How Rep. Philip Burton and a Magic Marker Hijacked Tomales Bay into the Golden Gate National Recreation Area

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Volume 4 of the West Marin Review will be available at Bay Area bookstores in late August. It features more prose, along with poetry and art from West Marin and beyond. A book party will be held on September 16, 2012 at Toby's Feed Barn.

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Dear Reader

WELCOME TO Volume 4 of the West Marin Review, an award-winning literary and art journal published by Point Reyes Books and an all-volunteer group of friends and neighbors.

People ask, Is the book about West Marin? Are contributors from West Marin?

The Review’s focus is not limited to our corner of rural northern California, and its contributors are not necessarily West Marin residents, but this place of great natural beauty, open spaces, and public lands does seem a magnet for creative people. In the abbreviated biographies in the back pages, you’ll find that many of the talented writers and artists contributing to this volume do live here. Others are from urban and rural places near and far—the Bay Area, across the country, and sometimes across the seas. We are proud to include well-known authors and artists in these pages side by side with the art and poetry of local schoolchildren and other emerging talent published here for the first time.

West Marin inherits Native American and immigrant cultures along with a history of agriculture and ranching, and these influences all reach into this journal. But perhaps most influential to the identity of this place is the presence and protection afforded by its public lands: in particular, the Point Reyes National Seashore, occupying lands and seashore west of Highway One, and the Golden Gate National Recreation Area (GGNRA), occupying lands east of the highway.

This volume’s featured history takes us back to the mid-1970s, when the GGNRA’s boundaries were being drawn. In “How Rep. Phillip Burton and a Magic Marker Hijacked Tomales Bay into the Golden Gate National Recreation Area,” George Clyde conducts a
dramatic investigation, makes an extraordinary discovery, and finds the solution to a thirty-five-year-old mystery.

Clyde’s essay is a colorful story in a book full of colorful writing (Alvin Duskin’s “Uncle Dave”), art (Kaya Gately’s “Hummingbird,” Kathleen Rose Smith’s “Sun Woman Triptych,” and Thomas Joseph’s “Bodega Bay” are only a few examples), and music (Bart Hopkin’s bright adaptation of a Jamaican folk song for guitar and voice or other instrument).

There are pieces to make you smile: Joan Thornton’s revision of a classic tale in “Gretel,” the story “Etiquette” by William Masters, the poem “covenant” by Gina Cloud. And there are fantastically informative essays, as in F. J. Seidner’s erudite “Collecting,” alongside which Carola DeRooy’s abstract on a Coast Miwok basket, “The Language of Baskets,” gains in dimension. There are also ghosts fluttering across the pages. Chekhov haunts Susan Trott’s short story, “About Bunin,” much as Jake Velloza haunts Michael Parmeley’s remembering, “Jake’s Memorial.” “Nouns” are the elusive ghosts in Helen Wickes’s poem.

You’ll find other gifts and happy surprises here. The Review is a book whose pages open not only to the natural world, but to the world where love and loss exist, where politics has its effect, where people get stuck in elevators and boys receive haircuts, whether they want to or not.

We hope you’ll enjoy this year’s Review in all its diversity, and that if you’re inspired to, you’ll send us your own work for our next volume. Look for submission guidelines at westmarinreview.org.

POEM Jane Hirshfield, “Many-Roofed Building in Moonlight” (excerpt from poem on page 110)
ART Kaya Gately, Grade 7, Hummingbird, 2011, gouache, 7 × 5½ inches
I HAVE a home in the town of Marshall. The town is a strip of about thirty-five homes and businesses along Highway One on the east shore of Tomales Bay, in the rural unincorporated area of west Marin County, near Point Reyes. About fifty people live in Marshall, mostly in small cottages at the edge of the bay.

Tomales Bay is approximately ten miles long and averages a mile in width, sitting directly atop the San Andreas Fault. One of the most pristine estuaries in the world, the bay is home to the famous Hog Island Oyster Company, which grows shellfish in its waters.

Marshall is greatly loved by those of us who live there and by the tourists who enjoy the scenery and the oysters. But it is not of much national importance. So I was surprised to learn that in 1980, President Jimmy Carter signed a law adding this sentence to the laws of the United States:

> For the purposes of this subchapter, the southern end of the town of Marshall shall be considered to be the Marshall Boat Works.

You might wonder, Why did Congress enact a federal law to define the southern end of the town of Marshall? It’s a good question, especially since there is no other reference to the town of Marshall
or the Marshall Boat Works in that subchapter or in any of the other laws or regulations of the United States.

