undocumented pseudo-scientific conjecture. Not all of our substantive comments received a response or resulted in needed revisions to the earlier document.

All in all, it is our opinion that another round of formal comment on the PBO would serve only one purpose: reinforcement of the record to be used in a lawsuit against the USFWS. Otherwise, I think you should concentrate on the Reasonable and Prudent Alternatives as the only non-judicial means to reverse the Jeopardy Opinion.

The Reasonable and Prudent Alternative lists 8 major actions (plus sub-actions) which must be taken to eliminate the jeopardy to listed endangered species. In this memo, we have broken these down into 19 distinct parts which we address individually. In our opinion, these actions fall into three categories:

- 1) "Reasonable": actions which are entirely do-able, reasonable and cost-effective, and should be agreed to by Shorelands unchanged
- 2) "Negotiable": actions which are apparently reasonable, but require further clarification as to what has already been done, and what further needs to be done to satisfy the USFWS concerns; Shorelands should negotiate before agreeing to a list of specific items
- 3) "Difficult": actions which are not reasonable by reason of legality, enforceability or excessive economic impact on the project; Shorelands should negotiate to have these items modified substantially or dropped.

I provide an analysis of each item as listed under the Reasonable and Prudent Alternatives, with recommendations for how to proceed:

- Chall: He talked about the current status of the Shorelands Project, particularly with reference to the Preliminary Biological Opinion. Is that what you came up with or is that somebody else's?
- Weissman: That is the jeopardy opinion that Peter Sorensen wrote.
- Chall: I see, the Preliminary Biological Opinion [PBO]. He had been asked by Mr. Storm to review it and "the future processing of a new application through the federal regulatory programs." He writes, "It is to be clearly noted that these comments are purely my own interpretation..." His letterhead reads Land Planning and Permitting Consultant. I thought that this would indicate that he was in a private practice.
- Weissman: That's correct, he left the corps during the course of this and became a wetlands permitting consultant.
- Chall: I see. He found that the PBO issued on August 31, 1990, "included a specific Reasonable and Prudent Alternative (R&PA), which the Service believes would avoid the likelihood of jeopardy. One can thus assume that if the R&PA were accepted, jeopardy is lifted and a new application could ensue." He goes on to discuss what might be done about that. Thorpe would have to go through the whole EIR/EIS process again, et cetera.
- He talks also about the revised Alternatives Analysis, AA. What does that mean?
- Weissman: That is probably part of the Environmental Impact Statement.
- Chall: That "will require under the 404(b)(I) Guidelines, relating to the current project..." Is that another hurdle?
- Weissman: That's what EIS was in support of. They were applying for a permit from the Corps of Engineers to fill wetlands, to place fill in a wetland. That's what Section 404, the Clean Water Act, relates to is fill in wetlands. So, 404(b)(I) guidelines is what they had to follow to comply with the requirements to get that permit, and that requires an Alternatives Analysis.
- Chall: I see. My word, there just seem to be so many hurdles to go through beyond the jeopardy opinion.
- Weissman: Right, and the jeopardy opinion was--if they didn't get passed the jeopardy opinion, then the rest of it--.

Chall: Just goes.

Weissman: Exactly.

Chall: I understand, then, that even if Thorpe were to go through all the work and time required regarding the Reasonable and Prudent Alternatives, he would still need corps and the city of Hayward approval. Corps, under the Guidelines of the Clean Water Act, and Hayward, because of an interchange on Highway 92 he would need to connect with his project.⁹

Weissman: There was no assurance that they were going to get through that first part of the process. That was going to be very difficult as well because of the fact that the project was not a water-dependent use. It didn't have to be in a watered environment. There were other hurdles coming, but the proximate one, the one that just stopped them dead was that--.

Chall: The jeopardy.

Weissman: Right. Here's a critique we wrote of this.¹⁰

Chall: I guess you were the last consultant then to deal with this whole project, and the last potential mitigation to be considered. I understand he tried many times to mitigate in so many different ways that he finally just had to give it up. He probably gave it up because he didn't have anymore money, and I think some of his investors pulled the rug out from under him and set up their own little corporation so that they wouldn't be involved in the bankruptcy suit.

Weissman: Right. Well, it amazed us that he was able to stay in the game as long as he did with the adverse circumstances because it was costing him so much money to continue. What was so surprising was that the investors had so little assurance that they were going to see that money again, that they were willing to put that money up.

With the record of the number of iterations, the number of cycles that he had gone through and just been turned down and

⁹Memorandum from City Manager Louis Garcia to members of the city council, "Status Report on the Proposed Shorelands Project," October 2, 1990.

¹⁰Memorandum from Karen Weissman to John Thorpe, "Critique of Draft Biological Opinion," May 14, 1990. See following page for excerpt of memorandum. Complete document can be found in The Bancroft Library.

SUBJECT: Critique of Draft Biological Opinion

:

TRA FILE: BSLH
 DATE: May 14, 1990
 FROM: Karen Weissman

First page of a 7-page memo;
 entire memo will be deposited
 in The Bancroft Library.

TO: Mr. John Thorpe
 The Shorelands Corporation
 21800 Hesperian Boulevard
 Hayward, CA 94541-7004

We have reviewed the Draft Biological Opinion for the Early Consultation on the Shorelands Project, pursuant to Section 7 of the Endangered Species Act. We believe the Opinion, in its present form, is scientifically unsupportable since many of its conclusions are pure opinion, unsupported by factual documentation. The Opinion also contains much irrelevant information, and omits key issues that it should have contained, such a discussion of onsite reasonable and prudent alternatives, and a discussion of the feasibility and cost of restoring the project site within the foreseeable future. The Biological Assessment, as you know, contained a lengthy discussion of this latter issue, and the Service should have evaluated, and responded to the arguments given in that Assessment.

Most extraordinary is that the Opinion is generic, and has almost entirely avoided any consideration of the 1989 Biological Assessment and Mitigation Plan, and the Supplement Report submitted in January 1990. In particular, the revised Biological Assessment and Mitigation Plan were a response to the 1987 Jeopardy Opinion, and a specific effort to respond to all of the concerns raised in that Opinion. The new plan contains many elements specifically requested by the Service. Among these are:

- o Greater than 2:1 compensation for loss of both existing and "emerging" mouse habitat
- o Phasing of the restoration of pickleweed marsh in advance of the impact
- o Detailed criteria for the success of marsh restoration (and as revised in the January, 1990 supplemental report)
- o A 100-foot wide mouse corridor connecting the proposed mitigation lands on Oliver/Perry with existing mouse habitat in downstream Mt. Eden Creek, to prevent the genetic isolation of the Oliver/Perry population
- o A predator barrier fence and water buffer, whose design is based on results of as-built fence tests, specifically requested by USFWS. At the Service's request, this is to provide a minimum separation of 100 feet between the perimeter hiking trail and the adjacent salt ponds.
- o An integrated system of predator control, by experienced, reputable operators

yet they were willing to say, "This time it's going to work, we've figured it out, we've got mastery, we know the tricks that you have to play to get through these things. We've figured out what they pitfalls were, and we can avoid them this time."

The fact that he was able to persuade people repeatedly to bankroll the project--I don't know, maybe in some ways it's not so surprising because we've encountered other projects where there were, for example, Asian investors, Japanese investors who have poured huge amounts of money into California, into very speculative projects, with no information. It's like they're completely ignorant of the regulatory context, what it takes to get a project permitted and actually built in California. It is so onerous. There is probably a list of a thousand places where you could put your money before you would put your money in these real estate projects, and yet they have done it.

Critique of Government Environmental Regulations in General and on the Shorelands Project in Particular

Chall: Yes they have, and many times have lost. What is your opinion of the regulations, which seem to be at times onerous, and at other times, depending on how you look at it, wise in terms of saving wetlands and saving rivers and creeks, and all the rest of it? You have to deal with these all the time and they do keep changing. What is your general opinion of the hurdles, as it were, the rules, the regulations?

Weissman: You mean do I think they're appropriate or do I think that they're overly harsh?

Chall: Yes.

Weissman: Well, I personally think that environmental regulation is a good idea. I wholeheartedly endorse it, and I disapprove of all of these attempts on the part of the Republicans to dismantle environmental laws. I think that people have found when they have done studies that actually the net cost is less if environmental laws are followed, and that endangered species, per se, have not prevented developments from going forward.

All of the horror stories you hear are not really true. But on a case-by-case basis, I think that there are instances

where, like this one, people have misused the regulatory basis that they're operating from. In this case, it's hard to judge, On the face of it, the project didn't really seem to be such a good idea. When you looked at it objectively, from the point of view of all the constraints and all the regulatory problems that were faced and the type of project that it was, a rational business person would have opted to do something different.

I don't think it was really that John was just ground under by the weight of environmental law. I think that most people would have realized that what he was attempting was unrealistic.

Chall: Not good for the environment, or unrealistic from that point of view, or from a business point of view, or any point of view?

Weissman: Well, I think that if you get down to the details of could he have mitigated for this, and mitigated for that, I think at that level he probably could have mitigated for a lot of what his direct impacts were. But the larger issue was whether one should be putting that magnitude of that development in that location. He wanted us to revise his EIS, and I have a feeling that had that happened there would have been other environmental issues that had significant unavoidable impacts, such as traffic.

Traffic would have been probably equal to, or worse than biology as a project stopper. [laughs] There was no way doing any kind of cumulative traffic projection that anybody would want to put a huge development at the end of the San Mateo Bridge, in that location. So, there were a lot of environmental problems with that project the way it was conceived.

I think that the environmental laws were working correctly in that when you had everything together in sum, the project would have either had to have been turned down as it was, or it would have had to have been heavily modified to be able to fit into that setting. Somebody else with a different project could probably succeed, but it wouldn't be easy for anybody.

Chall: The racetrack really doomed it. This has been a very interesting hour with you. I thank for your time.

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Berkeley, California

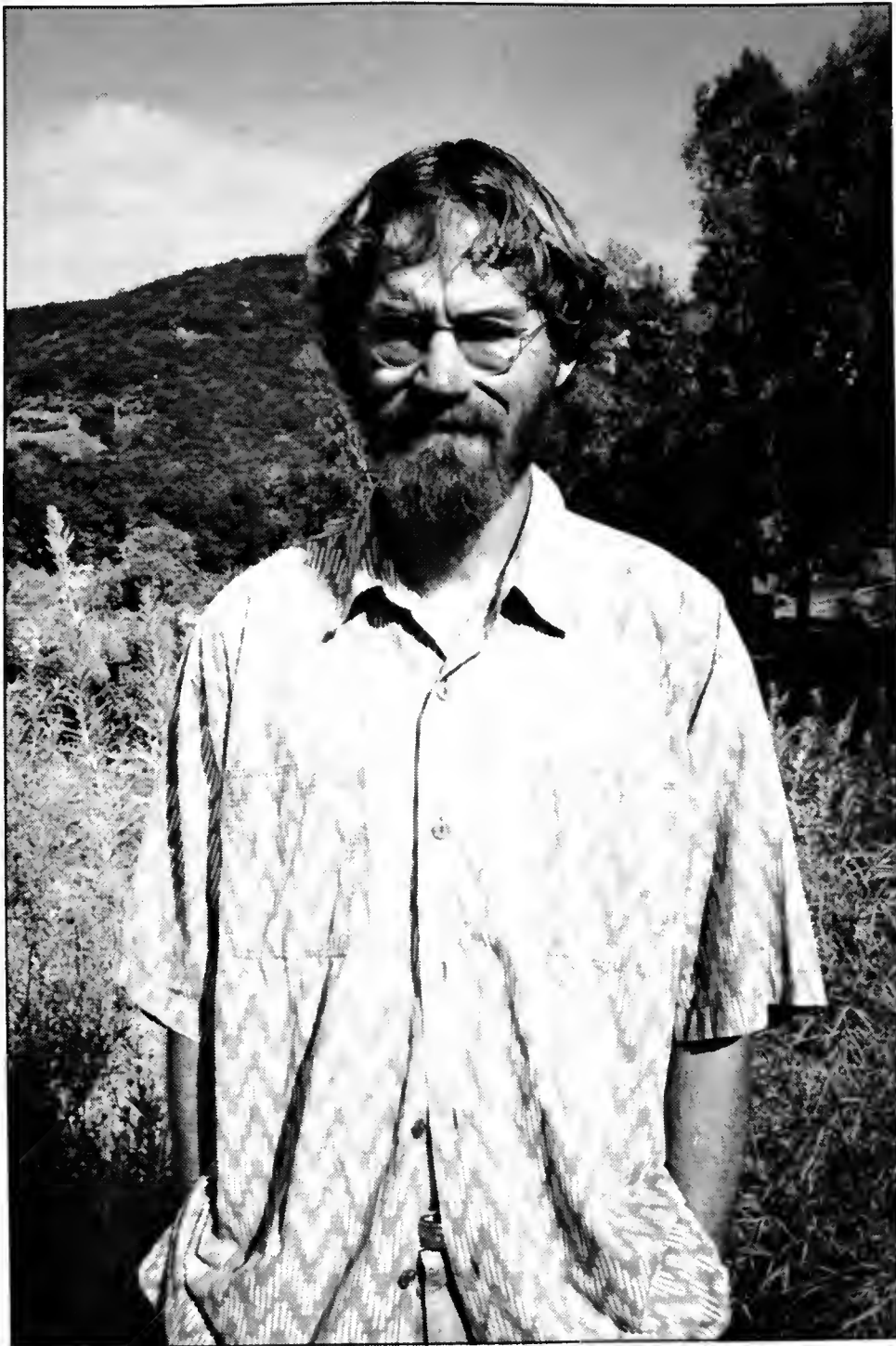
California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Peter C. Sorensen

AUTHOR, JEOPARDY OPINIONS ON THE SHORELANDS PROJECT

An Interview conducted by
Malca Chall
in 1998



Peter Sorensen.

TABLE OF CONTENTS--Peter C. Sorensen

AUTHOR: JEOPARDY OPINIONS ON THE SHORELANDS PROJECT

INTERVIEW HISTORY	246
BIOGRAPHICAL INFORMATION	248
Background: Education and Career with the U.S. Fish and Wildlife Service	249
The Shorelands Project: Interagency and Other Contacts	250
Mitigation Concerns for Shorelands: Legal and Scientific Considerations	253
Reviewing the Environmental Impact Report/Statement	254
What Constitutes Jeopardy of an Endangered Species?	255
Predation: Everyone's Concern	257
Response to Arguments Regarding Non-Jurisdiction on the Baumberg Tract	258
Analyzing the Government's Role in Protecting the Environment	259
Jeopardy Opinions and the Process, 1987, 1990	261
Looking Back on the Shorelands Project and the Ramifications for the Bay Area Environment	265

INTERVIEW HISTORY--Peter C. Sorensen

Peter Sorensen graduated from Humboldt State University in 1976, with a degree in wildlife management. After working four years for the Bureau of Land Management, he was transferred in 1980 to the Endangered Species Office of the United States Fish and Wildlife Service and was assigned to handle all San Francisco Bay Area wetlands endangered species issues. As a result, he became the point man for the Fish and Wildlife Service to analyze the Shorelands Project and determine whether or not it would jeopardize endangered species on the Baumberg Tract. His course of action was discussed critically by John Thorpe and Karen Weissman, and elliptically by Robert Douglass, in their interviews.

Mr. Sorensen is currently with the Fish and Wildlife Service in Carlsbad, California, where he is concerned with endangered species in desert habitats. He agreed to talk, by phone, about the Shorelands Project and his reasons for determining that it would jeopardize endangered wildlife. Regulations, he claimed, do not allow a person to come into a project with a predetermined position. It is only the preparation and completion of the formal consultation and biological opinion that determines whether or not there is jeopardy. It is his responsibility, therefore, to analyze the biological assessment in the EIR/EIS to ensure that a project avoids jeopardy. This was how he determined jeopardy on the Shorelands Project.

He carefully responded to Karen Weissman's criticism of his draft jeopardy opinion, which was the instrument that convinced Mr. Thorpe to finally withdraw his permit application to build Shorelands. One of Mr. Sorensen's specific concerns was that it was difficult to reconcile continued incremental losses of habitat for a population of species which had been declining; this was especially a concern on large-scale projects like the proposed Shorelands Project.

Responding to Mr. Douglass's criticism that the Fish and Wildlife Service had mistreated Mr. Thorpe by sending him on wild goose chases in order to seek approval for a project that the service knew they would never give him, Sorensen claims that the service allows a developer to amend and resubmit his or her planning statement and try to pass jeopardy; there is no agency conspiracy against developers and private investors. Yet, he admits that the mechanism for approvals seems complicated and onerous. That is because the American public is afforded an opportunity to participate--a step in the process which he and other interviewees in this series consider essential and useful. Some projects are more complex than others, and as such require more time to conclude. The Shorelands Project was one of these.

When reviewing his edited transcript, Mr. Sorensen answered two questions I added, questions that occurred to me after we concluded our one-hour telephone interview on June 10, 1998. Mr. Sorensen's articulate and candid responses to the criticisms leveled against the endangered species office and his role in issuing the jeopardy opinions against Shorelands are important segments of this history of the Baumberg Tract.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer Editor

January 2000
Regional Oral History Office
University of California at Berkeley

Regional Oral History Office
Room 486 The Bancroft Library

University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name Peter C. Sorensen

Date of birth 2.5.50 Birthplace Altadena CA

Father's full name Ernest B. Sorensen

Occupation retired Birthplace Iowa

Mother's full name Alma W. Sorensen

Occupation retired Birthplace Alberta Canada

Your spouse Lisa E. Sorensen

Occupation nurse practitioner Birthplace San Francisco

Your children Ashley Mia S., & Andrea Kristine S.

Where did you grow up? LA & Orange Counties

Present community Vista CA, San Diego County

Education B.S. in Wildlife Mgmt, Humboldt State Univ.

Occupation(s) wildlife biologist - Division Chief, Desert District, Carlsbad Fish & Wildlife Office, US Fish & Wildlife Service

Areas of expertise regulatory biologist under the Endangered Species Office; wetlands ecology; desert ecology

Other interests or activities birding, camping, traveling, gardening - vegetables & native plants

Organizations in which you are active Western Field Ornithologists, AOU

INTERVIEW WITH PETER SORENSEN

AUTHOR: JEOPARDY OPINIONS ON THE SHORELANDS PROJECT

[Date of Interview: June 10, 1998] ##¹

Background: Education and Career with the U.S. Fish and Wildlife Service

Chall: Before we get into the Baumberg Tract or the Shorelands Project, I'd like to have a little information about your own personal background, something about your education and career path to the U.S. Fish and Wildlife Service. So tell me something about where you got your initial education, where you grew up.²

Sorensen: Well, I was born here in California.

Chall: Where, here?

Sorensen: Southern California--[coughs] I've got a cold, as you can hear.

Chall: All right, we'll manage.

Sorensen: Southern California. Went to junior college down here, then I went to Humboldt State University, got a bachelor's degree in wildlife management. And I was pretty tired of school at that point and went to work for the Bureau of Land Management back in Colorado and worked there for four years before coming to Sacramento to work for the Fish and Wildlife Service in the Endangered Species Office.

Chall: When was that?

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

²This interview was recorded by telephone.

Sorensen: In December, 1980. And then I worked in Sacramento exclusively on endangered species until 1995 when I came down here to Carlsbad [California].

Chall: What are you working on now?

Sorensen: Oh, actually I am working on desert issues: desert tortoise, big horn sheep, and big regional habitat conservation plans out there. Doing a lot of work with the BLM [Bureau of Land Management].

Chall: But you're still with the Fish and Wildlife Service?

Sorensen: Yes.

Chall: And is your concern again with endangered species, or is this a different kind of assignment?

Sorensen: It's 99 percent endangered species.

Chall: Is that the so-called Section 7?

Sorensen: And you know HCPs under Section 10(a). HCP--Habitat Conservation Plan. I'll try not to use acronyms.

Chall: That's all right, I'll just ask you to fill them in.

The Shorelands Project: Interagency and Other Contacts

Chall: So, when you were with the Fish and Wildlife Service in the Endangered Species Office in Sacramento in 1985, were you assigned the Shorelands Project?

Sorensen: Yes, I worked on all Bay Area wetlands endangered species issues involving clapper rail, harvest mice, least terns, and you know, various other species as well.

Chall: I see, so this was definitely in your bailiwick, as it were?

Sorensen: Yes, that was my territory.

Chall: So you worked there throughout this whole period, then, from 1985 through 1990 when that was the main problem? I mean, that was one of the concerns of the Shorelands development.

Sorensen: Right.

- Chall: Was your position as lead person in the office? Were you assigned something special to do with respect to Shorelands?
- Sorensen: Well all the endangered species part of the project was my responsibility. The other 404 wetlands issues involving migratory birds--you know, water fowl, shorebirds, general wetlands-type issues--were in a different program that I closely coordinated with.
- Chall: I see. And who--I have the names of about three other people in the office--Gail Kobetich--is that how it's pronounced?
- Sorensen: Yes, he was the field supervisor for the Endangered Species Office.
- Chall: And Ted Rado--R-A-D-O?
- Sorensen: No, Ted Rado was not involved at all.
- Chall: He wasn't?
- Sorensen: No.
- Chall: Okay, and how about Peggy Kohl?
- Sorensen: Yes, Peggy headed up the 404 wetlands shop that I just described, dealing with the non-endangered species--wetlands, waterfowl, shorebirds, fisheries. And under Peggy, Karen Miller. And I think Ruth Pratt may have gotten involved a little bit, but Karen Miller was my main counterpart for the non-endangered species wetlands issues.
- Chall: Hers was the non-endangered species?
- Sorensen: That was Karen Miller's assignment and mine was the endangered species.
- Chall: So you worked closely then with these people?
- Sorensen: Right. Yes, everything we did was closely coordinated in the Shorelands review, as on all other projects.
- Chall: In your interaction and your contacts with other persons as you were doing this study would you have been in contact with the Corps of Engineers--Scott Miner, Skid Hall, Vicki Reynolds, people whose names I have from the corps--were you in close contact with them throughout this project?

Sorensen: Yes. We attended a lot of meetings together and we talked on the phone a lot. We coordinated fairly closely, I would say.

Chall: I'll probably get back to some of these contacts, I'm just trying to get some of these ideas--the grid outlined. How about the city of Hayward--were you in touch with those people --Mark Storm or any of the other members of the city, either the council or the administration?

Sorensen: Well, the city had approved the EIRs and all and I think we probably commented on--yes, it was an EIS/EIR and Karen Miller had the lead on that. But, no, we didn't coordinate nearly as closely with the city as we did with the corps, and with developers.

Chall: How about BCDC [Bay Conservation and Development Commission] and the Regional Water Quality Control Board?

Sorensen: No, they really weren't players. I mean, they were players, but not in the context of our involvement through the corps.

Chall: That's really what I'm trying to find out.

Sorensen: Right.

Chall: Then, the so-called third party folks, like Steve Foreman who was writing the biological assessment, Karen Weissman of TRA [Thomas Reid Associates] who revised it later--did you coordinate with them at all--beyond reading their studies? Did you talk to them about what they were doing at the time that they were making their assessments and how they were going about it?

Sorensen: Yes, I recall attending numerous meetings with them, or all three of them, and talking about coordinating or scoping out the kinds of studies that should be done to satisfactorily address our concerns.

Chall: Yes, because their main problem, in effect, was meeting your concerns in this area with endangered species.

Sorensen: Yes, our issues were difficult ones. Sometimes there's feasibility problems as to whether or not you can really address some of these issues.

Chall: Now, what about John Thorpe and Richard Murray of the Shorelands Project?

Sorensen: Yes. Again, we had many meetings with them.

Mitigation Concerns For Shorelands: Legal and Scientific Considerations

- Chall: Tell me something about those meetings. What kind of meetings were they like? I mean, were you trying to explain what you wanted them to cover, how you wanted them to deal with the issues that you had concerns with, and checking what they were doing?
- Sorensen: Yes, well, basically I think the meetings came down to: they had a definite proposal that they were trying to sell us on. They were pretty much convinced in their own mind that their mitigation program that they and their consultants had come up with was adequate and were trying to convince us of that. And of course we had different views. We didn't think their mitigation went as far as it needed to, to offset the impacts to the point of avoiding jeopardy. And so there was a lot of room for disagreement, discussion, and emotions--the whole gamut.
- Chall: What was your chief scientific and legal concern with the Shorelands Project?
- Sorensen: Well there were impacts of three different species. The salt marsh harvest mouse. I guess one of the major concerns was the loss--and the same is true for clapper rails--the loss for marsh restoration potential in the South Bay where so much habitat had been lost historically. The recovery plan identified that area as a Priority One Recovery Task which means that failure to restore habitat in the area could jeopardize or result in an irreversible population decline for the species. So that was kind of the approach we were bringing to the issue. But then there were all kinds of other impacts, too, to both those species involving indirect effects of the project through predation--you know, predators: cats, rats, all that sort of thing.
- Chall: Right.
- Sorensen: And then for least terns I guess predation was the big concern there, too, because their nesting colonies out on those narrow little salt pond levees were quite vulnerable.
- Chall: Yes. When you start a project of this kind, and you see its size and scope, do you already have in mind certain regulations and scientific/legal concerns that almost predetermine a project of this type? Do you start out a project like Shorelands with a set position? For example, "I see what

you're planning here, but I just know from my point of view that it won't fly?" or are you willing to just sit back and wait until you get the EIR/EIS?

Sorensen: I'd say the latter scenario. I mean, it varies from individual to individual, but the [Endangered Species] Act and our regulations really do not allow us to come in with predetermined positions. It's the preparation and completion of our formal consultation and biological opinion that is the instrument for determining whether the project works or not biologically. In other words, whether or not there is a jeopardy. And personally, I've always approached projects operating under the assumption that it's possible and mitigatable, they just have to show me how they're going to accomplish that.

Chall: Of course, it had been noted, I guess, through my own research and the press and elsewhere, that some people--Paul Kelly, for example--seemed to be opposed from the start. I just wondered whether that was your opinion, as well.

Sorensen: We were suspect about their ability to adequately mitigate the impact, but nonetheless we gave them every opportunity to demonstrate that they could do that. And under the Endangered Species Act, under Section 7, it's the other federal agency and the permit applicant that bear the burden for demonstrating that their project avoids jeopardy.

Chall: Is it possible that if some other person or persons were in your position in the federal Fish and Wildlife Service that the outcome could be different? Do you think that any of that depends on the persons who are in charge?

Sorensen: Yes, I think it definitely does.

Reviewing the Environmental Impact Report/Statement

Chall: When the EIR/EIS is received by the Fish and Wildlife Service, your office, what do you do with it? It's very complicated. I've gone through some of it on Shorelands. What do you first do with it? By this time you would already know what had been going on. You were in touch with the people who were writing it, I imagine.

Sorensen: Right. But nonetheless, that isn't relieving us from the need or the responsibility to thoroughly analyze this document to

Audubon, September-October 1998

PETER SORENSSEN

The U.S. Fish and Wildlife Service appears a bit schizophrenic about Peter Sorensen, a biologist in Carlsbad, California, who studies endangered species and identifies threats to their existence. "The regional directors have always hated Pete with a passion," declares one of his colleagues. On the other hand, his immediate bosses have always defended him like sow grizzlies. His current field supervisor, Ken Berg, is no exception. "Pete has had to be the bearer of bad news," he says. "You're not popular when you tell somebody that his proposed project is not compatible with a species's survival." Somehow Sorensen has kept his job for 19 years.

In 1985 he got "fired" (i.e., dismissed from current responsibilities) by the regional office. But only for an hour. His supervisors—Gail Kobetich and Jim McKevitt—had him back on the job before he knew he was gone. He'd offended a former Interior official who was working for a firm proposing a housing development in Newark, California. Recalls Sorensen, "It was a hundred-twenty-five-acre project site on a diverse and productive habitat that supported higher numbers of [endangered] salt marsh harvest mice than we'd ever seen. We basically told them, 'Look, you guys don't have a project unless you redesign it.' They weren't willing to do that." Eventually the Fish and Wildlife Service bought the land, and it is now part of the San Francisco Bay National Wildlife Refuge.

"Some people feel that southern California is a write-off, so they talk instead of act," says Art Davenport, a biologist in Sorensen's office. "We have a phrase for it: virtual conservation. Pete is not of

that ilk." Sorensen's colleagues say he gets into trouble because he writes "jeopardy opinions"—that is, he scientifically demonstrates just how a development will jeopardize an endangered species. Jeopardy opinions, which must be approved by the regional office, require developers to submit a "reasonable and prudent alternative." If they are well connected, as they are in southern California, the regional director gets roasted by angry politicians. That's why issuing jeopardy opinions is aberrant behavior for the Fish and Wildlife Service.

In 1995 Sorensen was banned by the regional office from working in Orange



Peter Sorensen, U.S. Fish and Wildlife Service.

County. Although he declines to talk about it, his associates are less reticent. They contend that he offended landowners by telling them their development plans might be influenced by the agency's concerns for the endangered Quino checkerspot butterfly. "These guys are so powerful they can basically dictate who federal and state agencies assign to work on their projects," remarks one biologist.

Currently Sorensen is fighting for the peninsular bighorn sheep, listed as endangered in March. In 1997, while listing was under way, he and his team wrote a jeopardy opinion on a golf course and residential development in the Coachella Valley, which already has 91 golf courses—roughly one for every sheep. The developer would not agree to the scaled-back alternative proposed by the Fish and Wildlife Service. Now Sorensen has to persuade the agency to stand firm. It's never easy. ■

CHRISTOPHER COLE

For more information, call Forest Service Employees for Environmental Ethics at 541-484-2692, Public Employees for Environmental Responsibility at 202-265-7337, or the Government Accountability Project at 202-408-0034

determine its accuracy, you know, as far the factual background and biological resources that it lays out, and then also critique its interpretation and conclusions based on the facts that are presented. Then look at the impacts and mitigation and make a judgment as to whether their reasoning and conclusions were sound and whether they had successfully mitigated to a point that we could approve the project. And then of course, you know, we write all that up. Then the Department of the Interior responds to the EIS, to the Corps of Engineers. And I can't remember what happened with the final EIS on Shorelands; we may have commented on that, too.

Chall: So the initial one in 1987 is the one that John--. Well, I guess he withdrew his application at that time and handed over to TRA the assignment to draw up another biological assessment. It gets very complicated.

Sorensen: That was the second round [1987-1992].

What Constitutes Jeopardy of an Endangered Species?

Chall: That was the second round, that's right. Now, in terms of mitigation, except for the harvest mouse, there hadn't been very much wildlife, endangered species, on that Shorelands property.

Here, I just want to quote a bit from the assessment of TRA. She [Karen Weissman] writes, "The loss of the site, per se, in its present condition will have only a minor effect on the current populations of endangered species, particularly if these impacts are mitigated locally, as Shorelands proposes. . . . If successful, the project mitigation plan will create 123 acres of salt marsh harvest mouse habitat for the 64 acres destroyed--a net gain of 59 acres."

But, she continues, "The project would definitely add to the cumulative loss of restoration potential on former tidelands. It is the cumulative loss of restoration potential on such former tidelands that may make recovery of the San Francisco Bay wetland endangered species impossible."³

³"Biological Assessment for the Proposed Shorelands Project," Originally prepared by Western Ecological Service Company [WESCO], revised by Thomas Reid Associates, August 1989, p. 48.

Although at the end, she--TRA--that's Karen Weissman--felt that mitigation over time was possible. Apparently, it's the cumulative loss of habitat that was the concern.

And also, Steve Foreman said in his interview, "There was a potential with enough money and resources to develop a system that would replace the use and values that would have been lost from water birds, for endangered species. It would have been, I think, certainly feasible to go out to restore enough habitat to show a net benefit to the species over time, based on what they have now with no changes and continued degradation of existing habitat."⁴

However, he said, "The issue that couldn't be addressed which I still believe is valuable is that he could never replace that space, that element for recovery, the acreage. That was something that he could not replace or did not try to address."⁵

And are these the concerns that you had?

Sorensen: Yes. Yes, that's a pretty balanced account, I guess, of the spectrum of perspectives and angles to the whole dilemma there. And like I said earlier, the entire site, in fact, the Baumberg Tract in its entirety which is well beyond the 700 acres was designated in the recovery plan as a Priority One Task. And I guess that's what they were alluding to, but without making specific reference to it, regarding the restoration potential and the inherent acreage of spatial values of the site itself.

Chall: Now your recovery plan that you talk about, that antedated the Shorelands application?

Sorensen: It came before.

Chall: Yes, it was something that was already intact.

Sorensen: Yes, I think 1984 was the date on that plan.

Chall: Of your recovery plan? And that was just about the time that John Thorpe began his work on his application.

Sorensen: Right.

⁴See interview with Steve Foreman, this volume, p. 235.

⁵ibid.

Predation: Everyone's Concern

- Chall: Now, with respect to predation, which was a problem, the predator fence: it creates both a great deal of--well, how shall I put it?--laughter and grief. Was this a serious problem? I think that it was felt by some that it could over time have been corrected.
- Sorensen: Well, we viewed predation as a serious problem, but their experimental approach in that fenced enclosure, as I recall was--. You know, they tried to get our concurrence on it, but I don't think we ever committed or agreed to that experimental approach to determine whether fencing could effectively mitigate the effects of predation. That was something that they insisted on demonstrating, regardless of whether or not the agencies approved of the experiment. I think they were just willing to gamble that they could show us and force us to accept that by virtue of the results that they anticipated from their experiment.
- Chall: As you might expect, the Leslie Salt people--Robert Douglass--whom I have interviewed--when I asked him about the predator fence and the moats and all of that, he said, "The predator fence was probably one of the worst examples of how the agencies mistreated John, just by sending him on these wild goose chases. I'm sure the individuals within the agencies think they acted honorably, but basically there was if not a public strategy then certainly informal strategies to drain John, to send him down corridors with wild goose chases and continually chase project approval but knowing full well they were never going to give him project approval."⁶
- How do you respond to that?
- Sorensen: Well, I think my response earlier in the conversation addresses that. We don't come in with predetermined outcomes for reviewing these projects. And also what I said earlier, too, I believe it's accurate that we didn't recommend that they conduct this fencing experiment. That was entirely their idea.
- Chall: So if they come in with an idea and say, "Perhaps we can work it out in a certain way, let's try this," you just agree to let them try?

⁶See interview with Robert Douglass in this volume, p. 162.

Sorensen: Well, we couldn't stop them--we would have if--and that's how I remember it going down: it was their idea, that we never condoned. I think they probably asked us to approve it but I don't think any of the agencies ever did.

Chall: Yes, I don't think they did. There were so many hurdles in front of him that it was remarkable, I think in some ways, that he held on as long as he did.

Sorensen: Yes. So basically, just to round out my response to Douglass's comment, no, there was not a conspiracy or a strategy to sap him of his resources by sending him off on wild goose chases; that is not accurate at all.

Response to Arguments Regarding non-Jurisdiction on the
Baumberg Tract

Chall: I see. Leslie Salt--the company, from the beginning, felt that the corps and therefore the Fish and Wildlife Service had no jurisdiction over Shorelands, and they early wrote letters to the corps. Let's see, I have a letter here. In 1985, they wrote to Andrew Perkins, Jr., who was Lieutenant Colonel for the San Francisco District Corps of Engineers, outlining the fact that they felt that the corps had no jurisdiction over Section 10. Then again in 1987. There was a letter from the Leslie Salt Company to Marvin Plenert, regional director of the United States Fish and Wildlife Service, who was in Portland, with a very carefully analyzed brief from an attorney with the same arguments--that the corps had no jurisdiction over either Section 7 or Section 404, both of them.⁷

How do the agencies respond to letters of that kind?

Sorensen: Well, I can't recall how or whether we responded to that since it was mainly a legal trust responsibility involving the Corps of Engineers, and EPA secondarily, you know, in whether or not there is 404 jurisdiction. The Fish and Wildlife Service through the Fish and Wildlife Coordination Act has some influence on those jurisdictional calls, but it's advisory only with the ultimate responsibility lying with the other two federal agencies.

⁷See letters to Marvin Plenert in Robert Douglass interview, page 164a.

Chall: These were letters sent to the heads of the agencies. Would they contact you and ask you how you were going about your studies, or was there any obligation on your part to respond to them?

Sorensen: You mean from EPA?

Chall: Yes, or Plenert? Did they just assume that you're carrying on your work as you're supposed to?

Sorensen: You know, depending on the relationships among the staff working for the respective agencies on a given project there could be quite a bit of coordination or there might not be. It just depends on those personality dynamics among the staff. But in this case we had a good relationship with Vicki Reynolds of the corps and I'm sure that we talked to her and provided her with information and things like that, you know, of background information. And through informal discussions trying to influence what the corps' 404 call should be.

Our main expertise, of course, is wildlife. And under the commerce clause of the Constitution, use by migratory birds can be a deciding factor in corps jurisdiction, although I think that more pertains to isolated waters and not tidal wetlands. And you know, I'm not a real authority on 404 jurisdiction.

Analyzing the Government's Role in Protecting the Environment
##

Chall: Okay, we're on again. All right. Let's see where I am now.

