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By E-Mail

John Bowers
Legal Counsel
San Francisco Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, CA 94111

Subject: Point Buckler Island
BCDC Enforcement File No. ER2012.038

Dear Mr. Bowers:

In am writing, on behalf of Point Buckler Club, LLC (the "Club"), to respond to your letter of 17 December 2015.

In that letter you said that "the information and analysis that Mr. Wendt [former counsel to the Club] stated he wanted to provide to us relates primarily, although not exclusively, to the question of whether the hydrological conditions on Pt. Buckler Island…did or did not satisfy the definition of a 'managed wetland' as that term is defined in section 29105 of the Suisun Marsh Preservation Act." Although I have no doubt that you are characterizing Mr. Wendt's comments correctly, I'm not clear on the relevance of that information.

The principal issue for the Club, as I understand it, is whether the work done in 2014 was subject to the permit provisions in § 29500 of the Suisun Marsh Preservation Act, or whether the work was exempt under § 29501.5. The exemption of § 29501.5 turns on the existence of a certified individual management plan, not on whether there are managed wetlands, a phrase that is not used in that section. As a result, it appears that the status of Point Buckler as (or not as) a managed wetland is not relevant to the legal analysis of whether a permit was required. Please correct me if I'm missing something.

No one seems to dispute the fact that Point Buckler was a managed wetland in the past. To my knowledge, BCDC has never issued a permit allowing any other use to be made of the island. Isn't BCDC's position that a managed wetland cannot be legally abandoned without a permit? (*See* 14 CCR § 10125 (defining "substantial change in use" to include "abandonment"

of a "managed wetland".) If that's the case, isn't Point Buckler still legally a managed wetland in the eyes of BCDC regardless of whether the island has in fact always been a managed wetland?

Your letter also refers to the additional information requested by the Regional Board in their letter of 9 December 2015. As you may know, the Regional Board refused to extend a deadline established by the cleanup and abatement order. The Club filed suit in Solano Superior Court and obtained a stay of that order. The Regional Board then rescinded the cleanup and abatement order.

The Regional Board now says that it would like to collect the data referred to in its December letter by itself, using its own consultants. Because of that interest, a meeting set for 22 February 2016 has been postponed. My understanding is that BCDC was invited to that meeting, and I expect BCDC to be invited to future meetings between the Club and the Regional Board.

Some of the information you requested is included in the technical report prepared by Applied Water Resources in October 2015, which was submitted to the Regional Board. I am attaching a copy. Among other things, Applied Water Resources identified the presence of water on the island at high tide by comparing aerial photographs taken by NOAA in 2013 at MHW and MLLW. Figure 3 shows that at high tide water was present in a few channels, and Figure 2 shows that water was present in the old levee ditch. The rest of the island inside the levee was dry. That is exactly what we observed during the site visit in October 2015, when we all walked around the island on hard ground, even though (as John Sweeney reported) water inside the levee was being maintained at a high level.

A figure prepared by the Regional Board, which I am also attaching, shows that according to Lidar measurements taken before 2014, the island is above MHHW except in a few areas. This conclusion is consistent with aerial photographs from Google Earth. If you compare, for example, the largest channel on the island (which comes in from the northeast) and the land surrounding it in 2013 and 2015 (which I'll provide in separate e-mails), you will see that there is very little observable change other than the levee.

As I told the Regional Board, I don't see any reason why there can't be tidal wetlands on the island along with duck ponds and uplands. The Club remains interested in a resolution. There ought to be a way to work our differences out.

Thanks very much for considering these comments, and please call if you have any questions.

Sincerely,

Lawrence S. Bazel