The law was part of 1980 legislation expanding the boundary of the Golden Gate National Recreation Area. When I asked senior officials and rangers at that national park to explain the reference to Marshall and what it means, they had no idea. It was a complete mystery to them.

I came across this little mystery when I was trying to solve a bigger one—what is the legal boundary of the GGNRA, and does it include Tomales Bay? That question is important to me because my home rests on stilts above the bay and I have a mooring on the bay. Do park laws apply to me or not? And the question is important to boaters, to kayakers, and to the park, whose rangers cruise the bay in patrol boats enforcing park regulations.

As a retired lawyer, I decided to look at the 1980 law that established the park’s northern boundary. That simple research project tumbled me into the fast-and-loose world of the late California Congressman Phillip Burton, where I learned an astounding secret about the park boundary and Tomales Bay.

PHILLIP BURTON AND A MISSING MAP

Burton served in the House of Representatives from 1964 until his death in 1983 at age fifty-six. His passion for the environment, his pursuit of power, and his unorthodox maneuvering helped put millions of acres of wilderness and park properties under federal protection. But his laws had a few rough edges—like the peculiar reference to the town of Marshall. And, as I learned, Burton, too, had a few rough edges.

Starr went on, “Congressman Burton loved power and pursued it egregiously. He had a terrible temper. He was sometimes hasty and imprudent. Yet he was also a great legislator: great in his vision, great in his defense of working people, great in his passion for the environment. Few members of Congress have wielded his influence or left behind the legacy of this towering, tumultuous parliamentarian.”

In my research, I discovered how Burton wielded his influence to bypass the law.

In the late 1970s and early 1980s, spurred on by local environmentalists, Burton aggressively pursued expanding the GGNRA boundary to include properties that were still undeveloped. The federal government would acquire these properties for the park and protect them from development for vacation homes and tourist businesses.

As a result of Burton’s efforts, President Carter signed the 1980 law expanding the national park boundary. According to the law, the boundary is shown on a map entitled “Point Reyes & GGNRA Amendments, October 25, 1979.” So the map would show whether Tomales Bay is within the park boundary or not.

But the map was missing. It should have been on file at the Department of Interior’s Washington headquarters, but it was not. Nobody knew where the map was or what had become of it. Some doubted the map ever existed. The law requires that the map be on file and available for public inspection at National Park Service headquarters in Washington. I placed a number of calls to park service officials in Washington only to learn that they did not have the map there. Nor could they find any record of ever having received it.

Surely, I thought, someone had to have a copy of the official map that Congress adopted to describe a national park. A simple telephone call to the right person in the right office should end the search.
The Washington staff suggested I check with the Park Service’s Harpers Ferry Center in West Virginia, which designs NPS maps for publication. That office also had no knowledge of the map; they sent me to the NPS Denver Service Center, the federal agency’s repository for maps.

Until that point, I had been looking for the map quite informally. But the Denver office considered my simple request for a copy of the 1979 map a Freedom of Information Act filing. Unexpectedly, my search had become official government business. The FOIA request launched a cascade of formal searches that extended to the park service’s Western Regional Office in Oakland, to the GGNRA headquarters in San Francisco, and to the GGNRA archives in the San Francisco Presidio.

**MADLY SEARCHING FOR THE MISSING MAP**

“We have practically the entire NPS searching for the maps and have pretty much come to the conclusion that they don’t exist!” wrote Susan Ewing Haley, GGNRA park archivist, in an email that went to ten current and former park service employees involved in the Freedom of Information Act search for the map.

As a lawyer, I was astonished. How could Congress pass a law for a national park and refer to a map that did not exist? But Susan Ewing Haley’s startling conclusion was echoed by the Park Service’s real estate staff—officials who needed to know the park’s exact legal boundary. Greg Gress, Chief of the Land Resources Program at the NPS regional office, wrote me in an email: “Regarding the GGNRA/Pt. Reyes map, what I’m suggesting is that, despite what the law said, the map was never created and therefore isn’t on file here or in DC. I’ll double check next week with our cartographer to make sure about this, but if it’s the map I’m thinking of, it just doesn’t exist, or if it ever did exist, it has been lost both here, at the Park, and in DC.”
The skepticism within the agency only spurred me on. A break in my investigation came during the Freedom of Information Act search when the Park Service consulted Douglass Nadeau, former Chief of the GGNRA Division of Resource Management and Planning. Nadeau was Burton’s primary contact at the park during the 1980 boundary expansion. Now retired, he shed light on how Rep. Burton handled legislation in those days and provided hints about what may have happened to the map. He wrote in an email:

*Every time Phil Burton was inclined to expand our boundaries he asked me to prepare a down-and-dirty map outlining the proposal according to his directions...with the proposed additions and text depicted with Magic Markers. They were usually dated by me and signed by Phil. These were the maps that were referenced in the new legislation—very unconventional but it was the way he wanted it.*

*To correct this irregularity, the Denver Service Center should have followed up with an official, numbered, reproducible map. My sense is that in most cases this did not happen.*

*If any of those original maps made their way back to my office, they are in the [GGNRA] archives.*

*Unfortunately, I seem to recall a conversation with Bill Thomas or one of Phil’s aides when they said that the last time they saw those maps they were rolled up on the floor under a couch in Phil’s office! I wish I could offer a more promising lead.*

It now seemed likely that the 1979 map probably did exist in some form at some time. And Nadeau’s email had all but confirmed
something else: it was he who created the elusive map. Moreover, the map, if I were to find it, would be hand-drawn with Magic Markers.

**A TATTERED MAP**

While the park archivists assured me they did not have the missing map or any copies, I was encouraged by what Nadeau wrote, and I decided to visit the archives to take a look myself.

The Golden Gate National Recreation Area archives are housed in an old building at the San Francisco Presidio that stands in the shadow of the entrance ramps to the Golden Gate Bridge. It was originally a cavalry stable that once housed up to 100 animals, mostly mules. Now it houses about four million documents in a clean and efficient area run by a friendly and helpful staff.

**FIG. 1** GGNRA map dated December 28, 1980 showing Tomales Bay to be within the boundary of the Golden Gate National Recreation Area. *Map courtesy of GGNRA Archives*
There, I reviewed a set of old park boundary maps dated December 28, 1980. Park Service cartographers had drawn these maps several months after the law was passed. According to those maps, the answer to my question was clear: Tomales Bay (sometimes referred to as the “Tomales Bay Tidelands”) was within the park boundary. A legend on one of those maps is unequivocal:

**NOTE: THE GOLDEN GATE NATIONAL RECREATION AREA BOUNDARY INCLUDES ALL THE TOMALES BAY TIDELANDS FROM THE GIACOMINI RANCH TO PRESTON POINT EXCEPT THE AREA INCLUDED IN THE POINT REYES NATIONAL SEASHORE.**

The legend then refers to the map shown in figure 1, which includes all of Tomales Bay, a total of 3,350 acres, to be within the park.
except for a strip along the western edge that is part of the Point Reyes National Seashore (see page 77).

However, none of the NPS maps bore the magic title, “Point Reyes & GGNRA Amendments, October 25, 1979.” They were merely internal Park Service maps, prepared after the legislation.

The archives staff seemed genuinely excited about my quest for the missing map, and they decided to dig a bit deeper than they had earlier. Suddenly, there appeared a mailing tube with four old, rolled maps, not fully catalogued and probably not viewed for many years, if not decades. We put on protective gloves and unrolled the crumbling maps on a large viewing table. I was reminded of the pirate maps I made as a child.

I thought we might be getting close, and we were. Bingo! There it was, with edges torn, a parchment-like, semi-transparent map, colored with Magic Markers (fig. 2).
In the bottom-right corner appears the correct title, handwritten in red: “Point Reyes & GGNRA Amendments, October 25, 1979.” Beneath the legend is a reference to “P.L. #96-199,” the 1980 law that expanded the GGNRA boundary to include the lands depicted on the map.

There was a loud cheer in the somber, library-like atmosphere of the archive building.

As word of the discovery got out, email congratulations came in from the officials who had been involved in the search. Colin Smith, Chief Park Ranger wrote, “I’d love a copy of the whole thing. Good work.” Greg Gress of the regional office wrote, “Wow! Great job ferreting out this long lost map! We look forward to comparing it [with] our land status maps to see if we’ve correctly reflected the intent of the legislation.”

But the thrill of discovery was soon tempered. On closer inspection, I saw that while the map’s title was correct, it was a copy, not the original. At the top of the map was this legend:

“P.B.” was Congressman Phil Burton. And “DN,” the person who had drawn the copy on April 15, 1980, was Douglass Nadeau, the senior park planner who worked closely with Burton on park legislation. Why was the copy hand drawn? I realized that in 1980, large color copiers were not common.
Still, Nadeau’s carefully drawn duplicate map, prepared only a few weeks after President Carter signed the boundary expansion law, seemed to be a true copy of the 1979 statutory map.