Well, let me say this about the material that I've seen: the EIR/EIS that Carolyn Cole let me have on loan, the material that Karen Weissman from TRA let me have, a considerable amount of background material that I got on loan from Howard Cogswell, and some updated material from Janice and Frank Delfino who saved quite a bit--it shows a very, very complicated process going through the EIR/EIS and then dealing again with all of the various steps that an applicant has to go through, particularly to gain non-jeopardy. I'm just amazed at what needs to be done. All of this would appear to be expensive, perhaps frustrating, time consuming, and, on the part of the developer and maybe even those who have to draw up all this material, onerous.

What do you have to say about the regulations that protect the environment? All that a developer or anybody else has to go through in order to gain permission, and permits to go on with a development in any part of the environment, whether it's wetlands or the desert or a local hill, where we need to have a concern?

Sorensen: Well, just speaking strictly from the standpoint of the Fish and Wildlife Service, even where there are no overlapping wetlands regulations which is typically the case for endangered species in upland areas where the sole federal jurisdiction is Section 10(a) and the incidental take and habitat conservation plan provisions of the Endangered Species Act, you know, even in a relatively simple case like that where there is no Section 7 nexus--which actually provides us a streamlined project review mechanism--that's just the way it is. [See Glossary]

But the reason why it can be complicated, time-consuming, and onerous is the fact that the American public is afforded an opportunity to comment and participate in these processes. And I think that's a great virtue of the system in the sense that excluding the public would truly short-circuit the ability of agencies to make informed decisions. I'm continually impressed at the depth of information that does come out through the public comment periods and the opportunities for public review in these decision making and regulatory processes. And the public has an opportunity to comment under NEPA [National Environmental Policy Act] and CEQA [California Environmental Quality Act], you know, for the EIR/EIS as well as through the corps public interest review under 404 where the projects go out on public notice. So there's at least three opportunities right there for the public to weigh-in on the issue. And that's what adds most of the time to these processes.

Chall: Is the public weighing in the issue? By the public whom do you mean?

Sorensen: Both the public, you know, the general John Q. Public at large, as well as local state and federal agencies are all afforded opportunities to comment on these project proposals. And what adds to the expense and the onerousness and things like that is when you have a big project and you get overwhelming public input. Because there's so many issues and so many contradictions and conflicts and so forth, it truly is a formidable task sorting out the factual background versus

interpretations of facts and misinterpretations--and all that sort of thing--just to come up with a clear picture of what the basis of the decision should be.

Chall: And is it your responsibility to sift through all of this material and try to indicate where the Act itself and the regulations pertain?

Sorensen: Yes, I think that's a good way to put it. Under the Endangered Species Act we're supposed to use the best available scientific and commercial information. And we avail ourselves of those public and agency comments that are received through the NEPA and 404 process in formulating our biological opinions under Section 7.

Chall: Now, you are the person who wrote the jeopardy opinion [Shorelands Project]. At least your name comes up as the person who wrote it. Is that correct?

Sorensen: Yes.

Chall: And you wrote it in 1987?

Sorensen: Yes, there's two.

Chall: There were two, right. The second came out in 1990, I think.

Sorensen: I don't remember the dates of both.

Chall: When John withdrew his application in 1987 and then brought material back in 1990, then again, apparently, you submitted a draft biological opinion--I guess that's what it's called?

Sorensen: It's probably a preliminary biological opinion under the early consultation process.

Jeopardy Opinions and the Process, 1987, 1990

Chall: What does the process mean at that point?

Sorensen: The early?

Chall: The early consultation? That's part of a regulation, that's part of the process that must be gone through, is it?

Sorensen: Well, early consultation is seldom used. That's the only one I've ever been involved in. In fact, it may be the only one that I've ever heard about being used. Even though it's in the regulations and is available, it's seldom used. I'm not exactly sure why except that it has the effect of prolonging the process because it's invoked before the project proponent is necessarily serious or committed enough to, you know, to go through the official permit application and decision-making process.

Chall: I see.

There's a communication from Karen Weissman to John Thorpe about your Draft Biological Opinion dated May 14, 1990. It's a seven page assessment in which she writes, "We believe the Opinion, in its present form, is scientifically insupportable since many of its conclusions are pure opinion, unsupported by factual documentation."⁸

Sorensen: Which opinion was she critiquing--the first one?

Chall: She calls it the "Draft Biological Opinion for the Early Consultation on the Shorelands Project, pursuant to Section 7..."

Sorensen: That would have been the second one then.

Chall: Yes. Then in a second memo, a letter dated September 11 to John Thorpe, she says, "Tom Reid and I have reviewed the August 31, 1990 Preliminary Biological Opinion [PBO]. The new Opinion is a major improvement over the first draft in terms of documentation and specificity with regard to project features. Its principal author, Peter Sorensen, also responded to many of the criticisms raised in our formal comments. However, the PBO still contains many logical inconsistencies, as well as undocumented pseudo-scientific conjecture. Not all of our substantive comments received a response or resulted in needed revisions to the earlier document."⁹

⁸Memorandum by Karen Weissman of Thomas Reid Associates to John Thorpe of The Shorelands Corporation, Subject: Critique of Draft Biological Opinion, May 14, 1990.

⁹Memorandum from Karen Weissman of Thomas Reid Associates to John Thorpe and Richard Bailin of The Shorelands Corporation, Subject: Negotiation Strategy for Reasonable and Prudent Alternatives as stated in Preliminary Biological Opinion, September 11, 1990.

Then she continues, "All in all, it is our opinion that another round of formal comment on the PBO would serve only one purpose: reinforcement of the record to be used in a lawsuit against the USFWS. Otherwise, I think you should concentrate on the Reasonable and Prudent Alternatives as the only non-judicial means to reverse the Jeopardy Opinion."

And now, then, after that there's this whole area called "Prudent--"

Sorensen: Reasonable and prudent alternatives?

Chall: Reasonable and prudent alternatives! [laughs] You know, that's an incredible set of steps.

Sorensen: Well, that's part of our biological opinion or our early opinion or whatever. Well, I mean, under Section 7, whether it's a conference for a proposed species, a formal consultation for a listed species, or an early consultation for a listed species, if we determine likelihood of jeopardy then the service, pursuant to the law, itself requires that we formulate reasonable and prudent alternatives if any are available that avoids the likelihood of jeopardy but yet allow for the primary intended purpose of the project.

Chall: [What steps did you take to respond to the serious critiques of TRA which never actually satisfied them?¹⁰

Sorensen: The service gave full consideration to all comments and incorporated changes as appropriate in the final opinion. I cannot remember the specific issues that TRA may have disagreed with--except the general effectiveness of their proposed predator management program.

Chall: She suggested the possibility of a lawsuit. How common are they against the Fish and Wildlife Service? What do you have to do if there is a suit?

Sorensen: The service is seldom sued over Section 7 issues, or even served with sixty-day notices, a requirement before a suit may be filed. In the seven states within the FWS's Region 1, I am aware of only one suit in about twenty years. If sued, we must coordinate with the Department of the Interior's Solicitor's Office and the Department of Justice in compiling an administrative record for the case before it goes to court.]

¹⁰This and the following question and answer were added during the editing process.

Chall: I guess John withdrew before he went through any of these steps, but he claims that there were some changes in management of the service at the top with Wayne White. He claims that he did receive eventually a non-jeopardy opinion but by that time it was too late for him, and that the city of Hayward refused the final permit. Have you any recollection or knowledge about whether any of this went through, whether there was a change in management with Wayne White and others that would have brought about non-jeopardy?

Sorensen: Well, there probably was a change because this was going on, you know, over what--three-four years?

Chall: Yes.

Sorensen: The Fish and Wildlife Service about that time--I don't know the exact dates, but it sounds accurate, that our field office there was reorganized in a way that the Endangered Species Office was subsumed within the Ecological Services Office. Gail Kobetich, who was the previous field supervisor for the Endangered Species Office then became the head of the endangered species program within the larger Ecological Services Office that was headed up by Wayne White. He became the field supervisor over the combined program. So that was strictly an internal reorganizational thing. And then there were new colonels, I suspect, with the Corps of Engineers. They usually only stick around for two years.

Chall: Yes. So as far as you know John didn't receive a permit? He didn't pass the jeopardy, even with that change?

Sorensen: No, I don't recall changing our jeopardy opinion.

Chall: You were there during this change of administration?

Sorensen: Right.

Chall: So his claim is probably not totally accurate. Although he does claim that it was the city that made it impossible to finally receive the permit. There were additional problems that had to do with the interchange routes 880/92--I think a couple of those--the roads that would get people into his development if it were passed.

Sorensen: Yes, that's right. That was something that came along towards the end. The access infrastructure wasn't contemplated earlier, so that added a new element of complexity to the whole thing. And that was more of a city issue, I think. But ultimately, our "final" preliminary biological opinion did

offer a reasonable and prudent alternative that allowed for a racetrack project along with commensurate impact avoidance and other mitigation measures. However, for whatever reasons, the corps never issued a 404 permit. Although I recall it even involved reviewing these new roadway plans to access--

Chall: Yes, that's probably because it had something to do with the wetlands.

Sorensen: Yes.

Looking Back on the Shorelands Project and the Ramifications
for the Bay Area Environment

Chall: I think those are basically all the questions that I have to ask you about this project.

We do have some time and some tape left over here and I would like to know whether you want to add anything to this story that I probably haven't covered. There are probably some things that might have come up in your own recollections that you might want to cover?

Sorensen: Oh, I don't know. I have a hard time sometimes with open-ended questions, especially on a big, complicated project like this--it went on for so long.

Chall: Was this one of the more or most complicated projects that you had been handling at that particular time?

Sorensen: Yes, that's a fair statement, I think. It's one of the bigger ones I've ever [laughs] enjoyed working on. There were a number of other big ones, though, like Cullinan Ranch.

Chall: Yes, oh, yes.

Sorensen: That was a very interesting case study, too, but it wasn't quite as complicated as Shorelands because it only went through one round, you know, instead of two rounds of review through the corps and the EIS process.

Chall: I can't recall now whether that was approved or not.

Sorensen: No, the corps actually denied that permit. And that was pretty interesting because the developer, the sponsor in that project came in kind of beating his chest, from southern California,

proudly proclaiming that he had never had a project stopped and he would be darned if he was going to let anybody stop this project, too.

You know, in the same way, John Thorpe--you've probably heard this, it's hearsay coming from me because I wasn't at the meeting--that he apparently threatened to commit suicide if his project wasn't approved.

Chall: No, I hadn't heard that one. Because he's usually pretty upbeat.

Sorensen: Yes, at a public meeting involving the environmental groups. I could probably name some names if you wanted to get first-hand verification. But you know that's all kind of a peripheral and interesting human element.

Chall: Yes, well, he usually was successful, too, in what he did.

Sorensen: Yes.

Chall: So, generally, then, you were concerned that there would be a loss of habitat. That the loss of habitat for the endangered species was an important factor in not permitting this project to go through because there was so little habitat for the endangered species, those species, particularly, around the Bay Area.

Sorensen: That was an important part of it, but the other just as important aspect was that at that point in time the population levels for those species had been declining and had been declining for a long time. And when you've got something sliding towards extinction, you know, it's kind of hard to reconcile the continued incremental losses, especially on the large scale that these larger projects involve.

Chall: Now did you know that the California Conservation Wildlife Board has taken over 835 acres of the Baumberg Tract and is going to restore it?

Sorensen: Yes, and possibly involving mitigation funds from the city of San Jose required by the San Francisco Bay Regional Water Quality Control Board for marsh conversion impacts from the city's wastewater discharge.

Chall: Yes, that's right.

Sorensen: Yes, so it was kind of a joint acquisition that was--

- Chall: That's right. It's based on mitigation for I guess a sewer line and the expansion of the highway 880 into the marsh all in the Fremont, Milpitas, San Jose areas. They put some funds into mitigating those problems and it was decided that they would use the Baumberg Tract for it.
- Sorensen: I didn't hear about the highway connection, but it sounds like it was a pot of money from a variety of sources?
- Chall: Including the East Bay Regional Park District for extending their trail system.
- Sorensen: Well, it sounds like it had a good ending then from the standpoint of what the recovery plan objectives were for restoring those areas.
- Chall: Now they just have to balance it out. They have to work out how they'll get these various species to recover on this tract.
- Sorensen: They have competing habitat needs.
- Chall: Exactly. They have some real problems. Steve Foreman is more or less in charge of this with Carl Wilcox.
- Sorensen: Oh, yes.
- Chall: So it's back to square one in a sense that they have to go through the same regulatory hurdles that John Thorpe went through to make sure that they're going to pass the jeopardy.
- Sorensen: Boy, Steve Foreman's going to make a career out of this project. From the beginning to the very end.
- Chall: [laughs] Right. He's been on Baumberg all the way through. And I think he's enjoying it very much.
- Sorensen: Yes.
- Chall: Well, I thank you very much for the time you've given to this. Your interview will go into a volume that deals with the history of the Baumberg Tract. I do appreciate your being willing to contribute a chapter to that volume.

Sorensen: Well, I appreciate the invitation. I hope this benefited in some respect.

Chall: I think so. Thank you very much, Mr. Sorensen.

Sorensen: Thank you, you're welcome.

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THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Carl G. Wilcox

THE BAUMBERG TRACT WETLANDS RESTORATION PROJECT

An Interview conducted by
Malca Chall
in 1998

TABLE OF CONTENTS--Carl G. Wilcox

THE BAUMBERG TRACT WETLANDS RESTORATION PROJECT

INTERVIEW HISTORY	271
BIOGRAPHICAL INFORMATION	273
Background: Education and Career Path to the California State Department of Fish and Game	274
Department of Fish and Game: Lead Manager for Review of the Shorelands Project	275
The Shorelands Project: An Ill-Conceived Plan	277
Developers and Environmental Regulations	279
Development Plans for the Oliver Property	281
The Baumberg Tract Wetlands Restoration Project: Carl Wilcox, Project Manager	282
Site Selection	283
Fixed Commitments for the Species' Habitats	284
Funding for Restoration and Long-term Management	287
Additional Constraints	288
The Public Comment	290
The San Francisco Bay Area Wetlands Goals Project	292
Historic Preservation and the Baumberg Tract	294

INTERVIEW HISTORY--Carl G. Wilcox

Carl Wilcox graduated from Sacramento State University in 1974, with a degree in biological conservation, and from New Mexico Highlands University in 1976, with an M.A. in biology. Since 1980 he has worked in various departments of the state Department of Fish and Game [DFG], in the Central Coast Region since 1986. As an environmental specialist working on wetlands issues, he was lead manager for review of the Shorelands Project. Currently, as regional environmental services supervisor, he is a manager of the Wetlands Restoration Project on the Baumberg Tract. With an in-depth knowledge, therefore, he could discuss the two Baumberg Tract projects. Moreover, because he was one of the final persons interviewed in the series of Baumberg Tract oral histories, he could tie together many of the issues raised by other interviewees.

Mr. Wilcox talked with me by phone for one hour on July 20, 1998, from his office in Yountville. I was interested, at the outset, in the role of the state DFG in the regulatory process for the Shorelands Project, their contribution to background research on the tract, and the state's regulations on wetlands and endangered species. I also wanted to know about the relationships between the DFG and the Fish and Wildlife Service, Shorelands Project personnel, and Hayward area environmentalists. Finally, I wanted the latest information available, at that time, on the ongoing restoration plans.

Mr. Wilcox began by explaining the role of the state government in relation to compliance with the California Environmental Quality Act [CEQA] and the federal Clean Water Act [CWA]. The Shorelands Project, he felt, did not meet the state's "no net loss of wetland acreage and/or habitat functions and values," and, he continued, the project "was proposing as mitigation the conversion or alteration of existing wetlands, not the creation or restoration of new wetlands." With the benefit of hindsight, Mr Wilcox claimed that Shorelands was an ill-conceived project, one that "no one would propose...today."

In response to concerns that the environmental regulations seem complex and onerous, he admitted that there is "a high degree of layering," but that nothing makes them insurmountable. Public comment following the publication of the EIR/EIS takes time, but it is an aspect of the process that he and others involved in the preparation and review process, whether professionals or grassroots activists, consider important. He claims to value the comments made by grassroots activists, although, as he points out, he may not always agree with them.

Today, as project manager with the overall responsibility for the Baumberg Restoration Project, Mr. Wilcox carried forward the narrative begun by Steve Foreman in an earlier interview. Mr. Wilcox carefully explained the problems he identified in developing a plan that meets state and federal Clean Water Act regulations, adheres to mitigation constraints set into the project, and which is confined by limited funding. He made it clear why the complex restoration plan schedules which had been initially projected might be delayed in the future. As the Baumberg Tract example illustrates, the restoration of wetlands involves a delicate balancing of many interlocking concerns.

Mr. Wilcox added information and clarified answers when he reviewed his lightly edited transcript. By linking the Shorelands Project and the Baumberg Tract Restoration Project, he broadened our understanding of San Francisco Bay's past and current wetlands issues, and the problems faced by developers and environmentalists trying to implement environmental laws and regulations.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer/Editor

January 2000
Regional Oral History Office
University of California at Berkeley

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BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name Carl Gordon Wilcox
Date of birth Oct. 7, 1950 Birthplace Las Vegas, New Mexico
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Occupation Desktop Publisher Birthplace Jacksonville, Florida
Your children Matthew AND Rebecca

Where did you grow up? Anticich, CA

Present community Napa, CA

Education B.S. Biological Conservation (fisheries) Sacramento State University, M.S. Biology New Mexico Highlands University

Occupation(s) Environmental Services Supervisor, Calif. Dept of Fish + Game

Areas of expertise Biological Conservation, Coastal wetland management AND Restoration

Other interests or activities Sailing, White-water rafting, bird watching

Organizations in which you are active The Wildlife Society, American Ornithologists Union

INTERVIEW WITH CARL WILCOX

THE BAUMBERG TRACT WETLANDS RESTORATION PROJECT

[Date of Interview: July 20, 1998] ##¹

Background: Education and Career Path to the California State
Department of Fish and Game

Chall: Could you tell me about your educational background and how it led you to your career with the Department of Fish and Game?²

Wilcox: Okay. I have a bachelor of science degree in biological conservation from Sacramento State University and a master of science degree in biology from New Mexico Highlands University. I graduated from Sacramento State in 1974 and from Highlands in 1976. Following that, I worked for the California Department of Fish and Game as a seasonal aide, and then California Conservation Corp from 1977 to 1980. In 1980, I was employed by the department as an ecological reserve manager at Upper Newport Bay, ecological reserve in Orange County. I was there until 1986, when I transferred to the Central Coast Region Office as an environmental specialist working on wetlands issues in the Central Coast Region, which runs from San Luis Obispo to Mendocino County. I'm currently the regional environmental services supervisor.

Chall: Well, between 1984 and 1987 and even up to 1992 when the Baumberg Tract was being considered for development by the Shorelands Project, were you involved in any way in that activity, in that project?

Wilcox: Yes, when I came to the region in 1986, one of my responsibilities was working on projects that affected wetlands and we were involved in the CEQA compliance process, the California

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

²This interview was recorded by telephone.

Environmental Quality Act. So I was involved in the project from a review of the environmental document as well as the review and comment on the permit application under Section 404 of the federal Clean Water Act. We were also involved in the endangered species permitting issues since several species affected by that project were also state listed as well as federally listed.

Chall: I see, so the state was as involved then as the federal in those issues?

Department of Fish and Game: Lead Manager for Review of the Shorelands Project

Wilcox: Yes. When I came in '86, I assumed involvement in the project from Paul Kelly who had been the unit manager down in that area and had worked on the project. Paul was instrumental in focusing attention upon the potential adverse effects of the project on seasonal wetlands and wildlife.

Chall: He was no longer unit manager?

Wilcox: Shortly after my arrival, he transferred and went to work for our divisional staff in Sacramento.

Chall: And, he no longer had any involvement with the Baumberg Tract?

Wilcox: No direct involvement as a department representative.

Chall: I noticed in the biological study that he was listed along with Leora Feeney. So was John Gustafson. What would have been his role?³

Wilcox: Well, as far as the biological study, Leora worked for Paul for a while as a seasonal aide doing seasonal wetland bird surveys in the South San Francisco Bay, which included some of the Baumberg Tract. John Gustafson works in the department's non-game birds and mammals office in Sacramento. He coordinated endangered species recovery activities and funding support for the work Leora conducted.

³"Biological Assessment for the Proposed Shorelands Project."
Prepared by Western Ecological Services Company (WESCO), June 1987.

Chall: Actually the first jeopardy opinion was coming out in 1987, so you really had just about one year on Baumberg.

Wilcox: Right.

Chall: In that one year, were your contacts with Steve Foreman, or John Thorpe; who were your contacts in this project?

Wilcox: Primarily the consultants in the form of Steve Foreman and then--.

Chall: Carolyn Cole of Cole/Mills?

Wilcox: Yes, and there was an architect or somebody.

Chall: Richard Murray.

Wilcox: Yes, Richard Murray. I met with them on several occasions and coordinated with the Fish and Wildlife Service. I think Pete Sorensen was the lead person for the service.

Chall: Right. What would you have been doing? Were you in contact also with John Thorpe or with Richard Murray for John Thorpe?

Wilcox: We worked primarily with his consultants in the form of Mr. Murray, and there was a young woman that worked for Mr. Thorpe as an assistant.

Chall: Yes, Nori G. Hall. When you were in contact or consulting with them, what was your general point of view?

Wilcox: Well, there was a great deal of skepticism about the feasibility of their mitigation for endangered species in particular and how they would mitigate for wetlands in general. They basically were not proposing things that were consistent with existing department policy in the wetlands mitigation arena. Basically, the department, at that time, had what is called a no net loss wetlands policy, which required no net loss of wetland acreage and/or habitat functions and values. Most of what this Shorelands Project was proposing as mitigation was conversion or alteration of existing wetlands, not creation or restoration of new wetlands.

Chall: I see.

Wilcox: Which didn't meet our policy requirements. There were a lot of concerns about predator issues with regard to endangered species and then some pretty hokey mitigation proposals for snowy plover mitigation.

- Chall: So were you consulting with them about your feelings of skepticism at the time that they were making these proposals or were you just allowing them to try them out to see if they would work perhaps?
- Wilcox: We were commenting on their proposals, generally in a fairly negative manner. The mitigation activities that I mentioned were, in most cases, not consistent with policy and just not things we were going to approve or accept.
- Chall: That you recognized right away even before you read the EIR/EIS?
- Wilcox: EIR/EIS. It was somewhat of an iterative process in that the department would comment on the document. Shorelands received the comments, and then they came back and tried to address the issues and revise things, so there was a period of consultation following the initial round of comments on the environmental document.
- Chall: Otherwise, prior to that, do you simply wait to see what the EIR/EIS has to say before you make comments that might be considered negative to the project?
- Wilcox: Right, oft times, unless somebody comes to us and consults in advance. There wasn't a whole lot of that as I remember in the first go around.
- Chall: I sometimes wonder whether, if different people were in charge of the project or, let's say, in your place, the results might be different in terms of the final decisions.

The Shorelands Project: An Ill-Conceived Plan

- Wilcox: Well, they can be. But from the perspective of wetland issues, the Shorelands Project was ill-conceived to start out with. No one would propose it today. It's the kind of thing where somebody has an idea and looks at a site as a barren wasteland and doesn't really consider the public perception and acceptance of it. When that project was formulated, I think in--.
- Chall: In about 1983 or so when it was first conceived, I guess.
- Wilcox: Yes, things were different in the way people looked at development around the edge of the Bay. You were getting to the point where people started--particularly projects of that size--becoming concerned about the loss of these historic baylands, these diked bayland areas, and the loss of the values that were associated with them. There was kind of a paradigm shift in the community in

that the environmental community was becoming much more aware of wetland issues in San Francisco Bay, and the South Bay in particular.

Paul Kelly was, I think, a real mover or force in developing that consciousness in the environmental community, educating people about those wetland areas, and getting them interested in them. It was kind of the start of a new era in wetlands permitting. There's a lot more scrutiny of projects as a result of this increased understanding of the seasonal wetlands around the Bay.

Chall: So that was another shift from simply CEQA to the whole concept of the Clean Water Act and the endangered species. These regulations did come along at different times, but in a continuum of a kind.

Wilcox: Right.

Chall: Then, in 1987, John Thorpe removed his project so that he did not have to accept the jeopardy and went on to revise his mitigation plans. He assigned another round to TRA, Thomas Reid Associates. Were you in any way consulted by Karen Weissman who worked with Thomas Reid on the next go round?

Wilcox: We were to some degree, but the issue never really got much better. They were still proposing the same kinds of things. There were still outstanding issues about whether or not things were wetland or not, whether they were going to mitigate. The project never got to a point where the department would have removed any of its objections.

Chall: And your objections--how important, in a way, were your objections? I know that the jeopardy opinion from the Fish and Wildlife Service was paramount. Was yours of equal stature?

Wilcox: No, really the driver in that instance was the federal endangered species. Obtaining endangered species approval was critical in obtaining the corps permit. If they approved the project, that was the real controlling factor on whether or not they could get a permit, short of legal action against the city of Hayward and/or the corps.

Chall: So, you were not as involved in comments and consultation?

Wilcox: Not directly, although, during that period we did coordinate with the service. It's interesting. We were still trying to figure out how to implement the state Endangered Species Act. One of the things we found out subsequently is that we have overlapping code

sections, and the harvest mouse is what is considered a fully protected animal, and that project would have resulted in the take of the animal which is totally prohibited by state law.

Chall: I see.

Wilcox: So, if we knew what we know today, they would have had an even more difficult time getting permits to do what they were going to do.

Chall: When you say if we knew what we know today, you're looking at it and considering your work with the restoration project or something else about the law?

Wilcox: No, this is the interpretation of the state Endangered Species Act and other code sections in the Fish and Game code.

Chall: And that's because what the courts have ruled or are you just interpreting the laws differently?

Wilcox: We're interpreting laws differently. It's an old law that nobody really paid all that much attention to until somebody challenged us in court under the state Endangered Species Act and issuing incidental take permits, or what we call 2081 permits. All of a sudden somebody looked at this older law that predated the state Endangered Species Act and basically preempts it, which prohibits any take of a certain list of species of which the salt marsh harvest is one. So, it's something we're having to struggle with right now.

Chall: You mean right now in your restoration plan?

Wilcox: Well, the restoration plan, but it also involves other instances where we have to authorize or deal with projects that might result in taking.

Chall: So there are others around the Bay here that you're now struggling with or are concerned with?

Wilcox: Yes.

Developers and Environmental Regulations

Chall: There are people who would say that all these regulations are terribly difficult to adhere to, and it's onerous, particularly for developers, and also perhaps for people who have to write the

EIR and all the regulations. How do you come down on that? Do you think sometimes these regulations are getting to be too difficult to deal with? The mouse may not be all that important in all these little spots where people want to develop? You may lose a mouse, or four hundred mice. How do you look at that aspect of the regulations?

Wilcox: I think the take on regulations is that certainly there's a high degree of layering. There's nothing necessarily in the regulations that makes them insurmountable. Projects get approved on a regular basis, but you have, certainly, different levels of interest. You have local politics that have their own set of requirements for local approval, and then you move up through the process to different levels of jurisdiction. Without regulations like the state and federal endangered species acts, you wouldn't see any protection measures, or very limited, or haphazard protection measures for endangered species. While there are substantial hurdles to overcome, they are manageable if you do your homework as a developer. In retrospect, nobody would propose a project like that today.

Chall: John Thorpe's?

Wilcox: Right. From my perspective, it was a bad project to start out with.

Chall: And projects today are not as widespread, as damaging, you think?

Wilcox: Well, certainly things have changed around the edge of the Bay. People aren't coming in to develop large tracts of land, or what we call the Bay lands, which are the diked historic areas of the Bay. There are very few of those kinds of projects anymore. Ever since the creation of the Bay Conservation and Development Commission [BCDC] and people's renewed interest in active enforcement of the Federal Clean Water Act under Section 404, this Bay filling has substantially been reduced.

Chall: That's right. Each attempt to build or develop is certainly critically looked at by BCDC, the state, and the federal government--all these projects.

Wilcox: This has set the stage for, you know, both the state and the federal government, and, in some cases, some of the local agencies in moving forward and protecting a lot of these lands. Development projects face such hurdles and public opposition that means are provided to acquire the property and protect them. Developments also are often scaled back to avoid and protect wetlands. An example is the Citation Homes project at Roberts Landing in San Leandro.

Development Plans for the Oliver Property

- Chall: There's a new project being considered on the old Oliver Tract [West] near Baumberg, which will be primarily housing. [See Map 1] Is the Department of Fish and Game involved in the EIR for that? [Proposition HH. See Appendix D]
- Wilcox: Yes, the department has commented on the EIR.
- Chall: The EIR has already been prepared?
- Wilcox: The draft; and I think it has been certified. The issue there, while it's within the historic bay lands, there aren't a lot of what are considered jurisdictional wetlands on the site.
- Chall: Oh, I see.
- Wilcox: So, we haven't had, let's say, outstanding concerns relative to that project. We would probably prefer it didn't occur, but, from a biological perspective, it doesn't have great existing biological value. It's primarily an old hay field, and it's been farmed, and there's very little wildlife value.
- Chall: There's no habitat being destroyed that hasn't been destroyed years ago or could be restored?
- Wilcox: Our main concerns focus on the specifics of their minimal wetland mitigation, and issues about buffers.
- Chall: And fill. I guess many people are concerned with that.
- Wilcox: Yes, on the other hand, it has substantial local opposition.
- Chall: Yes.
- Wilcox: It will ultimately be decided by the voters.
- Chall: So there's no impact with respect to the Baumberg Restoration Project?
- Wilcox: Not any direct impact. In fact, there might be some opportunities to cooperate as far as the development project taking some fill material that we have to remove from the site.

The Baumberg Tract Wetlands Restoration Project: Carl Wilcox,
Project Manager

Chall: Which they will need for building up land for the housing. Could we turn, then, to the Baumberg Restoration Project?

Wilcox: Sure.

Chall: All right, because I think we've taken care of John Thorpe's Shorelands Project. I didn't ask you about your interaction with John Thorpe. How well did you work with him?

Wilcox: Well, I only met him, I think, two or three times. Myself and John Schmidt, the executive officer of the Wildlife Conservation Board, met with him. I think this was in the very late eighties or early nineties. I talked to him about the possible sale of the property to the state. I think it was shortly after passage of Prop. [Proposition] 70, which was an open-space bond measure that specifically earmarked money for acquisition in the south of San Francisco Bay. [See Glossary]

Chall: He really had only an option on that land, so he couldn't have sold it anyway. It was really Cargill's property.

Wilcox: Yes, but we met with him to talk with him about stepping out of the way and that type of thing.

Chall: Well, by that time, I think he had already received the jeopardy opinion, had he not? This was 1990?

Wilcox: This was probably about 1988, 1989.

Chall: Oh, I see. That was just before he gave up the option. Prop. 70 was--. I don't remember the date of that. Do you off-hand?

Wilcox: It was, I think, June, 1988.

Chall: He had option on 736 acres of land, and you purchased 835, so I was trying to figure where that extra 99 acres came in.

Wilcox: It's out towards what's considered the Whale's Tail. We didn't acquire the Whale's Tail. We've acquired, I think, part of what used to be known as Pond 11.

Chall: So it wasn't the Whale's Tail.

Wilcox: No, Cargill still owns that.

Chall: Oh, I see. I'm trying to figure out from the maps that I have here, but it's a little difficult for me. I knew that there was nearly 100 acres difference, and I couldn't figure out just exactly what you had been able to get that John didn't have or have an option on. So that was it, Pond 11. [labeled Inner 11 on Map 1]

Site Selection

Chall: So the Wildlife Conservation Board purchased this from Cargill on the basis of mitigation. Did you have anything to do with any of those early decisions about where this mitigation would go? To the Baumberg Tract rather than someplace else?

Wilcox: Yes. I've been involved in the city of San Jose's issues since the mid 1980s as far as the water board [Regional Water Quality Control Board] requirements for mitigation for marsh conversion there.

Chall: Oh, this was for the sewer.

Wilcox: This was for the waste water discharge and the conversion issues down there. Originally, those requirements had been set for an undesignated site. Most everybody anticipated that it would be Bair Island, if and when it was purchased or made available. We got into a situation where there were several things going on. The ten-year life of Prop. 70 was about to pass. Basically, there were terms in Prop. 70 that said that if funds hadn't been expended within ten years then they could be reallocated at the discretion of the legislature. So there was an emphasis, since we had a willing seller in Cargill and the apparent lack of any potential activity with regard to Bair Island, to move forward with the Baumberg acquisition. [See Appendix C]

Chall: Yes. Well, the Japanese controlling it were not about to sell it at that point.

Wilcox: Yes, and the fact that the city of San Jose had gone on for five or six years without doing any of the mitigation. So, it was time that they did something and got something going. Since Baumberg became available, then we worked with the Fish and Wildlife Service and the regional board to designate the funds to the Baumberg acquisition.

Chall: And then there was also a mitigation needed by the cities of Milpitas and Fremont on Caltrans?

Wilcox: Right, yes, and those were for the Dixon Landing overpass. [See article, following page]

Chall: I'm just about ready to run out of tape, so maybe I'll stop for a moment and turn it over.

Wilcox: Okay.

Fixed Commitments for the Species' Habitats

Chall: Now, I've noticed in the material that I have received from you, when I've gone to some of your meetings, that when you purchased the Baumberg Tract your commitment was a restoration of 350 acres of tidal salt marsh for the salt marsh harvest mouse and clapper rail habitat, 17.5 acres of new jurisdictional wetlands including 12.6 acres of the salt marsh harvest mouse habitat. Then there is restoration of tidal salt marsh and enhancement of seasonal wetlands. Also you must provide access to the East Bay Regional Park District for continuation of the bay trail.

Now, in terms of the work that you need to do, are you committed exactly to 350 acres of tidal salt marsh for the harvest mouse and clapper rail? Could it be less if you aren't able to work it out conveniently? Because I know you have some problems, I was wondering whether those commitments are absolute.

Wilcox: Those mitigation commitments are absolute.

Chall: So you must have 350 acres and the 17.5 acres.

Wilcox: Right, and our objective is to have more.

Chall: When the California Wildlife Conservation Board purchased this, it was known that the Department of Fish and Game would be responsible for the restoration project. How was it that you were assigned to direct the project? Do you have a title?

Wilcox: Project manager. I was assigned to it because I was involved in the ongoing efforts to acquire it, and/or restore it, and that's one of my areas of expertise.

Chall: Restoration?

Wilcox: Yes.

Chall: I see. You, then, asked Steve Foreman and his group--?

WEDNESDAY, April 28, 1999

Oakland Tribune

Project requires wetlands filling

By Mary Nauman
STAFF WRITER

Plans that require filling in more than 17 acres of wetlands to widen the Dixon Landing Road interchange are expected to face tough scrutiny from environmental groups, officials say.

The wider interchange, which has been planned by Fremont and Milpitas since the 1980s, is needed to ease congestion and compensate for the new Interstate 880 car-pool lane planned between Mission and Calaveras boulevards.

One hurdle, however, is that the new interchange will require filling in 17.8 acres of wetlands. The U.S. Army Corps of Engineers is accepting public comment on the project until May 26.

"We're anticipating a lot of environmental agencies and individuals to comment on this," corps spokesman Doug Makkitten said. "The review period has just begun, but I know from talking with folks that we have already gotten calls on this subject."

Donna Olsen of Tri-City Ecology declined to comment on the project because she had not read the corps' report.

According to a public notice released by the corps, the project will replace the current overcrossing with a wider one, add a new bridge at Penitencia Creek and modify the existing on- and off-ramps to prevent congestion on the city streets.

If it is approved, the California Department of Transportation will compensate for filling in the wetlands by preserving an equal number of acres on the Baumberg Tract, an 800-acre restoration project in Hayward.

Colin Jones, spokesman for Caltrans, said the new Dixon Landing Road Interchange is an environmentally sensitive project, but the plans to preserve other wetlands should make the approval process easier.

Construction is expected to begin next summer, he said.

"We don't expect the wetlands to be a big problem because off-site mitigation is going to be provided," Jones said. "It can get pretty complicated, but it's still going to happen."

The final environmental impact study on the Dixon Landing interchange project is available at the Milpitas and Fremont libraries, or by contacting the Caltrans Information Center at 111 Grand Ave. in Oakland.

Wilcox: We contracted--.

Chall: Contracted with--. What was it then?

Wilcox: RMI, Resource Management International.

Chall: His present study differs in some way from the original study that he had to do for the Shorelands Project. Now, you are required to restore rather than to check on what would be lost.

Wilcox: Right, as part of that, we're doing resource inventories to facilitate the planning so we don't seriously impact existing uses. Certainly, the site functions as a seasonal wetland in that it ponds water during the winter months and provides habitats for shore birds and some water fowl. Then, also, it has an historic use by the threatened western snowy plover. As part of the restoration plan, we have to incorporate the needs of those species into the restoration plan.

Chall: As I understand it, the clapper rail and the harvest mouse use the same kind of habitat, but the snowy plover uses a different kind, and you have to provide for each.

Wilcox: Right, and we have an interesting problem there. The mouse and the rail, I think, have been listed ever since the early seventies and the authorization of the Endangered Species Act. The Baumberg Tract, in the current recovery plan, is listed or identified as essential habitat for their recovery, so we have a mandate through that recovery plan to restore tidal marsh. But then we have another endangered or threatened species that's using the habitat so we have to account for that also as well as try to address the existing wildlife values of the site.

