Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(Cleanup and Abatement Order)

Exhibit 32

32a. Adopted Cleanup and Abatement Order for John D. Sweeney and Point Buckler Club, LLC, August 10, 2016

32b. August 10, 2016, Water Board Hearing Transcript (Item 7)

32a. Adopted Cleanup and Abatement Order for John D. Sweeney and Point Buckler Club, LLC, August 10, 2016

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER No. R2-2016-0038

FOR:

JOHN D. SWEENEY AND POINT BUCKLER CLUB, LLC
POINT BUCKLER ISLAND
SOLANO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Water Board), finds that:

A. Purpose of Cleanup and Abatement Order

1. This Cleanup and Abatement Order (Order) identifies unauthorized activities conducted at Point Buckler Island (Site), adverse effects on beneficial uses resulting from unauthorized activities, and corrective actions that shall be implemented to clean up and abate the effects of the unauthorized activities.

B. Dischargers

2. John D. Sweeney (Mr. Sweeney) purchased the Site in 2011. He is named as a Discharger because, as the sole owner of the Site, he performed unauthorized activities, including levee construction, beginning approximately May 19, 2012. In a declaration dated December 28, 2015, Mr. Sweeney stated he was the manager of Point Buckler Club, LLC, and that:

   > In 2014, I personally did work (the "Work") to maintain and repair the levee ringing the island…I dug out material from an artificial ditch inside the levee and placed the material on the existing levee. Some material was placed where the levee had been breached and (where part of the levee had eroded away) on solid ground inside the former levee location. I repaired one of two tide gates. The Work stopped in September 2014, when the [Point Buckler Club, LLC] learned that there were regulatory objections to the Work.

   Mr. Sweeney continued unauthorized activities on the Site as president and manager of Point Buckler Club, LLC (Club), which took ownership of the Site on October 27, 2014. Construction of a portion of the levee, unauthorized placement of structures, and the removal and destruction of tidal marsh vegetation occurred during the Club's ownership. In addition, ongoing harm to beneficial uses continues to occur to the present. As the current owner of the Site, and because the Club had full knowledge of and authority over Mr. Sweeney's actions, as well as knowledge of the ongoing harm to beneficial uses, the Club is also named as a Discharger (Mr. Sweeney and the Club are referred to collectively as "Dischargers").

C. Site Description and Environmental Setting

3. The Site, also known as the Annie Mason Point Club or Club 801, is located off the western tip of Simmons Island in the Suisun Marsh, Solano County. Records from the Solano County

Assessor Office (Assessor's Parcel Number 0090-020-010) identify the Site as a 51.5 acre parcel. An evaluation of the shoreline, based on comparison of aerial photographs from 1985 and 2011, determined that considerable shoreline retreat (erosion) had occurred over this time period. This evaluation determined that Point Buckler Island reduced in size from 42.9 acres in 1985 to approximately 39 acres in 2011 (Point Buckler Technical Assessment of Current Conditions and Historic Reconstruction Since 1985 (Expert Report), Appendix G, 2016). The waters to the south and east of the Site are Suisun Cutoff and Andy Mason Slough (also known as Annie Mason Slough), respectively. Grizzly Bay is located north of the Site and Suisun Bay is to the south.

4. The Site appears to have been operated as managed wetlands for duck hunting during the early 1980s. The existing levee (hereafter referred to as tidal remnant levee) degraded and breached by 1993 due to the lack of repair and maintenance. By the time Mr. Sweeney purchased the Site in 2011, a total of seven breaches (located on the south, west, and northern sections of the tidal remnant levee) provided daily tidal exchange between the Bay and the Site's interior channels, tidal remnant borrow ditch, and interior tidal marsh. In addition, the tidal remnant levee had eroded away or subsided into the underlying wetlands, resulting in direct overland tidal flooding during higher tides over the degraded tidal remnant levee and across the interior marsh surface. By the time Mr. Sweeney purchased the Site in 2011, the Site was a tidal marsh subject to unimpeded daily tidal action for 18 years through tidal channels at the levee breaches and by high tide flows directly over the marsh surface. This area subject to tidal action – that is, the area of the site below the high tide line that was also exposed to the tides—was approximately 38.3 acres in 2011 (Expert Report, Appendices G, H, and J, 2016).

5. Site conditions regarding soils, hydrology, and vegetation prior to the initiation of unauthorized activities were determined based on historical records including soil maps, vegetation classifications and maps, and aerial photographs, and field observations during Site inspections conducted on October 21, 2015, and March 2, 2016, as well as boat surveys of the Site on May 28, 2003, and February 17, 2016.

6. Soils at the Site were mapped by the U.S. Department of Agriculture Soil Conservation Service as Joice Muck and Tidal Marsh. Joice Muck soils are described as very poorly drained soils occurring in brackish marshes affected by the tides. Tidal Marsh soils are described as very poorly drained soils in areas flooded periodically by tidal water (Soil Conservation Service, 1977).

7. California Department of Fish and Wildlife (CDFW) and Department of Water Resources conducted vegetation surveys and mapping at 3-year intervals from 2000-2012. The 2000-2012 vegetation maps for the Site identify predominantly wetland vegetation including hardstem tule (*Schoenoplectus acutus*), California bulrush (*S. californicus*), saltgrass (*Distichlis spicata*), common reed (*Phragmites australis*), and cattails (*Typha* spp.). The only potential non-wetland vegetation is on the outer edge of the Site's east end, where California rose (*Rosa californica*) and coyote brush (*Baccharis pilularis*) are present (Keeler-Wolf et al., 2000; Expert Report, Appendix H, 2016).

8. A March 2, 2016, vegetation survey of the Site identifies predominantly wetland vegetation typical of Suisun tidal marshes including large stands of hardstem tule, threesquare bulrush (*S.*

americanus), and cattail. These species typically occur in wetlands that are saturated or shallowly flooded for most of the growing season (Expert Report, Appendix H, 2016).

9. The March 2, 2016, vegetation survey also identifies the presence of Mason's lilaeopsis (*Lilaeopsis masonii*), a wetland plant listed by the California Native Plant Society (CNPS) as a California Rare Plant Rank 1B: Plants Rare, Threatened, or Endangered in California and Elsewhere (Expert Report, Appendix H, 2016; CNPS, 2016).

10. Tidal waters, tidal tributaries, and waterways are definitively "waters of the United States" under section 404 of the Clean Water Act. A March 2, 2016, topographical survey of the Site establishes the elevation and position of the high tide line and delineates tidal waters at the Site under Clean Water Act Section 404 jurisdiction. Based on the topographical survey, approximately 38.3 of the approximately 39 acres of the Site are below the high tide line, fall under Clean Water Act Section 404 jurisdiction, and therefore are waters of the State and United States (Expert Report, Appendix N, 2016).

11. Approximately 70 percent of the tidal remnant levee had subsided and degraded to high tidal marsh elevations and had been colonized by tidal marsh species (Expert Report, 2016).

12. The U.S. Fish and Wildlife Service's (USFWS) National Wetlands Inventory map identifies the Site as "estuarine intertidal emergent" or "persistent regularly flooded" (USFWS, 2016).

13. The San Francisco Estuary Institute's EcoAtlas map identifies the Site as tidal marsh with tidal drainage features (San Francisco Estuary Institute, 2016).

14. The Site is located at the southern end of Grizzly Bay and the northern end of Suisun Bay in the Suisun Marsh. The Water Board's Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) defines the existing and potential beneficial uses for waters within the Region. The Basin Plan designates the following existing and potential beneficial uses for Suisun Bay: industrial service supply, industrial process supply, commercial and sport fishing, estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, wildlife habitat, contact and noncontact water recreation, and navigation. The Basin Plan designates similar beneficial uses to Grizzly Bay. The Basin Plan also designates beneficial uses to wetlands in the Suisun Marsh including estuarine habitat, fish migration, preservation of rare and endangered species, contact and noncontact water recreation, fish spawning, and wildlife habitat (Water Board, 2015).

15. Suisun Bay is designated critical habitat for threatened and endangered species under both the State and federal Endangered Species Acts, including Delta smelt (*Hypomesus transpacificus*), and the southern population segment of green sturgeon (*Acipenser medirostris*) (CA Fish & G. Code § 2050 et seq.; 16 U.S.C. § 1531 et seq.). Suisun Bay is also within the habitat range of the longfin smelt (*Spirinchus thaleichthys*) which is listed as threatened under the California Endangered Species Act (Expert Report, Appendix P, 2016; CA Fish & G. Code, *supra*).

16. Suisun Bay lies along the migratory pathway of threatened and endangered species including winter-run and spring-run Chinook salmon (*Oncorhynchus tshawytscha)*, and green sturgeon, and is therefore critical habitat for these species (Expert Report, Appendix P, 2016).

17. Prior to unauthorized activities, wetland habitat at the Site would likely have provided feeding grounds for young salmonids as they migrate through San Pablo Bay on their way to the ocean. These wetland habitats would have supported aquatic invertebrates and insects, which are important food sources for salmonids. Shallow wetland habitats at the Site could also have provided salmonids refuge from predation from larger predatory fish. The Site is also immediately adjacent to habitats usually occupied by Delta smelt. Interior wetlands at the Site potentially contributed to food web productivity and export to the Bay in support of the recovery of this endangered species. Finally, tidal channels at the Site may have provided spawning grounds for the threatened longfin smelt (Expert Report, Appendix P, 2016).

18. The Site is also potential habitat for special status species including Ridgway's rail (*Rallus obsoletus*), black rail (*Laterallus jamaicensis coturniculus*), salt marsh yellowthroat (*Geothlypis trichas sinuosa*), Suisun song sparrow (*Melospiza melodia samuelisis*), and salt marsh harvest mouse (*Reithrodontomys raviventris*) (USFWS Biological Opinion (BO) 2013; Expert Report, 2016).

19. Suisun Marsh is identified as an impaired water body pursuant to federal Clean Water Act section 303(d) for mercury, nutrients, organic enrichment/low dissolved oxygen, and salinity/total dissolved solids/chlorides (33 U.S.C. 1313(d)).

D. Unauthorized Activities Conducted from 2012 to the Present

20. As of May 2012, Mr. Sweeney began unauthorized activities that included (1) mowing tidal marsh vegetation on the western end and through the interior of the marsh, (2) excavating trenches on the north and south ends of the site and discharging fill onto the marsh surface; and (3) installing two pilings in Andy Mason Slough (Expert Report, Appendix K (Fig. K-5), 2016).

21. As of April 2013, Mr. Sweeney installed a small boat dock, approximately 8 feet by 37 feet, in Andy Mason Slough. By February 2014, he replaced the small dock with a large dock (Expert Report, Appendix K (Fig. K-11), 2016).

22. As of March 24, 2014, Mr. Sweeney began levee construction activities including (1) excavating 1,770 feet of a new borrow/drainage ditch (hereafter referred to as borrow ditch) from tidal marsh, tidal remnant levee, and tidal waters; (2) constructing 1,825 feet of the new levee on top of tidal marsh, tidal remnant levee, and tidal waters; (3) excavating two trenches on the east and southwest of the Site and discharging spoils onto tidal marsh; and (4) mowing tidal marsh vegetation on the west end of the Site. These activities resulted in closing off two breaches (Breaches 1 and 2) and blocking tidal flow into two tidal wetland areas along the south end of the Site (Expert Report, Appendix K (Figs. K-4 and K-20), 2016).

23. As of June 5, 2014, Mr. Sweeney's levee construction activities had progressed with an additional 305 feet of borrow ditch excavated from tidal marsh and the material used to construct an additional 400 feet of new levee on top of tidal marsh and tidal waters. As a result, Breach 3 was closed, removing tidal flow into the west end of the Site (Expert Report, Appendix K (Figs. K-4 and K-23), 2016).

24. As of August 6, 2014, Mr. Sweeney had excavated an additional 1,375 feet of borrow ditch from tidal marsh and tidal waters and used the material to construct an additional 1,420 feet of new levee on top of tidal marsh, tidal remnant levee, and tidal waters. Four more breaches (Breaches 4, 5, 6, and 7) were closed as a result of levee construction, thereby closing all tidal channel connections at the Site (Expert Report, Appendix K (Figs. K-4 and K-25), 2016).

25. As of October 29, 2014, two days after the Club took ownership of the Site, borrow ditch excavation and new levee construction activities appear to have been completed. An additional 980 feet of borrow ditch was excavated from tidal marsh and tidal waters and an additional 1,065 feet of new levee was constructed on top of tidal marsh, tidal remnant levee, and tidal waters. From May 2012, to October 29, 2014, a total of 4,430 feet of borrow ditch was excavated from tidal marsh and tidal waters and approximately 8,586 cubic yards of material was placed on top of tidal marsh, tidal remnant levee, and tidal waters to construct the new 4,700-foot levee. As a result, both tidal channel and overland tidal flow connectivity were fully blocked (Expert Report, Appendix K (Figs. K-4 and K-29), 2016).

26. As of April 2015, unauthorized activities continued on the Site, including (1) the excavation of four crescent-shaped ponds in the interior tidal marsh, and the discharge of excavated material on the adjacent tidal marsh, (2) the discharge of fill in the borrow ditch for the west borrow ditch road crossing, (3) the discharge of fill onto tidal marsh at the Site's west end to create a road to the water's edge, (4) the mowing of tidal marsh vegetation and grading of the marsh plain for a road across the interior tidal marsh, and (5) the placement of shipping containers and trailers on tidal marsh at the Site's east and west end (Expert Report, Appendix K (Fig. K-32), 2016).

27. As of February 2016, the Club continued to conduct unauthorized activities including (1) mowing of approximately 1.5 acres of tidal marsh vegetation in the northeast portion of the Site, (2) constructing a helicopter pad on tidal marsh at the east end of the Site, and (3) constructing a second helicopter pad and three wind-break platforms on tidal marsh at the west end of the Site. The helicopter pads consisted of pairs of flat-rack shipping containers that were marked with a helicopter landing symbol (a circled "H") (Expert Report, Appendix K (Fig. K-40), 2016).

28. Water Board staff and others inspected the Site on March 2, 2016, and further documented that unauthorized activities at the Site had occurred. Water Board staff observed the features described in Finding 27 above, as well as a newly-installed gate and posts across the east borrow ditch crossing. These features were not observed at the Site during a site inspection conducted by Water Board staff and others on October 21, 2015. Further, these unauthorized activities were conducted after the Water Board issued a Notice of Violation on July 28, 2015, and a Cleanup and Abatement Order on September 11, 2015.

    Water Board staff observed on March 2, 2016, (1) cracks in the new constructed levee in response to some combination of drying (dessication), vehicular transport, and differential settlement; (2) one tide gate installed at the west end of the Site, which was closed at both ends; (3) the presence of relatively fresh tracks, consistent with the use of heavy equipment present at the Site; (4) possible toilet facilities; (5) goats in a pen located next to the east borrow ditch crossing; and (6) a second gate stored on the Site, which could potentially be used to fence the

west borrow ditch crossing to allow the goats to graze the Site's interior tidal marsh (Inspection Report, 2016).

E. Actions Taken by the Water Board and Others

29. On November 19, 2014, staff from the San Francisco Bay Conservation and Development Commission (BCDC) and CDFW inspected the Site and reported that unauthorized levee construction activities removed crucial tidal flow to the interior of the Site, thereby drying out the Site's former tidal marsh areas (BCDC, 2015).

30. On July 28, 2015, the Water Board Assistant Executive Officer issued a Notice of Violation (NOV) for filling waters of the United States and State. The NOV stated the Water Board's intent to issue a cleanup and abatement order requiring action to correct and mitigate for these violations and advised the Dischargers to cease and desist unauthorized activities.

31. On September 11, 2015, the Water Board issued Cleanup and Abatement Order No. R2-2015-0038 (Order) for unauthorized levee construction activities at the Site. The Order required the submittal of (1) a technical report describing the nature and extent of unauthorized activities and impacts resulting from these activities; (2) a description of any permits and other authorizations obtained; (3) a Corrective Action Workplan proposing corrective actions designed to restore tidal circulation to the Site; and (4) a proposal for compensatory mitigation habitat to address temporal and permanent impacts resulting from unauthorized levee construction activities.

32. In a letter to the Water Board dated September 18, 2015, Miller Starr Regalia responded to the Order on behalf of "John Sweeney, the managing member of the Point Buckler LLC" and requested a hearing before the Water Board.

33. In a September 23, 2015, email, the Water Board Prosecution Team stated that there was no action to take before the Board at this time and it would be more appropriate to schedule a meeting with Water Board staff. The email further stated that the Order could be revised in the future based on additional information received, such as technical reports required by the Order.

34. In a letter to the Water Board dated September 25, 2015, Lawrence Bazel responded to the Order on behalf of the Club. The letter (1) disputed the Water Board's authority to require cost reimbursement from the Discharger; (2) requested a hearing before the Water Board; (3) requested an explanation of how the Water Board was implementing separation of functions and the prohibition on ex-parte communications; and (4) requested that all deadlines in the Order be postponed for 60 days.

35. On October 7, 2015, Water Board staff met with Mr. Sweeney and the Club's counsel (Mr. Bazel and John Briscoe). The purpose of this meeting was to discuss unauthorized activities at the Site and regulatory approvals required for these activities. During this meeting, Mr. Bazel requested an extension for submittals required by the Order.

36. On October 11, 2015, the Club petitioned the State Water Resources Control Board (State Water Board) and requested a stay on the Order.

37. On October 15, 2015, the Water Board granted the Dischargers' request for a 60-day extension for Provision 2 of the Order, which required submittal of a Corrective Action Workplan.

38. On October 16, 2015, the Club submitted documents required by Provision 1 of the Order. This submittal included: (1) an amended petition and request for stay to the State Water Board; (2) a copy of the Site's 1984 Individual Management Plan; (3) a 1984 aerial photo; (4) a copy of the lease retroactively issued by State Lands Commission for the floating boat dock, wood pilings, gangway and walkway; (5) a letter report to Bruce Wolfe; and (6) a report titled *Conditions at Point Buckler* (Conditions Report) prepared by Applied Water Resources, dated October 16, 2015. The Conditions Report states that "recent activities at the Island has resulted in the placement of fill material into waters of the State" and that the hydrology of the Site prior to the Dischargers' activities consisted of "tidally influenced portions of some channels and some old ditches." The Water Board Assistant Executive Officer responded to this submittal in a letter dated December 23, 2015 (see Finding E.44, below).

39. On October 21, 2015, Water Board staff inspected the Site, along with staff from BCDC, U.S. Environmental Protection Agency (U.S. EPA), U.S. Army Corps of Engineers (Corps), and Dr. Stuart Siegel, (professional wetland scientist). The purpose of the site inspection was to observe site conditions and to better understand (1) the nature and extent of construction activities, including the volume of fill placed for construction of the levee, and (2) the extent of waters of the State and United States, including tidal marsh habitat that was adversely impacted by levee construction activities. Based on the results of the site inspection, Water Board staff concluded that a topographical survey and wetland delineation were necessary to determine the extent of impacts to waters of the State and United States.

    During this site inspection, BCDC staff observed additional work performed since their November 14, 2014, site inspection including (1) fill placed to construct a crossing over the borrow ditch on the Site's east and west end; (2) a road constructed across the Site interior; (3) four crescent-shaped ponds excavated in the Site interior; (4) a new water control structure installed on the Site's west end; (5) two additional storage containers; (6) a goat pen installed with a number of goats brought to the Site; (7) tidal marsh vegetation removed, mowed and/or flattened throughout Site interior; and (8) approximately 14 trees planted on the Site, all dead, "apparently due to high salinity levels" (BCDC, 2016).

40. On November 20, 2015, Water Board staff met with Mr. Sweeney, Mr. Bazel, and Mr. Briscoe, along with staff from BCDC. The purpose of this meeting was to (1) discuss the October 16, 2015, submittal required by Provision 1 of the Order, (2) discuss results of the October 21, 2015, site inspection, and (3) request additional information, including a topographical survey and wetland delineation. During this meeting, Mr. Bazel agreed to provide the additional information and requested a second extension for submittal of the Corrective Action Workplan required by Provision 2 of the Order.

41. In a letter to Bruce Wolfe dated December 1, 2015, the Club requested an extension of the Order's Provision 2 deadline from January 1, 2016, to April 30, 2016, and proposed to submit additional information agreed upon during the November 20, 2015, meeting with Water Board staff.

42. In a letter to the Dischargers dated December 9, 2015, the Water Board declined the second request for an extension due to a lack of technical justification.

43. In a letter to the Dischargers also dated December 9, 2015, the Water Board Assistant Executive Officer requested the submittal of additional information that had been agreed to during the November 20, 2015, meeting and proposed by the Club in their December 1, 2015, letter, including: (1) a forensic wetland delineation characterizing the extent of wetlands and other waters of the State before and after levee construction activities, (2) a topographical survey, (3) a description of current and intended future activities at the Site, (4) the date(s) excavation of the borrow ditch and levee construction began, (5) documentation of the Site's operation as a managed wetland from 1984 until the Discharger purchased the Site, and (6) documentation of any use of the Site as mitigation. The letter requested the submittal of this information by February 15, 2016. The Water Board has not received this information to date.

44. In a letter to the Dischargers dated December 23, 2015, the Water Board Assistant Executive Officer discussed the permitting requirements the Dischargers failed to satisfy and responded to the Dischargers' assertions regarding authorization under the Corps' Regional General Permit 3 (RGP 3) and associated Clean Water Act Section 401 water quality certification (Certification) issued by the Water Board. The letter concluded that (1) much of the levee construction activities done at the Site were not authorized under RGP 3 and associated Certification, and (2) the Site at the time it was purchased by Mr. Sweeney consisted largely of tidal marsh habitat and had been subject to tidal influence for a significant period of time.

45. On December 27, 2015, the Water Board received notice of an Ex Parte Hearing scheduled for December 29, 2015, at the Solano County Superior Court. The Club applied for a stay of the Water Board's Order, or, alternately, a temporary restraining order enjoining the Water Board from enforcing the Order. The Court issued a stay of the Water Board's Order.

46. In a memo to the Water Board Executive Officer dated January 4, 2016, the Water Board Prosecution Team recommended (1) rescinding the Order to address the Club's procedural due process claims; and (2) a hearing by the Water Board on a revised Order.

47. In a letter dated January 5, 2016, the Water Board Executive Officer rescinded the Order. The rescission was "without prejudice to Regional [Water] Board staff's ability to propose, or the Board's ability to issue, a [Cleanup and Abatement Order] and/or other orders or permits covering the subject matter of [the Order]." The rescission specifically noted the intent to "avoid unnecessary procedural litigation and to allow Board members an opportunity to consider the factual and legal issues in this matter in a public hearing."

48. On January 14, 2016, California River Watch issued a Notice of Violation and Intent to File Suit under the Endangered Species Act Section 11(g), 16 U.S.C. § 1540 (g) to the Dischargers. The notice alleged harm to and unauthorized take of threatened and/or endangered species in the Suisun Bay Conservation Area including Delta smelt, Central California steelhead, green sturgeon, Sacramento winter-run and Central Valley spring-run Chinook salmon, salt marsh harvest mouse, and Ridgway's rail.

49. In a series of emails beginning on January 22, 2016, Water Board staff requested permission from Mr. Sweeney to access the Site in early February 2016 to delineate habitats, survey topography, and document the nature and extent of construction activities. In a February 10, 2016, email to Mr. Bazel, Water Board staff noted that informal access to the island had not been granted or denied for the fourth time and expressed the urgency to visit the island during the proposed dates due to tides and seasonal changes in vegetation and a need to confirm and augment existing data (Application for Inspection Warrant, 2016).

50. On February 17, 2016, Water Board staff and Dr. Stuart Siegel conducted a boat survey around the Site to assess whether vegetation growth would obscure visual observation of the ground surface in tidal areas. Water Board staff determined that continued vegetation growth would impede visual observations of Site conditions and that Site access before March was imperative. Water Board staff also observed recent unauthorized activities that were not observed during the October 21, 2015, site inspection, including (1) grading to repair the levee on the Site's east end, and (2) two mobile helicopter landing pads installed on top of tidal marsh (Application for Inspection Warrant, 2016).

51. On February 19, 2016, Water Board staff submitted an application for an inspection warrant of the Site to the Solano County Superior Court. The Court issued the inspection warrant on February 24, 2016.

52. On March 2, 2016, Water Board staff conducted an inspection of the Site. They were accompanied by Dr. Stuart Siegel, Dr. Peter Baye (coastal ecologist/botanist), a topographical survey crew from CLE Engineering, Inc., Don Tanner (National Oceanic and Atmospheric Administration), and Paul Jones (U.S. EPA Life Scientist). The purpose of the inspection was to assess conditions at the Site resulting from unauthorized construction of the levee and placement of fill into waters of the State and United States. The inspection objectives included (1) investigate water quality, (2) survey topography and map the extent of fill material, (3) document site activities, (4) collect wetland jurisdiction data on soils, vegetation, and hydrology, and (5) observe ecological conditions including condition of vegetation communities and occurrence of listed or special status plant, fish, or wildlife species.

53. In a letter to the Dischargers dated March 28, 2016, the Corps: (1) confirmed the unauthorized discharge of fill material into jurisdictional tidal waters of the United States during an October 21, 2015, site visit; (2) stated that the Dischargers may be subject to administrative and/or legal actions for unauthorized work; (3) identified the potential for penalties for violations of the Clean Water Act; (4) stated that U.S. EPA would be the lead enforcement agency to determine the appropriate enforcement response; and (5) required that the Dischargers cease any further dredge or fill activities.

54. On March 28, 2016, on behalf of the Club, Mr. Bazel provided the Water Board and the Attorney General's office with a *Notice of Motion and Motion for Determination and Preliminary Injunction* filed with the Solano County Superior Court. The motion asked the Court to make a determination that the Executive Officer and the Water Board had "acted in excess of their jurisdiction in issuing a cleanup and abatement order" and asked the Court for a "preliminary injunction prohibiting [the Water Board] from re-issuing the cleanup and abatement order, from issuing a cleanup and abatement order requiring the Club to remove or

destroy any part of the levee at Point Buckler Island, or otherwise issuing another cleanup and abatement order against the Club for work done at Point Buckler Island in excess of their jurisdiction."

55. On April 8, 2016, the Water Board Assistant Executive Officer sent an email to Mr. Bazel, stating that, "Our inspection of Point Buckler Island on March 2, 2016, confirmed that the Section 401 Clean Water Act violations cited in our July 28, 2015, Notice of Violation still exist. The prior observations concerning the degradation of tidal wetlands and habitat were validated, and we note that the degraded conditions may potentially be exacerbated by the presence of grazing animals, recent mowing, and lack of restored tidal flow to the island." The Assistant Executive Officer suggested meeting to discuss resolution of the violations.

56. Water Board staff documented the results of the March 2, 2016, site inspection in an Inspection Report dated April 19, 2016. The Inspection Report provided a summary of inspection activities performed, water quality sampling methodology and results, staff observations of Site conditions, and photographs taken during the inspection.

57. On April 22, 2016, BCDC issued Cease and Desist Order (CDO) No. ECD2016.01 to the Dischargers. The CDO ordered the Dischargers to cease and desist all activity in violation of the Suisun Marsh Preservation Act (SMPA) and the McAteer-Petris Act (MPA). The CDO concluded that the Dischargers violated and continue to violate the SMPA and MPA by conducting unpermitted development at the Site and required the Dischargers to apply for a permit "for the placement of fill, substantial change in use, and/or development activities" no later than June 21, 2016. The permit application "shall include a proposed plan and schedule to restore tidal action to and tidal marsh vegetation at the Site". The CDO also provided notice of a public hearing before the Commission scheduled for July 21, 2016.

58. Technical experts contracted by the Water Board prepared the *Point Buckler Technical Assessment of Current Conditions and Historic Reconstruction Since 1985* (Expert Report) dated May 12, 2016. The purpose of this report is to (1) determine Site conditions prior to unauthorized activities; (2) document the nature and extent of unauthorized activities; (3) identify State and federal agency jurisdictional areas; and (4) assess the impacts resulting from unauthorized activities. Data and analyses presented in the technical report are based on site visits on October 21, 2015 and March 2, 2016 and boat tours around the Site on May 28, 2003, and February 17, 2016; new aerial photographs flown on February 10, 2016; historical aerial photographs; a topographical survey conducted on March 2, 2016; and literature reviews. Report preparers include Dr. Stuart Siegel, Dr. Peter Baye, Dan Gillenwater (wetland scientist), and Dr. Bruce Herbold (fisheries ecologist).

F. Harm Caused by Unauthorized Activities

59. Construction of the new levee resulted in unauthorized placement of fill in approximately 2.6 acres of waters of the State and United States consisting of tidal marsh, tidal channels, and tidal remnant levee. Construction of a road to the water's edge on the Site's west end, placement of spoils, and installation of structures resulted in unauthorized placement of fill in an additional 0.63 acres of waters of the State and United States (total fill placed in approximately 3.23 acres of waters of the State and United States). Approximately 5.8 acres of tidal marsh vegetation

were mowed or destroyed as a result of unauthorized activities. Finally, construction of the new levee blocked tidal channels and overland tidal flow into 27.18 acres of the Site's interior tidal marsh (Expert Report, Appendices K and Q, 2016).

60. Unauthorized activities adversely impacted beneficial uses at the Site including estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, wildlife habitat, and commercial and sport fishing (Basin Plan, 2015).

61. Unauthorized activities at the Site have unreasonably affected and continue to adversely impact water quality and beneficial uses by blocking tidal flows through the tidal channels and eliminating direct overland tidal flooding during higher tides (Expert Report, 2016).

62. By blocking tidal action, the Site has been deprived of estuarine waters and is draining and drying out. This has resulted in the mass dieback of previously dominant tidal marsh species, such as tule, bulrush, and cattail that thrive in permanently flooded or saturated soils. Instead, perennial pepperweed (*Lepidium latifolium*) now dominates over most of the diked interior marsh. Perennial pepperweed, which is intolerant of prolonged, deep seasonal flooding, is one of the most problematic invasive species in the Suisun Marsh (Expert Report, Appendix L, 2016; Conceptual Model for Managed Wetlands in Suisun Marsh, 2007).

63. Water quality data collected by Water Board staff show that blocking tidal action and ongoing drainage of the Site has resulted in increased salinity, particularly in water samples taken from the Site's interior channels and from test pits dug in the interior marsh. Elevated groundwater salinity exceeded the salt tolerance of the previously dominant tidal marsh species at the Site such as tule, bulrush, and cattail, and likely contributed to the mass dieback of these species (Expert Report, Appendices L and Q, 2016; Conceptual Model for Managed Wetlands in Suisun Marsh, 2007).

64. Mason's lilaeopsis, a special status wetland plant, was observed near the outboard edge of the tidal marsh along both sides of a constructed road to the water's edge on the Site's west end during the March 2, 2016 vegetation survey. Construction of the road to the water's edge likely destroyed colonies of Mason's lilaeopsis, resulting in adverse impacts on the beneficial use of preservation of rare and endangered species (Expert Report, Appendix Q, 2016).

65. Blocking tidal action eliminated tidal sedimentation that contributes to marsh accretion. Marsh accretion by tidal sediment deposition is essential if tidal marsh substrate elevations are to keep pace with sea level rise. Therefore, unauthorized activities reduced, and will continue to reduce, the Site's resilience to accelerated sea level rise (Expert Report, Appendix Q, 2016).

66. Blocking tidal channels at the Site likely prevented, and will continue to prevent, young salmonids from accessing feeding grounds. In addition, it exposes, and will continue to expose, young salmonids to a higher risk of predation by blocking their access to a shallow water refuge as they migrate through San Pablo Bay on their way to the ocean. Therefore, unauthorized activities led to long-term restrictions on beneficial uses such as fish migration and the preservation of rare and endangered species (Expert Report, Appendix P, 2016).

67. Blocking the hydraulic connection between the Site and adjacent open water habitats occupied by Delta smelt likely prevented, and will continue to prevent, the export of food material from interior wetlands at the Site that could support the growth and survival of this threatened species. Therefore, unauthorized activities led to long-term restrictions on beneficial uses such as estuarine habitat and preservation of rare and endangered species (Expert Report, Appendix P, 2016).

68. Blocking tidal channels at the Site likely prevented, and will continue to prevent, longfin smelt from accessing spawning grounds. Therefore, unauthorized activities led to long-term restrictions on the beneficial use of fish spawning (Expert Report, Appendix P, 2016).

69. The Suisun Marsh Habitat Management, Preservation, and Restoration Plan (May 2013) establishes restrictions on the timing of construction activities to avoid and minimize impacts to threatened and endangered species including Delta smelt, Chinook salmon, steelhead, green sturgeon, longfin smelt, Ridgway's rail, and California least tern. These restrictions require that landside work occur between July and September, and in-water activities occur between August and November. Because unauthorized levee construction activities were performed outside these work windows, unauthorized activities likely resulted in adverse impacts to these threatened and endangered species.

70. The degradation of tidal marsh vegetation, including mass dieback of marsh vegetation and spread of invasive perennial pepperweed, likely resulted in degraded wildlife habitat for waterfowl, passerines birds, and mammals, including river otters. Therefore, unauthorized activities led to long-term restrictions on the beneficial use of wildlife habitat (Expert Report, Appendix Q, 2016).

71. A California Environmental Quality Act (CEQA) assessment was not performed for unauthorized activities at the Site because the Dischargers failed to obtain required permits and authorizations. Consequently, there was no analysis of potential environmental impacts, evaluation of project alternatives, or consideration of ways to avoid, minimize, or mitigate for potential impacts resulting from the unauthorized activities.

G. Violations

72. The Dischargers' unauthorized activities at the Site violate the Basin Plan and Clean Water Act sections 301 and 401 as described below:

    a. Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9, prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses. The Dischargers' unauthorized activities have resulted in the discharge of fill into 3.23 acres of waters of the State and United States. The fill remains in waters of the State and United States, blocking tidal action to the Site and contributing to the ongoing degradation of 27.18 acres of the Site's interior tidal marsh. Accordingly, the Dischargers' unauthorized activities at the Site are in violation of the Basin Plan.

b. Clean Water Act section 301 prohibits the discharge of any pollutant by any person.

c. Clean Water Act section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from section 404 regulations. Section 10 of the Rivers and Harbors Act prohibits building any dock without authorization from the Corps. For both of these activities, Clean Water Act section 401 requires the applicant to obtain a related certification from the state in which the discharge originates or construction occurs, certifying (with or without additional conditions) that the activity is consistent with a number of specifically identified Clean Water Act provisions. Title 23 of the California Code of Regulations, section 3855, requires that "an application for water quality certification shall be filed with the regional board executive officer." Neither Discharger has filed an application for a Clean Water Act section 401 Water Quality Certification for the unauthorized activities that resulted in a discharge of fill to waters of the State and United States. Accordingly, the Dischargers are in violation of Clean Water Act section 401.

73. The Dischargers claim to have acted in compliance with the 2013 Regional General Permit No. 3 (RGP 3) and the associated conditional water quality certification. RGP 3, however, only authorizes maintenance activities within non-tidal seasonal and perennial wetlands and uplands of Suisun Marsh duck clubs. Work performed by the Dischargers, including construction of a new levee, road, and borrow ditch, was not maintenance and occurred in tidal areas and therefore was not work permitted or permittable under RGP 3 and its associated water quality certification.

74. California Water Code section 13304 requires any person who has discharged or discharges waste into waters of the State in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the State Water Resources Control Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

75. Based upon the above findings, the Water Board finds that the Dischargers have caused or permitted waste to be discharged or deposited where it has been discharged into waters of the State and United States, and created or threatens to create a condition of pollution. As such, pursuant to Water Code sections 13267 and 13304, this Order requires the Dischargers to submit technical reports and undertake corrective action to clean up the waste discharged and abate its effects. The burden of preparing technical reports required pursuant to section 13267, including costs, bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports, namely the restoration of beneficial uses at the Site.

76. The Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

77. Issuance of this Order is an action to enforce the laws and regulations administered by the Water Board and for the protection of the environment. As such, this action is categorically exempt from CEQA (Public Resources Code section 21000 *et seq*.), pursuant to section 15321, subdivision (a)(2), of title 14 of the California Code of Regulations. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup activities at the Site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. If the Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Water Board will conduct the necessary and appropriate environmental review prior to the Executive Officer's approval of the applicable plan. The Dischargers will bear the costs, including the Water Board's costs, of determining whether implementing any plan required by this Order will have a significant effect on the environment, and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Dischargers and a consultant acceptable to the Water Board shall enter into a memorandum of understanding with the Water Board regarding such costs prior to undertaking any environmental review.

78. Pursuant to California Water Code section 13304, the Dischargers are hereby notified that the Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall submit the required technical reports and clean up the waste discharged, abate its effects, and take other remedial actions as follows:

H. Prohibitions

1. The discharge of fill material is prohibited except as allowed by plans accepted by the Executive Officer or approved by the Water Board pursuant to this Order, or through permits (e.g., Waste Discharge Requirements or Water Quality Certification) issued by the Water Board subsequent to the adoption of this Order for the placement of fill into waters of the State or the United States. Further, the discharge of fill is prohibited without appropriate consultation and/or Clean Water Act permit authorization from the Corps.

2. Removal or destruction of tidal marsh vegetation in a manner that adversely impacts or threatens to adversely impact water quality or beneficial uses in any water of the State is prohibited.

3. This Order does not allow for the take, or incidental take, of any special status species. The Dischargers shall use the appropriate protocols, as approved by CDFW, USFWS, and the National Marine Fisheries Service, to ensure that activities do not impact the beneficial use of

preservation of rare and endangered species or violate the California or federal Endangered Species Acts.

I. Provisions

1. **No later than November 10, 2016, the Dischargers shall submit an Interim Corrective Action Plan, acceptable to the Water Board Executive Officer, that includes the following:**

   a. An Interim Corrective Action Plan (ICAP) designed to prepare the Site for tidal restoration. The ICAP shall include measures that will be taken to manage water at the Site to (1) control the spread of perennial pepperweed, (2) reduce soil salinity, and (3) reverse soil acidification and peat decomposition. The ICAP shall include triggers or criteria that will be used to evaluate whether the Site has been sufficiently rehabilitated and is ready for tidal restoration. The ICAP shall include an implementation time schedule. The Dischargers shall initiate implementation in accordance with the accepted implementation time schedule within 60 days of written acceptance of the ICAP by the Executive Officer.

2. **No later than February 10, 2017, the Dischargers shall submit a Point Buckler Restoration Plan, acceptable to the Water Board Executive Officer, that includes the following:**

   a. 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 Dischargers' unauthorized activities, including (1) restoring tidal flow into channels and ditches; (2) restoring tidal circulation throughout the interior of the Site; and (3) 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 Dischargers 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 Officer. 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.

   b. 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.

3. **No later than February 10, 2017, the Dischargers shall submit a Mitigation and Monitoring Plan, acceptable to the Water Board Executive Officer, that includes the following:**

   a. 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 (1) describe existing site conditions at the proposed mitigation site; (2) describe implementation methods used to

provide compensatory mitigation; (3) include monitoring that will be implemented and performance criteria that will be used to evaluate the success of the compensatory mitigation; and (4) include an implementation schedule. The Dischargers shall initiate implementation in accordance with the accepted implementation time schedule within 60 days of written acceptance of the MMP by the Executive Officer.

Compensatory mitigation shall comply with the State's No Net Loss Policy, which has been incorporated into the Basin Plan. The primary goal of this policy is to ensure no overall net loss and to achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values.

When wetlands are lost, compensatory mitigation for that loss is determined, in part, based on the functions and areal extent of the lost wetlands. Each site is reviewed on a case-by-case basis, and no pre-determined set of ratios is used to determine mitigation, though a minimum of 1 acre gained for each acre lost is typically required when that mitigation is in-kind, on-site, complete, and fully established at the time the impact occurs. For mitigation that is in-kind and on-site, and constructed at the same time as impacts occur, a typical amount of mitigation is approximately twice the amount of wetlands impacted (e.g., a minimum of 2 acres of compensatory mitigation for each acre of fill) due to the limited temporal loss. Factors leading to requirements for additional mitigation include:

- Temporal losses, which are defined as functions lost due to the passage of time between loss of the impacted wetland and creation/restoration of the full-functioning mitigation wetland;
- Indirect impacts to wetlands, including loss of or impacts to adjacent lands that influence the beneficial uses of the wetlands. Such impacts can include, but are not limited to, loss of upland buffers and adjacent supporting habitats, and the introduction of other activities, such as regular human disturbance, in adjacent areas;
- Loss of or impacts to medium to high quality habitat;
- Loss of or impacts to special status species and their associated habitats;
- The period of time required for full development of created/restored tidal marsh;
- Delays in the construction/restoration of mitigation wetlands, relative to when tidal marsh at the Site was filled (e.g. fill impacts began in 2012, but compensatory mitigation for the fill has not yet been provided);
- Uncertainty associated with the construction/restoration of tidal marsh; and
- Mitigation located off-site or the creation/restoration of out-of-kind wetlands (e.g. creation/restoration of wetlands other than tidal marsh, when impacts are to tidal marsh). Typically, the further off-site, and the more out-of-kind the mitigation is, the greater the amount of mitigation required.

4. No later than January 31 of each year following initiation of the corrective actions and continuing until the corrective actions are successfully achieved, the Dischargers shall submit annual monitoring reports, acceptable to the Executive Officer, describing the progress reached toward achieving the restoration activities' approved performance criteria.

5. The Dischargers shall submit with the final monitoring report a Notice of Completion, acceptable to the Executive Officer, demonstrating that the Restoration Plan, as approved, has been successfully completed.

6. If the Dischargers are delayed, interrupted, or prevented from meeting the work completion or report submittal deadlines specified in this Order, the Dischargers shall promptly notify the Executive Officer in writing with recommended revised completion or report submittal deadlines. Any extensions of the time deadlines specified in this Order must be approved in writing by the Executive Officer. The Executive Officer may consider revisions to this Order.

7. Water Board staff shall be permitted reasonable access to the Site as necessary to oversee compliance with this Order.

8. The Water Board, pursuant to Water Code section 13267, subdivision (b)(1), requires the Dischargers to include a perjury statement in all reports submitted under this Order. The perjury statement shall be signed by a senior authorized representative of the Discharger(s) (not by a consultant). The perjury statement shall be in the following format:

   I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

9. The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgements be performed by or under the direction of registered professionals. A statement of qualifications and registration numbers of the responsible lead professionals shall be included in all plans and reports submitted by the Dischargers. The lead professional shall sign and affix their registration stamp to the report, plan, or document.

10. No later than 14 days from the date of this Order, the Discharger is required to acknowledge in writing its intent to reimburse the State for cleanup oversight work as described in the Reimbursement Process for Regulatory Oversight fact sheet provided to the Dischargers with this Order, by filling out and returning the Acknowledgement of Receipt of Oversight Cost Reimbursement Account Letter or its equivalent, also provided with this Order.

11. As described in finding 78 above, upon receipt of a billing statement for costs incurred pursuant to Water Code section 13304, the Dischargers shall reimburse the Water Board.

12. None of the obligations imposed by this Order on the Dischargers are intended to constitute a debt, damage claim, penalty, or other civil action that should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare, and environment.

Failure to comply with the provisions of this Order may result in the imposition of civil liabilities, imposed either administratively by the Water Board or judicially by the Superior Court in accordance with Water Code sections 13268, 13304, 13308, 13350, and/or 13385, and/or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. Failure to submit, late or inadequate submittal of technical reports and workplan proposals, or falsifying information therein, is a misdemeanor and may subject the Dischargers to additional civil liabilities. This Order does not preclude or otherwise limit in any way the Water Board's ability to take appropriate enforcement action for the Dischargers' violations of applicable laws, including, but not limited to, discharging without a permit and failing to comply with applicable requirements. The Water Board reserves its rights to take any enforcement action authorized by law.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on August 10, 2016.

Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe, o=SWRCB, ou=Region 2, email=bwolfe@waterboards.ca.gov, c=US
Date: 2016.08.12 16:56:46 -07'00'

Bruce H. Wolfe
Executive Officer

August 12, 2016
Date

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32b. August 10, 2016, Water Board Hearing Transcript (Item 7)

California Water Boards
San Francisco Bay Regional
Water Quality Control Board

August 10, 2016, 9:00 a.m.

Item 7. John D. Sweeney and Point Buckler Club, LLC, Point Buckler Island, Suisun March, Solano County - Issuance of Tentative Cleanup and Abatement Order

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First Floor Auditorium
1515 Clay Street
Oakland, CA 94612

Reported by:
Julie Link

APPEARANCES

Board Members

Terry F. Young, Chair
James McGrath, Vice Chair
John Muller
Cecilia Ogbu

Staff

Bruce H. Wolfe, Executive Officer
Thomas Mumley, Assistant Executive Officer
Angela Tsao, Executive Assistant
Stephen Hill, Chief, Toxics Cleanup Division
Cheryl Prowell, Section Leader, Toxics Cleanup Division
Ross Steenson, Staff Engineering Geologist, Groundwater Protection/Waste Containment Division
Christine Boschen, Section Leader, Watershed Management Division

Staff Advisory Team

Shin-Roei Lee, Assistant Executive Officer, North Coast Region
David Elias, Section Leader, Groundwater Protection/Waste Containment Division
Elizabeth Wells, Staff Engineer, Groundwater Protection/Waste Containment Division
David Coupe, Senior Staff Counsel, Office of Chief Counsel
Marnie Ajello, Counsel to the Board

APPEARANCES (CONT.)

Staff Prosecution Team

Dyan Whyte, Assistant Executive Officer
Keith Lichten, Chief, Watershed Management Division
Bill Hurley, Section Leader, Watershed Management Division
Brian Thompson, Section Leader, Wastewater Control and Enforcement Division
Agnes Farres, Staff Scientist, Watershed Management Division
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Julie Macedo, Senior Staff Counsel, Office of Enforcement

Point Buckler Island Discharger Representatives

Larry Bazel of Briscoe Ivester & Bazel LLP, Counsel for the Discharger
John D. Sweeney, previous Owner and Operator of Point Buckler Island and President of Point Buckler Club, LLC (Discharger)
Dr. David Mayer, Fisheries Consultant for Discharger

Other Speakers

Dr. Stuart Siegal, PhD, Wetlands Scientist, Owner of Siegel Environmental, and Coastal Resilience Specialist for the San Francisco Bay National Estuarine Research Reserve, and Adjunct Professor of Earth and Climate Sciences at San Francisco State University
Marc Zeppetello, Chief Counsel, San Francisco Bay Conservation and Development

Other Speakers (Cont.)

Brett Moffatt, Attorney Advisor, USEPA, Region 9
Erica Maharg, Staff Attorney, San Francisco Baykeeper
Steven Chappell, Executive Director, Suisun Resource Conservation District
Peter Baye, Coastal Ecologist/Botanist, Consultant for Siegel Environmental and RWQCB
Bruce Herbold, Consultant for Siegal Environmental and RWQCB

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P R O C E E D I N G S

AUGUST 10, 2016 9:00 A.M.

Item 7. John D. Sweeney and Point Buckler Club, LLC, Point Buckler Island, Suisun March, Solano County - Issuance of Tentative Cleanup and Abatement Order

CHAIR YOUNG: This is Item…(pause) Item 7, and I'm now going to go through the hearing procedure for the Tentative Cleanup and Abatement Order with John D. Sweeney and Point Buckler Club, LLC.

This is the time and the place for a public hearing to consider a Tentative Cleanup and Abatement Order, naming John D. Sweeney and Point Buckler Club, LLC, collectively referred to as the Dischargers.

The designated parties for this proceeding are as follows. The Regional Board's Prosecution Team, and the Dischargers, John D. Sweeney and Point Buckler Club, LLC. All other parties are considered interested persons.

The functions of staff who will act in a prosecute -- I need to start over. The functions of staff, who will act in a prosecutorial role by presenting evidence for consideration by the

Regional Water Board, known as the Prosecution Team, have been separated from those who will provide advice to the Regional Water Board, or known as the Advisory Team.

Members of the Prosecution Team are Dyan Whyte, Keith Lichten, Bill Hurley, Brian Thompson, Agnes Farres, Benjamin Martin, Tamarin Austin, Laura Drabandt, and Julie Macedo of the Office of Enforcement.

Members of the Advisory Team are Shin-Roei Lee, David Elias, Elizabeth Wells, David Coupe, and Marnie Ajello -- that’s close enough.

Shin-Roei Lee has stepped into the role that Bruce Wolfe would normally serve. In response to objections that there had been a violation of the separation functions, I agreed to remove Bruce from the Advisory Team. However, this decision did not reflect a determination by me, or the Advisory Team, that there was in fact a violation of the separation of functions.

And I want to take this opportunity to thank Sin-Roei for coming back to do this for us. We appreciate it very much. And --

The Prosecution Team has a combined total of 60 minutes for direct testimony, cross-

examination, and a closing statement.

The Dischargers shall have a total of 60 minutes for the same.

Interested persons shall limit their comments to three minutes.

Pursuant to Government Code Section 11126(c)(3), please note that the Board may meet in closed session to deliberate on a decision to be reached, based on the evidence introduced in this hearing.

I’m now going to read the swearing in part of the procedure.

All relevant evidence that any person desires to be considered by this Board must be introduced at this hearing first, by the Board staff, second, by the Discharger, third, by public agencies, and fourth, by any other interested persons. The Board and Board Counsel may ask questions to clarify the testimony of a witness at any time. Cross-examination of a witness by others will be allowed, following completion of direct testimony by all persons.

Each person testifying will commence by stating his or her name, whom he or she represents, and whether he or she took the oath to tell the

truth. The hearings will not be conducted according to technical rules of evidence. The Board will accept any evidence or testimony that is reasonably relevant to the issues.

All Board files, exhibits, and agenda materials pertaining to this matter will be made part of the record of this proceeding. Additional written material will be made part of the record at the discretion of the Board.

Those wishing to testify in the hearing will now rise or raise their hand. That includes you, yes. You can raise your hand or --

Do you promise to tell the truth?

(Collectively: Yes)

CHAIR YOUNG: Thank you. All right, the order of this hearing is as follows. There will be testimony and then cross-examination of the Prosecution Team, testimony, and then cross-examination of the Dischargers. Then, we will have comments by interested persons. And if you're an interested person and haven't given me a green card, you need to do so, please.

Then we will have a closing statement from the Dischargers, followed by a closing statement from the Prosecution Team.

Please state your name, affiliation, and whether you have taken the oath before testifying. If you haven't submitted -- okay, I already did that.

We will now proceed with the Prosecution Team's testimony. Thank you.

And, right before we do, we have a statement from one of our Board Members.

VICE CHAIR MCGRATH: I do have a disclosure statement. I have two things that I want to say at the beginning of this proceeding that, arguably, might relate to my ability to make a decision based solely on the record before us, in the San Francisco Regional Water Quality Control Board's consideration of the Tentative Cleanup and Abatement Order that may be issued to Mr. Sweeney and Point Buckler Club.

First, I am a San Francisco Bay Conservation Development Commission, or BCDC, Commissioner, as I am this Board's designated representative to BCDC. I am not, however, on the Enforcement Subcommittee of BCDC, which drafted BCDC's CDO, naming Mr. Sweeney and Point Buckler Club. Indeed, I haven't seen it, or have I spoken to any other BCDC Commissioners about this matter.

Second, I am Vice President of the San Francisco Boardsailing Association, a role that I've held for more than 10 years. I don't remember if it's 20. It's a lot. SFBA's mission is to protect and enhance access for our members and educate our members about safety to assure their safety. SFBA represents kiters, as well as windsurfers.

I do not believe that my position in the SFBA conflicts with my role as a Regional Board Member in considering whether or not to adopt the Tentative Cleanup and Abatement Order. I have not discussed this matter with other members of SFBA, and I do not know Mr. Sweeney personally, or in my capacity as a Board Member of SFBA.

I have not had any oral or written communications concerning the Tentative Cleanup and Abatement Order from any person concerning any factual, legal, or policy issue during the time that the Tentative Cleanup and Abatement Order has been pending for the Board's consideration.

As a Board Member, I believe that I can fairly and impartially consider whether to adopt the Tentative Cleanup and Abatement Order with an open and unbiased mind, and I can consider and act

on the matter solely on the administrative record developed for these proceedings.

CHAIR YOUNG: Thank you.

MR. BAZEL: Shall introduce ourselves? Or shall we (inaudible)

MS. TSAO: Microphone?

MR. BAZEL: Shall we introduce ourselves? Is it on?

MS. TSAO: The button on the –

MR. BAZEL: There we go.

CHAIR YOUNG: Well, we didn't need to introduce ourselves, but we did need to use the microphone, so that was useful.

(Laughter)

CHAIR YOUNG: The Prosecution Team will be introducing themselves as they start. But, just so that we all know who you are, please go ahead.

MR. BAZEL: I'm Larry Bazel, with the Law Firm of Briscoe Ivester & Bazel, representing Point Buckler Club and John Sweeney.

I have with me Mr. Sweeney, on my right, and our fisheries expert, Dr. David Mayer, our wetlands biology expert and aerial expert, Dr. Terry Huffman, is out of the country and says he is sorry he can't make it. But I'm sure he's enjoying

his vacation.

CHAIR YOUNG: All right, thank you. It's nice to put names to faces.

All right, let's get started with the Prosecution Team's case then. Thank you.

MS. WHYTE: Great, thank you. I'm Dyan Whyte, Assistant Executive Officer, and I've served the Prosecution Team Lead for this matter.

I'll begin by saying that in 2009, the Legislature declared the Delta a critically important natural resource for California, and the Nation, and the most valuable estuary on the West Coast of North and South America.

Furthermore, it recognized the Delta as a delicately balanced ecosystem of hemispheric importance. And it is this delicate balance that the Water Boards are mandated to protect and restore.

Tidal wetlands serve as the lungs of the ecosystem, the Delta's ecosystem, and are the key to its survival and its recovery.

In this case, the Discharger's unauthorized activities have taken almost 30 acres of tidal wetlands out of service, potentially upsetting this delicate balance.

The Discharger's blatant disregard of the authorities and the permitting requirements of various agencies has caused significant harm. The Dischargers have employed numerous delay tactics to put off remedying the situation and, at the same time, continued to develop the island and potentially profit by selling memberships to an exclusive, kiteboarding club, accessed by helicopter and boat.

We would not be here before you today with a pile of material, over one-foot thick, if the Prosecution staff did not believe that there is an urgent need to restore the water quality functions and values at Point Buckler Island.

Agnes Farres, technical staff, at the podium, will now give you an overview of the case, followed by Laura Drabandt, to my left, Legal Counsel with Office of Enforcement, who will discuss some of the legal issues that have been raised. And that will be followed by Dr. Stuart Siegal, our expert, who will highlight some of the key scientific evidence in support of our findings.

And then, finally, we'd like to reserve any remaining time that we have for closing comments. Thank you.

MS. FARRES: Good morning. My name is Agnes Farres. I'm an Environmental Scientist in the Watershed Management Division. And I've taken the oath.

On behalf of the Prosecution Team, I would like to present the revised Tentative Cleanup and Abatement Order for Point Buckler Island.

This is the most egregious, illegal fill of tidal marshlands in the Bay's recent history. That is how Nicole Sasaki, Associate Attorney for San Francisco Baykeeper, described the conditions at Point Buckler to you, last November, during the public forum.

She was talking about the unauthorized construction of a levy and other activities that destroyed or degraded approximately 30 acres of tidal marsh at Point Buckler Island.

The ongoing harm to beneficial uses continues today and some of the damage may be irreversible.

