

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

May 23, 2016

Point Buckler Club, LLC
John Donnelly Sweeney, Registered Agent
171 Sandpiper Drive
Pittsburg, CA 94565

AND

John Donnelly Sweeney
171 Sandpiper Drive
Pittsburg, CA 94565

SUBJECT: Issuance of Violation Report /Complaint for the Administrative Imposition of Civil Penalties; Point Buckler Island, Solano County (BCDC Enforcement File No. ER2012.038)

Dear Mr. Sweeney,

As you may know, there are many violations of both the McAteer-Petris Act (MPA) and the Suisun Marsh Preservation Act (SMPA) at Point Buckler Island that we been unable to resolve with you and Point Buckler Club, LLC at the Commission's staff level. In a series of letters beginning in January, 2015, BCDC staff have requested that you refrain from engaging in activity at Pt. Buckler Island that requires permits under either the MPA or the SMPA, and that you apply for and obtain permits prior to engaging in this activity as well as activity in which you have previously engaged that requires permits under those laws. As of the date of this letter, you have continued to engage in unauthorized activity at Pt. Buckler Island and you have failed to apply for permits that are necessary for these as well as previous similar activities to be considered lawful under the foregoing laws. Therefore, we are moving this enforcement matter into the formal enforcement process. The first step in this process is, pursuant to Section 11321 of the Commission's administrative regulations (Title 14, Div. 5, CCR), to issue the enclosed Violation Report / Complaint for the Administrative Imposition of Civil Penalties ("Report/Complaint") that sets forth the Commission staff's allegations.

The Commission's law provides you with the opportunity to submit a "statement of defense" in the format of Appendix I of the Commission's regulations, **no later than June 27, 2016**, which, pursuant to 14 CCR § 11322, is 35 days from the date hereof. Thereafter, the Commission will hold an administrative hearing to consider the facts and determine whether it

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should issue either or both a cease and desist and/or a civil penalty order. As noted in Section V of the Executive Director Cease and Desist Order issued to you on April 22, 2016, the Commission will hold its public hearing on a) the enclosed Report/Complaint and b) your statement of defense on July 21, 2016, which is at least 45 days after the date hereof. We will notify you at least ten days in advance of each public meeting date.

I have enclosed the following documents: (1) the Report/Complaint with exhibits; (2) a Statement of Defense form; and (3) a copy of Chapter 13 of the Commission's regulations that govern the enforcement process. Please let me know if you would like me to email an electronic copy of the Statement of Defense form.

If you have any questions, please don't hesitate to contact Marc Zeppetello of our staff by phone at (415) 352-3655 or by email at marc.zeppetello@bcdca.gov.

Sincerely,



LAWRENCE J. GOLDZBAND
Executive Director

LG/MAZ/go

Enc.

§ 11211. Submittal of an Amendment.

(a) Within ten (10) working days of receipt by the Commission of a proposed amendment to the local protection program or component thereof, the Executive Director shall determine whether the proposed amendment meets the submittal requirements of Section 11210.

(b) If the Executive Director determines that the proposed amendment and supporting materials meet the submittal requirements of Section 11210, the Executive Director shall stamp all the materials "Filed BCDC" and the date of filing and notify the entity that submitted the proposed amendment of its filing.

(c) If the Executive Director determines that the proposed amendment does not satisfy the requirements of Section 11210, the Executive Director shall transmit to the entity that proposed the amendment a written explanation of why the proposed amendment and supporting materials do not comply with Section 11210.

(d) The filing of a proposed amendment and supporting materials shall constitute submittal of the amendment pursuant to California Public Resources Code Section 29410.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11212. Processing Amendments to the Local Protection Program or Component Thereof.

The Commission shall process a proposed amendment to the Suisun Marsh local protection program or to any component thereof in accordance with Sections 11202 through 11208, except that amendments designated as minor by the Executive Director under Sections 11213 and 11214 shall be processed only as provided in Section 11214.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11213. Definition of a Minor Amendment.

A minor amendment to the Suisun Marsh local protection program or any component thereof is an amendment that is consistent with California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan and that is one or more of the following:

(a) changes in wording, maps, or diagrams of any general, specific, or area plan, other policy document, zoning ordinance, zoning district map, regulation, or standard that does not change the designated, allowable, or permitted use, density, or intensity of land use or sphere of influence or boundary of any city; or

(b) changes in any certified management plan or policy document of the Suisun Resource Conservation District or the Solano County Mosquito Abatement District that does not change the permitted or allowable use of any land and does not change any water management program or practice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11214. Designation of an Amendment as Minor.

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States

Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice. NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

§ 11215. Frequency of Amendments.

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

Chapter 13. Enforcement Procedures**Subchapter 1. General Provisions****§ 11300. Grounds for the Issuance of Cease and Desist Orders.**

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11301. Grounds for Permit Revocation.

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

(1) the violation of a term or condition of a permit,
(2) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or

(3) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d); Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

HISTORY

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11302. Grounds for the Imposition of Administrative Civil Penalties.

Any one of the following actions shall constitute grounds for the imposition of civil penalties by the Commission:

- (1) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (2) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

§ 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAteer–Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11386.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment filed 5–22–2003; operative 6–21–2003 (Register 2003, No. 21).

Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

Article 1. Definitions

§ 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil penalties by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and otherwise follow the format for a staff violation report as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution or by appointment by the Chair without Commission objection to assist the Commission in carrying out its enforcement responsibilities.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before a hearing officer, the enforcement committee, or the Commission as part of a Commission enforcement proceeding.

(d) "Hearing Officer," means any person appointed by the Commission to receive evidence, hear arguments, make findings of fact, and recommend to the Commission what action it should take on an enforcement matter.

(e) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(f) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report and a statement of defense form in accordance with Section 11321(c).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(c), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

§ 11320. Staff Investigation and Discovery.

As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180–11181, 66637, 66638 and 66643, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes that the results of an enforcement investigation so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

- (1) a violation report that complies with the format set out in Appendix H,
- (2) a complaint for civil penalties that complies with the format set out in Appendix H if the staff seeks civil penalties, and
- (3) a statement of defense form that complies with the format set out in Appendix I. The violation report and complaint for civil penalties can be combined into a single document so long as it contains all the information required for both.

(b) The violation report shall refer to all documents on which the staff relies to provide a prima facie case and give notice that the documents may be inspected at the Commission's office and that copies will be provided with five days prior notice and upon payment of the cost of copying.

(c) Issuance of a violation report shall occur when the violation report is mailed by certified mail to all persons or entities named as a respondent in the violation report. Issuance of a complaint for civil penalties shall occur when the complaint for civil penalties is mailed by certified mail to all persons or entities named as a respondent in the complaint.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Sections 29610–29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11322. Respondent's Required Response to the Violation Report.

(a) Within thirty-five (35) days of the issuance of the violation report and the statement of defense form, each respondent shall submit to the Commission as its office an original and five copies of the completed statement of defense form and an original (or verified copy) and five copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person relied on by staff in its violation report is needed to show or contest a fact alleged in the violation report, the respondent shall request such cross-examination in the statement of defense form. The addendum shall list the name of each person the respondent wants to cross examine, all documents about which the respondent wants to cross examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for civil penalties and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form and all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters, and any request to allow cross-examination.

(d) If the staff wants to cross-examine, the staff shall, within seven days of receiving a statement of defense form, mail to all respondents a list of all persons that the staff wants to cross examine, the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for civil penalties together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) The Executive Director may at his or her discretion extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension and a written demonstration of good cause. The extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for the imposition of administrative civil penalties by submitting a cashier's check in the appropriate amount to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall file his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29610-29611, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee, the Commission, or a hearing officer, the Executive Director shall mail by regular mail a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5, and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11324. Distribution of the Violation Report, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall mail by regular mail the following materials to each respondent, and to the committee members if the enforcement hearing will be held before the enforcement committee, to the hearing officer if the enforcement hearing will be held before a hearing officer, or to the Commission if the enforcement hearing will be held before the Commission: (1) the violation report, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code, and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11325. Ex Parte Contacts.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12-27-2004; operative 1-26-2005 (Register 2004, No. 53).

§ 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order.

(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a brief summary of (A) any background to the alleged violation, (B) the essential allegations made by staff in its violation report (C) a list of all essential allegations either admitted or not contested by respondent(s), (D) all defenses and mitigating factors raised by the respondent(s), and (E) any rebuttal evidence raised by the staff to matters raised in the statement of defense form with references to supporting documents;

(2) a summary and analysis of all unresolved issues;

(3) a statement of whether the Executive Director has issued a cease and desist order and its expiration date; and

(4) a recommendation on what action the Commission should take; and

(5) the proposed text of any cease and desist order, permit revocation order, or civil penalty order that the Executive Director recommends that the Commission issue.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66642 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, indicate what matters are already part of the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the reported party(s);

(e) other speakers may speak concerning the matter;

(f) presentations made by the staff, a respondent, and other speakers shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the committee and the Commission shall not allow oral testimony unless the committee and Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to cross-examine all witnesses who are allowed to testify and a right to have rebuttal witnesses similarly testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing

pursuant either to Section 11322(a) or Section 11322(c) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered.

(h) Committee members, a hearing officer, and Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee, hearing officer, or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members, the hearing officer, or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(k) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an Executive Director's recommended enforcement decision within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the completed statement of defense form except to the extent the Executive Director has extended the time for such submittal pursuant to Section 11322(d) or the Commission admits the evidence into the record pursuant to Section 11327(f) and this section. To this end, the Commission, any hearing officer, and the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission, hearing officer, or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner and would be substantially harmed if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury or in the form of another document referred to in a violation report or complaint for the imposition of civil penalties and the declarant or author of the other document is subject to cross-examination as provided in Sections 11321, 11322, and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall consult with the Deputy Attorney General in attendance at the hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5 and 66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).

§ 11330. Adoption of an Enforcement Committee or a Hearing Officer Recommended Enforcement Decision.

After the enforcement committee or a hearing officer has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

- (a) all of the matters required by Section 11326; and
- (b) any further written report on or explanation of the enforcement proceedings as the enforcement committee or hearing officer believes is appropriate.

