San Francisco Bay Conservation and Development Commission
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Point Buckler Club, LLC 171 Sandpiper Drive Pittsburg, CA 94565 and John Donnelly Sweeney 171 Sandpiper Drive Pittsburg, CA 94565, Respondents.	COMMISSION CEASE AND DESIST AND CIVIL PENALTY ORDER NO. CDO 2016.02 Effective Date: November 17, 2016

TO JOHN DONNELLY SWEENEY AND POINT BUCKLER CLUB, LLC:

I. CEASE AND DESIST

Pursuant to California Public Resources Code Section 29601 and California Government Code Section 66638, John Donnelly Sweeney and Point Buckler Club, LLC, all of their agents and employees, and any other persons acting in concert with them (collectively "Respondents") are hereby ordered to cease and desist all activity in violation of the Suisun Marsh Preservation Act (SMPA) and the McAteer-Petris Act (MPA) at Point Buckler Island in Solano County, as described herein. Specifically, Respondents are ordered to:

1. Cease and desist from placing any fill within, or making any substantial change in use of, any area subject to tidal action, or that was subject to tidal action before Mr. Sweeney commenced the unauthorized activities described herein, including marshlands lying between mean high tide and five feet above mean sea level, without securing a permit from the San Francisco Bay Conservation and Development Commission (Commission or BCDC) as required under Government Code Section 66632(a);
2. Cease and desist from conducting or engaging in any "development" (defined in Public Resources Code Section 29114(a) as including but not being limited to the placement or erection of any solid material or structure; discharge or disposal of any dredged material; grading, removing, dredging, or extraction of any materials; change in the density or intensity of use of land or intensity of use of water; construction, reconstruction, alteration in the size of any structure; and the removal or harvesting of major vegetation other than for agricultural purposes) without securing a marsh development permit from the Commission as required under Public Resources Code Sections 29500 and 29501(a); and
3. Fully comply with requirements of Sections III and IV of this order.

II. FINDINGS

This Order is based on the following findings. The administrative record in support of these findings and this Order includes: (1) all documents and other evidence cited herein; and (2) all additional documents listed in the Index of Administrative Record attached hereto as Exhibit A.

A. Point Buckler Club, LLC is the owner of approximately 39 acres of land 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). 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 jointly referred to as Respondents.

B. In 1965, the Legislature enacted the McAteer-Petris Act (MPA), which is codified, as amended, at Government Code Sections 66600-66694. The Site is located in the jurisdiction of the Commission as established by Government Code Section 666610. Specifically, the Site is in the Commission's "San Francisco Bay" jurisdiction as defined in Government Code Section 666610(a). 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. Government Code § 66632(a).

C. In 1977, the Legislature enacted the Suisun Marsh Preservation Act (SMPA), which is codified, as amended, at Public Resources Code Sections 29000-29612. The Site is located in the "primary management area" of the "Suisun Marsh," as those terms are defined in Public Resources Code Sections 29102 and 29101, respectively.

D. Any person wishing to perform or undertake any "development," as that term is broadly defined in Public Resources Code Section 29114(a), at the Site is required to obtain a marsh development permit from the Commission, in addition to obtaining any other permit required by law from any local government or from a state, local, or regional agency. Public Resources Code §§ 29500, 29501.

E. 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 meet the requirements of, and implement, the SMPA and the Suisun Marsh Protection Plan at the local level.

F. One component of the certified local protection program is the Suisun Marsh Management Program (SMMP) prepared by the 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) at ¶¶ 7, 9.

G. Nothwithstanding 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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: "<u>2) ACTIVITIES ON LEVEES</u>: <u>a. Repair of Interior and Exterior Levees</u>...to repair damage from storms and to counteract subsidence of the levees." Under Section 6, "<u>PERMIT ADMINISTRATION</u>," 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.

M. 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.

N. 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.

O. 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).

P. 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.

Q. Mr. Sweeney purchased the Site on or about April 19, 2011. An aerial photograph taken in April 2011 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).

