State of California

M e m o r a n d u m

Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

To : Members and Alternates, BCDC

Date: November 14, 2016

Telephone: (510) 879-0279
FACSIMILE: (510) 622-2270
E-mail: Joel.Jacobs@doj.ca.gov

From : Joel S. Jacobs
Deputy Attorney General
Land Law Section
Office of the Attorney General – Oakland

Subject : Justification Memo for Closed Session Discussion of Point Buckler Matter on November 17, 2016

ATTORNEY-CLIENT COMMUNICATION

The Commission will hold a closed session to discuss the Point Buckler enforcement matter on November 17, 2016. This memo describes the justification.

Under Government Code section 11126(e)(1),

> Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

Litigation is considered pending when a court proceeding has been formally initiated. (§ 11126(e)(2)(A).) Here, Point Buckler has initiated a related court proceeding. (*Point Buckler Club, LLC and John Donnelly Sweeney v. San Francisco Bay Conservation and Development Commission*, Solano County Superior Court, Case No. FCS047083.)

Additionally, "pending litigation" also includes situations where "[a] point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body." (§ 11126(e)(2)(B)(i).) At the Enforcement Committee meeting, Point Buckler indicated that it would file suit if a sufficiently large penalty were imposed.

Accordingly, litigation is "pending" in two respects here, and the closed session is justified under the Bagley-Keene Act.