The enforcement committee or a hearing officer can adopt with or without change the staff recommended enforcement decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director, by the enforcement committee, or by a hearing officer, the staff shall mail the recommended enforcement decision to all respondents and to all Commissioners.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11332. Commission Action on Recommended Enforcement Decision.

(a) When the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter to the enforcement committee or hearing officer or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

- (1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or civil penalty order;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed civil penalty order or (B) adopt the recommended enforcement decision with regard to one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed civil penalty order and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee, hearing officer, or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Section 11327 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

When the Executive Director refers an enforcement matter directly to the Commission rather than to the enforcement committee, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10-11-89; operative 11-10-89 (Register 89, No. 30). For prior history, see Register 87, No. 30.

§ 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Civil Penalty Order.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11335. Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11336. Distribution of Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11337. Notice of Public Hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11338. Public Hearing Procedure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11339. Admissibility of Evidence.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

- (1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;
- (2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;
- (3) identification of the property where the activity has been undertaken or may be undertaken;
- (4) a description of the activity;
- (5) the effective date of the order;
- (6) the expiration date, if any, of the order;
- (7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer-Petris Act, the Suisun Marsh Preservation Act, or a permit;
- (8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;
- (9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;
- (10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and
- (11) such other provisions that the Commission has approved, including provisions relating to:
 - (A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;
 - (B) the obligation to conform strictly to the order and the consequences of the failure to do so; and
 - (C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order or a civil penalty order so long as the combined order contains all the information required under these regulations for both such orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued, but he or she shall not do so in a manner that extends the 90-day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11344. Amendments to Cease and Desist Orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

§ 11350. Contents of Permit Revocation Orders.

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and a civil penalty order so long as the combined order contains all the information required by these regulations for both types of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11351. Modification of Permit Revocation Orders.

The Executive Director may modify a permit revocation order if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11352. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11360. Preparation and Execution of Commission Cease and Desist Orders and Permit Revocation Orders.

The Executive Director shall prepare and sign a cease and desist order or a permit revocation order authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.

§ 11361. Issuance.

"Issuance" of a cease and desist order, a permit revocation order, a civil penalty order, or of any modification of such orders, is complete when the Executive Director executes the original copies of the order or modification and they are stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11362. Service of Copies.

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modifications to each person to whom the order is being issued no later than the second working day following the date of issuance. The Executive Director shall cause to be personally served or mail by registered mail a civil penalty order or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by regular mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification to each person who appeared at the hearing and submitted a written request for a copy as soon as possible after the Commission authorized the order or modification. (For civil penalty orders, see subdivision (d) of Government Code Section 66641.6.)

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11370. Enforcement Record.

The record of an enforcement proceeding shall consist of

- (a) the violation report, including all documents referred to in the report;
- (b) any complaint for civil penalties;
- (c) all timely filed statement of defense form(s);
- (d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;
- (e) the staff recommended enforcement decision, including all documents referred to in the recommendation,
- (f) minutes of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if eyewitness or expert testimony is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;
- (g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;
- (h) any enforcement committee's or hearing officer's recommended enforcement decision,
- (i) any order that the Commission issues,

- (j) all other materials maintained in the Commission's file for the enforcement matter,
- (k) such other permit or other Commission files as have explicitly been made a part of the record,
- (l) the McAteer-Petris Act,
- (m) the San Francisco Bay Plan,
- (n) the Suisun Marsh Preservation Act,
- (o) the Suisun Marsh Protection Plan,
- (p) the Suisun Marsh Local Protection Program, and
- (q) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29210(e), Public Resources Code. Reference: Sections 66639-66640 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11380. Contents of Complaint for Administrative Imposition of Civil Penalties.

The complaint shall follow the same format as required for a Violation Report in Appendix H to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11381. Commission Hearing on Complaint for Administrative Imposition of Civil Penalties.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either (1) hearing the matter itself within 60 days of the service of the complaint or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint.

(b) The Executive Director shall determine whether to refer a complaint for the administrative imposition of civil penalties to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint for civil penalties to the Commission or to the enforcement committee, he or she shall consider the following factors:

- (1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,
- (2) the relative workloads of the Commission and the enforcement committee at the time,
- (3) whether the complaint involves any policy issues that should be determined by the Commission initially,
- (4) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and
- (5) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11382. Further Procedures for Commission Review of Complaints for the Issuance of Civil Penalty Orders.

The Commission shall follow the procedures established by Sections 11310 and 11321 through 11334 and Sections 11361 through 11370 of these regulations when it considers recommended enforcement decisions from either the staff or the enforcement committee or a hearing officer relative to the possible administrative imposition of civil penalties.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11383. Contents of a Commission Civil Penalty Order.

(a) A Commission civil penalty order shall be signed by the Executive Director and shall contain the following:

- (1) the name(s) of the person(s) required to pay the civil penalty;

- (2) the amount of the civil penalty;
- (3) the date by which the civil penalty must be paid;
- (4) written findings that (1) explain the decision to issue the civil penalty order and (2) provide the factual and legal basis for the issuance of the order, and
- (5) notice that a person to whom the Commission issues a civil penalty order may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) A civil penalty order can be combined with a cease and desist order or a permit revocation order so long as the information required under these regulations for both is contained in the combined order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11384. Modification of a Commission Civil Penalty Order.

The Executive Director may modify a civil penalty order if the modification would not alter the amount of the penalty or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11385. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a civil penalty order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a civil penalty order by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

§ 11386. Standardized Fines.

(a) This Section shall apply to an enforcement action if the Executive Director determines:

- (1) that an alleged violation is one of the types identified in subsection 11386(e);
- (2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and
- (3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) Except as provided in subsection (g), if this Section applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) believed to be responsible for the alleged violation that contains all of the following information:

- (1) the nature of the alleged violation and each and every action that must be taken to correct the alleged violation;
- (2) the fact that if the alleged violation is fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any civil penalty; and
- (3) the fact that if the alleged violation is not fully corrected within 35 days of mailing of the notice, the person believed to be responsible for the alleged violation may be subject to the payment of a civil penalty and

may resolve the penalty portion of the alleged violation by paying the standardized fine specified in subsections (e), and (f) without having to go through a formal enforcement proceeding pursuant to Sections 11300 through 11385 except as provided in subsection (h).

(c) Except as provided in subsection (g), if the person believed to be responsible for the alleged violation completes each and every corrective action specified in the notice pursuant to subsection (b) within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized or other fine.

(d) Except as provided in subsections (g) and (h), if the person believed to be responsible for the alleged violation fails to complete one or more of the corrective actions required by the notice pursuant to subsection (b) within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the penalty portion of the alleged violation by completing each and every action required by the notice sent pursuant to subsection (b) and by paying a fine in the amount provided in subsections (e) and (f).

(e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing the work authorized by the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each document plus ONE HUNDRED DOLLARS (\$100.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (e)(1) and (e)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement, plus ONE HUNDRED DOLLARS (\$100.00) per day for each violation, from the ninety-sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and

fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS (\$2,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained, or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than 95 days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day to the date the violation is completely corrected.

(f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

(g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to

be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS (\$100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty-five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the amount is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66641.5,

Government Code; and Sections 29201(e) and 29610, Public Resources Code.

HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

Subchapter 1. Marsh Development Permits Issued by Local Governments

Article 1. Application

§ 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as "a marsh development authorization," by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

[The next page is 539.]

Statement of Defense Form

Enforcement Investigation ER2012.038

Point Buckler Club, LLC and John Donnelly Sweeney

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **MARC ZEPPELLO** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY **JUNE 27, 2016** MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, California 94102

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report/complaint that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **MARC ZEPPELLO** of the Commission Enforcement Staff at telephone number **415-352-3600**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report):

2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

3. Facts or allegations contained in the violation report of which you have no personal knowledge (with specific reference to paragraph number in the violation report):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

5. Any other information, statement, etc. that you want to make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

7. Name of any person whose declaration under penalty of perjury was listed in the violation report as being part of the staff's case who the respondent wants to cross-examine, all documents about which you want to cross-examine the person, area or areas of information about which the respondent wants to cross-examine the witness, information that the respondent hopes to elicit in cross-examination, and the reason(s) why some other method of proving this information is unsatisfactory:

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

File: ER2012.038

Permit: None

Date Mailed: May 23, 2016

35th Day After Mailing: June 27, 2016

Hearing Date: July 21, 2016

**VIOLATION REPORT/COMPLAINT
FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES
ENFORCEMENT INVESTIGATION NO. ER2012.038
POINT BUCKLER CLUB, LLC AND JOHN DONNELLY SWEENEY**

FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS, AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER OR A CIVIL PENALTY ORDER BEING ISSUED TO YOU, OR A SUBSTANTIAL ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.

The San Francisco Bay Conservation and Development Commission (Commission or BCDC) is issuing this Violation Report/Complaint for the Administrative Imposition of Civil Penalties (Report/Complaint) and statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of the Commission's laws and permits issued by the Commission. The Report/Complaint contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and reference to all the pertinent evidence on which the staff currently relies. All the evidence this Report/Complaint refers to is available in the administrative record for this matter located at the Commission's office. You can review these materials at the Commission's office or have copies made at your expense or both by contacting Maggie Weber or Marc Zeppetello of the Commission's staff at telephone number (415) 352-3600. This Report/Complaint also informs you of the nature of the possible violations so that you can fill out the enclosed statement of defense form and otherwise be prepared for Commission enforcement proceedings.

Issuance of this Report/Complaint and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, the Commission will hold an enforcement hearing and will determine what, if any, enforcement action to take.

Careful reading of and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the violation report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact, Maggie Weber or Marc Zeppetello of the Commission's staff at telephone number (415) 352-3600 as quickly as possible. Thank you for your cooperation.