R. 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).

S. 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.

T. Before Mr. Sweeney began conducting levee construction and excavation activities at the Site, he knew that the placement of fill on levees in the Suisun Marsh, including levee repair work, requires authorization from multiple agencies. Specifically, in June 2011, Mr. Sweeney contacted the SRCD and the USACE regarding proposed levee repair work at Chipps Island (Club 915) in the Suisun Marsh. SRCD provided Mr. Sweeney with copies of the USACE's Regional General Permit (RPG3) and a relevant Biological Opinion prepared by the National Marine Fisheries Services, and Mr. Sweeney completed a USACE Wetlands Maintenance Permit Application. Working through the permitting process with SRCD, Mr. Sweeney obtained authorization from the USACE to perform the

levee repair under the RGP. However, Mr. Sweeney did not adhere to the conditions of the RGP, and on October 24, 2011, the USACE issued a Notice of Violation to Mr. Sweeney regarding his unauthorized work at Chipps Island that resulted in an illegal discharge of fill. Email message from David Wickens, USACE, dated June 23, 2011; USACE Wetlands Maintenance Permit Application prepared by John Sweeney and approved by the USACE on June 24, 2011; letter from Steve Chappell, SRCD to David Wickens, USACE, dated September 2011; USACE Notice of Violation issued to John Sweeney, dated October 24, 2011.

U. 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 ¶ 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).

V. 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, said activities were not described in and thus were not authorized by the Annie Mason IMP. Specifically, as noted above in ¶ I, 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.

W. 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.

X. On or about October 27, 2014, Mr. Sweeney transferred title to the Site to the Point Buckler Club, LCC.

Y. 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, Respondents 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.

Z. 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 (as described in a letter dated January 30, 2015; *see* ¶BB, below), 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 Respondents were 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.

AA. The unauthorized work Respondents 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 Respondents:

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).

BB. On January 30, 2015, BCDC sent a letter to Respodents 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 Respondents 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 Respondents restore the Site, following BCDC approval of a professionally prepared plan, or begin compiling a MDP application. Furthermore, BCDC staff requested that Respondents stop work at the Site. Finally, the letter advised Respondents of potential future BCDC enforcement options, including an Executive Director Cease and Desist Order (CDO), Commission CDO, and Civil Penalty Order.

CC. On March 25, 2015, Respondents' counsel 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 would require a MDP. Furthermore, BCDC staff recommended that Respondents restore the Site to tidal marsh or begin the MDP application process.

DD. A Google Earth image dated April 1, 2015 shows that Respondents continued to perform unauthorized work at the Site after receiving BCDC's letter dated January 30, 2015 directing that Respondents 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).

EE. 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.

FF. 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.

GG. 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, Respondents' 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 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, Respondents' counsel provide any additional information to BCDC by no later than October 10, 2015.

HH. 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.

II. On October 12, 2015, Respondents' newly-retained counsel requested that BCDC provide additional time for Respondents to submit information and analysis responsive to BCDC's allegations of unpermitted activities at the Site, which Respondents' prior counsel had offered to provide and as discussed in BCDC's August 18, 2015 letter. Respondents' 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.

JJ. 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 Respondents; (b) whether the work performed by Respondents 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 Respondents. During this Site inspection, BCDC staff observed that Respondents 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.

KK. On December 17, 2015, BCDC wrote to Respondents' counsel and agreed to provide additional time, as requested on October 12, 2015, for Respondents to provide information responsive to BCDC's allegations of unpermitted activities at the Site. BCDC extended to February 16, 2016, the deadline for Respondents to provide information and analysis responsive to the questions raised in BCDC's letter of August 18, 2015.

LL. 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 Respondents. 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.

MM. An aerial photograph dated February 10, 2016, shows that Respondents continued to perform unauthorized work at the Site after receiving BCDC's letter dated January 30, 2015 directing that Respondents 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).

