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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SOLANO

11 In The Matter of the Application of:

12 SAN FRANCISCO BAY REGIONAL
13 WATER QUALITY CONTROL BOARD

14 For an Inspection Warrant of:
15 Point Buckler Island, Suisun Bay

Case No. *MISC002135*

INSPECTION WARRANT

C.C.P Section 1822.51

(Filing Fees Exempt Per Gov't Code 6103)

16 THE PEOPLE OF THE STATE OF CALIFORNIA TO:

17 The San Francisco Bay Regional Water Quality Control Board and their authorized
18 representatives:

19 PROOF, by declaration under penalty of perjury under the laws of the State of
20 California, having been made this day before me by Benjamin Martin, Environmental Scientist
21 and investigator for the San Francisco Bay Regional Water Quality Control Board, submitted
22 to the Court on the 19th day of February, 2016;

23 THAT THERE IS REASON TO BELIEVE that there exists at the Point Buckler Island in
24 the Suisun Bay, Solano County, California, violations of California Water Code section 13385,
25 particularly subsections: (a)(1), failure to submit report of waste discharge; (a)(4), unauthorized
26 discharge to waters of the United States in violation of the *San Francisco Bay Basin (Region*
27

1 2) *Water Quality Control Plan*¹ Prohibition 9, issued pursuant to California Water Code,
2 Division 7, Article 3, Chapter 4, subsection 13243; and/or (a)(5), a requirement of the federal
3 Clean Water Act section 301 and/or 401 (33 U.S.C. Sec. 1311, 1341) that here is
4 authorization for an inspection pursuant to Water Code section 13267, subsection(c), with
5 respect to the premises named above, as required by the California Code of Civil Procedure
6 sections 1822.50 et seq. for the issuance of an Inspection Warrant. The property is
7 associated with assessor parcel number (APN) 0090-020-010, and comprises a total of 51.5
8 acres. The property is currently operated as a premier kite boarding destination for Silicon
9 Valley executives with plans to open a duck hunting club. On the parcel, over half the island
10 area is interior of a recently constructed levee, where a number of mobile storage containers
11 have been positioned. Along the southeast corner, a large boat dock is installed for access to
12 Point Buckler Island.

13 Based upon the declaration of the affiant, good cause exists to authorize an inspection
14 without the presence of the owner or occupant of the location. Yes X No Initials HJK

15 Based upon the declaration of the affiant, it has been shown that prior consent has
16 been sought and permission has been denied. Inspection is authorized without ~~out~~ 24 hour
17 notice. Yes No Initials

18 Pursuant to CCP § 1822.5b, 24 hour notice to owner/occupant
19 is required.

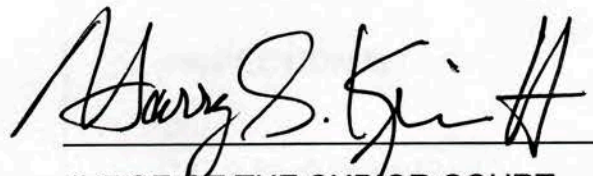
20 THEREFORE, San Francisco Bay Regional Water Quality Control Board authorized
21 representatives including Ben Martin, Dyan Whyte, Bill Hurley, Brian Thompson, Agnes
22 Farres, Dr. Peter Baye, Dr. Stuart Siegel, CLE Engineering, Inc., Special Agent Dan Tanner
23 (National Marine Fisheries Service), Paul Jones (US Environmental Protection Agency), and
24 the County of Solano Sheriff's Department members are hereby directed at some time
25 between the hours of 8:00 a.m. and 6:00 p.m. for two consecutive days to enter upon said
26 premises and make an inspection of any facility, pollution source or area related to compliance
27 located therein, questioning of or conferring with persons present on the property privately to

28 ¹ Commonly referred to as the *Basin Plan*, the document and information can be found on the San Francisco Bay
29 Regional Water Quality Control Board's website:
http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml

1 obtain information bearing on whether violations of the laws and regulations occurred,
2 obtaining photographs, videos and copies of required documents or records required to be
3 maintained in connection therewith by the San Francisco Bay Regional Water Quality Control
4 Board. This inspection shall be reasonably conducted so as to affect as minimal an intrusion
5 as possible on the normal operations of the property.