I. Person or persons believed responsible for illegal activity:

Point Buckler Club, LLC	John Donnelly Sweeney
John Donnelly Sweeney, Registered Agent	171 Sandpiper Drive
171 Sandpiper Drive	Pittsburg, CA 94565
Pittsburg, CA 94565	

II. Name of owner, lessee (if any), and other person(s) (if any) who controls property on which illegal activity occurred:

Point Buckler Club, LLC is the owner of approximately 39 acres of land at Point Buckler Island, which is located off the western tip of Simmons Island in the Suisun Marsh, Solano County (the Site). John Donnelly Sweeney (Mr. Sweeney) is a principal of Point Buckler Club, LLC and owned the Site from approximately April 19, 2011, to October 27, 2014, when he conveyed the Site to Point Buckler Club, LLC. Point Buckler Club, LLC and Mr. Sweeney are hereafter collectively referred to as SWEENEY.

III. Description of and location of property on which illegal activity occurred:

The violations occurred at Point Buckler Island (Assessor's Parcel No. 0090-020-010), which is located off the western tip of Simmons Island in the Suisun Marsh, Solano County (the Site).

The Site is subject to the jurisdiction of the Commission under the McAteer-Petris Act (MPA) as established by Government Code Section 666610. More specifically, the Site is in the Commission's "San Francisco Bay" jurisdiction as defined in Government Code Section 666610(a).

The Site is also located in the "primary management area" (PMA) of the "Suisun Marsh," as those terms are defined in the Suisun Marsh Preservation Act (SMPA) (Public Resources Code Sections 29102 and 29101, respectively). Therefore, the Site is subject to the jurisdiction of the Commission under the SMPA.

IV. Brief description of the nature of the illegal activity:

- A. SWEENEY has violated and continues to violate the McAteer-Petris Act (MPA) by conducting the unpermitted activities at the Site as described herein, including but not limited to:

1. Placing fill in waters of San Francisco Bay, including tidal marsh, by constructing and rebuilding levees, excavating ditches and four crescent shaped ponds, installing a new dock in Anne Mason Slough, constructing roads, and placing numerous containers, trailers, and other structures and two helipads on tidal marsh; and
 2. Making substantial changes in the use of water, land, or structures within the area of the Commission's jurisdiction by: (1) closing all the tidal breaches that existed in 2011 when Mr. Sweeney purchased the Site and thereby cutting off all tidal activity to the interior of the Site; (2) installing a new water control structure in the western portion of the Site; (3) draining the Site to further alter the pre-existing tidal marsh hydrology; (4) removing or destroying tidal marsh vegetation by the placement of fill, excavation activities, mowing activities, drainage activities, and bringing goats to the Site and allowing those goats to graze on the tidal marsh vegetation; (5) installing numerous trailers and containers and two mobile helipads at the Site; and (6) developing and operating the Site for intensive water-oriented recreational uses including but not necessarily limited to kite-boarding.
- B. SWEENEY has violated and continues to violate the SMPA by conducting unpermitted development at the Site as described herein, including but not limited to: (a) placing fill in waters of San Francisco Bay, including tidal marsh, by constructing levees; (b) excavating ditches and four crescent shaped ponds; (c) installing a new water control structure in the western portion of the Site; (d) installing a new dock in Anne Mason Slough; (e) constructing roads; (f) placing numerous containers, trailers and other structures and two mobile helipads on tidal marsh; (g) removing or destroying tidal marsh vegetation by the excavation activities, mowing activities, and bringing goats to the Site and allowing those goats to graze on the tidal marsh vegetation; and (h) developing and operating the Site for intensive water-oriented recreational uses including but not necessarily limited to kiting.

V. Approximate dates illegal activity occurred:

The violations summarized in Section IV, above, and described more fully in Section VI, below, began by no later than May 2012 and continue to persist through the date of issuance of this Report/Complaint.

VI. Summary of all pertinent information currently known to the staff in the form of proposed findings with references to all pertinent supporting evidence contained in the staff's enforcement file (the file is available at the Commission's office for your review; you should call Ms. Weber to arrange to the review the file):

This Violation Report/Complaint is based on the following proposed findings. The administrative record in support of these proposed findings includes: (1) all documents and other evidence cited herein or attached as exhibits hereto; (2) the attached declaration and the documents cited therein; and (3) all additional documents listed in the Index of Administrative Record attached hereto as Exhibit A. You may review the administrative record at BCDC's office or obtain copies of any or all documents contained in the record at your expense.

- A. The Commission has prepared and adopted the "Suisun Marsh Protection Plan," as that term is defined in the SMPA (Public Resources Code Section 29113(a)). In addition, the Commission has certified, the "local protection program" (LPP) as defined in Public Resources Code Section 29111, consisting of a number of components prepared by or submitted to Solano County or prepared by the Suisun Resource Conservation District (SRCD), that meets the requirements of, and implements, the SMPA and the Suisun Marsh Protection Plan at the local level.
- B. One component of the certified local protection program is the Suisun Marsh Management Program (SMMP) prepared by SRCD pursuant to the SMPA (Public Resources Code Sections 29401(d) and 29412.5). The SMMP consists of the following principal elements:
1. a general management program;
 2. individual water management programs for each privately-owned "managed wetland" within the primary management area of the Suisun Marsh;
 3. enforceable Standards Covering Diking, Flooding, Draining, Filling and Dredging of Tidal Waters, Managed Wetlands and Tidal Marsh Within the Primary Management Area; and
 4. regulations adopted by SRCD to ensure effective water management on privately-owned lands within the primary management area.

In Public Resources Code Section 29105, the SMPA defines the term "managed wetland" to mean "those diked areas in the marsh in which water inflow and outflow is artificially controlled or in which waterfowl food plants are cultivated, or both, to enhance habitat conditions for waterfowl and other water-associated birds, wildlife, or fish...." *See also* Declaration of Steven Chappell (April 21, 2016), attached hereto as Exhibit B, at ¶¶ 7, 9.

- C. Notwithstanding the otherwise applicable provisions of Public Resources Code Section 29500 regarding the need to obtain a Marsh Development Permit (MDP), in Public Resources Code Section 29501.5 the SMPA states that within the PMA of the Suisun Marsh, no MDP is required for any development specified in the component of the LPP prepared by SRCD and certified by the Commission.
- D. In or about 1984, individual management programs (commonly referred to as individual management plans or IMPs) were developed for each privately-owned managed wetland in the primary management area of the Suisun Marsh, including the Site, and were reviewed by the California Department of Fish and Game (now California Department of Fish and Wildlife or CDFW) and certified by the Commission. Suisun Marsh Protection Program at 34 and 70-71 (map); Chappell Declaration at ¶ 11.
- E. The IMP for the Site, denominated the "Annie Mason Point Club" (Annie Mason IMP), states that the club is contained within a single levee surrounded by Grizzly Bay to the north and Suisun Cutoff to the south, and describes two water control structures: (a) a main flood gate on the east side that functions to bring water into the club via a perimeter ditch system; and (b) a structure on the north side used to drain the club into

Grizzly Bay. The Annie Mason IMP further states, in a subsection addressing Water Management, Needed Improvements, that it is “necessary that the club follows a regular program of water management,” and that:

Proper water control necessitates inspection and maintenance of levees, ditches, and water control structures....Levees require frequent inspection and attention to prevent major breaks from occurring.

The Annie Mason IMP also contains a subsection addressing Vegetation Management, Needed Improvements, that discusses removal of undesirable vegetation to provide for the establishment of new vegetation more preferred by waterfowl. See Chappell Declaration at ¶ 11.

- F. In September 1989, the owner of the Site at that time, John Taylor, submitted an application to the Commission to place approximately 50,000 cubic yards of dredged material from the Port of Oakland on levees at the Site to improve water control. In October 1989, Commission staff determined that the application was incomplete and requested additional information from the applicant. No additional information was provided to staff, the application was never filed as complete, and no permit was issued by the Commission for this proposed work.
- G. On or about January 29, 1990, a Wetlands Maintenance Management Report was prepared that proposed the following work at the Site: (a) clearing ditches, 1,000 cubic yards, approximately 1,200 linear feet; (b) interior levee repair, 2,000 cubic yards, 500 linear feet; and (c) exterior levee repair, 2,000 cubic yards, 750 linear feet. There is no record documenting that this work was commenced or completed. Chappell Declaration at ¶ 14.
- H. At all times subsequent to certification of the Annie Mason IMP in 1984, all owners of property within the Suisun Marsh, including the Site, have been subject to certain regulatory requirements imposed by the United States Army Corps of Engineers (USACE) under the Clean Water Act and/or the Rivers and Harbors Act of 1899. These requirements are and typically have been set forth in a series of Regional General Permits (RGPs) issued by the USACE for successive five-year terms. The RGP currently in effect, RGP3 dated July 8, 2013, regulates, among other things: “2) ACTIVITIES ON LEVEES: a. Repair of Interior and Exterior Levees...to repair damage from storms and to counteract subsidence of the levees.” Under Section 6, “PERMIT ADMINISTRATION,” the current RGP requires property owners who intend to perform repair and other work activities that are regulated by the RGP to prepare and submit to the SRCD a report (called a “work request form”) that describes the proposed activities. The RGP gives to the SRCD the responsibility to compile and submit to the USACE the reports that the SRCD receives from property owners. Previous versions of the RGP contained regulatory requirements of similar scope and content. The records of the SRCD since 1994 reveal no reports submitted by any owner of the Site for purposes of compliance with an RGP regarding repair or maintenance of the levees at the Site. Chappell Declaration at ¶¶ 15-16.