NN. On February 16, 2016, Respondents' 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 Respondents began performing unauthorized work there and provides evidence that they 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. Respondents 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. Respondents 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 Respondents used the excavated soil as a source of fill for constructing and rebuilding the exterior levee. Conditions Report at 4.
5. Respondents excavated two arc-like shaped ponds in late-2014, and had partially dug two more ponds. *Id.*
6. Respondents 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 vehicular and pedestrian 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. Respondents removed at least 4.74 acres of tidal marsh vegetation as a result of excavation or filling activities. Conditions Report at 6, 7.
8. Respondents 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. Respondents also disturbed tidal marsh vegetation by moving track-mounted machines and rubber tired vehicles across the island. Conditions Report at 4.

OO. Neither the Conditions Report nor the February 16, 2016 letter from Respondents' 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]

PP. 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).

QQ. 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 Respondents had performed additional work since the October 21, 2015 Site inspection including: (a) installed three white flat-rack containers around two green closed freight containers to create an enclosure; (b) installed four flat-rack containers (two red and two blue), painted with a yellow "H," as two helicopter landing pads, one landing pad on the eastern side and one on the western side of the Site; (c) installed a green gate and posts across the ditch crossing on the eastern side of the Site; and (d) mowed tidal marsh vegetation 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.

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[1] In his transmittal letter, Respondents' 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. Res. Code § 29412.5; SMMP at 23.

RR. On April 22, 2016, the Executive Director issued a Cease and Desist Order (ED CDO) directing Respondents 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 that was subject to tidal action before Respondents performed the unauthorized activities described in the ED CDO, 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, (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 Respondents may wish to engage.

SS. On May 17, 2016, the Regional Board issued to Respondents (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 Respondents to restore the Site to its pre-development condition.

TT. On May 23, 2016, the Executive Director issued a Violation Report/Complaint for the Administrative Imposition of Civil Penalties against Respondents. Also on May 23, 2016, Respondents' counsel informed BCDC staff that he had filed in Solano County Superior Court a Petition for a Writ of Mandate and Complaint for Injunctive Relief (Petition and Complaint) against BCDC and its Executive Director challenging the ED CDO. Respondents' Petition and Complaint alleges, among other things that in issuing the ED CDO the Executive Director acted in excess of his legal authority, and asks for relief in the form of a judicial order invalidating the ED CDO.

UU. On August 10, 2016, the Regional Board issued Cleanup and Abatement Order No. R2-2016-0038 to Respondents for unauthorized activities conducted at the Site ("Regional Board Order"). Among other terms and conditions, the Regional Board Order:

1. prohibits the discharge of fill material except as allowed by plans accepted or approved by the Regional Board;
2. prohibits the removal or destruction of tidal marsh vegetation in a manner that adversely impacts water quality or beneficial uses;
3. requires Respondents to submit an Interim Corrective Plan including specified measures by no later than November 10, 2016;

4. requires Respondents to submit a Point Buckler Restoration Plan including specified actions by no later than February 10, 2017; and
5. requires Respondents to submit a Mitigation and Monitoring Plan including specified information by no later than February 10, 2017.

VV. Pursuant to Government Code Section 66638 and Public Resources Code Section 29601, when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit or a marsh development permit from the Commission without securing such a permit, the Commission may issue an order directing that person to cease and desist. The Commission's order may be subject to such terms and conditions may determine are necessary to ensure compliance with the MPA and SMPA, including the immediate removal of any fill or other material where that removal is necessary to avoid irreparable injury to any area within the Commission's jurisdiction or setting of a schedule with, which steps must be taken to obtain a permit or marsh development permit.

WW. Respondents have violated and continue to violate the 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:
    a. 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;
    b. installing a new water control structure in the western portion of the Site;
    c. draining the Site to further alter the pre-existing tidal marsh hydrology;
    d. 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;
    e. installing numerous trailers and containers and two mobile helipads at the Site; and
    f. developing and operating the Site for intensive recreational uses including but not necessarily limited to kite-boarding.