Most important, the map clearly answered the question, “Is Tomales Bay part of the park or not?” It is not. According to the map that Congress approved, the GGNRA boundary does not include Tomales Bay. Today’s park maps are wrong.

**Mysteries Deepen**

Discrepancies between the statutory map and the maps drawn by the Park Service raised some very big questions. If the bay is not within GGNRA boundaries, why did the maps prepared by National Park staff a few months later specifically include Tomales Bay in the park? And why do all modern park maps show the bay within the park if Congress never approved it? Further, how can park rangers enforce park regulations in the bay if it is not within their jurisdiction?

To find answers, I decided to look into the history behind the 1980 boundary law: speeches made to Congress, committee hearings, and committee reports. I expected the research would help determine what the 1979 map was supposed to show and whether Tomales Bay itself was supposed to be included in the park.

Those were the days when Burton had enormous influence in Congress and often pushed through legislation that still needed to be fleshed out—something that would probably be impossible in today’s digital world. Burton would often pack his bills with federal park designations in districts of key legislators to obtain their votes, a practice that became known in Congress as “park barreling.”

When the GGNRA boundary expansion law was originally proposed to Congress in early 1979, it referred to a map, identified as 80,003-L, showing the new territory. The House of Representatives first passed that version of the boundary expansion bill in May 1979.
And what did map 80,003-L show? I was amazed to learn that no such map was created. Two months after the House voted to approve the map, a Senator asked the Park Service for a copy and received this response: “This map has not been completed. Our Regional Office in San Francisco is working on the intended boundary to be reflected by the map.”

So, there was precedent for Congress to vote on Burton’s park expansion without having the statutory map in hand—or even drawn! As the bill made its way through Congress, the reference to map 80,003-L was changed to refer to Nadeau’s Magic Marker map, “Point Reyes & GGNRA Amendments, October 25, 1979.”

As Nadeau explained, the ephemeral nature of these maps was a product of Burton’s approach to legislation: “When [Burton] was cooking up a new boundary proposal, he would describe it verbally and ask me to draw a map. With limited time, I would respond with a quick-and-dirty Magic Marker un-reproducible original. Weeks later, legislation would appear referring to this mysterious map of unknown origin and location.”

In February 1980, in a speech before the final Congressional vote on the matter, Burton provided the House of Representatives with an extended and detailed description of the new territories to be included within the GGNRA, lot by lot, with acreage estimates, including this statement: “All of the undeveloped lots, parcels, lands and interests in lands West of Hwy. 1 (to Tomales Bay).”

However, in none of the Congressional committee hearings, nor in any of the committee reports, nor in any of Burton’s speeches in Congress was there any mention of including Tomales Bay itself in the park’s expanded boundary. Nor did the acreage estimates in Burton’s speech include the bay’s 3,350 acres. Nor did the lengthy report in the *San Francisco Chronicle*, which detailed the new boundary after the vote, suggest that Tomales Bay itself would be included.
Both the legislative history and the 1979 map make it absolutely clear: Congress did not include Tomales Bay within the boundary of the GGNRA.

So the question remained: Why did the Park Service publish maps a few months later showing Tomales Bay within GGNRA boundaries—a practice that continues with the park maps of today?

Hijacking Tomales Bay

John Sansing, Superintendent of Point Reyes National Seashore when the bill was passed, had responsibility for managing the northern portions of the GGNRA. After President Carter signed the law in March 1980, it was Sansing’s job to know what lands were within the park boundary. But, as he later wrote, this was without him or anyone who was drawing the official park maps having access to the 1979 map referred to in the legislation.

I asked Sansing, now long since retired, whether Tomales Bay was supposed to be included. “One day it was in, one day it was out,” Sansing recalled. “We were confused.” What confused him was what confused me. As he wrote in a memorandum nearly three years later, “We’ve not been able to find the legislative language which extends the boundary…to include the bay.”

Burton, however, was not confused, nor did he feel obliged to follow the 1979 map or his own speeches to Congress. According to Nadeau’s notes at the park archives, well after the law had been passed by Congress, Burton told Nadeau that the park’s new boundary included “all State lands and submerged lands,” presumably referring to Tomales Bay. It seems that Burton acted on his own to expand a national park boundary—an authority that is properly exercised through an Act of Congress.