- I. An aerial photograph dated April 30, 1985, shortly after preparation of the Annie Mason IMP, shows that the levees at the Site were intact at that time, precluding tidal action except via the authorized water control structures, and provided the necessary infrastructure to control water levels at the Site for managed wetlands conditions. Notwithstanding the foregoing, in an analysis performed in 1984 by the California Department of Water Resources (CDWR), the CDWR determined that "Levees about Annie Mason Island are not now in good repair." Chappell Declaration at ¶ 12.
- J. In contrast, a series of aerial photographs taken from July 1988 to September 2011 show the progressive levee breaches that conveyed tidal waters from Grizzly Bay into and from the interior ditch and channel network, and thus the reversion of the Site to tidal marsh. The first levee breach (in the north) had occurred by August 1988, and two more breaches (one in the southwest and another in the northeast) had occurred by May 1991. Two more levee breaches (one in the south and another in the northeast) had occurred by August 1993, and two more levee breaches (both in the northwest) had occurred by the Summer 2003. Beginning in or about 1988 with the first levee breach, continuing between 1988 to 2003 with the six additional levee breaches that occurred over this period, and continuing from in or about 2003 to 2011 with all seven levee breaches, these breaches provided daily tidal exchange between the Bay waters and the tidal marsh that comprised the Site, and the interior channels and ditch provided internal tidal circulation throughout the Site. Aerial photographs dated: April 30, 1985; July 14, 1988; August 18, 1988; June 13, 1990; May 28, 1991; August 23, 1993; Summer 2003; October 20, 2003; Summer 2006; April 2011; and September 1, 2011. Siegel Environmental, Point Buckler Technical Assessment of Current Conditions and Historic Reconstruction Since 1985 (May 12, 2016) (Point Buckler Technical Assessment Report), Appendix G (Opening of Tidal Connectivity and Establishment of Tidal Marsh, 1985 to 2011), Section G-3.1.
- K. Beginning no later than August 1988, with the first levee breach, the areas of the Site formerly consisting of managed wetlands began reverting to "tidal marsh," as that term is defined in Section II, Exhibit C of the SMMP due to: (a) the lack of maintenance of the levees and water control structures at the Site; (b) the constant exposure of the Site to daily tides and the forces of the waves and winds; and (c) the periodic exposure of the Site to storm events. The reversion and persistence of the Site as tidal marsh continued after May 1991 from three levee breaches, after August 1993 from five levee breaches, and after August 2003 from seven levee breaches, which provided daily tidal exchange between the Bay waters and the interior channels and ditch, and provided internal tidal circulation throughout the Site. Point Buckler Technical Assessment Report, Appendix G (Opening of Tidal Connectivity and Establishment of Tidal Marsh, 1985 to 2011).
- L. During this same period (1988 –2011), due to the progressive erosion and deterioration of the remnant levees over this period, portions of the Site interior to the levees were subject to the inflow and outflow of tidal waters in the form of "overtopping" of the

levees during "about half of the high tides." This form of tidal influence on the Site is referred to as "'overland' flow of tidal waters to the interior tidal marsh." Pt. Buckler Technical Assessment Report, App. G, Section G-3.2.

- M. Mr. Sweeney purchased the Site on or about April 19, 2011. An aerial photograph taken in April 2011, and attached hereto as Exhibit C, shows that at that time the levees at the Site were breached at seven different locations and the entire Site was intersected by countless tidal channels that, together with the remnant interior ditch and combined with overland flow of tidal waters, provided internal tidal circulation throughout the entire Site. These same conditions are shown in an aerial photograph taken on September 1, 2011. Aerial photographs dated: April 2011; and September 1, 2011; Point Buckler Technical Assessment Report, Appendix G (Opening of Tidal Connectivity and Establishment of Tidal Marsh, 1985 to 2011).
- N. The status of the Site as constituting, over the overwhelming preponderance of its area, a tidal marsh is also confirmed by CDFW Suisun Marsh vegetation data sets which show virtually the entire Site to be dominated by the growth of vegetation types characteristic of tidal wetland areas. Pt. Buckler Technical Assessment Report, Appendices G (Section G-3.2) and H (Fig. H-2).
- O. Over an approximately 20-year period before Mr. Sweeney purchased the Site in April 2011: (a) the levees and water control structures at the site were not maintained; (b) the site was subject to tidal action and consisted of tidal marsh, including in the areas interior to the progressively eroded, deteriorated and breached levees; and (c) the Site did not contain managed wetlands as defined in the SMPA (Public Resources Code Section 29105). For these reasons, when Mr. Sweeney purchased the Site, the Annie Mason IMP no longer applied to the Site and any potential development at the Site was not specified in the SRCD's component of the local protection program. Therefore, at the time Mr. Sweeney purchased the Site, a MDP from the Commission was required pursuant to the SMPA (Public Resources Code Section 29500-29501), to authorize any "development" (as defined in Public Resources Code Section 29114(a)) at the Site, and a permit was required by the Commission, pursuant to Government Code § 66632(a), to authorize the placement of any fill or to make any substantial change in use of any water, land, or structure at the Site. Chappell Declaration at ¶¶ 17-21.
- P. Beginning by no later than May 2012, and without applying for or obtaining a permit from BCDC under either the MPA or the SMPA, Mr. Sweeney began excavating trenches and ditches in tidal marsh, rebuilding eroded levees, and placing fill on tidal marsh to construct new levees at the Site. This work included but may not have been limited to constructing new levees by excavating material from the ditch inside the eroded levees and placing such material on (a) the remnants of the eroded levees in locations where the eroded levees remained; and (b) tidal marsh and waters of the State inside former levee locations where the former levees had completely eroded and disappeared and had been replaced by tidal marsh. In addition, without applying for or obtaining a permit from BCDC under either the MPA or the SMPA, Mr. Sweeney removed one of the former water control structures from the Site and, in approximately September 2013,

replaced a sunken dock located in the southeast portion of the Site with a larger dock at the same location. Declaration of John D. Sweeney in Support of Ex Parte Application, Sonoma County Superior Court Case No. FCS046410 (December 28, 2015), at paragraph 4; Email from Mr. Sweeney to Jim Starr, CDFW, dated November 19, 2014. Aerial photographs or Google Earth images dated May 19, 2012, February 3, 2014, March 24, 2014, May 22, 2014, August 6, 2014, October 29, 2014, and January 29, 2015. Point Buckler Technical Assessment Report, Appendix K (Fill and Excavation in Wetlands and Waters Since 2011). Each of these unauthorized activities constituted "development" as defined in Public Resources Code Section 29114, and the construction of new levees, and installation of a replacement dock each constituted both placement of fill and a substantial change of use of land and water under Government Code Section 66632(a).

- Q. Even if the Annie Mason IMP still applied to the Site at the time Mr. Sweeney engaged in the above-described activities, which it did not (see ¶ N above), said activities were not described in and thus were not authorized by the Annie Mason IMP. Specifically, as noted above in ¶ E, the Annie Mason IMP authorized the "inspection and maintenance" of existing levees, not the construction of an entirely new levee to replace a previously existing levee that had eroded away to the point that it no longer served any effective water control function. Moreover, the Annie Mason IMP does not authorize any improvements or other work to occur in any portion of the Site that qualifies as a "tidal marsh." See Chappell Declaration at ¶ 19.
- R. On March 19, 2014, while two BCDC staff members and Steve Chappell, Executive Director of SRCD, were touring the Suisun Marsh, one of the locations they visited was Simmons Island, located approximately 100 yards east of the Site across Annie Mason Slough. From the western levee on Simmons Island, directly east of the Site, they observed that a significant amount of heavy machinery was on the Site and that substantial landform alteration (*i.e.*, excavation and redeposit of excavated material) had occurred, which appeared to have as its purpose the construction of a new levee. BCDC staff and Mr. Chappell also observed a floating dock and pier at the southeastern portion of the Site. The levee construction work observed at the Site was a surprise to Mr. Chappell because the Site met the SMMP's definition of a "tidal marsh" and he knew that work of this nature was clearly subject to the USACE, Regional Water Quality Control Board, and BCDC permitting requirements. Mr. Chappell knew of his own personal knowledge that: there had been no such permit authorizations; that a "work request form" under the USACE's RGP3 had not been submitted to SRCD or approved by the USACE for the construction activity observed on the Site; and that such a request could not have been authorized by the USACE under the RGP3 for the construction activity observed at the Site. Chappell Declaration at ¶ 17.
- S. On or about October 27, 2014, Mr. Sweeney transferred title to the Site to the Point Buckler Club, LCC.
- T. Some time in or about 2014, and without applying for and obtaining from the BCDC a permit under the MPA or a MDP under the SMPA, SWEENEY began operating the Site as a "Private Sport and Social Island located in the California Delta. Ideally suited for the

Bay Area / Silicon Valley Executives who want to get away and enjoy kiting in a safe and secluded environment without boarding a plane.” www.pointbucklerisland.com. See also www.facebook.com/pointbucklerclubVIP. Such activities constituted both a “substantial change of use of land and water” under the MPA (Government Code Section 66632(a)) and “development” (as defined in Public Resources Code Section 29114) under the SMPA.

- U. On November 14, 2014, BCDC staff inspected the Site, accompanied by Jim Starr of CDFW, and identified a number of violations of the SMPA and the MPA, including but not limited to:
1. During unpermitted construction of new levees, three major tidal channels were filled, thus removing tidal flow to the interior of the island. Further, it appeared from the extent of the levee construction that SWEENEY was in the process of draining this once tidally active marshland in order to convert the Site to upland.
 2. Unpermitted levee construction work had been conducted outside the appropriate work windows for the following protected species: Chinook Salmon, Delta Smelt, Clapper Rail, and Salt Marsh Harvest Mouse.
 3. Unauthorized installation of an approximately 288-square-foot dock on the eastern portion of the Site in Anne Mason Slough, which sometime between the Fall of 2013 and Spring of 2014 was enlarged to roughly 1,400 square feet.
 4. Unauthorized placement of two mobile army trailers on the northwest side of the Site and one on the southeast side of the Site.
 5. Unauthorized placement of two shipping containers on the southeast side of the Site.

During the Site inspection, BCDC staff provided Mr. Sweeney with a copy of the Annie Mason IMP because he had previously informed BCDC staff that he did not have a copy of that document and had requested a copy.

- V. The unauthorized work SWEENEY performed at the Site from May 2012 to January 29, 2015 is shown in a series of aerial photographs and Google Earth images. The photographs and images show that SWEENEY:
1. initiated trench excavation and filling activities by no later than May 2012;
 2. installed a large dock in Annie Mason Slough and began grading in the southeastern corner of the Site by February 3, 2014;
 3. conducted levee construction and ditch excavation activities along the southern and southwestern portion of the Site, closing two of the tidal breaches, by March 24, 2014;
 4. conducted levee construction and ditch excavation activities in a clockwise direction around to the northeastern portion of the site, closing off the five remaining tidal breaches and cutting off all tidal channel connectivity to the interior of the Site, by August 6, 2014;

5. completed the final segment of levee construction and ditch excavation activities along the eastern portion of the Site by October 28, 2014; and
6. excavated three crescent ponds in tidal marsh in the interior of the Site by January 29, 2015.