In this presentation, I'll describe conditions at the Island before the Dischargers began unauthorized work. I'll explain who the Dischargers are and the fill they placed in waters of the State, and United States, that destroyed or

degraded approximately 30 acres of tidal marsh habitat at the Island.

I'll also talk about the enforcement history at the Island and describe the corrective actions required in the CAO we are recommending you adopt today.

The Island is located in Solano County, with Grizzly Bay to the north and Suisan Bay to the south. San Pablo Bay is to the west and San Francisco Bay to the southwest.

This map shows the Suisan Marsh, the area outlined in black, where the Island is located. Grizzly Bay is to the north, Honker Bay is to the east, and Suisan Bay is to the south.

Dark green areas on the map indicate tidal marsh and light green indicate dyke marsh.

The Suisan Marsh is the largest contiguous brackish marsh on the West Coast of North America and is a critical part of the Bay Delta Estuary. Historically, this area was predominated by tidal marsh. But, over time, there has been a significant loss of tidal wetlands.

The Suisun Marsh provides habitat for special status species, including Black Rail, Salt Marsh Yellow Throat, and Suisun Song Sparrow. Many

special status plants are also found in the marsh, including Suisun Thistle and Mason's Lilaeopsis, which we observed on the Island during our inspections.

The Island is located within critical habitat for threatened and endangered species, under both the State and Federal Endangered Species Acts, including Delta Smelt, Steelhead, and Green Sturgeon. And lies along the migratory pathway of threatened and endangered species, including Chinook Salmon and Steelhead Trout.

John Sweeney purchased the Island in 2011. He is named as a Discharger because he owned the Island and did unauthorized work beginning in 2012.

By 2014, Mr. Sweeney had constructed a new levy around the Island, excavated a new borrow ditch, and completed other, unauthorized work.

Mr. Sweeney transferred title to Point Buckler Club, LLC, in October 2014. Mr. Sweeney is the Club's President and Manager. The Club is named as a Discharger because it currently owns the Island, unauthorized discharges occurred during its ownership, and illegal fill remains in place today.

These photos show the Island in 2011, at the time Mr. Sweeney purchased the Island, but

before he began to develop it. Most of the Island is tidal marsh, evident by the light and dark green, in the aerial photo on the top left.

In the bottom right figure, the dark green shows the remnant levy around portions of the Island, and the blue shows a network of interior marsh channels and ditches that were tidally influenced. There were seven breaches in the remnant levy, as shown in the bottom right figure.

The entire Island was subject to daily tidal action and, therefore, Water of the States under Porter Cologne. With the possible exception of upland habitat, on the eastern edge, shown in red.

In the next series of slides, I will take you through levy construction and other unauthorized activities in more detail.

This photo shows the seven breach locations, circled in yellow, with open breaches indicated by the blue boxes. Structures place of spill are indicated by the green boxes, and earthen fill are indicated by yellow boxes. Other activities are indicated by brown boxes.

Beginning in 2012, Mr. Sweeney placed two pilings in the slough for a boat dock that he

installed later in 2013. He excavated one trench in the south end and one trench in the north end, and placed a fill on tidal marsh.

He mowed tidal marsh vegetation in the west end (pause) and across the Island interior.

You can see what appear to be new roads on the Island. And he placed fill on tidal marsh, on the north end, to construct a new walkway out to the Bay.

All breaches are open and the Island is fully tidal.

Mr. Sweeney began major construction by March 2014. He began by excavating a new borrow ditch in tidal waters. He used fill material from the borrow ditch to build a new levy on tidal marsh. Mr. Sweeney began on the south end, in a clockwise direction, and followed the alignment of the old levy, initially. Breach one is closed by the new levy, as indicated by the red box. He also excavated a trench in tidal marsh, on the east end.

Mr. Sweeney extends the new levy, interior to the old levy alignment, when he gets to the west end, where there is a large breach due to high wind and wave energy. Breach two is now closed.

Mr. Sweeney excavated a trench on the

southwest side and placed the spoils on tidal marsh. He installed one water control structure, a tide gate, and mowed tidal marsh vegetation on the west end.

By June 2014, Mr. Sweeney continued to excavate a borrow ditch from tidal waters and placed fill on existing tidal marsh, primarily interior to the old levy alignment. Breach three is closed.

Mr. Sweeney continued to excavate a new borrow ditch from tidal waters and placed fill on tidal marsh. By August 2014, all seven breaches are closed, removing daily tidal connection to the Island's interior tidal marsh. You can also see mowing and equipment tracks across the Island's interior tidal marsh.

The photo on the top left shows that the majority of the Island, approximately 38 acres, was subject to tidal action before the Dischargers began unauthorized work. When the Dischargers finished building the new levy, in October 2014, all tidal connection to the Island interior was blocked, either through breaches in the old levy or over the top of the old levy, as shown in the bottom right figure.

This discharge of fill remains in waters of the State, blocking tidal action to the Island and contributing to the ongoing degradation of approximately 30 acres of tidal marsh.

In November 2014, BCDC inspected the Island, along with staff from the California Department of Fish and Wildlife. In January 2015, BCDC sent a letter to the Dischargers, describing violations observed during the site inspection. Including, installation of a boat dock, placement of trailers and shipping containers in tidal marsh, construction of a levy that removed crucial tidal flow into the Island, and work conducted outside appropriate work windows for Chinook Salmon, Delta Smelt and Clapper Rail.

In the Letter, BCDC recommends the Island be restored and requests the Dischargers to stop work and apply for permits.

There is a representative from BCDC here today, who is available to answer any questions.

In April 2015, after receiving notice from BCDC, the Dischargers continued to develop the Island without permits. Structures placed as fill are circled in green and earthen fill is circled in yellow. Unauthorized work included four crescent-

shaped bonds, excavated in the interior tidal marsh, with spoils placed on adjacent marsh.

Shipping containers and two trailers, placed in tidal marsh, on the west end. A road build across the borrow ditch on the west end. A road to the water's edge, built on tidal marsh. And mowing tidal marsh vegetation and grading the marsh plain for a road across the interior.

The Water Board issued a Notice of Violation in July 2015, and a Cleanup and Abatement Order in September 2015. Staff have also inspected the Island twice, to document the nature and extent of unauthorized work, and the extent of impacts to Waters of the State.

The CAO required an Impact Assessment, a Corrective Action Work Plan to restore tidal flow to the Island, and a Proposal for Compensatory Mitigation.

Executive Officer Bruce Wolfe rescinded the 2015 CAO to allow Board Members to consider the matter in a public hearing.

Staff have continued to coordinate with other agencies and meet with the Dischargers in an attempt to encourage prompt action and tidal restoration. These informal efforts have not

resulted in any interim corrective action or restoration on the Island.

The Dischargers have delayed tidal restoration for over a year. They requested two extensions for submitting the Corrective Action Work Plan required by the 2015 CAO.

The first request was granted, but the second request declined, due to lack of technical justification and the urgent need to restore the Island.

When the second extension request was declined, the Dischargers filed for a stay of the CAO at Solano County Superior Court for a Temporary Restraining Order and joining implementation of the CAO. The Court dismissed these claims.

The Dischargers agreed to provide additional information, including a topographical survey, to assess the extent of impacts to Waters of the State. Because the Dischargers failed to provide this information, staff requested permission to access the Island.

Because we were not granted timely access after four requests, we obtained an Inspection Warrant from Solano County Court.

After a year of working with the

Dischargers, they have not submitted any proposals or plans for Interim Corrective Actions or Mitigation.

Staff met with the Dischargers many times, most recently on July 22nd, 2016, to discuss tidal restoration of the Island and permitting requirements. As of that date, the Dischargers had only a conceptual sketch for a duck club and kiteboarding facilities on the Island.

They proposed four breaches in the levy, but provided no scientific basis for the proposed breaches, did not demonstrate that sufficient tidal flow would be restored, or how much tidal restoration would be achieved, and were generally opposed to any discussions regarding mitigation.

The top left photo was taken during a boat survey of the Island, in February 2016. It was close to high tide and water was up against the levy and covering the tidal marsh area in front of it. The bottom right photo was taken during the March 2016 inspection. The levy appears heavily compacted. The tide is lower and the tidal marsh exterior of the levy is visible.

The elevation of the levy is not much higher than the exterior tidal marsh. And

vegetation litter, deposited by the tides, is visible on top of the levy.

With the next few slides, I want to give a sense of some of what we saw during the inspection. Here are a series of images which show the un-vegetated levy close up. The levy is placed directly on tidal marsh and active deterioration and erosion of the levy is causing further discharge directly into the Bay.

The top left photo shows the borrow ditch. Due to lack of tidal circulation, the water is bright green, indicating eutrophic conditions. There is also a trailer, with a pen enclosing some goats, and heavy equipment visible in the background.

The top right photo shows one of the crescent-shaped ponds, excavated in the island interior. The duck in the photo is a decoy. The crescent ponds had murky gray water, the soil as orange or rusty red in color, and the edges of the ponds had no vegetation. Some of the crescent ponds had an oily film on the water’s surface.

Staff collected water quality data throughout the Island. Diking off and prolonged drainage of the Island has resulted in elevated

surface and groundwater salinity, as compared with Suisun Bay, which likely contributed to the mass dieback of tidal marsh vegetation, observed during the inspection.

During the March 2016 inspection, we also observed additional unauthorized work, including more structures placed as fill, that had been done since we issued the 2015 CAO, and since our October 2015 inspection. This work included three white windbreak platforms, placed on tidal marsh in the west end, two helicopter landing pads placed on tidal marsh, and approximately 1.5 acres of tidal marsh vegetation mowed on the east end.

The mass die back of tidal marsh vegetation, combined with the mowing and removal of tidal marsh vegetation has led to the invasion of the harmful, invasive species, Perennial Pepper Weed. Perennial Pepper Weed is one of the most problematic invasive species in the marsh because it is so difficult to eradicate. Its dominance on the Island will have a broader impact by allowing it to spread elsewhere in the marsh.

Mr. Sweeney posted on Facebook about continued, unauthorized work, after regulatory agencies requested that he stop. Shown here is Mr.

Sweeney's Facebook post, dated June 12th, 2015, after BCDC's Letter of Request to Stop Work.

His post says, "Awesome breeze today. Some equipment hauling, first, then kite".

The photo shows the landing craft that he used to haul heavy equipment to the Island.

This photo was posted in December 2015, after the Water Board issued the NOV and while the 2015 CAO was still in effect. The post says, "1944 LCM3 Landing Craft, moving some flat rack containers to islands." The photo shows flat rack containers used to construct the two helicopter landing pads on the Island.

Work continues on the Island today. The top right photo is an aerial view of the kiteboarding facilities on the western end of the Island. It shows the shipping containers and windbreak platforms used to create a sheltered lounge area, locker facilities, and a composting toilet. There is also a large area that seems to have been mowed, graded, compacted, and then covered with Astroturf, presumably for laying down kites prior to launch. Behind the kiteboarding facilities is a degraded interior marsh.

Now that you have a better understanding

of the nature and extent of unauthorized levy construction activities, here is a time lapse series showing the progression of unauthorized work on the Island. Note that work started in the southeast corner and moved in a clockwise direction.

The dark-colored linear feature around the perimeter of the Island is the borrow ditch and the lighter-colored linear feature next to it the levy.

(pause)

The goal of the Tentative CAO is to restore water quality, functions, and values that existed at the Island prior to the Discharger's unauthorized activities. There are three main requirements in a Tentative CAO.

The first requirement is to submit an Interim Corrective Action Plan that includes measures to manage water on the Island, to prepare the Island for tidal marsh restoration.

The second requirement is for a Restoration Plan that must include corrective actions that will fully restore functioning tidal marsh and specifically address tidal channels, tidal circulation, and the need for overland tidal flow.

The third requirement is to submit a Mitigation and Monitoring Plan that proposes compensatory mitigation for all temporary and permanent impacts to wetlands and waters of the State that resulted from unauthorized work.

We received six comment letters, as shown here. All of the public commenters expressed support for the Tentative CAO and encouraged the Water Board to use their enforcement authority to protect this critically important habitat in the Suisun Marsh and mitigate the harm caused by the Dischargers.

Many commenters noted the severity of impacts and the significant delay in restoring the Island. Several commenters also noted that the Dischargers appeared to be aware of the permits that would have been required for the work done.

Because of these concerns, many comments requested strengthening the Tentative CAO by including deadlines for submitting permit applications and for completing restoration.

The Prosecution Team recommends revising the Tentative CAO, as submitted in our Rebuttal Package, to require all necessary permit applications be submitted within three months of

receiving Water Board approval of the Restoration Plan, and to include a deadline for completion of restoration construction within one year of receiving all necessary permits.

The Dischargers did not seek permits from any regulatory agency before doing the work and have delayed tidal restoration of the Island. In his Facebook post, Mr. Sweeney shows a photo of a house he planned to build on Point Bucker and says, “Not building to code or with permits”.

Mr. Sweeney has a history of interacting with regulatory agencies in the Suisun Marsh and was well aware of permitting requirements, but chose to disregard them.

The CAO is appropriate given the Discharger’s disregard for regulatory requirements. And the CAO is necessary to compel the Dischargers to clean up and abate the fill they placed in Waters of the State, in compliance with the law, in a timely manner and to mitigate for impacts to beneficial uses.

Thank you.

MS. DRABANDT: Good morning, my name is Laura Drabandt. I’m with the Office of Enforcement.

As you know, the Board has the authority to regulate the Waters of the State, and to issue Cleanup and Abatement Orders under Water Code Section 13304. And Waters of the State, by definition, include any surface or groundwater within the boundaries of the State. All the waters surrounding Point Buckler Island, and all the surface water on it, and all the groundwater underneath it are waters of the State.

And you have the authority to issue this Tentative Cleanup and Abatement Order under 13304. First, because Mr. Sweeney and the Club discharged waste into Waters of the State, causing a condition of pollution. And second, because the Discharger has violated the Basin Plan prohibition when they discharged earth and fill into Waters of the State, harming beneficial uses.

If you find either of these occurred, you have the authority to issue the Cleanup and Abatement Order.

As you'll hear from Dr. Siegel, after me, nearly the entire Island, if not all of it, is within the Board's regulatory jurisdiction. The tidal marsh, the tidal channels, the surface and groundwaters on the Island, are all Waters of the

State.

And the Discharger and his attorney is conflating or confusing the Board's jurisdiction. Waters of the State includes Waters of the United States.

You will hear from Dr. Siegal about the Federal Clean Water Act, Section 404 jurisdiction, going to the high tide line because the Army Corps of Engineer usually makes a jurisdictional determination as part of issuing a permit for dredge and fill.

Similar to the Corps 404 jurisdiction, the Board has jurisdiction to the high tide line when it issues Water Quality Certifications under Clean Water Act, Section 401.

In the Clean Water Act realm, the Federal regulations state that to determine the high tide line, consider multiple lines of evidence, starting with actual data, the observed water at the Island, and Dr. Siegel did just that.

He then went on to compare data to the nearby Port Chicago high tide elevations and looked at a multitude of rack line evidence. Dr. Siegel will tell you about the actual data, actual observations, and actual analyses used to determine

that the majority of the Island is well below the high tide line.

When Mr. Sweeney filled in the seven breaches, he discharged earth and material to Waters of the State, and United States, causing a condition of pollution and violating the Basin Plan prohibition.

The Tentative Cleanup and Abatement order, before you today, requires the Dischargers to submit plans to clean up the discharges, restore the tidal marsh functions, and propose mitigation for the lost beneficial uses.

You will see in the Prosecution materials that BCDC and the Suisun Resource Conservation District agree that the Island return to tidal marsh. And the Army Corps called the discharges of dredge or fill material jurisdictional because the work was done under the high tide line.

We have representatives here, today, from BCDC and the Suisun Resource Conservation District, if you have any questions for them.

What you will not hear today is any alternative jurisdictional boundary lines supported by data and by experts for the Dischargers. While the Dischargers criticize the Prosecution’s

conclusions, they have not provided any contradictory evidence to support any alternative based on scientific analysis or current site conditions.

Their consultants' declarations make broad statements and to not offer up any alternative high tide line consistent with the Federal regulations. And remember, insinuations and arguments by counsel are not evidence.

We anticipate that you will hear about the Suisun Marsh Preservation Act, the Army Corps Regional General Permit 3, or RGP3, Suisun 401 certification, and the Individual Management Plan. And all the relevant agencies agree that none of these exempted the Dischargers from obtaining permits for their activities.

No managed wetlands have been on the Island for decades. It reverted to tidal marsh. The Discharger has never worked in compliance with any of the acts, permits, certifications, or plans. But in retrospect, they're now trying to claim protection under these laws, permits, certifications, and plans that they never complied with in the first place.

Again, we are asking you to keep in mind

the focus of this hearing, which is issuing a Cleanup and Abatement Order to clean up the discharges into Waters of the State, which includes the United States, and to abate their harm to beneficial uses. It is straight forward and not a complex issue.

Dr. Siegel will now explain how he determined the Island is mostly under the high tide line and jurisdictional, and he will explain how the Dischargers are harming the beneficial uses.

VICE CHAIR MCGRATH: Before you go on and to Dr. Siegel, can you go back to the previous one? And I'd be happy if Dr. Siegel weighed in on this.

You show a mean high water line and that is, if I'm not mistaken, the mean of the higher daily tidal datums. So, that means there are high tides above and below that. Is that correct?

MS. DRABANDT: Dr. Siegel will definitely go into this in more detail.

MS. WHYTE: We have a presentation going into this in detail.

VICE CHAIR MCGRATH: Pardon?

MS. WHYTE: WE have a presentation that will go into that in some more detail, with some additional graphics.

VICE CHAIR MCGRATH: Okay.

MS. WHYTE: If you don't mind holding.

MS. DRABANDT: Thank you.

CHAIR YOUNG: One more question.

BOARD MEMBER MULLER: If I may make an accurate clarification, it's been mentioned a couple of times on page 11, slide 22, we've talked about mowing. And this is not a mower, it's a disk and a solid roller that could make a difference in a take, also, with the impact of the soil. Mowing is just slightly above the ground. I just want it to be accurate.

CHAIR YOUNG: Great. Thank you.

DR. SIEGAL: Thank you, Members of the Board. My name is Stuart Siegal and I have taken the oath today.

I'm a Wetlands Scientist, with over 30 years' experience working in San Francisco Bay Wetlands. I am owner of Siegal Environmental and formerly owned Wetlands and Water Resources.

I'm also the Coastal Resilience Specialist for the San Francisco Bay National Estuarine Research Reserve. And I'm an Adjunct Professor of Earth and Climate Sciences at San Francisco State University.

There are three core findings I want to emphasize today. And I want to emphasize that there's no ambiguity about any of these findings.

As previously alluded to and mentioned by Agnes and Laura, Point Buckler is nearly 100 percent, if not entirely, jurisdictional waters of the United States and, therefore, the State of California. Maybe that eastern remnant levy might not be jurisdictional.

Second, Point Buckler Island was tidal marsh for more than 20 years prior to the diking and draining in 2014. And that is also very clearly established.

And lastly, for the diking and draining of tidal marsh at Point Buckler, significantly harmed beneficial uses.

So, this is the figure that Agnes was just showing and that Commissioner McGrath was asking about. And what I want to do is highlight -- this is the figure from the Corps of Engineers, their website, to illustrate Federal jurisdiction. So, I want to emphasize that under section 404 of the Clean Water Act, the question is Waters of the United States. Things, such as wetlands, are a subset jurisdiction under the Waters of the United

States.

And as you can see, Waters of the United States extend up to the high tide line, which is the Clean Water Act defines as the maximum tide height.

The question that Commissioner McGrath asked was about Section 10 jurisdiction, the mean high water line, which is much lower elevation. And the mean high water line is the average of every day's two high tides, averaged over 18.6 years, which is called the National Tidal Datum Epic. And that's the period of time in which all of the astronomic forces in the solar system drive the tides on the earth. And that's 18.6 years is what the Federal Government uses to define tidal datums.

And so, the mean high water line, which is the much lower line, applies to Section 10 of the Rivers and Harbors Act, which is also a subset of Waters of the U.S., under the Clean Water Act.

What I want to focus on next is this lower right corner, the green box, which is what the Corps of Engineers calls coastal wetlands. And this is what we really want to emphasize for Point Buckler.

So, I'll spend a little time to explain this graphic because I understand it will be a little bit complicated. What you see here is a three-dimensional cross-section of a typical tidal marsh. And I added -- I have more information to add on to this. The blue line is what's called the high tide line. That is, again, the jurisdiction, the upper limit of jurisdiction under Section 404 of the Clean Water Act.

Everything from that line downward, out into open waters, in tidal systems is Waters of the United States and Waters of the State.

High tide line is defined as the maximum high tide, which I mentioned is the highest tide that is reached in any 18.6 year period. So, it's not the daily high tides. It's not the average of the daily high tides, it's the very highest tides, the gravitational forces of the solar system exert upon Earth. And that number rises with sea level rise. And the Federal Government updates those values about every 25 years.

Next, let's take a look at where the wetlands occur within this Clean Water Act jurisdiction. So, tidal wetlands occupy a zone of elevation below the high tide line and through

parts of the jurisdiction here.

So, tidal wetlands extend up, above what is called mean higher high water, which is above the mean high water. The mean higher high water is the higher of each of the two days' high tides, averaged over that 18.6 year period. And so, mean higher high water is a higher number than mean high water. And tidal wetlands occur a little bit above that.

And they can occur down, lower into the tides. How far they go depends upon the salinity of the water. The fresher the water, the lower down the plants can tolerate that submergence and they can grow down.

So, in Suisun Marsh, where it's brackish water, the vegetation can grow down to about mean tide level, which is the average of all of the tides over the 18.6 year period. And that varies where you are in Suisun Marsh.

Next, and this is very important, is that little zone between the wetlands and the high tide line, which is colored in green here. And I want to point out this area is still jurisdictional. This is still below the high tide line. And this is called the Transition Zone.

And what we are used to thinking, when we go look at this zone out in the field, it looks like uplands because it supports terrestrial vegetation. But because the maximum highest tide in that 18.6 year period can reach this area, it is still jurisdiction under the Clean Water Act and, therefore, Waters of the U.S. and Waters of the State of California.

And that's a very important port here that there's areas that don't look like wetlands, that are still jurisdictional waters of the U.S.

Next I want to tackle a point of confusion about this thing called daily tides. So, mean high water, which is what Commissioner McGrath asked about before, again that's the 18.6 year average of every day's two high tides. And below that elevation of mean high water, which sits below mean high tide line -- or behind high tide line, the tide's going out every day. Above that line is where tides only get to every so often. It could be a few times a month, or a few times a year, or not for once every 18.6 years.

So it's very important to separate out daily tidal actions from less than daily tidal actions. And tidal wetlands occur in the space

that goes from below -- from with daily tidal action at low elevations to only occasionally at the higher elevations.

And that is a condition that tidal marshes around the entire planet experience. That's where tidal marshes are found, in that zone that what we call the surface, where you might stand on if you're in a marsh, that zone is where the tides get to only sometimes. And that's what you find around the entire planet on all tidal wetlands.

And so, I want to be clear that under the Clean Water Act mean high water is not a jurisdictional line.

So, let me turn next here to how we established high tide line and how we know that Point Buckler is well below the high tide line and, therefore, Waters of the U.S. and Waters of the State.

So, I'm going to walk you through some information on this graphic here. We did a topographic survey in March of 2016. On the lower right is an air photographic with the survey points they collected on the surface of the marsh, only. We have other data, as well, but this is the points on the surface of the marsh.

The red dots are elevations on the interior marsh surface and the blue dots are elevations on the dirt path the Discharger constructed through the middle of the marsh. There are a total of 512 survey points between these two areas that we surveyed that day, back in March.

On the left is a histogram. And the histogram shows the number of survey points, which is the X axis, that occur within an elevation range, which is the Y axis. And so, what we've done here is use one-quarter foot elevation bins on the Y axis. And in the red and blue bars that are on the histogram, that tells you how many points from that survey in March are within that elevation of one-quarter foot in each bin.

And the colors in the graph, the red and the blue, match the colors on the map so that you can understand where those locations were taken.

As you can see, the maximum elevation of the interior of the Island, including the dirt path, is one point goes up to mean higher high water. And a hundred percent of the points on the interior of the Island lie 1.5 feet below all the indicators of the high tide line for Point Buckler. And many of those points lie closer to two and a

half feet below.

So, the entire Island is so far below the high tide line and, therefore, without any question subject to the Clean Water Act jurisdiction of Waters of the U.S. and Waters of the State. And I emphasize waters here. And wetlands, again, is a subset of that elevation, of that jurisdictional type.

I want to point out that the eastern levy may not be jurisdictional, but we did not investigate it further. It may actually, in fact, be jurisdictional.

Now, let me turn to the fact that Point Buckler was tidal marsh for more than 20 years. This is the same image that Agnes presented a few moments ago. And what we see on this diagram is that there are seven breaches to this levy. So, the levy was last maintained in 1985.

The first of the seven breaches on the Island, on the very north, appeared in 1988. By 1990, there were two more breaches on the Island. Those first three breaches were quite large in size and functioned to establish significant tidal connectivity between the surrounding Bay waters and Point Buckler Island.

By 1993, the next two breaches had appeared in the northeast and in the south, adding additional tidal connectivity. And by 2003, the last two breaches on the northwest had appeared.

In addition, the old, remnant levy, which is the dark green line around the perimeter of the Island, had over all of these years degraded elevation and become tidal marsh, itself.

So, let’s take a look at how the colors on this map describe tidal action. The blue are the -- the blue are the channels and the ditches on the Island that are subject to the daily tidal action. The tides went in and out of the blue channels and ditches every single day. There’s about 9,500 feet of those ditches and channels on the Island before the new levy was constructed.

The green is the area of the tidal marsh. And that is the area that is about 38 acres in size, total. And that area was subject to tides occasionally. The higher high tides would flood up over onto the marsh service. Those tides could come either through the levy breaches, into the channels and ditches, and up and over onto the marsh service. And the tides could spill over the outside edge of the Island, across that remnant

levy onto the marsh. The tidal connection on those higher high tides could flood the Island in both manners.

So, the next two slides, I've illustrated in those gray boxes. I'm going to focus in on the southwest, in breach two, and in the northeast, breaches six and seven.

Here, we show the breach around -- the Island around breach two, and placement of the new levy and borrow ditch in 2014. As with the next slide, this slide shows the 2011 air photo on the top and the 2016 air photo on the bottom.

And the approach to looking at these is to look back and forth between these two images here. And there's two points I really want to make about this here. So, on the top image you can see, in looking back and forth, that there were no barriers to tidal connectivity between the surrounding Bay waters and the interior of the Island.

And secondly, that the new levy in this location was constructed not in the location of the old levy, but interior to that, on top of the tidal marsh service, as Agnes had mentioned. And this occurred elsewhere on the Island, when the Discharger built the new levy out there.

The lower graph shows the red line, which is the outline of the old levy from 1985. And then the orange area, connecting them, is where the breach was. That's the section of levy, about 150 feet in length at this location, that had eroded away and opened by 1990 to let the tides in.

Two other interesting points on this graphic, if you go to the top, you can see these are two rows of pilings here. These were failed attempts to repair that breach in the early 1990s. And they put a bunch of pilings and sheet pile walls and it didn't work. And those pilings are still there -- still out there today.

And number two is that, as was pointed out by Agnes as well, the borrow ditch, which is this green area to the inside of the levy is bright green, filled with algae, indicating the lack of connection between the waters on the inside of the Island and the Bay waters on the outside of the Island.

And lastly, the footprint of the old breach is still open waters of the Bay. The new levy is built far interior of that.

Now, let's take a look at breaches six and seven, on the northeast side of the Island. Again,

the same idea as the previous slide, the baseline 2011 air photograph on top and the 2016 photograph on the bottom.

And going back and forth between these two images, we see the same two findings from the previous slide. One is that on the top, there was open breaches between the Island and the surrounding Bay waters, allowing daily tidal connection into the interior of the site, into the channels and ditches.

And number two, that the vegetation on the inside and outside was the same as tidal marsh, regardless of where the old levy used to be.

We also see on the bottom that the new levy, again the red lines are the old levy at the edge of the Island. The orange is where the breached, the old levy is gone. The new levy and borrow ditch were built to the interior of the old levy, not on top of it. They weren't fixing the old levy, they built an entirely new levy interior to the old one, on top of tidal marsh, and excavating the borrow ditch out of tidal marsh and onto some channels, as well.

What is different about this location and why I put this slide up is that in 2003, I visited

the site with a group of researchers. We were looking for a tidal marsh study site for a research projects and this was one of our candidate sites. And so, several of us came by boat to the Island. And you can see in the top photo, where I have a photo location looking into breach seven, from the boat, which you can see in the lower right. It's a little dark, unfortunately, in here. And we looked into the channel and you can see the waters in the channel, you can see the tidal marsh vegetation on the inside. It's quite tall vegetation. You can't see the surface of the Island. You just see water and vegetation because the vegetation hides wherever that surface might be.

And then, on the left and right of that photograph you also see the tidal marsh vegetation on the levy, to left and right of that breach.

And so that visit back in 2003, 13 years ago, it was very clearly tidal marsh at that time. And it's no ambiguity that this Island was tidal marsh.

So, let's cover, briefly, the impacts to beneficial uses. We had mentioned, Agnes mentioned several of them already. So, the first one is to salmonids. And it is important to note that there

are both listed and non-listed salmon species, that Point Buckler is all about location, location, location.

Point Buckler is located along a primary migratory route for juvenile salmon migrating from the Central Valley of California out to the ocean. Juvenile salmon depend on tidal marsh channels for food and for refuge from predation during their migration to the ocean. And Suisun Marsh is a very important part of that migratory route.

Point Buckler had about five percent of the length of tidal marsh channels that were found in Suisun, Grizzly and Honker Bays. So, of the total channels in that area where the fish used, Point Buckler was five percent of that length of channel. Thus, the loss of so much tidal marsh channel habitat along this core migration route for salmon, again location, really address the beneficial impact and identifies that.

The second, as previously mentioned, there are five federally designated species for which the Federal Government had designated critical habitat that includes Point Buckler. That is Delta Smelt, Winter Run and Spring Run Chinook Salmon, Central Valley Steelhead, and Southern Green Sturgeon.

The critical habit designation defines areas that have -- are critical to the protection and survival of the species listed. So, it's a very important designation under the Federal Endangered Species Act.

Longfin Smelt is a California listed species that has been recently shown to spawn in the tidal marsh channels in Suisun Marsh. So, again, that loss of five percent length of the channels is very significant.

Delta Smelt, which is a species that has, again, garnered news for many years. If you look at the migratory route from the Delta into Suisun, the green and blue dots are most of where the Delta Smelt captures occur over the last, almost 50 years. This is data from Department of Fish and Wildlife.

And you can see that Point Buckler lies directly in the route where the Delta Smelt move between the Delta and Suisun Marsh. So the loss of that habitat right along this location of migration is a very significant adverse impact to Delta Smelt.

And I will close with a before and after comparison. So, we have air photos on the right,

which Agnes has shown you. So, in 2011 at the top right, 2016 in the bottom right. On the left is the area where tidal action occurred on the Island. Over 38 acres before any work was done on the Island. And down on the bottom, in the yellow, which is just shy of 30 acres, was removed from tidal action by the diking and draining of the Island.

Thank you very much.

CHAIR YOUNG: Any other questions right now?

MS. WHYTE: I think I'll just add this, that this does conclude our presentation for now and then we'll save our remaining time. Thank you.

CHAIR YOUNG: All right. I do have one question, please, for Dr. Siegal.

You presented the data from the surveys, the height surveys, and I'm just trying to make sure I know what I'm seeing here. It looks to me like they were done interior to the new dyke, all the dots that I can make out here.

Were there also any heights that were surveyed of the old levies?

DR. SIEGAL: We have a few elevations that we shot of the old levy.

CHAIR YOUNG: Okay.

DR. SIEGAL: To the outboard side. And its elevations were the same as the marsh on the outside and the same as the marsh on the inside. All of them the same range, around between mean high and mean higher high water, were most of those elevations.

CHAIR YOUNG: All right, thank you.

All right, we'll proceed with the cross-examination, then.

(pause)

MS. WHYTE: So, may I just raise -- may I raise a question about timekeeping? I'm just noting, because I'm not sure who's marking that, that we have 11 minutes remaining. And then, cross-examination would come out of the Discharger's time?

MR. COUPE: Yeah, we're adjusting the time accordingly.

MS. WHYTE: Okay, thank you.

(pause, inaudible)

MR. BAZEL: Here we go. Let's see if it works.

MS. DRABANDT: I'm sorry, may we please clarify, is this cross-examination or the

presentation?

MR. BAZEL: There's not time for cross-examination. Since I'm limited to one hour, my plan is just to give a presentation.

MS. TSAO: Microphone.

MR. BAZEL: Sorry. Okay.

CHAIR YOUNG: So, just to clarify --

MR. BAZEL: We are limited to one hour. One hour does not give us enough time for cross-examination, so I do not intend to cross-examine the witnesses.

MS. WHYTE: All right.

MR. BAZEL: Just to proceed with the presentation.

CHAIR YOUNG: Very good, so you're electing to skip the cross-examination and go ahead with your testimony. Thank you.

MR. BAZEL: Yes. And is that okay?

CHAIR YOUNG: That's your choice, yes.

MR. BAZEL: Okay, I'm Larry Bazel and I have taken the oath.

MR. LICHTEN: Should I take the lights down?

MR. BAZEL: Sure, taking the lights down is fine, I think. Oh, there's a way of doing that.

One hour isn't nearly enough time to cover all the main issues, all the things that we disagree with but -- and I've asked for more time. I think we should have a full hearing on this. But since I've been limited to an hour, I'm just going to touch on a few issues. And I may have to speak fast. If I speak too fast and you can't understand, please stop me.

But here's what I'm intending to talk about. First, just to explain what the Club would like the Regional Board to do today. And then, to take on some of the assertions that you've heard today, again and again, you've heard the word "tidal marsh", 30 acres of tidal marsh. Repeating it again and again doesn't make it so, to paraphrase Ms. Drabandt. That's not evidence. That's just the Prosecution Team's talk.

What we're going to show is that there was not a mass dieback of vegetation on the Island. That repairing the levy, which the Club did do, did not dry up tidal marsh, because most of the Island is above the high tide line.

And I'm pleased that the Prosecution Team has spent some time explaining the importance of that. If we're above the high tide line, then it's

not subject to the Board's jurisdiction.

We're going to explain why the levy was repaired. It was repaired for duck ponds. It has nothing to do with kiteboarding. And we're going to explain why duck ponds are important.

We're also going to explain that the Prosecution Team's elevations are wrong. The elevations on the Island. They just can't be what they say they are and we'll explain why.

Their high tide line is wrong, also in the sense of where it falls on the Island. They've gotten into trouble because their topo data is wrong, it's very wrong.

And based on the topo data, if the topo data were true, the entire Island would be under water every day. But it wasn't and it isn't. It wasn't before the levy work was done.

And that's, yeah. So, that's a big problem. We're going to talk a little bit about how we got here. And even though there's an item that talks about legal issues, I'm really not going to talk very much about legal issues. Almost not at all because there isn't time.

And then, explain why I think the Cleanup and Abatement Order will do more harm than good.

So, first, what we're requesting. We're requesting that the Regional Board postpone action, postpone a decision until December. We are meeting, as the Prosecution Team said, to discuss permitting. And ultimately, I think we should get to settlement of the penalty complaint. We think that permitting is better than the Cleanup and Abatement Order. It's certainly better than litigation that would inevitably result if a Cleanup and Abatement Order is issued. And it will allow the parties to work on the factual issues.

I am sensitive to the assertions of delay. It's certainly not been my intent to delay. And on the contrary, we'd like to speed this up to get it resolved as quickly as possible. It is better for the Club to get this resolved, and to get the Island into good shape, and proceed with its business. Delay is not good for business.

Let me get back to that. But the permitting process, I think, is the better process. And I am hopeful that we can work things out. I think the meetings have given me reason to think that there's a pathway forward and a meeting ground somewhere in between.

So, let me get to the no mass dieback

issue. You heard that we've been accused of a mass dieback, which was seen in March, March 2nd, when the Prosecution Team went out there. And this is just some of the phrases that are in the proposed order, itself, that refers to a mass dieback of marsh vegetation.

And this -- we think this idea, this concept that we destroyed 30 acres of tidal marsh, that's what got everyone so riled up. And in the anger, a lot of things haven't come into focus as clearly as they should have. So, we think this idea that drying out the tidal marsh, which didn't happen, is really a very important reason for why this has all gone forward.

Okay, not true. It wasn't any dieback. We'll look at aerials that show the Island was completely brown before the levy repair. We'll show ground level photos. Witnesses saw dry land. Water had to be pumped on the Island to make the ponds. And now, in May 2016 and still it rained over the winter and the Island came back, and it's green. It's lushly green. That's not a dieback.

Okay, let's go. Most of the Island was dry before the repair and something very interesting happened, the Prosecution Team changed

position on rebuttal. And we'll get to that. You heard some of it from Dr. Siegal, that it now agrees that most of the Island was not subject to daily tidal inundation and that daily tidal inundation we think is important.

The first photograph, February 1948, it shows Duck Club and ponds. All the aerial photographs I'm using are from the Prosecution Team's report. They were cut and pasted, so they all ought to be not in dispute.

So, okay, let's see if I can use the mouse as a pointer here. Can I? Okay, there we go.

You see, in 1948, there was a levy. It was around the entire edge of the Island. No dispute that in 1948, and by word of mouth back to the 20s, the Island was being used as a Duck Club. In the middle -- come on, pointer. There we go. There are ponds. We think these are classic Duck Club tidal ponds that are below the high tides.

What you do is open a tide gate and on a rising tide, and as the high tide flows into the ponds, the ponds are filled. When you get to the top of the high tide, you've filled your ponds, you close the gate and now you've got your duck pond.

February 1981 was the last time we saw a

sign of a tidal pond on the Island. This is the 1981 photo and in the middle you'll see there's a little pond there.

You can also see, if you look carefully, that the levy has moved. It's not entirely around the edge of the Island in here, they took a bit of a shortcut because the Island has been eroding away. It was supposed to be 51 and a half acres at some point and now I think the Prosecution Team puts it at 40, 39, something like that. So, there's been a big loss of land on the Island, lots of erosion. Not surprising that the levies have needed repair.

Now, we're going to jump to May 2012, the Island is mostly brown. But you'll see that the vegetation was cut for kiteboarding and that the kiteboarding took place on the western tip of the Island.

So, there's -- there we are in May 2012. You'll see kiteboarding, this is where kiteboarding took place for two years. And, yes, some vegetation was cut for roads through the Island.

You'll also notice the Island is pretty brown. There's some green in it, but it's mostly brown. This is -- there's obviously been a mass

dieback of vegetation naturally because -- it's certainly not related to the levy repair because there's absolutely no levy repair work at all.

Here's a ground level photograph and vegetation is being cut. You'll see there's some green plants, but a lot of dead, brown plants. You'll also see that people are walking on dry land. This is not land that's been subject to daily overflow by the tides. Especially, if you look at the topo data, they could have had a foot of water there every day. The topo data are wrong. I'll get back to that.

There's heavy equipment on that Island. And again, the vegetation is brown and dead. And the equipment isn't sinking into the marsh, it's on dry land.

August 2012, here the Island is green and the western tip is used for kiteboarding. I wanted a green one so you can see that the Island doesn't always look brown from the air. Sometimes it looks green. Kiteboarding is over here, in the corner, takes up a very small space. It's being done out on that point. There's no levy there. You don't need a levy for kiteboarding.

January '13, it's still before the levy

repair. The Island, again, is brown and dry. Yeah, and we're still having kiteboarding. And I want to point out the debris line. So here we go, tiny little area over here used for kiteboarding. The Island is pretty brown. It's brown all over the place.

And this white line, all around the southern edge in particular, but it also goes up along the north, is a debris line. We'll get back to that afterwards. But that's important for determining the high tide line. It's an approved method, one of the methods, one of the two methods, really, you use to determine the high tide line. And that white line is very important.

January 2014, same as January 2013. I want to show, again, this is before work started on the levy and the Island is brown. There's a mass dieback of vegetation. Certainly not caused by the levy, because there is no levy.

Whether that dieback is seasonal or whether it was related to the drought, doesn't matter; it wasn't caused by the levy.

Now, this is just a close up, close up to make two points. Close up of the previous slide. One is there's a little excavated pond there,

that the Prosecution Team pointed out. And we wanted to show that to make the point that when there is water on the Island, ponded water on the Island, you can see it. And that's not -- that Island isn't full of ponded water. Those dry areas are dry. You see some of the old borrow ditch there and that, undoubtedly, had some water in it, at least in places. But most of the Island is dry and brown. This is not the picture of an island that's subject to daily tidal inundation.

Again, you're looking at that white line, that debris line that we'll look at again, later.

March 2014, the levy repair has begun, BCDC and SRCD, the Suisun Resource Conservation District, whom you've heard about earlier, were actually there in March. They saw the heavy equipment. They figured out that the levy was being repaired. And what did they do? They didn't do anything.

If they had -- here's the -- here's the aerial photograph. You can see that there's some levy work being done -- let's see if I can get the pointer to work.

Anyway, along the south you'll see the old borrow ditch has been expanded and the dirt is

being placed on the old levies. It's repairing the old levy, that's what happened.

But certainly, the great majority of the Island hasn't been done. If BCDC, SRCD had stopped by and said, hey, there's a problem here, things could have been very different. That was a seriously missed opportunity.

We don't know when Regional Board staff found out, but there wasn't any contact with the Club until the levy was complete.

Okay, this aerial, we're now in February of this year. The repair is complete. The Island is brown and dry. This is when the Prosecution Team went out and looked at the Island. And sure enough, it was brown and dry. And it may very well have been a mass dieback then, but it wasn't caused by the levy. Because this May and starting earlier, but May was a nice green month, the Island turned green. Plants came back and they came back strong.

I have three on-the-ground photographs here, showing lots of green vegetation.

The Prosecution Team, as far as we can tell, didn't go back and evaluate this vegetation at all.

Now, our expert, who's not here, says, among other things, using those aerial photographs to interpret the vegetation over the years is problematical. But in particular, those May photographs tell you that the Island has not dried out.

More evidence of dryness before the levy repair. In the 1980s, DWR, the Department of Water Resources, agreed to install a pump, but it wouldn't install the pump until the levy was repaired. So, why do you need a pump? Most duck clubs don't need a pump. They've got tidal ponds. You open the tide gate and the water flows in. The fact that you needed a pump meant the Island was high and dry. You needed to pump water up onto it.

And, you need a levy repair because if you're pumping up above the high tide line, water's not going to stay there. It's going to flow back down into the Bay. So, you've got to repair the levy to hold the water.

According to a previous owner, DWR actually did provide the pump and generator in the early 1990s. And what we can say there, now, is that there is a pump and an old, rusted-out generator. We don't know how long it's been since

it's been in use. It hasn't been used recently.

But it's very clear that that pump is meant to pump water from outside the Island into it. It's the kind of pump that has a float on it. It has an intake several feet below the surface. It wouldn't work in a shallow duck pond.

So, next, we didn't dry up the tidal marsh. You've seen before that the Island was often brown and there's no sign of ponding in those aerial photographs after 1981, except in those little ponds that were excavated. There's no sign of the ponding you would see if the Island was covered with water every day.

You've seen ground level photographs, in May 2012, before any levy, where people were walking around on dry land. Heavy equipment was going over dry land.

I have the witnesses that kiteboard lawn, on the western end of the Island was never under water, at least no witness ever -- no kiteboarder ever reported that it was underwater.

And that was used, there were -- from 2012 through 2014, there wasn't a -- through the beginning of 2014, in any case, there wasn't a levy over there.

And the Prosecution changed position, Prosecution Team changed position on this. In the initial technical reports submitted here, it says, “Point Buckler was subject to daily tidal inundation”. That’s what it said. And the reason that the Prosecution Team said that is ‘cause it’s the consequence of their funny top numbers. If you actually believe that the Island is as low as they say it is, of course it would be covered with water.

And here’s their Island -- their figure. They showed you that figure today. And it says the whole Island is subject to tidal action.

But in their rebuttal report, they changed position quite a lot. It says, “vegetated upper into tidal marsh planes, such as those at Point Buckler, do not have daily tidal flooding, but only periodic tidal flooding.”

Their new figure shows that the daily exchange is just in those little channels, and we don’t dispute that there was flow into those little channels and into the old borrow ditches. At least some of the borrow ditches. They had silted up, perhaps, or silted up to some extent.

The rest of this figure, and again this is

from the Prosecution Team's rebuttal report, shows only periodic over-bank tidal flows. How periodic? Infrequently. As much as a few times per month to none for several months. They last briefly and they're fairly shallow.

And the result, now, is that we're not too far off. We say that there's no evidence that there were ever any bank overflows.

And the Prosecution Teams say a few times a month to none for several months, brief and shallow.

So, for most of the Island, for those 30 acres, the Prosecution Team now admits that there was not daily tidal inundation. There was only periodic overflow. And the consequence of that is that those 30 acres were certainly not fish habitat. If you put water on them once every few months or even a few times a month, that's not going to sustain fish.

And oh, by the way, you might very well strand fish. If you've got a bank overflow, water goes and ponds on the Island, and the interior of that Island is not flat, then you may very well have fish stranded in puddles that die. But there's no sign of those puddles, no sign of fish

stranding, or dead fish, or anything like that. Most of the Island was not fish habitat.

And whatever vegetation grew on the Island before the levy was repaired, was usually dry. If there was bank overflows a few times a month to once every several months, we're not talking about daily tidal inundation.

So the vegetation, then, the watering of the vegetation, then, was not all that different from the watering of the vegetation, now. There's shallow groundwater there. The whole Island is not all that far. It doesn't have much elevation, no matter how you count. Groundwater is shallow. The plants have to be able to handle that shallow groundwater.

So, the conclusion is we didn't dry out the 30 acres of tidal marsh and there was no mass die off of vegetation. We think this, enough, raises -- this, alone, raises questions about the Cleanup and Abatement Order that refers to a mass die off and to, effectively to, destroying the 30 acres. That's reason enough to send it back, but there's more.

But before we get to the more, let's talk about the duck ponds. Because, you know, there's

all this talk about bad attitude. A lot of the stuff, a lot of the photographs of the clubhouse and the temporary, the trailers there. The lawn furniture, the temporary things that have been parked there, none of them is permanent, were -- well, first of all, had nothing -- let's start at 2011.

When the Island was purchased, Mr. Sweeney did not kiteboard and there was no intent to kiteboard when he purchased the Island. It was not purchased for kiteboarding.

There was an intent to restore the duck club. The previous owner said, DWR requires levy repair. And we know from DWR sources that, yes, that it was demanding that the levy be repaired before the pump was installed.

The levy isn't needed for kiteboarding. None of this would have been done for the kiteboarding.

So, when the Prosecution Team talks about parking trailers for a little clubhouse, and parking flat pieces of equipment to use as a helipad, that has nothing to do with the levy repair that's ostensibly the reason for this cleanup and abatement order. That's for this

little kiteboarding operation.

And recreation, by the way, is a beneficial use that should be supported. Kiteboarding really isn't the problem here.

Levies are needed for duck ponds and that's why the levy was built. But, the Club doesn't need the levy around the entire Island. That's the way it was, that's the way I understand it is at most or virtually all of duck clubs, you build a levy around the Island. But it didn't have to be around the Island.

If the agencies had showed up, if -- and even now, there's no reason why most of the Island can't be returned to the way it was. And if people are interested in real tidal marshes, even improved to create tidal marsh. So, that creates a potential for multiple uses for the Island. It's a potential for improving this Island, so it does more for everything and everyone, and all the wildlife.

So, why do people care about duck ponds at all? Well, hunters care about duck ponds for one reason. But the Legislature and BCDC care about duck ponds, because the ponds are preferred by waterfowl over natural tidal marsh because duck

ponds are managed to provide food.

This is the Suisun Marsh Protection Plan. This is the blueprint for restoring and protecting the Suisun Marsh. It was required by statute. It was updated within the last ten years. And it says that duck ponds in managed wetlands are vital. They're vital to waterfowl. Why? Because waterfowl need habitat and they need food.

Duck ponds are critical habitats. They deserve special protection. That's the Suisun Marsh Protection Plan. That's one of the environmental policies that are spelled out there.

And the Suisun Marsh Preservation Act, the Public Resources Code the section is cited, requires all State agencies, including the Regional Board, to act in conformity with the policies of the Protection Plan. So, this Regional Board ought to be giving duck ponds special protection.

And when there are people out there who are trying to restore duck ponds from dry land, they should be encouraged and not stuck with a Cleanup and Abatement Order, and penalties.

So, the conclusions of this section are that there was no nefarious intent. The idea was to restore the duck club, restore the duck ponds to

the way it used to be. And no one disputes that there was a levy around the whole Island. And that the Regional Board should favor the restoration of duck ponds.

Let's get to their elevations, because they're wrong.

How am I doing on time, by the way? Thirty-five minutes left, all right. I think I'm doing okay.

There's a problem with the topographic data. The topographic study was done this March, when the Prosecution Team went out, and you saw that they took elevations at many places across the Island.

But they can't be right because they fail a reality check. And here's reality check number one, and this may be very important, the Prosecution went out in February. Two weeks before they inspected the Island, they went out in a boat and boated around the Island.

And that, the day they went out and the time they went out was the highest tide of 2016. The reason that I say approximately the highest is because according to the Port Chicago data, that level of high tide has happened, I believe, three

times this year, and they're all within a couple of hundredths of an inch of each other. But let's say it was roughly the highest tide of 2016.

And at Port Chicago, the tides were 7.0. And you look at the Port Chicago data, it actually -- they'll actually say 7.01, 7.02, or 7.03. We don't care about those hundredths of an inch. Especially at Port Chicago.

The question was what was the tide at Point Buckler? You've got to adjust.

The May Prosecution Team report said 7.3 feet, but that adjustment was based on one data point. And let's say it was not of the highest reliability.

In the rebuttal report, the Prosecution Team came back and they say, NOAA, the Federal Agency, the National Oceanic and Atmospheric Administration that provides the data for Port Chicago said, here's the adjustment to use. You multiply it by 1.12. That gives you 7.8 feet.

And so, in February, if that adjustment is right, and we're not challenging that adjustment, the water level was 7.8 feet.

There's a problem. According to the topographic data for the Island, the levy crest was

only 6.7 feet. Now, it's not 6.7 feet all the way around. But there probably are hundreds, if not a thousand feet or more that's below 7.8 feet. And the lowest point at the top of the levy is 6.7.

And if it's true that the levy crest was 6.7, and the tide was 7.8, and by the way these are all on the same scale, and these are the Prosecution Team's data, then 1.1 feet of water went over the crest and it flooded the Island.

Pardon my little sketch here, but I just wanted to make a point that the water did not stack up in the air outside the Island. If it's true that the water level was 7.8, and we don't doubt that, then if the levy is only 6.7, water flowed over that levy.

So, why is that a problem? Because the Prosecution Team didn't see any overflows on February 17th. And if a foot, 1.1 feet of water had flowed over that levy, that whole Island would have been flooded. Two weeks later they showed up and they didn't see any sign of flooding on the inside of the Island.

Our expert says, more or less, ah, come on, if you had any substantial amount of water flowing over that levy, it would have left deep

erosion marks. There aren't any. He was there, he didn't see any. There isn't any erosion resulting from water flowing over the levy.

I'm going to go back to the Prosecution Team's own photo from that day. You say it earlier. And I'm going to show it to you again. On the Prosecution Team's presentation -- here, I do need the pointer and let's see if I can get it going. Come on.

Well, if you look over on the right, I would do the same thing that the Prosecution Team did and show that you can see the levy. By the way, in the background you see trailers that are parked. They're on wheels and containers.

But on the right-hand side, right in here, okay, that is -- that's the levy there. And what you're looking at is in front of the levy. What you see here is at 7.8 feet the water didn't even get to the base of the levy. And I say, and you know, this is obviously a rough approximation, but that could easily be another foot or two to the base of the levy and then add two or three feet up the base of the levy.

If this is 7.8 feet of elevation, that's where they say the water is here, then the top of

the levy may very well be 12 feet.

The Prosecution Team's topo data says roughly seven and a half feet, no more than eight, I don't believe. And depending on where on the levy this falls. So, the topo data could be off by four or five feet. That, obviously, is going to color how they see tidal flows on the Island.

If the Island were four or five feet lower than it is, it might very well, it probably would flow every day. But here you have the highest tide of 2016 and it hasn't even gotten to the foot of the levy. That's important. We'll get back to this when we get to the high tide line.

But for the moment, the point is just that the Island's topo data are wrong.

Okay, now how do (pause) --

I may need some technical assistance here. (inaudible) So, that was good. Okay, we're on the next slide, now.

The Prosecution Team argues that there is evidence of overtopping and spot repair on the levy. But I like their photo, I think it supports us. Here's the photo that they used and it confirms some of the things they said earlier. The levy isn't very high. It's essentially a pile of

mud and peat in places. It's not very strong. You can tell from the tracks that when things drive across it, it leaves an impression.

The Prosecution Team says in this little place there is evidence that some water got up there. There's also evidence of some wrack, some vegetation debris on the top of the levy. But that could easily be thrown up by wave action.

What this tells you is that if there were any substantial flow of water across the top of this levy, you'd see erosion marks. A foot of water, you'd see either deep cuts or the levy just completely wiped out. That didn't happen.

Conclusion for this is that the Island elevations can't be right.

Let's go to the high tide line. Jurisdiction here is based entirely on the high tide line. If the Island is above the high tide line, it is not within the Board's jurisdiction. And if it's not within the Board's jurisdiction, the Board can't issue a Cleanup and Abatement Order, at least on most of the levy work, which is up there on dry land.

The Prosecution Team used the definition from the Corps, and I want to quote three parts of

that. Basic concept is it's the maximum height reached by a rising tide. It is higher than mean high tide or mean higher high tide. But it's not the max ever, ever, we'll get to in a moment.

The middle part of the definition is very important, "may be determined by a more or less continuous deposit of debris." That's the debris line that I've been talking about and that I'm going to go back to.

And then here's the restriction on the maximum height ever. It encompasses spring high tides and other tides that occur with periodic frequency, but it does not include storm surges.

Now, the Prosecution Team asserts that the high tide line is 8.2 feet. We -- there are things we don't agree with that, but for these purposes it doesn't matter. Certainly, the high tide got to 7.8 feet this year. And the Prosecution Team calculated or based that on two different methods.

Let's go back to the 8.2 feet above the levy problem, again. If the high tide ever got to 8.2 feet, again, it would have gone over the levy and wiped that levy out. Same conclusion about the levy.

But now, I want to offer an alternative.

Let’s go back to that continuous deposit of debris. The Prosecution Team found wrack at elevations up to 8.3. But as I remember, they found other places where the wrack was two feet lower. And that’s not a more or less continuous line. You wouldn’t expect the tide to be two feet lower on one side of this Island than it is on the other side of the Island. Whatever the tide is, it’s likely to be the same around the whole Island to a very small difference. So, if there’s some debris that’s higher up, then that was probably thrown up by waves.

But, there is a more or less continuous deposit. It’s in aerial photographs and it’s on the ground. We saw in aerial photographs that was --

Earlier. I can’t see the date. January 2014. Here’s February 2016. And again, you see that white line along the shore. This is after the levy was built. And you can see the levy is built uphill from that white debris line. It touches the line in places and, conceivably, some places of the levy, certainly where there were breaches around the Island, could be below the high tide line. But most of the levy is above that debris line. And

the debris is a legitimate and a good way to determine the high tide line.