Chall: You've also had to deal, then, with problems of hydrology?

Wilcox: Yes.

Chall: There are quite a few problems that you are concerned about, but mainly it's this difference in habitat--is that it--and how you're going to arrive at the balance?

Wilcox: Right, it's developing a plan that creates habitat that makes sense for clapper rails and harvest mice but also addresses the needs of snowy plovers, and shore birds, and water fowl. One of the things that we've found doing our survey work over the last couple of years since acquiring the site is that the snowy plover use on the site has shifted dramatically. The areas that they used to use have changed in vegetative character to the point

where the plovers aren't using them too much anymore and have moved to different areas on the site more to their liking.

Chall: You have to retain that kind of habitat then?

Wilcox: Right. In a way, it has worked out pretty well for us in that now we're able to consolidate the snowy plover management areas, and we're not having to look at trying to get the plovers to move.

Chall: Oh, they're doing it on their own.

Wilcox: They're doing it on their own and going to a good place for them and freeing up an area that was really problematic from a restoration perspective. It was right in the middle of where we wanted to put tidal marsh habitat, so, to some degree, they're helping us out.

Chall: Well, that means that it probably was a good idea, though you might not have planned it that way, to have had some time to wait to see how the land would respond to the rains that we've had recently and any other changes that have occurred.

Wilcox: Yes, it hasn't been so much recent change but the ability to compare our data with work that was done for the Shorelands Project in the mid 1980s.

Chall: Oh, ten years.

Wilcox: Yes, and over that ten-year period, there has been a fairly substantial change in the area known as the pickle pond, which was where the plovers historically nested in greatest numbers. That has developed a lot of vegetation, vegetative cover, in the form of pickleweed and annual grasses and things.

Chall: Where are they now?

Wilcox: They've moved out into what's called Inner 11 pond and Pond 15.

Chall: All right, I'll check that on the map. Inner 11 and Pond 15?

Wilcox: I think, in some of our documents, we call it Pond 16. [laughter]

Chall: I have lots of maps, and it's very confusing.

Wilcox: Yes, they're basically the two ponds kind of in the northwest portion of the site right next to the active salt ponds. [See Map 1]

Funding for Restoration and Long-term Management

- Chall: Now, aside from the constraints you have about the species, the habitat for the species, you have a constraint with respect to money, \$1.3 million. Is that serious?
- Wilcox: Well, we don't know. We discovered we had more money.
- Chall: Oh, how does one discover that? [laughs]
- Wilcox: I was under the impression that we had only \$1.3 million, but it turned out we had almost \$1.7 million.
- Chall: Oh, that does add a bit.
- Wilcox: So, that's going to help, but we still don't know if it's enough or not. We have been working to kind of pare the project down to kind of do the minimum amount of site modification. At this point, I feel it's probably going to be enough.
- Chall: When you say enough, does this have to do not only with the technical work that needs to be done to prepare the habitat properly, dredging and whatever else is needed, but also for management, or does this not deal with management that might be necessary for a number years to ensure that the habitat remains the way you want it?
- Wilcox: This doesn't address long-term management.
- Chall: How will that be addressed?
- Wilcox: Well, we have addressed it to some degree through developing an endowment for the site. The city of San Jose, as part of their mitigation component has provided funds into an endowment as have the cities of Milpitas and Fremont.
- Chall: Oh, I see, and so you're assured that by, what--their annual budgets--that there's money there?
- Wilcox: There will be money, yes. They're providing funds to the department that go into a dedicated account.
- Chall: I see. That gives you a little breathing space.
- Wilcox: Yes, it will be helpful.

Additional Constraints

- Chall: Other problems. I noted when I sat in on your meetings that you had to deal with quite a few additional problems. I suppose John Thorpe must have had to deal with them too, but there were other things that seemed to be of greater concern. You had to deal with problems such as PG&E [Pacific Gas and Electric Company] and the power lines, CalTrans and some of their lines, and some sewer agencies--I don't know which ones they were--with respect to their pipes.
- Wilcox: We have the East Bay Municipal, what is it?
- Chall: East Bay Municipal Utility District. I don't know whether it's that one.
- Wilcox: No, the East Bay Dischargers Authority.
- Chall: That may be it. Then there's the Regional Water Quality Control Board, and Leslie Salt, and the Mosquito Abatement District, these are just some of them. When I listened to all the problems, I thought, mercy me, [chuckles] how do you even begin? You want to set up a habitat for these species, and then you have to be concerned about the underground pipes and the overhead power lines and all these other aspects? How are you doing?
- Wilcox: Well, I think we're doing pretty well. We're trying to incorporate those needs into the design so that, with regard to the PG&E towers on the eastern portion of the site, they already have a boardwalk put in so access to those isn't a big problem. We're incorporating a berm design into the project to provide access to the sewer. From a planning and design aspect, it seems to be working out pretty well.
- Chall: I see.
- Wilcox: Then, the snowy plover management area basically leaves the PG&E alignment through the northern portion of the property the way it is, so we're not going to have to do anything. We're not changing anything, so we don't have to deal with that. From an infrastructure perspective, we seem to be doing pretty well. The relocation of Cargill's facilities, I think, is going to be manageable.
- Chall: How have they been as a company to deal with?
- Wilcox: Oh, we have a good relationship with them. They've been cooperative. They have an interest in seeing the project go

forward and being a success. They have committed to provide us assistance in doing some of the project implementation.

Chall: Dredging?

Wilcox: By providing their dredge the Mallard, so that will be a really valuable contribution to the project.⁴

Chall: Somebody has to be going around working with all of these different agencies and their personnel. Who's doing that for you?

Wilcox: Oh, that's Steve's job.

Chall: Oh, I see. [laughs]

Wilcox: That's why we pay him.

Chall: Well, he knows most of these people by now, and he certainly knows the area that he's working on. That's an advantage. Are you feeling comfortable or optimistic that you're going to be able to get your plan, have it ready when it's supposed to be--the end of this year [1998].

Wilcox: Yes. The schedule has slipped a year, so I feel quite comfortable that we're able to be underway.

Chall: When?

Wilcox: Next year at this time [July 1999].

Chall: You'll be underway next year at this time?

Wilcox: As far as construction is concerned, yes. The plan, at this point, should be coming out by the end of August, then we'll be doing the CEQA documents for the project and making the permit applications and going to final design. We have a contract with East Bay Regional parks now to do the final construction documents, and the contract bidding, and construction supervision.

Chall: So, that has been successful for East Bay Regional parks to do that. I know, at one time, you were hoping they could.

Wilcox: Yes.

⁴Mallard is the name of the dredge. It is a rather historical feature itself.--C.W.

- Chall: Is there a plan for the trail that the East Bay Regional Park District and other folks have wanted over the years?
- Wilcox: The alignment will be identified in the project's plan. We're not going to be constructing it. That's up to the park district, but I think they're going to be trying to get grant funding, or funding to construct it concurrent with the restoration project.
- Chall: Will this be a phased in plan? I know John Thorpe's was a plan that was going to be phased in over a number of years. Is your plan phased in some way?
- Wilcox: No, we hope not. The only reason it might be phased is if we don't have enough money to do all the construction.
- Chall: I see. So, once your plan is accepted and you begin work on it, you expect to just get it all done within a certain period of time?
- Wilcox: Yes, yes.

The Public Comment

- Chall: What about public input? I know you have a Technical Advisory Committee, and they've been meeting, but there are quite a number of local environmentalists who are quite concerned about all this and have been for years.
- Wilcox: Well, we also have a Public Advisory Committee, and so, when we've met with the Technical Advisory Committee, then we generally have an evening meeting for them. We've had, I think, two of those so far. We had an initial scoping meeting and then a meeting to present the project alternatives and things this winter. When the plan comes out, we will have another meeting to present the plan, then there will be an opportunity through the CEQA review for people to comment. It's our hope that we will have talked to people enough and that they will understand the plan, and we'll have addressed everybody's concerns by the time it comes out.
- Chall: Who are the people most concerned with whom you have dealt? I mean are there some local environmentalists who are more concerned than others, or more vocal than others?
- Wilcox: Yes. What do they call themselves? The Committee to Save Alameda's Last Marshlands. They're called CALM. The primary people involved in that are Frank and Janice Delfino.

Chall: Right, I know them.

Wilcox: And Ron Barklow.

Chall: Oh, yes.

Wilcox: And then the Hayward Area Shorelands Protection Agency [HASPA] also has concerns about how what we're doing fits in with their plan. Then the Citizens' Committee to Complete the San Francisco Bay National Wildlife Refuge. Some of the members of that group have an interest, particularly Phil LaRiviere from a hydrologic perspective. He's going to be, I'm sure, making comments on the hydrology. That's why we're spending so much time trying to get the hydrology right.

Chall: Yes. I know the Delfinos and Barklows for many years have been quite concerned about local wetlands and almost anything having to do with the environment locally. They do collect a lot of information. You are concerned about their concern?

Wilcox: Oh, very much. I try to keep them as up to date as possible, and provide them with all the information, and try to get their comment, and try to address their concerns as part of the designs.

Chall: Are their concerns by and large valid concerns that you yourself learn something from?

Wilcox: Yes. Janice and Frank are very bright and committed people. I think they're certainly able to develop a lot of information relative to development projects. I don't know that they really have too much specific concern about the project per se. I think they're going to be particularly interested in how we deal with the snowy plovers and the seasonal wetlands on the site. And, is there going to be enough and that kind of thing? And they're concerned that we're not getting bamboozled by Cargill--that kind of thing. I think they--. [laughs] Well, I saw them last week, and they wanted us to delay the project in anticipation of San Francisco International Airport buying out Cargill. I don't think we're going to do that. Nothing we're proposing would preclude future restoration in the area if Cargill were to give up any of their surrounding ponds. [See Appendix B]

Chall: That's far into the future.

Wilcox: Yes, and I just think it's too important to get this under way. If you listen to Cargill, they want to stay in business.

Chall: That's what they say. That's right.

Wilcox: I don't have the luxury of anticipating people.

Chall: A great second guess there.

Wilcox: Right, so I think--. Recently, the Regional Wetlands Goals Project issued its report. It calls for the maintenance of substantial areas of salt ponds in the South Bay--. Even if Cargill were to go away, to manage those in the absence of somebody making salt is going to be really difficult. Cargill's continued existence in the South Bay is probably not a totally bad thing. Salt ponds provide substantial habitat value for waterbirds.

Chall: It's not totally negative. I mean you obviously would like them to stick around.

Wilcox: Yes, from a management perspective. I think people like myself and Marge Kolar would say, "If you're going to have salt ponds, keep them in business." We might like to see the conversion of more salt ponds into tidal marshes, and that may happen down the line, but I don't think we're saying, you know, eliminate salt production totally.

The San Francisco Bay Area Wetlands Goals Project

Chall: Well, you just brought up a subject that I wanted to discuss with you before we ended: the Regional Wetlands Goal Project. I noticed that you are co-chairman of the San Francisco Bay Ecosystems Goals Project. You put out recently a draft called the Regional Wetlands Goals. [June 26, 1998] Was that it?

Wilcox: Yes.

Chall: Can you tell me what it means to be co-chairman of this project? I don't know who the other co-chair is.

Wilcox: The other co-chair is Mike Monroe with the U.S. EPA [Environmental Protection Agency]. Basically, the project is an effort to just focus on the fish and wildlife, the biological needs of the San Francisco Bay Estuary into the future and make recommendations about how much of the various habitat types there should be and provide guidance on where it should be.

Chall: My, it looks like a tremendous project. I was visiting Dr. Howard Cogswell the other day, and he showed me the report. It had absolutely spectacular graphics. I'm sure there was a great deal

of substance in it as well. But I was quite taken by the fact that there's so much going on of this kind where people are really looking into every aspect of the Bay that one could possibly look into. Not always the same people involved. It seemed to me you had enough to do with the Baumberg Tract, but I suppose it all fits in. It's part of your area of expertise.

Wilcox: Yes. One of the driving forces behind this is that it's an effort to start to address, on a baywide basis, how you deal with recovering endangered species while accounting for the needs of a lot of species which, while they're not endangered, depend on the habitats of the altered baylands. We currently have ongoing internal wars between the agencies over restoration projects and whether or not you should mitigate for restoration work. It was spawned particularly by the Sonoma Baylands Project. The Goals is an effort to look at everything together and make recommendations that would balance the needs of the various species groups.

Chall: How is it working out?

Wilcox: Well, at this point, I think it's worked out very well.

Chall: At least you're talking to each other.

Wilcox: Oh yes, and I think there's probably a lot of agreement about what the goals say or the objectives of the goals. There is certainly a lot of concern about how they would be implemented because basically we've called for all of the baylands to be protected and that includes a lot of private property. We called for about 60,000 acres of tidal marsh restoration, which is going to require substantial land acquisition, and conversion of some of the existing wetlands types to tidal marsh in the Suisun Bay Area.

Chall: That's a cost.

Wilcox: Yes, there's cost and there's people's existing interest and attachment to the land they own and use.

Chall: That's right.

Wilcox: If you go to the Suisun Marsh, it's almost all managed wetlands for water fowl, so we had four public meetings last week. The last one was in Benicia, and we had, by far, the largest turnout-- the angry duck hunters. [laughter]

Chall: Well, there you are. When you just look at what's happening with CALFED [California-Federal Bay Delta Program], you can understand this perhaps looks even more difficult. [See Glossary]

Wilcox: Right. We feel that the Goals that we've developed are much more sound from a biological perspective than what CALFED has done in their document. They're primarily focused on the Delta and upstream, and their treatment of San Francisco Bay and the lower estuary is really poor.

Chall: It's not their concern?

Wilcox: Scientific expertise and understanding about the estuary is very poor. We're hoping the goals will be able to inform the public and decision makers about the diverse biological issues in the Bay.

Chall: That's interesting because it seems to be all tied in when you start looking at the Delta here and the estuary. There are so many groups--the CVPIA [Central Valley Project Improvement Act], and CALFED, and yours, just to name three --that you wonder how they're all going to be able to work these things out and still save the Bay. [See Glossary]

Wilcox: Yes, that's an interesting thing in that, while they're all connected, you have kind of the Bay perspective and then you have the Delta and the water interests. Everybody always talks about the Bay-Delta, but they're very different things.

Chall: Yes, and very different people concerned.

Wilcox: Very different constituencies.

Chall: Yes, the so-called stakeholders. Well, I think I've come just about to the end of my tape here. If there is anything else you want to add to this interview, you're welcome to do it when you read the transcript. I really do appreciate the time you've given to me as well as a lot of good information. Thank you very much.

Historic Preservation and the Baumberg Tract

Wilcox: Sure. I don't know if, when you talked to Steve [Foreman], he brought up the issue of the historic preservation in restoration of the Baumberg site.

##

Chall: All right, tell me about the historic aspects of the Baumberg Tract.

Wilcox: Well, basically, the site, or the property, includes the old Eden Landing harbor site, which was a port back in the period from the 1850s through the early 1900s. It was a shipment point particularly for agricultural products to San Francisco. The schooners like the Alma used to go in there to transfer freight. So, we have that site. CalTrans and past historic investigations, or archaeological investigations, of the site have indicated that the port site is a potential site for listing on the historic register.

Chall: Oh, my.

Wilcox: So, we have been working to assess the site and try to work around it because, if we do work that's going to adversely affect it, then we're going to have to get into a substantial investigation of the site, which can be very costly. So, we're trying to plan around it. Unfortunately, it's right in the middle of one of our key channel locations.

Chall: What does it mean to work around it? Does it mean you have to leave old pilings or a dock or something that looks like it there?

Wilcox: Yes, you can't, on the surface, really see anything of the site, but there is a lot of buried material on site, lots of bottles, and probably old pilings, and possibly foundations, some of the fill. You can still see the turning basin for the port facility. The easiest way to deal with it is to avoid it, so we're having to incorporate that into the project design.

Chall: Would some of the work that you do to get water into the site, or whatever you're doing with dredging, et cetera, for habitat, would it mess it up in some way? I mean would it change it?

Wilcox: Yes, well, that's part of what we're assessing in our archaeological report right now is how best to address the Eden Landing port site. Depending on how we have to treat the site, it limits our ability to restore the channel that could come up Mt. Eden Slough. To some degree, you know, we may be able to kind of restore the historic character of the port site by bringing the slough through its historic alignment, and we're hoping that will be considered an avoidance measure and possibly even an enhancement.

Chall: Is there another problem of that kind on your site?

Wilcox: Fortunately not. Having historical features on sites is a complicated issue to deal with. People think about environmental constraints being fish and wildlife, but historical can be equally as difficult to deal with.

- Chall: No, Steve hadn't told me about that. That's really quite interesting because most of the time we think about historical sites as being old buildings and not leftover lost ports, docks, and things of this kind. Well, there they are. I suppose there may have been others that you encountered in your Regional Wetlands Goals Project?
- Wilcox: Well, we're not that detailed in that aspect with the Goals.
- Chall: I see, so no one has had to bring that up to you.
- Wilcox: No, but I'm sure for other restoration sites it will be an issue. On the Baumberg site, we have the port site, and then there are two prehistoric midden sites on the site. Fortunately, we're able to totally avoid those.
- Chall: Yes, I noticed you had an archaeologist on your task force for that reason.
- Wilcox: Yes, right. CalTrans has been very involved because they have to use our historical assessment in their Environmental Impact Report. We're basically doing the historical compliance aspect of the Dixon Landing Road project, so they've had somebody participating, and RMI has an historian archaeology sub-consultant too to work for us.
- Chall: There's quite a bit involved that one doesn't usually think about on projects of any kind, particularly this kind. That's really very interesting, and I'm glad you brought that up. I wouldn't want to lose that story. Is there anything else?
- Wilcox: I think that's it.
- Chall: All right, thank you very much.
- Wilcox: Sure enough.
- Chall: Goodbye.
- Wilcox: Goodbye.

Regional Oral History Office
The Bancroft Library

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Berkeley, California

California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Roberta G. Cooper

THE HAYWARD CITY COUNCIL AND THE SHORELANDS PROJECT

An Interview conducted by
Malca Chall
in 1998



Roberta Cooper, 1996.

Photo by Steve Rubiolo.

TABLE OF CONTENTS--Roberta G. Cooper

THE HAYWARD CITY COUNCIL AND THE SHORELANDS PROJECT

INTERVIEW HISTORY	299
BIOGRAPHICAL INFORMATION	300
Background: Education, Career and Route to Mayor of Hayward	301
The Shorelands Project	303
Early Considerations	304
Final Decisions of the City Council	307
The Ballot Measure HH and Land Use Plan on the Weber Tract and Oliver Properties	308
The Role of the City Managers and the Shorelands Project	310

INTERVIEW HISTORY--Roberta G. Cooper

Roberta Cooper has had close ties to Hayward's government since 1985, when she served on the task force of the General Plan Revision Committee. Her interest in city planning and governance prompted her to run for a seat on the city council in 1988. She won; she won again in 1992. In mid-term, 1994, she ran for and was elected mayor. She began her second term as mayor of the city of Hayward in 1998.

These years roughly coincided with those when John Thorpe was applying to both the federal government and to the city of Hayward for approval of his Shorelands Project development plans. Although several other present city council members served between 1984 and 1992, when John Thorpe's project was active, I chose to interview Roberta Cooper because she is currently the mayor, and because her role in the city's final negative decision on the project was mentioned by John Thorpe in his oral history interview. The views of Mayor Cooper's fellow city council members have been well documented in the Hayward Daily Review.

Mayor Roberta Cooper agreed to participate in this project, and the interview was conducted in her office on October 14, 1998. Although she apologized for not recalling all the events and intricacies related to the Shorelands Project, she clarified ambiguous statements made by Mr. Thorpe and other interviewees. She also moved the ongoing Hayward shoreline/wetlands debate forward to the controversy over Proposition HH--the housing and recreation issue facing Hayward voters on November 3, 1998, just weeks after our interview. Several other interviewees also discussed Proposition HH. Material from the Hayward City Clerk's files about Proposition HH are gathered together as Appendix D in this volume. This interview has provided an important link between the Shorelands Project and the ongoing concern with the development of open space close to the shoreline, a current "hot button" issue which was discussed by other interviewees.

Mayor Cooper is an articulate woman who speaks softly, but with care. She answered the questions I posed to her fully, and returned her lightly edited transcript to me without changes, other than substituting the pronoun "he" for "I" in one case. I am pleased to include this interesting and timely interview in this volume on the history of the Baumberg Tract.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall

Interviewer/Editor

January 2000

Regional Oral History Office

University of California at Berkeley

Regional Oral History Office
Room 486 The Bancroft Library

University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name ROBERTA G. COOPER

Date of birth 3-18-37 Birthplace S.F.

Father's full name HYMAN SINGER

Occupation BOOKKEEPER Birthplace RUSSIA

Mother's full name SARAH SINGER

Occupation RETAIL CLERK Birthplace PHILA., PA

Your spouse JERREL S. COOPER

Occupation TEACHER Birthplace S.F.

Your children JAY M. COOPER

SCOTT A. COOPER

Where did you grow up? S.F.

Present community HAYWARD

Education B.A. 1958, M.A. 1979

Occupation(s) TEACHER, MAYOR OF HAYWARD

Areas of expertise U.S. HISTORY, TRANSPORTATION, EDUCATION,

Other interests or activities GARDENING, STITCHERY,
READING MYSTERIES

Organizations in which you are active AAUW, LWW, NCW

INTERVIEW WITH ROBERTA COOPER

THE HAYWARD CITY COUNCIL AND THE SHORELANDS PROJECT

Background: Education, Career and Route to Mayor of Hayward

[Date of Interview: October 14, 1998] ##¹

Chall: Before we get into the Baumberg Tract, I'd like just a thumbnail sketch of your background: something about where you grew up, your education and your career, and how you got into city work. I'm sure you have quite a bit of material around to answer those questions, but you can give me a thumbnail sketch.

Cooper: All right. I'd be happy to give you a thumbnail sketch. My name is Roberta Cooper. I am the mayor of the City of Hayward. I am starting my second term of office. Each term is of four years. I came to Hayward in 1962, after getting married in San Francisco to a person who, like I, had been born and raised in San Francisco. We moved to Hayward in 1962 and have remained in Hayward since that time. As I mentioned, my husband and I are both native San Franciscans.

I attended school in San Francisco--went to Commodore Sloat, went to St. Monica's, Lincoln, and spent the last two years of high school at the old Lowell. I went on to City College in San Francisco, received an A.A. and then went to UC Berkeley where I received a B.A. in American History and much later went back to school and received a master's degree from the University of San Francisco.

Chall: In what field?

Cooper: Education.

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcripts.

Chall: Then did you become a teacher?

Cooper: I was trained as a teacher and entered the teaching profession in 1959, left it for some years, and then went back to it in 1969, and then retired from the Hayward school district in 1994 after twenty-six years.

Chall: Were you active in city government prior to your going onto the city council?

Cooper: No. I had been appointed to the Human Services Commission and the personnel board, had served as a task force member on the General Plan Revision Committee--

Chall: And your city council membership began--

Cooper: Nineteen eighty-eight.

Chall: So the task force of the General Plan Revision Committee was earlier than that, I guess.

Cooper: Yes.

Chall: I think that was '84, wasn't it? I think I have 1984 in my notes.

Cooper: It was either '84 or '85, I think. And not too long.

Chall: About two years, I think.

Cooper: It was about eighteen months.

Chall: So how did you happen to be asked to go on a committee of that scope?

Cooper: I applied.

Chall: Oh, I see. [laughter] Simple enough. They were happy to have you.

Cooper: I hope so.

Chall: What interested you in city planning?

Cooper: Well, I had become very interested in what was going on in Hayward and it just seemed another opportunity not only to become involved but to learn more of how the city functions.

Chall: Shortly after that, then, you decided to go on the city council?

Cooper: Yes. It was really a direct relationship to the experience on the General Plan Revision Committee to my running. I was going to run in 1986 but then was encouraged to run in 1988, which I did, and won.

Chall: And you remained on the city council, but ran for mayor in 1994?²

Cooper: Yes, they were four-year terms. I ran again in 1992 [for the council] and won and in 1994 I ran for mayor and won and then won in 1998.

Chall: So you left your city council position term in mid-term?

Cooper: Right. And Olden Henson was appointed in my place.

The Shorelands Project

Chall: Now, let's see, if you came onto the city council in 1988, that was sort of mid-way--we're going on to the Baumberg Tract, now--mid-way in the planning for the Shorelands Project. Because John Thorpe had initiated it in about 1982.

Cooper: Oh, yes.

Chall: So when you were on the General Plan Revision Committee did the Shorelands come up at all?

Cooper: Seems to me that that was one of the questions that I was asked when I was being interviewed for the General Plan Revision Committee--what was my stand on Shorelands. I think it was, "Do you approve of gambling?" But it really was because of the racetrack that was proposed there.

Chall: Right.

Cooper: You know, I really don't recall any significant discussions about that, but that area and the Walpert Ridge were two areas of contention as I came on that task force.

Chall: And did you have any mindset at all on either of these at the time?

²In Hayward the elected mayor is also a member of the city council.

- Cooper: No, but I certainly learned a lot and came away with a lack of support for both of them.
- Chall: After--
- Cooper: After learning what I did on the revision task force.
- Chall: So the revision task force actually set you on a path? Is that right?
- Cooper: Yes, it did. It was a wonderful opportunity.
- Chall: Was it against certain types of planning, or types of planning in certain places? Or, development I mean, not planning, but development.

Early Considerations

- Cooper: I think it was, for the Shorelands. Not that I totally understood it, but for its supposed comprehensive use of the land. And yet, I came to learn that financially it would not be as presented: industrial would go in first to pay then for all of these--you know, the racetrack, et cetera. And that just didn't seem like an awfully good idea. And it would have impacted traffic just awfully. In terms of Walpert Ridge, it was, "Now what do we do with the last vestiges of wonderful open space?" If it is to be housing, how can it be accommodated? And that was what we never went into at that time.
- Chall: But the Shorelands, per se, the fact that it was on wetlands--there was some concern about the environment at that point. That was not your concern; your concern had mainly to do with the economics of it?
- Cooper: I think it had to do a lot with the environment, but obviously the economics of the project entered into many discussions.
- Chall: In terms of where the various members of the city council were during this period, in 1988 to 1991--or '92 when it all ended--there were members of the council who I think approved the project.
- Cooper: Oh, and were very enthusiastic and really supportive.
- Chall: And there were those others of you who were not supportive.

- Cooper: Correct. It really wasn't until 1990, when Michael Sweeney was elected mayor, that there was enough of a majority on council to begin to slow down the development and look at some of these community hot buttons and deal with them.
- Chall: I have interviewed John Thorpe for this oral history project--of course, there wouldn't be one without him. But he feels that politicians were afraid of the size of the project, and they were afraid of political and environmental squawk. Eventually he had the approval of all federal agencies, he claims, and he needed the city's approval before he got the final federal permit from, I guess, the Corps of Engineers. He feels that some city managers were sympathetic with his plan--Don Blubaugh, for example--but by the time it got to Jesus Armas he had no real help. City managers, he feels, really had a lot of control over the city council. During the mayoral terms it varied: in the Giuliani era he had city support, during the Sweeney era it was neutral, and during the Cooper era it was the tail-end--no help whatsoever.³
- Cooper: I don't recall by the time I became mayor that it was a feasible project. I remember going to a meeting at his garage--remember the Shorelands building?
- Chall: Yes.
- Cooper: And there was a discussion--actually it was a diatribe--by John against the city, when I got up and left.
- Chall: In 1994 he was pretty well finished, was he not?
- Cooper: Either he had already declared bankruptcy or he was close to it.
- Chall: I think he declared bankruptcy in 1991 [July, 1991].
- Cooper: Okay, well, then it basically--
- Chall: It may have been when you were on the council.
- Cooper: Yes, I think so.
- Chall: Rather than being mayor?
- Cooper: Right, I think it was. And it might have been--we were discussing the Zucchini Festival, I think. By that time John was not rational in any discussion about the city of Hayward.

³Alex Giuliani, mayor 1982-1990. Michael Sweeney, mayor 1990-1994. Roberta Cooper, mayor 1994-present.

- Chall: I see. He felt that you council members--or those of you who opposed him (and there were always a few who didn't)--were really blocking him. Was that right? Blocking his proposal?
- Cooper: We were hoping that it wouldn't go through. I wish I can remember the years more clearly now, but I think there was a majority of us on council who were not supportive, feeling that the impact--not necessarily the commercial development, but the industrial development and the racetrack--I think the racetrack was always the glitch in the plan.
- Chall: I see.
- Cooper: What the racetrack would have to do in terms of the environment--the traffic, clean air, public safety. There were a myriad of reasons that I think are perfectly justifiable.
- Chall: About all the city could do at that time or any time was, as I understand it, determine where the interchange would be--whether it would be the Whitesell or another interchange [Cabot], one of which would be more expensive than the other. And you weren't able to make a final decision on it until you got the Corps of Engineers permit approval, was that it?
- Cooper: It may have been. I can't say for sure.
- Chall: But your concern was the interchange--the cost of the traffic, the loop?
- Cooper: Well, yes. And as I recall, Mr. Thorpe at that time was promising everything to everybody. And I don't think he had much credibility at that time. It was an issue by some people in the community. It was certainly supported by the Chamber [of Commerce] and the business leaders of the community, but there are a lot of other folks who didn't feel that it would be the best project for that area and for the city.
- Chall: Now you had probably Mr. [Bill] Ward and--
- Cooper: Mr. [Matt] Jimenez.
- Chall: The five on the council--
- Cooper: Seven.
- Chall: Seven. So that Ward and Jimenez, who were for it--
- Cooper: Somehow I don't think Shirley was in support of it.



CITY OF HAYWARD AGENDA REPORT

AGENDA ITEM _____

WORKSESSION ITEM _____

Date: October 2, 1990
 To: Mayor and City Council
 From: City Manager

STATUS REPORT ON THE PROPOSED SHORELANDS PROJECT

RECOMMENDATION

Review the attached materials and request any additional information you may wish at subject work session.

BACKGROUND

Attached hereto is:

1. A "Summary of Prior Events and Present Status of Shorelands Project" by the Shorelands Corporation.
2. A letter dated September 2⁵, 1990 from "Skid" Hall (Retired, Chief of Permit Review Section, U.S. Army Corps of Engineers, San Francisco District, 1977-1990) concerning the status of the Shorelands project in the federal review process.
3. A letter dated August 31, 1990 from the Fish and Wildlife Service to the Corps of Engineers setting forth a Preliminary Biological Opinion (PBO) on the Shorelands project.
4. A letter dated September 7, 1990 from the Shorelands Corporation to the Fish and Wildlife Service responding to the Preliminary Biological Opinion (PBO).

Based on the Reasonable and Prudent Alternatives (R & PA) contained in the PBO, or an alternative R & PA as may be negotiated, Shorelands will be able to file a new permit application with the Corps of Engineers and will be ready to likewise amend their City of Hayward permit request to reflect their present proposals.

STATUS REPORT ON THE PROPOSED SHORELANDS PROJECT

Submission of the applications will then also necessitate revisions in the previously prepared DEIS/DEIR. It is the Corps' practice to initiate the preparation of any required environmental documents at such time as an application for Corps permits is filed. This is done so that the information contained in the environmental documents can be used to evaluate the mitigation plan for the project approval (this is the "no net loss" mitigations, as well as the mitigations needed to avoid impacts on endangered species) and the Alternative Sites Analysis required for a federal permit to fill wetlands.

It is the purpose of the Alternative Sites Analysis to demonstrate that there are no sites that could be used for the Shorelands project (a non-water-dependent use) that do not impact wetlands. If Shorelands does not provide this evidence, federal authorizations will be withheld.

If Shorelands successfully satisfies this Alternative Sites Analysis, then the question of whether a Cabot Boulevard interchange with Route 92 should be built, instead of a Whitesell interchange, becomes most relevant.

The Whitesell interchange is \$2.3 to 4.8 million cheaper (depending on options) than the Cabot Boulevard interchange; it does not impact wetlands and thus, does not require related federal authorization; and has been shown to satisfactorily serve traffic needs as studied (without Shorelands). If the Shorelands is to be built and if it is determined that the Whitesell interchange will still handle the traffic from that project as well, then the Whitesell interchange would remain the obvious choice. If, however, it is determined that there are no alternative sites for the Shorelands project and that a Cabot Boulevard interchange is instead needed to handle the traffic from it and other sources, then the resulting project for which there would be no alternatives would be a Shorelands/Cabot Boulevard interchange project.

Increased costs for constructing the alternative Cabot interchange and the costs associated with mitigating the impacts of that alternative facility would all be attributable to the Shorelands project.

Louis N. Garcia, City Manager

Attachments

34-90MM

Chall: Shirley Campbell?

Cooper: Right.

Final Decisions of the City Council

Chall: There was a period of time in 1990 when the U.S. Fish and Wildlife Service had claimed that if he were to lop off some sixty acres from his plan, they might be willing to consider it again. And at that time, according to this article in the Hayward Daily Review of September 10, 1999, "The City Council is largely undecided about how it felt about the Shorelands project.... Councilman Matt Jimenez said he has been in favor of the project from the beginning. Council members Roberta Cooper and Shirley Campbell said last week that they were largely undecided and uninformed about the project. Mayor Michael Sweeney said he was concerned about the project and that he would ask some 'tough questions' before forming an opinion."

And then later, there was the discussion, the argument, over a period of about a month or so, whether to--what would you call it--pull a file, I mean, close a file.⁴ The city council after a period of a month or so decided that they would not have the staff close the file--would leave it open, even though the staff objected. Staff felt it was time to clear it off the books. He was already in bankruptcy and nothing had been going for quite some time.

Cooper: Right. You know what, I vaguely remember that.

Chall: Well, what would have caused you to decide after a month or so to keep the the file open?

Cooper: Maybe it was just time to be middle of the road and not make, in essence, any final decision.

Chall: Because it's really up to him to reopen the permit process.

Cooper: Yes, and he never could.

Chall: [Reading from the same article] "But at that time Councilmen Jimenez and Bill Ward said that the Shorelands file should be

⁴Hayward Daily Review, August 14, 1991; September 14, 1991; October 10, 1991.

reopened. Council members Shirley Campbell, Roberta Cooper, and Nick Randall said they wanted to discuss the procedural aspects of processing all projects, not just Thorpe's development. And council member Doris Rodriguez said Hayward owed Thorpe a hearing as a form of 'respect' because he has contributed to or paid for many community events including the city's Fourth of July fireworks."

Cooper: Oh, well. [laughter]

Chall: So that was the pretty much the end of the city council's activity with respect to the Shorelands.

Cooper: Yes, until relatively recently.

The Ballot Measure HH and Land Use Plan on the Weber Tract and Oliver Properties

Chall: Okay, now you have this new project which is in contention? Are you thinking about the one that is ballot measure HH?

Cooper: Well, that is the area that's east of the railroad tracks. The area to the west of the tracks is buildable without permission from the residents of Hayward.

Chall: Oh, I see, so that the HH concerns only that which is west of the tracks at the Weber property and the adjoining Oliver property? [See Map 1 and Appendix D]

Cooper: West of the tracks, you're right.

Chall: That is close to the Baumberg Tract. In fact, those are parcels that Mr. Thorpe would have liked to have used for mitigation, at least. But the city feels that is a viable project? Are you going to build on that part of it?

Cooper: Well, we're not going to build anything on it. We've done a specific plan for that area, council has adopted it, the heirs to the Oliver fortune--the United Church of Christ and the Hayward Historical Society--will be kind of the grand masters in terms of deciding on developers and all of that. It won't be any of our--

Chall: Oh, I see.

Cooper: That's not what we do. What we do is to make sure that the land use is appropriate. And we've approved the land use. Now, there

are interesting arguments on both sides of HH and we'll have to wait until November to see which one--

Chall: I see. As far as the city is concerned, the plan has total approval.

Cooper: Yes. I think there was only one--Ron Hulten--who voted against it.

Chall: How do you look at that portion of the tract? Now, we're talking about the part that is west of the railroad tracks.

Cooper: Eight hundred acres of that has been sold by Cargill Salt to the state California Wildlife Conservation Board.

Chall: Yes, that's the Baumberg Tract as we call it.

Cooper: Is that what it is?

Chall: Yes.

Cooper: The fact of the matter is, that's a significant amount of acreage of that western area, so that whatever is developed is not even going to be on the Bay, it's going to be a distance back. A part of the concern has been that there's going to be a lot of fill west.

Chall: Yes.

Cooper: I've asked the staff to look at how much fill Foster City has, because not only did they use fill, Foster City was not damaged at all in the 1989 Loma Prieta earthquake. And so with the pristine view about not using fill--the fact is that we've seen significant development in the bay region using fill. The 800 acres is proposed to be used for the Pacific Flyway, for the birds, so the fact is that not only do they have that, but the interpretive center area [Hayward Area Shoreline] adds up to a reasonable amount of land devoted to restoring the marsh and encouraging healthy wildlife.

Chall: So you feel that there's enough of it there already?