6 PROVIDED FURTHER that said entry and inspection are made within 14 days from the
7 date of signing and issuance hereof. This warrant shall be executed and returned to this Court
8 within 14 days of the issuance hereof, and shall be void unless executed within 14 days period
9 of time, unless extended or renewed by this Court.

10
11 ISSUED ON 2-24-16

12
13 
14 _____
15 JUDGE OF THE SUPERIOR COURT

16
17 This instrument is a
18 correct copy of the original
19 on file in this office

20 ATTEST:
21 FEB 25 2016



22 Clerk of the Superior
23 Court of the State of California in and
24 for the County of Solano
25 By 
26 _____
27 DEPUTY CLERK

FILED
Clerk of the Superior Court

FEB 19 2016

By 
DEPUTY CLERK

1 Christian Carrigan, Director, SBN 197045
2 Laura Drabandt, Senior Staff Counsel, SBN 235119
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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SOLANO

12 IN THE MATTER OF THE
13 INSPECTION AT:

14 Point Buckler Island
15 APN 0090-020-010
16 SEC 18 & 19 T3N R1W

Case No. MISC 062135

**AFFIDAVIT FOR INSPECTION
WARRANT**

17 **A. Affiant Information**

18 1. I, Benjamin Martin, declare as follows: The San Francisco Bay Regional Water
19 Quality Control Board has the authority to conduct the inspection prayed for herein
20 pursuant to California Water Code section 13267(c) and California Code of Civil
21 Procedure section 1822.50 et seq. I am authorized by the San Francisco Bay
22 Regional Water Quality Control Board to conduct investigations and inspections of
23 places where violations of California Water Code, Division 7 (*Porter-Cologne Water
24 Quality Control Act*), may be present.

25 2. I am an Environmental Scientist employed by the San Francisco Bay Regional
26 Water Quality Control Board (Regional Water Board), and my work address is 1515
27 Clay Street, Suite 1400, Oakland, California. I presently work for the Enforcement
28 Section, responding to complaints and conducting investigations. I have a Master of
Science degree in Fisheries Science from Auburn University. As an Environmental
Scientist, I have worked in regulatory enforcement for the past year and a half; my
responsibilities include determining compliance with the California Water Code (Wat.

1 Code § 13000 et seq.) and the federal Clean Water Act (33 U.S.C. § 1251 et seq.).
2 These responsibilities include protecting public health and safety, and preserving and
3 protecting water quality in ground and surface waters, including their beneficial uses. I
4 am responsible for conducting inspections and investigations of places where
5 violations of the California Water Code and federal Clean Water Act may be present,
6 including places where unauthorized fill and waste have been placed where it
7 discharges or threatens to discharge into surface and ground waters, such as at Point
8 Buckler Island. As an Environmental Scientist, I have conducted inspections and
9 determined compliance in storm water management, and wastewater treatment for
10 industrial, agriculture, and construction facilities. I am a participating member of the
11 Santa Clara County, Contra Costa County, and Sonoma County Environmental Task
12 Force groups.

13 3. I have 131 hours of specialized environmental training that includes
14 environmental crimes training and investigative training. Of the specialized
15 environmental training, I have 29 hours environmental investigations training, 32 hours
16 of response to oil spills training, 24 hours storm water compliance training, 6 hours of
17 emergency response training, and the remaining 40 hours in an environmental law
18 university course.

19 **B. San Francisco Bay Regional Water Quality Control Board Regulatory**
20 **Authority**

21 4. Pursuant to section 13222 of the California Water Code, the Regional Water
22 Board is authorized to adopt regulations to carry out its powers and duties under Division
23 7, also known as the *Porter-Cologne Water Quality Control Act*.

24 5. Pursuant to section 13263 of the California Water Code, the Regional Water
25 Board is authorized to establish discharge requirements that protect ground and surface
26 waters of the state of California.

1 6. This Affidavit is made in support of a request for an inspection warrant; to establish
2 reason to believe that conditions of nonconformity with the federal Clean Water Act (33
3 U.S.C. § 1251 et seq.) and the California Water Code, regarding violations by Point
4 Buckler Club, LLC and/or John Sweeney; and to set forth reasons why it is necessary to
5 have the Regional Water Board execute said warrant; and to permit Regional Water
6 Board staff to conduct an inspection of the Point Buckler Island property to determine
7 the extent of violations that exist on Point Buckler Island.