Aerial photographs or Google Earth images dated: May 19, 2012; February 3, 2014; March 24, 2014; May 22, 2014; August 6, 2014; October 29, 2014; and January 29, 2015. Point Buckler Technical Assessment Report, Appendix K (Fill and Excavation in Wetlands and Waters Since 2011).

- W. On January 30, 2015, BCDC sent a letter to SWEENEY regarding the unauthorized work observed during the November 14, 2014 Site inspection. The letter discussed the regulatory framework governing the Suisun Marsh and, in particular, the Site, including the Suisun Marsh Protection Plan and IMPs, and explained that based on available information, the history of the Site, and the recent Site visit, the Site had never been managed in accordance with the Annie Mason IMP and had long ago reverted to a tidal marsh due to neglect, abandonment, and/or the forces of nature. The letter advised SWEENEY that a marsh development permit from BCDC was required prior to performing any development at the Site, and that any work that could not be retroactively approved through such a permit would likely need to be removed, restoring the Site to tidal marsh. BCDC staff recommended that SWEENEY restore the Site, following BCDC approval of a professionally prepared plan, or begin compiling a MDP application. Furthermore, BCDC staff requested that SWEENEY stop work at the Site. Finally, the letter advised SWEENEY of potential future BCDC enforcement options, including an Executive Director Cease and Desist Order (CDO), a Commission CDO, and Civil Penalty Order.
- X. On March 25, 2015, counsel for SWEENEY wrote to BCDC questioning the applicability to the Site of the SMPA requirements for a marsh development permit. By letter dated May 7, 2015, BCDC staff once again explained that because conditions at the Site had fundamentally changed as a result of years of neglect, failed attempts at management, and natural forces, the Site had reverted to a tidal marsh and was no longer a managed wetland as defined in the SMPA, and, therefore, the Anne Mason IMP no longer applied to the Site. BCDC staff reaffirmed that given the fundamental change in Site conditions, any future work at the Site requires a MDP. Furthermore, BCDC staff recommended that SWEENEY restore the Site to tidal marsh or begin the MDP application process.
- Y. A Google Earth image dated April 1, 2015 shows that SWEENEY continued to perform unauthorized work at the Site after receiving BCDC's letter dated January 30, 2015 directing that SWEENEY stop work. The referenced image shows new work (since an aerial photograph taken on January 29, 2015) including, but not limited to: (a) excavating a fourth crescent pond in tidal marsh in the interior of the Site; (b) placing fill in the ditch for a road to cross the ditch at the west side of the Site; (c) placing fill on tidal marsh for a road to the water's edge at the northwestern corner of the Site; (d) mowing vegetation and grading for a road on tidal marsh across the Site; (e) installing containers and trailers on tidal marsh in the western portion of the Site; and (f)

installing another trailer or container on the east side of the Site. Google Earth image dated April 1, 2015; Point Buckler Technical Assessment Report, Appendix K (Fill and Excavation in Wetlands and Waters Since 2011).

- Z. On or about July 21, 2015, San Francisco Bay Regional Water Quality Control Board (Regional Board) staff provided notice to BCDC and other state and federal agencies of potential violations of state and federal laws protecting wetlands and special status species at the Site. Email from Xavier Fernandez, Regional Board, dated July 21, 2015, with attachments.
- AA. On July 28, 2015, the Regional Board sent to Point Buckler, LLC a Notice of Violation for Filling Waters of the United States and State at the Site, alleging violations of both the federal Clean Water Act and the California Water Code.
- BB. On August 11, 2015, BCDC staff met with Mr. Sweeney and his counsel to discuss the violations of the SMPA and MPA at the Site. At that meeting, SWEENEY's counsel offered to provide additional information to BCDC regarding the historic conditions at the Site and Mr. Sweeney's recent activities there. By letter dated August 18, 2015, BCDC staff provided guidance on what the additional information should focus on in order to be useful to staff in determining whether or not to proceed with an enforcement action. In summary, staff suggested that the additional information include: (a) a historical perspective of the inflow and outflow of tidal water at the Site since 1984; (b) a biological Site assessment; (c) documentation of Mr. Sweeney's cultivation of waterfowl food plants at the Site; and (d) any reports submitted by Mr. Sweeney to the SRCD describing any actions which he had taken to implement the Annie Mason IMP. Staff requested that, as discussed at the August 11, 2015 meeting, SWEENEY's counsel provide any additional information to BCDC by no later than October 10, 2015.
- CC. On September 11, 2015, the Executive Officer of the Regional Board issued Cleanup and Abatement Order No. R2-2015-0038 to Point Buckler LLC, as named Discharger, for unauthorized levee construction activities at the Site. Order R2-2015-0038 found that Point Buckler LLC's "levee construction activities included construction of a levee around the perimeter of the Site resulting in the diking off of the tidal channels located on the northeast, northwest, and southwest portions of the Site," and had adversely impacted tidal marsh vegetation and tidal marshlands that constitute waters of the State and the United States.
- DD. On October 12, 2015, SWEENEY's newly-retained counsel requested that BCDC provide additional time for SWEENEY to submit information and analysis responsive to BCDC's allegations of unpermitted activities at the Site, which SWEENEY's prior counsel had offered to provide and as discussed in BCDC's August 18, 2015 letter. SWEENEY's counsel indicated that Sweeny would provide BCDC with copies of submissions to the Regional Board required by Order R2-2015-0038, and suggested that those submissions would provide answers to most of the questions raised by BCDC.

- EE. On October 21, 2015, representatives of BCDC, the Regional Board, United States Environmental Protection Agency, and USACE inspected the Site, together with Mr. Sweeney and his counsel. The purposes of the inspection were to observe and document Site conditions and obtain a better understanding of: (a) the nature and extent of construction activities performed by SWEENEY; (b) whether the work performed by SWEENEY was within the purview of the USACE RGP3; and (c) the extent of waters of the Bay, the State and the United States and tidal marsh habitat that was adversely impacted by the work performed by SWEENEY. During this Site inspection, BCDC staff observed that SWEENEY had performed additional work since the November 14, 2014 Site inspection including:
1. installed a dirt "land bridge" over culverts by placing fill at two locations across the drainage ditch to provide access to portions of the Site;
 2. constructed a road across the interior of the Site;
 3. excavated four semi-circular ponds in the interior of the Site;
 4. installed a new, unauthorized water-control structure in the western portion of the Site;
 5. moved two storage containers from the northwestern portion of the Site, where they were located during the November 14, 2014, Site inspection, to the interior of the Site and added two additional storage containers;
 6. installed a goat pen and brought a number of goats to the Site;
 7. removed, mowed, grazed, and/or flattened tidal marsh vegetation throughout the interior of the Site; and
 8. planted approximately 14 trees on the Site, all of which had died, apparently due to high salinity levels.
- FF. On December 17, 2015, BCDC wrote to SWEENEY's counsel and agreed to provide additional time, as requested on October 12, 2015, for SWEENEY to provide information responsive to BCDC's allegations of unpermitted activities at the Site. BCDC extended to February 16, 2016, the deadline for SWEENEY to provide information and analysis responsive to the questions raised in BCDC's letter of August 18, 2015.
- GG. On January 5, 2016, the Executive Officer of the Regional Board rescinded Order R2-2015-0038 in order to address procedural due process claims asserted by SWEENEY. The rescission was without prejudice to Regional Board staff's ability to propose, or the Regional Board's ability to issue, a Cleanup and Abatement Order and/or other orders or permits covering the subject matter of Order R2-2015-0038.
- HH. An aerial photograph dated February 10, 2016, and attached hereto as Exhibit D, shows that SWEENEY continued to perform unauthorized work at the Site after receiving BCDC's letter dated January 30, 2015 directing that SWEENEY stop work. The referenced image shows new work (since the Google Earth image dated April 1, 2015) including, but not limited to, installation of two helicopter landing pads and placement

of three wind-break platforms, all on tidal marsh. Aerial photograph dated February 10, 2016; Point Buckler Technical Assessment Report, Appendix K (Fill and Excavation in Wetlands and Waters Since 2011).

- II. On February 16, 2016, SWEENEY's counsel submitted a letter to BCDC and an enclosed technical report, prepared by Applied Water Resources Corporation, entitled *Conditions at Point Buckler, Response to Cleanup and Abatement Order R2-2015-0038*, dated October 16, 2015 ("Conditions Report"), which, counsel indicated, provided some of the information regarding the Site requested by BCDC in its letter dated August 18, 2015. The Conditions Report establishes that the Site was a tidal marsh before SWEENEY began performing unauthorized work there and provides evidence that SWEENEY violated the MPA and SMPA at the Site. According to the Conditions Report:
1. In 2013, two years after Mr. Sweeney purchased the Site, aerial photographs show that there were eight tidally-influenced channels that bisected the eroded levees and through which tidal water flowed to or toward the interior of the Site. Conditions Report at 9.
 2. "Recent activities at the Island has [sic] resulted in the placement of fill material into waters of the State." Conditions Report at 4. This work involved rebuilding and constructing the exterior levees, which placed fill into sections of the former ditch system and tidal channels.
 3. SWEENEY constructed over 40% of the existing exterior levee inland of the location of the former eroded levee by placing fill on tidal marsh. Conditions Report at 3.
 4. SWEENEY excavated approximately 68% of the existing ditch, interior of the newly constructed and rebuilt levee, inland of the location of the former ditch, which no longer existed due to erosion of the former levees or had become silted in, and SWEENEY used the excavated soil as a source of fill for constructing and rebuilding the exterior levee. Conditions Report at 4.
 5. SWEENEY excavated two arc-like shaped ponds in late-2014, and had partially dug two more ponds. *Id.*
 6. SWEENEY installed two 24-inch diameter steel pipe culverts in and across the new ditch system, over fill, on the eastern and western sides of the Site to allow passage over the ditch. Conditions Report at 3.
 7. "Recent activities at the Island has [sic] resulted in the removal or coverage of vegetation." Conditions Report at 6. SWEENEY removed at least 4.74 acres of tidal marsh vegetation as a result of excavation or filling activities. Conditions Report at 6, 7.
 8. SWEENEY disturbed tidal marsh vegetation at the Site by rotary mowing activities that commenced in 2012 and were conducted on the west, north, and southeastern portions of the island. SWEENEY also disturbed tidal marsh vegetation by moving track-mounted machines and rubber tired vehicles across the island. Conditions Report at 4.