Cooper: Yes. Well, I don't believe there's enough there, but I think there's been a good faith effort. And life changes in terms of how we perceive things and we can't be so parochial that nothing happens. Community is a dynamic organism and if it isn't allowed to grow and restructure, it dies. And I don't think any of us wants Hayward to die.

Chall: Now, in John Thorpe's development, there had to be an EIS as well as an EIR and he had to get approval from the federal Fish and Wildlife Service and the Corps of Engineers. In this project you did not need that?

Cooper: Oh, [laughs] yes, indeed.

Chall: Oh, you did?

Cooper: Oh, yes!

Chall: And you did get it?

Cooper: You know, I have no--I don't recall, but yes, all those permits were needed because there are wetlands on the Weber property.
[See article, following page]

Chall: Right, so you passed the jeopardy. That's what they call it.

Cooper: Pretty much.

Chall: When you say pretty much, what does that mean?

Cooper: Well, I'm hedging my bets. I'm just not sure. I think that they're still working through the feds.

Chall: I see, I see. But what would stop it altogether would be a negative vote?

Cooper: Probably.

The Role of the City Managers and the Shorelands Project

Chall: Going back to Baumberg and Shorelands. Let me ask you another question that comes up. The attitude of city managers. John, for example, thinks that Don Blubaugh was supportive and that Jesus Armas was not and that they really helped formulate how the city council feels or felt.

Cooper: That's not true. It works just the opposite. Good city managers read the council. If you recall when Don Blubaugh was here, Barbara Bradley was on the council, Julio Bras, Bill Ward, Matt Jimenez--well, if you count, that's a majority. And so when you have that, plain and simple, you've got a city manager who has his path planned out for him. And so what the message is, you will do all that you can do in order to make this a go. When Jesus came

Oakland Tribune, September 23,
1999.

AROUND THE AREA

Baylands project OK'd in Hayward

One of largest
in the city's history

By Karen Holmeister
STAFF WRITER

HAYWARD — The City Council on Tuesday endorsed final plans to build a massive residential and business development that ranks among the largest projects in the city's history, on baylands near the Hayward-Union City border.

The council's 6-1 vote came nearly a year after voters gave general approval to the complex of 536 homes, a business park, light manufacturing, a small commercial center, a 25-acre sports park and two smaller parks in November 1998. Councilman Kevin Dowling was the lone dissenter.

Nels Nelson, who supports the project, quoted a historian in noting that "government exists for the greatest good and the greatest number. There is a lot of good to

be done here (with the project.) There are more good things than objectionable things."

The development will be constructed during the next 10 to 15 years south of Highway 92, the Hayward-San Mateo Bridge entry, and east of Hesperian Boulevard.

The 251-acre project covered in Tuesday's vote is Hayward's largest remaining undeveloped flatlands area. The issue of developing this land was complicated during the last six years by the site's proximity — about 2½ miles east — to the Hayward shoreline.

Evelyn Cormier of Hayward said, "There is no good reason to build housing in a wetlands area. What makes our area unique and wonderful, in addition to the weather, are things controlled by the bay."

Council members adopted a subdivision map and approved, for first reading, a development agreement for the project. The development agreement will be adopted in the next month or two.

The council first agreed to the overall project in February 1998, subject to voter

approval on land use changes in a 155.5-acre section of the 251-acre project.

Development of the entire project hinged on a majority of voters agreeing — as they did last November — that the 155.5 acres should be changed from open space to residential, industrial corridor and parks and recreation uses.

There were 25 speakers during the two-hour public hearing Tuesday, including 13 for the project, seven against it, and five commenting on it in general. More than 100 people attended the meeting, but only 65 were left in the council chambers when the vote took place at 10:40 p.m.

Development plans originated in 1993 when the city authorized studies for about 1,200 acres south of Highway 92 and west of Hesperian.

The present project began taking shape after 835 acres south of Highway 92 were sold in 1996 by Cargill Salt Co. to the California Wildlife Conservation Board for permanent open space.

back--I don't know where he gets Jesus--Jesus left very soon after Don Blubaugh.

Chall: You had Louis Garcia for a while.

Cooper: Yes, and then Jesus came back, I think, in '93.

Chall: And by that time it [Shorelands] was finished.

Cooper: By that time the majority had changed and this was not what we wanted to do. And city managers who are worth their salt take that into serious consideration.

Chall: And from your old contacts with John Thorpe, you feel that he might have been just upset in general because his plan didn't go through?

Cooper: I would suspect that he's a very angry man.

Chall: All right. So, unless you have something to say that might wrap up this discussion--

Cooper: I appreciate your coming.

Chall: Well, I thank you very much for your time.

Cooper: You're welcome. I'm sorry that I don't have more accurate information, but a lot of those battles, et cetera had gone on through the eighties.

Chall: I just wanted to get one city council member's slant on this project.

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The Bancroft Library

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Berkeley, California

California Water Resources Oral History Series

THE BAUMBERG TRACT: FROM THE PROPOSED SHORELANDS DEVELOPMENT
TO THE WETLANDS RESTORATION (EDEN LANDING ECOLOGICAL RESERVE), 1982-1999

Janice Delfino

ACTIVIST FOR THE ENVIRONMENT

An Interview conducted by
Malca Chall
in 1998



Frank and Janice Delfino, 1998.

TABLE OF CONTENTS--Janice Delfino

ACTIVIST FOR THE ENVIRONMENT

INTERVIEW HISTORY	314
BIOGRAPHICAL INFORMATION	316
I BACKGROUND	317
Education and Career in Nursing	317
Genesis of Activism for the Environment	319
II CONCENTRATION ON THE HAYWARD AREA SHORELINE	323
The Hayward Area Shoreline Planning Agency [HASPA]	323
John Thorpe and the Shorelands Project	324
The Public Trust Issue	329
The Eventual Purchase of the Baumberg Tract for the Wildlife Restoration Project	330
Analyzing the Restoration Project	332
III ASSESSING THE CONSEQUENCES OF CITIZEN ACTIVISM	338
The Value of Vernal Pools	339
Opposition to "Re-creating" Creeks	340
Roberts Landing: The Toxic Soil Issue	342
Citizens for Alameda's Last Marshlands [CALM]	345
The Suit Against Leslie (Cargill) Salt Company	346
Save San Francisco Bay Association, The San Francisco Airport, and Other Matters	348

INTERVIEW HISTORY--Janice Delfino

I have known Janice Delfino since the mid 1960s, when our children attended the same elementary school in Castro Valley, California. Since 1955, Janice and her husband Frank have lived in a modest home on two-thirds of an acre hillside in Castro Valley. They grow varieties of fruit, vegetables, almonds, and walnuts, as well as flowers to attract birds and butterflies. They joined the Ohlone Chapter of the Audubon Society in 1967, the year after the organization was founded. Eventually they became active in environmental issues dealing with the San Francisco Bay shoreline of southern Alameda County. Our paths occasionally crossed after I moved to Hayward in the early 1970s. Gradually I became aware of their activities thorough the local press or through the Ohlone Audubon Chapter's bulletin, the Kite Call.

When I began my research on the Baumberg Tract I was unaware of the Delfinos' interest in and knowledge about Baumberg until Howard Cogswell told me about Janice's collection of old maps of the Hayward shoreline. I soon realized that Janice and Frank knew important parts of the history of the Baumberg Tract, and had themselves played an important part in the property's more recent history. When I asked Janice and Frank to participate in the oral history project, Janice agreed to be interviewed but Frank declined, preferring to spend his time working on their small farm and entrusting Janice to explain their unique activist partnership. As Janice discusses Frank's scientific background, one soon realizes that the couple has always worked closely as a team.

We scheduled our interview for the morning of July 21, 1998. At the table in their large, old fashioned kitchen, overlooking a small grape arbor, we placed the tape recorder and an assortment of papers, press clippings, and other material which Janice thought would be useful. For many years she had been collecting and carefully filing innumerable old and current maps, pamphlets, newspaper clippings, environmental reports, and other material relevant to her area of concern. Janice generously provided copies of selected material for the volume, and for deposit in The Bancroft Library. Most of the maps in this volume are copied from her collection. We recorded for nearly three hours, with a lunch break, at which Frank joined us.

The range of the Delfinos' activities goes beyond the Baumberg Tract, and is closely linked to other wetlands projects around the Bay. Some are currently generating heated debate. These ties to other projects and organizations indicate the passion, hard work, and dedication to the environment which drive citizen activists like Janice and Frank Delfino. To some, this might be considered serious and unwarranted interference. Others may consider such action as providing

the leadership that is necessary to maintain or enhance the integrity of the environment. Judgments vary widely.

Janice knows her subject well and has strong opinions. Because she is so enthusiastic about her activities she discussed many of them in rapid succession. Among the topics we discussed were Shorelands, the Cargill Company, present plans for restoration of the Baumberg Tract, and the many other projects around the area with which she and Frank have been or are currently involved. She feels that she and Frank have been successful in preventing developments which would have harmed endangered plant and animal species.

She reviewed her edited transcript, correcting spelling and adding details. Later, regardless of her busy schedule, she provided additional information whenever I asked for it. As the final chapter of this volume, Janice Delfino's interview links her untiring activism on behalf of the environment to the history of the Baumberg Tract and other related wetlands issues in the San Francisco Bay Area.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer/Editor

January 2000
Regional Oral History Office
University of California at Berkeley

Regional Oral History Office
Room 486 The Bancroft Library

University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name JANICE ANN BINSACCA DELFINO

Date of birth OCTOBER 9, 1926 Birthplace SOLEDAD, CALIFORNIA

Father's full name ALFRED D. BINSACCA

Occupation FARMER Birthplace WATSONVILLE, CALIFORNIA

Mother's full name TILLIE MARIE BIANCHI BINSACCA

Occupation HOMEMAKER Birthplace SOLEDAD, CALIFORNIA

Your spouse FRANK G. DELFINO

Occupation CHEMICAL ENGINEER Birthplace MENLO PARK, CALIFORNIA

Your children THOMAS A. DELFINO, NEILE. DELFINO

Where did you grow up? SOLEDAD, CALIFORNIA ON A FARM.

Present community CASTRO VALLEY, CALIFORNIA

Education STANFORD UNIVERSITY SCHOOL OF NURSING B.S. DEGREE

Occupation(s) RETIRED REGISTERED NURSE

Areas of expertise I DON'T LIKE TO USE THE WORD EXPERTISE. FRANK AND I HAVE AN ABIDING INTEREST IN PRESERVING AND PROTECTING THE WETLANDS AROUND SAN FRANCISCO BAY AREA. WE ACQUIRE MAPS, AERIAL PHOTOS, TAKE OUR OWN PHOTOS, AND GATHER OTHER PERTINENT INFORMATION ON THE WETLANDS WE ARE STRIVING TO PROTECT.

Other interests or activities WE ARE FORTUNATE TO HAVE A LARGE VEGETABLE, BERRY AND FRUIT TREE GARDEN. I AM WORKING TO DEVELOP A BUTTERFLY GARDEN. WE BOTH VOLUNTEER OUR SERVICES AT THE DON EDWARDS SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE. BIRD WATCHING.

Organizations in which you are active CITIZENS COMMITTEE TO COMPLETE THE REFUGE, HAYWARD AREA SHORELINE PLANNING AGENCY-CITIZENS ADVISORY COMMITTEE, VOLUNTEER AT THE DON EDWARDS SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE, FRIENDS OF THE ALAMEDA WILDLIFE REFUGE, OHLONE AUDUBON SOCIETY, MEMBER OF STANFORD NURSE ALUMNAE

INTERVIEW WITH JANICE DELFINO

ACTIVIST FOR THE ENVIRONMENT

I BACKGROUND

[Date of Interview: July 21, 1998] ##¹

Education and Career in Nursing

Chall: The first thing I'd like to know, Janice, is your background--your educational background--and whatever career you had which did or didn't bring you into this activism which is now a major part of your life.

Delfino: I am a registered nurse, with a B.S. degree from the Stanford University School of Nursing. And I think my concern about public health--not that I'm a public health nurse, but I think my concern about health, and especially the health of the Bay, is because people do eat fish and shellfish--what they call finfish and shellfish--from the Bay. I just think that I'm concerned about the health of the environment and how it affects our human beings.

Chall: And you grew up where? In the central valley somewhere?

Delfino: No, Soledad, California, out in the Mission district. That's out by the Soledad Mission in Salinas Valley. And we lived out in the country on a dairy farm.

Chall: Oh, you were on a farm.

Delfino: Oh, yes, yes. And then I went to San Jose State, took my two years of pre-nursing at San Jose State and then transferred to the Stanford School of Nursing. At that time the hospital, medical school, and the nursing school were in San Francisco.

Chall: That's right.

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

Delfino: And I graduated in 1949.

Chall: And then did you stay in nursing for a while?

Delfino: Yes, at Herrick Hospital, Berkeley, California. I was in charge of the emergency department.

Chall: Oh, really?

Delfino: Until I married Frank and then we moved to Sacramento. Frank was working in enology with the wine department at UC Davis and he had his degree in chemical engineering, a B.S. degree in chemical engineering.

Chall: From Davis?

Delfino: No, no, from UC Berkeley, leaning toward the food--the food processing. And we were there for two years, moved to New York--well, we lived in west New York, New Jersey, but Frank was working in a winery in New York City!

Chall: Is that so?

Delfino: And then we came back--we moved here 1955.

Chall: Right here on Reamer Road [Castro Valley]?

Delfino: On Reamer Road in 1955. Frank was working, had a job again in the food business at Skippy Peanut Butter in Alameda. That was the original plant, the original Skippy Peanut Butter plant. They just tore down the building this spring; we were there.

Chall: He worked there from 1955 until he retired?

Delfino: He did not work just there. All the Skippy Peanut Butter plants in the country were built by Frank. He supervised the building of those and then he went to South America and Mexico to build--to work on mayonnaise plants. See, then it was Best Foods.

Chall: Oh.

Delfino: I mean he was working with Best Foods--Mexico and Argentina and Chile.

Chall: Really! I remember that he used to be away a lot, but that was for Skippy.

Delfino: Yes, that was for Skippy. They were putting in the sorting machines--improving the peanuts that went into--sorting the

peanuts so you didn't get a bunch of bad ones. So anyway, Frank retired in 1986 and I retired in 1987. I was out of nursing twenty-five years and then I went back to nursing over at Fairmont Hospital in rehabilitation, you know, with stroke victims and the motorcycle accident victims.

Chall: Oh, I didn't realize that--after your boys were grown up and gone?

Delfino: Yes, I decided--oh, there was a shortage of nurses at that time and it's just over the hill, right? Fairmont Hospital, there. I really enjoyed the rehabilitation because you could see progress made by patients. That was very rewarding.

Chall: Yes. What were those years? Can you recall that?

Delfino: Nineteen-eighty. I took the RN [registered nurse] refresher course that Fairmont Hospital offered and then I worked until 1987.

Chall: I see. Now during that time, let's see, Frank had retired so he was working on your farm here?

Delfino: And doing some consulting work. Not on a regular basis, but he did do consulting work.

Genesis of Activism for the Environment

Delfino: But there was, you know, way back in the late sixties, a plan for a southern crossing, do you remember?

Chall: Oh, yes.

Delfino: I think it was the Southern Crossing!

Chall: Well, there was a big campaign for the Southern Crossing, that was to be the new--the so-called Second Bay Bridge--a parallel bridge to the Bay Bridge.

Delfino: Yes, and it would have gone through Alameda and then curved around and would come down. The alignment would have been along the shoreline of San Leandro and Hayward--I mean, maybe 200 feet in, in some places. Well, we just couldn't stand that.

Chall: I see.

Delfino: And so I think that was probably how we started. I mean, we were members of Ohlone Audubon Society and we worked on committees. Frank was field trip chairman and things like that, but, see, those are fun things. When you get down to the real hard work, it's going to meetings, writing letters. Well, anyway it finally went to a vote and the public voted down the Southern Crossing of San Francisco Bay.

Chall: Yes, I recall that, now that you mention it. So you really got started then?

Delfino: In those days I was up at Parsons School in the library. You know, those things. I didn't go back to work until--

Chall: You said around '80.

Delfino: --until 1980, so I was out a long time.

Chall: Well, you were rearing a couple of boys and you have a rather large piece of property here that you were farming.

Delfino: Oh, yes, yes. And with Frank away it was important that somebody be here.

Chall: That's right. I remember that you were, as I was at that time--housewives we were called--taking care of our children. I think I was a volunteer at the library at Parsons School.

Delfino: You were.

Chall: I tried to get you a number of times to make a committee report at Parents Club meetings. And you just said that you couldn't do it. I had to persuade you and persuade you to get up in front of the few people who attended meetings.

Delfino: I was scared.

Chall: You just said you couldn't do it and I insisted that you do it. And then after a few years, I found that you were out there [laughter] declaiming broadly about all kinds of issues! And I thought, "What happened to Janice?"

Delfino: Well, you had set up the library--

Chall: Yes.

Delfino: --and then it was easy to take over. And then Lorraine Parr was another excellent mother and worker and volunteer at the library at Parsons School. Well, in those days, we stayed home.

Chall: Yes, but still you were a shrinking violet in a sense.

Delfino: Oh, scared to death.

Chall: So, what happened, Janice?

Delfino: Oh, maybe I know what happened. Remember Jo McLellan?

Chall: Yes.

Delfino: You remember, she discovered that the Oakland Scavenger Company did not have a permit to go across the Hayward outfall channel to begin dumping on shoreline property. I guess it was at that time wetlands or marshland--probably not the best salt marsh habitat, but Jo McLellan was really a good investigator.²

Chall: Yes.

Delfino: She does a great job, then she kind of falls back and gives up. And I remember going to the [Alameda County] board of supervisors to protest the board giving a permit to Oakland Scavenger Company to raise the height of their garbage dump.

The Oakland Scavenger Company--I guess they did finally get a permit, but then they wanted to raise the height of the dump. Now this is the big dump at the end of West Winton, you know, the one that has all kinds of leachate problems now. Well, anyway I went to the board of supervisors to say that I want the board to deny giving the permit to Oakland Scavenger Company to raise the height of the dump--gosh, I don't remember how high. I'm not certain of the additional height.

Chall: That's okay, because all those kinds of figures can be found in the public record.

Delfino: Yes, yes. Anyway, John Murphy, Supervisor John Murphy was very cruel and he said what I had to say had no meaning. He just, you know, told me as if to say, "Go home and take care of your house." [laughter] And that made me very angry. And so I guess I was in tears. It was a rainy day and I could hardly see driving home, and I thought, "I'll get you John Murphy."

Supervisor Joe Bort was a very considerate person. But anyway, Oakland Scavenger didn't get their way. And then we also

²The outfall channel was where the Hayward waste water treatment plant discharged treated water into the Bay. It is now a flood control channel.
--J.D.

protested Oakland Scavenger Company using what is now the Cogswell Marsh. At that time it was a big flat area. They wanted to dump their cannery waste. They said they had lost their lease at the Port of Oakland. They would barge the cannery waste out into the ocean. You know. Well, you remember.

Chall: Yes, there were many canneries around here--in Hayward, San Leandro, and Oakland.

Delfino: They would barge the cannery wastes beyond the Golden Gate. And what we had heard was that they dumped the cannery wastes on the larval crab beds and killed the larval crabs.

Chall: Oh.

Delfino: I've never seen that in writing but that was a possibility. Anyway, they lost their ability to dump--I mean, we protested that very strongly. We went to the board of supervisors. See, that was all in the county and this was no place to dump cannery waste. They did finally take the cannery wastes down to San Benito County or to the south end of Santa Clara County and spread them out in the fields and ground them up and such. But they wanted to use the Hayward shoreline. Well, it was close by. Look at all the canneries that were in Hayward.

Chall: That's right, and San Leandro.

Delfino: Yes. So that allowed us to preserve shoreline property.

Chall: Now, when you say "us," Janice, who were the "us" in those times?

Delfino: Barbara Shockley, Jo McLellan, Howard Cogswell--HASPA had just started, I think--Hayward Area of Shoreline Planning Agency--in 1973. Before that I was appointed by Howard Cogswell to be on the Master Plan--you know, the Citizens Group on the Master Plan for East Bay Regional Park District.

Chall: Oh, yes.

Delfino: The park district had to come up with a master plan, you know? They were building things and you know, doing some dumb things. I was with Kay Kerr's shoreline committee.

Chall: I think Harold [Chall] was on that committee, too.

Delfino: Yes. And Kay Kerr had the shoreline section, the shoreline committee. Anyway, then Howard Cogswell, who was still on the board of East Bay Regional Park District, appointed me to HASPA, on the citizen's advisory committee along with Phil Gordon. So we're some of the old timers.

II CONCENTRATION ON THE HAYWARD AREA SHORELINE

The Hayward Area Shoreline Planning Agency [HASPA]

Delfino: And then we really went to work on the Hayward shoreline.

Chall: You built the [Hayward Area Shoreline] Interpretive Center.

Delfino: Well, that came later. But you see, you have to give credit to Ilene Weinreb. Mayor Ilene Weinreb [Hayward] and Martin Storm, a city planner [Hayward]--an excellent person. Ilene realized that we had an opportunity to use the Hayward shoreline as mitigation for filling in the eastern approach to Dumbarton Bridge.

And this was mitigation so there was money to buy the property on the Hayward shoreline. And that was Ilene and Martin Storm's idea. Ilene said, "If you have a plan you can go forth with it. If you have some goals--but mainly you have a plan." And so here was something close by. We needed to open that area, and I believe it was in 1981 when that parcel was open to Bay water. It was very costly, there was a lot of heavy equipment used, and there were complaints by various people, but it's operating, it has clapper rails. It is now the Cogswell Marsh.³

Chall: Well, it's certainly a great place for walking and birding.

Delfino: Oh, yes. With the bridges over it you can be right above the little creatures in the marsh. So that all came about because of the Hayward Area Shoreline Planning Agency.

Chall: I see.

³The Cogswell Marsh, a portion of the Hayward shoreline, was dedicated in honor of Howard Cogswell. Some 200 acres (three former salt ponds) from Johnson's Landing northward, opened to tidal action along the shore.

Delfino: And the citizens advisory committee and the technical advisory people--those were staff people from the agencies.

Chall: This was HARD [Hayward Area Recreation and Park District], wasn't it?

Delfino: HARD and East Bay Regional Park District and the various school districts--Hayward and San Lorenzo--and the city of Hayward. That was Martin Storm who staffed that. Staff people were considered technical people.

Chall: I see.

Delfino: And the Alameda County Mosquito Abatement District was a member of the technical advisory committee to HASPA.

John Thorpe and the Shorelands Project

Delfino: We just plugged right along, doing very well. Then I guess it was 1980 or '81 or '82--John Thorpe decided he wanted the--oh, the Africa-USA.

Chall: Marine World?

Delfino: Marine World Africa-USA. They either were closing shop across the Bay or they lost their lease or something happened and John Thorpe thought it would be wonderful to use the oxidation ponds--the Hayward treatment of waste water oxidation ponds. See, by that time, Super Sewer had come in and they didn't use the oxidation ponds. And I'm not sure how many acres it is, but it's quite a large area; you see it from some of the trails.

Chall: Probably, but I don't realize what it is.

Delfino: Yes, there were cells where they used to just evaporate the water, or put out their waste water and then finally it would go out the outfall channel. Anyway, John Thorpe thought that was a good place to have--[laughter]--Africa--well, anyway, the Marine World. And at one of the city council meetings he brought a tiger.

Chall: Yes, I heard about that.

Delfino: You heard of that. A beautiful animal. And he came up the aisle and--oh--what a beautiful animal!

- Chall: No one's ever going to forget that scene.
- Delfino: John Thorpe was such a--let me see, what is the word-- flamboyant--
- Chall: Flamboyant is often used.
- Delfino: Yes, yes. And he would work to your visual senses, seeing this beautiful tiger. But anyway, he was told to look elsewhere and darn it if he didn't go south of [Route] 92.
- Chall: Oh, I see. He came first with the idea of the Africa-USA without having taken any option on any land yet?
- Delfino: I think that's right. And maybe Africa-USA felt that this was not the best place. I don't know what happened. We were not privileged to know what happened there. Then he decided he would--I guess he talked to Cargill about using Cargill's abandoned salt ponds. Here are these abandoned salt ponds: "My goodness! Well, we can't let this property go to waste." [laughs] And that's when he came up with the idea of the racetrack, although John said he knew nothing about racing. But he would have people who knew something about horse racing.
- Chall: Now when that began that was about '82, '83?
- Delfino: Yes, yes.
- Chall: Did you immediately take action?
- Delfino: Well, of course.
- Chall: The Ohlone Audubon Society?
- Delfino: Well, I think Ohlone, but maybe HASPA, because many of the people who were in Ohlone Audubon are also at HASPA. So we decided, you know, this is no place for a racetrack. And one of the things that was interesting but devastating was that the waste from the horses had to be put into some type of holding pond. And John Thorpe came up with the idea of using water hyacinths. They are called hyacinths. Water hyacinths.

The water hyacinths would use up the bacteria. They would digest the horse manure. John Thorpe said there was a waste water treatment facility project in the city of Hercules along the shoreline of San Pablo Bay where water hyacinths were being used to treat waste water. I have a copy of the document that proposed the use of water hyacinths and how wonderful the project would be. Well, what we found out when I did the investigation

was that Hercules had a cover over the ponds that contained the water hyacinths, and when the wind blew, the wind [laughs] damaged the covers and the wind pushed all the water hyacinths to one side. And it was a mess.

Then I also called Foster Farms [the chicken meat producer]. Somehow I found out that Foster Farms had a project using water hyacinths to treat their waste water. And they said, "Oh, well, we have space. We can do this. We can put the water hyacinths out in the field and grind them up, and they're not going to spread." I mean that's the problem. When water hyacinths spread or clog waterways, there is a major problem.

Chall: That's right.

Delfino: So I presented that and made it known that this was a very bad waste water processing system. And we picked his project apart. He was going to have a hotel at the very end, it would be on pond Inner 11, the old Cargill pond, Inner 11. [Map 1] And it would be the gateway to Hayward--this big hotel with big Hayward sign, you know?

Chall: Yes.

Delfino: [laughs] I mean he had grand plans for everything--it was probably a great idea, but the wrong place. And an RV park and commercial developments.

Chall: The plans were shown in his brochure. [See Shorelands Project promotional brochure in envelope, back cover]

Delfino: Yes.

Chall: So you had to come not only to meetings of the city council, but primarily what was it, the EIR/EIS commenting meetings?

Delfino: Oh, well, yes, and the agencies. We talked to the agencies--not necessarily BCDC, but I don't know if we ever, or why we contacted BCDC. Sometimes I did all this, you know, on my own because if you gather information, then you can present it to HASPA in a meeting. The Corps of Engineers would have the final say.

Chall: That's right.

Delfino: Fish and Wildlife Service, Fish and Game are advisory to the corps. And then EPA has--what is it called? They can deny a project--they could have the final say. There's a word or phrase--EPA can elevate the project for further study. The Fish

and Wildlife Service issued a jeopardy opinion. The clapper rails were not necessarily found on the property, but then it depended who was out there and who did the census, who did the surveys, and at what time. They issued a jeopardy opinion but we thought that the city of Hayward was waiting for the corps to make a decision and the corps was waiting for the city to deny it.

Chall: Oh, really?

Delfino: So a decision was not made or a decision was not rendered by the corps or the city of Hayward. The jeopardy opinion just hung there.

Chall: Even in 1992 or 1990, that last one?

Delfino: All I remember is that Pete Sorensen, who is the endangered species man at Fish and Wildlife Service, had issued a jeopardy opinion. Oh, and the mitigation--oh, that's right, there was no mitigation for the loss of wetlands there on the property. John Thorpe said, "Well, I'm going to buy the Oliver property."

Chall: Yes.

Delfino: But Mr. Oliver--I guess Alden had died.

Chall: This was Gordon, I believe, with whom John Thorpe was negotiating.

Delfino: Gordon. There was no way--well, at that time Gordon knew that Thorpe couldn't buy the property. I mean, we didn't know it but it was going to go to the [Hayward Area Historical Society] historical society and the [Eden United Church of Christ] church. But John Thorpe had to cross Mr. Weber's property the way his Shoreland Boulevard was set, and he didn't buy that, or Mr. Weber wasn't selling it, so he had no way to provide access. But that didn't stop John! [Map 1]

Chall: So if I understand it, you would do a lot of research, take the research to HASPA, HASPA would then take it to whatever agency was appropriate?

Delfino: Well, yes. And of course the city was the main or the lead agency on this project because it's in the city's jurisdiction.

Chall: But the city couldn't do anything until they received the information from the corps?

Delfino: That's right. And see, it was dragging on, and I guess John Thorpe's partners began to ask questions.

Chall: Yes, it was expensive and losing money, I think.

Delfino: Well, they never made it. They never made a cent. The money was going out. And, well, [laughs] John Thorpe finally had to give up.

Chall: Yes. So you, in a sense, were working through HASPA?

Delfino: Oh, yes.

Chall: Did you contact directly people like Paul Kelly or Sorensen?

Delfino: Well, Paul Kelly--that's interesting. Paul Kelly was the representative from Fish and Game on the Hayward Shoreline and a wetlands person and he's really terrific.

Another person had said, "You don't put a racetrack on land like this." And the Mt. Eden Creek, which gets tidal action, has tidal action up to where flood control has a block at the end of Eden Landing Road. If you were to extend Eden Landing Road beyond the fence, beyond that gate, there's a block in the Mt. Eden Creek. There's a beautiful, beautiful salt marsh and that's where if there are clapper rails--at that time we weren't certain there were clapper rails, but there was certainly salt marsh.

Chall: The habitat was there for them.

Delfino: Oh, yes, yes. The little mouse was there, but it was not on the property. But who knows, you know, they travel over the levees and there is salt marsh--I mean, pickleweed--on the inside, on the Baumberg side--you know, the abandoned salt pond side--and so apparently there was--we didn't realize it at the time, but the snowy plovers nested there.

Chall: Yes.

Delfino: They're there now so they must have been nesting before, but nobody was out doing surveys.

Chall: I think Howard Cogswell had seen plovers.

Delfino: And Leora Feeney was asked to do--I guess she was paid by--which agency I'm not sure--

Chall: Department of Fish and Game, I think.

Delfino: Oh, that's right.

Chall: I'm not sure, but I think she worked with Paul Kelly.

Delfino: Yes.

The Public Trust Issue

Chall: So you were busy on the Shorelands Project? That came to an end, but over the years have you always had a certain amount of cynical respect, let's put it that way, for the Cargill or Leslie Salt Company? Have you always been a little uncertain about their motives? I know sometimes you've been critical.

Delfino: Well, in 1984, Judge [M.O.] Sabraw ruled that Cargill--it was still going under the name of Leslie Salt--but Cargill purchased Leslie Salt in--I thought it was 1978. The public trust issue had to be resolved on the Baumberg area. But Ned Washburn, or Edgar Washburn, the attorney for Leslie Salt--you know that name?

Chall: Yes.

Delfino: --the attorney for Cargill and the State Lands [Commission] worked together and State Lands gave up a huge amount of property in the Baumberg area.

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Chall: You were telling me about Edgar Washburn and the State Lands decision.

Delfino: Yes, and what is left in the public trust is Mt. Eden Creek--a navigable waterway--and 153 acres of Pond 10. Pond 10--the 153 acres, once Cargill stops producing salt, will revert to State Lands Commission. [Map 1]

Chall: How was this resolved? In whose court was this?

Delfino: In the superior court in Hayward.

Chall: And what year was that?

Delfino: It was December 31, 1984. [laughs] Apparently--that's interesting--it had to be wrapped up before the end of the year.

Chall: This is at the time that John Thorpe had his option and was considering mitigation?

Delfino: Well, yes, and the public trust issue had to be resolved.

The Eventual Purchase of the Baumberg Tract for the Wildlife Restoration Project

Chall: Now at about the same time or later, I'm not sure actually when this happened, but you said it was after John Thorpe lost or gave up in the nineties that the city of Hayward established a citizens committee?

Delfino: The city council in or about 1993 appointed a group of citizens to be on this committee to establish or determine where the urban limit line on the west side should be. I know they also studied Walpert Ridge, but for this discussion we'll just talk about the west side of Hayward. And that committee determined that Hesperian Boulevard should be the western limit.

Well, that's when the Oliver Trust, Mr. Weber, and Cargill decided that they didn't like that decision because they said they were left out of the decision. And of course HASPA was pleased [laughs] because that would keep the properties west of the railroad track--see, HASPA's jurisdiction ends at the railroad track--the rails of the railroad track. We do not have jurisdiction or we did not study Oliver East.

But anyway, that's when the city said there had to be an EIR. The three property owners provided money for the EIR. And Cargill waited until there was a development plan on their property that meant industrial development, industrial buildings.

Chall: So they were going into the Baumberg Tract area?

Delfino: Oh, yes. And there were several alternatives as to how to develop the Baumberg Tract and still have wildlife habitat. And of course, looking at the maps, you don't put housing or industrial development and all that on bay mud! But that didn't stop the city of Hayward or even the consulting companies.

You know, I have to fault those consulting companies.

Chall: Do you know who it was at that time?

Delfino: TRI--oh, golly. EIP Associates were EIR preparers; TJKM were transportation consultants. Of course then Cargill waited. As far as we could tell, Cargill waited until there was a development plan for their property. And of course all that would have to go through the regulatory agencies: the Corps of Engineers, and--oh, there was oversight--I think EPA has oversight over the corps, I think that's the phrase. It would have to go to all these agencies.

Chall: The same as John Thorpe had to.

Delfino: Yes, and so Cargill waited until there was a development plan. Then they decided, well, they were going to sell it and that's when the Wildlife Conservation Board gathered together money from various agencies and sources. Shall I list the sources of money?

Chall: Yes.

Delfino: The San Jose waste water treatment facility was converting a salt marsh habitat into brackish habitat and they had a penalty and that penalty amounted to over \$6 million, so that money was put together with mitigation money from CalTrans--because CalTrans filled in wetlands in Milpitas and Fremont. Then there was Proposition 70 money. And the Wildlife Conservation Board was still scrambling for money. They were going to many sources and some of those sources denied them the money. Oh, I didn't mention earlier about the restoration: there's only \$1.3 million for restoration and the consulting company has said that's really not enough because they plan to do some dredging to restore areas of the Baumberg Tract to bring in bay water. So Wildlife Conservation Board did buy the Baumberg property at \$15,000 an acre--I think it was \$12.5 million.

Chall: That's right. You felt that was more than they should have paid?

Delfino: Yes, because the Oliver North property just across Highway 92 was sold for \$6,000 an acre--abandoned salt ponds. [November 2, 1995]

Chall: Now under the auspices of HARD? [Map 1]

Delfino: Yes.

Chall: That you think will be a snowy plover habitat?

Delfino: Oh, well, it is already. The snowy plovers have been nesting there over the years. One thing, there are ravens nests in one of those light towers by the Toll Plaza. And the ravens go down and get the little snowy plovers.

Chall: Oh, so they're predators, right?

Delfino: Oh, yes.

Chall: What can be done about that? Nothing?

Delfino: I guess it's considered a protected bird.

Chall: The raven?

Delfino: The raven!

Chall: You've got problems.

Delfino: [laughs] So somebody has to work on this, and that would be Fish and Wildlife Service--to do something about that raven.

Chall: Now, did you say the raven is also a protected species? I know the snowy plover is.

Delfino: The raven is a bird that is--well, just like a song bird is protected. But the raven is the largest songbird that we have. [laughs] The raven makes kind of an old croaky sound.

Chall: So there will have to be another place for them to nest?

Delfino: I guess. That would be the thing, to destroy the nest, to discourage their nesting there.

Chall: Well, that's an interesting problem.

Delfino: Well, it really is, yes.

Analyzing the Restoration Project

Chall: Now what about the general restoration project? Are you keeping an eye on it?

Delfino: Well, it's interesting. WESCO [Western Ecological Services Company]--it's a consulting company, it merged with a company called RMI [Resource Management International]--and they're in San Rafael or Novato. At RMI Steve Foreman was doing the work and something happened. Somebody bought out RMI and Steve Foreman now is with the consulting company, LSA, in Point Richmond.

Steve Foreman, Carl Wilcox of Fish and Game, and some landscape architects have held I think two meetings to inform the public. Those were held at HARD's Interpretive Center. They came up with some plans, but the problem is how do we get bay water into the ponds where they want the bay water, and how do we maintain a clean or clear bottom of the abandoned salt ponds, mainly the old pickle pond--Leslie Salt's old pickle pond--and keep vegetation out so the snowy plovers have a place to nest? And the \$1.3 million that's available for restoration is probably not enough.

Chall: To do that extra work.

Delfino: And the latest news is that the hydrologist working with Steve Foreman left to go to Colorado and now they have to start over on some parts of the restoration plan.

Chall: Oh, really? Wouldn't the former hydrologist have had all this information available?

Delfino: Well, the word is he left such a mess that it was not understandable.

Chall: I see; the notes weren't clear?

Delfino: Yes, the plans weren't clear. And then the landscape architect people or the landscape--I'm not sure what title they have--came up with a plan that showed trees. And we said, "What foolishness, you don't put trees in an area where you have nesting birds because the trees will attract predators!" You know, they didn't think. That would be trees along the trail. The landscape architect planners wanted trees along the trail, probably for aesthetic reasons, but did not think about predators.