With Burton’s mandate, it would just be a matter of time before Nadeau got out his Magic Markers to draw yet another map,
this time with the bay included within the park boundary. And sure enough, that map, dated July 8, 1980 and entitled “GGNRA Boundary Revisions,” was also in the tube of old maps I found at the park archives (fig. 3). It was the most tattered and torn of all.

In contrast to the 1979 map that Congress had approved, Nadeau’s July 1980 map is much more detailed; moreover, it accurately reflects what Burton said in his speech. It shows the GGNRA boundary to include the undeveloped properties along the east shore...
of Tomales Bay and to exclude the developed ones, creating a patchwork along the edge of Tomales Bay. Most revealing is Nadeau’s legend at the deteriorating top edge of the map.

With the torn-out portions supplied, the legend would read:

*Prepared by D. Nadeau 7/8/80 from legislative history and (?). Other materials gathered during legislative process Field work by F. Dean*
The legend, with words underlined by Nadeau, reads:

<table>
<thead>
<tr>
<th>GGNRA</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Lands <em>clearly</em> included in authorized boundary including additions thru channel islands legislation</td>
</tr>
<tr>
<td>• State tidelands suggested by P. Burton to be <em>shown</em> included in authorized boundary on all maps (even though we will most likely never acquire them)</td>
</tr>
</tbody>
</table>

Finally, the answer! The “Lands *clearly* included in the authorized boundary,” which Nadeau colored with a dark green Magic Marker, did not include Tomales Bay. Rather, he marked Tomales Bay in light green, representing “State tidelands suggested by P. Burton to be *shown* in authorized boundary on all maps”—even though no legislation had included Tomales Bay in the park boundaries. As Superintendent Sansing said of Burton’s suggestion, “He was good at telling staff what to do.”

When Burton told Nadeau to show Tomales Bay within the park boundary, it must have put Nadeau in a very difficult position. He would have known that Congress had not included the bay in the
legislation, but the very powerful Phil Burton made his instructions clear. Walking a delicate line between his responsibilities as a park official and the demands of Representative Burton, Nadeau drew a map that included the bay in the park boundary, but with a caveat of sorts—differing shades of green Magic Markers, noting that the bay itself was only “suggested by P. Burton to be shown included.”

Perhaps inevitably, Nadeau’s disclaimer literally became a faded footnote on a tattered scrap of history. A few months later the Park Service published its new maps. Following Burton’s suggestion, the mapmakers showed Tomales Bay within park boundaries. Notably gone on these maps—and all subsequent maps up to this day—are both Nadeau’s map legend and his color gradations clarifying what is law and what is suggestion.

Burton’s suggestion is still being observed today, with park rangers patrolling the bay and issuing warnings and citations for violations of national park rules, despite the lack of Congressional authorization. If you want to confirm that, try hunting ducks in the middle of Tomales Bay.

POSTSCRIPT: THE MYSTERY OF THE TOWN OF MARSHALL

My question was answered, but the peculiar mention of the town of Marshall in the federal law remained unexplained until I discovered a piece of correspondence.

In his speech to Congress when the boundary law was passed, Burton said that he wanted to exclude from the park “the Town of Marshall, from the Post Office building on the north to the last undeveloped lot on the south of the Town.” But shortly thereafter, Jerry Friedman, a long-time local environmentalist, sent Burton a letter with this comment: “Since the town of Marshall is really a long line of homes often separated by vacant parcels, right now we do not have a definitive idea as to which developed lot is the southernmost edge of the town.”
To clarify the matter, Burton got Congress to pass clean-up legislation, adding this sentence: “For the purposes of this subchapter, the southern end of the town of Marshall shall be considered to be the Marshall Boat Works.”

Amazingly, neither Burton nor Friedman nor anyone else noticed that Burton’s stated intention to exclude Marshall was never actually written in the law! So the stand-alone definition of the southern end of the town of Marshall is a curiosity, but it is legally meaningless. It lives on as a relic of the fast-and-loose times of the Burton “park barreling” era.

Congress should now decide if Tomales Bay will be part of the GGNRA. Until then, park rangers cannot legally enforce park rules in most of the bay. I believe that a fitting tribute to Burton’s legitimate accomplishments would be for Congress to add Tomales Bay to the national park—legalizing his suggestion that the Park Service has followed for thirty-two years.

As a final footnote, Congress should delete the dangling reference to the town of Marshall from the United States Code.