- JJ. Neither the Conditions Report nor the February 16, 2016 letter from SWEENEY's counsel contain any of the following information requested in BCDC in its August 18, 2015 letter: a biological Site assessment; documentation of cultivation of waterfowl food plants at the Site; and any reports submitted by Mr. Sweeney to the SRCD describing any actions which he had taken to implement the Annie Mason IMP.¹
- KK. On February 17, 2016, representatives of the Regional Board performed a boat survey with the Solano County Sheriff Marine Patrol around the perimeter of the Site and observed, among other things: (a) recent unauthorized grading on the east site of the Site that appeared to be maintenance or repair to the levee; and (b) placement of two mobile helicopter landing pads. In the Matter of the Inspection at Point Buckler Island, Affidavit for Inspection Warrant (of Benjamin Martin, Regional Board), dated February 19, 2016, at 11 (Affidavit for Inspection Warrant).
- LL. On March 4, 2016, representatives of the Regional Board, escorted by the Solano County Sheriff's Department, inspected the Site pursuant to an Inspection Warrant issued by Solano County Superior Court. The inspection consisted of conducting: (a) a topographic survey of the Site; (b) a forensic wetland survey designed to identify and characterize the extent of wetlands and other waters of the State and current conditions at the Site; and (c) in situ water quality measurements. Affidavit for Inspection Warrant, at 5. During this Site inspection, Regional Board staff observed that SWEENEY had performed additional work since the October 21, 2015 Site inspection including: (a) three white flat-rack containers were newly installed around two green closed freight containers to create an enclosure; (b) four flat-rack containers (two red and two blue), painted with a yellow "H," were newly installed as two helicopter landing pads, one landing pad on the eastern side and one on the western side of the Site; (c) a green gate and posts were newly installed across the ditch crossing on the eastern side of the Site; and (d) tidal marsh vegetation was mowed throughout an approximately 1.5-acre area on the eastern side of the Site (this area had not been mowed on October 21, 2015). In addition, Regional Board staff observed that the water in the ditch was bright green in color, and notably different in color compared to the water in Suisun Bay, indicative of stagnant and eutrophic conditions, in contrast to observation during the October 21, 2015 Site inspection when the water in the ditch was greenish brown in color and not noticeably different in color in comparison to the water in Suisun Bay. Regional Board, Inspection Report (April 19, 2016), Exhibit A, at A-2 to A-3.
- MM. On April 22, 2016, the Executive Director issued a Cease and Desist Order (EDCDO) directing SWEENEY to, among other things, a) cease and desist from i) placing any fill within, or making any substantial change in use of any area subject to tidal action, or

¹ In his transmittal letter, SWEENEY's counsel asserted that the statutory exemption from the requirement to obtain a marsh development permit (Pub. Resources Code § 29501.5) turns on the existence of a certified IMP and suggested that it was irrelevant whether the Site was a managed wetland or a tidal marsh. However, as a component of SRCD's local protection program, an IMP may be prepared only for a "managed wetland in private ownership within the primary management area." Pub. Resources Code § 29412.5; SMMP at 23.

that was subject to tidal action before SWEENEY performed the unauthorized activities described in the Order, and ii) engaging in any activity on the Site constituting “development,” as defined in the SMPA, without applying for and obtaining a permit under both the MPA and the SMPA, and b) apply for and obtain permits for all prior work at the Site for which such permits are required under either the MPA or the SMPA, or both, and c) apply for and obtain any and all permits under both the MPA and the SMPA prior to undertaking any future activities at the Site for which such permits are required, including but not limited to any productive use of the Site in which SWEENEY may wish to engage.

- NN. On May 17, 2016, the Regional Board issued to Mr. Sweeney a) a Complaint for Administrative Civil Liability Complaint No. R2-2016-1008 seeking \$4,600,000 in civil fines for violating i) San Francisco Bay Basin Water Quality Control Plan Discharge Prohibition No. 9 and Clean Water Act section 301 for unauthorized discharge of fill to waters of the State and United States on the Site, and ii) Clean Water Act Section 401 for failure to obtain a Water Quality Certification, and b) a tentative Clean Up and Abatement Order, which, if issued, would require Mr. Sweeney to restore the Site to its pre-development condition. The Board set a hearing on these actions for August 10, 2016.
- OO. On May 23, 2016, counsel for SWEENEY informed BCDC staff that he had filed in Solano County Superior Court a Petition for a Writ of Mandate and Complaint for Injunctive Relief against BCDC and its Executive Director challenging the EDCDO. Although as of the date of issuance of this Violation Report the Petition and Complaint has not been served on the BCDC, the Petition and Complaint has been posted on the facebook page of the Pt. Buckler Club. See www.facebook.com/pt.bucklerclub VIP. The Petition and Complaint alleges, among other things that in issuing the EDCDO the Executive Director acted in excess of his legal authority, and asks for relief in the form of a judicial order invalidating the EDCDO.

VII. Provisions of law or Commission permit that the staff alleges has been violated:

Government Section 66632. Permit for Fill, Extraction of Materials or Substantial Change in Use of Land, Water or Structure; Application for Permits.

Any person wishing to place fill, to extract materials, or to make any substantial change in use of any water, land, or structure, within the area of the Commission’s jurisdiction, including at the Site, is required to obtain a permit from the Commission.

Public Resources Code Sections 29500, 29501(a).

Any person wishing to perform or undertake any “development,” as that term is broadly defined in Public Resources Code Section 29114(a), in the primary management area of the Suisun Marsh, including at the Site, is required to obtain a marsh development permit from the Commission.

VIII. If the staff is proposing that the Commission impose an administrative penalty as part of this enforcement proceeding, the amount of the proposed penalty:

Staff proposes a penalty of \$952,000 under Section 66641.5(e) of the McAteer-Petris Act for the following violations:

Description	Violation(s)	Amount
Place fill in the Bay to close each of seven tidal breaches of remnant levees and cut off tidal action to the Site	Placement of fill; substantial change of use. Seven violations. [\$2,000 per day per; duration over 1.5 years]	\$210,000
Place fill in Bay to construct new levees around Site	Placement of fill [\$2,000 per day per; duration over 1.5 years]	\$30,000
Excavate ditch interior to levees around Site	Extraction of materials [\$2,000 per day per; duration over 1.5 years]	\$30,000
Install replacement dock on eastern portion of Site; install additional, larger dock	Placement of fill. Two violations. [\$1,500 per day); duration over 2 years.]	\$60,000
Excavate each of four crescent ponds in interior of Site; place excavated fill adjacent to each pond	Excavation of materials; substantial change of use; placement of fill. Four violations. [\$1,500 per day; duration over 1 year.]	\$120,000
Place fill in Bay to construct road to support vehicles in northwestern portion of Site	Placement of fill; substantial change of use. [\$2,000 per day; duration over 1 year.]	\$30,000
Place fill in Bay to construct road to support vehicles across the entire Site	Placement of fill; substantial change of use. [\$2,000 per day; duration over 1 year.]	\$30,000
Placing fill in Bay to construct two land bridges over culverts installed interior ditch on east and west sides of site	Placement of fill; substantial change of use. Two violations. [\$1,000 per day; duration over 1 year.]	\$60,000
Remove one of the former water control structures at the Site	Substantial change of use. [\$2,000 per day; duration over one year.]	\$30,000
Install new water control structure in western portion of Site	Placement of fill. [\$500 per day; duration over seven months (discovered during 10/21/15 site visit)]	\$30,000

Description	Violation(s)	Amount
Removing, mowing, and/or destroying tidal marsh vegetation (for other than agricultural purposes) throughout Site	Substantial change in use. [Occurred at various times; documented on 10/21/15 Site inspection, in Conditions Report; and on 3/4/16/ Site inspection. \$500 per day; duration no less than 2-7 months.]	\$30,000
Developing and using Site for water-oriented recreational activities including but not limited to kiting	Substantial change in use. [\$500 per day; duration approximately two years.]	\$30,000
Placing mobile army trailers and storage containers on the Site	Placement of fill; substantial change of use. Five containers documented on 11/14/14 Site inspection. Five violations. [\$100 per day; duration over 1.5 years.] Two additional storage containers documented on 10/21/15 Site inspection. Two violations. [\$100 per day; duration at least seven months, or 210 days.] Three wind-break platforms documented in 2/10/16 aerial photo. Three violations. [\$100 per day; duration at least 100 days.]	\$150,000 (for five violations documented 11/14/14). \$42,000 (for two additional violations documented 10/21/15). \$30,000 (for three additional violations documented 2/10/16).
Installation of four flat-rack containers as two helicopter landing pads	Placement of fill; substantial change of use. Two violations. [\$200 per day; duration at least 100 days.]	\$40,000
Total Proposed Penalty		\$952,000

IX. Any other statement or information that the staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violations:

- As of the date of issuance of this Report/Complaint, the alleged violations are ongoing, and SWEENEY has made no effort to settle or resolve the violations.
- Mr. Sweeney may argue that it was his understanding the work he performed at the Site was authorized by the Annie Mason IMP and, therefore, he assumed he was not required to obtain a permit from BCDC. However, as documented in Paragraphs VI.P, VI.R, and VI.U, above, prior to obtaining a copy of the Anne Mason IMP from BCDC in November 2014, Mr. Sweeney had already completed levee construction and rebuilding and ditch excavation activities around the entire Site, closing all seven of the pre-existing tidal breaches, and had also conducted substantial additional unauthorized development activities at the Site.
- SWEENEY continued to perform unauthorized work at the Site after receiving BCDC's letter dated January 30, 2015 directing that SWEENEY stop work, as documented in Paragraphs VI.Y, VI.EE, VI.HH, VI.KK, and VI.LL, above.