Chall: I see.

Delfino: We need to keep trees out of the area. So RMI and Fish and Game quickly scrapped that idea. Oh, it looks pretty on paper, but you don't do those things!

Chall: So who at public meetings looks at this plan and says, "Wait, don't do it"?

Delfino: Well, those of us from HASPA and the advisory council.

Chall: Otherwise they don't recognize that this is not--

- Delfino: No, they're probably urban planners and they're probably urban landscapers.
- Chall: Well, they may be, but you would think that people like Steve Foreman and Wilcox would have taken a look and said no.
- Delfino: I would have thought so, but maybe the landscape people work separately and then came to this meeting--
- Chall: Oh, and then presented their plans?
- Delfino: Yes. I was sitting next to Sheila Junge--do you know Sheila Junge? [spells] We both groaned and said, "What foolishness, you don't put trees out there!" At a meeting last night, Friends of the Alameda Wildlife Refuge--we're a group of volunteers and we're trying to save the least terns at the Alameda Naval Air Station. Some of the people and the politicians of Alameda would like trees out there and make it beautiful. Well, the reason the least terns are there is because it's flat, you know, the air field is just flat.
- Chall: Yes.
- Delfino: Of course the weeds have to be controlled, weeds grow through any old crack in the pavement--
- Chall: Yes, they will. [laughs]
- Delfino: --in the runway. But anyway, see, the mentality is skewed when it comes to certain birds. And that's why snowy plovers like the Oliver North property because--
- Chall: Yes, there's not a blade of--there's nothing there!
- Delfino: It's so highly concentrated in salt. Well, we've already talked about the purchase, but the process, the restoration still has to come about.
- Chall: But it will, assuming that they can put it all together in a balanced way--which may require a lot of balancing. I guess at the Interpretive Center [Shoreline], it took a while before the ducks, and the terns, and all the birds that are there now, came in.
- Delfino: Oh, yes. Yes, well, it took ten years, I think, before clapper rails came into the Cogswell Marsh. You had to have cord grass high enough and thick enough--well, not thick enough, but enough of it to give them shelter.

Chall: And that takes a while.

Delfino: Oh, it takes a while, yes.

Chall: So that even with the planning for the Baumberg restoration, it will take a long while before they can be sure that it works.

Delfino: Oh, yes.

Chall: You never can be sure that it's going to work perfectly, can you? Do you feel that you can from plans?

Delfino: Well, mitigation--I don't know if any mitigation has been successful, not even San Leandro's mitigation plans along the San Leandro shoreline. Their shoreline, the north pond--they have four big culverts but they don't monitor it. And bay water was coming in and water was becoming stagnant at the eastern end of the north marsh. And Frank and I would go out--well, we used to go out quite often, but now that we've got these other problems--other affairs along the shoreline--we told the consulting company, "You've got stagnant water, the pickleweed is dying, and there's a lot of algae. And algae tells you something is wrong." Well, they don't have anybody in San Leandro to monitor their mitigation. They'd love to have Mark Taylor--Mark is--you know Mark Taylor?

Chall: No, I don't.

Delfino: He is the Hayward Shoreline supervisor for East Bay Regional Park District. He is excellent. He's not a biologist but he certainly knows what's going on and how to resolve problems. Well, I talked with Carl Wilcox at the Goals Project.

Chall: Are you active in the Goals Project?

Delfino: Yes.

Chall: In what way?

Delfino: Well, we have to respond for one thing. We're interested in how and what they determine should be done with the salt ponds in the South Bay.

Chall: They just came out with a report.

Delfino: Yes, and one of their determinations is that the salt industry, salt production should cease.

Chall: Should cease?

Delfino: Yes, because the ponds--some of them are valuable for wildlife, but the need for more marsh--there is a need for some ponds to remain with shallow water.

You know, there is this proposal to expand--a plan to expand San Francisco Airport--to fill in 400, maybe 500 acres of open bay water. And the mitigation would be to buy out Cargill and then you'd have thousands of acres.

Chall: I see. That's quite a mitigation!

Delfino: Thousands, yes!

Chall: Cargill, as I understand it, has no intentions of selling. [See Appendix B]

Delfino: Oh, you throw quite a few million dollars their way, they will change their mind. I was going to tell you, I mentioned to Carl Wilcox at the Goals meeting last Monday, a week ago, "Well, why don't you just wait on the Baumberg issue until the San Francisco Airport buys out Cargill? And then you can bring in water through Pond 10 and not have to do all that dredging." "Oh," he said, "Well, we can't depend on that." And I said, "Well, it will come; it'll take forever--"

Chall: It might take forever and meanwhile they have a limit--they do have a time when they're supposed to be finished.

Delfino: I don't know.

Chall: I think they do. I don't know, but I think they do. And so they're not going to wait forever.

Delfino: But it would be a shame to destroy what is a pickleweed marsh. I mean, the last time we saw their plans, they were going to dredge Mt. Eden Creek, which has pickleweed marsh. "Oh," they said, "it's just not very good." Well, it looks pretty good to me!

Chall: Now, in terms of what looks good to you, [laughter] how do you judge? And how do you then convince others?

Delfino: Well, we were taking a shorebird census for San Francisco Bay Bird Observatory and we had the Baumberg area. Phil Gordon--Phil and Pat--had another portion of the Baumberg area, and Viola and Ron Barklow had another section. So we'd count the birds that were in that marsh.

And oh, another thing, probably there would be clapper rails if the red fox were under control. A few years ago, I guess the

Wildlife Refuge people were doing--they had a permit to get in to do a clapper rail census at the Whales Tail because that is a larger marsh. And they saw one clapper rail and four red foxes, so you know that the red foxes are taking over. Now, the animal damage control people--I'm not sure if they went out there and took care of the red foxes.

Chall: How would they do that? Traps?

Delfino: Trap them and--

Chall: Some want to shoot them?

Delfino: But mainly trapping. The cat people. Cats go out and that's a problem.

Chall: Of course that was the whole problem with predators with respect to Shorelands, too.

Delfino: Oh, John Thorpe had the vaulting varmint fence.

Chall: That's what you call it!

Delfino: Yes, it was a vaulting varmint fence and that was going to control the predators. But you know, if you have roadways, you don't close off roadways if you have through traffic.

Chall: You've got problems there. Well, all these things have to be worked out. This is just nature, you know, the natural environment.

Delfino: In the old days, you had more open water and that discouraged the animals. Sure, foxes do swim but if you have a large area, maybe a large pond--put some islands in ponds. And that's what I would like to see: some of the levees opened up but leave sections of levees so that those sections become islands.

Chall: I don't know whether they plan to do that or not, but that was even one of John Thorpe's possibilities, as I recall. Islands, but I'm not sure now just where.

Delfino: Yes, I can't remember where he was going to have these islands.

III ASSESSING THE CONSEQUENCES OF CITIZEN ACTIVISM

Chall: When you work as you're doing in so many areas and contacting the agencies and making them aware of what you know and what you've researched and what you feel about it, how effective do you think you are?

Delfino: Very effective. [laughter] I'm just thinking of the Citizens Committee to Complete the Refuge. Although we are a loose coalition--well, not loose--it's a coalition of various organizations and various, maybe just individual citizens.

Chall: Private organizations? What agencies? HASPA? Would that be one of them?

Delfino: No, Ohlone Audubon Society.

Chall: And Golden Gate Audubon--

Delfino: Save the Bay is part of it. I can just show you.⁴ We get the information out: the Wetlands Alert or Action Alerts go out. We get these public notices from the corps and we immediately do our networking. I'm just going to show--

Catellus property is going to be developed. Catellus is in Fremont and it's adjacent to the Warm Springs unit. The Warm Springs unit was purchased from the Caruff property.

Chall: What property?

⁴Save Wetlands: Newsletter of the Citizens Committee to Complete the Refuge. The front cover lists the endorsers. Copies of an Action Alert or Wetland Alert on two corps' public notices--Cargill and Catellus and the responses to the public notices for Ohlone Audubon Society are included with this material. All of the material, donated by Janice Delfino, will be deposited with the volume in The Bancroft Library. See also, pp. 339a,b; 340a, 346a,b.

The Value of Vernal Pools

Delfino: C-A-R-U-F-F, Caruff property that was purchased by Fish and Wildlife in 1992. It's in the Wildlife Refuge now, turned out that it has vernal pools. Those are vernal pools. That's downingia--[showing a picture]

Chall: What's the name of that flower?

Delfino: [spells] That's one of the indicators of a vernal pool. It's probably the last one to bloom. The Contra Costa goldfields are a vernal pool plant. It is an endangered plant species.

But anyway, here are all these agencies--they are not agencies, but citizens that take an interest. Well, I'll get back to the Warm Springs unit. They found out there are vernal pools, tadpole shrimp, tiger salamanders--those are all endangered. And the goldfields, the plant. Well, then here comes this Catellus project. It has the same problems because there are vernal pools and endangered species.

Chall: What was Catellus planning to build?

Delfino: Home Depot and--

Chall: Oh, I see. Yes, a real development.

Delfino: Oh, yes. But here are these vernal pools scattered all over these 800 acres. And you don't put passageways for tiger salamanders and some of these other creatures because they don't know how to use them. Vernal pools are endangered.

And then we get this Baccarat property--a public notice from the corps to develop thirty-two acres. Frank and I go down and investigate and then we report to all our activists, "Go look at the vernal pools." And they respond and say, "We cannot lose these vernal pools." So that's how we're effective.

Chall: I see.

Delfino: Then we write up our statement, rewrite it for Ohlone Audubon. We've reviewed the public notice and we've investigated and then we send our response. Our response is not only to the corps but to the Regional Water Quality Control Board, to Fish and Game, Fish and Wildlife, and we encourage them to look at this with more care. And this time with this Baccarat property. Dr. Michael Josselyn, do you know that name? He was a consultant hired by the developer to look at this. He did not find vernal

Ohlone Audubon Society, Inc.

*A Chapter of the National Audubon Society
Southern Alameda County, California*

339a



June 8, 1998

Lieutenant Colonel Richard G. Thompson
District Engineer
U.S. Army Corps of Engineers
333 Market Street, 8th Floor
San Francisco, California 94105-2197

Via Facsimile and
Postal Service

ATTENTION: Regulatory Branch

SUBJECT: Baccarat Fremont Development, Public Notice No. 23205S
Dated: May 11, 1998

Dear Colonel Thompson:

The Ohlone Audubon Society has reviewed the subject document and has the following comments and questions.

Page 1. PROJECT DESCRIPTION: Since no information is provided in the Public Notice (PN), what is the total acreage of the site? How many acres are planned for development? There is no mention of a storm water detention basin for the proposed development. Where will the detention basin be located and its acreage? The project as proposed is not water dependent, and the alternative sites analysis that has been provided in the PN is inadequate. At this point the information on the project description is incomplete.

Page 1. ENVIRONMENTAL ASSESSMENT: Has the Corps of Engineers wetlands delineation been completed? The information provided in this section of the PN does not clearly indicate a Corps' Environmental Assessment. The full extent of wetlands on the site has not been adequately mapped.

Page 2. IMPACTS ON THE AQUATIC ECOSYSTEM: The consultant has been less than forthright in providing information on the extent of vernal pools on the entire site. Information on vernal pool vegetation is certainly lacking. Was there a reason for not finding vernal pool indicator plants? It is difficult to overlook vernal pools throughout the site, even casual observations indicate that many vernal pools exist on site.

Before issuing any permits, the Corps, U.S. Fish and Wildlife Service, and California Fish and Game should survey the site for wetlands of special concern. If the permitting agencies are unable to evaluate vernal pool plants and inhabitants, then an impartial expert assessment should be done.

Colonel Richard G. Thompson
 June 8, 1998
 Page 2.

The proposed mitigation site contains acres of vernal pools. The mitigation plan as proposed will destroy or convert the existing vernal pools. This is an unacceptable mitigation plan.

Will there be a reconsideration of the proposed berm/buffer plan? Is the 25 foot wide buffer adequate? Shouldn't there be concern that the berm/buffers will cover up vernal pools?

The project site contains habitats for species other than endangered species. Shouldn't these other inhabitants be of concern also? Were surveys done for burrowing owls?

Due to the lack of a complete environmental assessment and the need for additional information concerning vernal pools on the mitigation site, an ENVIRONMENTAL IMPACT STATEMENT should be required.

Page 4. ALTERNATIVES ANALYSIS: NO FILL Section An independent consultant should evaluate the wetlands on the site since wetlands such as the vernal pools do not appear to be degraded as stated by the developer's consultant. Secondly, in spite of the area being surrounded by flood control channels and paved streets, the wetlands are surviving and providing a more natural habitat than the development would provide.

Since the project is not water dependent, the developer has failed to provide an alternate off site location for the project.

FIGURE 2 MAP The scale of the map does not correspond to the scale bar. There is a need for adequate map and scale information. Figure 2 indicates sampling points. What was sampled, what were the dates of sampling, who did the sampling, and what were the results?

Due to the inadequacy of information on this project, the Corps should deny the developer's application permit for filling wetlands.

The Ohlone Audubon Society requests that the Corps hold a public hearing on this project, and the responses to Ohlone's questions would be appreciated.

Sincerely yours,

Frank Delfino Janice Delfino

Frank and Janice Delfino
 Ohlone Audubon Society
 Conservation Section
 18673 Reamer Road
 Castro Valley, California 94546
 Phone: (510) 537-2387

cc: Regulatory Agencies

pools. He's a botanist. He did a quick and dirty job. [laughs] And once you write down the words vernal pool, of course everybody gets excited because we know the endangered species that are in vernal pools.

Chall: I see.

Delfino: And so we sent copies of our letters to the various agencies. They finally went out and looked at the place on July 1.

Chall: This July [1998]?

Delfino: Yes, and then we had letters, copies of their responses. To the corps we said, "Let's have a public hearing. Deny the permit, but let's have a public hearing." So I don't know what's going to happen.

But in the meantime the flood control people went to work at doing all their work under emergency issues--I mean, not issues but under emergency plans because of El Nino. They began to dump--this is still this Baccarat--in the major vernal pool. They began to dump on Baccarat property and cover up vernal pools so not only did we have this consultant not finding vernal pools, we had the flood control doing their so-called emergency work and dumping on this property. And then they tried to scrape it, they tried to pull it back.

Chall: I see. You pointed that out?

Opposition to "Re-creating" Creeks

Delfino: Oh, yes, yes. So that is where we are so effective, when we get these public notices. Take for example Toroges Creek. Do you know the Avalon Homes above [Highway] 680 with all the slides, the mud slides?

Chall: Oh, yes. How do you spell Toroges?

Delfino: [spells] They want to put in a golf course. Well, here are these hills. They wanted to scrape the hills, fill the creek, and then make it a golf course. So we say, "You don't do that. You don't fill the creek because there are frogs and salamanders --" Well, again, with all these Action Alerts. We went to the water quality board and protested and then hired Roy Gorman, attorney Roy Gorman to represent us. When we went to the state Water Resources Control Board executive director Walter Pettit



Golden Gate Audubon Society

2530 San Pablo Avenue, Suite G • Berkeley, CA 94702 • Phone: (510) 843-2222 • Fax: (510) 843-5351

Americans Committed to Conservation • A Chapter of the National Audubon Society

ACTION ALERT !!

ACTION ALERT!!

They've Destroyed Our Wetlands, Now They Want to Destroy Our Streams

Toroges Creek, Gateway, Windemere. What do these names have in common? They are all sites where proposed golf courses threaten to destroy our native streams!

Toroges Creek is located in the hills above Fremont. It provides a home for many species including the tiger salamander, the loggerhead shrike, and the black shouldered kite as well as several bat species. Oaks and many other native plants can be found there.

In order to create a "championship class" golf course a developer, and the City of Fremont, want to bury over ½ mile of this wonderful stream, and the 396 acres of grasslands that surround it, under 70 feet of engineered fill. **Good-bye stream, good-bye wildlife, good-bye nature and goodbye to life.**

That's not all, they then have the nerve to say that they'll recreate that stream so that it will be as good as new. Fat Chance! Such a massive mitigation effort has never been attempted. The only similar attempt took place in Montana and after 3 years that sadly reconstructed Montana stream still has essentially no wildlife value.

In the Gateway Valley in Orinda, Brookside Creek winds for 5 miles through some of the most beautiful woodlands in the East Bay. **DOOMED** by a proposed golf course/ residential housing development unless we act.

In Windemere seven miles of streams are proposed for devastation in order to satisfy this seemingly endless need for golf courses.

Can we really afford to have all of our streams disappear under the developers' backhoe. California has already lost over 98% of its streamside (riparian) habitat. It's time to say enough!

And we can do it! Doublewood is the first of these projects to go through the permit process. Our Regional Water Quality Control Board could have denied this project and its Executive Officer did recommend denial, but the Regional Board Members tied on the vote. Now the State Water Resources Control Board gets to decide. **If we can show enough public opposition we have a good chance of having the Doublewood Project denied. If Doublewood is denied we can stop the other projects, too!**

The State Water Resources Control Board is holding a Public Hearing on the Doublewood project on Friday, April 17, at 9 AM in Oakland at the BART headquarters, located at 800 Madison Street, right above the Lake Merritt BART station.

Please come. You don't have to speak, they are going to limit the number of speakers, but we need to show that a lot of people care! We'll have buttons and signs for you to hold to show which side you're on. We have a chance to win this one but only if we can get enough folks showing the State Water Board how important our streams are to us. **See you there!**

For more information call the Golden Gate Audubon Society Office at 510-843-2222.
Thanks.

[spells]--we protested before him that this is an unproven way. You can't mitigate for that type of destruction and if you allow that there will be the Blue Rock Country Club in Hayward, the Orinda Gateway project, and the Windemere--all these involve filling creeks for golf courses. Mr. Pettit, just Monday--or Friday, I guess--denied their plan.

Chall: Now, if you hadn't been on it, do you think that they would have paid attention?

Delfino: The developer said there was only one person in Fremont that was against this; everybody likes this plan.

Delfino: The only person was Janice Delfino?

Chall: No, no, no, I was not in favor, but the Fremont person is James Gearheart.

##

Delfino: Florence La Riviere was the one who informed us. Actually, I know what I wanted to show you. [pause]

Chall: You're keeping quite a few good records here, aren't you? And very carefully.

Delfino: There are all these other developments. Gateway. Do you know where Gateway is? You go through Caldecott Tunnel from the Berkeley-Oakland side. You know the Caldecott Tunnel?

Chall: Yes.

Delfino: And then you see that big hillside; on the right-hand side that is Gateway Valley.

Chall: I really travel so rarely through there that I probably haven't noticed.

Delfino: Well, that's another creek--miles and miles of creek--the Brookside Creek--and other little creatures will be covered up. There is the same plan to cover up these creeks and re-create--that was it--re-create these creeks. Well, there are red-legged and yellow-legged frogs and salamanders and who knows what else there. And so those of us who worked against Toroges--the filling of Toroges Creek--go over and help them, inform them. Some of those people in Orinda didn't know even what a public notice was!

Chall: You must be all over the place, Janice.

Delfino: Well, you know, you hate to see it happen. And if it happens, if Toroges Creek is re-created, then it would be easy to re-create all those other creeks, so you have to help those other people. And they learn very fast!

Chall: Yes, but you have to set the precedent.

Delfino: Yes, poor Florence is just so busy trying to help others. Toroges Creek drains into the Bay.

Chall: Oh, I see.

Delfino: Well, the one in Orinda drains into San Pablo Reservoir. And I guess the overflow goes into the San Pablo Bay, but it's the same thing; you have to help each other on these projects. It's a matter of getting the word out and going to meetings. Golden Gate Audubon Society has improved San Leandro Bay in Oakland, you know, their new project. That was mitigation for the Port of Oakland filling in bay water by the airport.

Chall: Yes, is that the one about which there was an article in the newspaper just the other day?⁵

Delfino: Yes, yes.

Chall: Near Arrowhead Marsh, not far from it? [Martin Luther King Jr. Shoreline Park]

Delfino: That's right. Save the Bay and Golden Gate Audubon. I'm not sure who else. I should say for us, the Delfinos--I don't think we were that involved.

Roberts Landing: The Toxic Soil Issue

Chall: You were involved a long time ago in Roberts Landing?

Delfino: Oh, yes!

Chall: And that, according to what I've read in the newspaper, was revised considerably as a result of public pressure?

Delfino: Malca, if we had not taken a sample of soil from the old Trojan Powder Factory site and sent it to the lab at our own expense--

⁵Oakland Tribune, June 11, 1998.

Chall: You and Frank?

Delfino: Yes. We were so determined that somebody find out that there was contamination, hazardous waste on that site. We then took our photos--we went to Pacific Aerial Surveys and bought aerial photos and then submitted information to the Department of Toxic Substance Control--DTSC--and finally convinced them to re-look at this property. They had given clearance to Wayne Valley, to Citation Homes, way back. I'm sure Citation spent millions of dollars to clean up a place that they said was squeaky clean, that it was washed by rains and tides from the Bay. They sent us a threatening letter, they were going to sue us.

Chall: Really?

Delfino: Well, this was 1992--I can't remember--oh, no, earlier than that! Yes, sent us a threatening letter and that made us work even harder.

Chall: I see.

Delfino: Yes, you get a letter like that--

Chall: You mean they threatened you with a suit?

Delfino: Yes, if we continued what we were doing. We had to prove that what we were doing was right and that there were hazardous wastes. Then we interviewed Henry Stockfleth. [laughs] He had worked there. He was the main nitrater at the Trojan plant. He made the stuff to make explosives. And we interviewed him before he died. He died at the age of ninety-two. He told us a lot, told us where the water wells were. Then we were told it was our civic duty that we should tell Citation and the city where the water wells were. And we said, "You pay us \$100 an hour and we might consider it, we're consultants." [laughter] But it took a lot of effort.

Chall: Actually, then you and Frank did it on your own? You went out and scooped out some soil?

Delfino: Well, we took a teaspoon of soil in an area where nothing was growing. And it was the discharge from the factory; they discharged their acid and nothing grew. I mean, we would walk the area and look at things and try to decide what went on. By this time, the factory had been demolished. The Trojan Powder Factory closed in 1963 after their last major explosion. Many explosions had occurred since the factory was established in 1906.

Chall: Yes, long ago.

Delfino: Yes. And there was an ice plant that was just black and we knew that there was something in the soil that caused that plant to be black. You know, plants don't die black. [laughs] And so that's where we took the sample and the pH was pretty low. [tape interruption]

[To continue the story about the Trojan Powder Explosive Factory site where Citation Homes planned to build homes:⁶

Frank checked the soil sample to determine its pH. With a low pH, we felt it necessary to have a reputable laboratory determine the pH of the soil and have a complete soil analysis. We sent the soil sample to Curtis & Tompkins Analytical Laboratories in Berkeley on October 11, 1990. The results indicated there were metals in this small sample that should be of interest to the Department of Toxic Substances Control.

In addition to the soil analysis, Frank and I decided to visit the file room at DTSC. We were asked what company we represented. We said we are with Ohlone Audubon Society. The person at the desk said Audubon people were harmless, and we were allowed to review the Trojan Powder Factory file without going through the usual process. I took notes on what we read in the file. We returned a second time to the file room, this time to make copies of some of the information we believed was very important.

We felt we had enough information on the hazardous wastes where Citation Homes planned to develop. Now it was time to present our findings to DTSC. After many meetings with DTSC staff, it was determined that indeed a thorough soil cleanup of the old factory site must be completed before any homes could be built.

Another of our concerns has been the lepidium or pepper weed plant growing on the San Leandro shoreline. We were told by Peter Baye of the Corps of Engineers that this invasive non-native weed would eventually take over the pickleweed and other native plants. For five years Frank and I have manually pulled out this lepidium. This summer we removed lepidium plants in the LaRiviere Marsh at the Don Edwards San Francisco Bay National Wildlife Refuge.]

⁶This account was written by Janice Delfino. I had accidentally left the pause button depressed when she returned with the Alert data. --M.C.

Citizens for Alameda's Last Marshlands [CALM]

- Chall: Now it's on, it's recording. We were talking about CALM. I asked you what CALM means?
- Delfino: It stands for Citizens for Alameda's Last Marshlands. And that means not just the city of Alameda but Alameda County. It started, I believe, when the Port of Oakland began to fill in by the airport and people like Leora Feeney and Jo McLellan were very concerned. We were not part of the CALM, we didn't become members of CALM until 1987. It was a loose coalition of people. And we used that name as an organizational name in San Leandro for Roberts Landing.
- Chall: So it goes back a long way.
- Delfino: Yes, I think CALM started in 1985. That was when Leora Feeney and a few others decided that they needed a title as another organization. There were Save the Bay and Golden Gate Audubon and they thought we needed another organization to fight the Port of Oakland for filling the Bay. And so then when we write The Citizens Committee to Complete the Refuge newsletter [Save Wetlands], we write under the title of CALM. But now when we write for the newsletter our concern is with the least terns and the Alameda Naval Air Station.
- Chall: I see. And they put out a little magazine?
- Delfino: Yes, the Citizens Committee to Complete the Refuge puts out a newsletter twice a year and that's how we make money to do what we do--to pay for stationery, to pay for stamps, to send out the monthly meeting mailing, and to send the Save Wetlands newsletter to interested people. It's a 501(c)(3) organization.
- Chall: So people pay to belong to CALM? Or pay for the newsletter?
- Delfino: No, CALM does not have--we're not a 501(c)(3). We're an affiliate of the refuge committee, which means we are under the umbrella, so to say, of the Citizens Committee to Complete the Refuge.

CCCCR [Citizens Committee to Complete the Refuge] finances are handled by Peninsula Conservation Center Foundation--PCCF--the Citizens Committee to Complete the Refuge is the umbrella organization. And then all these other organizations: the Tri-

city Ecology Center, Ohlone Audubon, Golden Gate Audubon, Sequoia Audubon, Santa Clara Valley Audubon, and League of Women Voters in Fremont--they're all under Citizens Committee to Complete the Refuge.

The Suit Against Leslie (Cargill) Salt Company

Delfino: You were asking earlier about the BayKeeper.

Chall: Yes, I was.

Delfino: All right. What happened was we had an opportunity to respond to BCDC's environmental assessment--and that was in 1994--on Cargill's levee maintenance and dredge lock activity. Cargill needed a permit to continue mucking around in the Bay, [laughs] and their ten-year permit had expired the year before or maybe two years before. Anyway, so we asked about this dump: "Did Cargill have a permit to dump on public land?" The public land meaning land that's in the wildlife refuge.

We didn't get a response that was satisfactory. Then the corps sent out a public notice on the same issue of Cargill's levee maintenance and dredge lock activities, so of course we again asked the same questions. And in fact we thought maybe that area should be opened up for mitigation, to take the dump out. But Water Quality [Control Board]--none of the agencies would tackle it. None of the agencies would do anything about this dump.

So then we decided to go to the BayKeeper. We took the BayKeeper and two attorneys to the refuge. They sailed out at Jarvis Landing--in the old days that was the only way to get into the Bay, was at Jarvis Landing in Fremont. They took their boat and went way out to Newark Slough and then out into the Bay and then up Mowry Slough to the dump. And they realized that this was something that should not exist, so they brought suit. BayKeeper.

But they needed an agent--I mean, an organization--in the area and so the Citizens Committee to Complete the Refuge joined with the BayKeeper.

Chall: But you were the primary whistle blower?

Delfino: The whistle blower. And it's still going on.



SAVE WETLANDS

Newsletter of the Citizens Committee To Complete The Refuge

Newsletter Issue 24

Summer 1998

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ENDORSERS

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Citizens for Alameda's Last Marshlands

Citizens for Open Space in Alvarado

Friends of Foster City

Save Our South Bay Wetlands

Save Wetlands in Mayhews

Wing Wings/Pintail Duck Clubs

BayKeeper and the Citizens Committee Stand up to Cargill in Court and Win!

Proved Cargill contaminating Bay with industrial waste

Janice and Frank Delfino vital to Action!

- Special Standing of Janice Delfino qualifies BayKeeper to participate
- Summary Judgment in our favor, throwing Cargill's defense out of court
- Penalty trial to follow



In a recent decision, BayKeeper and the Citizens Committee to Complete the Refuge were awarded a Summary Judgment in favor of the Bay and its wildlife by Judge Charles Legge, Northern California District, Federal Court, after a thoughtful and thorough examination of the evidence. At issue was the long-standing existence of a Cargill dump on Mowry Slough in southern Newark.

The Delfinos bring to their work the finest qualities of citizen activism. They are persistent and passionate, but just as important to their success is their habitual keen observing and meticulous note taking, along with their use of

(Continued on page 2)



Save Wetlands is the semi-annual Newsletter of the Citizens Committee to Complete the Refuge, an all-volunteer organization.

The mission of the Committee is to save the Bay's remaining wetlands by seeing them placed under the protection of the Don Edwards San Francisco Bay National Wildlife Refuge.

Membership is open to anyone interested in saving wetlands, but a tax-deductible contribution of \$10 per issue would be appreciated to help cover operating expenses.

Published twice yearly at 453 Tennessee Lane, Palo Alto CA 94306. Tel (650) 493-5540; fax (650) 494-7640; e-mail florence@refuge.org; net <http://www.refuge.org>

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resources--consultants, photographers, and aerial and surface observers.

Several agencies refused to act on the Delfino's concerns, but Mike Lozeau, the BayKeeper, listened to them, found merit in their cause and encouraged his lawyers to take the case. Then, as he put it, his "investigators gathered samples from waters adjacent to the moonscape of gray hills created by Cargill, analyzed them and found evidence of highly toxic heavy metals ... around the dump, where sensitive shorebirds in the refuge swim and feed." Those analyses demonstrated the presence of chromium, copper, lead, mercury, nickel, selenium, and zinc.

The record shows that our legal representatives understood the facts of the case and presented them convincingly. In addition, they were imaginative in the methods they used to explain the site and its biological values to the court. Photographs, videos and expert consultants served to reinforce their legal arguments.

Judge Legge declared that the factual evidence was so clear that there was no reason to go to trial. He stated that Cargill had dumped industrial waste into a pond on the levee without proper permits (for over 30 years, according to Cargill!). With regard to "Waters of the United States", he ruled that this pond meets the regulatory standard of use by migratory birds.

Cargill attorney Edgar Washburn's definition that Bay water wasn't water after a change in the dissolved solids, and thus couldn't possibly be considered a "Water of the U. S.", was not accepted by the court.

In another ploy, Washburn argued that BayKeeper and none of the others had standing to sue. The judge ruled otherwise, saying that Janice was harmed by the presence of the illegal dump, that the Delfinos had worked on the establishment of the Refuge, had volunteered untold hours on its behalf and were dedicated bird watchers. Only one person with standing is required, and since Janice is a member of the BayKeeper organization, it had standing also.

By law there will be a penalty assessed against Cargill. Our attorneys triumphed a second time with the judge's ruling that Cargill could not delay the penalty trial until after their appeal had been heard. The possibility of settlement was rejected by Mr. Washburn, so the penalty trial is set for July 13.

The Delfinos give full credit to the commitment and skill of the three attorneys who served pro bono: Suzanne Bevash, Danielle Fugere and Helen Kang. The latter, with Eb Luckel, made the courtroom presentations to Judge Legge. To us uninitiated, the legal demands made on our lawyers were outrageous, but the reward for integrity and hard work came with the announcement of the Summary Judgment. □

* * *

Inside

- 2 Cargill Lawsuit
- 3 S. F. Airport Expansion
- 4 The North Bay Scene
- 5 Creating Habitat on Treasure Island
- 6 Action at Charleston Slough

- 7 Double Wood, Catellus and Sonoma
- 8 A Few South Bay Topics
- 9 Mitigation Banks Often Rob Us
- 10 A Word to the Faithful
- 11 Other Wetland Matters..

Chall: Yes. I thought it was finished, but I realized reading the paper the other day that it hadn't.

Delfino: Yes and you will read that--

Chall: Yes, in your Save Wetlands [Summer 1998] there.

Delfino: Yes, so that would give you some idea. Judge Legge--Charles Legge--was the same judge that ruled in the Newark-Coyote case. Cargill v. Corps concerning the site known as the Newark-Coyote case. Yes, we were distressed--at least I felt distressed--when we realized that he was going to be the judge. But he ruled in our favor on this--on the dump--in our favor twice. He said that I had standing because we had helped to establish the refuge in the beginning and we were volunteers and we work--we contribute time, effort. BayKeeper didn't have standing because the judge determined that he, BayKeeper Mike Lozeau, went out for justice, for litigation purposes. [laughs]

But there are two women attorneys, very thorough and they worked so hard on this.

Chall: And do they do it pro bono?

Delfino: Yes.

Chall: I wondered about that because that's very expensive.

Delfino: Oh, my goodness, yes. And of course they had to hire consultants and those consultants are very expensive.

Chall: Yes, they are.

Delfino: And so that's part of the problem. Cargill puts forth motions--attorney Ned Washburn puts forth motions and our attorneys then have to respond. And this is just going on.

Now the next--supposedly this September 28 the judge will decide on the penalties.

Chall: Oh, I see.

Delfino: Now what Florence [La Riviere] told me this morning on the telephone was that Water Quality is going along with the silt fence, not remove the dump but just put up this silt fence. And that's a terrible, terrible idea.

Chall: It's no answer to the problem, is it, as far as you can tell?

Delfino: Oh, no, it's going to cost Cargill money to haul that dump away, but it's on public land!

Chall: It's up to the judge now to make a decision or is there more?

Delfino: Well, Cargill is doing everything to cause the judge to say, "You don't have to move the dump." I think that's what it is. "You don't have to remove this dump." Cargill complained that they couldn't take their waste out. These are the factory wastes. The dump is made up of factory wastes and other things that they put in there, because there was a refuse dump. Ned Washburn wrote that. And I don't know why he even wrote that to begin with--in the beginning it was a refuse dump.

Chall: Are they still dumping or have they had to stop?

Delfino: Not this year. Or not last year. They didn't dump.

Chall: So they have not been reissued a permit, in other words?

Delfino: They never had a permit. Oh, they had to go get a permit.

Chall: Which means they are not allowed to dump?

Delfino: Well, they've applied for a permit and that gives them something --I'm not sure what it is. The judge said you have to get a permit, so they go ahead and make an effort to get a permit, but there are other problems involved.

And Water Quality apparently is very weak in this issue. And that's why I have to talk with one of the staff persons and ask him why. "Why? What is the value of this silt fence?" I'll talk with Frank first about it, but I mean, they're a public agency, they can't just favor Cargill! And that's what it sounds like.

Save San Francisco Bay Association, The San Francisco Airport,
and Other Matters

Chall: With respect to the Save the San Francisco Bay Association--I guess you are members of the association?

Delfino: We are members, yes. But we were concerned when they went along with Bay Planning Coalition--those are people who are lawyers for wetland developers. They are wetland developers, Port of Oakland people, and they know very little about the south end of the Bay.

In fact Save the Bay did not even respond to the BCDC and corps issue on Cargill's levee maintenance. So they know very little about our south end of the Bay.

Chall: Do you have the feeling that they're going beyond Saving the Bay as it was earlier conceived?

Delfino: Well, one of the things is they're against filling 400 acres to open up thousands of acres--you know, improve the tidal action.

Chall: Now what are you talking about?

Delfino: Oh, the San Francisco Airport. The expansion would fill in 400 or 500 acres at the widest part of the Bay, open Bay, the most productive part of the Bay is the tidal marshes and the shallow water areas in the south end of the Bay. And Save the Bay--their mission has been "No fill in the Bay"--although their mission, also, if you read their mission statement, it is to restore the Bay.

Chall: Yes.

Delfino: All right, restoring the Bay means improving tidal marshes. So we had a meeting with them a couple weeks ago and they said, "We're going to have a very difficult time convincing our board of directors that filling the Bay for the airport and buying"--see, the airport has the money to buy Cargill.

Chall: But now what is the stand of Save the Bay on this?

Delfino: They're not in favor of filling for the expansion of the airport.

Chall: They're not in favor?

Delfino: That's right. At least the staff people.

Chall: What is your position?

Delfino: Fill that area and buy out Cargill to open up thousands of acreage.

Chall: I see.

Delfino: I mean, here are 500 acres and we get thousands of acres.

Chall: Can you be sure of that? I mean, nobody's sure of what Cargill's going to do. [See Appendix B]

Delfino: Well, if Cargill becomes a willing seller--. Oh, they said they're not going to sell, "Our salt is so important." But for the Cargill Company--they bought this property for real estate values, not for salt! They only make a little money out of salt. But no, I'm in favor--. I mean, sure, if it meant just filling the Bay and not doing anything about South Bay, then that would be different, but when you can open up more bay water to improve tidal action and create acres of tidal marshes, then I am in favor of buying out Cargill.

Chall: But your opening up more bay water is dependent upon Cargill's sale, is that right?

Delfino: Yes, oh, yes.

Chall: That is so uncertain; but you would wait, then? You would play a waiting game, a holding game?

Delfino: Well, then they can't fill until they can mitigate.

Chall: And so the airport is on hold, is that right?

Delfino: Well the airport is moving forward. They have consulting companies doing feasibility studies and all that, and somebody would have to appraise Cargill's properties--and not sell for \$15,000 an acre.