XX. Respondents have violated and continue 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 and

rebuilding 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 recreational uses including but not necessarily limited to kiting.

III. CONDITIONS

A. No later than February 10, 2017, the Respondents shall submit a Point Buckler Restoration Plan, acceptable to the Executive Director, that includes the following:

1. A Restoration Plan describing corrective actions designed to restore, at a minimum, the water quality functions and values of the tidal marsh, including the length of channel and area of marsh, existing prior to the Respondents' unauthorized activities, including:

   a. Restoring tidal flow into the channels and ditches;

   b. Restoring tidal circulation throughout the interior of the Site; and

   c. Restoring overland tidal connection to the Site's interior marsh during higher tides.

   The Restoration Plan shall include a workplan and implementation time schedule. The workplan shall identify all necessary permits and approvals and a process to obtain them. The Respondents shall initiate implementation in accordance with the approved implementation time schedule within 60 days of written acceptance of the Point Buckler Restoration Plan by the Executive Director. If the Plan proposes any alteration of the Site such that it is not returned to pre-existing conditions, such alterations must be addressed in the Mitigation and Monitoring Plan.

2. A Restoration Monitoring Plan (RMP) shall include monitoring methods and performance criteria designed to monitor and evaluate the success of the implemented restoration actions. Performance criteria shall include targets for water quality, soil and hydrologic conditions, and vegetation composition including invasive species control. The RMP shall monitor the success of the restoration actions until performance criteria have been successfully achieved, and for at least five years following completion of the restoration actions.

B. No later than February 10, 2017, the Respondents shall submit a Mitigation and Monitoring Plan, acceptable to the Executive Director, that includes the following:

1. A proposal to provide compensatory mitigation to compensate for any temporal and permanent impacts to wetlands and other waters of the State that resulted from unauthorized activities at the Site. The Mitigation and Monitoring Plan (MMP) shall:
    a. Describe existing site conditions at the proposed mitigation site;
    b. Describe implementation methods used to provide compensatory mitigation;
    c. Include monitoring that will be implemented and performance criteria that will be used to evaluate the success of the compensatory mitigation; and
    d. Include an implementation schedule. The Respondents shall initiate implementation in accordance with the accepted implementation time schedule within 60 days of written acceptance of the MMP by the Executive Director.

C. By no later than March 3, 2017, Respondents shall apply for a permit to request authorization from the Commission for the placement of fill, extraction of materials, substantial change in use, or development activities that Respondents have conducted or performed at the Site at any time from April 19, 2011 through the date of this Order. The application must be prepared in compliance with the Commission's regulations governing major permits. *See* 14 C.C.R. §§ 10300-10316.

D. Respondents shall apply for a permit from the Commission prior to the placement of fill, extraction of materials, substantial change in use, or development activities that Respondents propose to undertake or conduct at the Site after the date of this Order. Any such application must be prepared in compliance with the Commission's regulations governing major permits. *See* 14 C.C.R. §§ 10300-10316.

E. Respondents must cease and desist from any further actions at the Site that would damage or destroy marsh vegetation at the Site, including mowing vegetation, discing soil or vegetation, or grazing goats at the Site.

F. Respondents must cease and desist from any further actions that would drain surface water or groundwater, or otherwise further alter the hydrology, of the Site.

IV. CIVIL PENALTY ORDER

A. Government Code Section 66641.5(e) provides that the Commission may administratively impose civil liability for any violation of the MPA in an amount of which shall not be less than $10 nor more than $2,000 for each day in which the violation occurs or persists, but may not administratively impose a penalty of more than $30,000 for a single violation.