8 **C. Location and Basis for Warrant**

9 7. Point Buckler Island is located in Suisun Bay in unincorporated Solano County,
10 California. The property to be inspected is located off the western tip of Simmons
11 Island, approximately 10 miles south of the City of Fairfield, California and approximately
12 8 miles east of the City of Benicia, California; assessor's parcel number is (APN) 0090-
13 020-010 comprising a total of 51.5 acres. (Exhibit 1, ParcelQuest Web Based Assessor
14 Data Search). Point Buckler Island is also known as Annie Mason Point Club and Club
15 #801. The Island is currently operated as a premier kite boarding destination for Silicon
16 Valley executives¹. On the property, over half the Island area is interior of a recently
17 constructed levee, where a number of mobile storage containers have been positioned.
18 Along the southeast corner, a boat dock is installed for access to Point Buckler Island.
19 Looking at historic aerial photographs obtained from the US Geological Survey
20 (www.earthexplorer.gov) and Google Earth (earth.google.com), it appears that
21 approximately two years ago, levee construction was initiated on Point Buckler Island
22 without any permitting or regulatory oversight. The new levee was constructed by
23 digging a borrow ditch and placing fill around the perimeter of the Island. Fill was placed
24 directly into waters of the United States and covered vital tidal marsh habitat. Though
25 some portions of fill were placed on a derelict levee, these unauthorized activities cut off
26

27 ¹ See www.pointbucklerisland.com and <https://www.facebook.com/pointbucklerclubVIP/>

1 tidal flow into the Island's interior tidal marsh habitat and is in violation of the California
2 Water Code and the Clean Water Act. (See Exhibit 1 for excerpted aerial photos.)

3 8. According to the ParcelQuest Web Based Assessor Data Search, the owner of
4 record of the real property described above is listed as Point Buckler Club, LLC, at 171
5 Sandpiper Drive, City of Pittsburg, California, 94565. (See Exhibit 2.)

6 9. In his Declaration in Support of Ex Parte Application for Stay of Administrative
7 Decision; or, in the Alternative, for a Temporary Restraining Order and Order to Show
8 Cause Regarding Preliminary Injunction in Solano County Superior Court Case No.
9 FCS046410, John D. Sweeney stated he was the manager of Point Buckler Club, LLC,
10 and that:

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

19 (See pages 1 and 2 in the Declaration of John D. Sweeney in Support of Ex Parte
20 Application attached in Exhibit 3.)

21 10. The aerials and party admission evidence indicates to me that discharges of
22 earthen material from the levee construction activities likely caused deleterious bottom
23 deposits, turbidity or discoloration, and adversely affected beneficial uses to waters of
24 the state. With my experience and educational background, I assert that such bottom
25 deposits can damage aquatic biota, smother non-motile life forms and destroy spawning
26 and feeding areas. The discharge of fine-grained sediments from levee construction in
27 the water column could have potentially caused clogging in the gill structures of fish,
28 made water-column feeding difficult or impossible, and eliminated light penetration that
is needed for primary production. Additionally, fill that was placed cut off tidal channels

1 to the Island interior for use by aquatic organisms such as Delta Smelt (listed threatened
2 species under both state and federal Endangered Species acts), Longfin Smelt (listed
3 threatened species under state law), and Chinook Salmon (endangered under federal
4 Endangered Species Act) thus adversely impacting the beneficial use for preservation of
5 rare and endangered species. The discharge of earthen material from the construction
6 activities caused burial of existing estuarine habitat, smothered organisms (plant and
7 animal) and ultimately cut off the Island from natural tidal influence thus causing a long
8 term restriction of the beneficial uses of fish migration and spawning.

9 11. The purpose of executing the warrant is to address past and on-going violations of
10 California Water Code and the federal Clean Water Act, and to aid in determining what
11 actions are necessary in composing a path forward to restoring the Island. If this warrant
12 is granted, the site inspection would consist of employing expert consultants to conduct
13 (a) a topographical survey to construct a digital elevation model of the Island, and (b) a
14 forensic wetland survey designed to identify and characterize the extent of wetlands and
15 other waters of the state and current conditions at the Island. The inspectors will
16 perform in situ water quality measurements for temperature, pH, dissolved oxygen, and
17 salinity. No water samples or soil samples will be seized from Point Buckler Island itself,
18 but possibly from surrounding waters of the state. The site inspection needs to occur as
19 quickly as possible, and not later than by early March because vegetation is quickly
20 growing due to warm temperatures and recent rainfall. The seasonal vegetation will
21 obscure critical visual information, and may obstruct survey equipment.