Chall: So this is all sort of in limbo? I mean, everything's moving ahead, but nothing is certain?

Delfino: Yes, and the Sierra Club people are against it.

Chall: Against?

Delfino: The filling. But they would leap for opening up more of Cargill's property. And you can't do that unless you buy out Cargill, and the only way you're going to get that much money--. It would be a lot of money to buy out Cargill, but it's worth it!

Chall: And who will buy it out?

Delfino: The San Francisco Airport.

Chall: The San Francisco Airport?

Delfino: They have the money! They have millions and millions and millions of dollars. I have been disappointed with Barry Nelson as executive director of Save San Francisco Bay Association. I don't think Barry is involved with the issue of the San Francisco

Airport expansion. He was a very poor executive director, and we strongly disagreed with his dealings with Will Travis of BCDC concerning the purchase of Cargill's North Bay salt ponds, and the Sonoma Baylands Project.

Cargill asked Save the Bay to write a letter recommending Cargill for the National Wildlife Federation Environmental Award. Now, through various means we got that information. Save the Bay wrote a letter recommending that Cargill get this environmental award. Well, we thought it was one of the worst companies for an environmental award. We're members of National Wildlife Federation, so we immediately phoned, [laughs] "If you get information from Save the Bay concerning Cargill, please don't award this company." And Barry Nelson was the one who told Marc Holmes to write the letter. I guess that capped it. That probably capped it for me. He told him to write the letter and Marc Holmes went ahead.

And so of course in the meantime we had found out and we sent in information to National Wildlife Federation telling them how terrible Cargill was and what they were doing going against endangered species. And you know, there was another lawsuit that Cargill was involved in--not our lawsuit--so National Wildlife Federation decided they would give no awards. That took care of that.

Chall: So they don't give awards, is that correct?

Delfino: Apparently. We had a letter saying that they discontinued that.

Chall: I can see that they could get into difficulties, particularly when they don't know what's going on locally, everywhere in the United States, and people have varying points of view on issues.

Delfino: That's right. And we sent them information, you know, articles and other information that told them what a poor record that Cargill had concerning the environment.

Chall: You are not at all sympathetic in any way to whatever Cargill does?

Delfino: Well, they claim they work with the Wildlife Refuge. The agreement, when the property was purchased, was that they could continue making salt. Rick Coleman [former refuge executive] wanted the dump out of there. In fact, that was the first time I knew that there was a problem. And that goes back to the late eighties: "Get that dump out of there." And Cargill said, "We operate on this refuge; we have the privilege of the signed

agreement that we operate and we can dump there." Other little things have been kind of nasty.

Chall: So they're a thorn in your side and you're a thorn in their's for sure! [laughs]

Delfino: Bob Douglass' daughter--Jennifer Nations--she's married--sent a fax to Florence [La Riviere]--wanted information on the Citizens Committee to Complete the Refuge problems we'd had with Cargill. She was at one of the universities in Texas and she wanted to do a paper on that subject. She was taking a class--she's an environmentalist, much against her own father's ideas--[laughs]--so how does this story go?

She had to do this paper for a class on the environment. Florence asked if I would help her. So I gathered all appropriate information. I knew who she was because on her fax it had Jennifer Douglass Nations, but I did not let her know that I knew who she was. Frank and I bent over backwards to provide her with information. Then she would send us updates on her paper and maybe some more questions. Then she made a presentation before her class. I guess she was getting a master's degree. She sent us a copy of her paper with an "Excellent" on it. The professor gave her an "excellent."

So I phoned and complimented her and then after our conversation I said, "Jennifer, I've known all along who you really are." [laughs] And I said, "Florence and I both knew who you were, but we felt so kindly toward you and wanted you to do so well." She had been a volunteer at the refuge and Rick Coleman had helped her along. So Jennifer and I had a good laugh about that. That's about enough. [laughs]

Chall: Well, we've covered pretty thoroughly your career as an activist for the environment. Thank you very much.

TAPE GUIDE--Baumberg Tract Oral History Project

INTERVIEW WITH HOWARD COGSWELL

Interview 1: September 6, 1996

Tape 1, Side A

1

Tape 1, Side B

18

Interview 2: July 17, 1998

Tape 2, Side A

29

Tape 2, Side B

41

Tape 3, Side A

53

Tape 3, Side B

65

INTERVIEW WITH JOHN THORPE

Interview 2: February 28, 1998

Tape 3, Side A

81

Tape 3, Side B

91

Tape 4, Side A

103

Tape 4, Side B not recorded

Interview 1: May 10, 1997

Tape 1, Side A

108

Tape 1, Side B

119

Tape 2, Side A

128

Tape 2, Side B

137

INTERVIEW WITH ROBERT DOUGLASS

Date of Interview: February 24, 1998

Tape 1, Side A

156

Tape 1, Side B

166

INTERVIEW WITH STEVE FOREMAN

Date of Interview: March 11, 1998

Tape 1, Side A

179

Tape 1, Side B

188

Tape 2, Side A

189

Tape 2, Side B

208

INTERVIEW WITH KAREN WEISSMAN

Date of Interview: November 4, 1997

Tape 1, Side A

219

Tape 1, Side B

229

Tape 2, Side A

239

Tape 2, Side B not recorded

INTERVIEW WITH PETER SORENSEN

Date of Interview: June 10, 1998

Tape 1, Side A

249

Tape 1, Side B

259

INTERVIEW WITH CARL WILCOX

Date of Interview: July 20, 1998

Tape 1, Side A

274

Tape 1, Side B

284

Tape 2, Side A

294

Tape 2, Side B not recorded

INTERVIEW WITH ROBERTA COOPER

Date of Interview: October 14, 1998

Tape 1, Side A

301

Tape 1, Side B not recorded

INTERVIEW WITH JANICE DELFINO

Date of Interview: July 21, 1998

Tape 1, Side A

317

Tape 1, Side B

329

Tape 2, Side A

341

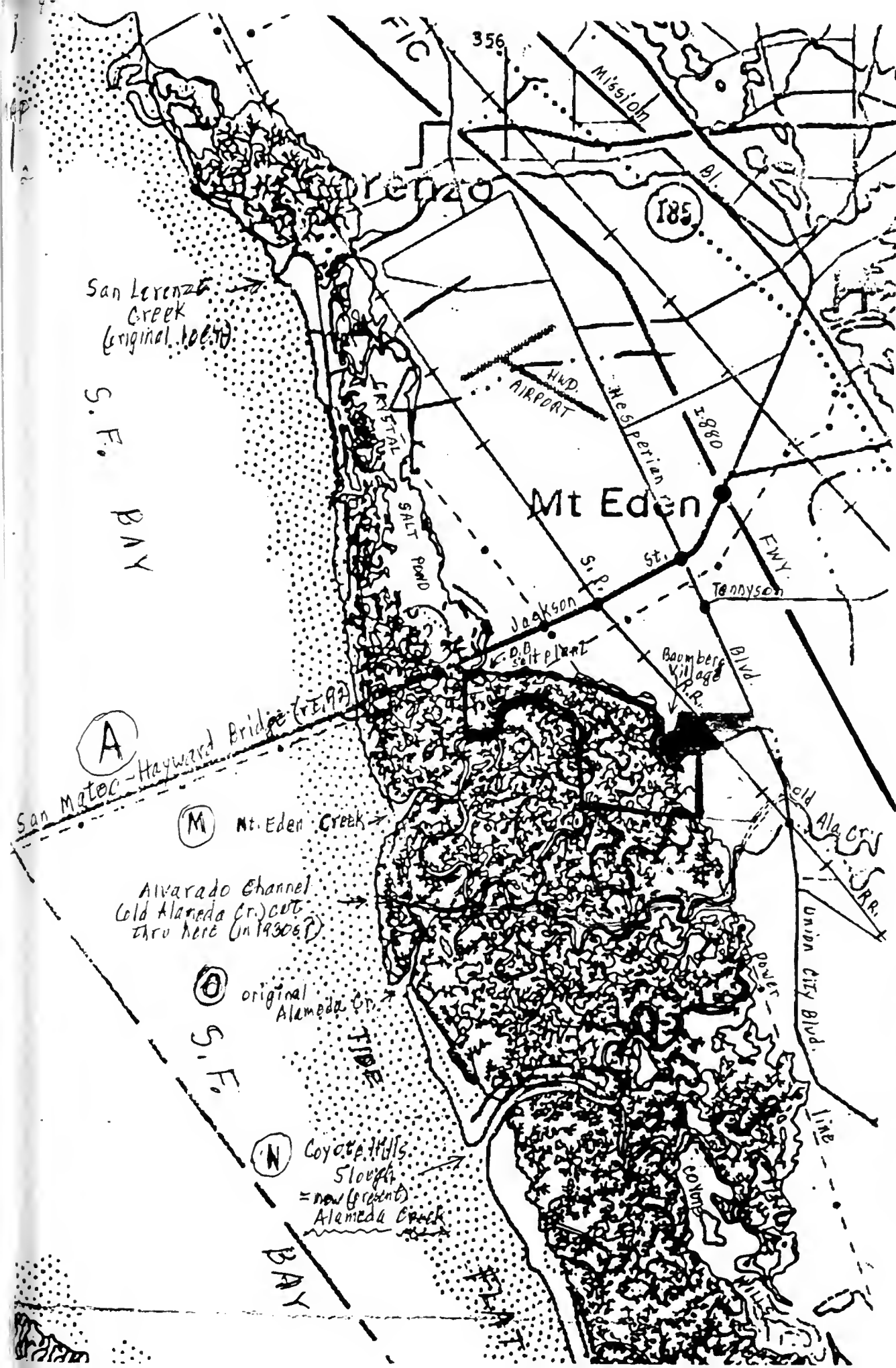
Tape 2, Side B not recorded

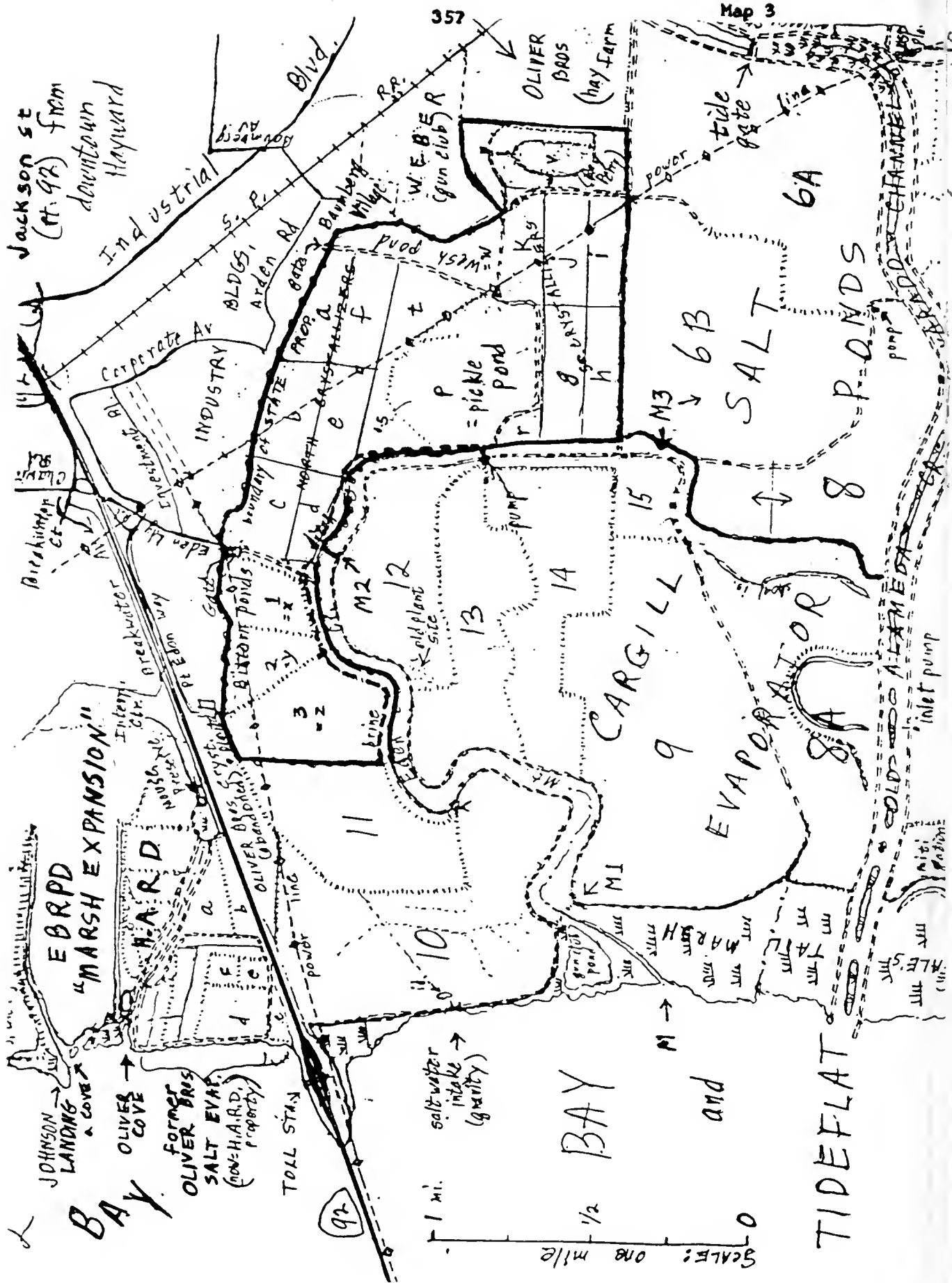
523



from D.R. Nichols & N.A. Wright, 1921. Preliminary Map of
Historic Margins of Marshland, SAN FRANCISCO BAY, CALIFORNIA
U.S.D.I. / Geol. Survey and D.S. Dept. of Housing and Urban Development.

Annotations by Howard L. Coppswell
from several sources. / June 1996 + Sep. 1998





A-1 = PUBLIC TRUST EASEMENT
A-2

STATE

B-1 } TITLE NOT RESOLVED IN LITIGATION (EXISTING MARSH)
B-2 }
B-3 }

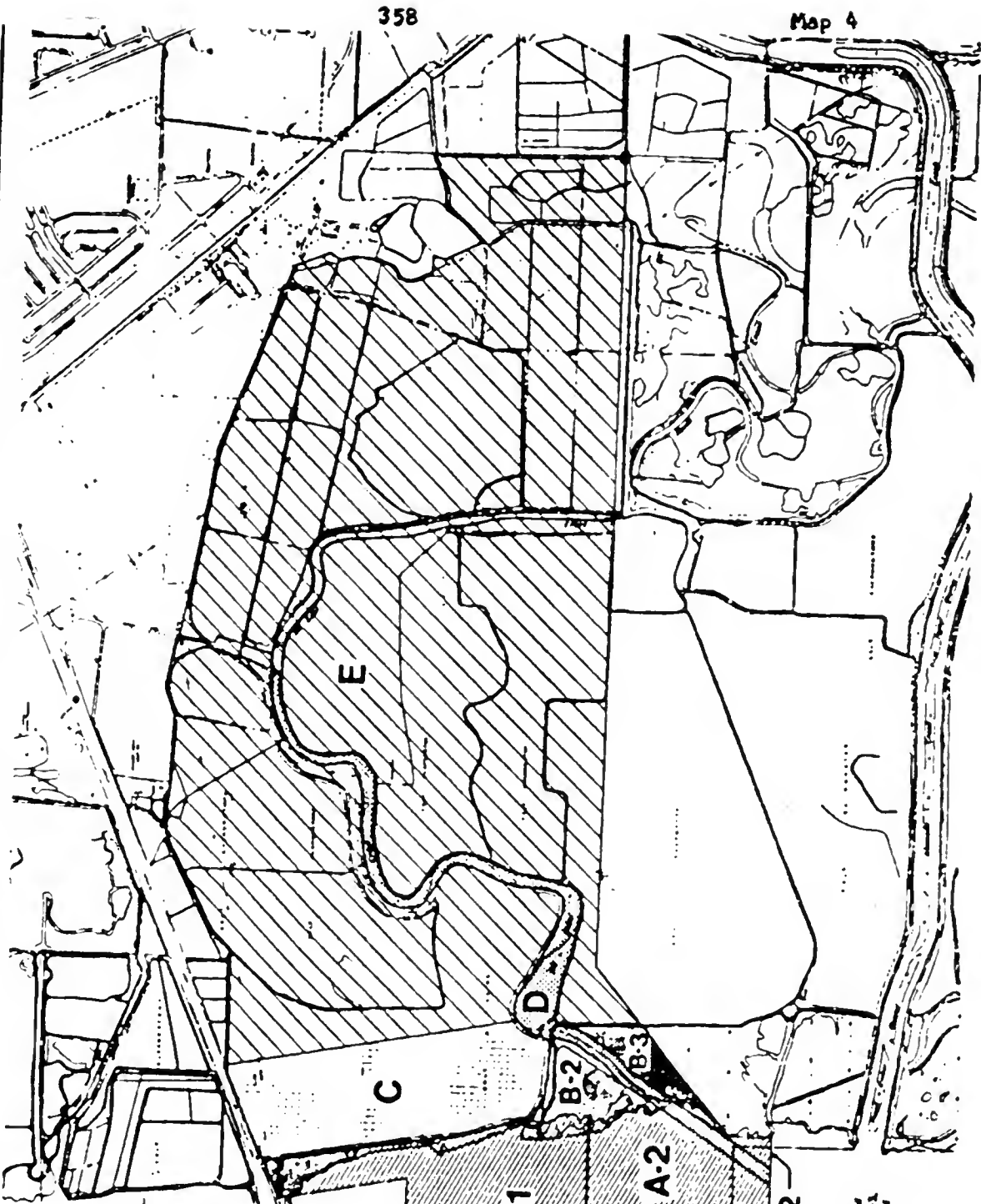
C = STATE

INTEREST SUBJECT TO
LESSEE'S CONTINUING SALT PONDING

D = STATE FEE SIMPLE ABSOLUTE

E = LESSEE TITLED TO STATE
LANDS SETTLEMENT AGREEMENT
EXHIBIT C

MAP DEPICTING PARCELS DESCRIBED
IN SETTLEMENT AGREEMENT



This map is for the Settlement Agreement only. It is not intended to
show any boundary lines. The actual parcel boundaries are
shown in the Settlement Agreement. The actual parcel boundaries
are shown in the Settlement Agreement. The actual parcel boundaries
are shown in the Settlement Agreement. The actual parcel boundaries
are shown in the Settlement Agreement.

SETTLEMENT
12-31-1984

GLOSSARY--Baumberg Tract Oral History Project

BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC): Act passed by the California legislature in 1969. State agency responsible for protecting surface area of the Bay and providing access to the Bay and shoreline. Mandate authorizes filling or dredging only when public benefits clearly exceed public detriment from loss of water areas; limited to water oriented uses such as ship and air ports, recreation, wildlife refuges. If development plans affecting San Francisco Bay do not meet these standards, permits may be denied.

CALFED: A joint 32-member state-federal planning organization established in 1995 to develop a solution to water and environmental problems of the Bay-Delta [San Francisco Bay-Sacramento-San Joaquin Delta]. Its three alternative solutions are now being debated by interested parties throughout the state. Program elements include: storage, conveyance, levee protection, water quality, ecosystem restoration, water use efficiency, water transfer, watershed management.

CALIFORNIA DEPARTMENT OF FISH AND GAME (CDFG): A department within the state Resources Agency with oversight of California rivers, streams and lakes. Trustee agency responsible for management, enhancement, and protection of fish and wildlife resources.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA): Act passed by the California legislature in 1970. The provisions of the Act were extended to private projects by the Friends of Mammoth legal decision in 1972. Administered by state and local governmental agencies; overseen by the state Office of Planning and Research. Statute requires that all projects over a certain size as defined in the State EIR Guidelines must be reviewed to assess their environmental impact. Legislation which created Environmental Impact Reports (EIR).

CLEAN WATER ACT (SECTION 404): Act of Congress, 1972, primarily to authorize the U.S. Environmental Protection Agency (EPA) to regulate water quality through the restriction of pollution discharges. Section 404 specifically delegates certain authorities to the U.S. Army Corps of Engineers (Corps) and EPA relating to the discharge of dredged or fill material into waters of the United States and adjacent wetlands. The Corps is the permitting agency for permits issued pursuant to Section 404.

CVPIA: Central Valley Project Improvement Act. Act of Congress, 1992. Specifically allows transfers of CVP water from CVP areas to areas outside the CVP service area. Seeks to balance Central Valley Project water use among California farmers, urban water districts, fish and wildlife.

ENDANGERED SPECIES ACT (ESA) FEDERAL: Act of Congress, 1973. Law designates species for protection based on their threat of extinction as a consequence primarily of economic growth and development. If a species is listed as endangered or threatened under the federal Act, public agencies and private developers must obtain a permit from the U.S. Fish and Wildlife Service upon proof that their project will not jeopardize the survival or recovery of the species in the wild. A "jeopardy opinion" issued by the USFWS is an automatic denial of the project.

SECTION 7, ESA: Consultation process between a federal agency and the USFWS that authorizes take of listed species incidental to lawful governmental activities provided that such take is done pursuant to reasonable and prudent measures that the Secretary of the Interior considers necessary or appropriate to minimize such impact. Results in a "Jeopardy" or "Non-Jeopardy" Opinion.

INCIDENTAL TAKE: According to the U.S. Code, take incidental to and not the purpose of carrying out the purpose of an otherwise lawful activity.

SECTION 10 (a), ESA: Permit (Incidental Take Permit or ITP) issued by the director of the USFWS to a private entity or a non-federal governmental agency to allow the incidental take of a listed species. The take must be subject to an approved Habitat Conservation Plan (HCP). Counterpart of the Section 7 process on private lands or lands with no federal jurisdiction. See also TAKE; TAKINGS

ENVIRONMENTAL IMPACT REPORT (EIR): See California Environmental Quality Act.

ENVIRONMENTAL IMPACT STATEMENT (EIS): See National Environmental Policy Act.

ENVIRONMENTAL PROTECTION AGENCY (EPA): Independent agency of the federal government with authority to protect the environment from water, air, and land pollution. Established in December 1970 by reorganization Plan No. 3 devised to consolidate the federal government's environmental regulatory activities under the jurisdiction of a single agency. Transmitted to Congress on July 9, 1970, by President Richard Nixon.

JEOPARDY: See Endangered Species Act, Section 7.

MITIGATION: Avoiding, minimizing, or compensating for impact of planned development or other activities on wetlands and other biological resources. Compensates by creating an equivalent amount of new wetlands or some other ratio (e.g. 2:1, 3:1, new:old) deemed acceptable to the federal and/or state resource agencies.

NATONAL ENVIRONMENTAL POLICY ACT (NEPA): Act of Congress, 1969 which established the requirement for environmental assessment of major

federal actions directly under the jurisdiction of federal agencies. Basis for the Environmental Impact Statement (EIS). For private projects with federal involvement. The lead agency is the agency granting a permit for the project (e.g. Corps of Engineers for a project with wetlands subject to Section 404 of the Clean Water Act). Federal counterpart to the California Environmental Quality Act.

PROPOSITION 70, June 1998. Wildlife, Coastal, and Park Land Conservation Bond Act. Initiative statute sponsored by Californians for Parks and Wildlife. \$776 million to acquire, develop, rehabilitate, protect, and restore parks, wildlife, coastal and natural lands in California.

RIVERS AND HARBORS ACT of 1899 (SECTION 10): Act of Congress, 1899. Amended over the years. Requires a permit to fill or dredge in navigable waters—those areas of the shoreline below the historic mean high water mark. Enforcement is the responsibility of the Corps of Engineers. (See U.S. Army Corps of Engineers.)

STATE WATER RESOURCES CONTROL BOARD: State agency responsible for setting and enforcing state water quality standards.

TAKE: Federal Endangered Species Act of 1973 definition was "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" towards a listed species. This definition was extended by the Palila decisions to include degradation of critical habitat.

TAKINGS: The appropriation, including excessive regulation that amounts to an appropriation of private property by the federal government, and is thus subject to monetary compensation of the landowner.

U.S. ARMY CORPS of ENGINEERS: Responsible for regulation of activities which affect navigable waters (rivers, streams, harbors) and "waters of the U.S." which includes wetlands. Principal enabling legislation of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

U.S FISH AND WILDLIFE SERVICE (USFWS): A subdivision of the U.S. Department of the Interior. Agency charged with the implementation of the federal Endangered Species Act, including the determination of Jeopardy.

WETLANDS: Habitats that are frequently inundated or saturated for long duration and support characteristic plant life; vegetated waters of the United States. Wetlands have a specific legal definition under federal law which must be followed by other levels of government and the private sector in order to comply with the law.

APPENDICES

A	Pages Selected from the Biological Assessment and Mitigation Reports of WESCO and TRA for the Proposed Shorelands Project	362
B	The Leslie Salt Division of the Cargill Company: Its History; Current Legal, and San Francisco Airport Issues	370
C	The Don Edwards San Francisco Bay National Wildlife Refuge; Bair Island; The Hayward Shoreline Interpretive Center	377
D	Proposition HH	381

1.0 INTRODUCTION

The Shorelands Corporation has applied to the City of Hayward for a permit to develop portions of a 735.9-acre site located at the terminus of Eden Landing Road in Hayward, Alameda County, California (Figure 1).

The project is planned as a mixed use development consisting of a horse racing track and associated facilities, a family entertainment park, a recreational vehicle park, and space for commercial offices, light industrial manufacturing and research and development. The project would be built in four phases over eight years, as shown in Tables 1 and 2.

The project facilities would place fill material on 660.7 acres of the 735.9-acre project site and approximately 33 acres proposed for right-of-way for new roads. Portions of the site are under the jurisdiction of the U.S. Department of the Army, Corps of Engineers. The Shorelands Corporation applied to the Corps of Engineers, San Francisco District (USACE) for a permit to fill under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act in 1983.

Pursuant to Section 7(c) of the Endangered Species Act, as amended (16 USC 1531-1542), USACE must consult with the U.S. Fish and Wildlife Service (USFWS) to determine if any federally listed (or candidate) threatened or endangered species would be adversely affected by USACE's issuance of the applicable permit for the project. The USFWS responds to the consultation with a written opinion that the project would either result in Jeopardy or Non-Jeopardy to the species.

In 1987, the USFWS issued a Jeopardy Opinion concerning three listed species, as tabulated on page two. In response, the Shorelands Corporation withdrew its permit applicant to the USACE, to allow re-design of the project and a mitigation program that would not cause jeopardy to endangered species. The project has since been re-designed, the mitigation plan has been revised to allow for the determination of a Section 7 Biological Opinion by the Service, and Shorelands has requested initiation of Early Consultation. The mitigation plan is an attachment to this report.

This report is a compilation of the data necessary to allow USFWS to complete an assessment of the project's potential impacts to listed species. The report includes brief descriptions of the pertinent species' status, range, distribution, habitat requirements, general ecology, population levels, and occurrence in the project area. The report also discusses the potential impacts of the proposed project on the species and their habitats, and evaluates proposed measures to compensate for adverse impacts.

*Pages selected from the Biological Assessment and Mitigation Reports of WESCO and TRA for the Proposed Shorelands Project.

BIOLOGICAL ASSESSMENT -- SHORELANDS PROJECT

2.2.2 Summary of Mitigation Program

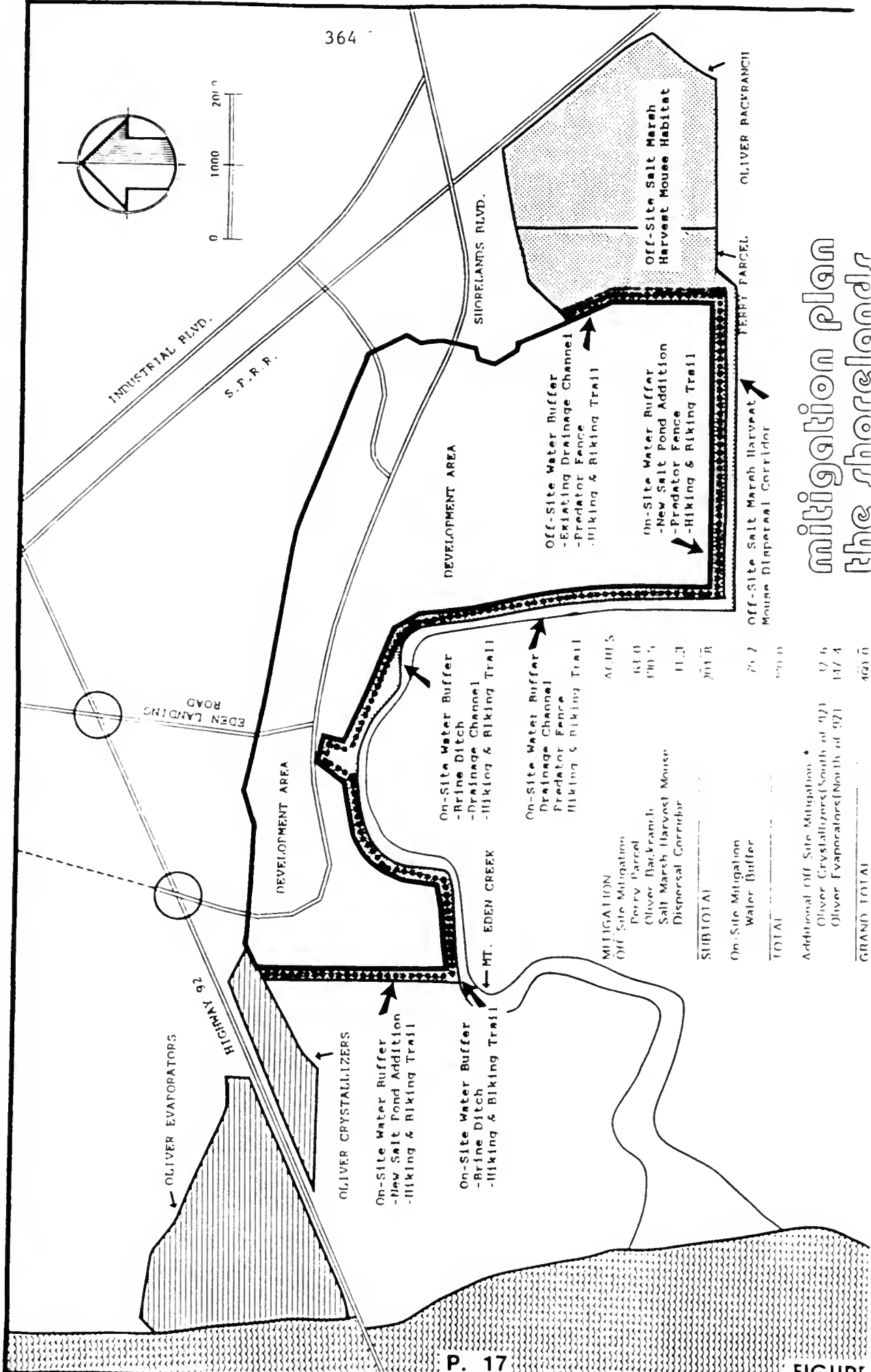
The project would offer approximately 205 acres as wildlife habitat mitigation land (See Figure 6 and attached Mitigation Plan). Depending upon present values, especially for the snowy plover, Shorelands could also offer another 180 acres in the Oliver crystallizers and evaporators. The principal components of the project's currently-proposed mitigation program are as follows:

Within the 193.5 acres comprising the Oliver/Perry parcels:

- o 112 acres of salt marsh and transitional marsh on the Oliver/Perry parcel east of the project site
- o 18 acres of permanent (freshwater) ponds and 25 acres of seasonal ponds within the Oliver/Perry parcel to provide habitat diversity
- o a system of salt and freshwater sources and drainageways to provide water of appropriate salinity to the new marsh and ponds

In addition, the project would provide:

- o a 100-foot wide salt marsh harvest mouse dispersal corridor (11.3 acres) offsite along the southern boundary of the property to provide continuous pickleweed from the salt marsh on Oliver/Perry to the existing salt marsh habitat along Mt. Eden Creek
- o an on-site water buffer (66.1) acres providing a minimum separation of 100 feet between the perimeter hiking trail at the edge of the project development and the adjacent off-site salt ponds. The water buffer will comprise new salt evaporator pond, a brine ditch, and a storm drainage ditch (see Exhibit 3 of the Mitigation Plan). This buffer will separate the 9.1 acres of perimeter hiking trails from the outboard wildlife habitat.
- o a predator fence of USFWS-approved design located in the center of the water-filled channels, and surrounding the portions of the project site most likely to harbor verminous predators such as Norway rats
- o a predator control program, including rodent-proofing buildings and utility openings; baiting, trapping and removal and ongoing monitoring of predator numbers;
- o water quality control measures as required by the RWQCB for wastewater and stormwater to prevent degradation of offsite water quality; monitoring of water quality over time by RWQCB or in accordance with RWQCB requirements



mitigation plan
the shorelands

BIOLOGICAL ASSESSMENT -- SHORELANDS PROJECT

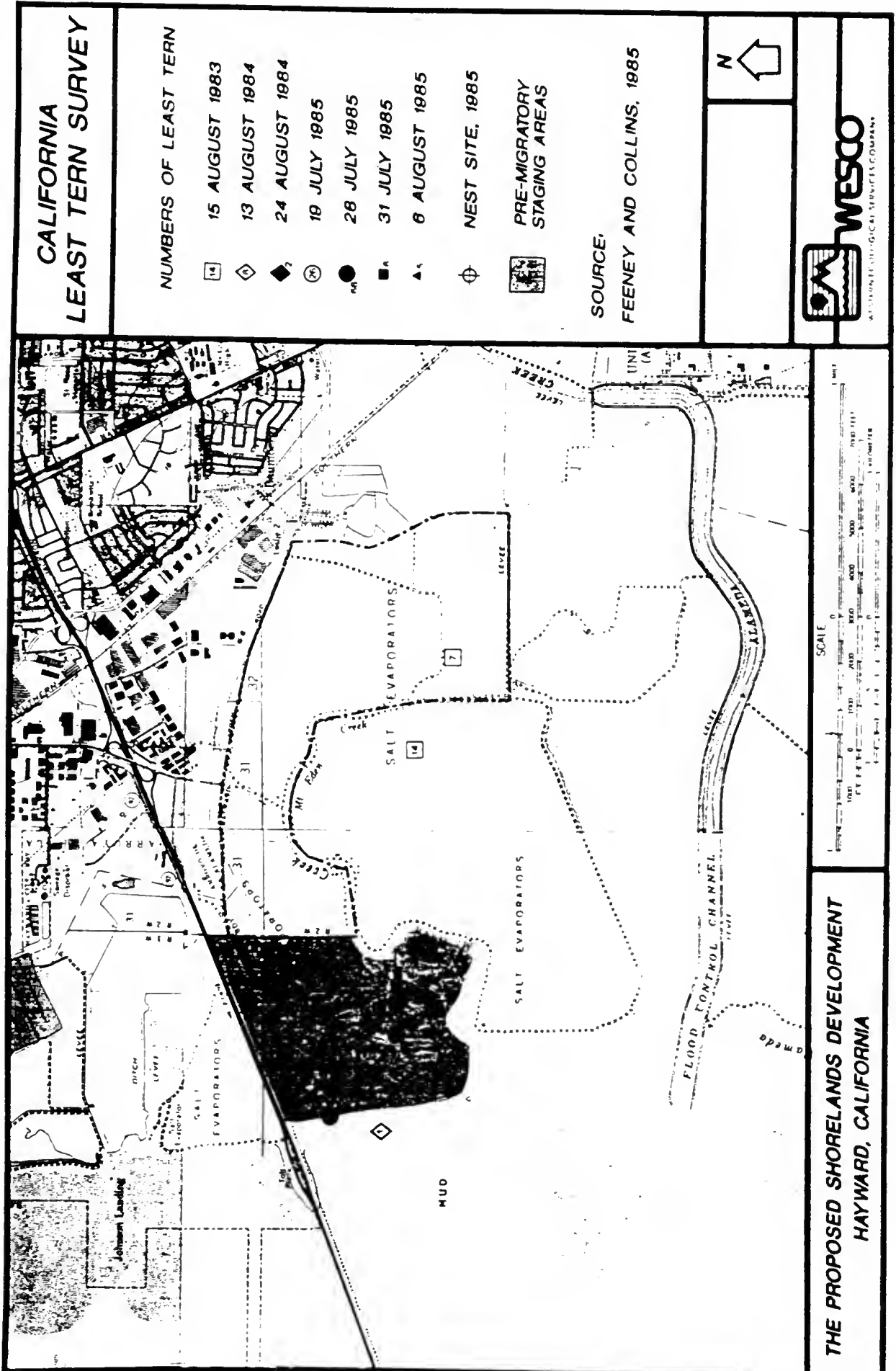
- o guaranteed funding for initial habitat restoration and predator monitoring, as well as long-term stewardship and monitoring of the mitigation lands. There will be funding to cover the important contingencies, such as the habitat restoration failing to meet performance criteria, or the project not building out as originally intended.