Let's see what that debris line looks like on the ground. It's got logs, dead vegetation, and Styrofoam. Here it is on the ground. This is floatable stuff. The wood is certainly floatable. The vegetation is probably hollow, easily floatable. You can see that the vegetation has floated up from the shore line.

And the concept, by the way, of a wrack line, or a debris line, is the vegetation floats up on the high tide. And then, when the tide recedes, it gets stuck. And as higher tides come, debris gets pushed up. And so, the debris line is more or less as high as the high tide got. It's a nice rough, but good Corps -- it's in the Corps' definition. That's in the Corps regulations. It's a way of determining where the high tide line is.

Here's another picture. This is all floatable material. There's some Styrofoam bits in there.

Now, what's also interesting is that in the interior of the Island, those 30 acres that are supposed to be tidal marsh, there aren't any logs in there. There isn't anything like what we saw in

the outside. If the high tide picked up that material that you saw on the outside, and if the high tide actually floated over the remnant levies in 2012, or 2011, or 2009, or in the 20 years that the Prosecution Team says that the Island was tidal marsh, then you'd see those kind of deposits in the middle and they're just not there.

And our expert says that casts doubt on the credibility of the conclusion that there were high tides going into the interior of the Island.

But what I want to do is go back to that nice photo on February 17th, because that supports the concept that that white debris line is at 8.2 more or less, and that the high tide line is below the base of the levy.

So, here we're at that nice photograph again, and you can see it's dated February 17th of this year. And if you look at it, what's in the foreground is not the levy. This is the vegetation outside the levy. And by the way, that vegetation outside the levy, to the water side of that white debris high tide line, we're not challenging jurisdiction over that. But there wasn't work in that area. The work was on the other side of the white debris line.

And the question, if this is 7.8, if you raise the water level four-tenths of a foot, to 8.2, would it get to the base of that levy? And my -- it sure looks to me like it would not. And if 8.2 doesn't get you to the base of that levy, then that levy is above the high tide line. It is not -- and since the high tide line is the only thing we're talking about for jurisdiction, it's not in the jurisdiction of the Corps or the Regional Board.

Most of the work was done above the debris line. We say that, at the very least, it casts very serious doubts about whether the Regional Board could issue the Cleanup and Abatement Order.

And our general position is, for many legal reasons, the Regional Board does not have authority to issue a Cleanup and Abatement Order in this situation.

Let's talk a little bit about how we got here. The Cleanup and Abatement Order was issued in September 2015, and some of this is the same as you've heard before. We asked for an extension of a deadline. The extension was granted once. This was a second extension.

And in return for that extension, we

offered to collect a lot of data, including topographic data on the Island. Essentially, the data that the Regional Board, ultimately staff, ultimately collected themselves. Staff refused to extend that deadline.

That put the Club in a really impossible position. We could submit a plan to destroy the levy. We had a vague requirement. We were talking, we were trying to get discussions to where I believe they are now. And what this said is by January 1st, we were going to have to essentially submit a levy destruction plan and start down that road. And staff weren't even willing to bump it a little bit.

So, we had to go to court to get a stay on the order. Either that or we had to violate the order and we did not want to violate the Cleanup and Abatement Order, so we went to court to get a stay.

Now, how did we get a stay? It turns out that staff haven't been complying with Constitutional protections, at least not in our case. Due process requires a hearing on a Cleanup and Abatement Order. It also requires separation into Prosecution and Advisory Teams.

The initial Cleanup and Abatement Order here, had no separation. It had no hearing. To my understanding that staff routinely does not have a hearing of going to separation until someone objects and demands it.

The problem is that the law is very clear that a Cleanup and Abatement Order requires a hearing. There's some -- it may be a pre-depravation hearing, it might be a post-depravation hearing. The general rule is pre, but post is allowed in emergency situations, as soon as possible after the depravation.

But nothing out there says you can't have a hearing at all. So, we went to the court. We said they violated due process, stay the order. The court granted the stay and then staff rescinded the order. Undoubtedly they concluded, correctly, that that was an argument they weren't going to win.

Unfortunately, they came back with a vengeance. Back in September of last year, the Cleanup and Abatement Order was just a Cleanup and Abatement Order. There was no talk about penalties. Now, staff wants to impose the largest penalty ever on John Sweeney and the Club. And it

was specifically calculated to deprive him of everything he has.

There is, attached to the order, a calculation that says we've done some research, here are all the assets and we're taking them all away. We're taking everything he has away.

So, the conclusion, the point, the message is loud and clear. If you insist on your Constitutional rights, the Regional Board will take away everything you have. And is that really the message that the Regional Board wants to get out there?

The Regional Board should be holding hearings on Cleanup and Abatement Orders. I understand it's a problem and it might -- or, it's an annoyance. And you might very well want to institute a process where people waive their rights to hearings, but they do have rights to hearings and to separation. And if people insist on their Constitutional rights, that's no reason to crush them.

And is it threatening to a person to say the Government of the State of California is going to take away everything you have? You bet it's threatening. That's one more reason why we don't

want a delay.

This is the legal section that I'm not going to talk about. So, let's just put a quick list in there. We think that the proposed order doesn't comply with due process. I've touched on that.

The Suisun Marsh Preservation Act -- we didn't actually talk about the Club's plan and all of that. I mean, the Suisun Marsh Preservation Act required that individual management plans be created for each duck club, and enforced, and reviewed every five years. An individual management plan, I'm going to call that a duck plan, or a duck club plan. It was prepared for Point Buckler. It was certified in about 1984. And we say it's still in effect. Other people say it's not in effect.

There's a provision of the Preservation Act that says any work done in accordance with your plan doesn't require a permit under that Act, and from BCDC. There isn't time to argue all that. I can go into it, if anyone is interested.

We think there are a host of problems under 13304, which is the code that authorizes cleanup and abatement actions.

The -- at every step of the way, if this is above the high tide line -- well, Cleanup and Abatement Orders are for discharges of waste into Waters of the State that cause a condition of pollution or nuisance. That's the essence of it.

And we think there are problems with all three. Some of the things that the Cleanup and Abatement Order refers to as a discharge of waste is the parking of trailers, the excavation, cutting of vegetation. Removing things, it seems to me, can't be a discharge of waste. There's no case law on -- well, there's case law on the Federal side that excavation is not a discharge of pollutants under the Federal scheme. And I'd argue, persuasively, I think, that it's not under Water Code 13304.

This is not a condition of pollution or nuisance because it was restoring duck ponds. Duck ponds that are vital and that need to be protected under the Suisun Marsh Preservation Act and Protection Plan. The Legislature has decreed that. I'm going to stop.

Water Code 13267 requires a balancing, essentially, of the cost and benefits. That balancing wasn't done. There's a sentence that

says costs are outweighed by the benefits, but that's not a real analysis.

CEQA applies here because the exemptions used don't -- the exemptions that the Prosecution Team has referred to don't apply when there's construction. There's construction here.

Any noncompliance with any of these statutes would invalidate the order.

And that takes me to the final point. The proposed order will do more harm than good.

Well, we met twice, recently, and the basic concept is that the Club is going to be submitting permit applications to restore the great majority of the Island to what it was. Whether, if you want to call it tidal marsh or dry land, it will allow water to get through the levy. There will be a small duck pond, not the whole -- relatively small, compared to the area of the Island. And there'll be kiteboarding facilities. Kiteboarding doesn't take up much space, alone, at the end of the Island.

A lot of time is needed to work out the details. The issuing the Cleanup and Abatement Order will encourage litigation. We have to file a petition to the State Board within the 30 days or

we lose the right to challenge the Cleanup and Abatement Order forever.

As a practical matter, that means we have to file the petition. The State Board used to sit on petitions forever. Now, they're dismissing them in 90 days. Once they're dismissed, we have 30 days to go to court or lose it forever. That means we'll wind up going to court and we'll go to court pretty soon.

And once we're in court, it's going to be very tempting to litigate these issues. If we win any one, we win big time and the Cleanup and Abatement Order goes away. Much as I like litigation, and I do like litigation, I don't think it's the right solution here. Permitting is enough.

The Regional Board -- for us to get permits, we need to convince the Regional Board staff to approve it. And that's going to be tough. But it also submits us to their -- to their jurisdiction, in a sense. It gives them control over us because if they say you need to do X, Y, and Z or we won't give you a permit, then we need to do X, Y, and Z. Now, I'll get back to that. Maybe I should dwell on it a little more.

I'm sensitive to some of the criticisms that I heard today, that we're not moving fast enough. I'll see what I can do to speed it up. It's not so easy.

Let me go on to the next slide. The Cleanup and Abatement Order is too rigid. It says, "restore tidal flow into seven breaches". At the last meeting we proposed four and the Regional Board staff came back and said, what's the right number? And you heard, they criticized us today for not having a serious hydrologic analysis. And that's a fair criticism.

The -- but it's also -- it also gives me grounds for optimism. Because the implication is that the Regional Board staff would approve a proposal that's got hydrological backup, good science backup. And so, we're going to go talk to the hydrologist. And as of right now, we don't know how many breaches, except that I hear the Regional Board saying is you ought to come back with the right number and me saying, yeah, we should. So, that's a good start, maybe.

And we need to do more. And we need to figure out how this is actually going to work to protect the fish, since that's an important point

of it. And we do have a fisheries biologist on board. And that's going to be tricky, too. We don't have all the answers and the Board staff doesn't, either.

Let me start talking about no need for haste, at least in issuing the Cleanup and Abatement Order. We heard several times this morning we haven't proposed any interim measures. Well, boy, I'd like to. And I expect that we will, as soon as we can figure them out.

We haven't heard staff come back and say, well, why don't you do X, Y, and Z in the meantime? You know, sometimes you don't want to hear those kinds of things. But here, some of that might very well be helpful.

There is a tide gate in there. At one point we said, well, do you want us to open a tide gate? And BCDC came back and said, not without a permit from us. And we said, okay, well, we may very well need to open that tide gate at some point.

But we obviously need to have some rationale for how and when we're going to open it and what we're trying to accomplish with it. And that takes time. We haven't quite figured all

those things out.

But I think there's a middle ground here and I think the scientists can work it out. I think as we start focusing more, we're going to find more of a middle ground and a way that we can make this Island a better place than it was. Because those little channels that got tidal flow before -- now we all agree those 30 acres only got occasional inundation, if ever -- those little channels weren't very big. And the Prosecution Team says they're important because there's not so many of them around.

Well, if that's the case, there's plenty of room on that Island to dig more and to make them good habitat for endangered fish.

So, our fisheries biologist is a little bit critical of the Prosecution Team's assertion about fish. I think we should start off by saying there's no direct evidence of any harm to fish. This is all -- all the accusations are on the speculative side.

The basic concept is that these little tidal channels are thought to be good because they provide food for fish and habitat. What hasn't been accounted for, really, is predation.

Predation is an issue that's just beginning to be looked at and the evidence is very interesting. It's obvious that these little channels could do more harm than good, if we've got a bunch of predators that figure out, oh, I don't need to wander around in open water. I just sit here at the mouth of this channel and all my food swims out and right into my mouth.

Our expert says the science is young on these issues. We need to look harder at them.

So, we think a Cleanup and Abatement Order will do more harm than good. We think that a Cleanup and Abatement Order ought to be based on good science. And there are serious problems here. They're solvable. We can figure out what the real elevations on the Island are, presumably. But the work that's been done so far is not ready for prime time.

There's also a serious issue about whether the court even has jurisdiction over most of the work. The Prosecution Team admits that the high tide line is the key thing here. They say it's up above everything. We say it's down at the base of the levy.

CHAIR YOUNG: Mr. Bazel, I don't want to

interrupt you, but I want to make sure you can see the time clock there. You're down to less than five minutes.

MR. BAZEL: Oh, thank you. I'll finish within five minutes.

A process for resolution is underway and I think the Regional Board should let the parties try and cool down a little bit.

CHAIR YOUNG: You do understand that the five minutes includes whatever closing statement you want to make.

MR. BAZEL: I'll stop right now.

CHAIR YOUNG: All right. Thank you.

Are there questions?

VICE CHAIR MCGRATH: This is, of course, on my time. But I have a series of six questions, so you have some idea what's coming at you.

First, did you ever have a temporary tidal gauge installed, as was recommended by Dr. Hoffman? Your December 2015 letter indicated that you intend to do so.

MR. BAZEL: Well, thank you for my December 2015 letter? Is this where we -- is this the letter from December 1st or so?

VICE CHAIR MCGRATH: I think it was the

15th. I didn't note the date, specifically. But I'm referring to the recommendation by your consultant, Dr. Terry Hoffman, who said the way to determine a site-specific tidal area is to put in a temporary tidal gauge. I think it takes about a month. Did you do that?

MR. BAZEL: We did not do that.

VICE CHAIR MCGRATH: Okay.

MR. BAZEL: And the Prosecution --

VICE CHAIR MCGRATH: That's okay.

MR. BAZEL: -- Prosecution Team didn't, either.

VICE CHAIR MCGRATH: I've got other questions. So, that's the first one.

Second, do you dispute the survey data that was showed to us today, that showed the elevation of the interior marsh plain?

MR. BAZEL: Yes.

VICE CHAIR MCGRATH: Do you have an alternative site-specific survey that would dispute that specifically?

MR. BAZEL: No, we --

VICE CHAIR MCGRATH: So, you've not done your own survey?

MR. BAZEL: We have not done our own

survey.

VICE CHAIR MCGRATH: I heard your arguments about how you dispute it.

Third, did you do any vegetation surveys at any time before or after construction?

MR. BAZEL: No -- did we do any surveys? No --

VICE CHAIR MCGRATH: Vegetation?

MR. BAZEL: aerial studies, no.

VICE CHAIR MCGRATH: Or on site. This area is mapped as alkali bulrush, this at hardstem.

MR. BAZEL: We didn't do any mapping.

VICE CHAIR MCGRATH: Okay.

MR. BAZEL: Dr. Huffman did tour the site more than once. And that --

VICE CHAIR MCGRATH: Well, I think we've already asked this one, but I'm going to ask it more specifically, since I've looked at the data on management of duck club ponds in some detail, and the recommendations. They do recommend management of the system in order to provide both open water and alkali bulrush. And the only information about vegetation at the site, available on the record, shows that it was predominantly hardstem bulrush. So, do you have any biological consultants or plans

for managing for a duck club that would show what was entailed to transition the vegetation from hardstem bulrush to alkali bulrush?

MR. BAZEL: We, our -- the conceptual plan that we submitted to staff, at the last meeting, would have provided for a relatively small duck pond, with a levy around it, and specially planted vegetation that would provide food for ducks. And which vegetation, I don't recall.

VICE CHAIR MCGRATH: Is that part of our record?

MR. BAZEL: No.

VICE CHAIR MCGRATH: Okay. It's subsequent to this. I guess we'll have to discuss that with our attorneys about its applicability.

Bear with me, I've got a couple more. Fifth, are there -- there's an argument that you're making that you're maintaining a facility that was approved in 1984. But there's also pretty clear indication that throughout the period of time between '84 and '88 there had not been work done on the levies.

So, do you have any records of construction after 1988 and before 2011 that document maintenance efforts? Things like rental

of equipment, local permits, anything that would show substantial construction of reliance on your viewpoint that you had an approved plan?

MR. BAZEL: We don't have any records from the former owner. What we do have is an aerial photograph from 1984 that shows intact levies. We have the club plan, itself, that talks about levies having been repaired. We have an undated document that I placed as being part -- well, I thought it was part of the 1984 club plan. It was pages following in the documents we got from SRCD.

The Prosecution Team says those last couple of pages, that have a map that show levy repair areas, are not part of the '84 plan. They're from something like 1990. The former owner says he made repairs in 1990. Since 1990, there's no -- or, the early 1990s, there's no record of any repair until 2014.

VICE CHAIR MCGRATH: All right. And then, this is my last question. Do you have any correspondence with the Department of Water Resources that shows plans to use Point Buckler as mitigation?

MR. BAZEL: Yes. We have an EIR from 1984 that says that here's the mitigation we will do.

VICE CHAIR MCGRATH: I've seen what is in the record. It's only a portion of the DWR record and it's not at all specific. I'm looking for something more specific that says our mitigation monitoring plan involves use of Point Buckler in the following manner.

MR. BAZEL: What it says is, as mitigation, we will install a pump at Point Buckler and spend $30,000 a year to maintain it. That's pretty much all it says. It's in the '84 EIR. It's in their contracts through 2005 or so. It is in at least one letter that the Prosecution Team referred to, from 1988, that says we won't install that until you repair the levies.

VICE CHAIR MCGRATH: Right.

MR. BAZEL: And in 2014 -- or, 2016, the DWR prepared a little summary of what I think is their files, that said they dropped the requirement, themselves. How they get to drop the mitigation requirement, I don't know. Because, they said, the levy was never repaired.

VICE CHAIR MCGRATH: Right, so you reached the same conclusion that I do that DWR didn't carry forward any plans because the levies weren't --

MR. BAZEL: On the contrary. We think DWR

actually put the levy in -- the pump in, in the early 1990s, and there's no one around who remembers it.

VICE CHAIR MCGRATH: Okay.

MR. BAZEL: Because there's a pump there and there's a big generator.

VICE CHAIR MCGRATH: All right, those are my questions. Thank you.

CHAIR YOUNG: I have a question. Did you have -- all right.

I'm looking at the requirements for the Individual Management Plans. And you had said in, let me make sure it's your brief -- yes. That the Individual Management Plans had to be reviewed every five years.

MR. BAZEL: Yes.

CHAIR YOUNG: And then, could be modified accordingly. Do you have records of the Individual Management Plan ever being reviewed and updated?

MR. BAZEL: I don't know. What we have is -- we don't actually have BCDC documents or SRCD documents saying here's the formal review we went through every five years. What we know is it's a statutory requirement and we have no reason to doubt that they complied with the law.

(pause)

CHAIR YOUNG: That they complied with the law. But you -- if you bought it in 2011 and it's now 2016, did you file an update?

MR. BAZEL: No, the updates are not the obligation of the landowner. They're the obligation of the regulatory agencies. Because the way the Suisun Marsh Preservation Act works is that these plans were, by statute, prepared by SRCD and submitted to BCDC for certification. And at that point, those agencies primarily are supposed to enforce them to make sure that the property owners pretty much keep their land in duck clubs, that the duck clubs are maintained. Because the Legislature wanted these duck ponds to be going on in perpetuity. That's why there's no -- there's no end date for any of these plans.

If ever there's a reason to change the duck club to anything else, the five-year review gives the agencies an opportunity to say, gee, we don't want that as a duck club anymore, we want it for something else. But there was never any agency action here that said that the -- that said that this Island should not be used for a duck club or for duck ponds. And there was never any agency

action that said that you can't do what the plan says until after the work was done.

CHAIR YOUNG: All right, thank you. I have one other question. You acknowledge that you're in discussions with the Regional Board and perhaps with other agencies, as well, I don't know --

MR. BAZEL: Yes.

CHAIR YOUNG: -- right now to get permits to do what you're planning to do, or what is planned to do with the Island.

And, yet, you state that prior to doing the dyke work and all of the work that's been done on the Island -- at that time there was no permit required. But now, you're acknowledging that there's a permit required. So, walk me through that.

MR. BAZEL: Well, we think that -- we still think that there's no BCDC permit required because the work -- the levy is maintained in accordance with the Club plan. But, BCDC wants us to submit an application and issue a permit. And that is something we're willing to do, to go through that process, to come out the other end with something that gives the agencies what they

need, and gives the Club at least a little bit of what it needs. And so we can get resolution of this and move on, and not continue fighting about it.

CHAIR YOUNG: All right, thank you. (inaudible)

All right, thank you very much.

MR. BAZEL: Mm-hmm.

CHAIR YOUNG: Although, we now have time for cross-examination.

MS. DRABANDT: This is Laurie Drabandt again. Thank you for the opportunity, but seeing as you just heard an hour of argument and not testimony, we're going to forego any cross-examination, thank you.

CHAIR YOUNG: All right, thank you.

You can get comfortable, now.

All right --

BOARD MEMBER MULLER: I have a quick question of our Advisory Team.

CHAIR YOUNG: Yeah, sure.

BOARD MEMBER MULLER: Is it time?

CHAIR YOUNG: Yeah, any time.

BOARD MEMBER MULLER: Yeah, I would like just -- I believe it's to the Advisory Team, a

quick question just for the record. The visit with the Suisun Resource Conservation District, number one, they are a nonregulatory body, correct?

MS. AJELLO: I believe they are regulatory. They assist with permitting of duck clubs, yes. Is that the case? They're not our --

BOARD MEMBER MULLER: I'm not aware of that, number one.

MS. AJELLO: So --

BOARD MEMBER MULLER: Number two, again for the record, BCDC, I think it would be for their regulatory authority when their visit was there. What was their regulatory authority when they were there, if any? Other than potential permitting, I would imagine?

MS. AJELLO: And probably investigation, as well. Of -- some of these activities are, you know, they exercise jurisdiction over tidal marsh and, therefore, unauthorized activities are under their jurisdiction so…

BOARD MEMBER MULLER: Yeah, I still believe the Suisun RCD does not have enforcement authority, though. Is that correct?

MS. AJELLO: You know, I believe that --

MR. COUPE: I don't believe the RCD

specifically has regulatory jurisdiction, I guess, in order to clarify your question.

Under the Suisun Marsh Preservation Act, BCDC has the regulatory authority and mandate to issue permits for development activity in this particular case. Based on evidence that I've reviewed in the record, correspondence from BCDC suggests that there is a permit that's going to be required as a result of the activities moving forward.

BOARD MEMBER MULLER: Thank you.

CHAIR YOUNG: All right, this is the time of day when everyone begins to squirm and wonder when we're going to have lunch. So -- I'm wondering that, as well.

But what I'm going to suggest is that the next thing we are to do here is to hear from the group of interested persons, for whom I have cards.

And if the Board is okay with it, I would like to go ahead and do that at least, right now, because some of these folks actually needed to leave. So, if everybody can hold on?

All right, then we'll start with Mark Zeppetello, Chief Counsel for BCDC.

And on deck, we'll have Brett Moffatt, if

Brett chooses to testify. Thank you.

MR. ZEPPETELLO: Thank you, Members of the Board. My name is Mark Zeppetello. I'm Chief Counsel at BCDC. And I here today speaking on behalf of our Executive Director, Larry Goldzband.

BCDC has primary State responsibility for implementing the Suisun Marsh Preservation Act. And, that includes both permitting and our review of Local Protection Programs.

BCDC strongly disagrees with the Discharger's argument that the work they did here was exempted from permitting requirements pursuant to an Individual Management Plan that was certified by BCDC in 1984.

There is an exemption in the Act for development, specified in a –- the Suisun Resource Conservation District's Local Protection Program. The Local Protection Program does include over a hundred different management plans that were certified by BCDC back in 1984, including a Management Plan for Point Buckler.

The Management Plan for Point Buckler stressed the need for frequent inspection and maintenance of the levies. There is no evidence that -- or, actually, to the contrary, the evidence

is that the levies at the site were not maintained at any time between 1984, when the Management Plan was certified, and 2011 when the Dischargers, or Mr. Sweeney, purchased the site.

There was reference, just a minute ago, about a map of levy repair work in 1989. That was apparently prepared in conjunction with a permit application that was submitted to BCDC in 1989 to do levy repair work on the Island. BCDC asked for further information of the property owner, which was never provided. The permit was never issued.

When the Discharger, Mr. Sweeney, purchased the site, the Island had not been managed as a managed wetland for 20 to 25 years. Over that time, because of exposure to the site, to the Bay, to the tides, to the winds, the levy got breached in several locations. There was overtopping. The site had reverted to tidal marsh.

The IMP was no longer in effect. The IMP is not a document in stone that requires or mandates, in perpetuity, that a duck club or a managed wetland be maintained. It’s an authorization that, if followed, allows an exemption for permit requirements. But it did not, once and for all, forever, exempt work on this

Island from permitting requirements.

The IMP was no longer in effect. But even if it was, what the IMP authorized was maintenance of existing levies. It did not authorize construction of new levies, digging up new ditches, construction of helipads, or a change in use to recreational kiteboarding.

The Dischargers -- in BCDC's staff's and Executive Director's view -- the Dischargers violated the Suisun Marsh Preservation Act, as well as the McAteer-Petris Act, when they did unauthorized work without a permit.

I'd like to address, briefly, Mr. Bazel's point that BCDC was aware of the work in March of 2014 and nothing happened after that. That is incorrect. BCDC was not on the Island in March 2014. Rather, they observed construction equipment on the Island from the mainland. And after that, they performed an internal investigation to try to determine whether the work was part of an authorized Tidal Restoration Program.

And when they determined that that was not the case, they did contact Mr. Sweeney. There was correspondence for a period of time and then an arrangement for a site visit that took place in

August of 2014.

In fact, Mr. Sweeney claims that he did this levy work because he wanted to manage the site for a duck club, pursuant to the Individual Management Plan. In fact, he did not have a copy of the IMP until BCDC staff provided him a copy at that site visit, in August of 2014, after the work was substantially -- the work from the levy was substantially completed.

The Dischargers make arguments about the importance of duck clubs under the Suisun Marsh Preservation Act. In fact, the Act has exemptions for managed wetlands. Managed wetlands are activities that manage the control of water and also vegetation to promote ducks. There's no evidence --

CHAIR YOUNG: I'm going to have to ask you to wrap up, thank you.

MR. ZEPPETELLO: Okay. I'll wrap up by saying that there are policies in the Act that promote tidal marsh and preservation of tidal marsh, and those policies were violated by this work. BCDC's Executive Director issued a Cease and Desist Order in April, alleging violations of the Marsh Act and the McAteer-Petris Act, following in

May by a Violation Report and Complaint for Administrative Penalties.

Those matters, we've extended them in stipulation with the Dischargers, but they're scheduled to be considered by our Enforcement Committee on October 6th, followed by our full Commission on November 17th.

I'd be happy to answer any questions regarding BCDC's role or the Marsh Act.

CHAIR YOUNG: Thank you.

VICE CHAIR MCGRATH: So, Mr. Zeppetello, BCDC did certify the plan at what date? MR. ZEPPETELLO: 1984.

VICE CHAIR MCGRATH: In 1984. And that plan, if it's what I've seen in the document, that I've seen in the RCD's document, I mean the RCD's document covers 115,000 acres. And what applies to Point Buckler is extraordinarily sparse in detail. Is that the same plan?

MR. ZEPPETELLO: I believe that's correct. It's stamped "1984" on the front.

VICE CHAIR MCGRATH: And as of 1989, it was still acknowledged by the previous owner that some kind of maintenance activity still required a permit from BCDC?

MR. ZEPPETELLO: Correct.

VICE CHAIR MCGRATH: Thank you.

CHAIR YOUNG: All right, thank you.

MR. ZEPPETELLO: Thank you very much.

CHAIR YOUNG: Next, we'll have Brett Moffatt. And then on deck, Erica Maharg from Baykeeper.

MR. MOFFATT: Hi, Members of the Board. I'm Brett Moffatt from the U.S. Environmental Protection Agency. We had not planned to offer any comments.

I just wanted to make one clarification here, that with the discussion that has occurred about the high tide line and questions about the status of the area, land and waters that were impacted by these activities.

That as far as the Federal definition of Waters of the United States is concerned, I would direct staff attention to 33 CFR, 328.4, which defines the limits of Federal jurisdiction, which I believe is incorporated within the State definition of State Waters, which refers to subpart section (b). It covers waters up to the high tide line and adds that where adjacent non-tidal waters are present, jurisdiction extends to the limits of

those waters. And those non-tidal waters do include wetlands.

So, to the extent that wetlands are impacted by any activities, whether they're above or below the high tide line, they would still be considered Waters of the United States. Thank you.

CHAIR YOUNG: All right, thank you very much.

We'll have Erica Maharg and then Steven Chappell.

MS. MAHARG: Good afternoon. My name is Erica Maharg, Staff Attorney with San Francisco Baykeeper. We have written letters before, but I wanted to come today on behalf of San Francisco Baykeeper and our 5,000 members and supporters around the Bay to reiterate our request that the Regional Board issue the Cleanup and Abatement Order against Point Buckler Club.

We, and our environmental NGO partners, all who have written letters, as you saw before, have been keeping a close eye on what's happening at Point Buckler Island.

And as we've seen today, and all the document that has been submitted before, Regional Board staff and its consultants have carefully

investigated the activities and the effects of those activities that have occurred on the Island. They have supported their conclusions with data.

Regional Board attorneys and other staff have also properly applied the laws to the facts at hand. Thus, the Regional Board's issuance of the CAO in this matter is entirely justified.

I also appreciate the Regional Board staff considering and proposing modification to the Tentative CAO, based on the suggestions made by Baykeeper and other organizations to create actual deadlines by which the Discharger must apply for permits and actually complete the restoration work.

This is incredibly important. The Island's habitat, which is critical and important habitat for several species of concern, has now been impaired or completely destroyed for almost two years, if not more.

It is imperative that the Island be restored as fast as practicable. The deadlines established in the CAO create a reasonable, but efficient, deadline for that restoration.

In general, as you know, San Francisco Bay and its ecosystems face many threats, many of which the Regional Board has no control over. Sea level

rise is an example of that. The drought is also an example.

In this instance, the Regional Board has the authority to reverse the harms caused by the Discharger's actions. And it should use the authority to ensure that Point Buckler's tidal wetlands are properly restored and protected in the future.

I also want to comment, briefly, on the fact that the permitting process could be a substitute for this CAO. It seems to me that the permitting process would be insufficient. The permitting process is not an order to restore the tidal marsh, or to compensate for the loss of and harm to the beneficial uses on the Island. It would be to permit the work and uses going forward.

So, it seems like the CAO has an incredibly important purpose to protect the Island and to restore the Island's tidal wetlands.

And we ask that the Regional Board stay strong, that you don't delay, and you adopt the CAO as proposed. Thank you.

CHAIR YOUNG: Thank you. (pause)

All right, after Mr. Chappell we have Peter Baye, if he wants to make a statement.

MR. CHAPPELL: Good morning. I'm Steve Chappell, the Executive Director of the Suisun Resource Conservation District.

I will not submit any comments this morning. I'm here at the request of staff as -- the Regional Board staff, as a sister agency in conservation of the marsh, and here at the request of the Board to answer any questions you may have of me for the Resource Conservation District.

CHAIR YOUNG: All right, I guess we have a question. Thank you.

VICE CHAIR MCGRATH: So, I'm just trying to augment what I see in the aerial photo record, which is pretty comprehensive, and from my own memory. I mean, I remember that the winter of 1982-1983 was an extreme winter, with three feet of surge in the Bay. So, it would have been expected to do a certain amount of damage up into the Delta.

But in 1984, there was the certification of a very general document that said this could be suitable for duck club, but its levies weren't suitable. Other records indicate substantial breaches along the way and there's nothing in the aerial photography that indicates any substantial construction, that I can see, between '84 and '93.

And there's no dispute that after '93 there was no further maintenance work.

From your perspective, as the resource management agency responsible for the whole 115,000 acres that's in the Management Plan, that's covered by Individual Plans, which do exempt some activities, are you aware of any construction that was fully appropriate under the plan on Point Buckler Island between 1984 and 1993?

MR. CHAPPELL: Looking at my declaration with BCDC, I started in the marsh in the fall of 1994. I've been with the District for 23 years. In my time as a member of the Resource Conservation District and as the Executive Officer, there were no permitted activities authorized or conducted at the site, that I'm aware of.

VICE CHAIR MCGRATH: So, you can't speak to the time before that, but since 1994?

MR. CHAPPELL: Only the information that was provided to the agencies and as part of the Public Record Act request of the District is evidence in the record.

VICE CHAIR MCGRATH: And if I recall the process in the record, and there's four volumes, I can't find every bit of evidence when I look at it,

there was a -- some type of note that was required to be submitted to do work in reliance upon the Management Plan. Is that correct?

MR. CHAPPELL: The Resource Conservation District has held an Army Corps of Engineers Maintenance Permit to conduct ongoing activities in the marsh since 1977.

When I started with the District in 1944 -- or in --

(Laughter)

MR. CHAPPELL: In 1994, the Regional General Permit had been issued that year and I've administered the permit or overseen its administration since that time. That includes a 401 certification for the Regional Board and Endangered Species Take Authorization through Biological Opinions from NOAA Fisheries and Fish and Wildlife Service.

VICE CHAIR MCGRATH: So, the Regional General Permit was in effect from 1994 on and it did require notice. Is that correct?

MR. CHAPPELL: It is a five-year permit. I have participated in the renewals of every permit since nineteen-ninety -- well, it expired in '98. And it does require the applicants to apply to the

Resource Conservation District, including the other State agencies in the marsh, the Department of Fish and Wildlife. We administer the permit, provide environmental compliance reporting to the regulatory agencies. But it's still at the discretion of the Corps to do the annual authorizations and we provide post-construction reporting.

So, we administer the permit on the behalf of the landowners, in partnership with the Department of Fish and Wildlife.

VICE CHAIR MCGRATH: And it does require them to apply to the RCD. Were there any applications after 1994, including the current activities?

MR. CHAPPELL: After which date?

VICE CHAIR MCGRATH: After 1994, that period of time that you can --

MR. CHAPPELL: The District does not have any record of any applications since 1994 for maintenance activities.

VICE CHAIR MCGRATH: All right, thank you.

CHAIR YOUNG: All right, thank you very much.

(pause)

MR. BAYE: I'm Peter Baye, Coastal Ecologist. I'm a sub-consultant for Stuart Siegal, of Siegal Environmental, and I worked on the Technical Report. And I'm available for questions.

CHAIR YOUNG: None?

VICE CHAIR MCGRATH: No, I'm gonna -- So, as I dug through the binders, it was fairly clear to me that if we go back to 1983-84 the Island did not have vegetation that was necessarily optimal for duck club use. It had hardstem bulrush, rather than alkali bulrush.

You know I can't identify those in the field, but I know you can. Is there anything in the -- as a biologist, recommending to a duck club what they might appropriately do to transition from hardstem to alkali bulrush, what would you recommend?

MR. BAYE: What would I recommend --

VICE CHAIR MCGRATH: Yes.

MR. BAYE: -- to convert the hardstem bulrush vegetation to --

VICE CHAIR MCGRATH: But assuming that all permits were obtainable and the like, and it was just a matter of transitioning from one kind of vegetation to another, and a suitable amount of

open water?

MR. BAYE: If levies were intact and functional, and if drainage ditches were functioning, and there were operable tide gates, I think a conventional method -- I won't say my recommendation, professionally. But a conventional method for converting hardstem tule or cattail-dominated stands to bulrush would involve some pretreatment to decrease the amount of existing vegetation.

And the most important step would be to follow with an annual cycle or sequence of drainage followed by flooding. The flooding is essential to developing favorable duck food vegetation, such as alkali bulrush, brass buttons, and other sea-producing plants and insect-producing vegetation. Without the annual flooding and properly timed cycles, in sync with low salinity periods of the Bay, it would not be possible to convert to --

VICE CHAIR MCGRATH: And that would have to be done with either effective water control structures that allowed flooding when the water was fresh enough, or pumps?

MR. BAYE: Yes.

VICE CHAIR MCGRATH: One further question.

An argument has been made that this was necessary mitigation for DWR under 1485, something that's not necessarily followed up with any kind of paper trail that indicates that plan. But one of the things that occurred to me, as I read through that, was, is management for mitigation under DWR's proposal or idea the same as management to optimize duck pond habitat? How would they be similar or different, or do you know?

MR. BAYE: I don't know the specific requirements for DWR's mitigation. I have not reviewed that.

VICE CHAIR MCGRATH: But that's an important technical question that, at some point, should be answered, if it was to be used for mitigation.

MR. BAYE: It would depend on whether that mitigation currently applies and I'm not aware that it does.

VICE CHAIR MCGRATH: Okay, thank you.

CHAIR YOUNG: Well, I have a question as long as you're here. And I'm going to try to ask this accurately, but you can correct me.

There are a couple of different vegetation surveys that are in the record for the vegetation

on the marsh. And the summation of the vegetation surveys sort of concludes that these -- the plants that are there are typical of emergent tidal marsh.

MR. BAYE: Yes.

CHAIR YOUNG: Now, if you found this same complement of plants -- well, do you ever find this same group of plants anywhere else?

MR. BAYE: Anywhere else than?

CHAIR YOUNG: Like in another -- in another type of ecological system nearby? I mean, would you -- you wouldn't go up to Mount Tam and find these things, right?

MR. BAYE: Yes. The dominant vegetation documented by the Department of Water Resources and California Department of Fish and Game, from the period of 2000 to 2012, on a three-year cycle of remapping of vegetation, confirmed that all the dominant vegetation on the Island was obligate wetland vegetation.

Obligate wetland vegetation, to clarify, means occurring almost always in wetlands. And that's quantified -- somewhat quantified to 99 percent of the time.

So, based on the overwhelming dominance of obligate wetland vegetation indicators, it would be

effectively impossible for that Island to be anything other than jurisdictional wetland.

As to what type of wetland, in fresh brackish wetlands, both tidal and non-tidal marshes could support the same dominant species. In fact, if you were to dyke and maintain saturated soil conditions, you could potentially keep most of the dominant vegetation in place, while losing some sensitive tidal marsh indicators that would not be evidence from an aerial photograph.

So, yes, the same species could occur in non-tidal and tidal perennially saturated conditions, but they would not be consistent with dry, high or dry, or upland conditions. It would be virtually impossible to maintain for ten years, consistently, all dominant obligate vegetation in conditions that were persistently drained dry or otherwise uplands.

CHAIR YOUNG: Thank you.

VICE CHAIR MCGRATH: You’ve triggered two further thoughts in my mind. If I remember the science of wetland soils correctly, it -- while these plants can grow at higher and lower vegetations, it is the saturated soils that give their competitive advantage. Is that not correct?

MR. BAYE: That is correct. The elevations, themselves, don't determine how saturated the soil is. That's a drainage feature.

VICE CHAIR MCGRATH: And the other thing that I do believe from my work on coastal wetlands, but I am much weaker in high -- you know, in brackish marsh systems. Is generally the marsh plain develops at or around the mean high tide datum? Is that correct, in your experience?

MR. BAYE: Could you repeat that?

VICE CHAIR MCGRATH: Generally the marsh plain develops at or near the mean high tide vegetation in most coastal marshes. Is that also the case in brackish marshes?

MR. BAYE: I have to disagree. The approximate equilibrium of mature tidal marshes, both in saline and in brackish marshes, is approaching mean higher high water.

VICE CHAIR MCGRATH: So, it's higher than mean high tide?

MR. BAYE: It's higher. In fact, as Stuart pointed out, globally tidal marshes form high marsh plains, these are semi-equilibrium marsh plains, at the higher tidal stages. So that the tops of tidal marshes that are in equilibrium with

tides and sediments are only flooded during some tides of the month.

If a marsh is flooded only to mean high water, it’s probably still accreting. It’s not a stable condition.

So, to find an extensive marsh plain in Suisun Marsh that is below mean high or high water would be exceptional. Actually, what we usually find is that the high marsh plains in Suisun Marsh are above mean higher high water. They’re peaty. The plants actually super-elevate them.

MR. BAZEL: May I respond to this? Is this on? May I respond?

CHAIR YOUNG: You can use some of your closing argument to respond.

MR. BAZEL: Okay, he is a member of the Prosecution Team and --

CHAIR YOUNG: Well, I think you waived your opportunity for cross-examination, but can we allow it as part of his time?

MR. COUPE: He has four minutes, I think, and 39 seconds left and he’s -- or 4:29 and you’re free to use that time however you’d like.

CHAIR YOUNG: Is that what you want to do? This will come out of your time allotment.

MR. BAZEL: I might as well wait until the end, it sounds like.

CHAIR YOUNG: Okay. All right, thank you.

MR. BAYE: Is that? If that's unclear, I can clarify it.

MR. BAZEL: Perhaps here's another way of getting at this. Perhaps that same question could be directed at both sides and that way I could get some time to respond to it.

CHAIR YOUNG: I would have to ask --

VICE CHAIR MCGRATH: Your argument was crystal clear.

MR. BAZEL: You didn't ask me anything about wetlands and about obligate -- obligate plants, and about marsh above the high tide line. So, I haven't had time --

CHAIR YOUNG: That wasn't part of your evidentiary record. It was part of theirs. So, that's why -- that's why the questions were directed at --

VICE CHAIR MCGRATH: Further --

MS. AJELLO: You do have discretion to give additional time, if you'd like.

VICE CHAIR MCGRATH: But the difficulty that I have here is Dr. Huffman is a renowned

wetland biologist, who is, I think, qualified to give testimony to vegetation and datum, and how vegetation -- but he's not here. And I did ask whether or not you'd developed the record, as suggested, to indicate your own view of what the elevations were at the site. That was the question I directed at you as to whether or not you had used your expertise, in the face of this action, to develop the record.

You can make an argument, but again, there's a difference between asking a scientist where marsh plans develop and asking a lawyer for -- but give him two minutes, Terry. –On me.

CHAIR YOUNG: Yeah, I was just going say I -- you know, thank you. I think we're done with the questions. I don't want anyone to leave with the feeling that something was unfair, so we'll give you a couple minutes. It will not come out of your time period. Please go ahead.

MR. BAZEL: Thank you. I just wanted to say, and I hope this will shed light, that we don't dispute that the plants on the Island are obligate wetland plants. Groundwater is shallow, that's why the Island didn't dry out. I think the Prosecution Team found groundwater down at about a foot and a

half, when they looked in March.

As far as whether those -- anything behind the high tide line is jurisdictional, this is now a legal argument. The Prosecution Team has only relied on the high tide line for jurisdiction. It has not relied on three-factor adjacent wetlands.

Brett Moffatt of EPA, said under EPA regs, adjacent wetlands can also be considered or are also considered within the jurisdiction of the Corps.

But the Prosecution Team, which has the burden, did not do a three-factor analysis.

Wetlands plants are one of the three factors, as I'm sure everyone knows. Soils and hydrology are the other two. They didn't do a delineation. They may very well say, hey, based on our topographic data the whole –- the whole Island was obviously under water. But as I've said, that data is questionable. Thank you.

CHAIR YOUNG: All right, just to clarify, we were signaling. (inaudible) Oh, yeah, he gave him two minutes. Okay, got it.

(Laughter)

CHAIR YOUNG: You did it. You did it in two minutes. I just wanted to make sure that the

two minutes were not going to come out of his closing statement.

MR. COUPE: I just want to put one gloss on this issue of jurisdiction that's been bandied around over the course of the hearing. Certainly, jurisdiction is going to be an important element in evaluating the extent to which the Corps has jurisdictional reach, under its 404 Program, and what corresponding 401 water quality certification may be issued by the Regional Board at some future date.

But I would just like to point out the fact that when we're really talking about jurisdiction in the context of the action that you're being asked to take today, which is the consideration of the adoption of a Tentative Cleanup and Abatement Order, we're really talking about Waters of the State, number one, which is a larger subset of waters that would constitute Waters of the U.S.

And I also want to point to some specific language in the statute, under 13304. I think I've heard some legal argument today, to the effect that the Regional Board's jurisdiction, pursuant to Water Code Section 13304, only extends if there is

a discharge of waste that causes a condition of pollution or nuisance.

And that is not a complete and accurate reading of the statute. The statute specifically says, in part -- and if you want me to take the time, I'll pull it out and we can read it, it's a very long sentence. But in very shorthand terms, if there is a discharge, or threatened discharge, of waste that could affect the quality of Waters of the State and that threatens to cause a condition of pollution or nuisance, then that's a sufficient basis to issue a Cleanup and Abatement Order, pursuant to Water Code Section 13304.

So, I don't want to be hung up -- I don't want the Board to be hung up with the idea that there has to be a demonstrated discharge. I'm getting the sense that there has been a discharge and there's been a lot of argument about what the extent of that discharge is.

But again, saying that there must be a discharge that causes a condition of pollution or nuisance is just not an accurate reading of the statute.

CHAIR YOUNG: Thank you for the clarification, appreciate it.

I actually had one more card. And Dr. Herbold's been sitting there very patiently, in the audience, the whole time. At least come up and say hello.

(Laughter)

DR. HERBOLD: Hello, Dr. Young and other Members of the Board. I am Bruce Herbold. I am now working as Private Consultant, and worked as a subcontractor to Stuart, in preparing the expert testimony.

MS. AJELLO: Did you take the oath?

DR. HERBOLD: I'm sorry. Yes, I did take the oath.

CHAIR YOUNG: Thank you.

DR. HERBOLD: And all the above is true. And also true is that I'm only here available for questions so --

CHAIR YOUNG: All right. Let's see, do we have any? But thanks, anyway.

DR. HERBOLD: I don't want to get between you and your lunch.

(Laughter)

(inaudible)

CHAIR YOUNG: Yeah. What's the intent of the Board. Do you want to -- we can do two things.

We can have closing argument and then we can go into deliberative session and eat our lunch, while we deliberate. Or, we can break for lunch, now, and come back and have closing arguments, depending on how everyone feels.

VICE CHAIR MCGRATH: I would like to break for lunch, have a brief closed session to discuss how we want to deliberate on this, only that subject. And then, having closing arguments.

CHAIR YOUNG: Have closing arguments --

VICE CHAIR MCGRATH: After.

CHAIR YOUNG: After lunch.

VICE CHAIR MCGRATH: After lunch.

CHAIR YOUNG: Is there any --

VICE CHAIR MCGRATH: You know I'm the hungry guy.

(Laughter)

CHAIR YOUNG: He's like a bird, we have to keep --

MR. COUPE: Okay, so just for clarification, the purpose of the closed session would be to deliberate on evidence presented at the hearing, as allowed for under the Government Code, right?

VICE CHAIR MCGRATH: That's correct.

MR. COUPE: Thank you.

CHAIR YOUNG: Wait, we can't do that before closing arguments.

MR. COUPE: You can choose to adjourn to have a closed session. I mean that -- it may be more administratively advisable to wait until everything's over and then do it, but you may choose to do it now. And then, you may choose to do it afterwards, at your discretion.

CHAIR YOUNG: I think we should not have a closed session before we hear the arguments.

VICE CHAIR MCGRATH: All right, let me ask a question of counsel. We have the discretion to discuss the evidence either in a public session or in closed session, do we not?

MR. COUPE: Absolutely.

MR. BAZEL: May I have that Code section, please?

MR. COUPE: Sure. It was cited in the -- Chair Young read it as part of the hearing procedure.

MS. AJELLO: It's 11126(c)(3).

MR. COUPE: 11126.

MR. BAZEL: And that's policy question, correct?

MS. AJELLO: It's a Government Code.

CHAIR YOUNG: Government Code Section 11126(c)(3).

MR. BAZEL: Thank you. I didn't take it down the first time.

MR. COUPE: Right. The decision about whether in fact you want to deliberate in open session versus closed session is entirely a subject to your policy discretion, yes.

VICE CHAIR MCGRATH: And can that discussion and that discussion, alone, occur in closed session?

MR. COUPE: What particular -- what is it specifically that you're asking that you want to have discussed in closed session?

VICE CHAIR MCGRATH: Whether or not we should discuss the merits of the project in open or closed session.

(Laughter)

MR. COUPE: I think the cleanest way to handle it, quite frankly, is to decide in open session whether you think it's appropriate to have a closed session. And if so, to adjourn to have closed session, to deliberate on matters.

VICE CHAIR MCGRATH: That's the advice I

was looking for. So, I'd rather have lunch, closing arguments, and then decide whether or not we're going to go into closed session.

BOARD MEMBER MULLER: That's better. That's the way to do it and proceed.

CHAIR YOUNG: We are all going to have lunch.

(Laughter)

CHAIR YOUNG: And we will -- I want to give the folks in the audience a chance to actually get something to eat.

BOARD MEMBER MULLER: But that time is pretty --

CHAIR YOUNG: Yeah, time is of the essence. Let's try to come back at 1:15 for closing arguments, if we could. Is that -- does that give you folks enough time? Yeah, we'll do that. We will come -- will adjourn temporarily, come back at 1:15 for closing arguments.

(Off the record at 12:46 p.m.)

(On the record at 1:24 p.m.)

CHAIR YOUNG: All right, folks, thank you for coming back. We will reconvene, now. And we were at the point at which we were going to have the closing statement from the Prosecution Team.

According to my records here, the Prosecution Team has 11 minutes and 11 seconds left. It's on the clock. But we won't start it until Dyan finds the piece of paper that she's looking for.

(laughter)

(pause)

MS. WHYTE: Sorry.

CHAIR YOUNG: No worries.

(inaudible)

MS. WHYTE: Okay. Okay, sorry about that.

So, it sounded like there was some confusion on the issue regarding the DWR mitigation. And so, we asked for perhaps two minutes that Steve Chappell can spend discussing that item, if it's of interest to you.

So with that, what I will lead to is just to close very briefly, is that (inaudible) -- okay, so I will cede two minutes to Steve and then I will follow up.

MR. CHAPPELL: A question was raised associated with the Department of Water Resources' pump and mitigation on the Island. The Island is not mitigation. And managing it as a managed wetland is not mitigation.

The State and Federal Water Projects and the upstream users of Suisun Marsh water have a mitigation agreement with SRCD, DWR, [WRO], and Fish and Game to mitigate for impacts from an increased salinity.

The pump, as identified in the 2000 -- or the 1994 -- ’84 Plan of Protection was to provide low salinity water at low tide. So, it was to pump water from the slough, at low tide, onto the managed wetlands because of lower salinity. That was the only purpose for that.

I do not know of any record that the pump was purchased or provided by the landowner. DWR was unable to find record of that.

CHAIR YOUNG: Thank you.

MS. WHYTE: Okay, thank you.

We feel that we’ve fully briefed all the issues that were raised today. We don’t see any new evidence that was presented, that we feel we need to respond to.

We’ll highlight that, without a doubt, we believe the Board has the authority to issue the Cleanup and Abatement Order.

And we also note that the dischargers have admitted that they have discharged into Waters of

the State.

I'll add, though, and emphasize that the Board has always supported recreational use of waters. And we routinely work with duck clubs to ensure that recreational uses are developed in an ecosystem-friendly manner. And, essentially, that's what our permitting process is for.

Now, we agree with the Dischargers on one point relating to the specifics of the Cleanup and Abatement Order, and that has to do with the provisions. If you look at Provision 2 of the Cleanup and Abatement Order, and as it relates to the Restoration Plan, we do note under one, that the -- that the requirement is to restore tidal flow into all seven breaches that existed prior to the Discharger's unauthorized activities.

And what I want to suggest, in that regard, is we're not specifically interested in seven breaches and that exact number of breaches. What we are interested is seeing the creation of a functioning ecosystem on the Island that is a tidal marsh, that has functioning channels with the appropriate and necessary flows to support the beneficial uses. That is our end goal.

So, perhaps that might need to be restated

differently and I'm not prepared right now to provide you with language, but we'd be happy to suggest some in a little bit, if you are open to that along those lines.

And then, lastly, I want to emphasize again that our expectation for this Restoration Plan is truly a Restoration Plan, not a site-development plan. It's for restoration of the Island, providing function and values to the tidal marsh as they existed prior to the unauthorized activities.

If the Discharger then wants to develop the Island, we will consider appropriate permits as that would relate to development and we would treat that as we would treat all these type of applications that we get in for that type of work.

So, with that, I think I will close. And again, we'll be happy to answer any more questions that you may have.

(pause)

CHAIR YOUNG: You might want to have that language in your back pocket.

(inaudible)

When you're ready.

MR. BAZEL: My turn?

CHAIR YOUNG: I am told that you have four minutes and 29 seconds. And our timekeeper, did you want to take a moment?

(pause)

You feel like you're at the Olympics, waiting for the --

(Laughter)

CHAIR YOUNG: -- waiting for the go signal?

MR. BAZEL: Okay, tell me when to start.

CHAIR YOUNG: When it says 4:29, we're going to -- they'll stop it and give you the signal. You can see that from where you're sitting, I hope.

MR. BAZEL: I can see barely, but well enough.

CHAIR YOUNG: Oh, okay.

MR. BAZEL: I'm not in my 30s, now.

MS. TSAO: Sir, is your microphone on?

MR. BAZEL: Okay am I on?

CHAIR YOUNG: You're on and your microphone is working. Yes, you can -- okay, good. Please go ahead.

MR. BAZEL: Okay, let me talk fast. The 1984 Club Plan did say that the levies were

repaired. It was not a here's-how-you-make-it-a-club. It says the duck club is okay, levies repaired, things are tight, keep them that way.

Work was done without a permit, we think. The repairs that were done in the early 1990s didn't have a permit, there's no record of any permit. Then, the previous owner says he did the repairs then. It makes sense because there is a big honking generator and a pump there, and no one would buy that generator or pay the money to have it moved there without a good reason. The reason had to have been that the levies were repaired and they were pumping water onto the Island to make ponds.

Third, our plans for planting duck food. The club intended to disc, seed, and roll on the Island for vegetation. You saw the roller there, there's also a disc. The equipment was brought on. If nothing else, that adds to the credibility. That's the plan.

Things got slowed down, shall we say, when the agencies showed up and got very unhappy.

Other duck clubs tend to burn the vegetation, but the club's plan here was to disc.

Peter Baye said that the plants there now

are obligate wetland plants. We have no dispute with that. We think that confirms our opinion that there wasn't a mass die off. That the plants there before are still the plants there now. But why are those plants more valuable than duck food plants? Why shouldn't we be allowed to develop at least one duck pond on the property?

And certainly, all those plants are not providing habitat for fish, if they're only under water a few times a month to once every several months.

The high tide line here is the only basis that the Prosecution Team has used to assert jurisdiction. They did not do a three-part wetland delineation at the site.

We didn't put in a tide gauge for a month. They didn't put in a tide gauge for the month. They have the burden here. So, if the data aren't there, they're the ones that should be penalized.

And we did provide data, even if it wasn't computerized data. We provided their photograph. Their photograph taken at the high tide this year. And you could very well argue that the seasonal high tides that the Corps calls for are the highest tide of 2016. That would be 7.8. It would not be

unreasonable to set that as the high tide line. And you saw where it was, 7.8 was nowhere near the base of the levy. Even if you use 8.2, their number, 8.2 wouldn't get you to the base of the levy. That photograph is evidence. That photograph is data and it's theirs. They can't say that it's a false photograph because they submitted it.

The -- there was a question about whether the permit would only be retroactive and we would somehow escape anything. That's not our intent. And I think Ms. Whyte made it very clear that's not her intent, either, that we will be talking about mitigation no matter what.

And that the -- whether it is to restore the Island, whether the goal is to restore the Island to the idyllic situation the Prosecution Team thinks was there or to do a little bit of restoration to what was there, and a little bit of improvement to provide real tidal marshes, in mitigation perhaps, but provide real tidal marshes that would get the Island to where we want it to be. I think both sides here can reach a conclusion that is scientifically and legally sound.

And, ah, come on, staff is going to be

issuing the permit. And by the way, we also will be asking the Corps to issue a permit or EPA, and BCDC. They're not going to approve all this if they think what we're doing is bad.

CHAIR YOUNG: Perfect timing. Thank you.

All right, it says here close the hearing. So, we're done. You guys are done talking and now it's our turn to talk.

We have the option of deliberating in open session, or closed session, or open session and closed session.

VICE CHAIR MCGRATH: I would prefer discussion in open session. Where there are any questions that have been raised about due process, I think for whatever reason retiring into closed session is not a good idea. And I'm perfectly comfortable with drawing my conclusions in a public arena.