B. Government Code Section 66641.9(a) states:

> *In determining the amount of administrative civil liability, the commission shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to*

removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

C. Nature, circumstances, extent, and gravity of the violations. Excavation of tidal marsh at the Site physically removed estuarine habitat and the placement of fill eliminated surface water and wetland habitats. The harm from Respondents' unauthorized filling, destruction of tidal marsh, and cutting-off of tidal action at the Site was and is substantial, has adversely impacted beneficial uses of Suisun and Grizzly Bays, and likely resulted in the illegal take of threatened or endangered species protected under the California and federal Endangered Species Acts. Unauthorized filling and excavation activities occurred outside work activity windows established to protect sensitive species in the Suisun Marsh. Blocked tidal channels at the Site are preventing longfin smelt from being able to access spawning grounds, young salmonids from accessing feeding grounds, and have cut off the export of food material from the Site's interior wetlands needed to support the threatened Delta smelt.

D. Whether the violations are susceptible to removal or resolution. Respondents' unauthorized filling and other unauthorized construction activities at the Site are potentially susceptible to removal or resolution, but to date, Respondents have taken no action to remove the unauthorized work or to restore tidal action or tidal marsh at the Site. Moreover, the temporal impacts to tidal marsh habitat and biological resources from Respondents' unauthorized activities are unavoidable, continuing, and potentially increasing with every passing day.

E. The costs to the state in pursuing the enforcement action. BCDC staff has incurred substantial staff costs in pursuing this enforcement action. These costs consist of time spent by numerous staff members on two Site visits; two meetings with Respondents and their counsel at BCDC's offices; numerous meetings among BCDC, Regional Board, and USEPA staff, including two multi-agency meetings together with Respondents and their counsel; preparation of an Executive Director Cease and Desist Order and a Violation Report/Complaint for the Administrative Imposition of Civil Penalties (Complaint); reviewing Respondents' Statement of Defense and preparing a recommended enforcement decision, and preparing for and participating in a contested hearing before the Enforcement Committee.

F. Ability to pay and effect on ability to continue in business. The Regional Board staff investigated and analyzed Respondents financial resources, and determined that Respondents have the ability to pay a substantial penalty. Respondents

claim that the Regional Board made a number of factual errors in its analysis of Respondents' ability to pay. However, Respondents have submitted no evidence of Mr. Sweeney's assets, or the assets of Point Buckler Club, LLC, to establish that they would be unable to pay the penalty proposed by BCDC staff in the Complaint.

G. Any voluntary removal or resolution efforts. As noted above, Respondents have taken no action to remove the unauthorized fill or other work or to restore tidal action or tidal marsh at the Site, and they continued to develop the Site for their kiteboarding operations after BCDC staff requested that they stop work and apply for a permit, in a letter dated January 30, 2015. Respondents claim that they intend to apply for a BCDC permit to seek authorization for certain completed work or proposed future work at the Site. However, BCDC staff first requested that Respondents apply for a permit in a letter dated January 30, 2015, over 20 months ago, but to date that they have failed to do so. Respondents recently proposed to BCDC staff a conceptual plan for future use and partial restoration of the Site. However, Respondents did not prepare the conceptual plan based on a technical analysis of the nature and extent of tidal exchange that would be necessary to restore tidal marsh and associated habitat values at the Site. Furthermore, Respondents have declined to discuss mitigation for temporal impacts resulting from the unauthorized work at the Site and for Respondents proposed future uses of the Site. Respondents have been only minimally cooperative.

H. Any prior history of violations; the degree of culpability. Before commencing unauthorized work at the Site, Mr. Sweeney knew that the placement of fill on levees in the Suisun Marsh requires authorization from multiple agencies. In June 2011, Mr. Sweeney contacted SRCD and the USACE to obtain authorization for levee repair work at Chipps Island in the Suisun Marsh (Club 915). Mr. Sweeney did not adhere to the conditions of the USACE's Regional General Permit, and on October 24, 2011, the USACE issued a Notice of Violation to Mr. Sweeney regarding his unauthorized work at Chipps Island that resulted in an illegal discharge of fill. Based on Mr. Sweeney's experience with the SRCD and the USACE at Chipps Island, he may have made a knowing and intentional decision to proceed with unauthorized construction activities and other work at the Site without contacting any regulatory agency and without applying for any of the permits he knew or should have known were required. At a minimum, Respondents' conduct at the Site was unreasonable and demonstrated a willful indifference to the regulatory permitting process that is intended to protect water quality, beneficial uses, and to prevent illegal discharges.