22 **D. Procedural Background and Potential Violations**

23 12. On January 30, 2015, the San Francisco Bay Conservation and Development
24 Commission (BCDC) notified Point Buckler Club, LLC, and John Sweeney that staff had
25 observed violations of the Suisun Marsh Preservation Act during a site visit on
26 November 19, 2014 that included: filling in three major tidal channels; conducting work
27 outside of allowable times to protect Chinook Salmon, Delta Smelt, Clapper Rail, and
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1 Salt Marsh Harvest Mouse; unauthorized dock enlargement; and placing two mobile
2 army trailers and two shipping containers on the Island. The notice stated that the once
3 tidally active marshland was drained and converted to upland as a result of the levee
4 construction. The BCDC requested Point Buckler Club, LLC, and Mr. Sweeney to stop
5 work on the Island until they submitted a permit application (with the caveat that if an
6 environmental specialist suggested intermediate measures to minimize adverse habitat
7 impacts to seek the BCDC's review to take action).

8 13. On September 11, 2015, the Regional Water Board issued a Cleanup and
9 Abatement Order (Order No. R2-2015-0038) to Point Buckler Club, LLC, care of John
10 Sweeney. The Order was based on the unauthorized levee construction, how it
11 adversely affected beneficial uses and violated California Water Code and the federal
12 Clean Water Act, and required an impact assessment and a corrective action workplan.

13 Violations described in the Order included that Point Buckler Club, LLC:

- 14 a. Failed to submit a report of waste discharge pursuant to California Water
15 Code sections 13376 & 13260.
- 16 b. Failed to obtain a permit for discharging into navigable waters and failed to
17 obtain a water quality certification for the activities that resulted in fill to
18 waters of the United States pursuant to Clean Water Act sections 301 and
19 401.
- 20 c. Failed to obtain coverage under the State's National Pollutant Discharge
21 Elimination System General Permit for Storm Water Discharges Associated
22 with Construction and Land Disturbance Activities (State Water Resources
23 Control Board Order 2009-0009-DWQ) for the levee construction and other
24 land disturbance activities pursuant to the federal Clean Water Act section
25 402.
- 26 d. Discharged, or placed where it could be discharged, to waters of the state
27 and United States silt, sand, clay, or other earthen materials from any
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1 activity in quantities sufficient to cause deleterious bottom deposits,
2 turbidity, or discoloration in surface waters or to unreasonably affect or
3 threaten to affect beneficial uses. These activities violated the *San*
4 *Francisco Bay Basin (Region 2) Water Quality Control Plan*² Prohibition 9,
5 issued pursuant to California Water Code, Division 7, Article 3, Chapter 4,
6 subsection 13243.

7 The Cleanup and Abatement Order required Point Buckler Club, LLC to submit an
8 impact assessment report describing all levee construction, boat dock construction, and
9 any other discharges of fill material or structures into water of the state and the
10 activities' potential impacts. The impact assessment was to then be used in comprising
11 a Corrective Action Workplan to describe how Point Buckler Club, LLC would restore
12 tidal circulation and interior marsh habitat that existed prior to the levee construction
13 activities, and provide compensatory mitigation habitat to compensate for any temporal
14 and permanent impacts to the functions and values provided by the impacted wetlands,
15 tidal marshlands, and drainage channels caused by their unpermitted activities.

16 14. Point Buckler Club, LLC, has petitioned the Cleanup and Abatement Order to the
17 State Water Resources Control Board, and filed for an Ex Parte Application for Stay of
18 Administrative Decision, or in the alternative, for a Temporary Restraining Order and
19 Order to Show Cause Regarding Preliminary Injunction in Solano County Superior Court
20 (Case No. FCS046410). The Court issued a stay, and the Regional Water Board
21 rescinded its Cleanup and Abatement Order at issue. However, the proposed inspection
22 may gather information that will be used to consider remedial alternatives and possible
23 enforcement.
24
25

26
27 ² Commonly referred to as the *Basin Plan*, the document and information can be found on the San
28 Francisco Bay Regional Water Quality Control Board's website:
http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml

1 15. The Regional Water Board staff met with Point Buckler Club, LLC, attorneys and
2 Mr. John Sweeney on October 7, 2015, and again during a site visit on October 21,
3 2015. The purpose of the site visit was to observe and document site conditions, and to
4 better understand (1) the nature and extent of construction activities, including the
5 volume of fill placed for construction on the levee; (2) whether the scope of work done
6 was in the purvey of the US Army Corps of Engineers Regional General Permit 3; and
7 (3) the extent of waters of the state and United States and tidal marsh habitat the was
8 adversely impacted by levee constructions. Regional Water Board staff concluded that
9 a topographical survey and wetland delineation is required to provide the needed
10 information, which would assist in determining what actions are necessary to restore the
11 Island. Follow up communications requested the information from Point Buckler Club,
12 LLC, and has not been provided; therefore, the Regional Water Board is requesting to
13 conduct the necessary work under the requested inspection warrant.

14 16. On January 5, 2016, Regional Water Board Executive Officer Bruce Wolfe
15 rescinded the Cleanup and Abatement Order (Order No. R2-2015-0038) based on Point
16 Buckler Club, LLC and the Board's Prosecution Team requests for a public hearing
17 before the Board itself to consider the facts.

18 17. California River Watch issued a Notice of Violation and Intent to File Suit under the
19 Endangered Species Act section 9 (16 U.S.C. § 1540(g)) to Point Buckler LLC, Point
20 Buckler Club LLC, and John Sweeney on January 14, 2016. The notice alleges harm to
21 an unauthorized take of threatened and/or endangered species: Delta Smelt, Central
22 California Steelhead, Green Sturgeon, Sacramento Winter-Run and Central Valley
23 Spring-Run Chinook Salmon, Salt Marsh Harvest Mouse and California Ridgeway Rail.

24 **E. Consent Denied**

25 18. In response to a request to meet, Dyan Whyte, Assistant Executive Officer,
26 emailed Mr. Lawrence Bazel agreeing to meet with him and his client, and requested
27 consent from the Point Buckler Club, LLC for the Regional Water Board staff to inspect
28

1 Point Buckler Island a second time. Ms. Whyte explained the need to better understand
2 the Island's conditions prior to meeting. The Regional Water Board staff needed more
3 information about habitat, topography, construction activities, and potential impact to
4 waters of the state. She asked for access on February 8 and 9, 2016, to delineate
5 habitats, survey topography, document the nature and extent of construction activities.
6 (See Exhibit 4.)

7 19. Mr. Bazel replied to Ms. Whyte's email on January 31, 2015 and denied consent to
8 access Point Buckler Island until after the parties met. He stated, "The club has
9 previously provided access for site visits to several regulatory agencies, including the
10 Regional Water Board, and expects to provide additional access in the future, but I
11 would prefer to postpone these discussions until after our meeting." Mr. Bazel provided
12 additional information and claims about the unresolved issues to be discussed at the
13 meeting. (Exhibit 4.)

14 20. On February 1, 2016, Ms. Whyte again emailed Mr. Bazel and requested access
15 to the Island to generate topography and other site condition data by licensed
16 professionals that the Regional Water Board had already asked Point Buckler Club,
17 LLC, to provide. She proposed access the week of February 16, 2016. (Exhibit 4.)

18 21. Mr. Bazel replied on February 3, 2016, and stated the week of February 16, 2016,
19 was not good for them. He also asked what the plan was for the site visit, and who
20 would attend. (Exhibit 4.)

21 22. Ms. Whyte responded on February 4, 2016, that "...we request access to the
22 Island in order to delineate habitats, survey topography, and document the nature and
23 extent of levee construction activities." She explained again that the information is
24 needed to confirm and augment existing data, and to have a meaningful discussion with
25 Mr. Bazel to assist in answering his questions. Ms. Whyte requested Mr. Bazel to
26 propose an alternative time for accessing the Island, or to clarify whether his client was
27 denying access and to provide the basis for the denial by February 8, 2016. (Exhibit 4.)
28

1 23. Mr. Bazel replied on February 8, 2016, asking for further clarification about who
2 specifically would visit the Island and to describe the kind of survey and work would be
3 performed by the survey team and technical professionals. He stated, "We would like to
4 know what your team will be doing on the Island, so that the club can figure out
5 whether it should bring its own professionals to see what they see." Additionally, he
6 specifically requested that we would not include Dr. Stuart Siegel in the visit to the Island
7 due to past conflicts with the club. (Exhibit 4.)