CHAIR YOUNG: I would respectfully submit that the Dischargers would still have due process, even if we went into closed session. But I understand your feeling.

However, my practice has always been that if there's anyone on the Board who would prefer to go into closed session that that determines what we

do. So, what's your preference?

BOARD MEMBER OGBU: It feels like a lot of pressure.

(Laughter)

CHAIR YOUNG: Yeah. If you would prefer to go into closed session, we can certainly do that. We've done that often, in other situations.

BOARD MEMBER OGBU: I would prefer a closed session, but I think it can be brief and I'm happy for there to be more discussion in open session, as well, so --

CHAIR YOUNG: So, here's what I am going to suggest. We are going to go into closed session, briefly. I would suggest that nobody leave the area around because we'll just come back out into the anteroom and call you back in.

Then, we will have some additional discussion in open session and carry on from there.

Unless my attorney has alternative advice?

MS. AJELLO: No, I just wanted to confirm for the record that the Board may meet in closed session to consider evidence received in adjudicatory hearing and deliberate on a decision to be reached based on that evidence. And the authority is Government Code Section 11126(c)(3).

CHAIR YOUNG: All right. Thank you, folks. You're getting your exercise. You can come in, you can go out, come back in again.

(Closed Session at 1:37 p.m.)

Item 7. Continued

(Reconvene Open Session at 2:14 p.m.)

CHAIR YOUNG: All right, we are reconvening in open session, now, at 2:14 by that clock.

And I think we have some comments. We may not have a lot of back and forth discussion, at this point, but we do have some comments that we would like to share.

VICE CHAIR MCGRATH: I'll start. And just as a note, we do anticipate some changes in the language for Provision 2 that captures the idea of a Restoration Plan and captures the idea that it is important to restore not just circulation, but also the channels within the system, which all the evidence shows were critical to an endangered species. And we'll leave the staff to work out that precise language while we're making our comments.

So, there are two areas that I want to link up the evidence and my conclusion. I am going

to support the Tentative Order. And I'm going to talk first about some confusion between Titled Adams Ownership Boundaries and jurisdiction. And those things have been a little bit conflated and I think unnecessarily so.

A lot of time has been spent arguing about what mean high water is, and that that is a limited jurisdiction, and that the high tide may not have been 8.2 or 7.8 or whatever. And I don't think that's relevant to the questions at hand.

Obviously, the Discharger has not provided definitive information, as recommended by their consultant, as to what the tidal action at the land would, and that might have helped. But I don't think, ultimately, it matters much. There's very clearly a tidal marsh plain within the Island. And the fact that it still remains doesn't obviate the damage that's been done to it.

The information is fairly clear that there was fill in the circulation channels to that. Filling channels and cutting off tidal circulation to that internal wetland does involve jurisdictional impacts and it does involve water sustaining, and the circulation of that water that is important to the health of those wetlands. And

I don’t think there’s any question on that in the evidence.

And I think a difference of a tenth of a foot, or three-tenths of a foot, or even a foot or two, as the data indicated, the Island is at 5.5 feet on a mean water or low water datum, and was provided water by channels which are deeper than that. That’s clearly within the jurisdiction and clearly below any arguable high tide line. And it’s within our jurisdiction and it is our duty to protect that.

Second, there’s a rather interesting argument made that there’s a vested right here and the property owner is compelled to restore a duck club into existence. It’s very clear that DWR did not choose this or go down the road to make this a mitigation part of their -- there’s uncontroverted evidence in the record to that effect.

The Applicant did not do what one would expect through due diligence and through preparing a Restoration Plan to analyze the existing vegetation, the existing health of the levies, and prepare a plan to transition it and get the necessary permits.

It’s clear in the record that the

Applicant was at least aware of the Nationwide 3 Permit in his activities on Chip's Island, as of 2008. And I would not put on my Facebook that I plan to do anything without permits, and not to code.

So, I find nothing that says there's a vested right. Even there arguably was a vested right to maintain an existing system, what was filled and created was not that existing system. So, I find the vested rights argument to be not supported by any evidence, and not by the clear language of Nationwide 3. And it doesn't obviate the basis of jurisdiction that we have under the (inaudible) -- so that's my linking of the information and the data to the conclusion that I've reached. That's my comment.

CHAIR YOUNG: Thank you. Ms. Ogbu?

BOARD MEMBER OGBU: I just want to say that I do -- I do support the Order. You know, we had a lot of evidence produced by both sides that I, and I know the other Board Members, very diligently read through in combination with the testimony and argument that we heard today. And based on all of that information, I do believe that the Prosecution Team presented what was substantial

evidence to support the order. To support that there was a discharge or threatened discharge into the Waters of the State.

And that the Order, itself, is a reasonable approach to the violation that occurred. And, I do appreciate that the Order is consistent with moving forward with the permitting process, and that is part of the provisions of the Cleanup and Abatement Order.

And that's essentially all I want to say.

BOARD MEMBER MULLER: Do you wanna go?

CHAIR YOUNG: Who's got the ball?

BOARD MEMBER MULLER: You're the Chair.

CHAIR YOUNG: Yeah, sure, I will follow up on that, thank you.

As Ms. Ogbu just pointed out, these were voluminous evidentiary filings. It was an entire file box. This information was sent to the Board Members weeks ago. Like my colleagues, I read the whole file box of documents. I reviewed the evidence that was in it.

I studied the Prosecution and the Discharger arguments side by side, flipping back and forth between all my different notebooks. And I basically couldn't find anything in the

Discharger argument that punched any holes in the Prosecution evidence.

I'll just mention a couple of items in that regard. One, it seems very clear to me that the interior of the Island was tidal marsh. Not just because of the topographical evidence, but that certainly is weighty evidence.

One can also tell by the way the channels developed. And we saw the aerial photographs of the channels developing, like a natural marsh. It has soil types that are typical of the tidal marshes in the area. And it supported tidal marsh plants, obligate tidal marsh plants.

And I don't know, where I come from the plants don't lie. You know, they're either there or they're not. But if they only grow under certain conditions and they're there, then those are the conditions in the field.

We didn't receive any evidence, comparable evidence, although we heard arguments from the Discharger, regarding the elevation and the plants. I'm empathetic with Mr. Sweeney's observations that it didn't look like a marsh to him. But that may be understandable from a layperson's point of view, but that's not what we're dealing with here. We're

here dealing with science and we're dealing with the evidence.

Second, I just wanted to talk briefly about the argument that perhaps all of this really was covered under some sort of preexisting permit system. And I didn't find that to be a persuasive argument, either. We had letters on the record from the Corps, and ECDC that said to the contrary. That what had happened on the Island was not covered under those permit systems.

The Management Plan for the unit had not been implemented for many, many years. And some of the work that was done was not in the Management Plan, in any case. So, I just didn't find the argument that the work was covered by an existing permit system to be persuasive at all, or that there was any evidence in the record that would -- that would counter what we did have in the record from the Prosecution Team.

And so, finally, I'm comfortable adopting this CAO. I think it addresses the damage that was done to beneficial uses. It's very careful and measured. And, in my view, what the CAO seeks to accomplish is to get the Island back to the way it was before all the changes were made, so that we're

restoring the status quo ante, and then we can start from there, you know, doing whatever permitting is required. Although, I understand that the time clock is that some of these things may happen in parallel.

I do think, speaking of time clocks, the deadlines that are in the CAO are reasonable. And I'll stop there.

So, I do support the CAO, but I'm willing to listen to alternative language on that one prohibition, as well -- or, provision, not prohibition.

BOARD MEMBER MULLER: Thank you, Madam Chair. And thank you, everyone, for being here with us today. It was a challenging day for all parties. I think the Board listened very carefully to all evidence and we thank you for that.

I want to mention to the Discharger that we've never been in the land use business here, so we strictly go by our Water Codes and policies there.

And the other thing, in our Board's many years of experience, for sure we've never been out to destroy anyone. That's not the reason we're here.

I think this gives you a chance to work together with the staff to bring this to closure here, in the near future, without the difficult challenge that we've all faced the last year or so. So, I really believe this is an opportunity to move forward in a positive direction and no more negatives. So, I will support this order, also.

CHAIR YOUNG: All right, at this point should we ask whether the Prosecution Team has alternative language for the one section that you would like to present to the Board?

MS. WHYTE: Ben will put that on the screen. This is what we worked out in the hallway and we did share it with the Dischargers, when we were out there, as well.

CHAIR YOUNG: Okay.

MS. WHYTE: I'll let you all read it, rather than read it into the record.

(pause)

CHAIR YOUNG: Is there any discussion among the Board Members on the proposed language?

VICE CHAIR MCGRATH: I do have a question of staff. The evidence before us indicated that marsh channels, the circulation channels are important for salmonids. Presumably, this provides

an opportunity to look the ditches and figure out whether or not they add hydraulic value or they might have to be sealed in some way. They have the potential to increase tidal channels, which might be a good thing, but there would have to be sufficient hydraulic analysis to make sure that they don't cut off circulation in interior.

So, I think it provides the necessary flexibility and the objective of -- I think you added what I wanted to see, the water quality functions, including the length of channels. And to the degree they might increase channel length, that would be a good thing.

CHAIR YOUNG: Agreed.

VICE CHAIR MCGRATH: Nodding doesn't show up on the record.

(laughter)

MS. WHYTE: Yes. Yes, I think I would agree with that and that was our thinking in crafting this language.

CHAIR YOUNG: All right, and just to make things perfectly clear, to follow up on that, there could be a concern that if one did a breach in the dyke and all of the water went just into the borrow ditches, and didn't go into the interior, didn't

start to recreate the natural system that that would not accomplish the intended purpose. So, are you confident, as the Prosecution Team, that your language would allow the Board to make sure that there wasn't that kind of a short circuit, as well?

MS. WHYTE: Right. That is our intention, really, is that we believe that some of the things that need to be looked at, as Vice Chair mentioned, is the hydrology, sediment transport, the amount of interchange that's happening. You know, we need to have the appropriate water chemistry restored.

Likewise, the depth of the ditches, the depth of the new borrow ditch, how the depth of the channels and the channel cross-sections have changed all needs to be looked at carefully in order to really recreate a system that functions as nature intended it to do, when it was existing prior to that.

So, we felt it was important to make clear it's not just about some water getting in and out of those channels. It needs to get in and out of there in an appropriate way, in which it will provide the functions.

CHAIR YOUNG: All right, thank you.

MS. WHYTE: And, likewise, the fish need

to get in and out of there, as well, is another consideration.

CHAIR YOUNG: Yeah.

MS. WHYTE: But the biota piece, as well, it needs to function for the biota.

CHAIR YOUNG: Okay. Are we ready for a motion?

(inaudible)

CHAIR YOUNG: I think by body language we're asking the Advisory Team the correct way to word the motion such that we capture the supplemental and the new language.

MR. COUPE: Just for purposes of clarification, I just want to walk through the changes as they were demonstrated in the supplement, just to make -- in the supplement, just to make sure that the Board's clear with those changes.

MS. WHYTE: I'll just -- Ben can walk the audience through those at the same time.

MR. COUPE: Great.

MS. WHYTE: He has that same document up there.

MR. COUPE: Great. If you don't mind doing that, I might stop you in one place or two,

but if you want to do that, that'd be great.

(whispering)

MR. MARTIN: Sorry, I'm not as familiar exactly which pages have them, but I know they're in red so when I see them, I'll stop.

(inaudible)

MS. TSAO: Could you state your name?

MR. COUPE: Let's start at the very beginning, on page 1. Okay, so if the Board was inclined to adopt the order what I would do, the first thing I would suggest, that's not here, is I would strike --

MS. WHYTE: I apologize, that is not the second revised version.

(inaudible)

MS. TSAO: Could new persons on the mic state their name just before they speak, please? Thank you.

MR. MARTIN: Yes, I'm Benjamin Martin. I took the oath earlier.

MS. DRABANDT: Hi, this is Laura Drabandt, again. And this version is not Item 7 Supplemental, but it does --

CHAIR YOUNG: Let's just walk through the Supplemental because everyone in the audience, if

that's okay with you, has access to it. It was on the table out front this morning.

MR. COUPE: Okay, so what we tried to do in the Supplemental is to make it clear that if the Board was inclined to adopt the order that it would no longer be a tentative order, obviously. And that we would have a specific order number assigned to it at the time of adoption. And that was the reason for the changes -- suggested changes in the header, which would also -- I would suggest striking the phrase "tentative order", so it just says "Adoption of Cleanup and Abatement Order Number R2-2-2016." And then we can just plug in the number, if the Board is inclined to adopt the order.

Just housekeeping, on top of page 2, in the header there's a reference to "Tentative Cleanup and Abatement Order." Again, the suggestion is to strike that phrase and just include whatever the order number is at the time that it's adopted, R2-2-2016, whatever that order number is, ultimately.

The next change that's specifically documented in the Supplemental is on page 3 and 4. This pertains to Findings 15 and 16. We went back

and took a look at the expert report. I think it was Appendix P. And based on a review of that -- or, actually, I'm sorry. These changes were in response to a suggested change from the Prosecution Team and we had no concerns with those suggested changes.

It's, in fact, Finding 17, on page 4, where you'll see some kind of lawyerly weasel words because we didn't feel like the finding was entirely representative of what the expert said in Appendix P.

So, you'll see "likely" or "could also" or "may." You know, I still think it sufficiently demonstrates that there are effects and impacts, but we just wanted to make it more consistent with the conclusions and what was actually said in Appendix P of the Export Report.

The next proposed suggested change is documented in the Supplemental is Subsection -- so, looking at page 14, under the Prohibitions -- oh, good, we did renumber those. That was something that had been -- somebody had brought that to our attention and we've gone ahead and renumbered that, accordingly, just to fix the typographical error.

We've already walked through the changes

that the Prosecution Team proposed, as to Provisions 2.a. -- yeah, 2.a, which includes the provision to the language and including the additional sentence about, “If the plan proposes any alteration to the site, then those alterations have to be addressed in the Mitigation and Monitoring Plan.”

CHAIR YOUNG: Does this have to be read into the -- should it be read into the record, the new version, right now?

MR. COUPE: We could certainly read it into the record. I certainly don’t have any concern with that. Why don’t --

CHAIR YOUNG: Let’s do it, in case someone’s listening to the audio.

MR. COUPE: Let’s go ahead and do that. So, I’m just referring to the proposed suggested changes that the Prosecution Team have made, pursuant to page 15 of the Order, Provision Section 1, 2, a.

And the first sentence will -- the suggested change has been to read, “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 Discharger's unauthorized activities. Including, one, restoring tidal flow into channels and ditches. Two, restoring tidal circulation throughout the interior of the site. And three, restoring overland tidal connection to the site's interior marsh during higher tides".

And then the next change doesn't appear until the end of that Paragraph A, a new sentence is added that reads, "If the Plan proposes any alteration of the site, such that it is not returned to preexisting conditions, such alterations must be addressed in the Mitigation and Monitoring Plan".

CHAIR YOUNG: Thank you.

MR. COUPE: And I think there was one other typo, just a housekeeping typo that we wanted to address, on Page 17 of the Proposed Order, as referenced in the Supplemental. Paragraph A, just changing "subsection" to "subdivision". And that's a nonsubstantive change.

(pause)

CHAIR YOUNG: Thank you. If the Board is ready, I will ask for a motion.

VICE CHAIR MCGRATH: I would move the

staff recommendation, as revised, both in the Supplemental and the Oral changes just given to us.

BOARD MEMBER OGBU: Second.

CHAIR YOUNG: All right. We've been discussing this now for some time, but we can discuss it some more if you wish. Is there any discussion post-motion?

No. Let's have a roll call vote then, please?

MS. TSAO: Board Member Ogbu?

BOARD MEMBER OGBU: Aye.

MS. TSAO: Board Member Muller?

BOARD MEMBER MULLER: Aye.

MS. TSAO: Vice Chair McGrath?

VICE CHAIR MCGRATH: Aye.

MS. TSAO: Chair Young?

CHAIR YOUNG: Aye.

So moved.

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of December, 2015.

Juliana Link

Juliana Link
CER-830

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 01 of September, 2016.

Barbara Little
Certified Transcriber
AAERT No. CET**D-520

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(Enforcement Penalty Methodology)

Exhibit 33

Executive Officer Summary Report, Enforcement Policy Penalty Methodology, December 14, 2011

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

EXECUTIVE OFFICER SUMMARY REPORT
MEETING DATE: DECEMBER 14, 2011

ITEM: **8**

SUBJECT: **Enforcement Policy Penalty Methodology -** Overview of the Methodology

DISCUSSION: This item provides the Board with an overview of the penalty methodology included in the State Board's Water Quality Enforcement Policy and some insights from the Board's advisory staff about the methodology. The Enforcement Policy requires a prescriptive methodology for calculating the amount of penalties to assess in Administrative Civil Liabilities (ACL) actions. Since the Policy's approval in 2010, there has not been a hearing on an ACL action before the Board. The purpose of this item is to prepare the Board for hearings on ACL actions that may occur in the near future, both to ensure that the Board understands how a penalty was calculated, but also so that if the Board decides to change a proposed penalty, the change will be consistent with the Enforcement Policy.

Having served as the Board's advisor on nearly all ACL actions, I will be providing this overview. As you may recall, ACL actions must adhere to a "separation of functions" process where a team of Board staff who has not been involved in investigating and prosecuting an enforcement case provides unbiased technical and legal advice to the Board, while a separate team of Board staff prosecutes the case by advocating for the proposed enforcement action. The Assistant Executive Officers have generally led the prosecution teams.

The accompanying Staff Report (Appendix A) summarizes the mechanics of the penalty methodology and provides supplemental information about its use including excerpts of the penalty methodology from the Enforcement Policy.

RECOMMEN-
DATION: No action is necessary, as this is an information item.

APPENDIX A: Staff Report on the Enforcement Policy Penalty Methodology

APPENDIX A

Matthew Rodriquez
Secretary for Environmental Protection

California Regional Water Quality Control Board
San Francisco Bay Region

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Edmund G. Brown Jr.
Governor

TO: Bruce H. Wolfe
Executive Office

FROM: Brian Thompson
Enforcement Coordinator

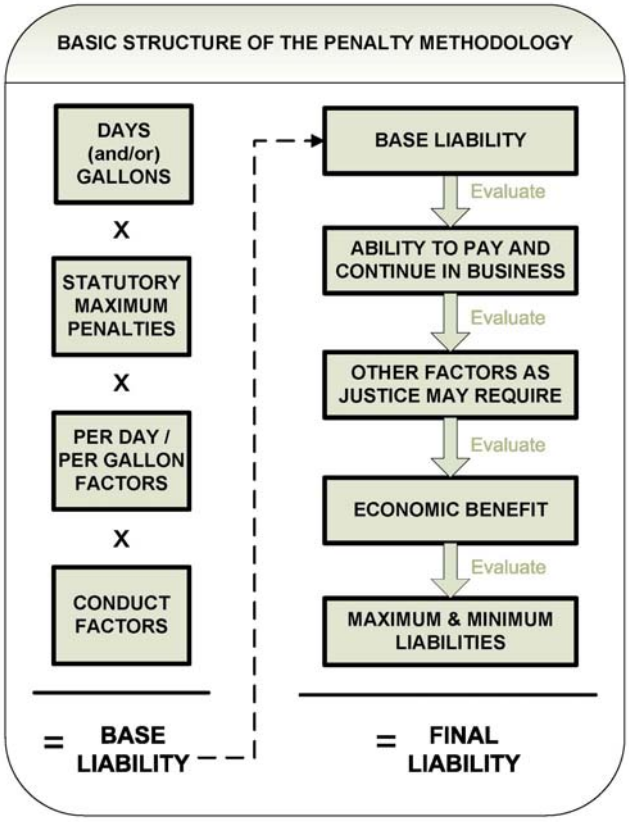
DATE: November 30, 2011

SUBJECT: **Enforcement Policy Penalty Methodology** – Summary of penalty methodology calculations and discussion of penalty factor assessments.

This staff report reviews how Administrative Civil Liabilities (ACLs) are calculated under the May 20, 2010, Water Quality Enforcement Policy (Enforcement Policy), it recommends an approach for changing a proposed ACL at a hearing, and it provides insight into some of the subjective penalty factors which may be contested during a hearing.

Basic Structure to the Penalty Methodology

There is a basic structure to the penalty methodology which shows the general "equation" for calculating an ACL. There are two parts to the calculation: (1) the steps taken to calculate a Base Liability; and (2) the steps taken to calculate the Final Liability (as illustrated below).



In general, the steps for calculating a Base Liability are based on factors associated with the violation (i.e., factors required by statute such as the nature, extent, gravity, and circumstances of the violation, toxicity of a discharge and its susceptibility to cleanup and abatement, discharger conduct, history of violations, etc.), and the steps for calculating the Final Liability consider other factors associated with the case (i.e., factors required by statue such as the discharger's ability to pay and continue in business, economic benefit, maximum and minimum penalties, etc.).

Penalty Factors Input into the Methodology

The functional part of the penalty methodology is the evaluation of penalty factors and the assessment of values which are input into the methodology to calculate an ACL. Within each step (or main factor) of the methodology, there are more specific penalty factors and sub-factors that are assessed to calculate the Base and Final Liabilities. For Base Liabilities, these factors are illustrated in the first two charts of Attachment A. The first chart is for non-discharge violations, which involve administrative- or procedural-type violations such as not obtaining a permit or submitting a report late, and the second chart is for discharge violations. For Final Liabilities, the factors are illustrated in the third chart. The factors input into the methodology are highlighted in these illustrations and, when applicable, there are page and table references to where the factor is discussed in the Enforcement Policy. For your convenience, a copy of the penalty methodology section of the Enforcement Policy (Section VI) is provided in Attachment B.

A Recommended Process for Changing a Proposed Liability

At an ACL hearing, the Board may decide to change a liability proposed by its Prosecution Team. Since adoption of the May 20, 2010, Enforcement Policy, modifications to a proposed liability must be explained and be compliant with the penalty methodology. Assuming that all facts surrounding the violation(s) are not in dispute, the following process is recommended for the Board and its advisory team to help facilitate this process.

1) Identify a penalty factor or factors that the Board wishes to modify based on hearing testimony.
2) Select an alternative input value.
3) Check the Enforcement Policy to ensure that the alternative value(s) remains within the allowable range and to verify that the definition is consistent with what was learned through hearing testimony.
4) Re-calculate the final liability and cross-check that the liability remains compliant with the Policy or statute (e.g., liability at least ten percent more than the economic benefit, and within minimum and maximum liabilities).

Supplemental Information about some of the Penalty Factors

There are some penalty factors that are conceptually similar but are evaluated separately in the methodology. The following penalty factors may, at times, be confused with another factor when discussing an alleged violation. Here are some additional thoughts about these penalty factors for your consideration.

"Potential for Harm" for Discharge Violations

The Potential for Harm factor for a discharge violation is the sum of three factors: Factors 1 + Factor 2 + Factor 3 (second chart, Attachment A).

Factors 1 and 2 both address harm associated with the discharge. For Factor 1, harm is evaluated by assessing the end result of the discharge (i.e., observed impacts or threat to the receiving water and beneficial uses). For Factor 2, harm is evaluated by assessing the risk associated with the material itself (i.e., the material poses an inherent risk based on the physical, chemical, biological, and thermal characteristics of the discharge). The main different between these two harm factors is that Factor 1 considers where, when, and how the discharge occurred, Factor 2 does not.

Factor 3 is an evaluation of how much of the discharge is susceptible to cleanup or abatement. The factor is assessed regardless of whether the discharge was actually cleaned up. The evaluation is based on whether 50 percent or more of the discharged material could be cleaned up or the effects abated. Credit for any actual cleanup is given in other steps of the methodology. These steps include the amount of gallons assessed in the Base Liability calculation, and the consideration of cleanup activities under the "Cleanup and Cooperation" conduct factor.

"Culpability"

Culpability is a penalty factor which considers fault of the discharger (e.g., if the was an intentional, negligent, or accidental violation). It is an evaluation of actions taken (or not taken) to cause a violation and the amount of responsibility the discharger bears. To help determine culpability, conduct may be compared to what a reasonable or prudent person would have done under similar circumstances, and it may compare operational procedures at a discharger's facility to professional standards or industry practices. The evaluation also considers extenuating circumstances or circumstances beyond the discharger's control which may have contributed to or caused the violation.

"Deviation from Requirement"

The Deviation from Requirement penalty factor is an evaluation of the effect of the violation on a legal requirement. For example, deviation may be considered minor when a discharger complies with most but not all of a permit provision and there is little difference between the noncompliance and what was intended by the legal requirement (i.e., effectiveness of the legal requirement remains generally intact). Deviation may be considered major when a discharger violates most or all of a requirement, such as when a discharge occurs in violation of a discharge prohibition, and there is a significant difference between the noncompliance and what was intended by the legal requirement (i.e., the legal requirement is rendered ineffective).

It should be noted that the Policy's description of Deviation from Requirement includes parenthetical consideration of a discharger's intent to help explain the requirement. We recommend that discharger intent be evaluated separately under the Culpability factor so as to not weigh this consideration twice.

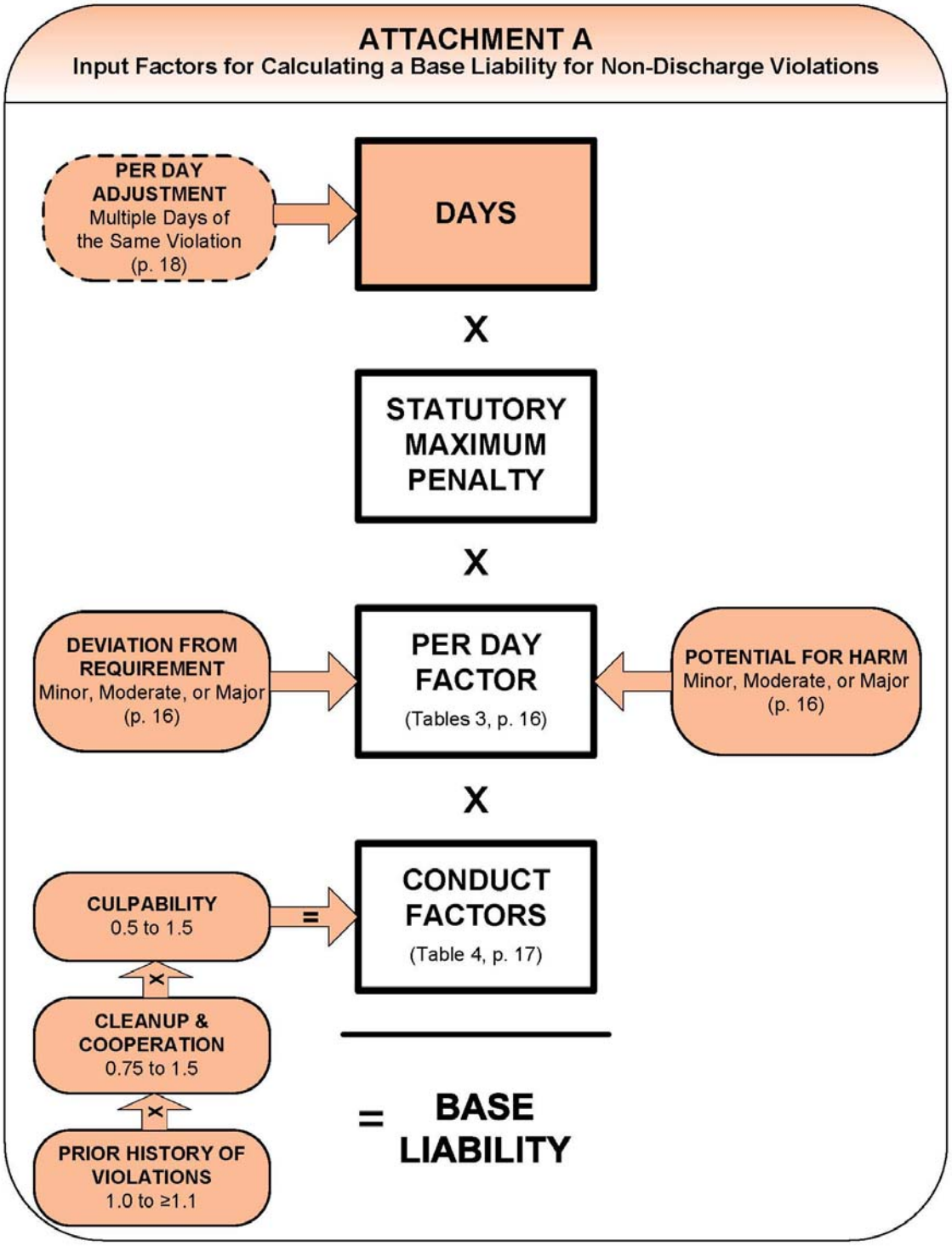
Final Thoughts

The Enforcement Policy requires that penalty assessments be derived through the penalty methodology. We hope this discussion of the methodology and its penalty factors is helpful to the Board and its advisory team. The attached information, in particular, may be useful tools to aid penalty methodology discussions during an ACL hearing by helping to quickly identify the primary adjustment dials in the methodology with a reference to where these dials are discussed in the Enforcement Policy.

Attachment A:
- Input Factors for Calculating a Base Liability for Non-Discharge Violations
- Input Factors for Calculating a Base Liability for Discharge Violations
- Factors to be Considered for the Final Liability Calculation

Attachment B:
- Enforcement Policy (Section VI), effective date May 20, 2010

ATTACHMENT A



Thick Border: Calculation step in methodology

Orange Fill: Penalty factor assessed in the methodology

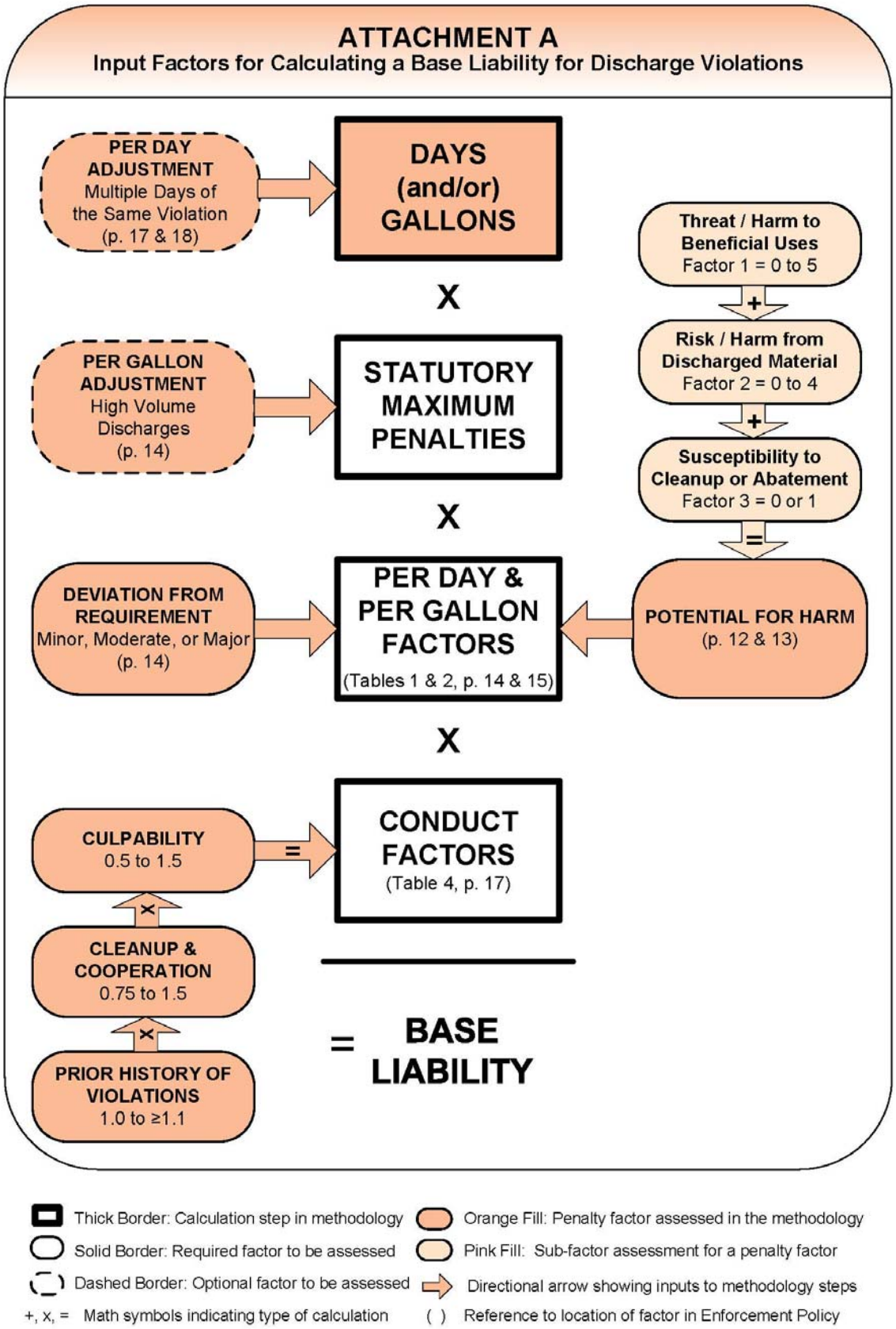
Solid Border: Required factor to be assessed

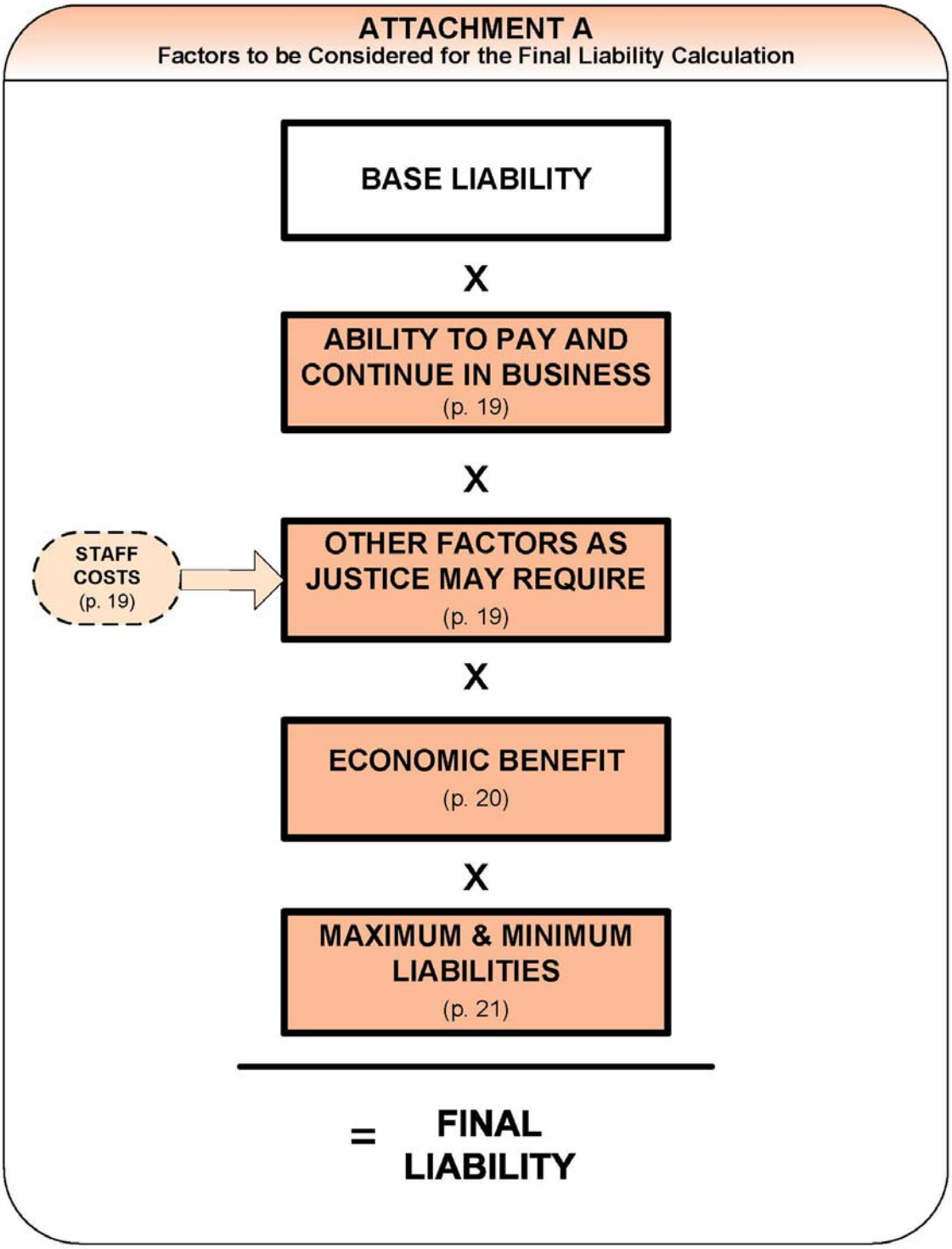
Directional arrow showing inputs to methodology steps

Dashed Border: Optional factor to be assessed

( ) Reference to location of factor in Enforcement Policy

+, x, = Math symbols indicating type of calculation


ATTACHMENT A
Input Factors for Calculating a Base Liability for Discharge Violations
PER DAY ADJUSTMENT
Multiple Days of the Same Violation
(p. 17 & 18)
DAYS (and/or) GALLONS
X
PER GALLON ADJUSTMENT
High Volume Discharges
(p. 14)
STATUTORY MAXIMUM PENALTIES
X
DEVIATION FROM REQUIREMENT
Minor, Moderate, or Major
(p. 14)
PER DAY & PER GALLON FACTORS
(Tables 1 & 2, p. 14 & 15)
X
CULPABILITY
0.5 to 1.5
=
CONDUCT FACTORS
(Table 4, p. 17)
x
CLEANUP & COOPERATION
0.75 to 1.5
x
PRIOR HISTORY OF VIOLATIONS
1.0 to ≥1.1
= BASE LIABILITY
Threat / Harm to Beneficial Uses
Factor 1 = 0 to 5
+
Risk / Harm from Discharged Material
Factor 2 = 0 to 4
+
Susceptibility to Cleanup or Abatement
Factor 3 = 0 or 1
=
POTENTIAL FOR HARM
(p. 12 & 13)
Thick Border: Calculation step in methodology
Solid Border: Required factor to be assessed
Dashed Border: Optional factor to be assessed
+, x, = Math symbols indicating type of calculation
Orange Fill: Penalty factor assessed in the methodology
Pink Fill: Sub-factor assessment for a penalty factor
Directional arrow showing inputs to methodology steps
( ) Reference to location of factor in Enforcement Policy



Thick Border: Calculation step in methodology
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+, x, = Math symbols indicating type of calculation
Orange Fill: Penalty factor assessed in the methodology
Pink Fill: Sub-factor assessment for a penalty factor
Directional arrow showing inputs to methodology steps
( ) Reference to location of factor in Enforcement Policy

ATTACHMENT B

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ENFORCEMENT POLICY

Effective May 20, 2010

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

any investigation and the Office of Enforcement will seek input from the Regional Water Board enforcement staff in the development of any resulting enforcement action. Such action may be brought before the State Water Board or the Regional Water Board, as may be deemed appropriate for the particular action. The decision as to where to bring the enforcement action will be discussed with the affected Regional Water Board enforcement staff. Enforcement actions requiring compliance monitoring or long-term regulatory follow-up will generally be brought before the appropriate Regional Water Board.

V.
COORDINATION WITH OTHER REGULATORY AGENCIES

A. Hazardous Waste Facilities

At hazardous waste facilities where the Regional Water Board is the lead agency for corrective action oversight, the Regional Water Board shall consult with Department of Toxics Substance Control (DTSC) to ensure, among other things, that corrective action is at least equivalent to the requirements of the Federal Resource, Conservation, and Recovery Act (RCRA).

B. Oil Spills

The Water Boards will consult and cooperate with the Office of Spill Prevention and Response at the Department of Fish and Game (OSPR) for any oil spill involving waters under the jurisdiction of OSPR.

C. General

The Water Boards will work cooperatively with other local, state, regional, and federal agencies when violations, for which the agency itself is not responsible, occur on lands owned or managed by the agency. Where appropriate, the Water Boards will also coordinate enforcement actions with other agencies that have concurrent enforcement authority.

VI.
MONETARY ASSESSMENTS IN ADMINISTRATIVE CIVIL LIABILITY (ACL) ACTIONS

A. Penalty Calculation Methodology

As a general matter, where, as in the California Water Code, a civil penalty structure has been devised to address environmental violations, civil penalties do not depend on proof of actual damages to the environment. Courts in reviewing similar environmental protection statutes have held that a plaintiff need not prove a loss before recovering a penalty; instead, the defendant must demonstrate that the penalty should be less than the statutory maximum. In certain cases, a strong argument can be made that consideration of the statutory factors can support the statutory maximum as an appropriate penalty for water quality violations, in the absence of any other mitigating evidence. Moreover, as discussed below, the Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code, § 13385, subd. (e).) Economic benefit or savings is a factor to be considered in determining the amount of other civil liabilities. (Wat. Code, § 13327.) The Water Boards have powerful liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.

While it is a goal of this Policy to establish broad consistency in the Water Boards' approach to enforcement, the Policy recognizes that, with respect to liability determinations, each Regional Water Board, and each specific case, is somewhat unique. The goal of this section is to provide a consistent approach and analysis of factors to determine administrative civil liability. Where violations are standard and routine, a consistent outcome can be reasonably expected using this Policy. In more complex matters, however, the need to assess all of the applicable factors in liability determinations may yield different outcomes in cases that may have many similar facts.

Liabilities imposed by the Water Boards are an important part of the Water Boards' enforcement authority. Accordingly, any assessment of administrative civil liability, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should:

- Be assessed in a fair and consistent manner;
- Fully eliminate any economic advantage obtained from noncompliance;[1]
- Fully eliminate any unfair competitive advantage obtained from noncompliance;
- Bear a reasonable relationship to the gravity of the violation and the harm to beneficial uses or regulatory program resulting from the violation;
- Deter the specific person(s) identified in the ACL from committing further violations; and
- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

The liability calculation process set forth in this chapter provides the decision-maker with a methodology for arriving at a liability amount consistent with these objectives. This process is applicable to determining administratively-adjudicated assessments as well as those obtained through settlement. In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will generally defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion.

The following provisions apply to all discretionary administrative civil liabilities (ACLs). Mandatory Minimum Penalties (MMPs) required pursuant to California Water Code section 13385, subdivisions (h) and (i), are discussed in Chapter VII.

General Approach

A brief summary of each step is provided immediately below. A more complete discussion of each step is presented later in this section.

<u>Step 1.</u> *Potential for Harm for Discharge Violations* – Calculate Potential for Harm considering: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement.

[1] When liability is imposed under California Water Code § 13385, Water Boards are statutorily obligated to recover, at a minimum, all economic benefit to the violator as a result of the violation.

Step 2. *Per Gallon and Per Day Assessments for Discharge Violations* – For discharges resulting in violations, use Table 1 and/or Table 2 to determine Per Gallon and/or Per Day Assessments. Depending on the particular language of the ACL statute being used, either or both tables may be used. Multiply these factors by per gallon and/or per day amounts as described below. Where allowed by code, both amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

Step 3. *Per Day Assessments for non-Discharge Violations* – For non-discharge violations, use Table 3 to determine per day assessments. Multiply these factors by the per day amount as described below. Where allowed by the California Water Code, amounts for these violations should be added to amounts (if any) for discharge violations from Step 2, above. This becomes the initial amount of the ACL for the non-discharge violations.

Step 4. *Adjustment Factors* – Adjust the initial amounts for each violation by factors addressing the violator's conduct, multiple instances of the same violation, and multiple day violations.

Step 5. *Total Base Liability Amount* – Add the adjusted amounts for each violation from Step 4.

Thereafter, the Total Base Liability amount may be adjusted, based on consideration of the following:

Step 6. *Ability to Pay and Ability to Continue in Business* – If the ACL exceeds these amounts, it may be adjusted downward provided express findings are made to justify this.

Step 7. *Other Factors as Justice May Require* – Determine if there are additional factors that should be considered that would justify an increase or a reduction in the Total Base Liability amount. These factors must be documented in the ACL Complaint. One of these factors is the staff costs of investigating the violations and issuing the ACL. The staff costs should be added to the amount of the ACL.

Step 8. *Economic Benefit* – The economic benefit of the violations must be determined based on the best available information, and the amount of the ACL should exceed this amount. (Note that the Economic Benefit is a statutory minimum for ACLs issued pursuant to California Water Code section 13385.)

Step 9. *Maximum and Minimum Liability Amounts* - Determine the statutory maximum and minimum amounts of the ACL, if any. Adjust the ACL to ensure it is within these limits.

Step 10. *Final Liability Amount* – The final liability amount will be assessed after consideration of the above factors. The final liability amount and significant considerations regarding the liability amount must be discussed in the ACL Complaint and in any order imposing liability.

STEP 1 - Potential for Harm for Discharge Violations

Calculating this factor is the initial step for discharge violations. Begin by determining the actual or threatened impact to beneficial uses caused by the violation using a three-factor scoring

system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations.

Factor 1: Harm or Potential Harm to Beneficial Uses

The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

0 = Negligible - no actual or potential harm to beneficial uses.

1 = Minor - low threat to beneficial uses (i.e., no observed impacts but potential impacts to beneficial uses with no appreciable harm).

2 = Below moderate – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

3 = Moderate - moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects).

4 = Above moderate – more than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), and human or ecological health concerns).

5 = Major - high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health).

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The characteristics of this discharge factor are scored based on the physical, chemical, biological, and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material, as outlined below. For purposes of this Policy, "potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways.

0 = Discharged material poses a negligible risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are benign and will not impact potential receptors).

1 = Discharged material poses only minor risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are relatively benign or are not likely to harm potential receptors).

2 = Discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).

3 = Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and /or there is substantial concern regarding receptor protection).

4 = Discharged material poses a significant risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material far exceed risk factors or receptor harm is considered imminent).

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the violator.

Final Score – "Potential for Harm"

The scores for the factors are then added to provide a Potential for Harm score for each violation or group of violations. The total score is used in the "Potential for Harm" axis for the Penalty Factor in Tables 1 and 2. The maximum score is 10 and the minimum score is 0.

STEP 2 - Assessments for Discharge Violations

For violations of NPDES permit effluent limitations, the base liability should be established by calculating the mandatory penalty required under Water Code section 13385(h) and (i). The mandatory penalty should be adjusted upward where the facts and circumstances of the violation warrant a higher liability.

This step addresses per gallon and per day assessments for discharge violations. Generally, it is intended that effluent limit violations be addressed on a per day basis only. Where deemed appropriate, such as for a large scale spill or release, both per gallon and per day assessments may be considered.

Per Gallon Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 1 below to determine a Per Gallon Factor for the discharge. Except for certain high-volume discharges discussed below, the per gallon assessment would then be the Per Gallon Factor multiplied by the number of gallons subject to penalty multiplied by the maximum per gallon penalty amount allowed under the California Water Code.

TABLE 1 - Per Gallon Factor for Discharges

	Potential for Harm									
Deviation from Requirement	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. The categories for **Deviation from Requirement** in Table 1 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved.

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of its adverse impact on the effectiveness of the most significant requirement.

High Volume Discharges

The Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved. Since the volume of sewage spills and releases of stormwater from construction sites and municipalities can be very large for sewage spills and releases of municipal stormwater or stormwater from construction sites, a maximum amount of $2.00 per gallon should be used with the above factor to determine the per gallon amount for sewage spills and stormwater. Similarly, for releases of recycled water that has been treated for reuse, a maximum amount of $1.00 per gallon should be used with the above factor. Where reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses, a higher amount, up to the maximum per gallon amount, may be used.

Per Day Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 2, below, to determine a Per Day Factor for the violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. Generally, it is intended that effluent limit violations be addressed on a per day basis. Where deemed appropriate, such

as for a large scale spill or release, it is intended that Table 2 be used in conjunction with Table 1, so that both per gallon and per day amounts be considered under Water Code section 13385. Where there is a violation of the permit not related to a discharge incident, Step 3/Table 3 below should be used instead.

TABLE 2 - Per Day Factor for Discharges

	Potential for Harm									
Deviation from Requirement	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The categories for **Deviation from** Requirement in Table 2 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

The Water Boards shall apply the above per day factor to the maximum per day amounts allowed under statute for the violations involved. Where allowed by code, both the per gallon and the per day amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

STEP 3 - Per Day Assessments for Non-Discharge Violations

The Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not limited to, the failure to conduct routine monitoring and reporting, the failure to provide required information, and the failure to prepare required plans. While these violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. The Water Boards shall use the matrix set forth below to determine the initial liability factor for each violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. For multiple day violations, please refer to the Adjustment Factors in Step 4, below.

Table 3 shall be used to determine the initial penalty factor for a violation. The Water Boards should select a penalty factor from the range provided in the matrix cell that corresponds to the appropriate Potential for Harm and the Deviation from Requirement categories. The numbers in parenthesis in each cell of the matrix are the midpoints of the range.

TABLE 3 - Per Day Factor

	Potential for Harm		
Deviation from Requirement	Minor	Moderate	Major
Minor	0.1 (0.15) 0.2	0.2 (0.25) 0.3	0.3 (0.35) 0.4
Moderate	0.2 (0.25) 0.3	0.3 (0.35) 0.4	0.4 (0.55) 0.7
Major	0.3 (0.35) 0.4	0.4 (0.55) 0.7	0.7 (0.85) 1

The categories for **Potential for Harm** in Table 3 are:

Minor – The characteristics of the violation present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.

Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.

Major –The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

The categories for **Deviation from** Requirement in Table 3 are:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

For any given requirement, the Deviation from Requirements may vary. For example, if a facility does not have a required response plan or has not submitted a required monitoring report, the deviation would be major. If a facility has a prepared a required plan or submitted the required monitoring report, but significant elements are omitted or missing, the deviation would be moderate. If a facility has a required plan or submitted the required monitoring report with only minor elements missing, the deviation would be minor.

STEP 4 – Adjustment Factors

Violator's Conduct Factors

There are three additional factors that should be considered for modification of the amount of the initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. Not all factors will apply in every liability assessment.

TABLE 4 – Violator's Conduct Factors

Factor	Adjustment
Culpability	Discharger's degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances. Adjustment should result in a multiplier between **0.5 to 1.5**, with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior.
Cleanup and Cooperation	Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should result in a multiplier between **0.75 to 1.5,** with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent.
History of Violations	Prior history of violations. Where there is a history of repeat violations, a minimum multiplier of **1.1** should be used to reflect this.

After each of the above factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Multiple Violations Resulting From the Same Incident

By statute, certain situations that involve multiple violations are treated as a single violation per day, such as a single operational upset that leads to simultaneous violations of more than one pollutant parameter. (Water Code § 13385, sub. (f)(1).) For situations not addressed by statute, a single base liability amount can also be assessed for multiple violations at the discretion of the Water Boards, under the following circumstances:

a. The facility has violated the same requirement at one or more locations within the facility;

b. A single operational upset where violations occur on multiple days;

c. The violation continues for more than one day;

d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the Water Boards may consider the extent of the violation in terms of the most egregious violation;

e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three distinct violations that may be addressed with a single base liability amount.

If the violations do not fit the above categories, each instance of the same violation shall be calculated as a separate violation.

Except where statutorily required, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Multiple Day Violations

For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Board must make express findings that the violation:

a. Is not causing daily detrimental impacts to the environment or the regulatory program;

b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,

c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation. For example, a violation lasting sixty-two (62) days would accrue a total of 8 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, and 60. Similarly, a violation lasting ninety-nine (99) days would accrue a total of 9 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, and 90.

<u>STEP 5 – Determination of Total Base Liability Amount</u>

The Total Base Liability Amount will be determined by adding the amounts above for each violation, though this may be adjusted for multiple day violations as noted above. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

STEP 6 – Ability to Pay and Ability to Continue in Business

If the Water Boards have sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violators ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

The ability of a discharger to pay an ACL is determined by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring its operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, the amount of the assessment may be reduced on the grounds of ability to pay. For a violation addressed pursuant to California Water Code section 13385, the adjustment for ability to pay and ability to continue in business can not reduce the liability to less than the economic benefit amount.

If staff anticipates that the discharger's ability to pay or ability to continue in business will be a contested issue in the proceeding, staff should conduct a simple preliminary asset search prior to issuing the ACL complaint. Staff should submit a summary of the results (typically as a finding in the Complaint or as part of staff's initial transmittal of evidence to the discharger), in order to put some evidence about these factors into the record for the proceeding and to give the discharger an opportunity to submit additional financial evidence if it chooses. If staff does not put any financial evidence into the record initially and the discharger later contests the issue, staff may then either choose to rebut any financial evidence submitted by the discharger, or submit some financial evidence and provide an opportunity for the discharger to submit its own rebuttal evidence. In some cases, this may necessitate a continuance of the proceeding to provide the discharger with a reasonable opportunity to rebut the staff's evidence. As a general practice, in order to maintain the transparency and legitimacy of the Water Boards' enforcement programs, any financial evidence that the discharger chooses to submit in an enforcement proceeding will generally be treated as a public record.

STEP 7 – Other Factors As Justice May Require

If the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express finding are made to justify this. Examples of circumstances warranting an adjustment under this step are:

a. The discharger has provided, or Water Board staff has identified, other pertinent information not previously considered that indicates a higher or lower amount is justified.

b. A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular disadvantaged group.

c. The calculated amount is entirely disproportionate to assessments for similar conduct made in the recent past using the same Enforcement Policy.

Costs of Investigation and Enforcement Adjustment

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. These costs may include the cost of investigating the violation, preparing the enforcement action, participating in settlement negotiations, and putting on a hearing, including any expert witness expenses. Such costs are the total costs incurred by

the Water Boards enforcement or prosecution staff, including legal costs that are reasonably attributable to the enforcement action. Costs include the total financial impact on the staff of the Water Board, not just wages, and should include benefits and other indirect overhead costs.

STEP 8 – Economic Benefit

The Economic Benefit Amount shall be estimated for every violation. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as BMPs), or did not take other measures needed to prevent the violations, the economic benefit may be substantial. Economic benefit should be calculated as follows:

a. Determine those actions required to comply with a permit or order of the Water Boards, an enforcement order, or an approved facility plan, or that were necessary in the exercise of reasonable care, to prevent a violation of the Water Code. Needed actions may have been such things as capital improvements to the discharger's treatment system, implementation of adequate BMPs, or the introduction of procedures to improve management of the treatment system.

b. Determine when and/or how often these actions should have been taken as specified in the order or approved facility plan, or as necessary to exercise reasonable care, in order to prevent the violation.

c. Estimate the type and cost of these actions. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of noncompliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.

d. Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of noncompliance. This calculation should be done using the USEPA's BEN [2]computer program (the most recent

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[2] USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an

(Continued)

version is accessible at http://www.waterboards.ca.gov/plnspols/docs/wqplans/benmanual.pdf) unless the Water Board determines, or the discharger demonstrates to the satisfaction of the Water Board, that, based on case-specific factors, an alternate method is more appropriate for a particular situation. However, in more complex cases, such as where the economic benefit may include revenues from continuing production when equipment used to treat discharges should have been shut down for repair or replacement, the total economic benefit should be determined by experts available from the Office of Research Planning and Performance or outside experts retained by the enforcement staff.

e. Determine whether the discharger has gained any other economic benefits. These may include income from continuing production when equipment used to treat discharges should have been shut down for repair or replacement.