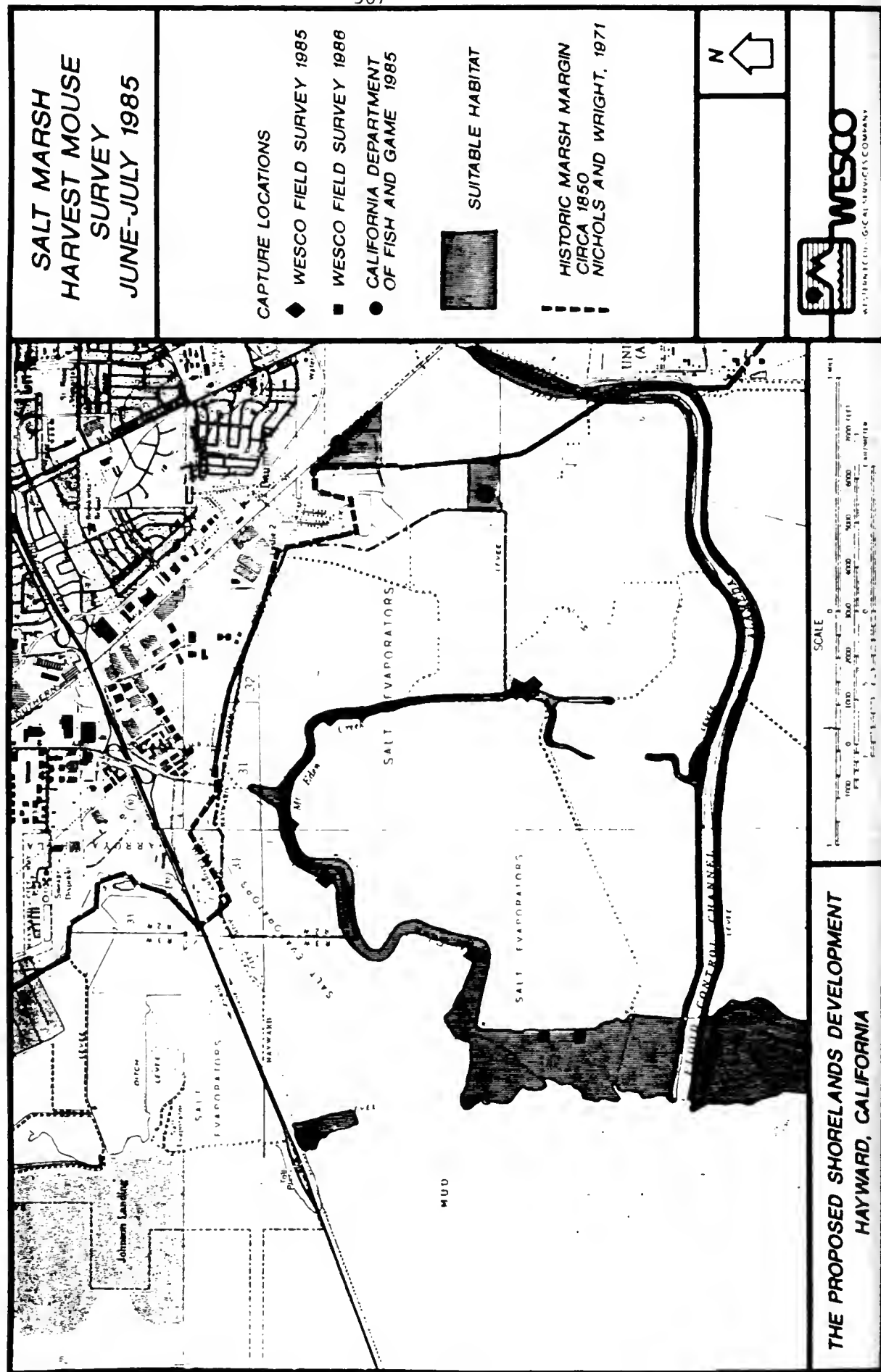
The mitigation program, as proposed, represents a concerted effort by Shorelands to provide adequate mitigation for all of the direct and indirect impacts on listed endangered species identified in the biological assessment. If successful, the plan should provide effective mitigation of each of the direct and indirect impacts.

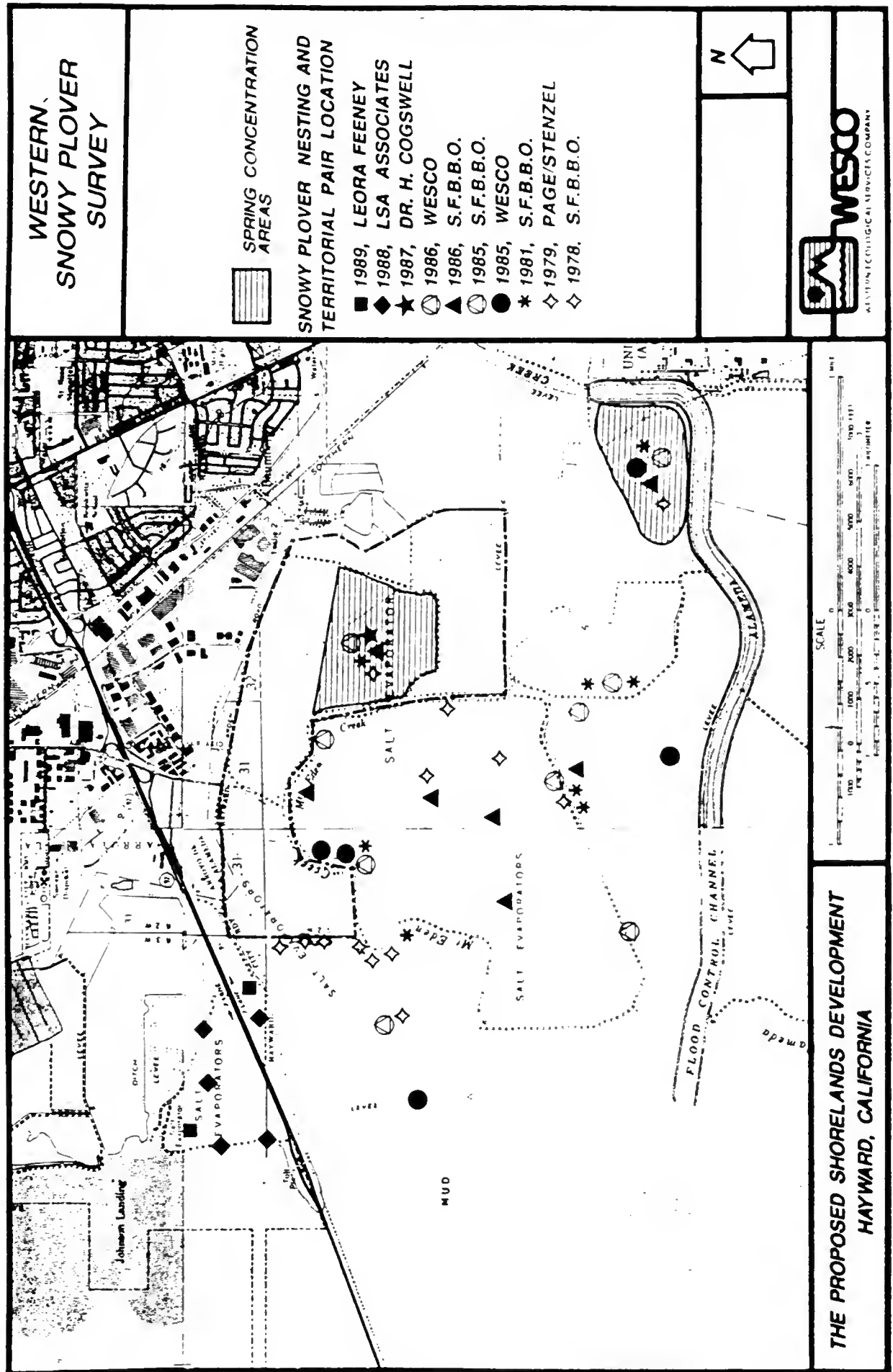
The proposed mitigation program is intended to support issuance of a Non-Jeopardy Opinion for listed endangered species under Section 7 of the Endangered Species Act. It is not intended to fully address all mitigation of impacts on shorebirds and other resource values as required under Section 404 of the Clean Water Act and related regulations. These are to be addressed in a separate program pursuant to Section 404 requirements, at a later date. If the Section 404 mitigation results in subsequent impacts to listed endangered species not addressed by the current mitigation program, then the Biological Opinion issued in response to this Biological Assessment will be invalidated, and the Section 7 consultation must be reopened.

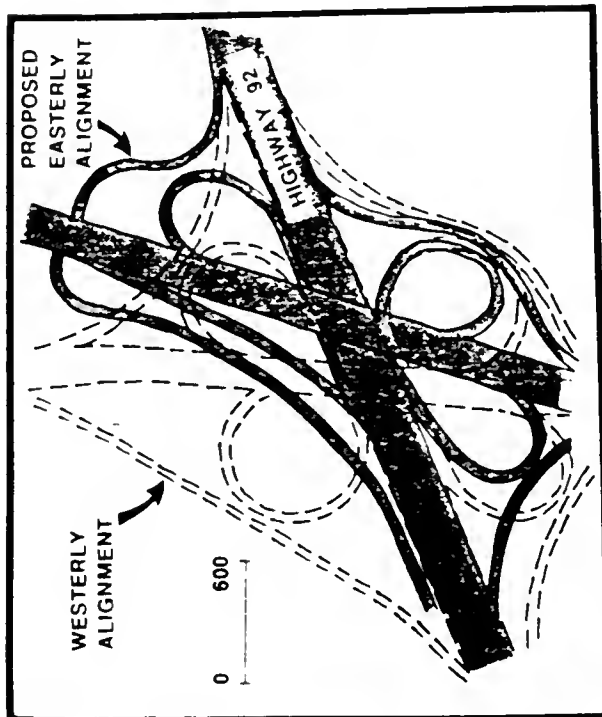
The Biological Opinion is expected to be issued, contingent upon a Conservation Agreement which will specify in detail the initial and long-term implementation mechanism and funding program for all of the conservation measures specified in the mitigation plan. The restoration, monitoring, and management functions will be carried out by an agency with the biological and open space management expertise necessary to successfully carry out these functions. The Hayward Area Recreation and Parks District (HARD) is such an agency. HARD has been approached by the Shorelands Corporation, and has shown an overall interest in playing this role, though the District has not yet made a firm, contractual commitment.

Initial conservation measures including baseline predator monitoring, predator barrier construction, and marsh restoration, will be funded as part of "up-front" development costs. Long-term funding for conservation activities will be specified in the Conservation Agreement, and will involve a standard mechanism such as an assessment district or a trust fund, or some combination. The funding mechanism will be structured to guarantee that funding will be available to assure that the mitigation for endangered species will compensate for whatever impacts have or will have occurred.

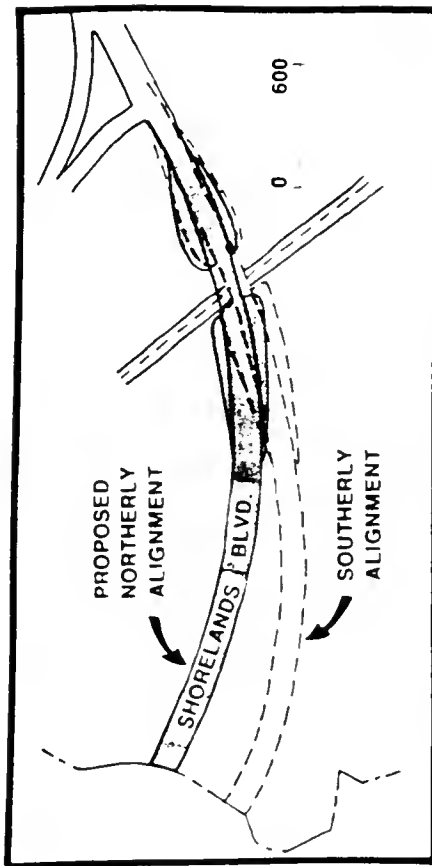




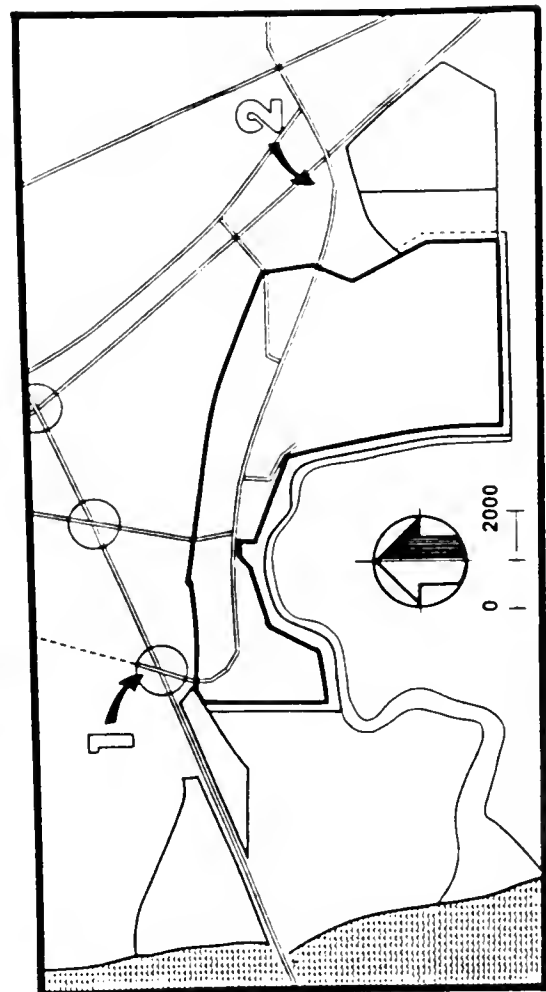




1 HIGHWAY 92/CABOT INTERCHANGE



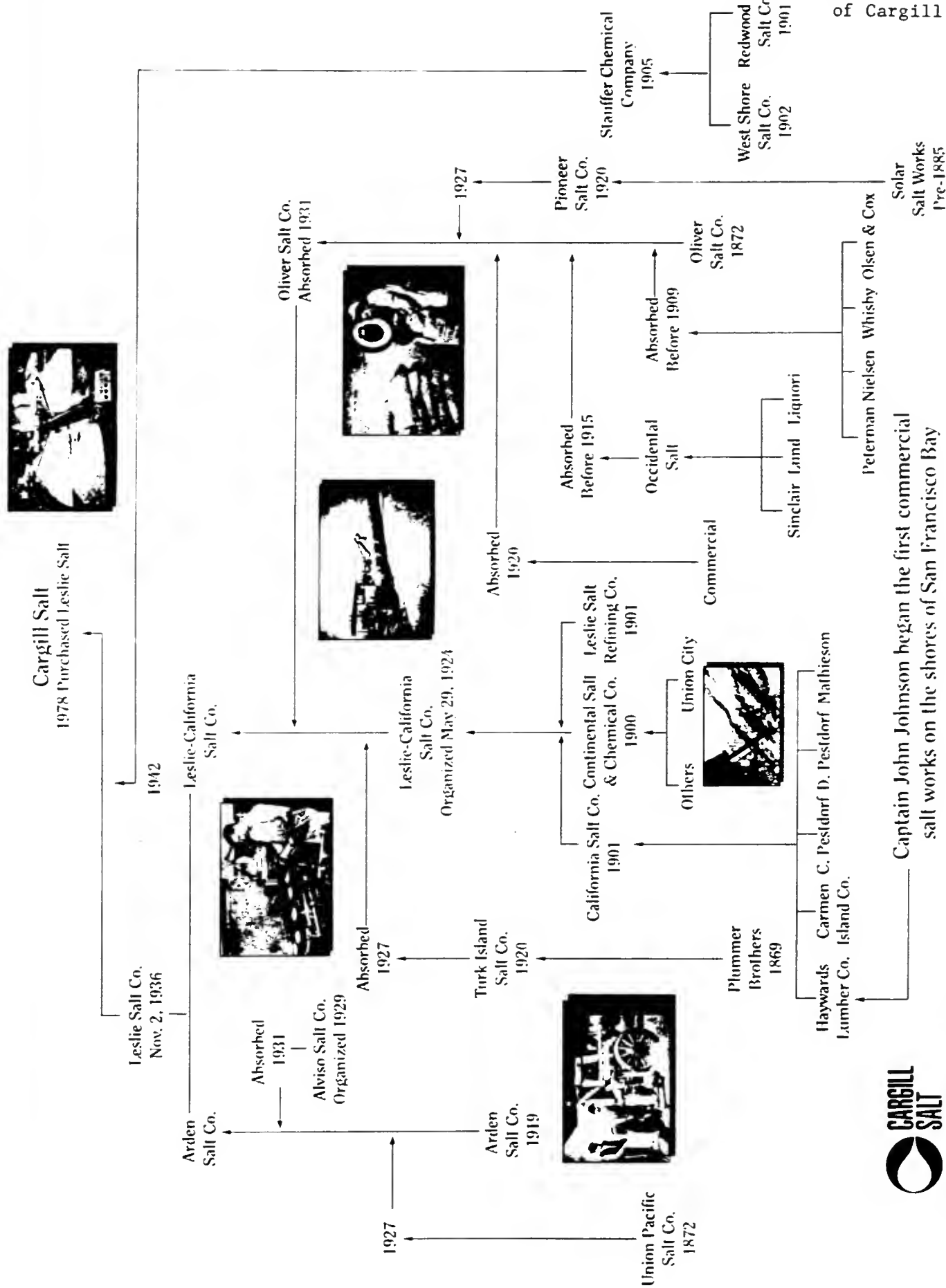
2 SHORELANDS BOULEVARD EXTENSION



KEY MAP

ALTERNATE OFFSITE TRAFFIC
IMPROVEMENT ALIGNMENTS

the shorelands
HAYWARD, CA. 94541-1700



THE BAY'S EDGE

A Cargill Salt Report

CALIFORNIA MANUFACTURER MAGAZINE PROFILES BAY AREA SALT INDUSTRY

Dear Neighbor:

Summer is approaching quickly, and we are entering the "making" phase of solar salt production, when salt crystals begin to precipitate in our crystallizer beds. As happens around this time of the year, we've set our sights on the future. We look not just to our 1999 harvest, but also to future harvests: the upcoming years in which we continue to improve our salt making process, and in which we continue to mature as a company and as individual employees.



*"Our salt supports a network
of jobs and industries
throughout the West."*

We also look back at a successful winter, which included a number of improvements in our operation, as well as the publication of the enclosed article in *California Manufacturer* magazine's February 1999 issue.

The article describes how our salt making process is part of the ecological network of today's San Francisco Bay, providing habitat and feeding grounds for a million or more shorebirds and waterfowl.

It also shows that Cargill is part of the economic network that underlies our South Bay communities, providing union jobs for hundreds of families in the area, purchasing goods and services from local businesses, and supporting education and community services.

And — as a feature in a magazine read by executives of manufacturing businesses throughout California — the article recognizes that our salt supports a network of jobs and industries throughout the West.

The widely publicized debate over proposed mitigation plans for the San Francisco Airport expansion has captured headlines around the Bay, and it's covered in this article, as well. We strongly believe that our working salt ponds are an asset to the Bay Area, and that a narrowly focused proposal

to close us down would do irreparable harm to the families who work here, the communities we live in, the industries we serve, and the diversity of wildlife that now thrives in the South Bay's unique ecosystem.

We hope the enclosed article provides you with an informative look at our company and the role we play in the Bay Area. The salt industry began here nearly a century and a half ago because of the rare combination of natural conditions that make salt gathering economically viable. The salt industry has thrived here because of the remarkable people who have honed the art and science of solar salt production in the Bay Area, and the communities they helped build. We look forward to a bright future as a productive member of the South Bay community.

Catherine

Catherine Gump
General Manager, Cargill Salt Western Region

CARGILL HONORS RENOWNED ENGINEER CLAIRE LOPEZ WITH SCHOLARSHIP

Cargill Salt has created the Claire Lopez Memorial Scholarship to assist a graduating Newark Memorial High School senior with his or her college education, and to honor a beloved salt company veteran. An award of \$1,000 will be presented to the chosen student.

Claire Lopez remains a legend in the salt industry. The mechanical salt harvester design Lopez helped develop in the 1920s and '30s still plies the salt ponds today. Under his direction, the salt company developed salt production facilities in Napa, Redwood City and Port Hedland, Australia. Lopez rose to the position of chief engineer for Leslie Salt, a position he held until his retirement in 1964.

Claire Lopez was the consummate mentor, imparting guidance and direction to young people. One man Lopez took under his wing — Bill Dutra, now president of Dutra Enterprises in Santa Clara — says his mentor motivated him to go to college. "Claire inspired me in that he was a self-made man who illustrated the ability that if you had the will and energy, you could educate yourself," Dutra says. "You're not

going to find another Claire Lopez."

"Claire Lopez didn't finish high school, but there's no person we would rather honor with a scholarship," says Catherine Gump, general manager of Cargill Salt's Western Region. "He was a brilliant engineer, a devoted mentor and a strong proponent of education as an avenue to the treasures of the future. Claire Lopez established, as much as anyone, the salt company's corporate culture — the integrity, strong work ethic, the dedication to community service and the forward-

thinking embrace of technology that continues to guide us. I'm sure he would be proud to have his name associated with the rising young talents from our community."

Newark Schools Superintendent Ken Sherer welcomes the scholarship. "We are deeply grateful to Cargill Salt for establishing the Claire Lopez Memorial Scholarship," he says. "Each year, it will inspire students to honor this outstanding person and to seek the linkage between education, work, and love of community — all of which are essential to a successful and fulfilling life."



Claire Lopez
1899 - 1994

CARGILL RECEIVES "FULL COMPLIANCE" RATING FROM CUPA

Cargill Salt received a clean bill of health from the City of Newark following its annual inspection. The City of Newark is Cargill's Certified Unified Program Agency (CUPA), which is responsible for enforcing a variety of state environmental regulations. The 5 1/2 hour inspection examined Cargill's management of above-ground storage tanks, storage and use of hazardous materials, handling and disposal of hazardous waste, oil spill prevention, fire safety, stormwater management and employee training in environment, health

and safety. The audit showed Cargill to be in full compliance with all state environmental laws.

The Newark refinery and Bay Area solar operation also earned top scores in an internal safety audit performed by Cargill. In many cases, Cargill's internal standards are more stringent than state and federal law.

"The results of these audits illustrate how serious our people are in working safely and keeping our environment clean," says general manager Catherine Gump. "We're proud of our record."

The Bay's Edge is a periodic report to the community, employees and retirees on Cargill Salt activities. We welcome your comments or questions.

For further information, please contact

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November 6, 1998

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c/o 2198 Oak Creek Place
Hayward, CA 94541

I am writing to set the record straight. Recent news reports have chronicled the year-long campaign by one activist to close Cargill's salt-making operations in exchange for the San Francisco Bay International Airport's proposed new runway. We thought the scheme was far too ludicrous to be believed, but now we hear rumors are circulating that we have a secret agreement with the airport along these lines.

This is false. Our sustainable industry has successfully harvested sea salt from San Francisco Bay for nearly 150 years, and we intend to continue to produce salt here.

This activist's proposal is unreasonable and unfair. To "pay" for a loss of less than one-tenth of 1 percent of open water, the airport is expected to toss Cargill Salt out and convert 29,000 acres of salt ponds and industrial properties to marsh. That's a ratio of nearly 75 to 1 — absurdly out of balance for a project that stands to benefit the entire region. Clearly, this is not about offsetting the as-yet-unknown impacts of a new runway; it's a cynical land grab.

Our salt ponds are home to more than 70 species of shorebirds and waterfowl as well as a host of other wildlife. My co-workers, many of whom are second, third and even fourth generation salt workers, take great pride in protecting this environment while producing a wide range of high quality products that supply thousands of California businesses and consumers.

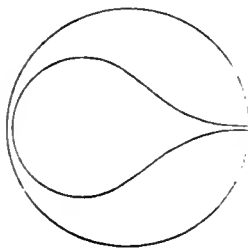
We all want better airport safety and service and a healthy bay. We do not have to choose between a new runway and an established San Francisco Bay industry, with its good union jobs and unique ecosystem. There are more reasonable and worthy alternatives.

Please don't hesitate to contact me or Jill Singleton if you would like to discuss this issue further.

Thank you,

Catherine A. Hay

Catherine Hay
General Manager



THE OAKLAND TRIBUNE

Nov 26, 1986

LOCAL

SFO expansion up against pillar of salt

FROM STAFF REPORTS

Representatives of the Cargill Salt Company, whose land San Francisco International Airport wants as part of its planned runway expansion, say the firm won't move.

SFO plans to restore wetlands on 29,000 acres of land Cargill uses along San Francisco Bay. The project would be penance for the environmental damage SFO would do by filling as much as 1,400 acres of the Bay for its new runway.

The airport wants to purchase 17,000 acres of land owned by Cargill Salt Company, plus 12,000 acres of federal land Cargill has the right to mine salt from.

But a spokesperson for Cargill said the company is here to

There are very few places in the world where an all-natural salt harvest can take place, Cargill's Jill Singleton said. "It's one of nature's gifts to the Bay area."

Both sides in the dispute say they would help the environment.

Singleton said Cargill salt ponds benefit a million migratory and resident shore birds, including ducks, egrets and cranes, which like the salt water.

Environmentalists say SFO's plan to restore the salt marsh—a process that could take 50 years—would create a habitat for several endangered species that prefer less salty water.

Even so, environmentalists feel some of the salt ponds should be maintained.

Coastal water harvest

The site is one of only two in the United States where the company can harvest salt from coastal waters, and its only site on the West Coast to produce food-quality salt, Singleton said.

Cargill's Bay Area operation has 400 regular full-time and 100 seasonal employees.

SFO spokesman Ron Wilson said the airport has had "friendly discussions" with Cargill about buying the land. But if the company refuses to sell, the airport will use its right of eminent domain to take over the

land.

As a government agency, Wilson said, SFO would have the right to take over the land. But it must be able to legally establish that the site is needed for a public purpose within the scope of the agency.

SFO would also have to give the owners fair market value for the land.

The airport is the "economic engine" for San Mateo County, Wilson said. And if the runway situation isn't fixed, the engine will slow down.

Wilson said other options, like shifting traffic to the Oakland and San Jose airports or relocating SFO, are now being considered. But he predicted that the Bay Area runway would

emerge as the airport of choice in studies conducted by SFO, the Metropolitan Transportation Commission and others.

Environmental effects

Singleton said the airport still needs to address the runway project's environmental impacts and its regional impacts before it even considers looking for ways to make up for the impacts.

"It seems like the cart is before the horse here," she said.

Wilson said SFO hopes to start the process in December and complete it in one year.

SFO runway report comes under fire as being self-serving

By Rebecca Wallace
STAFF WRITER

MILLBRAE — An airport-commissioned report stating that there are no real alternatives to the airport's massive runway expansion proposal is coming under fire for being too limited in perspective and too tied to the airport's self-interest.

What critics want, and may get from a group of Bay Area governmental agencies, is an independently financed study that will consider more regional solutions.

One of the largest Bay fill projects in history, the airport's plan would build new runways by filling as much as 1,400 acres. Work could cost up to \$2 billion and is designed to comply with federal regulations to space runways wider apart.

The airport's study, just released by P&D Aviation of Oakland, rejects any regional solutions — such as diverting traffic to other airports — for dealing with flight delays, airplane noise, increasing air traffic and a future filled with larger planes.

"It's hard to believe that it's an independent analysis when you see who's paying for it," said David Lewis, executive director of the Save San Francisco Bay Association.

Even more emphatically, the head of the Bay's primary regulatory agency said that filling the Bay should be the last — not the first — solution considered for resolving the airport's problems.

"The airport has a serious credibility problem," said Will Travis, director of the San Francisco Bay Conservation and Development Commission (BCDC), the state agency which must approve any permit for Bay fill. He recalled that only five years ago airport officials told the state

they wouldn't need to build runways into the Bay.

Travis said his agency has just joined a consortium of groups to spearhead an independent study of the runway project. The other groups include the Bay Area's three airports, the Metropolitan Transportation Commission and Association of Bay Area Governments.

Travis said he hopes the study will begin in February and take about a year.

Travis expressed concern about the runway project's environmental impacts yet to be studied, speculating that when the runway was built on the Bay's soft mud it could push the mud up onto the shorelines, causing flooding.

The P&D report dismisses several ways to solve the airport's problems, stating:

► High-speed train projects have recently failed in Texas and Florida.

► Spreading peak-period flights out more evenly could increase airplane noise. Also, scheduling decisions are made by airlines and driven by passenger demand.

► SFO should not shift passengers to the San Jose or Oakland airports because SFO has a unique role as the Bay Area's primary domestic hub, and needs to retain its critical mass of customers to remain that way.

Steven Grossman, director of aviation at Oakland International Airport, said Oakland officials would be supportive of shifting passengers there where flight delays and congestion are less of a problem.

But adding to the diverting flight plan would be only a short-term solution because eventually all airports will be operating at full capacity.

Cargill considers sale of salt ponds

By Katrina Martin
STAFF WRITER

NEWARK — It may well be one of the largest government land deals in state history, Cargill Inc. is considering selling thousands of acres of salt ponds along the San Francisco Bay — apparently including 2,000 acres north of the Dumbarton Bridge. Marge Kohler, general manager for the Don Edwards San Francisco Bay Refuge, confirmed that talks are under way and that the land would be for a federal and state wildlife preserve.

"We have been thinking about it for quite a long time, I have no idea how close we are (to an agreement), but we are certainly working on it," Kohler said.

The Wall Street Journal reported Wednesday that Cargill is negotiating with state and federal environmental officials over 18,000 acres of salt ponds in the San Francisco Bay Area.

The negotiations could stir up a heated controversy over the need to expand runways at San Francisco International Airport by filling in part of the bay.

Lori Johnson, spokesperson for Cargill, said the company has been engaged for many years with regulatory agencies about the land's future. She emphasized that no agreement has been reached.

"It's no secret they have had a strong interest in the future of the salt ponds," she

said. "We are in discussion now along those lines."

Cargill, based in Wayzata, Minn., operates salt-making plants in Newark and Redwood City. One of the largest privately owned companies in the world, it has 82,000 employees at more than 1,000 locations in 59 countries.

Ralph Nobles, a member of the Committee to Complete the Refuge, said he believes that the negotiations are focusing on about 16,000 acres located on the southwest part of the bay and 2,000 acres north of the Dumbarton Bridge.

Committee spokeswoman Florence LaRiviere said the group wants all of Cargill's 29,000 acres of land purchased, not just 18,000 acres.

"It is very important that all of the land be restored so it can begin to resemble what it was 150 years ago," LaRiviere said. "It must go back to the public to ensure the health of the bay."

The committee also will fight to ensure that, before any public money is spent, the salt ponds value be appraised as land that can not be developed. This will prevent the property from being sold at an unreasonably high price, she said.

Another priority, LaRiviere said, is ensuring that any contamination on the property — such as bittern ponds, which contain waste from the salt-making process — are

cleaned up at Cargill's expense.

"The public should not have to pay for that," LaRiviere said.

One stumbling block to a deal may be the company's asking price, a reported \$300 million, pending the outcome of a real estate appraisal. That equals about \$16,000 an acre, five times greater than the appraised value for 10,000 acres of northern salt ponds sold by Cargill to the state in 1994, the newspaper said.

Cargill spokeswoman Johnson declined to comment on the amount.

The prospect of gaining title to the acreage — though far from a sure thing — is exciting to state officials.

"This is a no-brainer," said Stanley Young, a spokesman for California Resources Agency Secretary Mary Nichols. "This is the kind of land the state would want to own and restore."

Nichols has been involved in the talks with Cargill, as have representatives from the Environmental Protection Agency, the Fish and Wildlife Service, the Army Corps of Engineers, the State Lands Commissioner and state Department of Fish and Game, Young said.

But the negotiations could further the controversy over San Francisco International Airport's need to expand runways by filling in part of the bay.

THE OAKLAND TRIBUNE, 10/13/91

Shoreline wildlife refuge celebrates 25th anniversary

By Kristin Burd
STAFF WRITER

FREMONT Twenty years ago, a small group of residents and a congressman decided to save some of Fremont's wetlands.

Today, their efforts have produced the 21,000-acre Don Edwards San Francisco Bay National Wildlife Refuge Complex.

And if their vision continues, environmentalists with the grass-roots organization Citizens Committee to Complete the Refuge hope the refuge will double in size and cover almost every Bay shoreline south of the San Mateo Bridge.

Today, environmentalists, dignitaries and visitors from the public will celebrate the refuge's 25th anniversary at the visitor center at T Marshlands Road in Fremont. It is the culmination of National Wildlife Refuge Week.

During the week, biologists and ecologists from the refuge visited schools and put on educational programs at the visitor center in Fremont and the education center in Alviso.

In 1972, after an arduous battle, former President Richard Nixon signed a bill creating a wildlife refuge smack in the middle of urban growth, said local refuge coordinator John Steiner.

Some thought putting a wildlife refuge so close to urban cities would spoil them for the plan, said local refuge manager Marc Kohler.

But instead of proving people's worst fears, the refuge's strength, she said. Environmentalists, nature lovers and volunteers were drawn to the wildlife island in an urban

area. "It was a place where people could go to see birds and other wildlife," Steiner said. "It was a place where people could go to see the Bay and its beauty."

The refuge's success is a testament to the power of citizen action. "It was a place where people could go to see birds and other wildlife," Steiner said. "It was a place where people could go to see the Bay and its beauty."

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Flower finds home in Fremont

By Kristin Burd
STAFF WRITER

Trying to find a place to live in the Bay Area is no easy task.

Ask the Central Valley goldfield.

The goldfield, which has been pushed out of its home in the Central Valley, has found sanctuary at the Don Edwards San Francisco Bay National Wildlife Refuge, which spans 20,000 acres from Fremont to Redwood City.

The refuge, which celebrates its 25th anniversary today, also serves as a haven for the Central Valley goldfield, the California clapper rail and the California least tern.

Also today, environmentalists will discuss ways to expand the refuge.

All species that live on the refuge, including the Central Valley goldfield, are protected by law. The refuge is a place where the Central Valley goldfield can find a home.

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The Contra Costa goldfield got a break in June when it was federally listed as an endangered species. But during the year to make the list, the plant disappeared from Mendocino, Santa Clara and Santa Barbara counties. Only a handful of the plants grows in Alameda, Contra Costa, Napa and Solano counties, according to a study by the U.S. Fish and Wildlife Service.

Some 161 endangered species and 58 threatened species live in California. But at least 207 other California species are on the list of candidates named by the U.S. Fish and Wildlife Service.

For every plant or animal on the government's endangered or threatened species list, there are hundreds yet to be listed.

The process is slow because the listing department is short-staffed and must protect the endangered species already listed, said Diane Windham, biologist and listing coordinator for U.S. Fish and Wildlife Service.

In the meantime, some candidate species, such as the California tiger salamander and the Gowen cyprinid, are protected at the refuge. But others, such as the riparian woodrat, the striped racer whipsnake, the Munz's onion, are being squeezed out of their shrinking habitats as they wait.

SFO to help restore Bair Island wetlands

By Rich Siskal
STAFF WRITER

S.F. AIRPORT The San Francisco Airport Commission today is expected to approve \$9.5 million for wetlands to offset the effects of airport expansion projects.

Bair Island in the Bay off Redwood Shores would be the major beneficiary of the money. San Francisco International Airport would grant \$5.6 million to the California Department of Fish and Game to restore wetlands on outer Bair Island.

The department would create 175 acres of new wetlands and improve another 472 acres on the island, said SFO spokeswoman Lisbet Engberg.

Among the projects on Bair Island would be a restoration of areas that had been filled in with soil dredged from San Francisco Bay decades ago, said Wilcox, spokesman for the Fish and Game Department.