X. List of staff exhibits:

- Exhibit A: Index of Administrative Record (¶VI, second paragraph)
Exhibit B: Declaration of Steven Chappell, dated April 21, 2016. (¶ VI.B)
Exhibit C: Aerial photograph dated April 2011 (¶ VI.M)
Exhibit D: Aerial photograph dated February 10, 2016 (¶ VI.GG)

**Point Buckler Club, LLC Violation Report (ER2012.038)
Index of Administrative Record**

Document Description	Date
Suisun Marsh Protection Plan	Dec-76
Suisun Marsh Management Program	Sep-80
Annie Mason Point Club Management Plan	11/15/84
Annie Mason Point Club Management Plan and Supplemental Materials	11/15/1984 - 1/29/1990
Letter from SRCD to Mr. James Taylor re: DWR Pump Facility	9/13/88
Application for BCDC Marsh Development Permit	9/18/89
BCDC Response to Application for BCDC Marsh Development Permit	10/12/89
SRCD Wetlands Maintenance Management Report	1/29/90
Department of the Army, Regional General Permit 3	7/8/13
Email from Mr. John Sweeney to Jim Starr, CDFW	11/19/14
BCDC Letter to Mr. John Sweeney re: Point Buckler Island Unauthorized Project, Suisun Marsh	1/30/15
Letter from Miller Starr Regalia to BCDC re: Point Buckler, LLC; Performance of Maintenance Activities Pursuant to Annie Mason Point Club Individual Management Plan, Club No. 801	3/25/15
BCDC Letter to Miller Starr Regalia re: Point Buckler Island Unauthorized Project, Suisun Marsh	5/7/15
Regional Board Notice to BCDC and other agencies re: Potential Violation for Unauthorized Diking of Suisun Tidal Marsh at Point Buckler Island	7/21/15
Regional Board Letter to Mr. John Sweeney re: Notice of Violation for Filling Waters of the United States and State, Point Buckler Island in the Suisun Marsh, Solano County	7/28/15
BCDC Letter to Miller Starr Regalia re: Point Buckler Island (BCDC Enforcement File No. ER2012.038)	8/18/15
Regional Board to Mr. John Sweeney re: Cleanup and Abatement Order No. R2-2015-0038 for Unauthorized Levee Construction Activities at Point Buckler Island in the Suisun Marsh, Solano County	9/11/15
Letter from Briscoe Ivester and Bazel, LLP to BCDC re: Notice of Replacement of Counsel	10/12/15
Applied Water Resources, Conditions Report at Point Buckler, Response to Cleanup and Abatement Order R2-2015-0038	10/16/15

EXHIBIT A

Document Description	Date
BCDC Letter to Briscoe Ivester and Bazel re: Point Buckler Island; BCDC Enforcement File No. ER2012.038 (Pt. Buckler, LLC; John Sweeney, Principal)	12/17/15
Declaration of John D. Sweeney in Support of Ex Parte Application	12/28/15
Regional Board Letter to Mr. John Sweeney re: Recission of Cleanup and Abatement Order No. R2-2015-0038 for Point Buckler Island, LLC	1/5/16
Letter from Briscoe Ivester and Bazel, LLP to BCDC re: Point Buckler Island; BCDC Enforcement File No. ER2012.038	2/16/16
In the Matter of the Inspection at Point Buckler Island, Affidavit for Inspection Warrant	2/19/16
Solano County Inspection Warrant	2/19/16
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DECLARATION OF STEVEN CHAPPELL

I, Steven Chappell, declare as follows:

1. I am the Executive Director of the Suisun Resource Conservation District ("SRCD"). I have been employed by the SRCD since 1994 and have held the position of Executive Director since 1998.
2. The Suisun Soil Conservation District ("SSCD") was originally created in 1963. In 1971 the SSCD became the SRCD under the expanded powers of Division 9 of the Public Resource Code ("PRC").
3. In 1974, the Legislature enacted the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974 which required the San Francisco Bay Conservation and Development Commission ("BCDC") to prepare and submit to the Governor and Legislature on or before December 1, 1976, a Suisun Marsh Protection Plan ("SMPP").
4. In December, 1976, the BCDC, in collaboration with the California Dept. of Fish and Wildlife, issued the SMPP, as defined in Section 29113(a) of the Suisun Marsh Preservation Act (PRC §§ 29000 – 29612; "SMPA"). In Part III, "Regulation Recommendations: 2. Water Management District," the SMPP recommended that the SRCD should be empowered to "regulate water management practices at managed wetlands controlled by privately-owned duck clubs." Thereafter, in 1977, the Legislature empowered the SRCD to fulfill this responsibility through the enactment of PRC Sections 9960-9963 as part of the same law (Ch. 1155) that enacted the SMPA. PRC § 9962(a) states that the SRCD "shall have primary local responsibility for regulating and improving water management practices on privately owned lands within the PMA of the Suisun Marsh in conformity with [the SMPA] and the SMPP."
5. The area over which the SRCD exercises its statutory responsibility encompasses 115,000 acres in the Suisun Marsh, as that term is defined in Section 29101 of the SMPA, which is comprised of approximately of 52,000 acres of managed wetlands, 6,000 acres of unmanaged tidal wetlands, 30,000 acres of bays and sloughs, and 27,000 acres of upland grasslands.
6. In Part II, "Findings and Policies: Environment" Finding 4 and "Land Use and Marsh Management" Finding 1 of the SMPP states that: "Tidal marsh is an important habitat for many wildlife species, including the endangered salt marsh harvest mouse and the Suisun shrew. Tidal marshes also contribute to the maintenance of water quality in the SF Bay." "Land Use and Marsh Management" Policy 3 of the SMPP states that: "The tidal marshes in the PMA should be preserved."

7. Section 29401(d) of the SMPA requires the SRCD to prepare, as a component of the "Local Protection Program" ("LPP") mandated by the SMPA, "a management program...designed to preserve, protect, and enhance the plant and wildlife communities within the PMA of the [Suisun] marsh, including...enforceable standards for diking, flooding, draining, filling, and dredging of sloughs, managed wetlands, and marshes." The SRCD prepared the Suisun Marsh Management Program ("SMMP") to carry out this directive. The SMMP consists of the following principal elements: (1) a general management program; (2) pursuant to section 29412.5 of the SMPA, individual water management programs ("IMPs") for each privately owned "managed wetland" within the PMA of the Suisun Marsh; (3) pursuant to section 29401(d) of the SMPA, enforceable standards covering diking, flooding, draining, filling and dredging of tidal waters, managed wetlands and tidal marsh within the primary management area; and (4) pursuant to section 9962(b) of the PRC, regulations adopted by SRCD to ensure effective water management on privately owned lands within the PMA. Pursuant to Section 29415 of the SMPA, in 1980 the BCDC certified the SMMP as consistent with the provisions of the SMPA and the SMPP. The SMMP notes at Section II.C.1 of Part 1 that "the policies of the SMPP prohibit future conversion of tidal marsh or open water areas to managed wetland or agricultural status."
8. In Exhibit C ("Standards Covering Diking, Flooding, Draining, Filling and Dredging of Tidal Waters, Managed Wetlands, and Tidal Marsh"), Section III ("Purpose"), the SMMP states that one of the principal goals of the standards set forth in Ex. C is "minimizing activities in tidal marshes and waters." The standards contained in Ex. C, Section VI ("Specific Principals and Standards") for the activities specified in the title of Ex. C vary depending on the location of the activity in either A) tidal waters, B) managed wetlands, or C) tidal marshes.
9. In Section II of Ex. C the SMMP defines the term "managed wetland" to mean "leveed areas...in which water inflow and outflow is artificially controlled, or in which waterfowl food plants are cultivated, or both, to enhance habitat conditions for waterfowl and other water-associated birds and wildlife." As such, the SMMP's definition of the term "managed wetland" is substantially identical to the definition of that term that is contained in Section 29105 of the SMPA. This same section of Ex. C of the SMMP defines the term "tidal marsh" to mean "vegetated areas...which are subject to daily tidal action."
10. In Section II.C.1 ("Individual Management Programs: Program Financing: Capital Improvements") of Part 2 ("Implementation"), the SMMP notes that "the adequacy of the water management facilities on the individual private ownerships varies tremendously." The SMMP further observes that: "it is evident that a substantial number of improvements are still necessary before all ownerships have adequate facilities."