The Water Boards should not adjust the economic benefit for expenditures by the discharger to abate the effects of the unauthorized conduct or discharge, or the costs to come into or return to compliance. In fact, the costs of abatement may be a factor that demonstrates the economic extent of the harm from the violation and, therefore, may be a factor in upwardly adjusting any monetary liability as a benefit from noncompliance. The discharger's conduct relating to abatement is appropriately considered under "cleanup and cooperation" liability factor.

The Economic Benefit Amount should be compared to the adjusted Total Base Liability Amount. The adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

STEP 9 – Maximum and Minimum Liability Amounts

For all violations, the statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed, and shall be described in any ACL complaint and in any order imposing liability. Where the amount proposed for a particular violation exceeds to statutory maximum, the amount must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed unless there is a specific provision that allows assessment below the minimum. In such cases, the reasons for assigning a liability amount below this minimum must be documented in the resolution adopting the ACL.

STEP 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

The administrative record must reflect how the Water Board arrived at the final liability amount. In particular, where adjustments are made to the initial amount proposed in the ACL complaint, the record should clearly reflect the Water Board's considerations, as the staff report or complaint may not reflect those considerations, or for any adjustments that are made at hearing

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average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

that are different from those recommended in the ACL complaint or that further support the final liability amount in the administrative civil liability order.

B. Settlement Considerations

The liabilities resulting from the above methodology are for adoption by the Water Boards after formal administrative proceedings. The calculated liabilities may be adjusted as a result of settlement negotiations with a violator. It is not the goal of the Enforcement Policy to address the full range of considerations that should be entertained as part of a settlement. It is appropriate to adjust the administrative civil liabilities calculated pursuant to the methodology in consideration of hearing and/or litigation risks including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses in the enforcement action that the prosecution reasonably believes may adversely affect the team's ability to obtain the calculated liability from the administrative hearing body. Ordinarily, these factors will not be fully known until after the issuance of an administrative civil liability complaint or through pre-filing settlement negotiations with an alleged violator. These factors shall be generally identified in any settlement of an administrative civil liability that seeks approval by a Water Board or its designated representative.

Factors that should not affect the amount of the calculated civil liability sought from a violator in settlement include, but are not limited to, the following:

1. A general desire to avoid hearing or minimize enforcement costs;

2. A belief that members of a Water Board will not support a proposed liability before that Water Board has considered the specific merits of the enforcement case or a similar case;

3. A desire to avoid controversial matters;

4. The fact that the initiation of the enforcement action is not as timely as it might have been under ideal circumstances (timeliness of the action as it affects the ability to present evidence or other timeliness considerations are properly considered); or

5. The fact that a water body affected by the violation is already polluted or impaired.

Except as specifically addressed in this Policy, nothing in this Policy is intended to limit the use of Government Code 11415.60

C. Other Administrative Civil Liability Settlement Components

In addition to a reduction of administrative civil liabilities, a settlement can result in the permanent suspension of a portion of the liability in exchange for the performance of a Supplemental Environmental Project (see the State Water Board's Water Quality Control Policy on Supplemental Environmental Projects) or an Enhanced Compliance Action (see Section IX).

As far as the scope of the settlement is involved, the settlement resolves only the claims that are made or could have been made based on the specific facts alleged in the ACL complaint. A settlement shall never include the release of any unknown claims or a waiver of rights under Civil Code section 1542.

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(Ability to Pay and Economic Benefit)

Exhibit 34

34a. Ability to Pay Supporting Evidence, Bryan Elder, August 29, 2016

34b. Economic Benefit Supporting Evidence, Bryan Elder, September 1, 2016

34c. Dredge and Fill Calculator, Agnes Farres, September 1, 2016

34a. Ability to Pay Supporting Evidence, Bryan Elder, August 29, 2016

Assessor's Assessment Number	
0090-020-010	**No Situs record on file**

Property Information			
Acres	51.51	**Exemption**	$0
Lot Size	2,243,775	**Census**	2527.020
Tac	60003	**Tac Change No.**	0
Tac Last Year	60003	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Zoning Information			
Acres	51.51	**Tax Rate Area**	60003
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	CV19850022
			n/a
Ag Preserve	n/a	**Land Division number**	n/a
Ag Preserve Status	No status on file	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60003	60003	60003	60003	60003
Tac Last Year	60003	60003	60003	60003	60003
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$162,339	$159,901	$156,769	$156,060	$153,000
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$162,339**	**$159,901**	**$156,769**	**$156,060**	**$153,000**

Printable Version

Important:

ONLINE REPORT

This is NOT a CONSUMER REPORT and does not constitute a "consumer report" under the Fair Credit Reporting Act ("FCRA"). This report may not be used to determine the eligibility for credit, insurance, employment or any other purpose regulated under the FCRA.

This system may be used only in accordance with your Subscriber Agreement, the Gramm-Leach-Bliley Act ("GLBA"), the Driver's Privacy Protection Act ("DPPA") and all other applicable laws. User agrees to having knowledge of all applicable laws pertaining to the usage of data. User accepts all responsibility civilly and criminally for any use of this system.

Violations of these restrictions or misuse of this system will cause your access to be terminated and will cause an immediate investigation.

Business Report

Business Report
Date: 08/24/2016

Subject Information

Reference ID: **NONE**

Names: **POINT BUCKLER CLUB LLC**
POINT BUCKLER CLUB, LLC

Address: **171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)**

Phone: **(415) 686-0907 (PT)**

Link Number: **182870900**
D-U-N-S® Number: **03-657-4180**
FEIN: **None Found**
Industry: **79970000 - Membership Sports And Recreation Clubs**

Indicators

Global Watch Lists Match: **No**

Principals (2 Found)

JOHN SWEENEY (78) [View Person Record]
ASSISTANT TREASURER; CHIEF EXECUTIVE OFFICER; MANAGER; MEMBER; OWNER; PRIN; PRINCIPAL; REGISTERED AGENT
171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)
JOHN SWEENEY (78) [View Person Record]
ASSISTANT TREASURER; CHIEF EXECUTIVE OFFICER; MANAGER; MEMBER; OWNER; PRIN; PRINCIPAL; REGISTERED AGENT
171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)
JOHN SWEENEY (46) [View Person Record]
ASSISTANT TREASURER; CHIEF EXECUTIVE OFFICER; MANAGER; MEMBER; OWNER; PRIN; PRINCIPAL; REGISTERED AGENT
171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)
JOHN SWEENEY (46) [View Person Record]
ASSISTANT TREASURER; CHIEF EXECUTIVE OFFICER; MANAGER; MEMBER; OWNER; PRIN; PRINCIPAL; REGISTERED AGENT
171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)

Subsidiaries (None Found)

Other Phones at Address (None Found)

Other Businesses at Address (2 Found)

CHIPPS ISLAND SPORT AND SOCIAL CLUB, LLC (Primary)
Link Number: 89577255

SAN FRANCISCO CUP CLASS (Primary)
SAN FRANCISCO CUP CLASS, LLC (Primary)
Link Number: 13259420

Corporations (1 Found)

Incorporation State: **CA**
POINT BUCKLER CLUB, LLC (Primary)
Address: **171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)**
Filing Number: **201428210040**
Link Number: 182870900
D-U-N-S® Number: 03-657-4180
Filing Office Link Number: 1807680030
Filing Office D-U-N-S® Number: 36-153-6006
Corporation Type: **Corporation**
Address Type: **Business**
Registration Type: **Limited Liability Company**
Verification Date: **11/28/2014**
Filing Date: **10/07/2014**
Date First Seen: **10/14/2014**
Date Last Seen: **12/09/2014**
Received Date: **12/01/2014**
Filing Office Name: **BUSINESS PROGRAMS DIVISION**
Filing Office Address: **1500 11TH ST FL 3, SACRAMENTO, CA 95814-5701 (SACRAMENTO COUNTY)**
File Date: **12/10/2014**
Sec Status: **Active**

Corporate Officers and Directors
JOHN DONNELLY SWEENEY , Title: **Other, MANAGER/MEMBER** [View Person Record]
171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)
JOHN DONNELLY SWEENEY , Title: **Registered Agent** [View Person Record]
171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)

Other Corporations at Address (2 Found)

LOST ISLANDS, INC. (Primary)
Incorporated In: **California**
Status: **Active**

POINT BUCKLER CLUB, LLC (Primary) [View Business Record]
Incorporated In: **California**
Status: **Active**

Global Watch Lists (None Found)

Property Deeds (2 Found)

FIPSCounty: **095**
APN: **0090-020-010**
APN Sequence Number: **001**
Owner Is Corporate Flag: **Yes - Corporation**
Lender Name: **JOHN D SWEENEY**
Business Name: **POINT BUCKLER CLUB LLC**
Owner Ownership Rights Code: **Company/Corporation**
Address: **CA (SOLANO COUNTY)**
Mailing Address: 171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)
Mail Carrier Route: **C003**
Batch Id: **20151215**
Batch Sequence: **00105**
Sale Date: **11/20/2015**
Recording Date: **12/09/2015**
Mortgage Date: **11/20/2015**
Document Type Code: **Deed of Trust**
Transaction Type Code: **Refinance**
Document Number: **000000110180**
Title Company Code: **00000**
Mortgage Amount: **$1,200,000**
Mortgage Loan Type Code: **Private Party Lender**
Mortgage Deed Type Code: **Deed of Trust**
Pri Cat Code: **Non Purchase**
Mtg Sec Cat Codes: **Private Party, Fixed, Refinance**
Universal Land Use Code: **Waste Land**
Property Indicator Code: **Vacant**
Private Party LenderFlag: **Y**
Refi Flag Code: **Loan to Value is More Than 50%**
Residential Model Indicator Flag: **Based On Zip Code and Value Property is Not Residential**
Record Type Code: **New Record**

FIPSCounty: **095**

APN: **0090-020-010**
APN Sequence Number: **001**
Owner Is Corporate Flag: **Yes - Corporation**
Business Name: **POINT BUCKLER CLUB LLC**
Owner Ownership Rights Code: **Company/Corporation**
Address: **CA (SOLANO COUNTY)**
Mailing Address: 171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)
Mail Carrier Route: **C003**
Batch Id: **20141031**
Batch Sequence: **00060**
Seller Name Or Plaintiff: **SWEENEY JOHN**
Sale Date: **10/27/2014**
Recording Date: **10/27/2014**
Document Type Code: **Deed**
Transaction Type Code: **Nominal**
Document Number: **000000082755**
Title Company Code: **00000**
Pri Cat Code: **Non Arms Length - Purchase**
Deed Sec Cat Codes: **Interfamily Transfer, Resale**
Universal Land Use Code: **Waste Land**
Property Indicator Code: **Vacant**
Inter Family Flag: **Yes**
Resale New Construction Code: **Resale**
Mortgage Information not available
Residential Model Indicator Flag: **Based On Zip Code and Value Property is Not Residential**
Record Type Code: **New Record**

Property Assessments (2 Found)

Assessed Year: **2016**
CA (SOLANO COUNTY)
FIPS County: **095**
APN: **0090-020-010**
APN Sequence Number: **001**
Range: **01W**
Township: **03N**
Section: **18**
Zoning: **MP MARSH P**
Property Indicator Code: **Vacant**
Municipality Name: **UNINCORPORATED**
Subdivision Name: **ANNIE MASON POINT**
Mailing Address: 171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)
Mail Carrier Route: **C003**
Owner Corporate Indicator Flag: **Yes - Owner is A Corporation**
Total Value Calculated: **$162,339**
Land Value Calculated: **$162,339**
Total Value Calculated Flag: **Assessed Value**
Land Value Calculated Flag: **Assessed Value**
Improvement Value Calculated Flag: **Assessed Value**
Assessed Total Value: **$162,339**
Assessed Land Value: **$162,339**
Tax Amount: **$1,753.68**
Tax Year: **2015**
Tax Code Area: **060003**
Recording Date: **04/21/2011**
Sale Date: **04/19/2011**
Sale Amount: **$150,000**
Seller Name: **TORRES CYNTHIA V**
Sales Transaction Type Code: **Resale**
Title Company Code: **440**
Title Company Name: **OLD REPUBLIC TITLE**
Residential Model Indicator Flag: **Property is Residential**
Prior Sale Recording Date: **12/17/2004**
Prior Sale Date: **07/27/2004**
Prior Sale Amount: **$150,000**
Prior Sale Mortgage Amount: **$125,000**
Prior Sale Code: **Full Sale**
Prior Sale Transaction Type Code: **Resale**
Prior Sale Document Type Code: **Deed**
Acres: **51.51**
Land Square Footage: **2243775**
Location Influence Code: **Water Front**

Assessed Year: **2015**

CA (SOLANO COUNTY)
FIPS County: **095**
APN: **0090-020-010**
APN Sequence Number: **001**
Range: **01W**
Township: **03N**
Section: **18**
Zoning: **MP MARSH P**
Property Indicator Code: **Vacant**
Municipality Name: **UNINCORPORATED**
Subdivision Name: **ANNIE MASON POINT**
Mailing Address: 171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)
Mail Carrier Route: **C003**
Owner Corporate Indicator Flag: **Yes - Owner is A Corporation**
Total Value Calculated: **$159,901**
Land Value Calculated: **$159,901**
Total Value Calculated Flag: **Assessed Value**
Land Value Calculated Flag: **Assessed Value**
Improvement Value Calculated Flag: **Assessed Value**
Assessed Total Value: **$159,901**
Assessed Land Value: **$159,901**
Tax Amount: **$1,737.66**
Tax Year: **2014**
Tax Code Area: **060003**
Recording Date: **04/21/2011**
Sale Date: **04/19/2011**
Sale Amount: **$150,000**
Seller Name: **TORRES CYNTHIA V**
Sales Transaction Type Code: **Resale**
Title Company Code: **440**
Title Company Name: **OLD REPUBLIC TITLE**
Residential Model Indicator Flag: **Property is Residential**
Prior Sale Recording Date: **12/17/2004**
Prior Sale Date: **07/27/2004**
Prior Sale Amount: **$150,000**
Prior Sale Mortgage Amount: **$125,000**
Prior Sale Code: **Full Sale**
Prior Sale Document Type Code: **Deed**
Acres: **51.51**
Land Square Footage: **2243775**
Location Influence Code: **Water Front**

Property Foreclosures (None Found)
Evictions (None Found)
Current Vehicle Information (None Found)
Past Vehicle Information (None Found)
Aircraft Records (None Found)
Bankruptcy Filings (None Found)
Liens (None Found)
Judgments (None Found)
UCC Filings (1 Found)

Filing Type: **Original**
Filing Number: **157499730702**
Filing Date: **12/08/2015**
Filing Time: **17:00:00**
Expiration Date: **12/08/2020**
Filing Office Name: **SECRETARY OF STATE/UCC DIVISION**
Filing Office Address: 1500 - 11TH STREET RM 205, SACRAMENTO, CA 95814 (SACRAMENTO COUNTY)

Debtor: Business Name: **POINT BUCKLER CLUB, LLC**
Name: **POINT BUCKLER CLUB LLC**
Address: 171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)

Secured Party: Business Name: **SWEENEY, JOHN DONNELLY**
Name: **JOHN DONNELLY SWEENEY**
DOB: **02/13/1938**
Address: 171 SANDPIPER DR, PITTSBURG, CA 94565-2081 (CONTRA COSTA COUNTY)

Collateral Items: Type: **Fixtures And Proceeds**
Type: **General Intangible(s) And Proceeds**
Type: **Account(s) And Proceeds**
Type: **Building(s) And Proceeds**

Other Known Employees (None Found)
Possible Current and Former Employees (None Found)

CHIPPS ISLAND

CALIFORNIA DELTA 734 ACRES FOR SALE
PRIVATE KITEBOARD ISLAND NEAR SHERMAN ISLAND
$18,350,000.00 USD

KITEBOARDING CHIPPS

Located a mile from Pittsburg Marina Chipps Island is about 6 miles upwind from Sherman Island. With big waves on the main river to protected slicks and ponds Chipps offers endless kiteboarding terrain.

Chipps Island California...

OPPORTUNITY

RESTORE THE 734 ACRE ISLAND TO MEET FISH AND KITE HABITAT GOALS. BUILD NEW CLUBHOUSES AND INFRASTRUCTURE ON THIS MASSIVE ISLAND. COMPLETE WITH PG@E SERVICE, THE ISLAND CAN BE TRANSFORMED INTO A KITE CAMP. ONLY 12 MINUTES BY HELICOPTER FROM SILICON VALLEY. THIS RARE OPPORTUNITY TO BUY THE LAST LARGE PRIVATE ISLAND NEAR SHERMAN ISLAND SHOULD BE CONSIDERED FOR ANY BILLIONAIRES REAL ESTATE PORTFOLIO. 8 SEPARATELY DEEDED CLUBS WITH MANAGEMENT PLANS FOR WATERFOWL HUNTING AND CLUBHOUSES.

CHIPPS ISLAND SALMON CANNERY 1879-1902

In the late 1800's Chipps Island became the largest Salmon Cannery on the West Coast owned by the Sacramento River Packers Association. Using gill nets across the delta between Pittsburg and Chipps the cannery wiped out the Salmon populations in the Delta by the early 1900s. It employed 2000 day workers and even had a hotel and store. It closed in 1902.

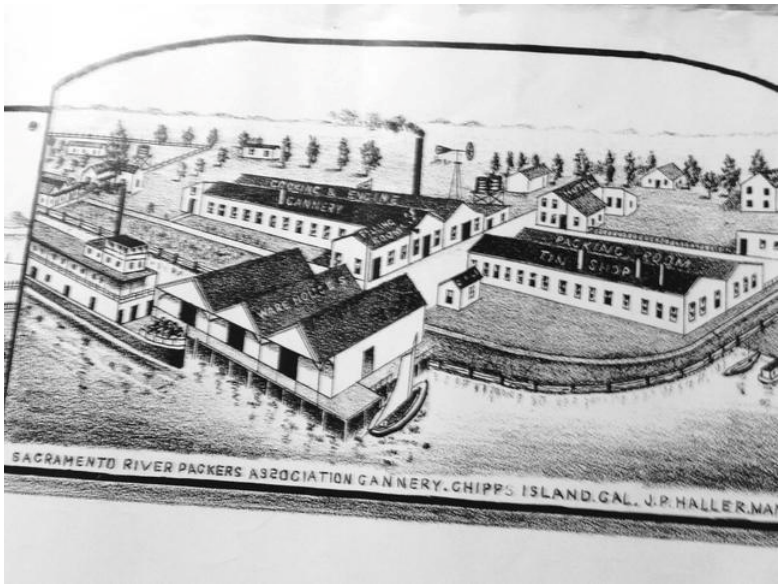
CHIPPS ISLAND ELECTRIC TRAIN 1890-1926

1996- 2001 FISHERIES FOUNDATION PLAN CHIPPS ISLAND HATCHERY

In 1996 The Fisheries Foundation Purchased 400 Acres of the 734 Acres for a Fish Restoration and Hatchery project. After many studies and attempts to secure funding the project failed and Chipps Island became a duck club yet again. The relevance of the project has only been magnified by the draught and the severe declines in all fish species. Modernizing the Fisheries Foundations findings and applying modern science would give the Delta the only fish centric hatchery and spawning site. The study can be viewed at this link:

CHIPPS ISLAND

CALIFORNIA DELTA 734 ACRES FOR SALE
PRIVATE KITEBOARD ISLAND NEAR SHERMAN ISLAND
$18,350,000.00 USD



PRIVATE KITE ISLAND FOR SALE CALIFORNIA DELTA

CHIPPS ISLAND IS THE LAST PRIVATE ISLAND IN THE WIND CORRIDOR BETWEEN SHERMAN ISLAND AND GRIZZLY BAY. EIGHT INDIVIDUAL PARCELS COULD ALLOW FOR NEW DWELLINGS AND COMPOUNDS. A PRIME FISH RESTORATION SITE, OFFSET HIGH END FACILITIES WITH ONSITE MITIGATION. TWO MILES OF DEEP WATER ACCESS AND SOME OF THE BEST KITEBOARDING IN AMERICA. DESIGN YOUR OWN KITE PARK ON THE INTERIOR AND WITH SLICK AND LAGOONS.

CHIPPS in the Chronicle NEWS

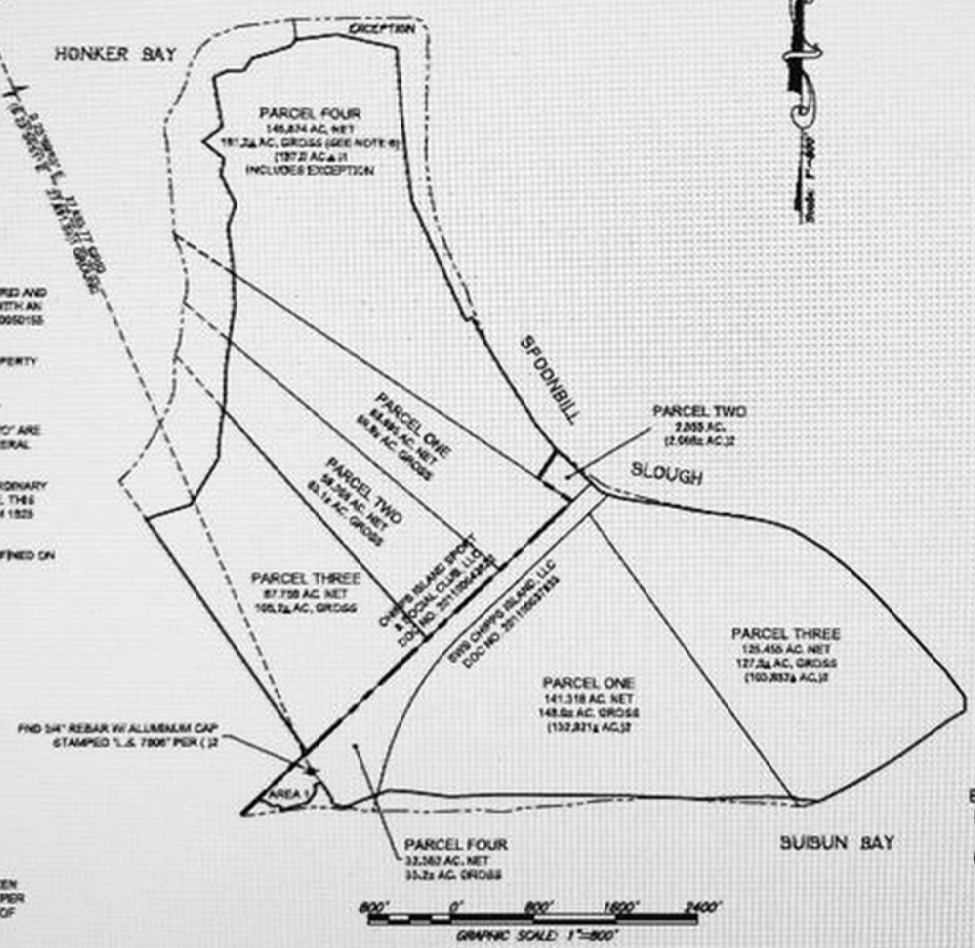
LEGEND:

○	DIMENSION POINT
✱	FND MONUMENT AS NOTED
( )1	RECORD PER UNRECORDED MAPS OF "CHIPS ISLAND" IN 1925 AND 1926
( )2	RECORD PER 30 RS 25
( )3	RECORD PER GRANT DEED DOC. NO. 2011-00043622
( )4	RECORD PER GRANT DEED DOC. NO. 2011-00057833
NET	SURVEYED ACREAGE TO SHORELINE
GROSS	DEEDED ACREAGE

MONTEZUMA GPS
PID-AE7865 (2)
NORTHING: 1,830,380.34 SFT (2)
EASTING: 6,848,308.66 SFT (2)
CCS 83 - ZONE 2 (2)
EPOCH DATE: 2007.00 (2)
C.G.F.: 1.00004058 (2)

GR2
PID-DH6884 (2)
NORTHING: 1,808,777.86 SFT (2)
EASTING: 6,574,858.14 SFT (2)
CCS 83 - ZONE 2 (2)
EPOCH DATE: 2007.00 (2)
C.G.F.: 1.00005872 (2)
CONVERGENCE ANGLE: 00°01'42.5" (2)
ELEVATION - N.A.V.D. 88: 6.8 SFT (2)

BASIS OF BEARINGS
S 14°28'18"E 38,409.56'



NOTES:

1. ALL BEARINGS, DISTANCES AND COORDINATES SHOWN HEREON ARE GRID AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 2 WITH AN EPOCH DATE OF 2007.00. DIVIDE GRID DISTANCES BY A FACTOR OF 1.00005155 TO CONVERT TO GROUND MEASUREMENTS.
2. EASEMENTS OR OTHER ENCUMBERANCES THAT MAY AFFECT THIS PROPERTY HAVE NOT BEEN SHOWN.
3. RECORD DISTANCES SHOWN PER 30 RS 25 ARE IN GROUND DISTANCES.
4. "AREA 1" WITHIN "PARCEL FOUR" AND THE 2.855 AC. WITHIN "PARCEL TWO" ARE DESIGNATED FOR SURFACE ACCESS EASEMENTS TO ANY EXISTING MINERAL RIGHTS.
5. THE BOUNDARY SHOWN ON 30 RS 25 IS LABELED AS THE "OBSERVED ORDINARY HIGH WATER MARK ON 01/03/2011" WHICH IS AT THE BASE OF THE LEVEE. THIS LINE MATCHES NEITHER DEED CALLS NOR MAPS OF CHIPS ISLAND FROM 1925 AND 1926.
6. THE DEEDED ACREAGE SHOWN HEREON AS "GROSS" HAS NOT BEEN DEFINED ON THIS SURVEY. ACREAGE IS BASED UPON THE LAND AS ASSESSED.
7. HISTORICAL BOUNDARY NOT LOCATABLE IN MANY INSTANCES DUE TO ENVIRONMENTAL FACTORS.
8. ROUNDING OFF OF DISTANCES FROM CLOSURES MAY CREATE MINOR DISCREPANCIES

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS IDENTICAL TO THE LINE BETWEEN NATIONAL GEODEDIC SURVEY DESIGNATIONS "MONTEZUMA GPS" AND "GR2" PER NATIONAL GEODEDIC SURVEY DATA SHEETS AND TAKEN AS A GRID BEARING OF SOUTH 14° 28' 18" EAST.

SURVEYOR'S STATEMENT:

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT AT THE REQUEST OF JOHN SWEENEY ON DECEMBER 12, 2011.

MICHAEL F. WILLIAMS L.S. 4732
LICENSE EXPIRES 6-30-2013

DATE:

LICENSED LAND SURVEYOR
MICHAEL F. WILLIAMS
No. 4732
EXPIRES 6/30/2013
STATE OF CALIFORNIA

COUNTY SURVEYOR'S STATEMENT:

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYORS ACT THIS ____ DAY OF _____, 2012.

STANLEY J. SCHRAM P.L.S. 7400
COUNTY SURVEYOR

EXP. DATE: _____

COUNTY RECORDER'S STATEMENT:

FILED THIS ____ DAY OF _____, 2012, AT ____:____ M. IN BOOK _____ OF SURVEYS, AT PAGE _____ AT THE REQUEST OF THE BAKER WILLIAMS ENGINEERING GROUP.

DOCUMENT NO. _____

MARC C. TONNESEN
ASSESSOR/RECORDER
COUNTY OF SOLANO
STATE OF CALIFORNIA

BY _____
DEPUTY

RECORD OF SURVEY

OF CHIPS ISLAND

BEING A SURVEY OF PORTIONS OF SECTIONS 31 & 32, T. 3 N., R. 1 E. M.D.M. AND SECTIONS 5 AND 6, T. 2 N., R. 1 E., M.D.M. AND SECTION 1, T. 2 N., R. 1 WEST., M.D.M.
UNINCORPORATED AREA OF SOLANO COUNTY, CALIFORNIA

BW BAKER-WILLIAMS ENGINEERING GROUP

SHEET 1 OF 4

NOVEMBER, 2012

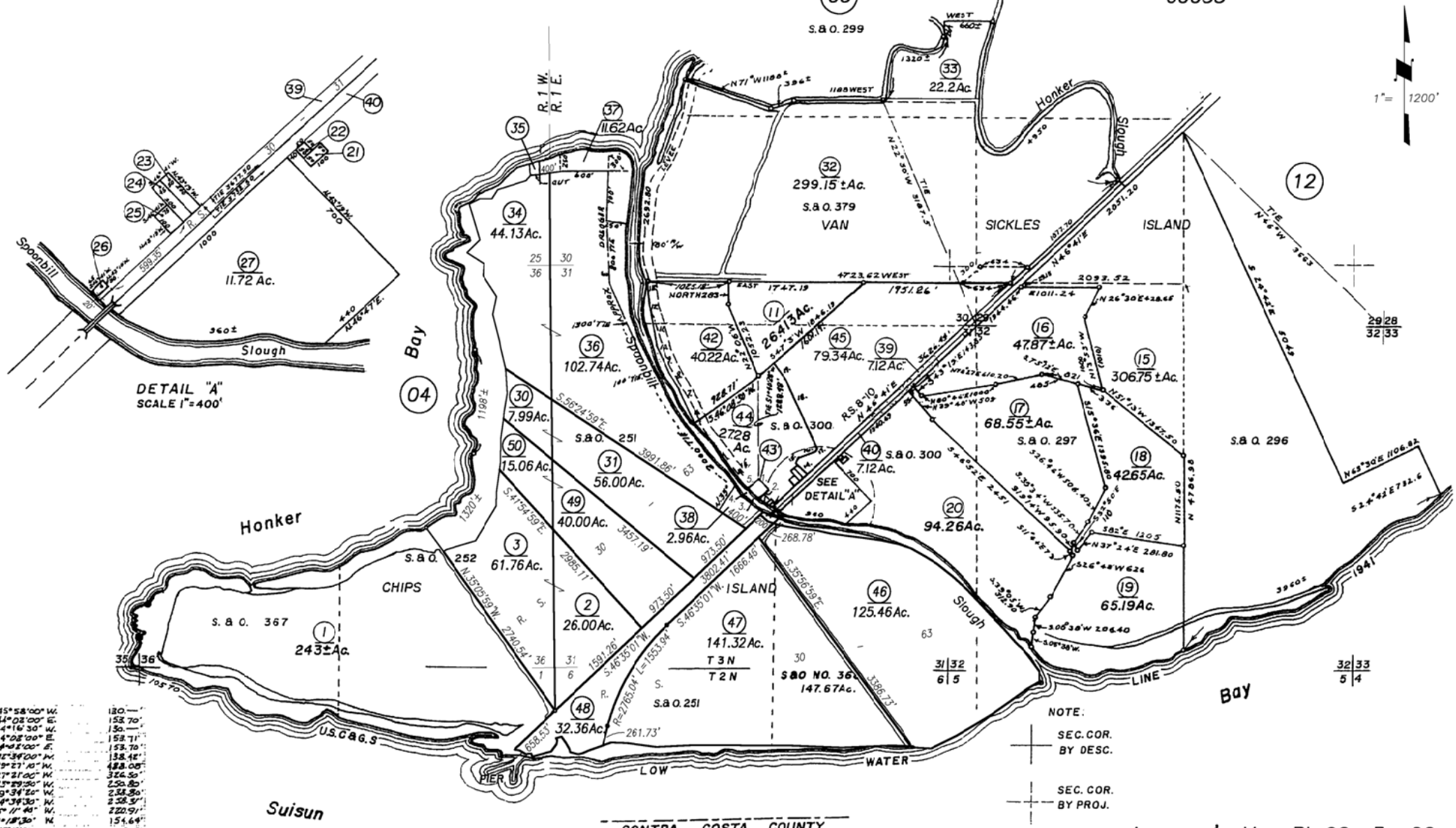
Job No. 11-12-008

POR. T.2N., T.3N., R.1E., & R.1W., M.D.B.&M.

Tax Area Code 60053

90-06

1" = 1200'



1.	N. 45°58'00" W.	120.—
2.	N. 44°02'00" E.	152.70'
3.	N. 44°16'30" W.	130.—
4.	N. 44°02'00" E.	152.71'
5.	N. 44°02'00" E.	152.70'
6.	N. 35°34'00" W.	138.42'
7.	N. 29°27'10" W.	488.08'
8.	N. 27°21'00" W.	326.50'
9.	N. 25°59'50" W.	250.80'
10.	N. 19°34'20" W.	238.80'
11.	N. 14°39'30" W.	258.57'
12.	N. 5°11'40" W.	220.91'
13.	N. 9°18'30" W.	154.64'
14.	N. 13°17'00" W.	228.09'
15.	N. 34°37'10" E.	23.18'
16.	N. 68°56'50" E.	195.54'
17.	N. 34°00'20" E.	21.58'
18.	N. 22°08'10" W.	1,057.66'
19.	N. 29°31'30" W.	201.93'

Assessor's Block Numbers Shown in Ellipses, Assessor's Parcel Numbers Shown in Circles

CONTRA COSTA COUNTY

R.S. 30-63	12-4-12	Cr
R.S. 30-31	8-3-11	Cr
060-38,46,47,48		
Chg. (Rs)	8-3-11	Cr
REVISION	DATE	BY

NOTE: This map is for assessment purposes only. It is not intended to define legal boundary rights or imply compliance with land division laws.

Assessor's Map Bk. 90 Pg. 06
County of Solano, Calif.

13-14

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	CHIPPS ISLAND SPORT & SOCIAL
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	05/13/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	05/18/2011
Document Number:	43622
	OLD REPUBLIC TITLE
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTIPLE PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-300
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	CHIPPS ISLAND SPORT & SOCIAL
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	05/13/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	05/18/2011
Document Number:	43622
	OLD REPUBLIC TITLE
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-500
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	CHIPPS ISLAND SPORT & SOCIAL
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	05/13/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	05/18/2011
Document Number:	43622
	OLD REPUBLIC TITLE
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-490
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	CHIPPS ISLAND SPORT & SOCIAL
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	05/13/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	05/18/2011
Document Number:	43622
	OLD REPUBLIC TITLE
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-310
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	CHIPPS ISLAND SPORT & SOCIAL
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	05/13/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	05/18/2011
Document Number:	43622
	OLD REPUBLIC TITLE
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-030
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	CHIPPS ISLAND SPORT & SOCIAL
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	05/13/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	05/18/2011
Document Number:	43622
	OLD REPUBLIC TITLE
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-360
Property Type:	MISCELLANEOUS
Land Use:	UNKNOWN

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	CHIPPS ISLAND SPORT & SOCIAL
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	05/13/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	05/18/2011
Document Number:	43622
	OLD REPUBLIC TITLE
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-020
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	CHIPPS ISLAND SPORT & SOCIAL
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	05/13/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	05/18/2011
Document Number:	43622
	OLD REPUBLIC TITLE
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-340
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	SWS CHIPPS ISLAND LLC
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	04/27/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	04/29/2011
Document Number:	37833
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-470
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	SWS CHIPPS ISLAND LLC
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	04/27/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	04/29/2011
Document Number:	37833
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTIPLE PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-380
Property Type:	MISCELLANEOUS
Land Use:	UNKNOWN

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	SWS CHIPPS ISLAND LLC
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	04/27/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	04/29/2011
Document Number:	37833
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-460
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

End of Document

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Real Property Transaction Record

Source Information

Filings Current Through:	08/12/2016
County Last Updated:	08/24/2016
Frequency of Update:	WEEKLY
Current Date:	08/31/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	SWS CHIPPS ISLAND LLC
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Property Address:	CA
Mailing Address:	9 BRITTON AVE BELVEDERE, CA 94920-2431

Transaction Information

Transaction Date:	04/27/2011
Seller Name:	[redacted]
Consideration:	NOT OF PUBLIC RECORD
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Recording Date:	04/29/2011
Document Number:	37833
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH
Multiple Parcel Sale:	MULTI / DETAIL PARCEL SALE

Property Information

County:	SOLANO
Assessor's Parcel Number:	0090-060-480
Property Type:	VACANT
Land Use:	WASTE LAND

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.
TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

End of Document

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Assessor's Assessment Number	
0090-060-380	**No Situs record on file**

Property Information			
Acres	2.96	**Exemption**	$0
Lot Size	128,938	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1189	**Current Status**	Active

Zoning Information			
Acres	2.96	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1189	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$27,530	$27,185	$26,533	$26,220	$25,701
Improvements	$92,749	$91,356	$89,567	$89,162	$87,414
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$120,279**	**$118,541**	**$116,100**	**$115,382**	**$113,115**

Printable Version

Assessor's Assessment Number	
0090-060-360	**No Situs record on file**

Property Information			
Acres	102.74	**Exemption**	$0
Lot Size	4,475,354	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1188	**Current Status**	Active

Zoning Information			
Acres	102.74	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1188	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$57,088	$56,601	$58,213	$56,748	$55,017
Improvements	$72,836	$71,742	$70,337	$70,019	$68,646
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$129,924**	**$128,343**	**$128,550**	**$126,767**	**$123,663**

Printable Version

Assessor's Assessment Number	
0090-060-340	**No Situs record on file**

Property Information			
Acres	44.13	**Exemption**	$0
Lot Size	1,922,303	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1188	**Current Status**	Active

Zoning Information			
Acres	44.13	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1188	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$10,679	$10,679	$11,650	$19,690	$18,828
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$10,679**	**$10,679**	**$11,650**	**$19,690**	**$18,828**

Printable Version

Assessor's Assessment Number	
0090-060-310	**No Situs record on file**

Property Information			
Acres	56.00	**Exemption**	$0
Lot Size	2,439,360	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1186	**Current Status**	Active

Zoning Information			
Acres	56.00	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1186	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$13,552	$13,552	$11,592	$11,032	$10,528
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$13,552**	**$13,552**	**$11,592**	**$11,032**	**$10,528**

Printable Version

Assessor's Assessment Number	
0090-060-300	**No Situs record on file**

Property Information			
Acres	7.99	**Exemption**	$0
Lot Size	348,044	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1186	**Current Status**	Active

Zoning Information			
Acres	7.99	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1186	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$1,933	$2,844	$2,109	$4,518	$4,320
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$1,933**	**$2,844**	**$2,109**	**$4,518**	**$4,320**

Printable Version

Assessor's Assessment Number	
0090-060-030	**No Situs record on file**

Property Information			
Acres	61.76	**Exemption**	$0
Lot Size	2,690,266	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1186	**Current Status**	Active

Zoning Information			
Acres	61.76	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1186	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
			Full Values		
Land	$14,945	$14,945	$12,784	$15,602	$14,889
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$14,945**	**$14,945**	**$12,784**	**$15,602**	**$14,889**

Printable Version

Assessor's Assessment Number	
0090-060-020	**No Situs record on file**

Property Information			
Acres	26.00	**Exemption**	$0
Lot Size	1,132,560	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1186	**Current Status**	Active

Zoning Information			
Acres	26.00	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1186	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$6,292	$7,098	$5,382	$5,122	$4,888
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$6,292**	**$7,098**	**$5,382**	**$5,122**	**$4,888**

Printable Version

Assessor's Assessment Number	
0090-060-500	**No Situs record on file**

Property Information			
Acres	15.06	**Exemption**	$0
Lot Size	656,014	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1186	**Current Status**	Active

Zoning Information			
Acres	15.06	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1186	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$3,644	$4,111	$3,117	$3,152	$3,008
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$3,644**	**$4,111**	**$3,117**	**$3,152**	**$3,008**

Printable Version

Assessor's Assessment Number	
0090-060-490	**No Situs record on file**

Property Information			
Acres	40.00	**Exemption**	$0
Lot Size	1,742,400	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1186	**Current Status**	Active

Zoning Information			
Acres	40.00	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1186	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$9,680	$9,680	$8,280	$7,880	$7,520
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$9,680**	**$9,680**	**$8,280**	**$7,880**	**$7,520**

Printable Version

Assessor's Assessment Number	
0090-060-480	**No Situs record on file**

Property Information			
Acres	32.36	**Exemption**	$0
Lot Size	1,409,602	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1189	**Current Status**	Active

Zoning Information			
Acres	32.36	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1189	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$7,831	$7,831	$6,698	$6,345	$6,055
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$7,831**	**$7,831**	**$6,698**	**$6,345**	**$6,055**

Printable Version

Assessor's Assessment Number	
0090-060-470	**No Situs record on file**

Property Information			
Acres	141.32	**Exemption**	$0
Lot Size	6,155,899	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1189	**Current Status**	Active

Zoning Information			
Acres	141.32	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1189	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$34,199	$34,199	$29,253	$26,185	$24,988
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$34,199**	**$34,199**	**$29,253**	**$26,185**	**$24,988**

Printable Version

Assessor's Assessment Number	
0090-060-460	**No Situs record on file**

Property Information			
Acres	125.46	**Exemption**	$0
Lot Size	5,465,038	**Census**	2527.020
Tac	60053	**Tac Change No.**	0
Tac Last Year	60053	**Tac Year**	00
Recorded Map	n/a	**Created on**	n/a
Created By	n/a	**Subdivison -**	
Use Code	6100 - marsh land	**Unit -** n/a **Lot -** n/a **Block -** n/a **Sublot -** n/a	

Property Characterisitcs
No Property Characteristics Information Available

Williamson Act Data			
Contract number	1189	**Current Status**	Active

Zoning Information			
Acres	125.46	**Tax Rate Area**	60053
Zone 1	MP	**Census Tract**	2527.020
Zone 2	n/a	**Use Code**	6100
Zone 2 Acres	0.00	**Planning file**	n/a
			n/a
Ag Preserve	1189	**Land Division number**	n/a
Ag Preserve Status	Active	**Land Division Date**	n/a
Variance No.	n/a	**PUD Number**	n/a

Values By Year

	2016/17	2015/16	2014/15	2013/14	2012/13
Status	AC	AC	AC	AC	AC
Tax Area Code	60053	60053	60053	60053	60053
Tac Last Year	60053	60053	60053	60053	60053
Use Code	6100	6100	6100	6100	6100
Exem Status	NA	NA	NA	NA	NA
	Full Values				
Land	$30,361	$30,361	$25,970	$20,462	$19,527
Improvements	$0	$0	$0	$0	$0
Mineral Rights	$0	$0	$0	$0	$0
Trees/Vines	$0	$0	$0	$0	$0
Personalty	$0	$0	$0	$0	$0
Fixtures	$0	$0	$0	$0	$0
Penalties	$0	$0	$0	$0	$0
Exemptions	$0	$0	$0	$0	$0
Total	**$30,361**	**$30,361**	**$25,970**	**$20,462**	**$19,527**

Printable Version

34a. Ability to Pay Supporting Evidence, Bryan Elder, August 29, 2016 (Part 2)

Source Information

Tax Roll Certification Date:	06/30/2015
Owner Information Current Through:	04/12/2016
County Last Updated:	05/02/2016
Current Date:	05/05/2016
Source:	TAX ASSESSOR

Owner Information

Owner(s):	[redacted]
	[redacted]
Absentee Owner:	OWNER OCCUPIED
Property Address:	[redacted] TIBURON BLVD BELVEDERE TIBURON, CA 94920-1402
Mailing Address:	[redacted] TIBURON BLVD BELVEDERE TIBURON, CA 94920-1402

Property Information

County:	MARIN
Assessor's Parcel Number:	[redacted]
Property Type:	SINGLE FAMILY RESIDENCE - TOWNHOUSE
Land Use:	SINGLE FAMILY RESIDENCE
Lot Size:	7360
Lot Acreage:	0.1690
Municipality:	TIBURON
Subdivision:	SAUSALITO LAND & FERRY CO
Block Number:	68
Lot Number:	1

Tax Assessment Information

Tax Year:	2014
Calculated Land Value:	$1,900,000.00
Calculated Improvement Value:	$1,099,999.00
Calculated Total Value:	$2,999,999.00
Assessed Land Value:	$1,900,000.00
Assessed Improvement Value:	$1,099,999.00
Assessed Total Value:	$2,999,999.00
Valuation Method:	ASSESSED
Tax Amount:	$19,054.84

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Tax Code Area:	11010

Building/Improvement Characteristics

Number of Buildings:	1
Year Built:	20050000
Total Area:	7360
Living Square Feet:	2740
Number of Bedrooms:	3
Number of Bathrooms:	4.00
Full Baths:	3
Fireplace:	YES
Garage Type:	TYPE UNKNOWN
Number of Units:	1
Construction Quality:	GOOD
Heat:	CENTRAL

Last Market Sale Information

Sale Date:	10/20/2014
Seller Name:	SWEENEY JOHN D TRUST
Sale Price:	$3,000,000.00
Consideration:	FULL
Deed Type:	GRANT DEED
Type of Sale:	RESALE
Mortgage Amount:	$1,800,000.00
Mortgage Loan Type:	CONVENTIONAL
Mortgage Term:	30 YEARS
Mortgage Deed Type:	DEED OF TRUST
Lender Name:	WELLS FARGO BK NA
Recording Date:	10/24/2014
Document Number:	44569
Title Company:	OLD REPUBLIC TITLE

Previous Transaction Information

Previous Document Number:	139461
Sale Date:	11/04/2003
Sale Price:	$920,000.00
Consideration:	FULL
Deed Type:	DEED OF TRUST
Mortgage Amount:	$828,000.00

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Number of Parcels:	Y Y
Recording Date:	11/17/2003

Historical Tax Assessor Information

Historical Tax Assessor Record: 1.	
Tax Year:	2013
Calculated Land Value:	$869,842.00
Calculated Improvement Value:	$752,463.00
Calculated Total Value:	$1,622,305.00
Assessed Total Value:	$1,622,305.00
Assessor's Parcel Number:	[redacted]
Homestead Exempt:	HOMEOWNER EXEMPTION
Absentee Owner:	SITUS FROM SALE (OCCUPIED)
Owner:	[redacted]
Property Address:	[redacted] TIBURON BLVD TIBURON, CA 94920-1402
Mailing Address:	[redacted] TIBURON BLVD BELVEDERE TIBURON, CA 94920-1402
Historical Tax Assessor Record: 2.	
Tax Year:	2013
Calculated Land Value:	$869,842.00
Calculated Improvement Value:	$752,463.00
Calculated Total Value:	$1,622,305.00
Assessed Total Value:	$1,622,305.00
Assessor's Parcel Number:	[redacted]
Homestead Exempt:	HOMEOWNER EXEMPTION
Absentee Owner:	OWNER OCCUPIED
Owner:	SWEENEY JOHN D
Property Address:	[redacted] TIBURON BLVD TIBURON, CA 94920-1402
Mailing Address:	[redacted] PITTSBURG, CA 94565-2081
Historical Tax Assessor Record: 3.	
Tax Year:	2012
Calculated Land Value:	$865,912.00
Calculated Improvement Value:	$749,067.00
Calculated Total Value:	$1,614,979.00
Assessed Total Value:	$1,614,979.00
Assessor's Parcel Number:	[redacted]

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Possible Asset Information

Real Property Tax Assessor Records

Property Address	Assessed Total Value	Tax Year	Confidence Score	View Full Text
[redacted]TIBURON BLVD BELVEDERE TIBURON, CA 94920-1402	$2,999,999.00	2014	97%	Full-Text
	$159,901.00	2014	93%	Full-Text

Real Property Transactions

Property Address	Sale Amount	Mortgage Amount	Recording Date	Confidence Score	View Full Text
CA			10/27/2014	93%	Full-Text
[redacted] AVALON CIR PITTSBURG, CA 94565-2343	$360,000.00	$334,452.00	07/31/2013	85%	Full-Text
[redacted]AVALON CIR PITTSBURG, CA 94565-2333	$300,000.00		03/19/2013	85%	Full-Text
CA	$150,000.00		04/21/2011	93%	Full-Text
[redacted] PITTSBURG, CA 94565-2081			10/08/2009	97%	Full-Text
[redacted] PITTSBURG, CA 94565-2081	$200,000.00	$140,000.00	08/26/2009	N/A	Full-Text
[redacted] TIBURON BLVD TIBURON, CA 94920-1402		$100,000.00	11/07/2007	N/A	Full-Text
[redacted] TIBURON BLVD TIBURON, CA 94920-1402		$159,000.00	03/23/2007	N/A	Full-Text
[redacted]TIBURON BLVD TIBURON, CA 94920-1402		$1,200,000.00	11/02/2005	N/A	Full-Text
[redacted] WOODWARD	$1,265,000.00	$981,000.00	09/07/2005	N/A	Full-Text

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Property Address	Sale Amount	Mortgage Amount	Recording Date	Confidence Score	View Full Text
AVE SAUSALITO, CA 94965-1734					
[redacted] WOODWARD AVE SAUSALITO, CA 94965-1734		$875,000.00	11/19/2004	N/A	Full-Text
CA		$875,000.00	11/19/2004	N/A	Full-Text
[redacted]TIBURON BLVD TIBURON, CA 94920-1402	$920,000.00	$828,000.00	11/17/2003	N/A	Full-Text
[redacted] TIBURON BLVD TIBURON, CA 94920-1402			11/17/2003	N/A	Full-Text
[redacted] AZORES CT PITTSBURG, CA 94565-3030	$129,000.00		10/24/1988	85%	Full-Text
CA 94920		$200,000.00	10/29/1987	62%	Full-Text
CAMINO ANDRES PITTSBURG, CA	$108,500.00	$109,383.00	08/20/1986	85%	Full-Text

Watercraft Records

Vessel Name	Hailing Port	Certificate Issue Date	Confidence Score	View Full Text
LINGAYEN GULF	PITTSBURG	11/20/2014	97%	Full-Text

Unclaimed Assets

Asset Type	Asset Value	Confidence Score	View Full Text
MATURED/TERMINATED POLICIES	$366.00	85%	Full-Text

Possible Adverse Information

Risk Flags Analysis

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Source Information

Filings Current Through:	04/19/2016
County Last Updated:	04/27/2016
Frequency of Update:	WEEKLY
Current Date:	05/05/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	JOHN T & JOHN D T SWEENEY
Owner Relationship:	UNMARRIED MAN
Ownership Rights:	JOINT TENANTS
Absentee Owner:	SITUS FROM SALE (ABSENTEE)
Property Address:	[redacted] PITTSBURG, CA 94565-2081
Mailing Address:	[redacted]LIBERTY SHIP WAY SAUSALITO, CA 94965-1731

Transaction Information

Transaction Date:	08/14/2009
Seller Name:	SWEENEY JOHN T
Consideration:	SALE PRICE (FULL)
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	NOMINAL
Recording Date:	10/08/2009
Document Number:	237279
	CHICAGO TITLE CO.
Construction Type:	SALE IS A RE-SALE
InterFamily Transaction:	RELEASE OF DEED OF TRUST/MTG
Purchase Payment:	CASH

Property Information

County:	CONTRA COSTA
Assessor's Parcel Number:	[redacted]
Property Type:	SINGLE FAMILY RESIDENCE - TOWNHOUSE
Land Use:	SINGLE FAMILY RESIDENCE
Building Square Feet:	1740

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.

TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

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End of Document

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To Summary

Real Property Transaction Record

Source Information

Filings Current Through:	04/19/2016
County Last Updated:	04/27/2016
Frequency of Update:	WEEKLY
Current Date:	05/05/2016
Source:	COUNTY RECORDER

Owner Information

Owner(s):	JOHN T SWEENEY
Owner Relationship:	UNMARRIED MAN
Absentee Owner:	SITUS FROM SALE (OCCUPIED)
Property Address:	[redacted] PITTSBURG, CA 94565-2081
Mailing Address:	[redacted] PITTSBURG, CA 94565-2081

Property Information

County:	CONTRA COSTA
Assessor's Parcel Number:	[redacted]
Property Type:	SINGLE FAMILY RESIDENCE - TOWNHOUSE
Land Use:	SINGLE FAMILY RESIDENCE
Building Square Feet:	1740

Transaction Information

Transaction Date:	08/14/2009
Seller Name:	[redacted]
Sale Price:	$200,000.00
Consideration:	SALE PRICE (FULL)
Deed Type:	GRANT DEED
Document Type:	GRANT DEED
Type of Transaction:	RESALE
Mortgage Amount:	$140,000.00
Mortgage Type:	CONVENTIONAL
Mortgage Term:	30YEARS
Mortgage Deed Type:	DEED OF TRUST
Mortgage Date:	08/17/2009
Mortgage Due Date:	09/01/2039
Lender Name:	CMG MTG INC
Address:	SAN RAMON, CA 94583
Recording Date:	08/26/2009
Document Number:	205230
	CHICAGO TITLE CO.
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	MORTGAGE

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.

RECORDING REQUESTED BY:

Philip S. Boone, Jr.

APN #: 0090-020-010

WHEN RECORDED MAIL TO
Philip S. Boone, Jr.
Morris Polich & Purdy, LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111

Recorded in Official Records, Solano County

Marc C. Tonnesen
Assessor/Recorder

12/09/2015
1:58 PM
AR16
07

P BOONE, PHILIP

Doc#: 201500110180

Titles: 2 Pages: 5

Fees	58.00
Taxes	0.00
Other	0.00
PAID	$58.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust, made this 20th day of November, 2015, between herein called POINT BUCKLER CLUB, LLC, a California limited liability company the address of which is 171 Sandpiper Drive, Pittsburg, CA 94565, herein called TRUSTOR,

OLD REPUBLIC TITLE COMPANY, a California corporation, herein called TRUSTEE,

and

JOHN D. SWEENEY, an individual, herein called BENEFICIARY,

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in Solano County, California, described as:

See "Exhibit A" attached hereto and made a part hereof.

Together With the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Payment of the indebtedness evidenced by one Secured Promissory Note, dated November 20, 2015, and any extension or renewal thereof, in the principal sum of $1,200,000.00, executed by Trustor in favor of Beneficiary or order (the "Note"); 2. Performance of each agreement of Trustor contained herein or in the Security Agreement between Trustor and Beneficiary of even date with the said Note; and 3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit; suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to

Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on a appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien of charge thereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto". Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and

authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving onto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledges, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust

or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

The Trustor requests that a copy of any Notice and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

Dated: December 4, 2015

POINT BUCKLER CLUB, LLC
a California limited liability company

By: Lost Islands, Inc.
a California corporation
Its Manager

By: _____
John D. Sweeney
Its President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On Dec 4th 2015 before me, Dana Orlando a Notary Public, personally appeared John D. Sweeney, who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is~~/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person(s), or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Name: Dana Orlando
(Typed or Printed)

(Seal)

DANA ORLANDO
COMM. # 1960344
NOTARY PUBLIC - CALIFORNIA
CONTRA COSTA COUNTY
MY COMM. EXP. DEC. 9, 2015

EXHIBIT A

Description of Property

The land referred to is situated in the unincorporated area of the County of Solano, State of California, and is described as follows:

All that certain Lot, Piece, or Parcel of land situate in Solano County, known as the Westerly end of Rich's Island and commonly called: "Annie Mason Point", which said land is separated from Rich's Island by the Annie Mason Slough, and is all that portion of swamp and overflowed Survey No. 365, in Township 3 North, Range 1 West, Mount Diablo Base & Meridian, lying West of the West line of Annie Mason Slough.

Excepting therefrom:

A) All portions of the above described real property that lie outside of the patents heretofore issued by the State of California for swamp and overflowed land Survey No. 365; and

B) All portions of said real property that lie below the line of ordinary high tide.

Also excepting therefrom: Rights excepted from the Deed from Louis R. Hewitson, et ux, recorded September 26, 1974, Book 1974, Page 41201, as follows:

"An undivided $^{2}/_{10}$ths interest in and to all oil, gas, casinghead gas, asphaltum and other hydrocarbons and all chemical gas, now or hereafter found, situated or located in all or any part or portion of the lands herein described lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said 2/10ths interest in all oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface thereof; but without any right whatsoever to enter upon the surface of said land or upon any part of said lands within five hundred feet (500') vertical distance below the surface thereof".