I. Economic savings resulting from the violations. By conducting filling, excavation, and other activities at the Site without authorization, Respondents avoided the costs of obtaining permits from BCDC and USACE, a Clean Water Act Section 401 water quality certification from the Regional Board, and perhaps other local approvals or permits, as well as the costs of complying with resource agency requirements to protect endangered or threatened species (such as, at a minimum, performing certain work only during work activity windows). Respondents also avoided the costs of mitigation for filling portions of the Site and for associated adverse impacts to biological resources. In addition, Respondents have benefitted economically from their unauthorized activities. The new levees Respondents constructed around the perimeter of the Site have provided an economic benefit by allowing them to conduct their commercial kiteboarding business, and expand kiteboarding operations in the northwestern portion of the Site, for the past two years without having those operations disrupted or damaged from tidal action, including tidal flooding from periodic overtopping of the former remnant levees.

J. Based on consideration of the relevant factors set forth in Government Code Section 66641.9(a), the penalty amounts authorized by Government Code Section 66641.5(e), and the preceding findings, the Commission hereby finds that an administrative penalty of $772,000 is justified to resolve this matter.

K. Pursuant to Government Code Section 66647, within 30 days of the Effective Date of this Order, Respondents shall remit the penalty payment to the Commission, by cashier's check, in the amount of $772,000 payable to the San Francisco Bay Conservation and Development Commission – Bay Fill Clean-Up and Abatement Fund.

V. TERMS

1. Under Government Code Section 66641 and Public Resources Code Section 29601, any person who intentionally or negligently violates any cease and desist order issued by the Commission may be liable civilly in the sum of up to $6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

2. This order does not affect any duties, right, or obligations under private agreements or under regulations of other public bodies.

3. Mr. Sweeney and Point Buckler, LLC must conform strictly to this order.

4. This order does not constitute a recognition of property rights.

5. This order is effective upon issuance thereof.

VI. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Section 66639 and Public Resources Code Section 29601, within thirty (30) days after service of a copy of a cease and desist order issued by the Commission, any aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of the order in any judicial proceedings brought to enforce the order or for other civil remedies.

DATED: November ___, 2017

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LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission

List of Exhibits

Exhibit A: Index of Administrative Record

Commission Cease and Desist and Civil Penalty Order No. CDO 2016.02
Index of Administrative Record

	Document Description	Date
1	Suisun Marsh Protection Plan	Dec-76
2	Suisun Marsh Management Program	Sep-80
3	Annie Mason Point Club Management Plan	11/15/84
4	Annie Mason Point Club Management Plan and Supplemental Materials	11/15/1984 - 1/29/1990
5	Letter from SRCD to Mr. James Taylor re: DWR Pump Facility	9/13/88
6	Application for BCDC Marsh Development Permit	9/18/89
7	BCDC Response to Application for BCDC Marsh Development Permit	10/12/89
8	SRCD Wetlands Maintenance Management Report	1/29/90
9	Department of the Army, Regional General Permit 3	7/8/13
10	Email from Mr. John Sweeney to Jim Starr, CDFW	11/19/14
11	BCDC Letter to Mr. John Sweeney re: Point Buckler Island Unauthorized Project, Suisun Marsh	1/30/15
12	Letter from Miller Starr Regalia to BCDC re: Point Buckler, LLC; Performance of Maintenance Activities Purusuant to Annie Mason Point Club Individual Management Plan, Club No. 801	3/25/15
13	BCDC Letter to Miller Starr Regalia re: Point Buckler Island Unauthorized Project, Suisun Marsh	5/7/15
14	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
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
16	BCDC Letter to Miller Starr Regalia re: Point Buckler Island (BCDC Enforcement File No. ER2012.038)	8/18/15
17	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
18	Letter from Briscoe Ivester and Bazel, LLPto BCDC re: Notice of Replacement of Counsel	10/12/15
19	Applied Water Resources, Conditions Report at Point Buckler, Response to Cleanup and Abatement Order R2-2015-0038	10/16/15
20	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
21	Declaration of John D. Sweeney in Support of Ex Parte Application	12/28/15
22	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
23	Letter from Briscoe Ivester and Bazel, LLP to BCDC re: Point Buckler Island; BCDC Enforcement File No. ER2012.038	2/16/16
24	In the Matter of the Inspection at Point Buckler Island, Affadavit for Inspection Warrant	2/19/16
25	Solano County Inspection Warrant	2/19/16
26	Regional Board Inspection Report	2/19/16
27	Declaration of Steven Chappell	4/21/16