11. The Soil Conservation Service ("SCS") of the US Dept. of Agriculture prepared an IMP for each of the privately owned managed wetlands in the Suisun Marsh. One of the "managed wetlands" for which the SCS prepared an IMP is the Annie Mason Point Club ("AMPC"), Club #801. The AMPC is located on Pt. Buckler Island ("the Site"), which is located within the PMA of the Suisun Marsh off the western tip of Simmons Island. In a Section entitled "Club Improvements: Water Management: Needed Improvements, the AMPC IMP emphasizes that: "Proper water control necessitates inspection and maintenance of levees, ditches, and water control structures" and "Levees require frequent inspection and attention to prevent major breaks from occurring."
12. In a "Plan of Protection for the Suisun Marsh" ("POP") completed in February, 1984, by the Cal. Dept. of Water Resources ("CDWR"), the CDWR states, at p. 103, in connection with a proposal for the CDWR to provide a water pump to the AMPC, that: "Levees about Annie Mason Island are not now in good repair. The pumping equipment will be...installed when the landowner has improved the island's levee system to provide adequate protection of the island." Additionally, on September 13th, 1988, the SRCD sent James Taylor, the AMPC landowner at the time, a letter noting that "one of the conditions of this installation [of a pump facility by CDWR] is that your exterior levee system be intact and up to standards." The letter requested information, "if the requisite work (levee repairs) has been done, and if not, when completion can be expected." The landowner never responded to this SRCD inquiry and to SRCD's knowledge, CDWR has never installed this pump due to the failure of the AMPC exterior levee integrity and the landowner's continued inability to artificially control the inflow and outflow of water at AMPC.
13. Notwithstanding the foregoing findings by the CDWR, the AMPC IMP in the "Summary" section contains a "report" by the "club" that "it now has the water control structures and tight levees necessary for proper water management."
14. On January 29, 1990, a "Wetlands Maintenance Management Report" was prepared which identified 11 locations along approximately 2,450 linear feet of the levee protecting the Site as being in need of interior and exterior repair work. There is no evidence that this needed repair work was ever completed or even undertaken
15. Since 1977 and thus at all times subsequent to the initial certification of the AMPC IMP by the BCDC in 1984, all owners of land within the Suisun Marsh, including but not limited to the Site, have been subject to additional regulatory requirements imposed by the US Army Corps of Engineers ("USACE") under the Clean Water Act and the Rivers and Harbors Act of 1899. These requirements and permitted scope of work defined as a set of discrete authorized maintenance activities have been set forth in a series of Regional General Permit 3's ("RGP3"). The RGP3's authorize the SRCD as co-permittee to "represent" Suisun Marsh landowners with respect to managed wetlands maintenance activities that said

landowners have undertaken or desire to undertake in the Suisun Marsh. During brief periods of time during which a RGP3 has not been in effect the SRCD has performed a similar function under an applicable USACE Nationwide Permit. The RGP3 has typically been issued serially by the USACE for successive 5 year terms. The RGP3 currently in effect, dated July 8, 2013, regulates, among other things, "2) ACTIVITIES ON LEVEES: a. Repair of Interior and Exterior Levees...to repair damage from storms and to counteract subsidence of the levees." Previous versions of the RGP3 contained regulatory requirements of similar scope and content. Under Section 6, "PERMIT ADMINISTRATION," the RGP 3 requires landowners in the Suisun Marsh who intend to perform repair and other work activities that are regulated by the RGP3 to prepare and submit to the SRCD a report (called a "work request form") that describes the proposed activities. The RGP3 gives to the SRCD the responsibility to compile and forward to the USACE the reports that landowners submit to the SRCD, for USACE review and authorization.

16. Since 1994, the records of the SRCD reveal no reports for purposes of compliance with an RGP3 or other evidence of any action on the part of the owners of the Site to maintain the levees and other water control structures on the Site as called for by the AMPC IMP. Due to the complete absence for a period in excess of 20 years of any repair and maintenance work on the exterior levee on the AMPC it is my professional judgment that it is not physically possible for a levee subject to such a lengthy period of inactivity, neglect, and numerous storm damage flooding events to retain the ability to control the inflow and outflow of tidal waters into and from the area that the levee had been originally constructed to protect. As a consequence of this inaction, the levees on the Site were allowed to deteriorate to the point that, when Mr. Sweeney purchased the Site, they no longer controlled the inflow and outflow of tidal water from the Site. As a result the hydrological status of the Site since 1994 was not that of "managed wetland," but rather that of a "tidal marsh", as those terms are defined in Section II of Ex. C of the SMMP. Thus, the standards for "diking, flooding, draining, filling, and dredging" contained in Ex. C of the SMMP that were applicable to the AMPC were those for a "tidal marsh," not those for a "managed wetland."
17. On March 19, 2014, I accompanied Joe LaClair and Cody Aichele-Rothman of the BCDC on a tour of the Suisun Marsh, which included a number of private duck clubs located in the Suisun Marsh. One of the clubs we visited was Club #802 (Rich Island). The Site is located a short distance (approximately 100 yards) across the Annie Mason Slough from Club #802. While we were present on Club #802, I personally observed a significant amount of heavy machinery consisting of a crane, a bulldozer, and other machinery on the Site. I also observed on the Site a substantial amount of landform alteration, i.e., excavation and redeposit of excavated material. The work appeared to have as its purpose the construction of a new exterior levee on the Site. Other nearby landowners had reported this activity to the SRCD, but it came as a surprise to me because, as stated above in

paragraph 15 and 16, any work of this nature on a site that met the definition of a "tidal marsh" in the SMMP was clearly subject to the requirements of the USACE, RWQCB, and BCDC permitting authority. Based upon my own personal knowledge that there had been no such permit authorization or request under the RGP3, nor could it have been authorizable by the USACE, for the construction activity we observed on the Site on March 19.

18. In Section VI.C.1 ("Specific Principles and Standards: Tidal Marshes: Diking") of Ex. C, the SMMP prohibits "diking of tidal marsh areas except in conformance with the findings of the SMPP and the provisions of a certified IMP...." Similarly, Section VI.C.2 ("Specific Principles and Standards: Tidal Marshes: Flooding and Draining") of Ex. C of the SMPP requires that "activities that would affect the natural daily flooding and draining of existing tidal marshes...be undertaken only in conformance with the findings of the SMPP and the provisions of a certified IMP...."
19. As noted above in Paragraph 11 of this declaration, the AMPC IMP authorizes the "inspection and maintenance" of existing levees on the AMPC property. It does not authorize the construction of any new levee to replace any levee that may previously have existed on the Site but which has functionally ceased to exist as a result of neglect and lack of attention. Thus the work Mr. Sweeney has performed in the form of new exterior levee construction is not authorized by, or in conformity with, the provisions of the certified AMPC IMP. Most notably, the AMPC IMP does not authorize any improvements or other work to occur in any area of the Site that meets the definition of a "tidal marsh," as that term is defined in Section II of Ex. C of the SMMP.
20. Accordingly, the construction by Mr. Sweeney of a new perimeter exterior levee on the Site in 2014 was inconsistent with both the findings of the SMPP (as quoted above in Paragraph 6 of this declaration) and with the provisions of the AMPC IMP.
21. Under Ex. C of the SMMP if the "diking of tidal marsh areas" or the obstruction of "the natural daily flooding and draining of existing tidal marshes" that are not "in conformance with [either] the findings of the SMPP [or] the provisions of a certified IMP" are only allowed if such activities occur "with the permission of the appropriate permitting authorities" such as the BCDC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is signed at

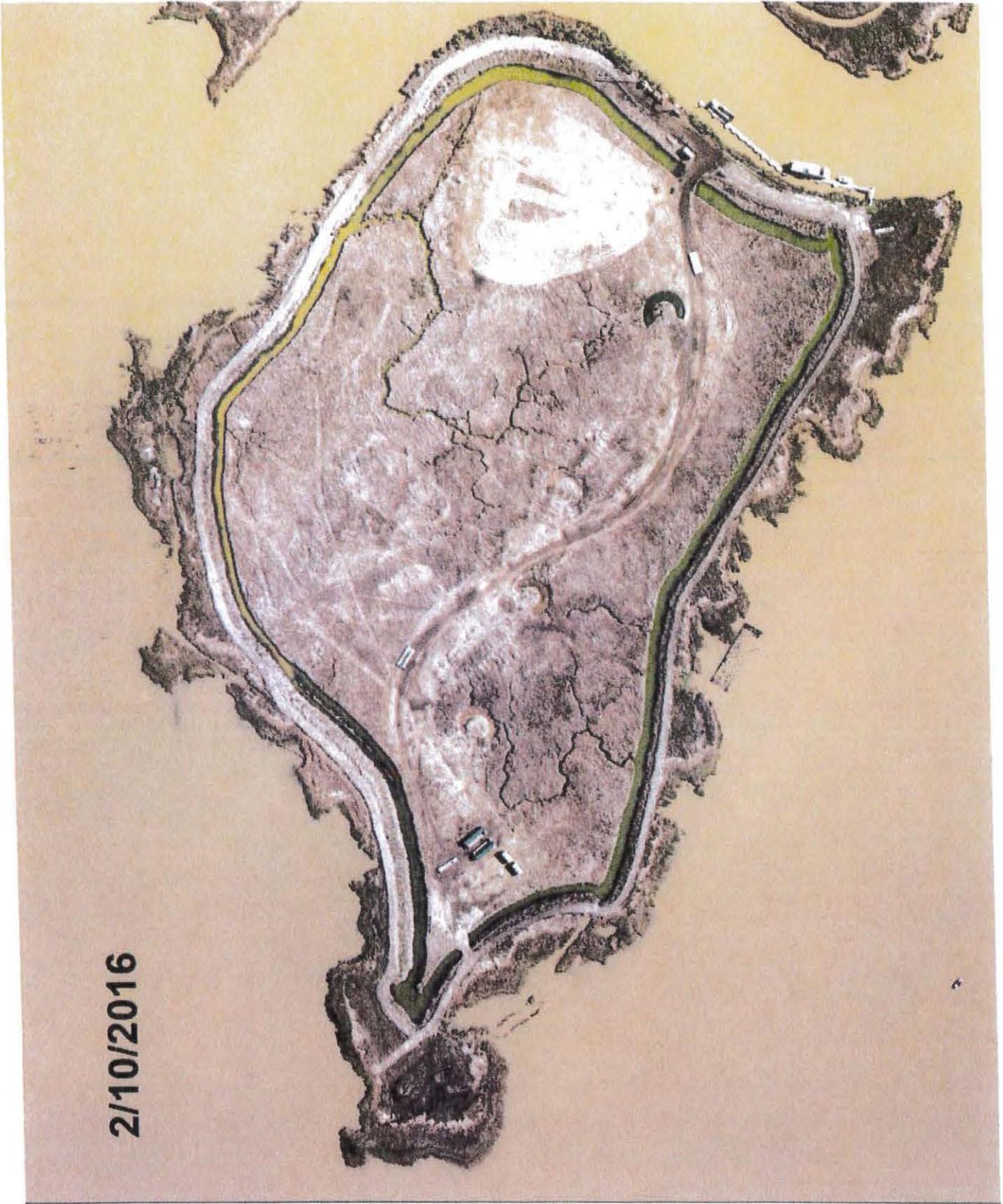
Salerno, CA on April 21, 2016.


Steven Chappell



April 2011

EXHIBIT C



2/10/2016