Also excepting therefrom: Rights excepted in the Deed from Reggie R. Hewitson, et ux, recorded September 26, 1974, Book 1974, Page 41199, as follows:

"An undivided 2/10ths interest in and to all oil, gas, casinghead gas, asphaltum and other hydrocarbons and all chemical gas now or hereafter found, situated or located in all or any part or portion of the lands herein described lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said $^{2}/_{10}$ths interest of all oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface thereof; but without any right whatsoever to enter upon the surface of said land or upon any part of said lands within five hundred feet (500') vertical distance below the surface thereof".

Excepting therefrom all remaining all oil, gas, casinghead gas, asphaltum and other hydrocarbons and all chemical gas now or hereafter found, situated or located in all or any part or portion of the lands herein described lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface thereof but without any right whatsoever to enter upon the surface of said land or upon any part of said lands within five hundred feet (500') vertical distance below the surface thereof.

APN: 0090-020-010

END OF DOCUMENT

Delta Landing Craft .com

FOR SALE LCU LINGAYEN GULF 1528

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Publié 11 days ago

Largest Landing Craft on West Coast 119' full restored - Trades (Pittsburg)

image 1 de 16

119' Landing Craft former Army LCU from Korean war.
Just completed haul out - new plating, shafts and props.
Recently refurbished and currently working in the delta. Can hold 200 tons on deck.
Only one on West Coast left
Rents for $6500 per day
Built in 1954 at Avondale Ship Yard
Triple Detroit Diesels (2x6v71s wing and center engine 6v92) just serviced
Three Gensets (yanmar, onan, detroit)
Draft 6 feet loaded
Spuds 2x 40'
Restored in 2012
All new Propellers (3) and Shafts (3) new May 2015
New bottom plate and paint
Asking $895,000 Best OFFERS and possible financing or trades

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Boats from USA

Search

Home » Not Specified » LCU Landing Craft

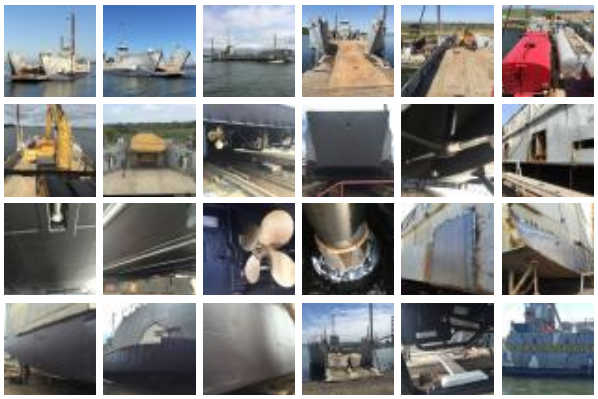
LCU Landing Craft

Price: $895,000

Protect Your Kids' Future
Organize Your Assets With A Living Trust. Simple & Affordable!

Boat location: Pittsburg, California, United States
Ships to: United States

Year: 20150000
Make: Not Specified
Model: Landing Craft
Type: LCU
Hull Material: Steel
Trailer: Not Included
Use: Fresh Water
Engine Type: triple diesel
Engine Make: Detroit
Engine Model: 6v71 and 6v92
Primary Fuel Type: Diesel
For Sale By: Private Seller
Condition: Used
Fuel Capacity: Over 200 Gallons
Hull ID Number: LCU1528
Length: 119.0 feet
Beam: 34.0 feet
Raiting: No votes yet



Seller Notes: Just completed extensive refit at yard may 2015

Protect Your Kids' Future

Organize Your Assets With A Living Trust. Simple & Affordable!

Description:

1954 / 2015 Avondale Landing Craft Utility LCU 1466 Class ex-Army LCU 1528 "Lingayen Gulf" 119 feet x 34 feet x 5 feet fully loaded 200 ton deck capacity Two 40' Spuds w winches Three main engines 2x Detroit 6v71 and center engine Detroit 6v92 Three Gensets 1x Detroit 25kw, 1 Yanmar 30kw, 1 Onan 10kw Kobelco Air Controls Raytheon 48 mile radar New Depth Sounder Watchmate Vision AIS Recent Survey May 2015 Yard work: Repair all survey items to Coast Guard specs Replate hull with insets where needed New front gate New 2.5 inch shafts x3 New 22x38 four blade props x3 New Stern Bearings New Rudder and Stern protection tubes Rebuilt stuffing boxes Ameron 235 two coats of epoxy on bottom after needle prep and welding repairs Rebuild rudders Service steering systems New bottom paint 20 new zincs 7 New hatches installed Rebuilt spuds Re align engines x 3 Full Detroit engine services and rack adjustments x 3 Vessel is in extremely good shape and currently working...Read more »

Add new question to the seller

Your name *

E-mail *

The content of this field is kept private and will not be shown publicly.

Text *

I'm not a spammer

Add question

Chose company

- Baja (1,710)
- Bayliner (5,364)
- Bennington (595)
- Boston Whaler (1,392)
- Caravelle (343)
- Carver (316)
- Carver Boats (920)
- Centurion (561)
- Century (727)
- Chaparral (1,986)
- Checkmate (475)
- Chris Craft (2,627)
- Cigarette (307)
- Cobalt (928)
- Correct Craft (638)
- Crestliner (272)
- Crownline (1,502)
- Cruisers Yachts (229)
- Donzi (829)
- Eliminator (274)
- Evinrude (43)
- Feather Craft (14)
- Forester (46)
- Formula (1,547)

- Fountain (668)
- Glastron (1,461)
- Grand Island (594)
- Imperial (65)
- Lonestar (41)
- Malibu (954)
- Mastercraft (2,050)
- Mercruiser (47)
- Nautique (267)
- Princecraft (52)
- Rinker (1,781)
- Sea Ray (8,919)
- Silverton (591)
- Starcraft (698)
- Sun Tracker (587)
- Sylvan (350)
- Tahoe Grand Island (420)
- Tige (369)
- Trojan (375)
- Yamaha (2,628)
- Four Winns (2,065)
- Grand Banks (67)
- Hurricane (624)
- Larson (1,349)
- Mach 1 (39)
- Mariah (370)
- Maxum (1,199)
- Monterey (1,242)
- Not Specified (17,180)
- Regal (1,632)
- Sea Doo (1,743)
- Searay (664)
- Ski Brendella (34)
- Stingray (831)
- Supra (422)
- Tahoe (1,055)
- Thompson (297)
- Tracker (257)
- Wellcraft (2,034)

Home Contact

Special Offers

Chris Craft Day Cruiser
Year: 1974
$5,500

Sea Doo Islandia
Year: 2003
$10,500

Fountain 38
Year: 2003
$89,000

Silverton
Year: 1977
$4,500

Bayliner 2859
Year: 1999
$15,000

Donzi 27ZX
Year: 1996
$20,000

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34b. Economic Benefit Supporting Evidence, Bryan Elder, September 1, 2016

Economic Benefit Analysis

John D. Sweeney/Point Buckler Club, LLC

Compliance Action		One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
		Amount	Basis	Date	Delayed?					
Obtain 401 Certification		$ 3,029,000	GDP	12/14/2016	Y	5/19/2012	12/14/2016	12/14/2016	7.30%	$ 699,201

Income Tax Schedule: For-Profit (Other than C-Corpor **Analyst:** Bryan Elder **Total Benefit: $ 699,201**

USEPA BEN Model Version: Version 5.6.0 (April 2016) **Date/Time of Analysis:** 8/31/2016 16:26

Assunptions:

1 Fee for obtaining 401 Certification based on use of Dredge and Fill Fee Calculator (v9 9/21/2011) using discharge estimates provided by Regional Board staff.
2 Mitigation credit costs based on low estimate from the Elsie Gridley Mitigation Bank of $100,000 per disturbed acre. Approximate disturbed acreage estimated at 29.7 acres.
3 Costs to obtain 401 certfication coverage are assumed to be delayed as the Discharger is still expected to expend similar costs to continue site operations.
4 Non-compliance date estimated as date discharge activities first identified.
5 Compliance date assumed to be date of proposed hearing.
6 Penalty payment date assumed to be date of hearing.
7 The Discharger is assumed to operate as a for-profit entity.

Economic Benefit Analysis

John D. Sweeney/Point Buckler Club, LLC

Compliance Action		One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
		Amount	Basis	Date	Delayed?					
Obtain 401 Certification		$ 3,029,000	GDP	12/14/2016	N	5/19/2012	12/14/2016	12/14/2016	7.30%	$ 2,285,391

Income Tax Schedule: For-Profit (Other than C-Corpor **Analyst:** Bryan Elder **Total Benefit:** **$ 2,285,391**

USEPA BEN Model Version: Version 5.6.0 (April 2016) **Date/Time of Analysis:** 8/31/2016 16:28

Assunptions:

1 Fee for obtaining 401 Certification based on use of Dredge and Fill Fee Calculator (v9 9/21/2011) using discharge estimates provided by Regional Board staff.
2 Mitigation credit costs based on low estimate from the Elsie Gridley Mitigation Bank of $100,000 per disturbed acre. Approximate disturbed acreage estimated at 29.7 acres.
3 Costs to obtain 401 certfication coverage are assumed to be delayed as the Discharger is still expected to expend similar costs to continue site operations.
4 Non-compliance date estimated as date discharge activities first identified.
5 Compliance date assumed to be date of proposed hearing.
6 Penalty payment date assumed to be date of hearing.
7 The Discharger is assumed to operate as a for-profit entity.

Economic Benefit Analysis

John D. Sweeney/Point Buckler Club, LLC

Compliance Action		One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
		Amount	Basis	Date	Delayed?					
Obtain 401 Certification		$ 5,999,000	GDP	12/14/2016	Y	5/19/2012	12/14/2016	12/14/2016	7.30%	$ 1,384,783

Income Tax Schedule: For-Profit (Other than C-Corpor **Analyst:** Bryan Elder **Total Benefit:** **$ 1,384,783**

USEPA BEN Model Version: Version 5.6.0 (April 2016) **Date/Time of Analysis:** 8/31/2016 16:29

Assunptions:

1 Fee for obtaining 401 Certification based on use of Dredge and Fill Fee Calculator (v9 9/21/2011) using discharge estimates provided by Regional Board staff.
2 Mitigation credit costs based on high estimate from the Elsie Gridley Mitigation Bank of $200,000 per disturbed acre. Approximate disturbed acreage estimated at 29.7 acres.
3 Costs to obtain 401 certfication coverage are assumed to be delayed as the Discharger is still expected to expend similar costs to continue site operations.
4 Non-compliance date estimated as date discharge activities first identified.
5 Compliance date assumed to be date of proposed hearing.
6 Penalty payment date assumed to be date of hearing.
7 The Discharger is assumed to operate as a for-profit entity.

Economic Benefit Analysis

John D. Sweeney/Point Buckler Club, LLC

Compliance Action		One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
		Amount	Basis	Date	Delayed?					
Obtain 401 Certification		$ 5,999,000	GDP	12/14/2016	N	5/19/2012	12/14/2016	12/14/2016	7.30%	$ 4,526,267

Income Tax Schedule: For-Profit (Other than C-Corpor **Analyst:** Bryan Elder **Total Benefit:** **$ 4,526,267**

USEPA BEN Model Version: Version 5.6.0 (April 2016) **Date/Time of Analysis:** 8/31/2016 16:29

Assunptions:

1 Fee for obtaining 401 Certification based on use of Dredge and Fill Fee Calculator (v9 9/21/2011) using discharge estimates provided by Regional Board staff.
2 Mitigation credit costs based on high estimate from the Elsie Gridley Mitigation Bank of $200,000 per disturbed acre. Approximate disturbed acreage estimated at 29.7 acres.
3 Costs to obtain 401 certfication coverage are assumed to be delayed as the Discharger is still expected to expend similar costs to continue site operations.
4 Non-compliance date estimated as date discharge activities first identified.
5 Compliance date assumed to be date of proposed hearing.
6 Penalty payment date assumed to be date of hearing.
7 The Discharger is assumed to operate as a for-profit entity.

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About Point Buckler Club

Overview

Page Info

PAGE INFO

Address	801 grizzly island road, Suisun City, California 94585
Start Date	Founded in 2011
Short Description	Exclusive Private Delta Island Club for Kiteboarding Duck Hunting and Social. Silicon Valley Kite Surfing hangout via high speed yacht or helicopter
General Information	Exclusive Private Island for 10 special owners. Kiteboarding and other sports year round. 15 minutes by air from Silicon Valley, or hour by high speed yacht. Two helipads and docking for up to 300 foot yachts.
Price Range	$$$$
Phone	(415) 686-0907
Email	john@spinnerisland.com
Website	http://www.pointbucklerclub.com

Get updates from Point Buckler Club on Facebook.
Log in or sign up for Facebook today.

Sign Up Log In

SPINNER ISLAND
HUNT + SOCIAL CLUB

About
Ownership
Join

Ownership

Spinner Island is a closely-held LLC by ten Bay Area Families. The owners are all friends and are engaged in a wide-array of business relationships. Currently there are two 5% ownership shares available in The Spinner Island Club. These shares are ownership stakes and are designed to give owners year-round access to every aspect of the club and to participate in the management, governance, and ongoing strategic planning of the project. Please john@spinnerisland.com if you are interested in becoming an owner.

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Monika Weyer
Direct: 916-396-0945
monika@netview.com

24 W. 10th Street
Tracy, CA 95376

Tyler Island Habitat, LLC has 1/12th interest
(One) Membership for Sale

Location: Tyler Island Rd and Tyler Island Bridge Rd, on the west side of Tyler Island along one mile of Georgiana Slough. Located between Rio Vista and Walnut Grove, just past Islton, Sacramento County.

Acreage: 803+/-acre gross acres of which 500 +/- acres in ponds

Blinds: 12 sunken triple blinds.

Water: Riparian River rights from Georgiana Slough, unmetered & unlimited use. Drainage and levee maintenance and all of Tyler Island is controlled by Reclamation District #563

Improvements:
- 1 metal barn converted -- used as a clubhouse
- 4 bed/2 bath. Modern Kitchen facility-large family gathering room.
- Equipment storage. 2 outside metal cottages. 2 mobile home sites
- 2 wells and 2 septic tanks.
- New pheasant pen for purpose of raising and releasing pheasants.
- New installed security system.
- Safflower and/or wheat planted each season for excellent dove hunting.
- Full 100 hunt days

Comments: Reported – 2014/2015 Season "Best Season Ever" Shooting record available. Hunt ducks, geese, pheasants quail and dove.

Assessment: Annual $7,000 +

Membership: Each membership includes the right to hunt for the registered member and one (1) guest. Sons and grandsons have full hunting rights and privileges as their member father/grandfather.

Members: 12

Price: **$245, 000** Term**:** cash

Please email or call Monika for more details 916-396-0945

The above has been secured from sources we believe to be reliable; however, we cannot assume responsibility for its correctness.

Volanti Duck Club
511+/- Acres
1 membership
Solano County

Presented By:

William T. Morgan Real Estate

www.wtmogan.com

(530) 662-8696

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WILLIAM T. MORGAN REAL ESTATE

10 N. EAST STREET, SUITE 103 | WOODLAND, CA 95776 | BUS: 530.662.8696 | FAX: 530.662.8589

WILLIAM T. MORGAN
License #00318291
Cell 530.867.2662
Res. 530.662.8466

MARIA DOD
Office Manager
530.662.8696
Maria@wtmorgan.com

Volanti Duck Club
Solano County
1 Membership in 511+/- Acres

LOCATION: From San Francisco travel East on interstate 80,. (30-45 Minutes) turn right on the highway 12 West side of Fairfied, CA. Proceed East on Highway 12 to Grizzly Island Road, turn right on Grizzly Island Road, in 3-4 miles you will come to Joice Island Road on your right, behind a large pipe gate, go thru gate and over the high bridge on Joice Island road (that is maintained by California Fish & Wildlife) Travel 2-3 miles to Volanti Duck Club, continue until you come to Suisun Slough turn right to Volanti chalets and club house which front on Suisun Slough.

ASSESSOR'S PARCEL NO'S: 0046-070-010 & 0046-070-030

ACREAGE: 511 +/- acres

IMPROVEMENTS:

Club house: Living area with large kitchen 2 bathrooms and game room. Fully Furnished!!!

Bungalow: 1 (has its own private boat dock.)

Miscellaneous structures: 1 cleaning shed

Duck Blinds: 22 blinds

WATER:

Duck Club

Source: water comes from Cat & Suisun Slough

Club house: 5000 Gallon fresh water storage.

The following information contained herein has been obtained from sources other than William T. Morgan Real Estate, and no warranties are made as to the accuracy of any statements herein contained, nor do said statements constitute representations of William T. Morgan Real Estate. Prospective purchasers are advised and directed to verify all information herein contained and to make an independent investigation.

DUCK CLUBS • FARMS • BUSINESS PROPERTY • COMMERCIAL

WILLIAM T. MORGAN REAL ESTATE

10 N. EAST STREET, SUITE 103 | WOODLAND, CA 95776 | BUS: 530.662.8696 | FAX: 530.662.8589

WILLIAM T. MORGAN
License #00318291
Cell 530.867.2662
Res. 530.662.8466

MARIA DOD
Office Manager
530.662.8696
Maria@wtmorgan.com

MINERAL RIGHTS: 1/11th

RECLAMATION DISTRICT: #219 (see map) Suisun Marsh Reclamation District. 2141 Joice Island reclamation district. An authorized and approved "Reclamation District"!!

UTILITIES: PGE, satellite service for TV & Phone system.

WILLIAMSON ACT: Club is in the Solano County Williamson Act program.

AMENITIES: 24/7 365 days per year live in security man & wife they also provide excellent maintenance of the club in and out door grounds.

Partnership owns, maintains and operates 3 pieces of marsh equipment: Rubber tired bucket loader/mower, 5 yard swamp dump truck and a "D6" mud cat with backhoe attachment.

Year round boat dock and fishing pier with access to Suisun Slough and Suisun City.

COMMENTS: Gravel road maintained by Fish & Wildlife. Property parallels the State Fish and Wildlife Joice Island game refuge.

PRICE: $125,000.00 cash to seller.

Feel free to call for showings!!!!!!! (530) 662-8696

The following information contained herein has been obtained from sources other than William T. Morgan Real Estate, and no warranties are made as to the accuracy of any statements herein contained, nor do said statements constitute representations of William T. Morgan Real Estate. Prospective purchasers are advised and directed to verify all information herein contained and to make an independent investigation.

Photo Gallery

Volanti does not just offer better than average duck hunting it also offers excellent fishing, firearm recreational shooting, swimming, water skiing, pig, pheasant and dove hunting. This picture shows the main club house.

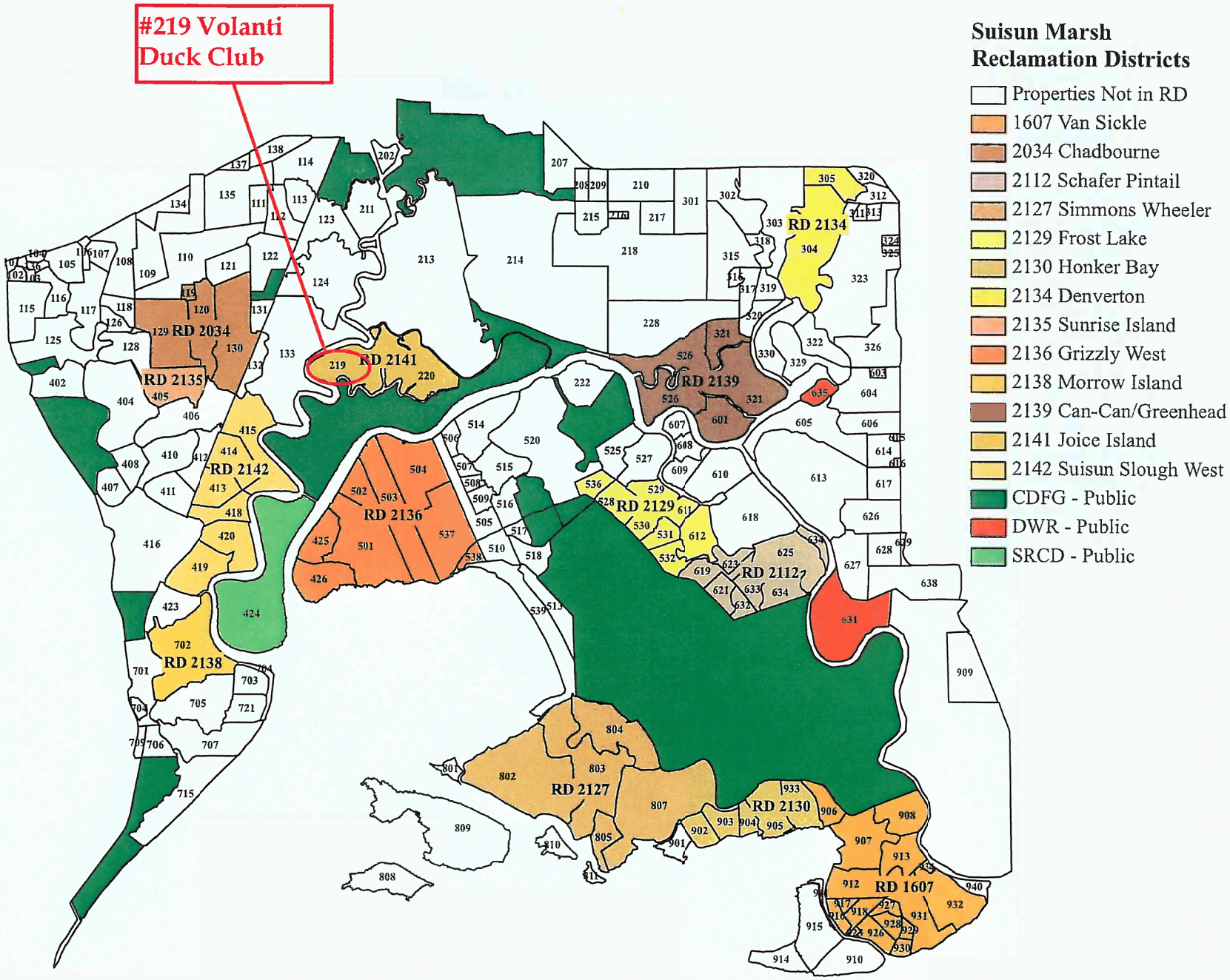
These are the private bungalows with private boat docks. Volanti is a full service retreat/recreational complex, within one hour driving time from San Francisco.

Excellent views to enjoy with family and friends. The club is all about fun, friendship, relaxation, great hunting and more. Volanti an isolated small piece of heaven!!!!

The following information contained herein has been obtained from sources other than William T. Morgan Real Estate and no warranties are made as to the accuracy of any statements herein contained, nor do said statements constitute representations of William T. Morgan Real Estate. Prospective purchasers are advised and directed to verify all information herein contained and to make an independent investigation.

Not only does Volanti offer excellent panoramic views but also a fabulous commercial style kitchen with large dining table, bar and game room.

The following information contained herein has been obtained from sources other than William T. Morgan Real Estate and no warranties are made as to the accuracy of any statements herein contained, nor do said statements constitute representations of William T. Morgan Real Estate. Prospective purchasers are advised and directed to verify all information herein contained and to make an independent investigation.


#219 Volanti Duck Club
Suisun Marsh Reclamation Districts
Properties Not in RD
1607 Van Sickle
2034 Chadbourne
2112 Schafer Pintail
2127 Simmons Wheeler
2129 Frost Lake
2130 Honker Bay
2134 Denverton
2135 Sunrise Island
2136 Grizzly West
2138 Morrow Island
2139 Can-Can/Greenhead
2141 Joice Island
2142 Suisun Slough West
CDFG - Public
DWR - Public
SRCD - Public
RD 2034
RD 2135
RD 2141
RD 2134
RD 2139
RD 2142
RD 2136
RD 2129
RD 2112
RD 2138
RD 2127
RD 2130
RD 1607

34c. Dredge and Fill Calculator, Agnes Farres, September 1, 2016

DREDGE AND FILL FEE CALCULATOR [1] v9 9/21/2011

This fee schedule is based on California Code of Regulations, Title 23, section 2200(a)(3). TO CALCULATE FEE: Enter the "Discharge Size" in Section A or, if the project qualifies, check the check-box in Section B according to the applicable Flat Fee category. If the project involves multiple discharges, then both Section A and Section B fee charges may apply (see footnote 1(a) below). The project fee owed will appear in the "Total Fee For All Categories" box at the bottom of the Fee Calculator. Discharges to waters of the state from both temporary and permanent project impacts are subject to fees. In any case, dredge and fill operation fees shall not exceed $59,000, plus any applicable surcharge(s).

A. FEES BASED ON DISCHARGE SIZE

	FEE CATEGORY	RATE	DISCHARGE SIZE		FEE	
(i)	**Fill & Excavation[2] Discharges.** Size of the discharge area as expressed in hundredths of acres (0.01 acre; 436 square feet) rounded up.	**$944 base fee plus Discharge Area Acres** x $4059	0.98		**$3,978**	
	To Non-Federal Waters (per fee cat. iv)	**$944 base fee plus Discharge Area Acres** x $4059 x 2			**$0**	
(ii)	**Dredging Discharges (except Sand Mining-see (v) below)[3]** Dredge volume expressed in Cubic Yards.	**944 base fee plus Dredge Volume CY** x $0.15			**$0**	
	To Non-Federal Waters (per fee cat. iv)	**$944 base fee plus Dredge Volume CY** x $0.15 x 2			**$0**	**Categories (i) (iii) will be charged an additional Base Fee amount of $944 which is included in the total below.**
(iii)	**Channel and Shoreline Discharges**. Discharge length shall be reported in Linear Feet. Includes linear discharges to drainage features and shorelines, e.g., bank stabilization, revetment, and channelization projects. (Note): The fee for channel and shoreline linear discharges will be assessed under the "Fill and Excavation" or "Channel and Shoreline" schedules, whichever results in the higher fee.	**$944 base fee plus Discharge Length Feet** x $9.44	9140	**$59,000**	**$59,000**	
		$944 base fee plus Discharge Area Acres x $4059	5.18	**$21,026**		
	To Non-Federal Waters (per fee cat. iv)	**$944 base fee plus Discharge Length Feet** x $9.44 x 2		**$0**	**$0**	
		$944 base fee plus Discharge Area Acres x $4059 x 2		**$0**		
(iv)	**Discharges to Non-federal (e.g. "Isolated") Waters.** Discharges to waters or portions of waterbodies not regulated as "waters of the United States", including waters determined to be "isolated" pursuant to the findings of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) 121 S. Ct. 675. **Double the otherwise applicable fee except restoration projects, which shall be charged the normal fee.**					

B. FEES BASED ON FLAT FEE CATEGORIES

(v)	**Sand Mining Dredging Discharges.** Aggregate extraction in marine waters where the source material is free of pollutants and the dredging operation will not violate any Basin Plan Provisions.	$1,776 Flat fee	Check if Applicable	☐	**$0**
(vi)	**Low Impact Discharges.** Projects may be classified as low impact discharges if they meet the following criteria: 1. The discharge affects less than (a) 0.1 acre, (b) 200 linear feet, and (c) 25 cubic yards. 2. Demonstrate that the discharger: (a) has taken all practicable measures to avoid impacts, (b) for unavoidable temporary impacts the discharger will restore waters and vegetation to pre-project conditions as quickly as practicable, (c) for unavoidable permanent impacts the discharger will ensure that there is no net loss of wetland, riparian area, or headwater functions, including onsite habitat, habitat connectivity, floodwater retention, and pollutant removal. 3. The discharge will not: (a) directly or indirectly destabilize a bed of a receiving water, (b) contribute to significant cumulative effects, (c) cause pollution, contamination, or nuisance, (d) adversely affect candidate, threatened, or endangered species, (e) degrade water quality or beneficial uses, (f) be toxic, or (g) include "hazardous" or "designated" material. 4. Discharge is to waterbody regulated as "waters of the United States".	$944 Flat fee.	Check if Applicable	☐	**$0**

(vii)	**Restoration Projects.** Projects undertaken for the sole purpose of restoring or enhancing the beneficial uses of water. This schedule does not apply to projects required under a regulatory mandate or to projects that include a non-restorative component, e.g., land development, property protection, or flood management..	$944 Flat fee	Check if Applicable	☐	**$0**
(viii)	**General Orders.** Projects which are required to submit notification of a proposed discharge to the State and/or Regional Board pursuant to a general water quality certification permitting discharges authorized by a federal general permit or license, (e.g., a U.S. Army Corps of Engineers nationwide permit). Applies ONLY if general water quality certification was previously granted.	$114 Flat Fee	Check if Applicable	☐	**$0**
	TOTAL FEE FOR ALL CATEGORIES **Includes $944 Base Price for Categories (i)-(iii) as applicable. Total fee due is limited to a maximum of $59,000.**				**$59,000**
	Amended Orders. Amendments of WDR's or water quality certifications previously issued for one-time discharges not subject to annual billings. Fees charged as follows:				**$0**
	(a) Minor project changes, not requiring technical analysis and involving only minimal processing time.	No fee required			**$0**
	(b) Changes to projects eligible for flat fees (fee categories v. - viii. above) where technical analysis is needed to assure continuing eligibility for flat fee and that beneficial uses are still protected.	Appropriate flat fee			**$0**
	(c) Project changes not involving an increased discharge amount, but requiring some technical analysis to assure that beneficial uses are still protected and that original conditions are still valid, or need to be modified	$944 flat fee			**$0**
	(d) Project changes involving an increased discharge amount and requiring some technical analysis to assure that beneficial uses are still protected and that original conditions are still valid, or need to be modified.	Additional fee assessed per increased amount of discharge(s) per this dredge and fill fee schedule [Section 2200 (a)(3)] (plus $944 base fee)			**$0**
	(e) Major project changes requiring an essentially new analysis and re-issuance of WDR's or water quality certification.	New fee assessed per this dredge and fill fee schedule (Section 2200 (a)(3)).			**$0**

1(a) When a single project includes multiple discharges within a single dredge and fill category, the fee for that category shall be assessed based on the total area, volume, or length of discharge (as applicable) of the multiple discharges. When a single project includes discharges that are assessed under multiple fee categories, the total fee shall be the sum of the fees assessed under each applicable fee category; however a $944 base fee, if required, shall be charged only once. Fees shall be based on the largest discharge size specified in the original or revised report of waste discharge or Clean Water Act (CWA) section 401 water quality certification application, or as reduced by the applicant without any State or Regional Board intervention. If water quality certification is issued in conjunction with waste discharge requirements (WDRs) or is issued for a discharge regulated under preexisting WDRs, the current annual WDR fee as derived from this dredge and fill fee schedule shall be paid in advance during the application for water quality certification, and shall comprise the fee for water quality certification.

1(b) Discharges requiring water quality certification and regulated under a federal permit or license other than a US Army Corps of Engineers CWA section 404 permit or a Federal Energy Regulatory Commission License shall be assessed a fee determined from the table in CCR 23, Section 2200(a).

2 "Excavation" refers to moving sediment or soil in shallow waters or under no-flow conditions where impacts to beneficial uses are best described by the area of discharge. It typically is done for purposes other than navigation. Example includes trenching for utility lines, other earthwork preliminary to construction, and removing sediment to increase channel capacity.

3 "Dredging" generally refers to removing sediment in deeper water to increase depth. The impacts to beneficial uses are best described by the volume of the discharge and typically occur to facilitate navigation. For fee purposes it also includes aggregate extraction within stream channels where the substrate is composed of course sediment (e.g., gravel) and is reshaped by normal winter flows (e.g., point bars), where natural flood disturbance precludes establishment of significant riparian vegetation, and where extraction timing, location and volume will not cause changes in channel structure (except as required by regulatory agencies for habitat improvement) or impair the ability of the channel to support beneficial uses.

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(Staff Costs)

Exhibit 35

ACL Complaint Staff Costs

FY 2015-2016: Updated 3/17/2016

Staff Time for Pt Buckler ACLc		Prosecution Team						
Enforcement for placement of fill in waters of the US and State		BMM Time	BT Time	AF Time	BH Time	KL Time	AEO Time	Total
Staff Cost Per Hour		$ 38.00	$ 100.00	$ 38.00	$ 100.00	$ 110.00	$ 118.00	
Handoff Agnes		1						1
File Review		8						8
ACLc Strategy Meeting 12/28/15		1	1			1	1	4
Ex Parte Hearing							3.5	3.5
Internal Strategy 1/5/16		1	1	1		1	1	5
Internal Strategy 1/12/16		1	1	1	1	1	1	6
Interagency meeting 1/7/2016 and expert witness call		3	3	3	3	3	3	18
Interagency meeting 1/19/2016		1	1	1		1	1	5
Internal Strategy 1/21/16		1	1	1	1	1	1	6
Expert witness strategy mtg 1/26		2.5	2.5	2.5	2.5	2.5	2.5	15
Internal Strategy 2/1/16		0.5		0.5	0.5	0.5	0.5	2.5
Internal Strategy 2/2/16		1	1	1	1	1	1	6
Interagency meeting 2/9		1	1	1	1	1	1	6
Internal Strategy 2/16		1	1	1	1	1	1	6
Site Visit Boat Survey		3		3			3	9
Warrant Serving & Inspection 3.2.2016		9	9	9			9	36
3.8.2016 Interagency debrief		3	3	3	3	3	3	18
3.24.2016 Expert report prelim		2	2	2		2	2	10
3.24.2016 next step meeting		1	1				1	3

4.4.2016 regrouping		1.5	1.5	1.5	1.5		1.5	7.5
4.11.2016 inspection report meeting w/Dyan		0.5	0.5	0.5			0.5	2
4.14.2016 Meeting		1	1	1			1	4
4.19.2016 internal and interagency		1.5	1.5	1.5		1.5	1.5	7.5
4.21.2016 Report Review		2	2	2		2	2	10
4.29 DA Meeting Solano County		2	2	2				6
5.6 Collective Edit		3	3	3		3	3	15
5.9 Check in		1	1	1			1	4
5.11 Report Edits		2		2				4
Associated Documentation Drafting		145	115	105	5	4	20	394
Staff Totals		191.5	156	149.5	20.5	29.5	66	613
Cost FY 2015-2016		$ 7,277.00	$ 15,600.00	$ 5,681.00	$ 2,050.00	$ 3,245.00	$ 7,788.00	$ 41,641.00

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(Water Board and Discharger July 2016 Meeting)

Exhibit 36

36a. July 22, 2016, Meeting Minutes – Point Buckler Island, Suisun Marsh, Solano County

36b. Point Buckler Draft Concept, July 20, 2016

36a. July 22, 2016, Meeting Minutes – Point Buckler Island, Suisun Marsh, Solano County

CASE FILE MEMO

To: Point Buckler Club, LLC Case File
Place ID 816826

Subject: July 22, 2016, Meeting Minutes – Point Buckler Island, Suisun Marsh, Solano County

Attendance:

Water Board
Brian Thompson
Keith Lichten
Laura Drabandt
Dyan Whyte
Agnes Farres
Julie Macedo
Tamarin Austin

BCDC
Adrienne Klein
Marc Zeppetello
Maggie Weber
Harsharon Sekhan
Kristoffer Jacob
John Bowers

EPA
Bill Lee
Brett Moffatt

Point Buckler Club, LLC
John Sweeney
Lawrence Bazel
Terry Huffman

I. Larry Bazel provided an aerial photo (Draft Concept) for discussion and identified next steps:
   A. Get feedback from regulatory agencies and begin putting together an initial permit application.
   B. Schedule another meeting in late August to determine how to proceed.
   C. Point Buckler Club[1] (Club) wants to discuss mitigation and penalties later, after they get the permitting process started.

II. Larry Bazel described the Draft Concept:
   A. Four cabins on stilts.
   B. Put kiteboarding area on stilts.
   C. A ramp for access to Club facilities on stilts.
   D. Helipads placed on eastern end, closest to the highest part of the island.
   E. Docks will stay in place.
   F. Propose four breaches in the levee, about 20 feet wide each. Something will be placed over the top of each breach that will act as a bridge. There will be a sheet pile energy dissipator on the other side to keep things from eroding too much.

III. Terry Huffman also described the duck pond shown on the Draft Concept:
   A. Outer line is the levee; estimate 0.5 acre for the levee and 1.1 acres for the pond
   B. Duck pond will be connected to the borrow ditch so it will be tidal

IV. Larry Bazel described the Club's desires for Point Buckler:

[1] For purposes of the meeting notes, Point Buckler Club and John Sweeney are not identified separately, though they are separate parties to the pending Water Board actions. In general, both are referred to here as the Club.

A. Levee – the Club wants to keep the levee as it is because they want to keep the island around.
B. Restoring tidal flow –Three channels there before will be opened back up - more potential for fish habitat.
C. Permit application – will not have complete permit application by Aug. 2, as required by BCDC.

V. BCDC asked what tidal action will be restored and if the Club is still figuring out the number of breaches.
   A. Terry Huffman is still calculating tidal prism; might propose smaller or larger breaches, or to reposition the breaches; are open to more breaches in the levee.
   B. Larry Bazel answered that the four proposed breaches are at least as large as the old breaches added together.

VI. Water Board asked how the locations for each site feature in the Draft Concept were chosen.
   A. Larry Bazel said the Club didn't want the duck pond where it would interfere with natural channels. The duck pond needs to be far away from structures. They looked at the northern area and can put the duck pond there.
   B. Kiteboarding is on the western side so the facilities are there. They won't make things worse than they are now.
   C. The breaches are spaced pretty well – will generate good circulation with the borrow ditch.

VII. The Water Board discussed requirements of the Tentative CAO and permitting requirements in general.
   A. Think about avoiding and minimizing impacts. For example, what are the helipads' impacts to birds and other species?
   B. Think through the timing and processes of wetland development. How will maintaining the levee affect wetland development?
   C. Avoid after the fact permitting and avoid harm.
   D. Think about the sizing of what you propose (e.g. breaches, borrow ditch, and levee). The hydrodynamics of an estuarine channel is complicated, especially after it has been manipulated.
   E. The Club's proposal should allow for sediment accretion – how does this work with the levee and breaches?
   F. Will periodic maintenance be required to facilitate flows?
   G. How would beneficial uses be protected? Should human access be limited?
   H. Dischargers will need to address current conditions at the site regarding increased salinity, soil acidification, and invasion of perennial pepperweed.

VIII. BCDC asked about the Club's intention with the crescent ponds; how the Club's conceptual proposal will integrate with requirements of the Tentative CAO; and asked when the Club would have a proposal with more scientific basis.
   A. Larry Bazel said that if the agencies think the crescent ponds are good, they can leave them in. If not, the Club can close them in.
   B. Larry Bazel also stated that permitting seems to be the right process. If they lose (at the Water Board's CAO hearing) on August 10, then they will petition State Board and file a lawsuit.

IX. Water Board asked the Club to think about how the duck pond will function and what vegetation will be present; stated that compensatory mitigation needs to be considered as part of evaluating the Draft Concept; discussed the need for information such as tidal modelling, fish habitat, sediment dynamics, and water quality to determine the appropriate number of breaches and evaluate the Draft Concept; and discussed the need to identify what the potential project is before having permitting discussions.

A. Larry Bazel said the Club is not ready to submit a full application.
B. Duck pond – there will be a fish screen on the duck pond, everything else will be tidal. The Club will follow the model for managing a duck pond. It is true they have not managed it as a duck pond before.
C. Terry Huffman asked whether the Club could get mitigation credit if the island is returned to a condition better than it was in 2011. The Water Board responded that they are using 2011 to represent baseline conditions, and there may be disagreement on what baseline conditions were.

X. BCDC discussed permitting and other requirements:
A. The Cease and Desist Order (CDO) has two conditions requiring permit application and proposed plan to restore the island.
B. Need to determine if public access requirements will apply.
C. The Club needs to follow instructions in the Suisun Marsh Protection Plan which articulates how to address policies and bring in the best available science.

XI. BCDC and EPA asked for justification for keeping the levee in place, and noted that if the Club had applied for a permit in 2011, the permit application would require justification for constructing a new levee
A. Larry Bazel said the island is valuable for endangered fish. The levee protects the island from erosion or else the tidal channels would disappear.
B. Water Board noted the borrow ditch will make restoration challenging because it is artificial in width and depth; asked what is the long term ecological function of the borrow ditch; said the island needs enough tidal flow to allow sediment accretion; asked the Club to explain the assumption of bulldozing the levee into the borrow ditch.
C. Larry Bazel answered that the easiest way to get rid of the levee is to push it back into the borrow ditch.

XII. Larry Bazel asked what the Club should do for the next meeting.
A. Water Board requested: (1) interim corrective action plans; (2) mitigation – research options, have concrete proposals, discuss with Water Board staff who can provide early input; (3) have more than one possible project to propose – other iterations that maximize restoration; (4) show us that four breaches (or whatever number is being proposed) will work.
B. Water Board staff will consider an amendment to the Tentative CAO to allow for more flexibility with restoring tidal circulation – not necessarily specify the number of breaches, but focus on the hydrodynamically appropriate number of breaches.
C. BCDC asked the Club to provide justification for the size of the large dock. The Water Board noted justification would be needed for all project components.

XIII. Mitigation discussion
A. EPA said a certain amount of mitigation will be necessary for all fill left in place – presumably mitigation will be offsite; asked the Club to let the agencies know what mitigation options they are looking at.
B. Larry Bazel said mitigation is going to be hard – the Club is not ready to talk about mitigation and wants to focus on project and alternatives.
C. Terry Huffman can talk to Keith Lichten about mitigation

XIV. Next Steps
A. The Club will provide deliverables (documents with technical justification addressing XII.A, C. above) to Water Board, BCDC, and EPA by September 2, 2016.
B. If deliverables are provided, the agencies will meet with the Club on September 8, 2016 at 1:30 pm.

C. The Club will provide an outline of any issues they don't have time to address at the September 8, 2016 meeting.

36b. Point Buckler Draft Concept, July 20, 2016

Figure 1. Draft Conceptual Point Buckler Plan

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

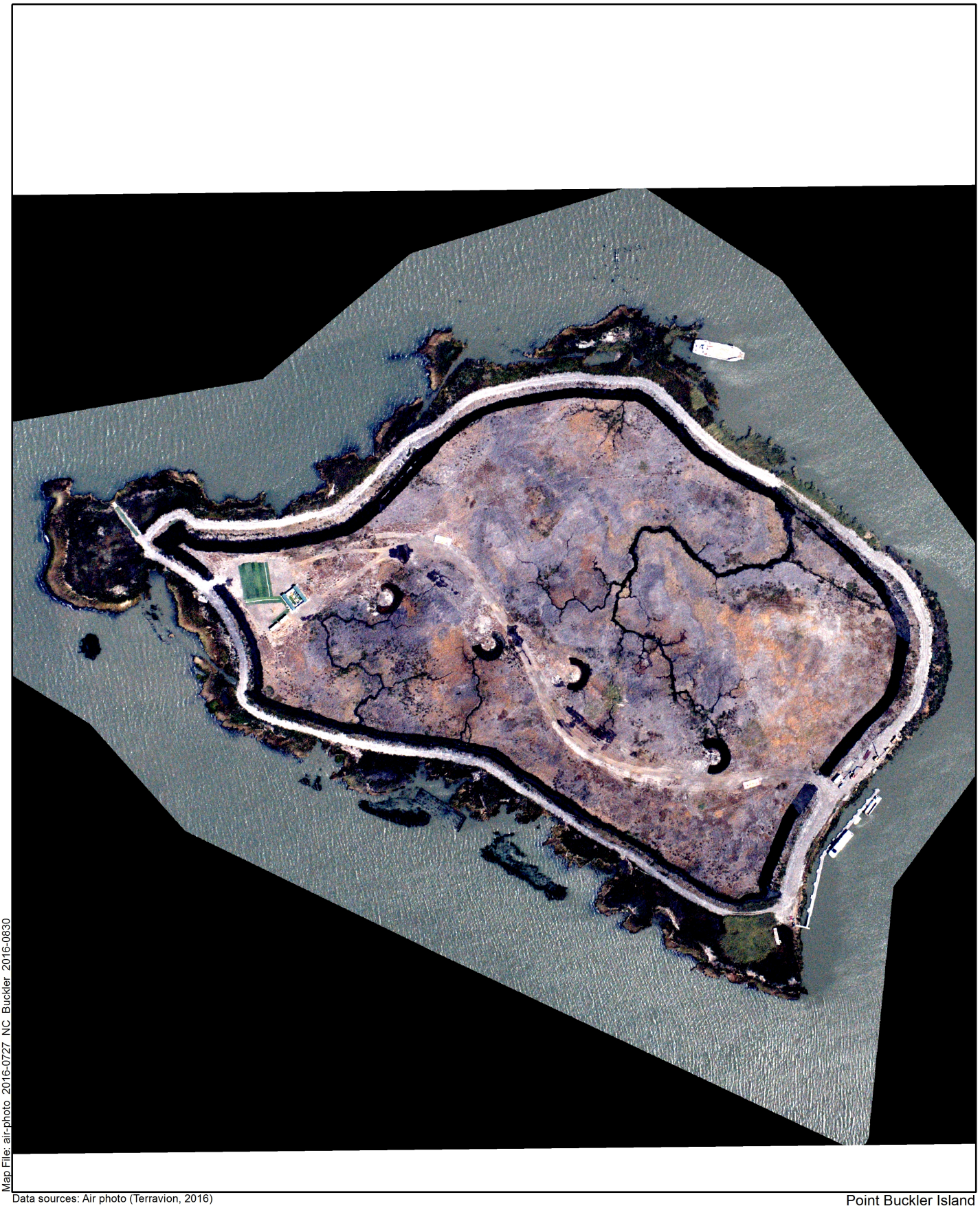
Description of Exhibit Provided by Hard Copy and Electronically
(Aerial Photographs)

Exhibit 37

37a. Aerial Photographs of Point Buckler Island, Snag Island, and Freeman Island, July 27, 2016

37b. Aerial Photographs of Point Buckler Island, Snag Island, and Freeman Island, August 24, 2016

37a. Aerial Photographs of Point Buckler Island, Snag Island, and Freeman Island, July 27, 2016



Map File: air-photo 2016-0727 NC Buckler 2016-0830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

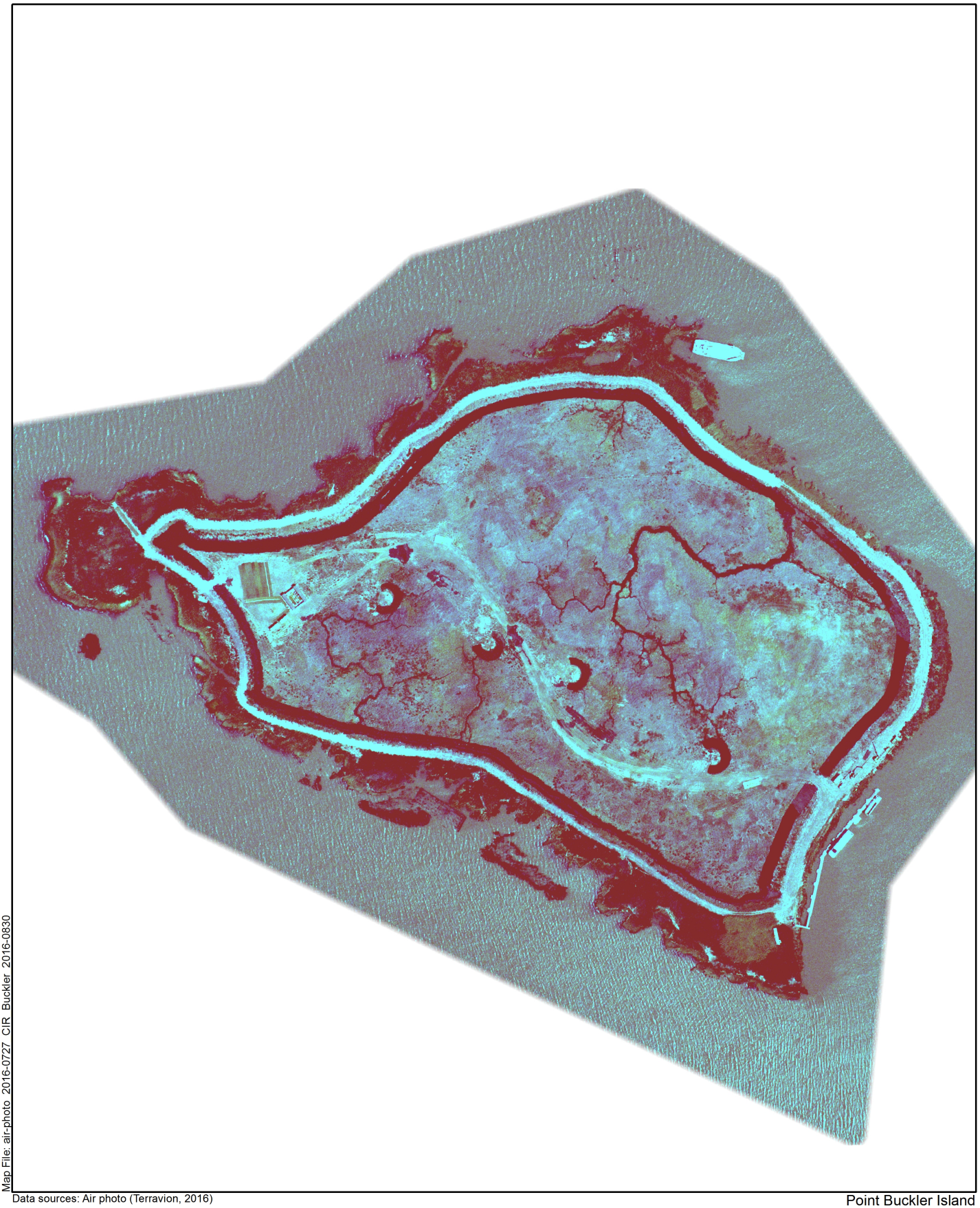
1:3,600 (1" = 300' at letter size)

0 150 300 ft

0 50 100 m

Image brightness and contrast adjusted from original for visual clarity

Pt. Buckler Island
July 27, 2016 Natural Color Aerial Photograph



Map File: air-photo_2016-0727_CIR_Buckler_2016-0830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

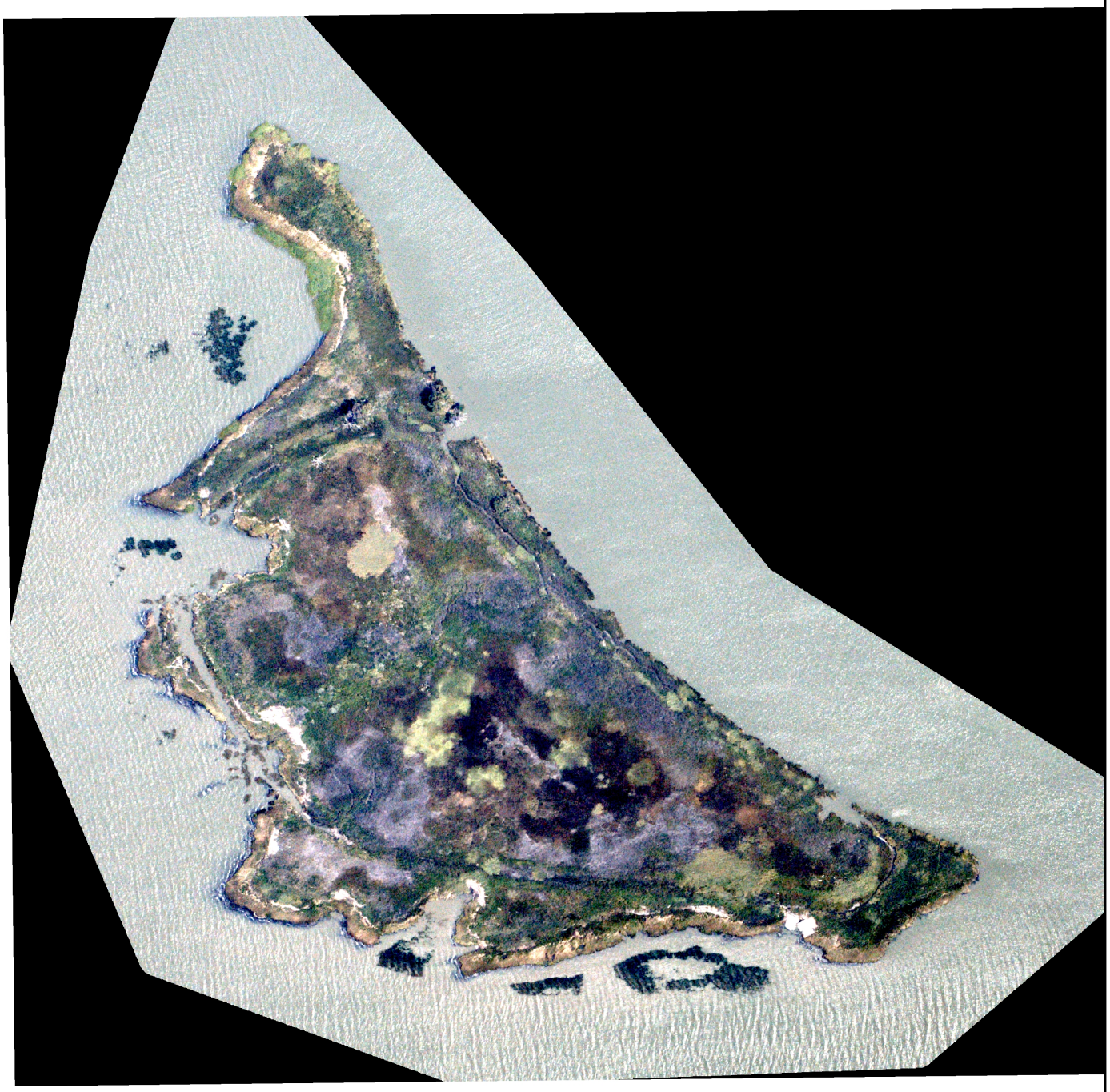
1:3,600 (1" = 300' at letter size)

0 150 300 ft

0 50 100 m

Image brightness and contrast adjusted from original for visual clarity

Pt. Buckler Island
July 27, 2016 Color Infrared Aerial Photograph



Map File: air-photo_2016-0727_NC_Snag_2016-830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:3,600 (1" = 300' at letter size)