	Document Description	Date
28	**Grant Deed**	7/27/04
29	**Grant Deed**	4/19/11
30	**Grant Deed**	10/27/14
31	**Business Entity Detail for Point Buckler Club, LLC Showing Sweeney As Registered Agent**	2/19/16
32	**Property Detail Report for Point Buckler Club, LLC**	3/7/16
33	**Screenshot of Point Buckler Website**	
34	**Screenshot of Point Buckler Facebook Page**	
35	**Point Buckler Technical Assessment Report of Current Conditions and Historic Reconstruction Since 1985**	5/12/16
36	**BCDC Executive Director Cease and Desist Order**	4/22/16
37	**Regional Board Complaint for Administrative Civil Liability Complaint No. R2-2016-1008**	5/17/16
38	**Aerial Photos or Google Earth Images**	4/30/1985, 7/14/1988, 8/18/1988, 6/13/1990, 5/28/1991, 8/23/1993, Summer 2003, Summer 2003 (annotated), 10/20/2003, Summer 2006, April 2011, April 2011 (annotated),9/1/2011, 5/19/2012, 2/3/2014, 3/24/2014, 5/22/2014, 8/6/2014, 10/29/2014, 1/29/2015, 4/1/2015, 2/10/2016
39	**Violation Report and Complaint for the Administrative Imposition of Civil Penalties**	5/23/17
	Records Added to the Administrative Record After Issuance of Violation Report	
40	**Letter, Joel Ellinwood to Ming Yeung (BCDC) Re. Levee Maintenance; Extension of BCDC's "Bay Jurisdiction (BCDC Inquiry File No. SL.VS.7136.1 – Chipps/ Van Sickle Island)**	12/11/09
41	**Email, David Wickens (USACE) to John Sweeney Re. Chipps Island Levee Breach**	6/23/11
42	**USACE RGP3 Application, Chipps Island Sport and Social Club, LLC, John Sweeney**	6/24/11
43	**Letter, Steve Chappell (SRCD) to David Wickens (USACE)**	9/22/11
44	**USACE Notice of Violation to John Sweeney Re. property identified as "Club 915"**	10/24/11
45	**Expert's Response to July 11, 2016 Evidence Package; Prepared by Stuart Siegel, Peter Baye, and Bruce Herbold**	7/21/16
46	**Regional Board Cleanup and Abatement Order No. R2-2016-0038**	8/12/16
47	**Regional Board Prosecution Team's Staff Summary Report, Administrative Civil Liability Complaint R2-2016-1008**	9/2/16
48	**Statement of Defense, Larry Bazel Declaration with Exhibits, John Sweeney Declaration with Exhibits, Petition for Review with State Board**	9/12/16
49	**Letter to Marc Zeppetello from Stuart Siegel re: Role of Daily Ebb and Flow of the Tides in Establishing Tidal Marsh**	8/10/16
50	**Declaration, Adrienne Klein**	9/23/16