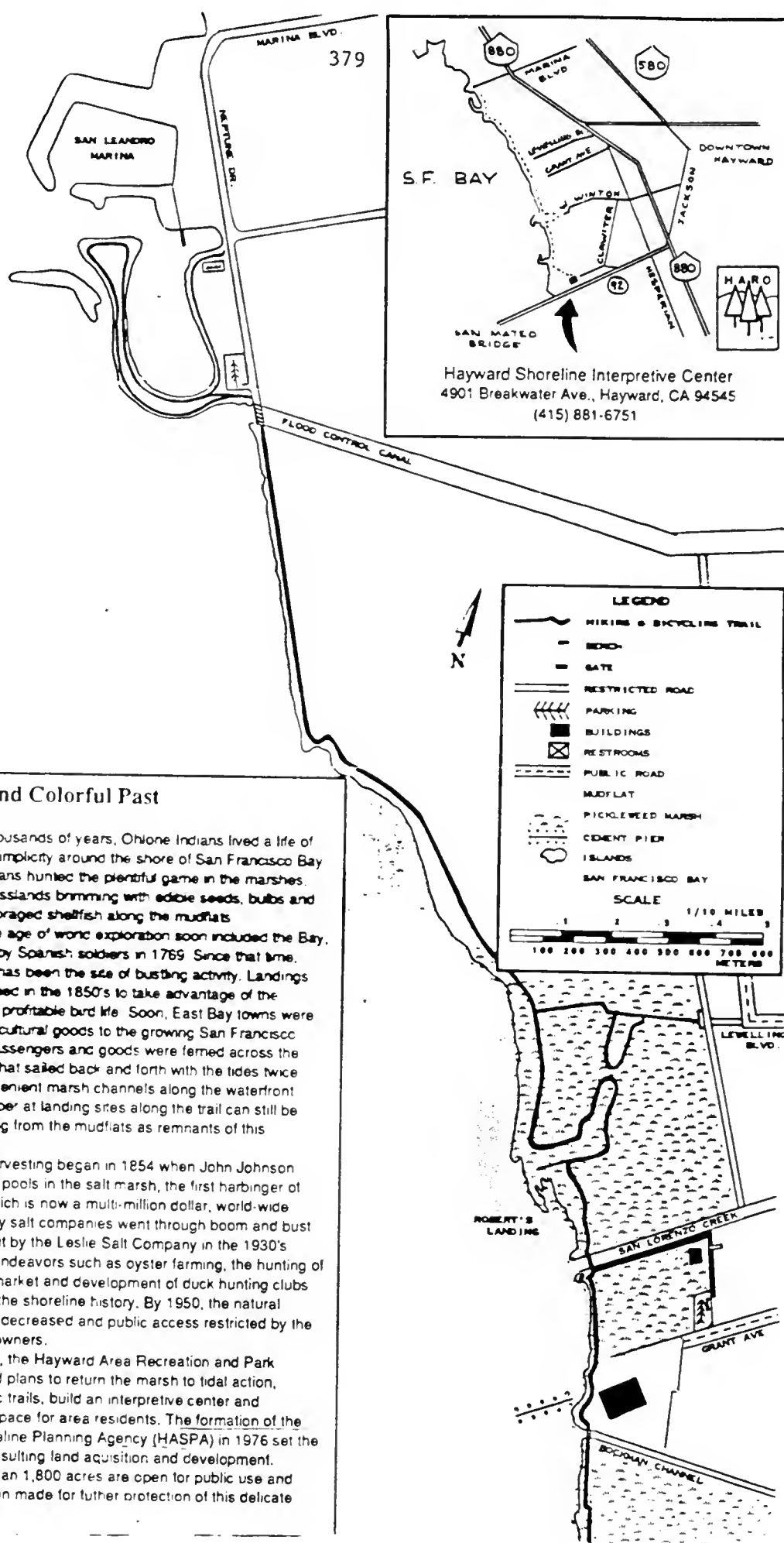
The results would be high-tide refuge for shorebirds and habitat for sensitive plant species that have been forced out over time by development along the shore, officials said.

They thrived in transition areas at the edge of the Bay. Well by regenerating some of that habitat, Wilcox said.

The regional water quality control board required the airport to fund projects on the Bay to gain approval for filling 1,000 acres of degraded wetlands as part of the airport expansion.

The airport also is required to fund projects to improve the airport's water quality, including a new boat launch, a new parking lot and a new parking lot.

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A Rich And Colorful Past

For thousands of years, Ohlone Indians lived a life of comfort and simplicity around the shore of San Francisco Bay. Here, the Indians hunted the plentiful game in the marshes, harvested grasslands brimming with edible seeds, bulbs and berries, and foraged shellfish along the mudflats.

But the age of world exploration soon included the Bay, first explored by Spanish soldiers in 1769. Since that time, the shoreline has been the site of bustling activity. Landings were established in the 1850's to take advantage of the abundant and profitable bird life. Soon, East Bay towns were supplying agricultural goods to the growing San Francisco metropolis. Passengers and goods were ferried across the Bay by ships that sailed back and forth with the tides twice daily into convenient marsh channels along the waterfront. Stumps of timber at landing sites along the trail can still be seen protruding from the mudflats as remnants of this colorful era.

Salt harvesting began in 1854 when John Johnson leveed natural pools in the salt marsh, the first harbinger of an industry which is now a multi-million dollar, world-wide venture. Family salt companies went through boom and bust until bought out by the Leslie Salt Company in the 1930's.

Other endeavors such as oyster farming, the hunting of waterfowl for market and development of duck hunting clubs contributed to the shoreline history. By 1950, the natural resources had decreased and public access restricted by the land's private owners.

In 1969, the Hayward Area Recreation and Park District initiated plans to return the marsh to tidal action, establish public trails, build an interpretive center and provide open space for area residents. The formation of the Hayward Shoreline Planning Agency (HASPA) in 1976 set the stage for the resulting land acquisition and development. Today, more than 1,800 acres are open for public use and plans have been made for further protection of this delicate resource.

380

Years of Effort Saves Bair Island

After more than a decade of unwavering dedication and collaboration by local citizen activists, Bair Island -- the largest, unprotected, restorable wetland in the South Bay -- has been saved from development.

In January, the Peninsula Open Space Trust (POST) negotiated an agreement to purchase Bair Island for \$15 million from its owners, the Kumagai-Gumi Corporation. Made possible by two loans from anonymous sources, POST now seeks to repay the loans through private donations and a \$10 million appropriation from the federal Land and Water Conservation Fund.

Once funding is secure, POST will transfer ownership of Bair Island to the U.S. Fish and Wildlife Service as an addition to the Don Edwards San Francisco Bay National Wildlife Refuge for permanent protection, management, and restoration.

Located in Redwood City, Bair Island is home to three endangered species: the California clapper rail, the salt marsh harvest mouse, and the California Least tern. In addition, 126 species of birds and 13 different mammals live or feed on the Island. The 1,626 acres of Bair Island purchased by POST will enable the entire 3,200 acre area to be restored to a rich tidal wetland habitat.

The agreement to preserve Bair Island marks a triumphant victory in an

inspiring effort by local residents who raised their voices and took action to protect their environment.

Determined to thwart a massive development proposal for Bair Island in 1982, Carolyn and Ralph Nobles of the Friends of Redwood City successfully educated and motivated thousands of local voters to defeat the proposal via referendum.

Another local couple, Florence and Phil LaRiviere, formed the Citizen's Committee to Complete the Refuge in 1985, with the goal of doubling the size of the refuge to include Bair Island and all other wetlands remaining in the South Bay.

In 1991, POST joined the effort and produced a stunning video on Bair Island to help educate the public and decision makers on the Island's value and the need to preserve it.

Through the years, other organizations including the Fish and Wildlife Service, Audubon Society, Sierra Club Chapters, and Save The Bay joined these individuals to carry on a persistent, grassroots campaign to educate the public and advocate for the sale and preservation of Bair Island.

Now with \$15 million hanging in the balance to Bair Island's fate, you can help!

What You Can Do:

Write to the

➔ PAGE 8



Photo by David K. Lee

After a dozen years of fighting for the preservation of Bair Island, Florence and Phil LaRiviere celebrate at the Don Edwards San Francisco Bay National Wildlife Refuge.

Measure HH 9/4/98 2:59 PM P

SECOND -

CITY OF HAYWARD MEASURE		
HH	MEASURE HH: "Shall the City of Hayward change the General Plan designation on approximately 155.5 acres of the South of 92 Area Oliver and Weber properties from Open Space-Baylands to Open Space-Parks and Recreation, Residential-Low Density, and Industrial Corridor, to allow for the complete implementation of the City approved Specific Plan which includes a mixed use single family residential-business development, business park, light manufacturing area, sports park, open space buffer, wetlands preservation area, and two neighborhood parks?"	YES
		NO

A MEASURE CHANGING THE GENERAL PLAN DESIGNATION OF CERTAIN PROPERTIES IN THE SOUTH OF 92 AREA FROM OPEN SPACE-BAYLANDS TO OPEN SPACE-PARKS AND RECREATION, RESIDENTIAL-LOW DENSITY, AND INDUSTRIAL CORRIDOR TO ALLOW FOR THE FULL IMPLEMENTATION OF THE SOUTH OF 92 SPECIFIC PLAN

FULL TEXT OF MEASURE HH

RESOLUTION AMENDING THE GENERAL POLICIES PLAN MAP DESIGNATIONS FOR THE OLIVER WEST AND WEBER PROPERTIES IN THE SOUTH OF ROUTE 92 AREA FROM OPEN SPACE-BAYLANDS TO RESIDENTIAL-LOW DENSITY, OPEN SPACE-PARKS AND RECREATION, AND INDUSTRIAL CORRIDOR

BE IT RESOLVED by the People of the City of Hayward as follows:

1. BACKGROUND. On February 17, 1998, the City Council of the City of Hayward held a public hearing and adopted Resolution No. 98-028, certifying an Environmental Impact Report for the Specific Plan for the South of 92 planning area, located west of Hesperian Boulevard, south of Industrial Boulevard, and north of the Old Alameda Creek ("South of 92 Area"); approving certain General Policies Plan map designation changes, and required voter approval of the change in designations for properties in the South of 92 Area currently designated as Open Space-Baylands; and adopting the South of 92 Specific Plan. This Resolution was considered by the voters at the November 1998 election, and constitutes a determination that to approve the change in designation of those properties in the South of 92 Area currently designated as Open Space-Baylands described herein.
2. PROPERTIES AFFECTED BY THIS RESOLUTION. The properties affected by this resolution are the 130.5-acre Oliver West Property and a 25-acre portion of property owned by Mr. John Weber, located west of the Union Pacific/Southern Pacific railroad tracks, which are both designated as Open Space-Baylands on the General Policies Plan Map. These properties are gener-

ally depicted on the map attached and incorporated as Exhibit A to this resolution. The Oliver West Property, owned by the Oliver Trust, contains approximately 130.5 acres, and is proposed for a change in designation from Open Space-Baylands to Residential-Low Density and Open Space-Parks and Recreation. A 25-acre portion of the total 80.5 acre property owned by Weber ("the Weber Property") is proposed for a change in designation from Open Space-Baylands to Industrial Corridor.

3. GENERAL POLICIES PLAN MAP AMENDMENT. The General Policies Plan Map is hereby amended, in the manner generally depicted in Exhibit A, to change the land use designations for portions of the South of Route 92 Area from Open Space-Baylands to a different land use designation, as follows:

- a. Oliver West Property (approximately 123 acres): from Open Space-Baylands to Residential-Low Density.
- b. Oliver West Property (approximately 7.5 acres): from Open Space-Baylands to Open Space-Parks and Recreation.
- c. Weber Property (approximately 25 acres): from Open Space-Baylands to Industrial Corridor.

4. DIRECTION TO THE CITY COUNCIL. The City Council is hereby authorized to take any steps which it determines are appropriate to carry out the provisions of this Resolution, including but not limited to the approval of further changes to the General Policies Plan Map designation of the properties affected by this Resolution.

5. EFFECTIVE DATE. All policies approved by this Resolution shall take effect upon the voters' approval of this Resolution.

ARGUMENT IN FAVOR OF MEASURE HH

Dear Friend,

Measure HH completes a historic City of Hayward planning process, which has already resulted in the permanent preservation of 850 acres of open space by the Wildlife Conservation Board.

Now Measure HH will help create a new 25 acre sports park with lighted soft-ball and soccer fields and basketball courts, two new neighborhood parks, and an opportunity to extend the Bay Trail to the Union City line. Passage of Measure HH means kids and families will have a safe place to spend their time. It will be a great place for after-school recreation activities and for company teams to play their league games. That's why the Hayward Area Recreation and Park District endorses this entire plan.

This historic package will also provide a huge boost to our local economy. The new business park campus will help bring over 3,500 high-paying, high-tech jobs - right across the street from the new Pepsi plant.

This complete "mixed-use" plan, at the intersection of Hesperian and Industrial, including the sports park, open space, business park, single-family homes and new jobs will also generate over \$600,000 of new revenue each year for our community. This new money can be used in our neighborhoods for things like fire protection and Neighborhood Watch programs.

Even the proceeds from the sale of this land will go back into the community, because the Oliver Family donated it to local charities. Now those charities are selling it with a pledge to use the proceeds to continue improving the lives of people in the Hayward area.

This plan is a step toward a brighter tomorrow for Hayward. Please join us in Voting Yes on Measure HH. We owe it to our kids, our families and our future.

Sincerely,

s/Charlie Plummer, Alameda County Sheriff

s/Jackie Grissom, President, Hayward Area Historical Society

s/Matt "Mateo" Jimenez, Hayward City Council Member

s/Dick Sheridan, Board Member, Hayward Area Recreation and Park District

s/Fran Baskin, Founder, Aunt Franny's Make A Wish Foundation
Softball Tournament

ARGUMENT AGAINST MEASURE HH

Please vote NO to save Hayward's endangered Baylands. Measure HH violates Hayward's General Plan Open Space Element identifying the Baylands as a threatened resource.

You are the last hope for this land and its creatures: thousands of wintering waterfowl and shorebirds, endangered and threatened species, and the burrowing owl.

Residential development in the floodplain west of the railroad tracks will subsidize a business park that should be able to pay its own way. A 12-foot high platform is needed to raise the homes above flood level. This would require thousands of round trips by large dump trucks hauling tons of dirt daily across town from the hills to the baylands for 18 months. It is questionable whether this engineered fill will suffice to protect the home purchasers.

The City of Hayward and the Hayward Area Shoreline Planning Agency have long planned to save these valuable lands west of the railroad tracks – seasonal wetlands and uplands – as special wildlife habitats because they are needed for nesting, roosting, and refuge during high water. Agencies like the California Wildlife Conservation Board have included the Oliver West and Weber properties on lists of land to purchase for wildlife. Acquisition would give the historical society and the church the money they expect without destroying the environment.

The Citizens Committee to Complete the Refuge, which has been enormously successful in finding funds, is confident that funds can be found to save this land for future generations. We want to help the church and the historical society receive fair value for the Oliver Trust property, but developers should not profit by destroying Hayward's Baylands. Once open space is gone, it's gone forever.

s/Viola Saima-Barklow, Chair, Committee To Save Open Space and
President, Ohlone Audubon Society

s/Minane Jameson, Board Member, Hayward Area Recreation and
Park District (HARD)

s/Glenn Kirby, Alameda County Park Recreation and Historical Commissioner

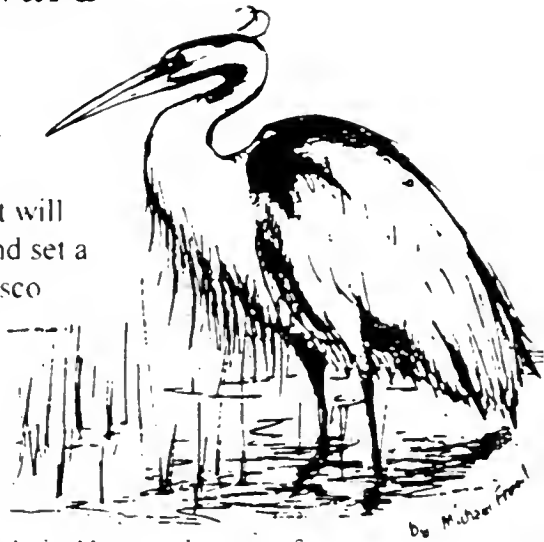
s/Sherman Lewis, Chair, Hayward Area Planning Association

s/Gail Steele, Alameda County Supervisor, District 2

Baylands Crisis in Hayward

Hayward voters are urged to vote NO on Measure HH on November 3, to save Hayward's Open Space-Baylands

If the South of Route 92 Specific Plan development is approved, it will overturn decades-old protection of the Hayward Area Shoreline and set a precedent for other shoreline development schemes on San Francisco Bay. That's why Measure HH must be defeated!! If you are not a Hayward voter, there are several ways you can help oppose Measure HH (see below)



The development scheme is to build 578 homes on twelve feet of landfill in a floodplain on Open Space-Baylands. The site is west of the railroad tracks near Hesperian and Industrial Boulevards in Hayward across from the Pepsi Plant. This land has been identified for inclusion in the Don Edwards San Francisco Bay National Wildlife Refuge since the 1980's. The residential development would be in the midst of protected wetlands and critical wildlife habitat. Landfill will be trucked in from a quarry on the east side of Hayward, along Industrial for 18 months - 10 hours a day, 800 truck trips per day.

Adverse impacts include loss of seasonal wetlands and uplands used as feeding, nesting, and roosting sites by thousands of waterfowl and shorebirds, and refuge for small mammals. The U.S. Fish and Wildlife Service has described these lands as essential habitat for the conservation of the endangered California clapper rail and salt marsh harvest mouse. Adjacent baylands are being restored as habitat for clapper rails and snowy plovers.

Measure HH is on the Hayward ballot because a group of grassroots open space advocates were successful in getting a city ordinance requiring voter approval before changing zoning for land designated as open space. The Committee to Save Open Space (CSOS) is now leading the campaign opposing Measure HH.

What can you do? If you are a Hayward voter, please vote NO on Measure HH. If you are an advocate for the environment, San Francisco Bay, the baylands, or the Refuge, you can help save Hayward's threatened baylands by volunteering your time to make phone calls or gather pledges to vote No, or by making a campaign donation. (We need funds to mail one or more educational campaign pamphlets.)

Please contact the Committee to Save Open Space (CSOS) at PO Box 657, Hayward, CA 94543-0657, phone 510-886-4730, fax 510-886-4031. Also: 510-471-0475 or 510-471-1521.



Yes, I would like to help CSOS defeat Measure HH on November 3! I will

- ☐ Sign a pledge to vote No on Measure HH (Hayward voters only)
- ☐ Gather pledges to vote No
- ☐ Allow my name to be used as endorsing the campaign against Measure HH
- ☐ Make a donation to the Committee to Save Open Space* Amount \$_____
- ☐ Make phone calls
- ☐ Other (tell us what you'd like to do)_____

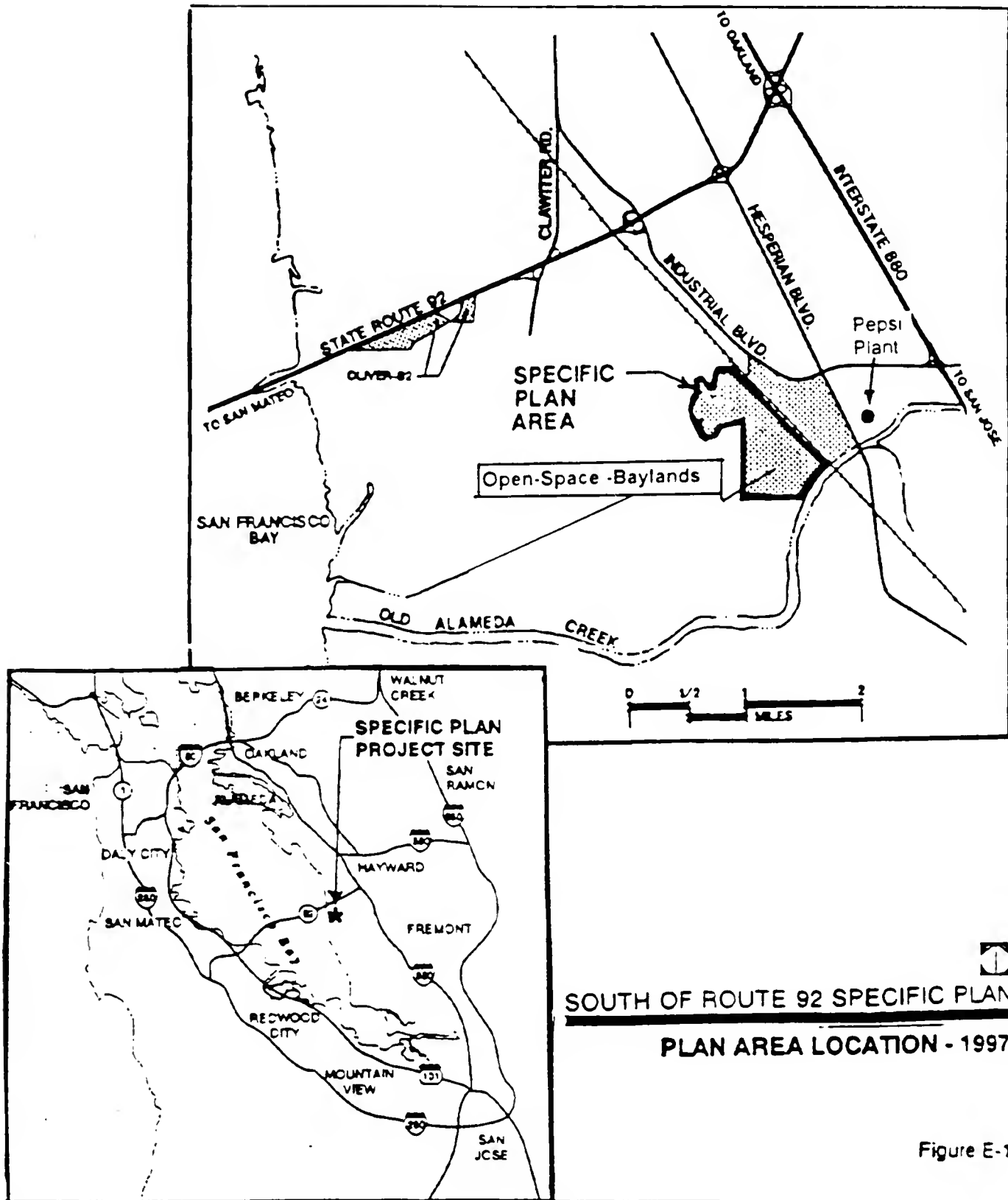
Name_____

Address_____

Phone_____

*Occupation_____

*Employer_____



SOUTH OF ROUTE 92 SPECIFIC PLAN
PLAN AREA LOCATION - 1997

Figure E-1

■ **TUESDAY** November 17, 1998

Hayward vote turnout shows local concern

By Karen Holzmeister
STAFF WRITER

HAYWARD — Hayward's dismal voter turnout in recent years is on the upswing, perhaps because of voter concern over local candidates and election issues.

Results from the Nov. 3 general election showed an overall Hayward voter turnout of 50.2 percent, including 45.6 percent of the voters who cast ballots on Measure HH, the baylands development issue.

In June, when mayoral and City Council candidates were on the ballot, 41 percent of the voters turned out for the election, City Clerk Angelina Reyes said.

In previous years, perhaps 17 percent to 22 percent of the registered voters went to the polls, Reyes said Monday.

"It was a very important gubernatorial election and there also was a very important local issue," Reyes said in explaining the high turnout. "(Hayward) Measure HH was at the very end (of the ballot), but people didn't seem to mind the long ballot."

Unofficial tallies compiled by

the Alameda County Registrar of Voters Office showed that 26,378 of Hayward's 52,445 voters cast their ballots Nov. 3.

Of those voters, 13,413 voted in favor of Measure HH and 10,522 voted against it.

Measure HH asked if the city's general plan should be revised to allow 155.5 acres south of State Route 92 to be changed from open space to residential, industrial corridor, and parks and recreation uses.

Voter approval will allow that land to be merged with 178 adjoining acres to produce a \$378 million complex of 578 homes, a business park, light manufacturing, a small commercial center, a 25-acre sports park and two smaller parks.

Measure HH gave voters a voice in the future of the city's largest remaining undeveloped flatlands area, an issue complicated by the site's location about 2.5 miles east of the Hayward shoreline.

The measure passed in 67 of Hayward's 81 precincts, as well as in absentee balloting.

Hayward sports park slated to open next year

By Karen Holzman
STAFF WRITER

HAYWARD — Joe Farias says his job as local senior softball league commissioner will be easier once a 25-acre sports park opens near the Hayward shoreline next year.

Preliminary plans for the park, just off Hesperian Boulevard near the Union City border, show four softball fields, three soccer fields, play and picnic areas, a concession stand, restrooms, ticket booth, more than 300 parking spaces and room for buses.

The complex will be lighted for evening games.

"We have 100 people ready to practice or play any day of the year, that it's not raining," Farias said. "Right now we practice at the Castro Valley Community Center, but we could do so much more with additional places to play."

The new public sports park will be part of a major residential and commercial development south of the Hayward-San Mateo Bridge entrance, endorsed by voters in 1998.

The 251-acre subdivision will include 538 houses, 22 commercial and light manufacturing properties, two neighborhood parks and the sports park. The value of the entire complex, which will be developed over 10 to 15 years, is estimated at more than \$300 million.

The sports park will be turned over to the city, and the Hayward Area Recreation and

Park District will operate programs there.

Taxpayers will not have to foot the estimated \$10 million cost of the park.

The developer who purchases the subdivision site, now owned by the Oliver Trusts, will be required to turn the park land over to the city. Wes Asmussen, general manager of HARD, said the land will cost at least \$6.25 million. Two trust beneficiaries will contribute \$3 million.

"The sports park has been needed for years and years," Asmussen said Tuesday when City Council members and HARD directors met to review sports park design plans. "But the district didn't have the money or the land for a project of this magnitude."

Eden United parish finally to receive its huge inheritance

By Lisa Gardner
STAFF WRITER

Imagine inheriting millions of dollars. Now imagine deciding to give some of it away. How would you decide who to give it to?

That's the dilemma facing congregation members at Eden United Church of Christ. This year, the 200-member church expects to begin receiving some of about \$10 million it will inherit from the sale of bayshore lands.

Their inheritance comes from a late church member, Alden Oliver, and his nephew, Gordon. Both had no children to leave money to, and were part of a family widely known for its Hayward salt-harvesting business.

The only stipulation to the money is that it must be used for "local church purposes." And in coming months, that will send the congregation into something of a soul-search.

Congregation members have already decided that some money will be used to renovate the church building, including the 135-year-old chapel once moved across town to its current location on Birch Street. That move was done with the help of Adolph Oliver, the father of Alden.

They've also decided that most of the money will be put into the Eden Area Foundation, a new non-profit corporation separate from the church.

While investments keep the fund growing, five percent of the money will be given annually to help the Hayward-area community, said Jim Phillips, chair of the board of the Eden Area Foundation.

In upcoming months, the congregation will be figuring out just what causes they are going to support with grants.

"We're going to be going through a process of determining the values we want to promote in the community. What are we called to do to be good stewards for this money?" asked the Rev. Lydia Ferrante-Roseberry, the newly-hired associate minister of mission outreach and growth, sitting in her office one day last month, sipping tea.

"(This money) is both a blessing and a curse. Because people have all sorts of issues around money," she said.

The church was named as a beneficiary of The Oliver Trust in the 1980s. But politics and land deals have kept much of the inheritance from reaching the church until this year.

In 1998, despite opposition from some environmentalists, voters approved the development of more than 330 acres of bayshore lands owned by The Oliver Trust into homes, businesses and parks.

The Hayward Area Historical Society, along with the church, will benefit from the deal.

Phillips calls the long wait for the money a blessing because the church had time to discern how to use it.

Phillips, who is a longtime church member, is also a lawyer who specializes in estate planning and trust law.

An often-quoted statistic says that the average inheritance is spent in 17 months, Phillips said.

To help in planning, the church hired Ferrante-Roseberry, a minister ordained in the Unitarian Universalist church with a background in community organizing.

Eventually, a minister from an Ohio denominational office will be brought in to lead discussions on how to use the money, Phillips said.

"It helps ensure that everyone's voice will be heard. It guarantees that the person in charge has no hidden agenda and it helps us come to consensus," Phillips said.

The church is in the midst of growth and change, and not only because of its inheritance.

Like many American churches, it has seen a significant drop in attendance since the 1940s and 1950s, when membership in the now 200-member church swelled to 1,500, Ferrante-Roseberry said.

About six months ago, with money from the sale of the Oliver home, the church began offering American Sign Language interpretation at worship services. That has attracted more worshippers.

A few years ago, the congregation became "open and affirming," which means they welcome anyone regardless of their sexual orientation.

And the church's soon-expected inheritance will add another ripple of change — one that will give them opportunities many churches do not have.

"Most churches have limited resources for doing outreach," Phillips said. "Now we'll be able to do a lot of good you can't do without financial resources."

INDEX--Baumberg Tract Oral History Project

- airplane design, history of, 86-87
- Armer, Laura Adams, 83-84
- Audubon Society, Hayward Area
Chapter: Ohlone, 14, 15, 325, 338, 339a,b
- Bailin, Richard, 130, 132, 135, 150, 220
- Bair Island, 25-26, 27, 195, 283.
See also Appendix C
- Baumberg Tract, passim.
- Baumberg Tract Wildland
Restoration Project, 23-28, 61-63, 106-108, 115-116, 171-173, 194, 201-212, 281-297, 330-335. See also California Wildlife Conservation Board
- Bay Meadows racetrack, 126-127
- BayKeeper, 346-347
- California Environmental Quality Act (CEQA), 22, 184, 260
- California Horse Racing Board, 143
- California Nurses Association, 83
- California State, Department of Fish and Game, 22, 24, 25, 56, 61, 62, 184, 186, 202, 203-204, 211, 220, 231, 274-296 passim
- California State Lands Commission.
See public trust doctrine
- California Water Resources Control Board (WRCB), 22
- California Wildlife Conservation Board, 6, 8, 23, 25-28, 171, 201-202, 204, 207, 282-283, 331
- Cargill Company:
Baumberg Tract Restoration Project, 282-283, 288-289, 329-331
- Cargill Company (cont'd.)
legal issues, 70-71, 346-348, 351-352
- Shorelands Project, 26, 66-67, 101, 102-103, 152-174, 202, 204
- San Francisco Airport runway expansion, 291-292, 335-336, 348-356
- See also Leslie Salt and Appendix B
- Citizens Committee to Complete the [San Francisco Bay National Wildlife] Refuge (CCCR), 25-26, 291, 338, 345-348
- Citizens for Alameda's Last Marshlands (CALM), 290, 345
- Clean Water Act, 9, 16-17, 20, 68, 69, 72, 187-188, 210, 240, 275, 280
- Coakley, Frank, 94-95
- Cogswell, Howard, 1-74, 166, 322, 323
academic career, 36-58
background and education, 29-35
opinions on Shorelands, 12-23, 110, 121
research on birds, 34-35, 39-42, 45-54, 56-58, 125
- Cole, Carolyn, 181, 182, 185
- Cooper, Roberta G., 299-312
- Corps of Engineers. See United States Corps of Engineers
- DeBartolo, Edward, 143
- Delfino, Frank, 290, 318, 339, 342-344, 346a,b
- Delfino, Janice, 6, 123-124, 290-291, 313-353
- Douglass, Robert C., 5, 6, 103, 125, 132, 152-174, 257-258

- East Bay Regional Park District,
8, 24, 107, 110-111, 123-124,
126, 170-171, 202, 205, 211,
289-290, 322,
- Edwards, Don, 105, 118
- Endangered Species (Act):
 vernal pools and creeks, 339-
 342
 wetland habitat, 21, 22-23,
 24, 165, 185, 186, 188-191,
 195, 200, 201, 204-205, 210,
 250-251, 254, 255-256, 261,
 263, 266, 276, 279, 284-285
- Environmental Impact Reports/
 Environmental Impact Statements
 (EIR/EIS), 183-188, 237, 254-
 255, 260, 277
- environmental laws, regulations,
 agencies--assessment of, 65-
 72, 162-167, 193, 202-204, 225
 242-243, 257-258, 259-261, 279-
 280, 290-291, 338-352
- Environmental Protection Agency
 (EPA), 18, 20, 127, 227, 258
- Feeney, Leora, 131, 190, 229-230,
 275, 345
- Fish and Game Department. See
 California State, Department of
 Fish and Game
- Fish and Wildlife Service. See
 United States Fish and Wildlife
 Service
- Foreman, Steve, 61, 62, 132, 175-
 214, 256, 267, 284-285
- Golden Gate Audubon Society, 32,
 342
- Golden Gate Fields, (racetrack),
 126, 143
- Hall, Nori G., 222-223
- Hayward Area Recreation and Park
 District, 6, 13-14, 63, 69
- Hayward Area Shoreline
 Interpretive Center, 8, 24
- Hayward Area Shoreline Planning
 Agency (HASPA), 20, 60, 69,
 122, 322-324, 325, 326, 327,
 330
- Hayward city of:
 Shorelands, 22, 100-101, 104-
 105, 114, 126, 127-128, 131,
 133-134, 168-169, 182-183,
 186, 231, 237, 241, 302-310,
 330
 Proposition HH, 112, 68-69,
 173, 281, 308-310. See also
 Appendix D
- Irvine Ranch, 66
- Josselyn, Michael, 70, 72, 339-
 340
- Kelly, Paul, 60, 186, 231, 254,
 275, 278
- Legge, Charles, 71, 347, 348
- Leslie Salt Company, 5-21, 25,
 26, 27-28, 59, 62, 70-72, 114,
 116, 118, 125, 127, 128, 132,
 187, 192, 258. See also
 Cargill Company and Appendix B
- Marine World-Africa USA, 124-125,
 324-325
- McGinnis, Sam, 182, 184
- Miller, Albert J., 137
- Mills, Carolyn, 181
- mitigation:
 Baumberg Tract Restoration,
 23-24, 283-284 212, 228-230,
 253-256, 265, 276
 Oakland Airport, 342
 Roberts Landing, 212
 San Francisco Airport runway
 expansion, 66-67, 335-336

mitigation (cont'd.)

Shorelands Project, 13-14, 15,
16-19, 59, 71-72, 159, 160-
164, 192-196, 228-230, 153-
256, 265, 276, 277, 278

Molnar, George, 205, 210

Murray, Richard, 59, 110, 115,
116, 130-131, 142, 150, 166,
197, 213, 224, 227, 228-230

National Environmental Policy Act
(NEPA), 184, 260-261

O'Connor, Thomas, 95

Oliver, Alden, 69

Oliver Gordon, 12, 13, 69, 101-
102, 122, 327

Oliver Salt property (and Oliver
Trust), 6, 63, 68, 69, 281,
308-310, 327, 330, 331. See
also Hayward, city of,
Proposition HH

Passarello, John, 26-27

Peninsula Open Space Trust (POST),
26

Perry Gun Club, 9, 12, 13, 122
predation, concerns with, 133,
162-163, 197-199, 232-236, 257-
258, 276, 336-337

property tax, assessors' scandal,
93-96

Proposition 70, 25, 282, 283.

See also Glossary

public trust doctrine, 10, 20-21,
329-330

Regional Water Quality Control
Board. See San Francisco Bay
Regional Water Quality Control
Board

Reid, Thomas Associates, 129,
130-131, 199, 200, 219-220,
263. See also Weissman, Karen

Roberts Landing (San Leandro),
212, 280, 342-345

San Francisco Bay Area Wetlands
Goals Project, 64-65, 196,
292-294, 335-336

San Francisco Bay Conservation and
Development Commission (BCDC),
62, 280

San Francisco Bay National
Wildlife Refuge, 7, 18, 21,
70, 106-107, 118, 165, 226, 346
(also known as Don Edwards San
Francisco Bay National Wildlife
Refuge)

San Francisco Bay Regional Water
Quality Control Board, 201,
210, 283, 346, 347, 348

Save San Francisco Bay
Association, 342, 348-349, 351

Shepherd, Paul, 103, 125, 158

Shockley, Barbara, 124, 322

Shorelands Project. See Thorpe,
John; related entries

Sorensen, Peter, 103, 131, 186,
225-226, 231-232, 235, 236,
238, 245-269

Steucke, Wallace (Wally), 106

Storm, Martin, 60, 100, 239, 323,
324

Stout, Edward, 140

Thorpe, John:

environmentalists,
relationships with, 109-
111, 122, 225

family background and
education, 80-91

law practice, 92-95

Shorelands Project, 8-9, 13-
16, 19-20, 75-151, 159, 160-
162, 163, 164, 170, 204,
221, 227, 228 231, 234, 236,
241-242, 243, 257-258, 263,
277, 282, 305-306, 308-311,
324, 325-326

United States Corps of Engineers,
 16-18, 19, 20, 21-22, 70-71,
 127, 131-132, 143-144, 183,
 185, 187, 220, 236, 258-259,
 260, 265

United States Fish and Wildlife
 Service, 21-22, 24-25, 103,
 106, 115, 122, 127, 131-132,
 133, 161, 162-163, 164-165,
 184, 185, 191, 193, 197, 199,
 202, 204, 220, 225-227, 229,
 232, 249-251, 258, 260-265, 283

Washburn, Edgar B., 164, 329,
 347, 348

Weber property, 12, 13, 308-310,
 327, 330. See also Appendix D

Weinreb, Ilene, 323

Weissman, Karen, 131, 199, 215-
 244, 255-256, 262-263

wetlands, 16-26, 66, 70-72

White, Wayne, 131-132, 238, 264

Wilcox, Carl, 23, 28, 61-62, 205,
 207, 208, 211, 270-297

Wolden, Russell, 95

workman's compensation, 93

World War II, G.I. Bill, 32-34

Malca Chall

Graduated from Reed College in 1942 with a B.A. degree, and from the State University of Iowa in 1943 with an M.A. degree in Political Science.

Wage Rate Analyst with the Twelfth Regional War Labor Board, 1943-1945, specializing in agriculture and services. Research and writing in the New York public relations firm of Edward L. Bernays, 1946-1947, and research and statistics for the Oakland Area Community Chest and Council of Social Agencies, 1948-1951.

Active in community affairs as director and past president of the League of Women Voters of the Hayward area specializing in state and local government; on county-wide committees in the field of mental health; on election campaign committees for school tax and bond measures, and candidates for school board and state legislature.

Employed in 1967 by the Regional Oral History Office interviewing in fields of agriculture and water resources. Also director, Suffragists Project, California Women Political Leaders Project, Land-Use Planning Project, the Kaiser Permanente Medical Care Program Project, and the Central Valley Project Improvement Act.

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