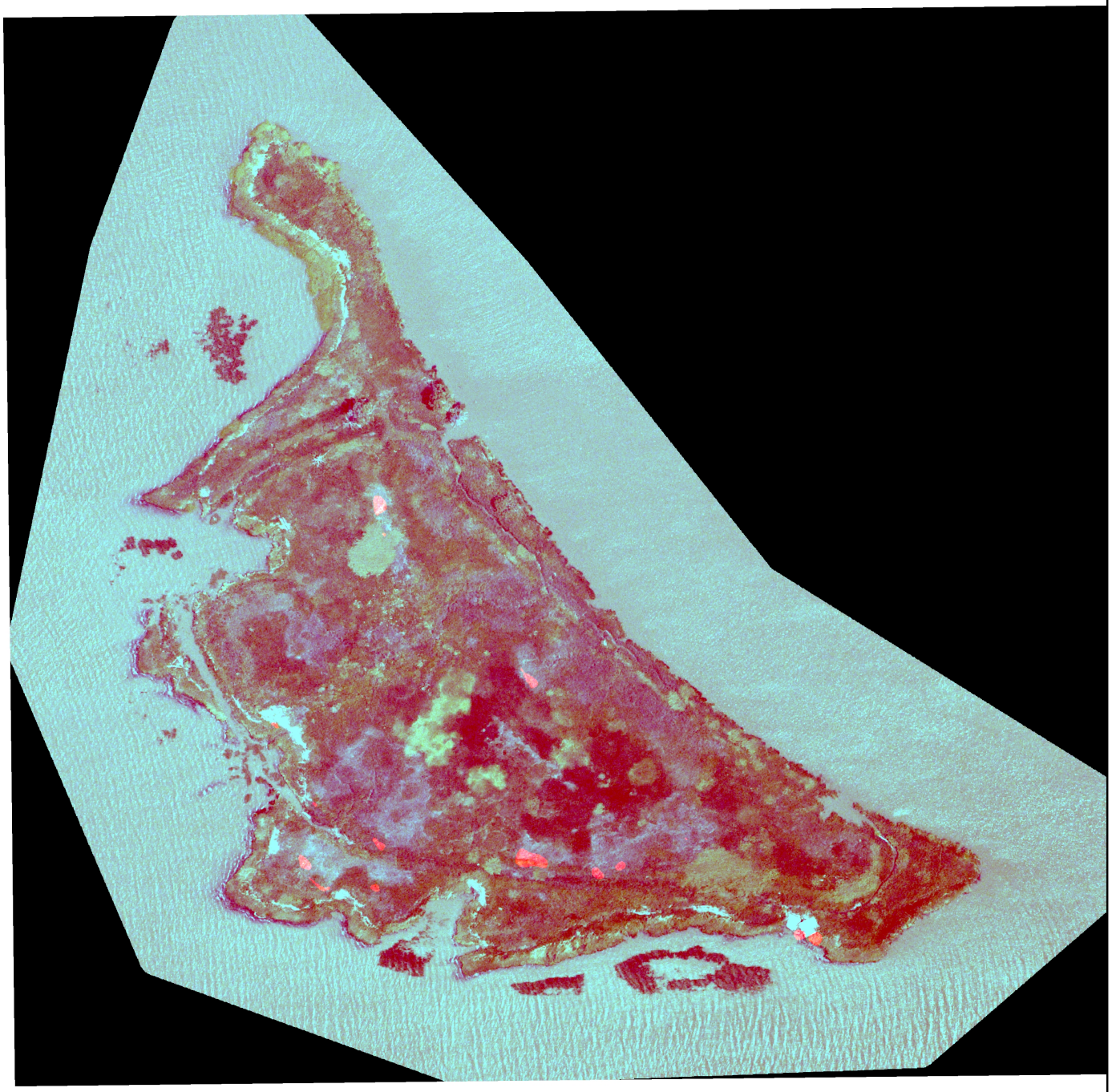
0 150 300 ft

0 50 100 m

Image brightness and contrast adjusted from original for visual clarity

Snag Island

July 27, 2016 Natural Color Aerial Photograph



Map File: air-photo_2016-0727_CIR_Snag_2016-830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:3,600 (1" = 300' at letter size)

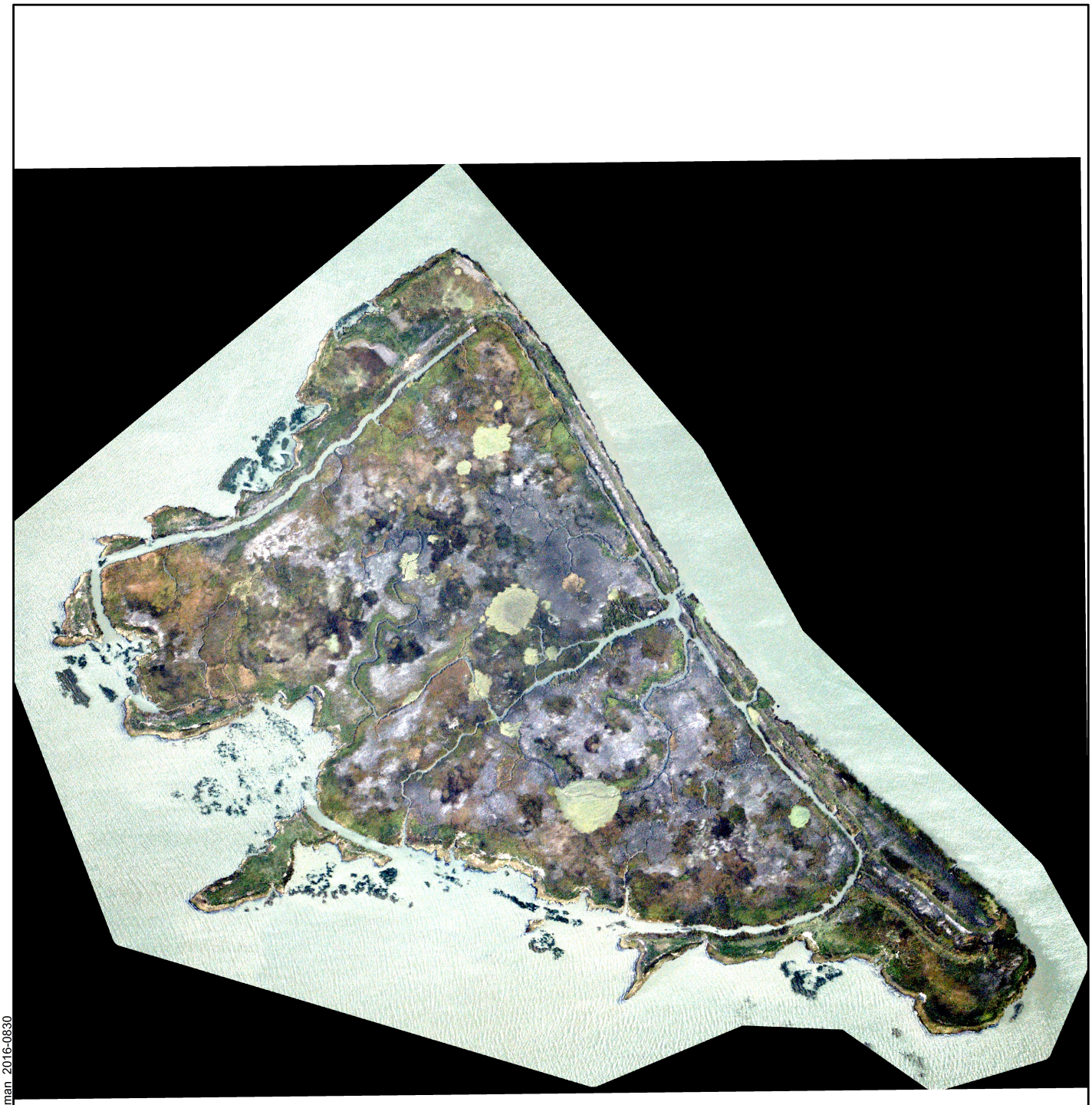
0 150 300 ft

0 50 100 m

Image brightness and contrast adjusted from original for visual clarity

Snag Island

July 27, 2016 Color Infrared Aerial Photograph



Map File: air-photo_2016-0727_NC_Freeman_2016-0830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:6,000 (1" = 500' at letter size)

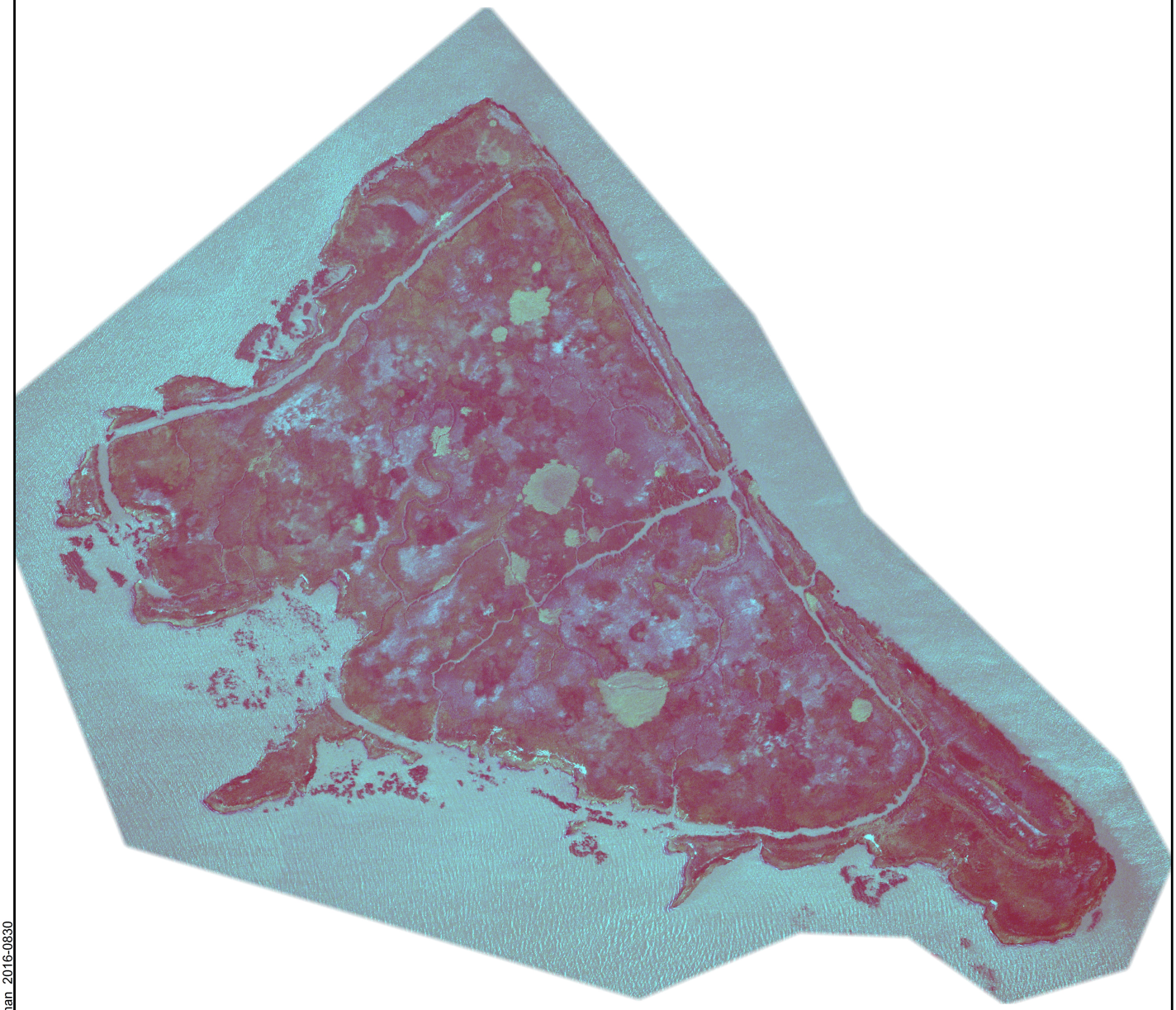
0 250 500 ft

0 75 150 m

Image brightness and contrast adjusted from original for visual clarity

Freeman Island

July 27, 2016 Natural Color Aerial Photograph



Map File: air-photo_2016-0727_CIR_Freeman_2016-0830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:6,000 (1" = 500' at letter size)

0 250 500 ft

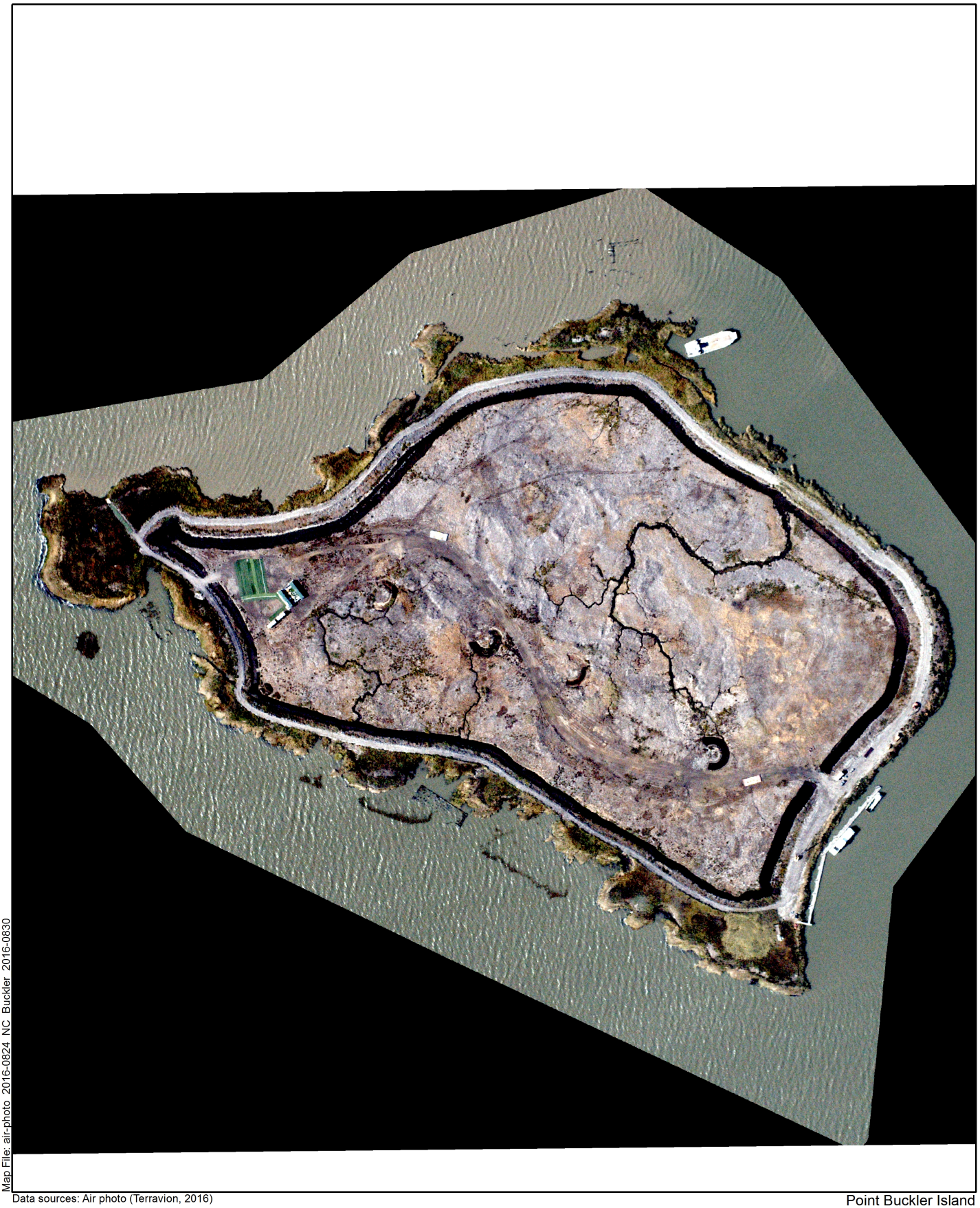
0 75 150 m

Image brightness and contrast adjusted from original for visual clarity

Freeman Island

July 27, 2016 Color Infrared Aerial Photograph

37b. Aerial Photographs of Point Buckler Island, Snag Island, and Freeman Island, August 24, 2016



Map File: air-photo 2016-0824 NC Buckler 2016-0830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

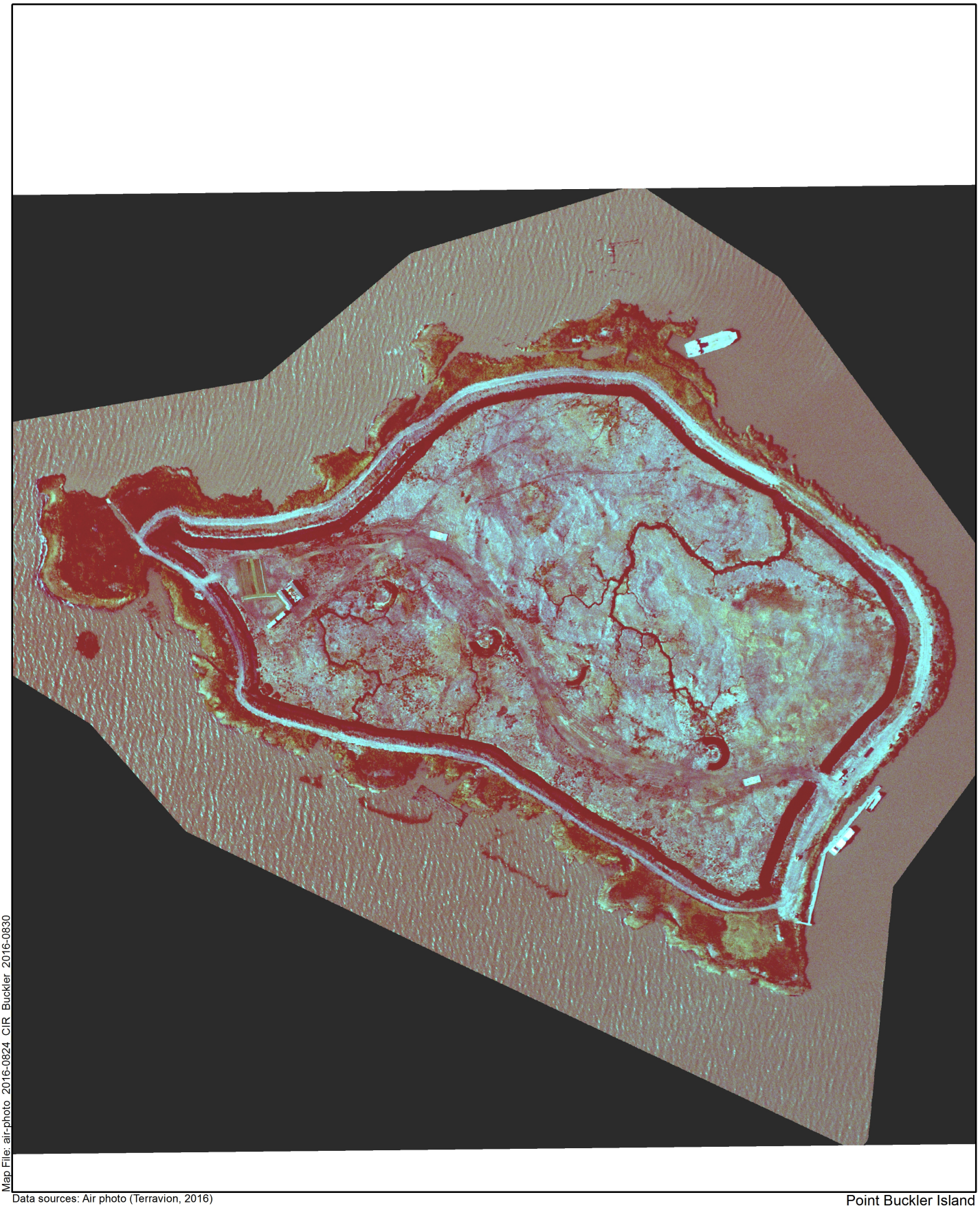
1:3,600 (1" = 300' at letter size)

0 150 300 ft

0 50 100 m

Image brightness and contrast adjusted from original for visual clarity

Pt. Buckler Island
August 24, 2016 Natural Color Aerial Photograph



Map File: air-photo 2016-0824 CIR Buckler 2016-0830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:3,600 (1" = 300' at letter size)

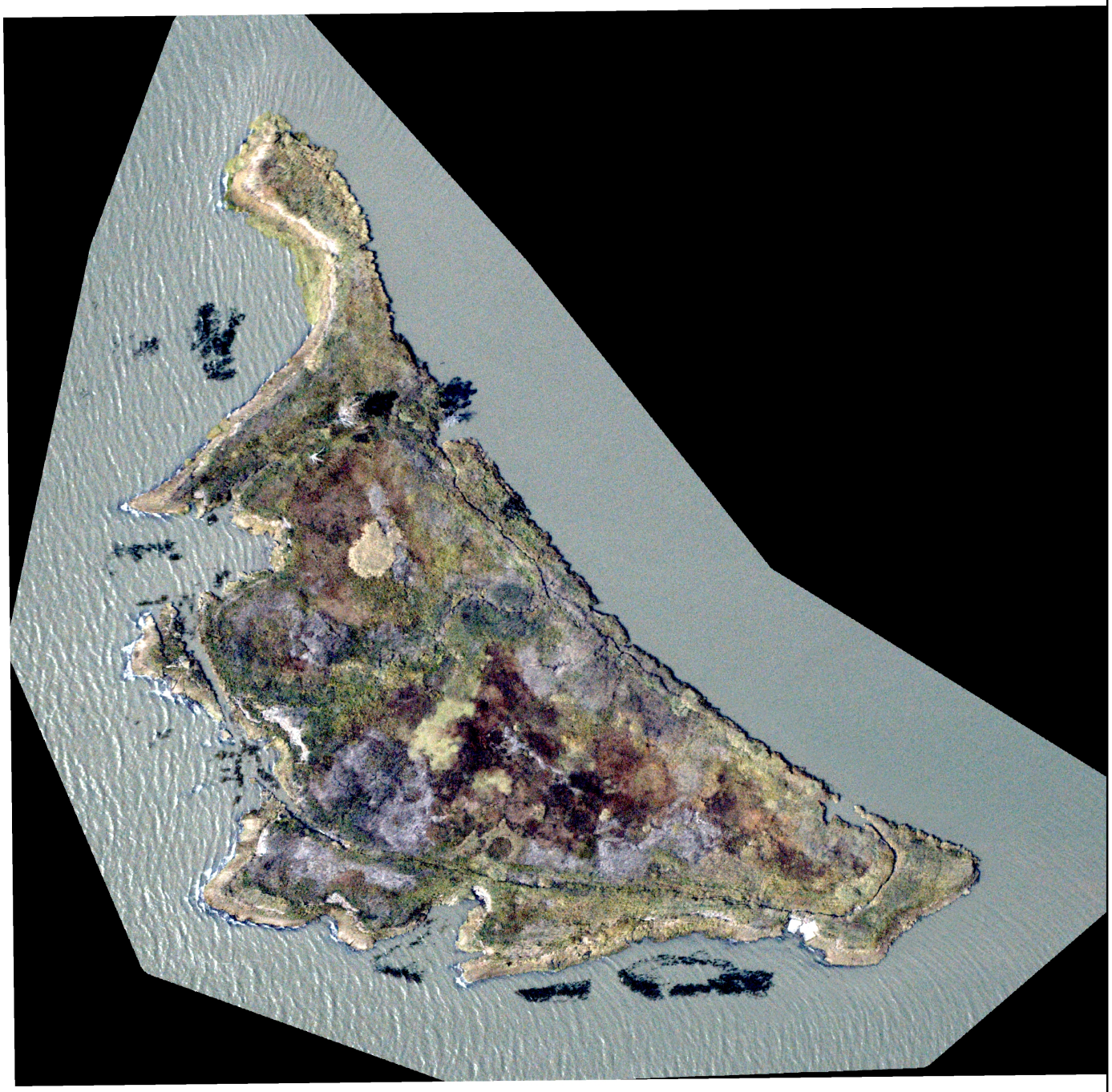
0 150 300 ft

0 50 100 m

Image brightness and contrast adjusted from original for visual clarity

Pt. Buckler Island

August 24, 2016 Color Infrared Aerial Photograph



Map File: air-photo_2016-0824_NC_Snag_2016-830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:3,600 (1" = 300' at letter size)

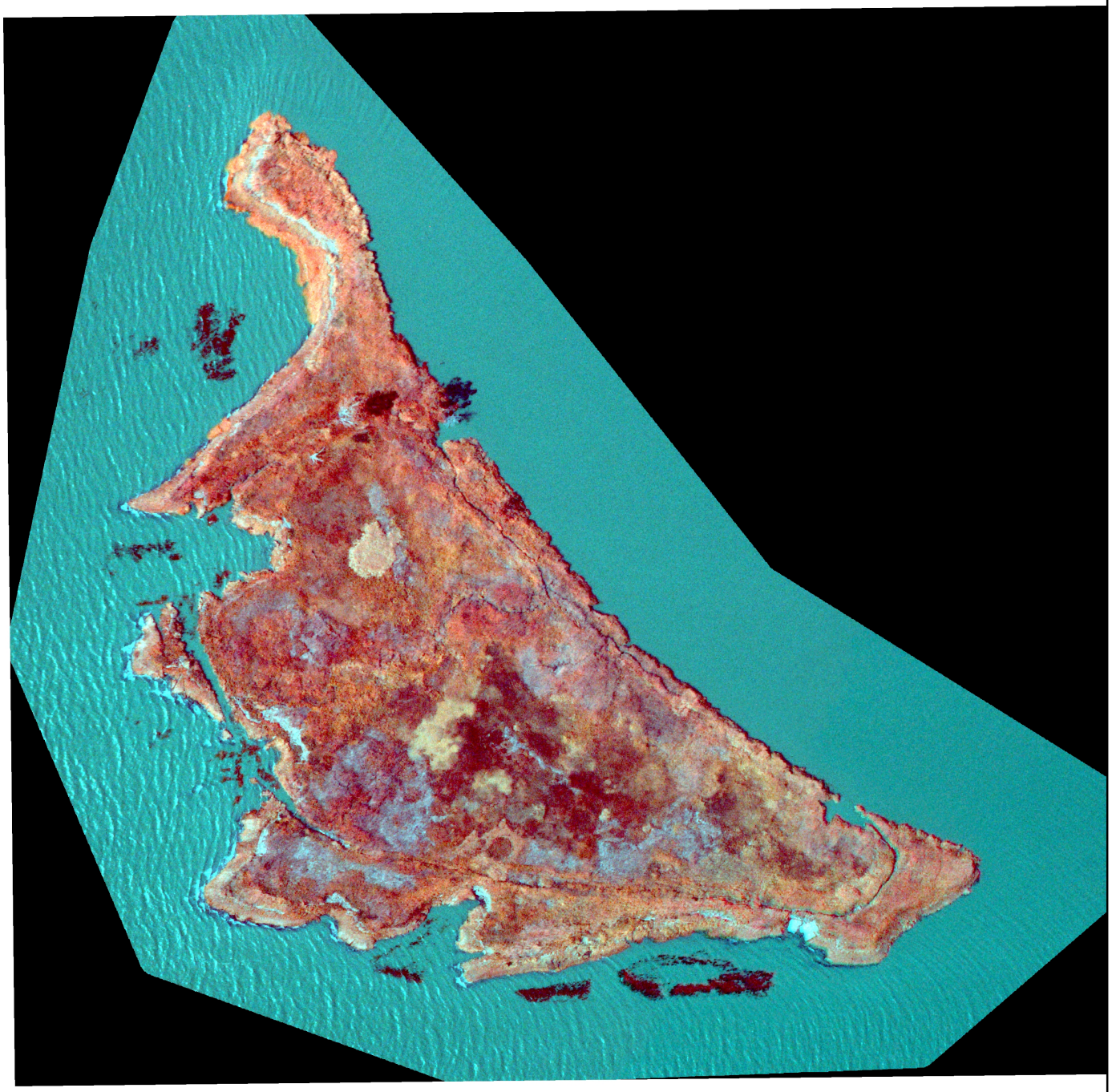
0 150 300 ft

0 50 100 m

Image brightness and contrast adjusted from original for visual clarity

Snag Island

August 24, 2016 Natural Color Aerial Photograph



Map File: air-photo_2016-0824_CIR_Snag_2016-830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:3,600 (1" = 300' at letter size)

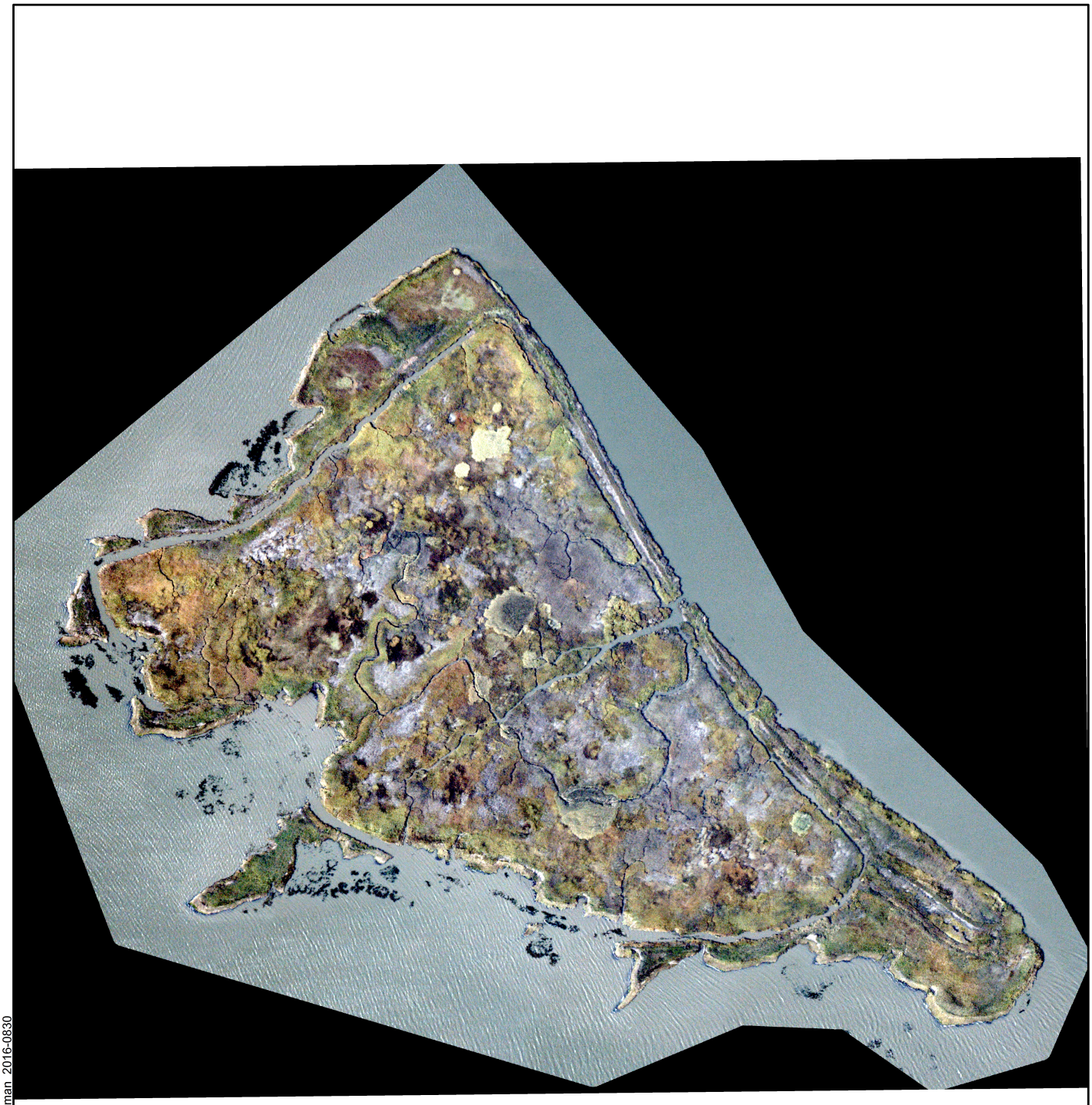
0 150 300 ft

0 50 100 m

Image brightness and contrast adjusted from original for visual clarity

Snag Island

August 24, 2016 Color Infrared Aerial Photograph



Map File: air-photo_2016-0824_NC_Freeman_2016-0830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:6,000 (1" = 500' at letter size)

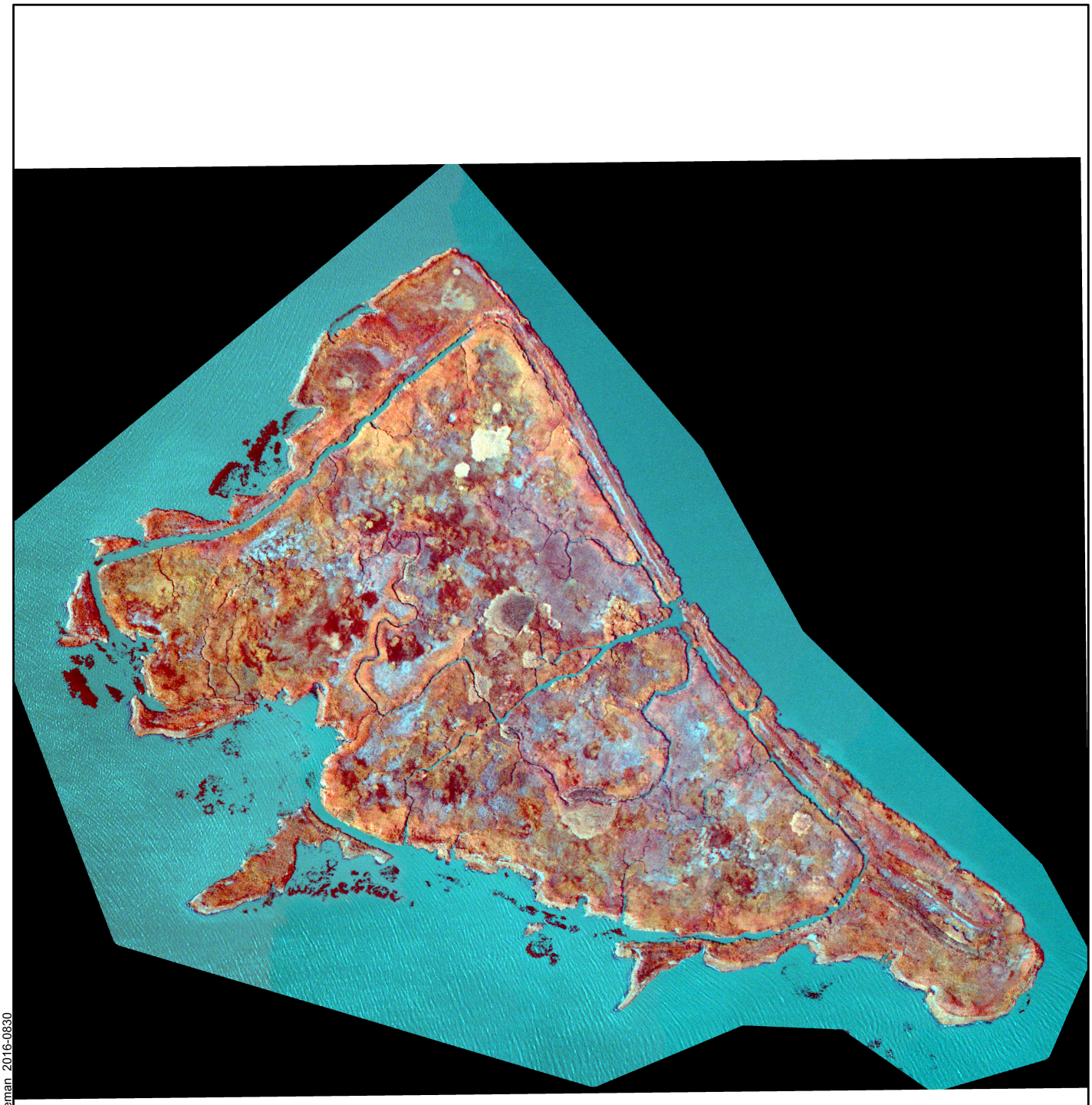
0 250 500 ft

0 75 150 m

Image brightness and contrast adjusted from original for visual clarity

Freeman Island

August 24, 2016 Natural Color Aerial Photograph



Map File: air-photo_2016-0824_CIR_Freeman_2016-0830

Data sources: Air photo (Terravion, 2016)

Point Buckler Island
Solano County, CA

1:6,000 (1" = 500' at letter size)

0 250 500 ft

0 75 150 m

Image brightness and contrast adjusted from original for visual clarity

Freeman Island

August 24, 2016 Color Infrared Aerial Photograph

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(Discharger Correspondences)

Exhibit 38

38a. John Sweeney, Suisun Resource Conservation District, and U.S. Army Corps June 2011 Emails Concerning Chipps Island

38b. John D. Sweeney letter to Suisun Marsh Club Owners, April 10, 2016[1]

[1] The annotated attachments were excluded from the exhibit and can be provided upon request.

38a. John Sweeney, Suisun Resource Conservation District, and U.S. Army Corps June 2011 Emails Concerning Chipps Island

Orlando Rocha

From: john sweeney [john@supercardirect.com]
Sent: Monday, June 20, 2011 11:05 AM
To: schappell@suisunrcd.org
Cc: orocha@suisunrcd.org
Subject: Chipps Island Levee Break on Woodin Side
Attachments: IMG_1747.JPG; IMG_1746.JPG

Steve

As you may know I bought the Mastelottos side of Chipps Island last year and now Thad Woodins side. He was to be off last Friday and when he left and pulled his barge out he caused one heck of a large mess. The levee broke and is now about 50 feet across just past where his house barge was. I went with Mike Frost and Dutra today to get a quote to seal it before it grows. Estimate we need 1000 ton of rock and then ability to fill with mud behind.

I need a bit of help on two fronts. One what permits did Woodin have for maintenance or dredging out there? I need to get an emergency permit to fix this with rock asap then backfill with mud. No way to stop this breach without rock. Here are two pics of it as of today. From what I know it broke the night of the 11th and has grown since.

Or if do i just need to file an emergency permit with whom?

John Sweeney
(415)686-0907

Orlando Rocha

From: john sweeney [john@supercardirect.com]
Sent: Wednesday, June 22, 2011 7:30 AM
To: schappell@suisunrcd.org; orocha@suisunrcd.org
Subject: Chipps Update

Steve and Orlando

Per ususal no reply from my calls to Army Corps. Same thing happened last month when we tried to address the old break and left several messages with no reply.

Im planning to get a barge out next week with a crane and an excavator. With some luck we hope to use two 40' shipping containers on each side of the break to form a backstop which can then be filled. The containers would the be removed as soon as levee dries. Army corps used them in New Orleans the same way. We would secure them in place using two old piles on each side. Its best to try and fix levee without rock first. If that fails we can have Dutra bring it in. Chipps levee in that area is very soft so the least amount of weight the better.

Since we cannot afford to let it grow Im going to mobilize these guys on their schedule as soon as they can get out there. Im hopeful we can at least get some sort of permit in place but my partners have told me to fix it asap regardless.

I can send a detail of the scope if you like. Any help would be appreciated.

Here is a pdf of the container stuff
http://www.seament.biz/files/ASBPASeamentPresentation.pdf

John Sweeney

From: john sweeney <john@supercardirect.com>
Subject: **Chipps ISland levee break RGP 5**
Date: June 23, 2011 11:10:59 AM PDT
To: david.m.wickens@usace.army.mil
Cc: orocha@suisunrcd.org
2 Attachments, 4.4 MB

David-

I need to get a permit asap going on the fix of the break at Chipps. I have had Dutra, Salt River and Mike Frost Construction out and we have agreed on two ways to proceed.

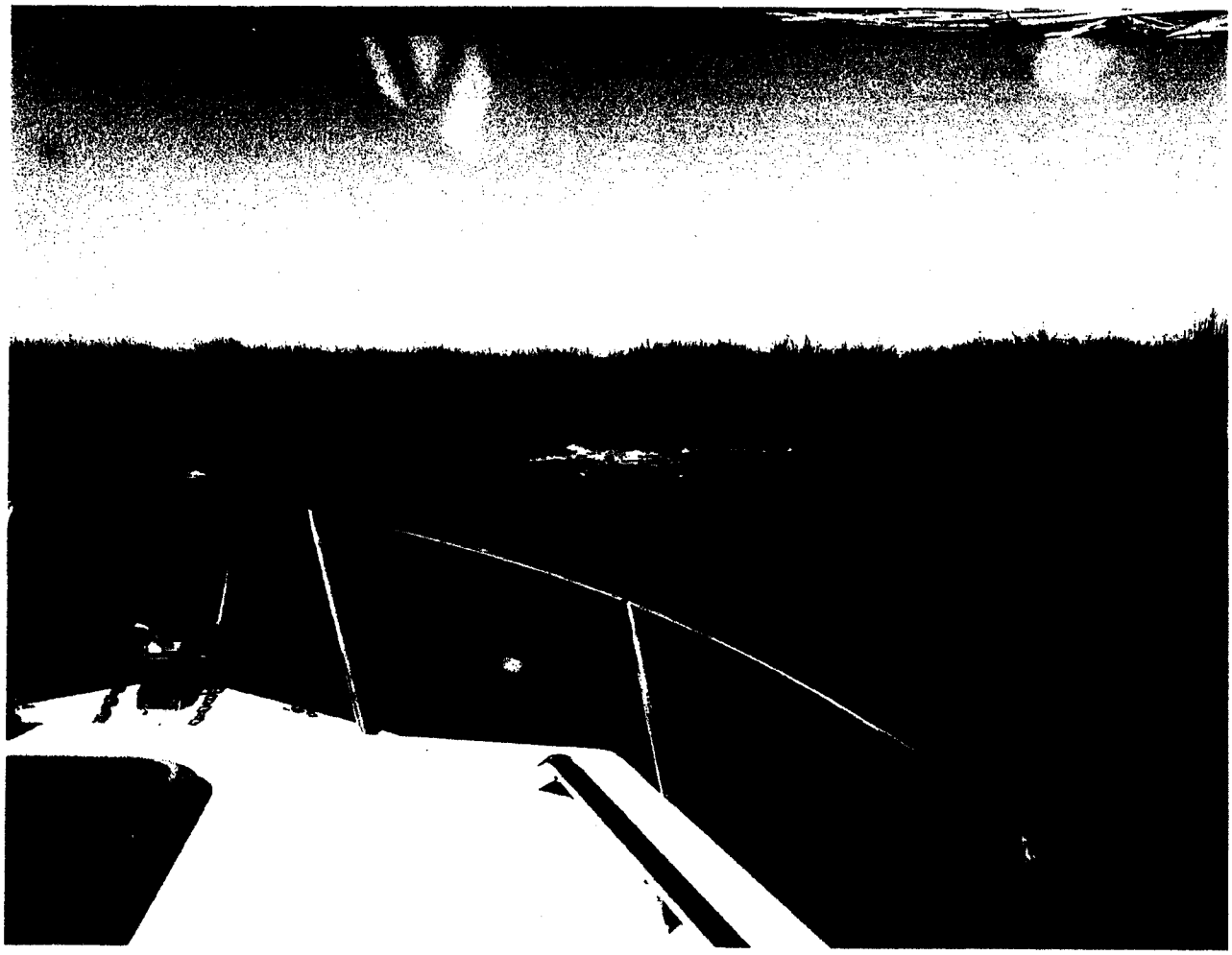
First since Chipps levees are soft as is filling with rock first off could be wasted as it may just sink. So we would like to bring a barge over and place two 40 containers infront and behind the break to slow the flow. Them with a long reach excavator fill the levee with mud and then wait for it to dry for a few weeks then add more. After a month remove the two water ballasted containers and hopefully the levee will be fixed. A similar method was used in New Orleans by Army Corps and other with a company called SeaBox.

If that fails we would bring in rock from dutra in Rio Vista and build a prism wall to stop the flow and then back fill with mud. Either way we need to use mud to rebuild it as its probably the only thing light enough to not sink.

Attached are the pics of the break and please let me know what form to fill out. I am totally bound by the barge companies schedules so the only time I can get equipment to Island is end of next week.

With a 60 foot long reach we would propably not be able to reach enough material from the inside of Island so we may need to grab mud from the inner slough. PLease advise on how I proceed.

John Sweeney
New Owner Chipps Island



levee break Chipps June

From: "Wickens, David M SPN" <David.M.Wickens@usace.army.mil>
Subject: **Chipps Island Levee Breach (UNCLASSIFIED)**
Date: June 23, 2011 1:51:38 PM PDT
To: john sweeney <john@supercardirect.com>, "Monarres, Laurie, SPN" <Laurie.A.Monarres@usace.army.mil>
Cc: <srcd@castles.com>

Classification: UNCLASSIFIED
Caveats: NONE

Mr. Sweeney,

Thank you for sending an email/pictures regarding the levee break on your property at Chipps Island, located within the Suisun Marsh, Solano County, California. The U.S. Army Corps of Engineers understands the importance of finding a timely solution to this situation.

Based on the information you submitted I believe it would be most prudent for you to immediately coordinate with the Suisun Marsh Resource Conservation District (RCD) to explore the potential for repairing the breach in compliance with the guidelines outlined in Regional General Permit 3 (RGP3). A copy of the permit is located at:

http://www.spnusace.army.mil/regulatory/permitnumber3.pdf

If it is determined RGP3 is not suitable to authorize your proposed levee repairs, please continue to coordinate with the Suisun Marsh RCD and contact the Corps for additional guidance.

Please email me at david.m.wickens@usace.army.mil or call me at 415-503-6787 if you have any questions.

Thank you,

David Wickens
U.S. Army Corps of Engineers
San Francisco District
Regulatory Branch

Classification: UNCLASSIFIED
Caveats: NONE

From: "Orlando Rocha" <ORocha@SuisunRCD.org>
Subject: **RE: Chipps Island Levee Breach (UNCLASSIFIED)**
Date: June 23, 2011 3:23:30 PM PDT
To: "'john sweeney" <john@supercardirect.com>
4 Attachments, 477 KB

John,

Here is what I put together, if you could put the location of the breach on a map of some kind that would be great, I have a general idea of where the breach is, but if you can point out the exact spot out that would be better. Just look it over, sign the first page and I will work with Dave, after you send it back to me.

Call me if you have any questions

Orlando

Orlando Rocha
SRCD Biologist
Water Manager Program
2544 Grizzly Island Rd
Suisun City, CA 94585
Office: 707-426-2431 ext 300
Cell: 707-631-0819

From: john sweeney [mailto:john@supercardirect.com]
Sent: Thursday, June 23, 2011 2:03 PM
To: schappell@suisunrcd.org; orocha@suisunrcd.org
Subject: Fwd: Chipps Island Levee Breach (UNCLASSIFIED)

Here is his reply just like last time said I have to go through SRCD.

John

Begin forwarded message:

From: "Wickens, David M SPN" <David.M.Wickens@usace.army.mil>
Date: June 23, 2011 1:51:38 PM PDT
To: john sweeney <john@supercardirect.com>, "Monarres, Laurie, SPN" <Laurie.A.Monarres@usace.army.mil>
Cc: <srcd@castles.com>
Subject: Chipps Island Levee Breach (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Mr. Sweeney,

Thank you for sending an email/pictures regarding the levee break on your property at Chipps Island, located within the Suisun Marsh, Solano County, California. The U.S. Army Corps of Engineers understands the importance of finding a timely solution to this situation.

Based on the information you submitted I believe it would be most prudent for you to immediately coordinate with the Suisun Marsh Resource Conservation District (RCD) to explore the potential for repairing the breach in compliance with the guidelines outlined in Regional General Permit 3 (RGP3). A copy of the permit is located at:

http://www.spnusace.army.mil/regulatory/permitnumber3.pdf

If it is determined RGP3 is not suitable to authorize your proposed levee repairs, please continue to coordinate with the Suisun Marsh RCD and contact the Corps for additional guidance.

Please email me at david.m.wickens@usace.army.mil or call me at 415-503-6787 if you have any questions.

Thank you,

David Wickens
U.S. Army Corps of Engineers
San Francisco District
Regulatory Branch

Classification: UNCLASSIFIED
Caveats: NONE

SRCD USE ONLY

Date received
1-23-11

Corps approval date

Corps File #
2525 [illegible]

USACE WETLANDS MAINTENANCE PERMIT (File Number 242156N)
APPLICATION 2011
AUTHORIZATION REQUEST FOR
URGENT OR UNFORESEEN MAINTENANCE ACTIVITY

Return by fax ASAP to: USACE, Attn: David Wickens (415) 503-6690 (ph. no. 415-503-6787) ; Jane Hicks (ph. no. 415-503-6771) and SRCD, Attn: Steven Chappell (707) 425-4402 (ph. no. 707-425-9302)

CLUB NAME _____

OWNERSHIP NUMBER 115

OWNER Phone number [illegible]

MANAGER Phone number 415-[illegible]

ACRES OF PRIMARY MANAGEMENT AREA IN OWNERSHIP 421

Orlando Rocha

From: Steven Chappell [SChappell@SuisunRCD.org]
Sent: Friday, June 24, 2011 1:11 PM
To: 'Orlando Rocha'
Subject: FW: Chipps Island (UNCLASSIFIED)

Orlando,

Please put this in the file.

Steve

-----Original Message-----
From: Wickens, David M SPN [mailto:David.M.Wickens@usace.army.mil]
Sent: Friday, June 24, 2011 12:39 PM
To: SChappell@SuisunRCD.org
Subject: RE: Chipps Island (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Excellent. Thanks for untangling the information.

I'll look for Orlando's email.

Dave

-----Original Message-----
From: Steven Chappell [mailto:SChappell@SuisunRCD.org]
Sent: Friday, June 24, 2011 11:40 AM
To: Wickens, David M SPN
Cc: 'Orlando Rocha'
Subject: Chipps Island

Dave,

After we spoke on the phone yesterday it took me some time to put all the pieces together to fully address your questions.

John Sweeny has recently purchased two properties on Chipps Island, isolated from each other by the old Sacramento Northern Railroad Levee.

* Property 915 is a managed wetland unit which the exterior levee failed this week.

* Property 910 has a levee breach that has been there since 1995.

I think some confusion has occurred because John contacted you a few weeks ago with questions about permit requirements to repair the old breached levee for Property 910. I had told him that I felt that this levee repair would not be covered under the RGP 3 and would require an individual permit.

Subsequently, the exterior levee failed on Property 915 (uncontrollably flooding the managed wetlands and damaging the property) and he contacted you and SRCD about a permit to repair this newly beached exterior levee.
Orlando has been working with John directly and provided him the link the RGP 5 and encouraged him to consider a breach repair alternative that complies with the existing RGP 3 permit terms and conditions. Orlando has received an urgent request for the RGP3 from John Sweeny and he will be transmitting it to you today.

Steve

Classification: UNCLASSIFIED
Caveats: NONE

Orlando Rocha

From: Steven Chappell [SChappell@SuisunRCD.org]
Sent: Friday, June 24, 2011 11:40 AM
To: 'Wickens, David M SPN'
Cc: 'Orlando Rocha'
Subject: Chipps Island

Dave,

After we spoke on the phone yesterday it took me some time to put all the pieces together to fully address your questions.

John Sweeny has recently purchased two properties on Chipps Island, isolated from each other by the old Sacramento Northern Railroad Levee.

- Property 915 is a managed wetland unit which the exterior levee failed this week.
- Property 910 has a levee breach that has been there since 1995.

I think some confusion has occurred because John contacted you a few weeks ago with questions about permit requirements to repair the old breached levee for Property 910. I had told him that I felt that this levee repair would not be covered under the RGP 3 and would require an individual permit.

Subsequently, the exterior levee failed on Property 915 (uncontrollably flooding the managed wetlands and damaging the property) and he contacted you and SRCD about a permit to repair this newly beached exterior levee. Orlando has been working with John directly and provided him the link the RGP 5 and encouraged him to consider a breach repair alternative that complies with the existing RGP 3 permit terms and conditions. Orlando has received an urgent request for the RGP3 from John Sweeny and he will be transmitting it to you today.

Steve

Orlando Rocha

From: Orlando Rocha [ORocha@SuisunRCD.org]
Sent: Friday, June 24, 2011 2:22 PM
To: Wickens, David
Cc: 'john sweeney'; 'SChappell@SuisunRCD.org'
Subject: 915 Urgent and or Unforeseen Work Request
Attachments: 915 Urgent USACE request 002.jpg; 915 Urgent USACE request 003.jpg; 915 Urgent USACE request 004.jpg; 915 Urgent USACE request 001.pdf; 915 Urgent USACE request map 001.jpg

Tracking:

Recipient	Read
Wickens, David	
'john sweeney'	
'SChappell@SuisunRCD.org'	Read: 6/27/2011 8:31 AM
Wickens, David M SPN	Read: 6/24/2011 2:39 PM

Dave,

Here is the Urgent request for unforeseen work that is causing uncontrolled flooding of Club 915. Let me know if you have any questions, Talk to you soon

Orlando

Orlando Rocha
SRCD Biologist
Water Manager Program
2544 Grizzly Island Rd
Suisun City, CA 94585
Office: 707-426-2431 ext 300
Cell: 707-631-0819

From: "Orlando Rocha" <ORocha@SuisunRCD.org>
Subject: **RE: Chipps Island Levee Breach (UNCLASSIFIED)**
Date: June 24, 2011 3:06:23 PM PDT
To: "'john sweeney'" <john@supercardirect.com>
Cc: <SChappell@SuisunRCD.org>
2 Attachments, 5.4 MB

John,

I sent the urgent request to Dave Wickens, so now we will wait for his response, if he has not responded by Monday I will follow up with him. I have attached both the Biological opinion and the RGP3 in their entirety for your review. I will also send you hard copies in the mail soon. Both of these documents describe the rules and regulations while doing work within the Suisun Marsh. If for some reason the scope of work to repair the breach on 915 is outside of these two documents, you will have to use a different avenue like the RGP 5 process to complete the work. Let me know if you have any other questions, and or need any further help.

Orlando

Orlando Rocha
SRCD Biologist
Water Manager Program
2544 Grizzly Island Rd
Suisun City, CA 94585
Office: 707-426-2431 ext 300
Cell: 707-631-0819

From: john sweeney [mailto:john@supercardirect.com]
Sent: Thursday, June 23, 2011 6:52 PM
To: Orlando Rocha
Subject: Re: Chipps Island Levee Breach (UNCLASSIFIED)

NMFS 2008 ....pdf (3.4 MB) US Army Cor....pdf (2.0 MB)

SRCD USE ONLY
Date received 6-23-11
Corps approval date
Corps File # 252521

USACE WETLANDS MAINTENANCE PERMIT (File Number 242156N)
APPLICATION 2011
AUTHORIZATION REQUEST FOR
URGENT OR UNFORESEEN MAINTENANCE ACTIVITY

Return by fax ASAP to: USACE. Attn: David Wickens (415) 503-6690 (ph. no. 415-503-6787) + Jane Hicks (ph. no. 415-503-6771) and SRCD. Attn: Steven Chappell (707) 425-4402 (ph. no. 707-425-9302)

CLUB NAME Chipps Island Sport & Social Club LLC

OWNERSHIP NUMBER 415

OWNER/Phone number John Sweeney

MANAGER/Phone number 415-656-0907

ACRES OF PRIMARY MANAGEMENT AREA IN OWNERSHIP 426

Please give details of requested for urgent or unforeseen maintenance activity. Attach map showing exact location of requested maintenance activity.

Describe urgent maintenance requested: SEE ATTACHED

External levee breach causing uncontrolled flooding

No. of units: _____

Size or acreage: _____

Proposed linear feet: _____

Proposed cubic yards: _____

Proposed work start: _____

Make photocopy of this page for each maintenance request.

John Sweeney Managing Partner

Name, title, phone number, and e-mail address of person requesting approval of urgent or unforeseen maintenance activity (please print)

Signature of person requesting approval

6/23/11
Date

JohnQ SpinnerIsland.com

Club name: Delta shoots
Ownership number: 415
Primary contact phone number: John Summey 415-636-0907

2011 APPLICATION
USACE WETLANDS MAINTENANCE PERMIT (File Number 242156N)

	TYPE OF WORK	# OF UNITS	SIZE OR ACREAGE	PROPOSED LINEAR FEET	PROPOSED CUBIC YARDS	PROPOSED WORK START (mm/dd/yy)	ACTUAL LINEAR FEET	ACTUAL CUBIC YARDS	Actual # of units/ size or acreage	ADDITIONAL COMMENTS
1	REPAIR EXISTING EXTERIOR WATER CONTROL STRUCTURES (gates, couplers and risers)			X	X		X	X		indicate size, type, and location of each on enclosed map
2	INSTALL, REPAIR, OR RE-INSTALL WATER CONTROL BULKHEADS		X		X			X		indicate size, type, and location of each on enclosed map
3	REPAIR EXISTING INTERIOR WATER CONTROL STRUCTURES (gates, couplers and risers)			X	X		X	X		indicate size, type, and location of each on enclosed map
4	INSTALLATION OF NEW INTERIOR WATER CONTROL STRUCTURES				X			X		indicate size, type, and location of each on enclosed map
5	PIPE REPLACEMENT FOR EXISTING INTERIOR WATER CONTROL STRUCTURE				X			X		indicate type, size and location of each on enclosed map
6	POND BOTTOM SPREADER V DITCHES	X	circle one 18X18 24X24		X			X	circle one 18X18 24X24	indicate location on enclosed map
7	CLEARING EXISTING INTERIOR DITCHES	X	X	3,000	3,000	ASAP			X	what was done with the material removed? placed on levee
8	CONSTRUCT NEW INTERIOR DITCHES	X	X						X	what was done with the material removed?
9	REPLACE PREVIOUSLY EXISTING RIP-RAP ON INTERIOR LEVEES/DITCHES	X	X						X	this area must have previously existing rip-rap

Club name: Delta Shoots
Ownership number: 915
Primary contact phone number: John Sweeney 415-181-0507

2011 APPLICATION
USACE WETLANDS MAINTENANCE PERMIT (File Number 242156N)

	TYPE OF WORK	# OF UNITS	SIZE OR ACREAGE	PROPOSED LINEAR FEET	PROPOSED CUBIC YARDS	PROPOSED WORK START (mm/dd/yy)	ACTUAL LINEAR FEET	ACTUAL CUBIC YARDS	Actual # of units/ size or acreage	ADDITIONAL COMMENTS
10	REPAIR INTERIOR EXISTING LEVEES	X	X						X	material source and type?
11	REPAIR EXTERIOR EXISTING LEVEES	X	X	100	3,000	ASAP			X	material source and type? pond bottom Grading & Ditch cleaning
12	CORING OF EXISTING LEVEES	X	X						X	indicate location on enclosed map
13	GRADING POND BOTTOMS FOR WATER CIRCULATION	X	2	X	3,000	ASAP	X			what was done with the graded material? Exterior levee repairs
14	DISCING	X		X	X		X	X		state location on map
15	INSTALL NEW OR RELOCATE / REPLACE EXISTING BLINDS		X	X	X		X	X		state size, type, and location on map (can not replace more than 5 blind sites per year)
16	INSTALLATION OF DRAIN PUMP AND PLATFORMS			X	X		X	X		state size, type, and location on map
17	EXISTING ROAD MAINT., ADDING SURFACE MATERIAL, AND GRADING	X	X	100	50	ASAP	X		X	material source and type? Gravel 3/4 ab
18	EXISTING PARKING LOT MAINT., ADDING SURFACE MATERIAL, AND GRADING	X		X			X		X	material source and type?

Club name: Delta Shoots
Ownership number: 915
Primary contact phone number: John Sweeney 415-886-0903

2011 APPLICATION
USACE WETLANDS MAINTENANCE PERMIT (File Number 242156N)

	TYPE OF WORK	# OF UNITS	SIZE OR ACREAGE	PROPOSED LINEAR FEET	PROPOSED CUBIC YARDS	PROPOSED WORK START (mm/dd/yy)	ACTUAL LINEAR FEET	ACTUAL CUBIC YARDS	Actual # of units/ size or acreage	ADDITIONAL COMMENTS
* 19	REPLACE PREVIOUSLY EXISTING RIP-RAP ON EXTERIOR LEVEE	X	X						X	this area must have previously existing rip-rap
20	PIPE REPLACEMENT FOR EXISTING EXTERIOR FLOOD GATE				X			X		Indicate size, type, and location of each on enclosed map Is there a bulkhead associated with the pipe(s)? YES NO
* 21	PIPE REPLACEMENT FOR EXISTING EXTERIOR DRAIN GATE				X			X		Indicate size, type, and location of each on enclosed map Is there a bulkhead associated with the pipe(s)? YES or NO
* 22	PIPE REPLACEMENT FOR EXISTING EXTERIOR DUAL PURPOSE GATE				X			X		indicate size, type, and location of each on enclosed map Is there a bulkhead associated with the pipe(s)? YES or NO
* 23	INSTALLATION OF A NEW EXTERIOR DRAIN STRUCTURE				X			X		indicate size, type, and location of each on enclosed map

*** Activities with Asterisks Have Additional Requirements (See Bottom of Page)**

***Pipe replacement for existing exterior drain, flood, or dual-purpose gate**

in-water work.
All work done at low tide (3 hours prior to low tide to 3 hours after low tide).
New pipe pre-assembled before installation.
Pipe placed below depth of emergent vegetation.
Pipe replacement is not done in the rain.
Replacement will not change the existing use or diversion capacity.

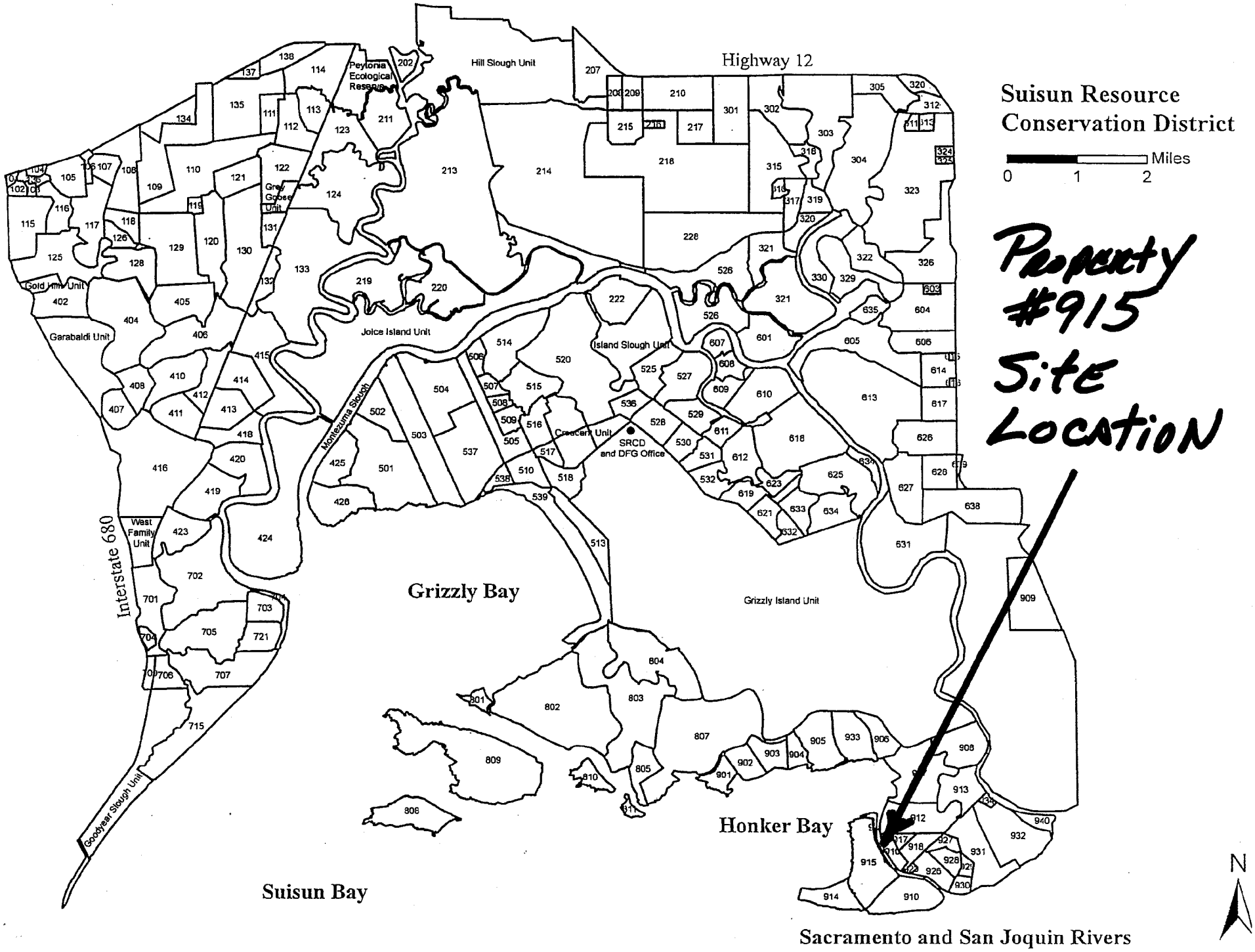
***Installation of new exterior drain structure**

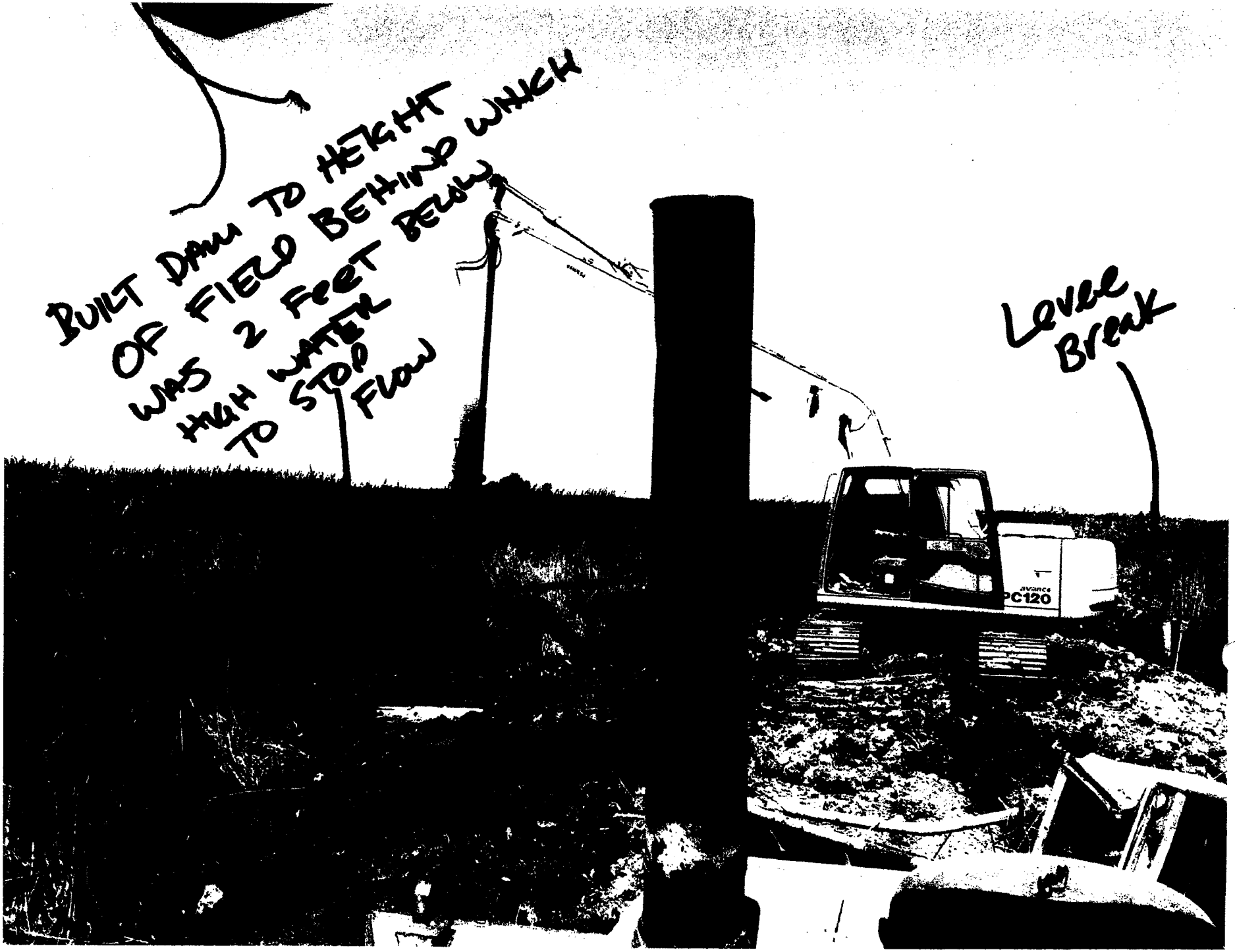
New drain placed where discharge channel already exists.
New drain is installed where exterior levees have no emergent vegetation.
No in-water work.
Pipe placed at low tide (3 hours prior to low tide to 3 hours after low tide).
Pipe is pre-assembled to minimize work time.
Pipe placed at a depth below emergent vegetation.

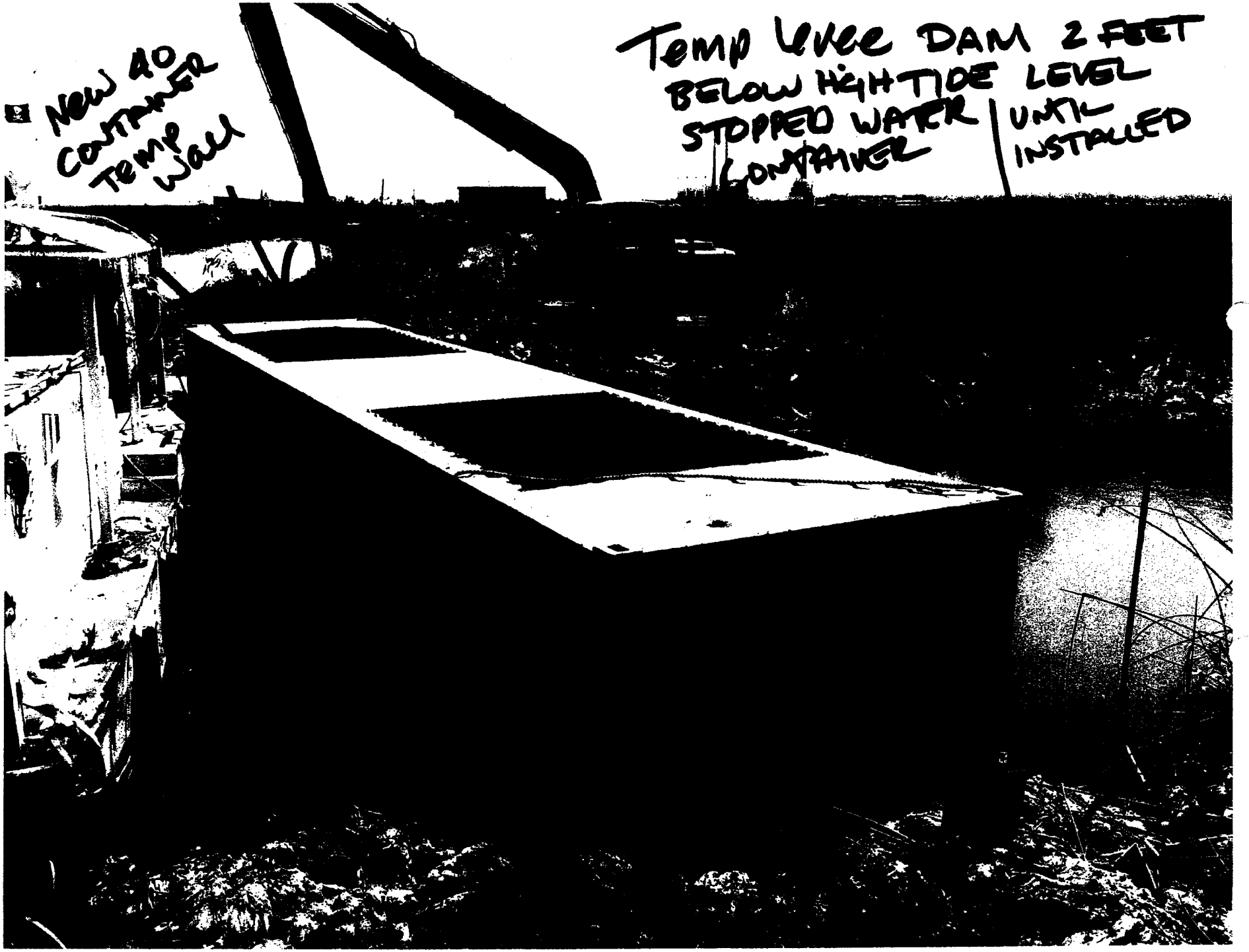
***Replace riprap on exterior levee**

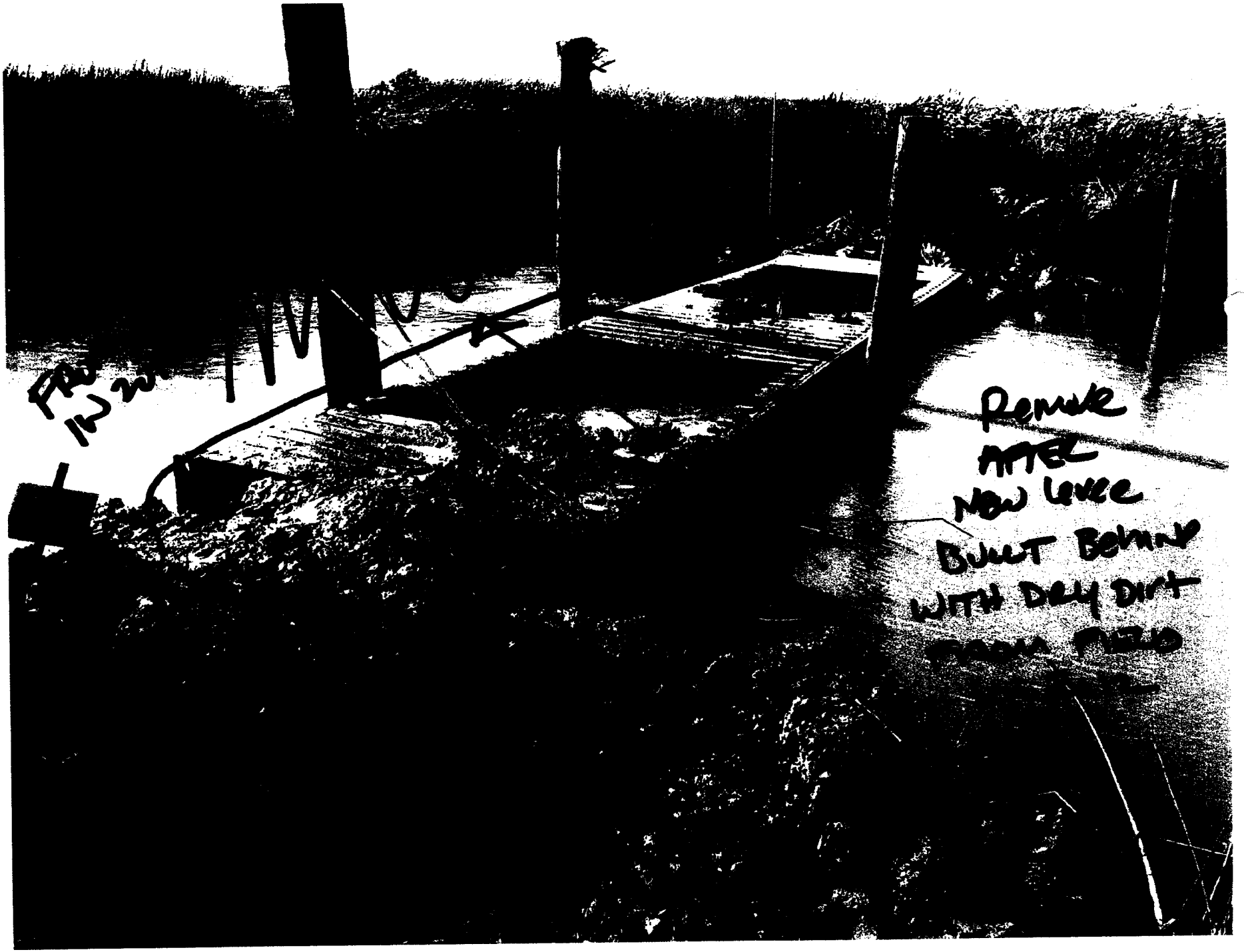
Riprap only placed where previously existing riprap was present.
Riprap is replaced in the minimum amount necessary.
Riprap not placed on emergent vegetation.
Riprap is placed during low tide.

Digitized by Google


Suisun Resource Conservation District
Miles
0 1 2
Property #915 Site Location
Highway 12
Interstate 680
Hill Slough Unit
Peytonia Ecological Reserve
Grey Goose Unit
Gold Hill Unit
Garabaldi Unit
Joice Island Unit
Island Slough Unit
Crescent Unit
SRCD and DFG Office
Montezuma Slough
West Family Unit
Goodyear Slough Unit
Grizzly Bay
Grizzly Island Unit
Honker Bay
Suisun Bay
Sacramento and San Joquin Rivers
N


BUILT DAM TO HEIGHT
OF FIELD BEHIND WHICH
WAS 2 FEET BELOW
HIGH WATER
TO STOP
FLOW
Levee
Break
avance
PC120


NEW 40 CONTAINER TEMP WALL
TEMP LEVEE DAM 2 FEET BELOW HIGH TIDE LEVEL STOPPED WATER CONTAINER
UNTIL INSTALLED


Remove
After
New levee
Built behind
with dry dirt

Orlando Rocha

From: Wickens, David M SPN [David.M.Wickens@usace.army.mil]
Sent: Friday, June 24, 2011 3:10 PM
To: Orlando Rocha
Subject: RE: 915 Urgent and or Unforeseen Work Request (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Orlando,

Thank you for this information. All work allowed under RGP3 is authorized.

Because it seems we have a landowner who is new to the program, please inform him of the importance of staying within the guidelines of the RGP3 authorization as it applies to his property.

Please add this urgent work request to next month's list.

Dave Wickens

-----Original Message-----
From: Orlando Rocha [mailto:ORocha@SuisunRCD.org]
Sent: Friday, June 24, 2011 2:22 PM
To: Wickens, David M SPN
Cc: 'john sweeney'; SChappell@SuisunRCD.org
Subject: 915 Urgent and or Unforeseen Work Request

Dave,

Here is the Urgent request for unforeseen work that is causing uncontrolled flooding of Club 915. Let me know if you have any questions, Talk to you soon

Orlando

Orlando Rocha
SRCD Biologist
Water Manager Program
2544 Grizzly Island Rd
Suisun City, CA 94585
Office: 707-426-2431 ext 300
Cell: 707-631-0819

Classification: UNCLASSIFIED

Orlando Rocha

From: Orlando Rocha [ORocha@SuisunRCD.org]
Sent: Friday, June 24, 2011 3:57 PM
To: 'john sweeney'
Cc: 'SChappell@SuisunRCD.org'
Subject: FW: 915 Urgent and or Unforeseen Work Request (UNCLASSIFIED)

John,

Here is the email I just received from Dave. Let me know if you have any other questions. You are ok to proceed with fixing the breach as long as you follow the RGP3 and Biological opinion.

Keep us updated, Talk to you soon

Orlando

Orlando Rocha
SRCD Biologist
Water Manager Program
2544 Grizzly Island Rd
Suisun City, CA 94585
Office: 707-426-2431 ext 300
Cell: 707-631-0819

-----Original Message-----
From: Wickens, David M SPN [mailto:David.M.Wickens@usace.army.mil]
Sent: Friday, June 24, 2011 3:10 PM
To: Orlando Rocha
Subject: RE: 915 Urgent and or Unforeseen Work Request (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Orlando,

Thank you for this information. All work allowed under RGP3 is authorized.

Because it seems we have a landowner who is new to the program, please inform him of the importance of staying within the guidelines of the RGP3 authorization as it applies to his property.

Please add this urgent work request to next month's list.

Dave Wickens

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From: Orlando Rocha [mailto:ORocha@SuisunRCD.org]
Sent: Friday, June 24, 2011 2:22 PM
To: Wickens, David M SPN
Cc: 'john sweeney'; SChappell@SuisunRCD.org
Subject: 915 Urgent and or Unforeseen Work Request

Dave,

Here is the Urgent request for unforeseen work that is causing uncontrolled flooding of Club 915. Let me know if you have any questions, Talk to you soon

Orlando

Orlando Rocha
SRCD Biologist
Water Manager Program
2544 Grizzly Island Rd
Suisun City, CA 94585
Office: 707-426-2431 ext 300
Cell: 707-631-0819

Classification: UNCLASSIFIED
Caveats: NONE

38b. John D. Sweeney letter to Suisun Marsh Club Owners, April 10, 2016[1]

[1] The annotated attachments were excluded from the exhibit and can be provided upon request.

POINT BUCKLER
CLUB

April 10, 2016

Dear Suisun Marsh Club Owners,

I purchased my first duck club in 2008, and have since bought several more. As owners, I believe we all share a similar passion for the welfare of our land, and the marsh as a whole. This is why I am sharing news of the State of California's plans to restore 8,000 acres of duck clubs to tidal habitat before the end of 2019. How you view this information depends on if you plan to sell, or hold your land.

When I purchased my properties I had no knowledge of an existing "club plan" created for each property. Nor did anyone (SRCD) with the responsibility to enlighten me on the subject do so. What I have learned is valuable information, every club owner should be aware of.

When the Suisun Marsh Preservation Act was passed all the clubs became protected in perpetuity under the act, and were issued individual club plans. They were created in 1984, and until present day have gone unchanged. In 2005, CALFED funded SRCD to revise every club plan. Unless you granted access to your property, (for SRCD to update your plan) it remains the same as when it was created in 1984. Collecting funds for a huge uncompleted project raises some serious questions in my mind about the integrity of SRCD....

These club plans are the ONLY instrument allowing you to work on your land! BCDC is planning to change them in 2016, and EVERY SINGLE club needs to make sure they are part of this process! These changes may alter your ability to do ANY CONSTRUCTION, and could end up allowing the State to claim your land if your levee breaks. State agencies have already attempted to claim my property as their own, labeling my club with a broken levee as an "abandoned property" or a "completed tidal restoration site".

Call BCDC and get a copy of your club's full plan. DO NOT LET THEM CHANGE YOUR PLAN WITH OUT YOUR CONSENT! They need access to your property to alter your plan. BCDC must hold a public hearing prior, and you NEED to be active in the process.

Call Cody Aichele at BCDC (415)352-3641, to get copy of your club plan now!

Next, who are we allowing to represent us as landowners? SRCD, originally designed to assist, and organize us as property owners, is solely focused on grants for studies that rarely impact, or

hold any value to landowners. Steve Chappell, will not inform, or consult with you if your club has a supposed violation; instead he quietly sends a watermaster to photograph your property, and then tattles to a higher authority agency. While these agencies attack you, Steve goes on pretending to be someone you can trust. SRCD has completely lost sight of their purpose, and we have stood by and let them. Chappell should be removed, and replaced with a club minded representative. SRCD should be reformed. This process can be accomplished by requesting a Judge to replace Steve, or we can do it as a group by show of quorum to Linda Siefert our Supervisor in Solano. You thoughts on Steve can go to Linda's assistant BTSmith@solanocounty.com

I unknowingly purchased two clubs in the marsh that had been illegally used by state agencies as restored tidal wetlands. I have had to turn to my club plan to battle these agencies from claiming my property as something it is not. SRCD has turned me in multiple times to other agencies for violations I expressed directly to SRCD, and requested their help to remedy. SRCD never told these agencies I contacted them first, instead they treated me as someone to be punished.

I have attached an article about my ongoing legal battle which began in 2012, when Jim Waters and Steve Chappell turned me into governing agencies in ways I have described above. I have also included the Metropolitan Water Agency land buy which will have immediate land value consequences in less than 90 days. Metropolitan is purchasing part of Chipps Island, which will be disclosed at their next meeting. The land value (8k-12k per acre range) will immediately change the marsh forever. Great news if you ever decide to sell.

Last I invite you to join the Suisun Marsh Property Owner Forum on Facebook. Anyone can post stories or events. It's a way to finally get the landowners together.

Any support for our legal case, (heard on June 25th) would be appreciated, and you can write the Judge Harry S. Kinnincutt if you support the cause. He will listen, as he has already ruled one time in our favor. SRCD is squarely against us so they are now on the side of the water agencies and no longer backing duck clubs.

If you want a copy of our court case I can email you the 15 page Preliminary Injunction.

Thanks for your time, please call me if you have any questions.

Sincerely,

John Sweeney
(415)686-0907
john@spinnerisland.com
Club 801, 940, 910, 915

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(Facebook Posts)

Exhibit 39

Point Buckler Club Facebook Posts

Point Buckler Club added 6 new photos.

Yesterday at 10:35am ·

Here we go again !

Like Comment Share

19 Chronological

Inanc Ino

Like · Reply · 18 hrs

1 Reply

Write a comment...

Point Buckler Club at Point Buckler Club.
July 23 at 8:22pm · Suisun City ·

Huge group and winds delivered!

140 Views

Like Comment Share

13

Write a comment...

Point Buckler Club at Point Buckler Club.
July 23 at 3:28pm · Suisun City ·

Jeff foiling around Buckler summer fun

94 Views

Like Comment Share

Chronological

10

Jim Christian Smoooooooooooth

Like · Reply · 21 hrs

Inanc Ino

Like · Reply · 18 hrs

Point Buckler Club added 3 new photos — at Point Buckler Club.

17 hrs · Suisun City ·

More fun on a warm Summer day. #kitebucklervip #foilfunday

Like **Comment** **Share**

8 Chronological

Julia Waite How awesome!

Like · Reply ·

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(U.S. Army Corps of Engineers Notices)

Exhibit 40

40a. Notice of Alleged Violation, U.S. Army Corps of Engineers, October 24, 2011

40b. Notice of Violation and Non-Compliance, U.S. Army Corps of Engineers, September 1, 2016

40a. Notice of Alleged Violation, U.S. Army Corps of Engineers, October 24, 2011

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

OCT 24 2011

REPLY TO
ATTENTION OF

Regulatory Division

Certified Mail

Subject: File No. 2000-252570N

NOTICE OF ALLEGED VIOLATION

Mr. John Sweeney
171 Sandpiper Drive
Pittsburg, California 94565

Dear Mr. Sweeney:

This inquiry concerns an unauthorized activity for which you have identified yourself as the responsible party. The property where the activity in question occurred is located on Chipps Island, within the Suisun Marsh Primary Management Area, on property identified as "Club 915," in Solano County, California (Please see attached map).

The unauthorized activity involves levee repair work you conducted at your property below the High Tide Line (HTL) and Mean High Water (MHW) of Spoonbill Creek on August 17, 2011. Based on my site visit of September 16, 2011, and my conversation with you while on site, you sunk a 40'x 10' metal shipping container into the breached portion of your exterior levee below the HTL and MHW of Spoonbill Creek then filled the container with approximately 150 cubic yards (cy) of dredged material. You estimated the total amount of fill material discharged into Spoonbill Creek to complete the breach repair in question and other associated work was approximately 1,200cy.

It is the Corps' understanding that you completed the work in question with the intent of receiving authorization under Department of the Army Regional General Permit 3 for Activities in the Suisun Marsh (RGP3). Under authority of RGP3, the California Department of Fish and Game (CDFG) and landowners represented by the Suisun Marsh Conservation District (SRCD) are authorized to work and place fill material in areas subject to Corps jurisdiction. Many factors dictate a policy of strict adherence to all terms and conditions of RGP3.

The Corps has determined the levee work you conducted on your property (Club 915) does not comply with the terms and conditions outlined in RGP3 and therefore is in violation of Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). Landowners represented by the SRCD who do not obey the terms and conditions of RGP3 can lose their SRCD representation and consideration of future work activities under the RGP3.

Please Note: all discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the United States, or below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act. Waters of the United States generally include all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters including interstate wetlands; all other waters, the use degradation or destruction of which could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States; tributaries of the waters identified above; the territorial seas; and wetlands adjacent to all the waters identified above. Furthermore, all structures and work occurring below the plane of mean high water in tidal waters of the United States, in former diked baylands currently below mean high water, outside the limits of mean high water but affecting the navigable capacity of tidal waters, or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899. Navigable waters of the United States generally include all waters subject to the ebb and flow of the tide, and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce. The term "structure" includes, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island or reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, or any other obstacle or obstruction. The term "structure" does **not** include bridges and causeways constructed in or over navigable or tidal waters of the United States, since this regulatory responsibility has been delegated to the U.S. Coast Guard under the Department of Transportation Act of 1966 (Pub. L. No. 89-670). The term "work" includes, without limitation, any dredging or disposal of dredged material, filling, or other modification of a navigable water of the United States.

The provisions of 33 C.F.R. Section 326.3 direct the District Engineer to commence an initial investigation of any unauthorized work, structures, and associated dredged or fill material discharges in waters of the United States to determine the appropriate administrative and/or legal actions to be pursued. In the event the alleged violation is subsequently confirmed, administrative actions could include a voluntary restoration of the site, an order requiring the completion of initial corrective measures to alleviate imminent adverse impacts to aquatic resources, and/or the issuance of an after-the-fact Department of the Army Permit to authorize any remaining work, structures, and dredged or fill material discharges in waters of the United States. Administrative actions could further include the use of Class I or Class II civil fines for violations under Section 404 of the Clean Water Act. Legal actions could include the initiation of civil or criminal proceedings when circumstances warrant such action.

Section 309 of the Clean Water Act (33 U.S.C. § 1319) provides penalties for violation of Section 301 (33 U.S.C. § 1311) of the Clean Water Act. Pursuant to Section 301, it is illegal to discharge any dredged or fill material without a permit issued by the Corps of Engineers pursuant to Section 404 (33 U.S.C. § 1344) of the Clean Water Act. A person may be subject to civil penalties of as much as $37,500 per day for each violation. Furthermore, the law also allows criminal penalties for violations. For the most egregious of those violations, the law provides for imprisonment for as much as 15 years, or fines of up to $1,000,000 for a violation (or even higher in some circumstances) (33 U.S.C. § 1319; 18 U.S.C. § 3571).

Under Section 12 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 406), a person convicted of violating Section 10 of the Rivers and Harbors Act may be subject to a criminal fine of up to $2,500.00, or by imprisonment for up to one year, or by both such punishments. Section 12 of the Act further authorized the Court to enforce the removal of any structure erected in violation of the Act. For the most egregious violations of the Act, a person or an organization who violates any provision of the Act may be subject to a criminal fine of not more than $100,000.00 or $200,000.00, respectively (or even higher in some circumstances) (18 U.S.C. § 3571).

To facilitate completion of our initial investigation, you are requested to provide this office the information specified in the enclosed *Investigation Questionnaire* within fifteen (15) days of receipt of this letter; this requested information may be held against you in the event of any subsequent legal action. You are further requested to contact this office within this timeframe to allow Regulatory staff to formulate any required resolution. You are advised to cease any ongoing work that may be occurring in waters of the United States.

You may refer any questions on this matter to Mr. David Wickens of my Regulatory staff by telephone at (415) 503-6787 or by e-mail at david.m.wickens@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

Sincerely,
ORIGINAL SIGNED
BY
LAURIE A. MONARRES
CHIEF, REG. DIV., NORTH BRANCH
Jane M. Hicks
Chief, Regulatory Division

Enclosure

Copy Furnished (w/o encl):

US Attorney, San Francisco, CA
US EPA, San Francisco
US FWS, Sacramento, CA
US NMFS, Long Beach, CA
US NMFS, Santa Rosa, CA
CA RWQCB, Oakland, CA
CA DFG, Napa, CA
CA BCDC, San Francisco, CA
CA CC, San Francisco, CA

CF:
CESPN-R Rdg File
CESPN-R-N (Wickens)

40b. Notice of Violation and Non-Compliance, U.S. Army Corps of Engineers, September 1, 2016

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

SEP - 1 2016

Regulatory Division

Certified Mail

Subject: File No. 2000-252570N

NOTICE OF VIOLATION AND NON-COMPLIANCE

Mr. John Sweeney
Registered Agent
Chipps Island Sport and Social Club, LLC
171 Sandpiper Drive
Pittsburg, California 94565-2081

Mr. Curt Setzer
Registered Agent
SWS Chipps Island, LLC
9 Britton Avenue
Belvedere, California 94920-2431

Dear Messrs. Sweeney and Setzer:

This inquiry concerns activities for which you may be the responsible party or property owner in question. The property is duck club #915, "Fin and Feathers," located on Chipps Island (APNs 0090-060-020, -030, -300, -310, -340, -360, -370, -380, -490, & -500), in the Suisun Marsh, Solano County, California. The activities involve the construction of an interior levee, installation and realignment of a floating dock structure, and placement of a shipping container occurring in Spoonbill Slough and adjacent wetlands and are in violation of Section 404 of the Clean Water Act (33 U.S.C. § 1344), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and not in compliance with the terms and conditions of Regional General Permit 3.

All discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the United States (U.S.), or below the high tide line in tidal waters of the U.S., and within the lateral extent of wetlands adjacent to these waters typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act. Waters of the U.S. generally include all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters including interstate wetlands; all other waters, the use degradation or destruction of which could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the U.S.; tributaries of the waters identified above; the territorial seas; and wetlands adjacent to all the waters identified above.

All structures and work occurring below the plane of mean high water in tidal waters of the U.S., in former diked baylands currently below mean high water, outside the limits of mean high water but affecting the navigable capacity of tidal waters, or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the U.S. typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899. Navigable waters of the U.S. generally include all waters subject to the ebb and flow of the tide, and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce. The term "structure" includes, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island or reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, or any other obstacle or obstruction. The term "structure" does **not** include bridges and causeways constructed in or over navigable or tidal waters of the U.S., since this regulatory responsibility has been delegated to the U.S. Coast Guard under the Department of Transportation Act of 1966 (Pub. L. No. 89-670). The term "work" includes, without limitation, any dredging or disposal of dredged material, filling, or other modification of a navigable water of the U.S.

The provisions of 33 C.F.R. § 326.3 direct the District Engineer to commence an initial investigation of any unauthorized work, structures, and associated dredged or fill material discharges in waters of the U.S. to determine the appropriate administrative and/or legal actions to be pursued. In the event the alleged violation is subsequently confirmed, administrative actions could include a voluntary restoration of the site, an order requiring the completion of initial corrective measures to alleviate imminent adverse impacts to aquatic resources, and/or the issuance of an after-the-fact Department of the Army Permit to authorize any remaining work, structures, and dredged or fill material discharges in waters of the U.S. Administrative actions could further include the use of Class I or Class II civil fines for violations under Section 404 of the Clean Water Act. Legal actions could include the initiation of civil or criminal proceedings when circumstances warrant such action.

Section 309 of the Clean Water Act (33 U.S.C. § 1319) provides penalties for violation of Section 301 (33 U.S.C. § 1311) of the Clean Water Act. Pursuant to Section 301, it is illegal to discharge any dredged or fill material without a permit issued by the Corps of Engineers pursuant to Section 404 (33 U.S.C. § 1344) of the Clean Water Act. A person may be subject to civil penalties of as much as $37,500 per day for each violation. Furthermore, the law also allows criminal penalties for violations. For the most egregious of those violations, the law provides for imprisonment for as much as 15 years, or fines of up to $1,000,000 for a violation (or even higher in some circumstances) (33 U.S.C. § 1319; 18 U.S.C. § 3571).

Under Section 12 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 406), a person convicted of violating Section 10 of the Rivers and Harbors Act may be subject to a criminal fine of up to $2,500.00, or by imprisonment for up to one year, or by both such punishments.

Section 12 of the Act further authorized the Court to enforce the removal of any structure erected in violation of the Act. For the most egregious violations of the Act, a person or an organization who violates any provision of the Act may be subject to a criminal fine of not more than $100,000.00 or $200,000.00, respectively (18 U.S.C. § 3571).

You are further requested to contact this office within 15 days of receipt of this letter to allow Regulatory staff immediate access to your property to inspect the area of the violation and to formulate any required resolution. You are advised to cease any ongoing work that may be occurring in waters of the U.S. until the inspection has been completed.

You may refer any questions on this matter to William Connor by telephone at (415) 503-6631 or by e-mail at william.m.connor@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

Sincerely,

for Holly Costa
Acting Chief, Regulatory Division

cc:

Chipps Island Sport and Social Club, LLC
SWS Chipps Island, LLC

US EPA, San Francisco, CA
US FWS, Sacramento, CA
US NMFS, Santa Rosa, CA
CA RWQCB, Oakland, CA
CA DFW, Napa, CA
CA BCDC, San Francisco, CA
Suisun RCD, Suisun City, CA

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Hard Copy and Electronically
(California Online Business Entity Search)

Exhibit 41

Point Buckler Club, LLC, California Secretary of State Online Business Entity Search,
August 24, 2016

Business Entities (BE)

Online Services
- **E-File Statements of Information for Corporations**
- **Business Search**
- **Processing Times**
- **Disclosure Search**

Main Page

Service Options

Name Availability

Forms, Samples & Fees

Statements of Information (annual/biennial reports)

Filing Tips

Information Requests (certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources
- **Business Resources**
- **Tax Information**
- **Starting A Business**

Customer Alerts
- **Business Identity Theft**
- **Misleading Business Solicitations**

Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, August 23, 2016. Please refer to **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	POINT BUCKLER CLUB, LLC
Entity Number:	201428210040
Date Filed:	10/07/2014
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	171 SANDPIPER DR
Entity City, State, Zip:	PITTBURGH CA 94565
Agent for Service of Process:	JOHN DONNELLY SWEENEY
Agent Address:	171 SANDPIPER DR
Agent City, State, Zip:	PITTBURGH CA 94565

* Indicates the information is not contained in the California Secretary of State's database.

* **Note:** If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to **Name Availability**.
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Field Descriptions and Status Definitions**.

Modify Search **New Search** **Printer Friendly** **Back to Search Results**

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Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Reference
(Critical Habitat Designations – Fish Species)

Exhibit 42

42a. Sacramento River Winter-run Chinook Salmon
Federal Register:
http://www.westcoast.fisheries.noaa.gov/publications/frn/1993/58fr33212.pdf
Critical Habitat Map:
http://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/chin/chinook_srwr.pdf

42b. Central Valley Spring-run Chinook Salmon
Federal Register:
http://www.westcoast.fisheries.noaa.gov/publications/frn/2005/70fr52488.pdf
Critical Habitat Map:
http://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/chin/chinook_cvsr.pdf

42c. Central Valley Steelhead
Federal Register:
http://www.westcoast.fisheries.noaa.gov/publications/frn/2005/70fr52488.pdf
Critical Habitat Map:
http://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/steelhead/steelhead_ccv_ch.pdf

42d. Southern Green Sturgeon
Federal Register:
http://www.westcoast.fisheries.noaa.gov/publications/protected_species/other/green_sturgeon/g_s_critical_habitat/frn_10092009_green_sturgeon_ch.pdf
Critical Habitat Map:
http://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/greensturgeon_ch_maps.pdf

42e. Delta Smelt
Federal Register:
http://ecos.fws.gov/docs/federal_register/fr2751.pdf
Critical Habitat Map:
https://www.fws.gov/sfbaydelta/maps/delta_smelt_critical_habitat_map.pdf

Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

Description of Exhibit Provided by Reference
(Federal Planning Documents)

Exhibit 43

43a. The Biological Effects of Suspended and Bedded Sediment (SABS) in Aquatic Systems: A Review, U.S. EPA, August 20, 2003
https://www.epa.gov/sites/production/files/2015-10/documents/sediment-appendix1.pdf

43b. Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California, August 2013
https://www.fws.gov/sfbaydelta/documents/tidal_marsh_recovery_plan_v1.pdf

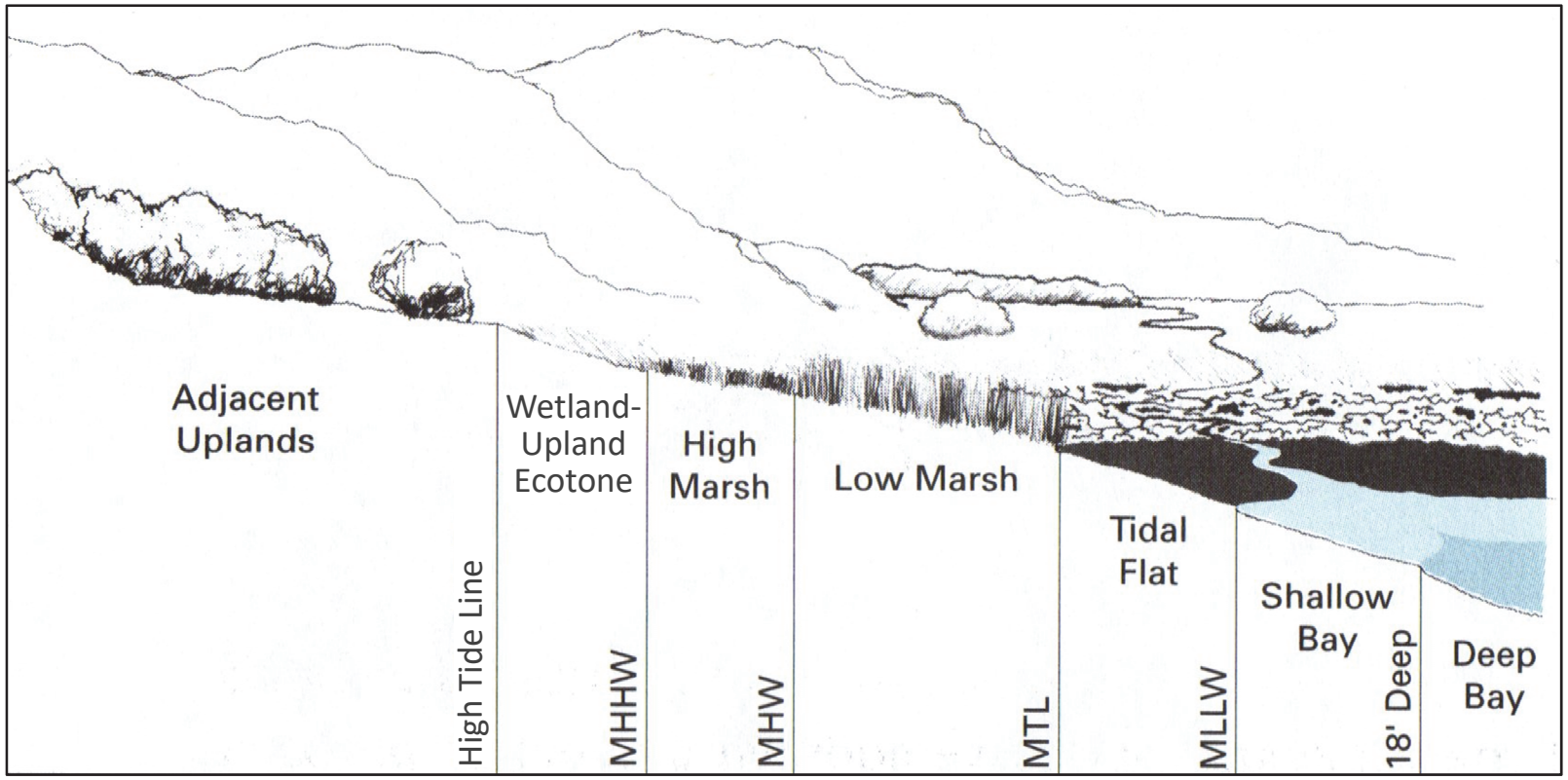
Administrative Civil Liability Complaint
No. R2-2016-1008

John D. Sweeney and
Point Buckler Club, LLC

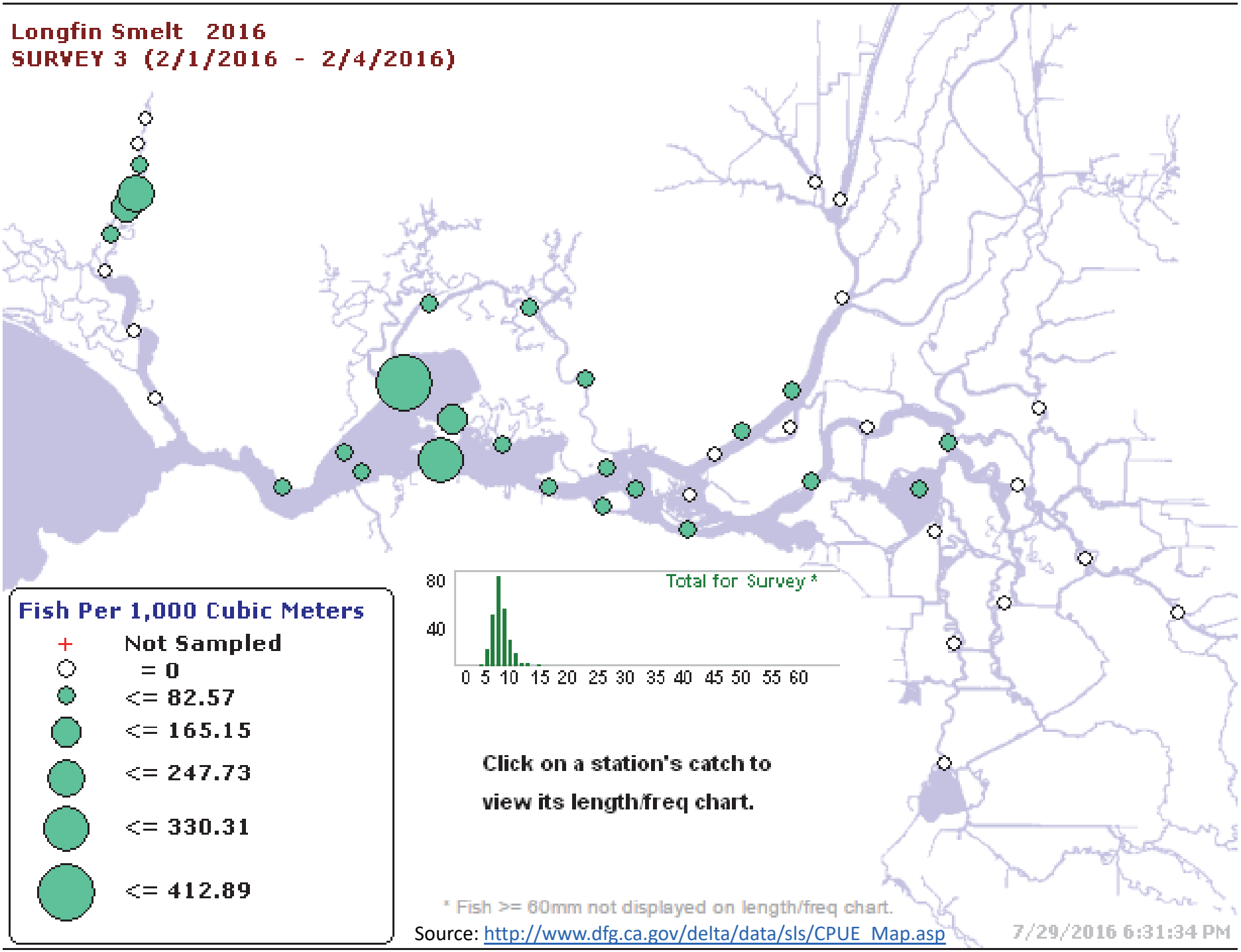
Description of Exhibit Provided by Reference
(Additional Expert Graphics)

Exhibit 44

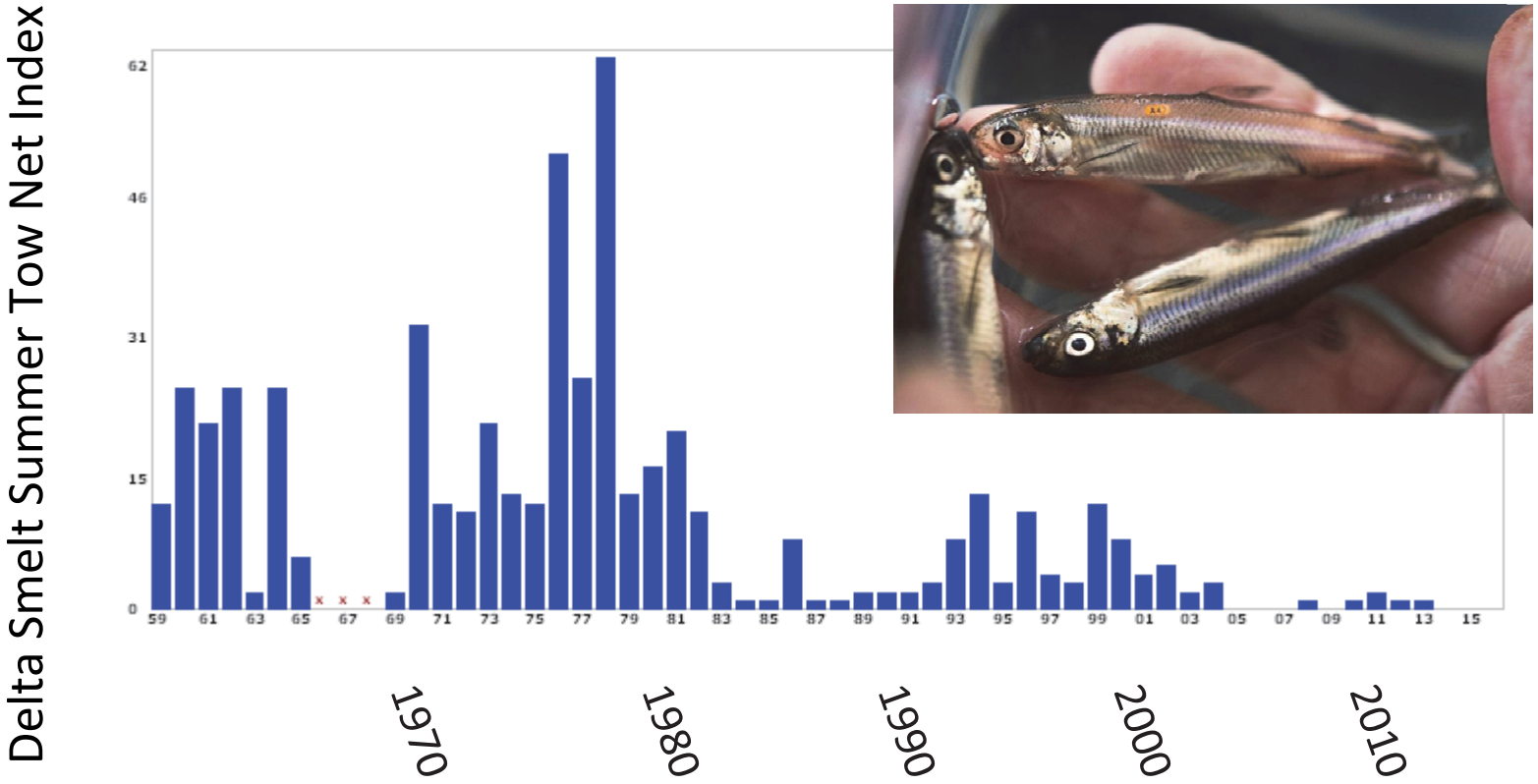
Estuary to Upland Cross Section, 2016 Longfin Smelt Survey, and Delta Smelt Tow Net Index Graphics



Source: Adapted from Goals Project 1999



Source: http://www.dfg.ca.gov/delta/data/sls/CPUE_Map.asp



Source: CDFW (data and graph),
Sacramento Bee (photograph)