8 24. During several conversations in February 2016, Dr. Peter Baye, Coastal Ecologist
9 and Botanist, and Dr. Stuart Siegel, Professional Wetland Scientist, have expressed to
10 me and Ms. Whyte the urgent need to access the Island prior to seasonal vegetation
11 growing and obscuring views and growing over survey points. Dr. Baye specifically
12 stated that the later the site visit was in February, the more likely the vegetation will
13 encumber the survey efforts, and that it would be very difficult to obtain specific
14 information to make clear inferences during early to mid-March 2016.

15 25. Ms. Whyte responded on February 10, 2016, confirming that informal access to
16 the Island had not been granted or denied for the fourth time, and her hope to avoid
17 needed to obtain a warrant. She further offered the dates of February 24, 25 or 26,
18 2016, to accommodate schedules. She provided the names and titles of the technical
19 professionals as well as the name of the survey crew consulting firm (CLE Engineering)
20 with a promise to provide specific names of the survey crew beforehand, and agreed to
21 not include Dr. Siegel in the survey crew. She also expressed the urgency to visit the
22 Island during the proposed dates due to tides and seasonal changes in vegetation and
23 a need to confirm and augment existing data. Lastly, Ms. Whyte asked for a response
24 by February 11, 2016, to allow time for rescheduling the work crew. (Exhibit 4.)

25 26. Mr. Bazel replied on February 11, 2016, that he did not believe the site visit was
26 urgent since he looked at the tide schedule for the next month or so. Note that he is not
27 a wetlands expert, and he did not address the urgent need to view the Island before the
28

1 vegetation grows. Mr. Bazel then proposed scheduling a site visit for March 17-18, or
2 March 21-28, 2016. (Exhibit 4.)

3 27. On February 17, 2016, Ms. Whyte, Dr. Siegel, Agnes Farres from the Regional
4 Water Board, and I performed a boat survey with the Solano County Sheriff Marine
5 Patrol around the perimeter of Point Buckler Island to determine how quickly vegetation
6 was growing on the Island, obscuring views and blocking access for survey equipment,
7 and to determine whether there was any construction activity on the Island. We
8 confirmed that spring vegetation growth had begun and will soon fully emerge given the
9 predicted warm weather and increases in daylight hours, along with the recent rain
10 storm. We conclude that continued vegetation growth will certainly obscure some of the
11 information needed to evaluate the Island and it is imperative that we gain access to the
12 Island before March.

13 28. These facts demonstrate that Point Buckler Club, LLC as the property owner, John
14 Sweeney as the manager, and Lawrence Bazel as the retained attorney have denied
15 consent to the San Francisco Bay Regional Water Quality Control Board staff to access
16 Point Buckler Island during the urgent time frame prior to early March for an inspection
17 consistent with California Code of Civil Procedure section 1822.51.

18 **F. Additional Cause for Inspection Warrant in Quick Time Frame**

19 29. During the February 17, 2016 boat tour, we also observed recent unauthorized
20 grading on the east side of the Island that appeared to be maintenance or repair to the
21 levee, and placement of two mobile helicopter landing pads. This unauthorized grading
22 provides further urgency to inspect the Island to obtain topography information before it
23 is compromised by additional grading, and in effort to prevent new violations of California
24 Water Code and the federal Clean Water Act. This is supported with my having recently
25 reviewed Mr. Sweeney's Facebook page where on February 22, 2014 he posted, "I need
26 a crew to frame and out the prefab together but won't be till August. Not Building to
27 code or w permits." This statement demonstrates Mr. Sweeney's willingness to
28

1 disregard local, state, and federal rules and laws, and further emphasizes the need to
2 access the Island soon. (Exhibit 5.)

3 30. The National Marine Fisheries Service (NMFS) through the National Oceanic and
4 Atmospheric Administration (NOAA) and the US Department of the Interior enforce the
5 Endangered Species Act (16 U.S.C. §§ 1531-1544) and may have a legal interest in the
6 citizen suit noticed by California River Watch. The January 14, 2016 notice gives 60
7 days until California River Watch intends to file suit, adding to the urgency of this
8 inspection.

9 **G. Participants**

10 31. In light of the above circumstances, I request that permission be given to conduct
11 this inspection warrant without the consent and/or presence of the owner. Lawrence
12 Bazel, on behalf of Point Buckler Club, LLC, and/or its manager, John Sweeney, have
13 not consented to allowing a site inspection by the San Francisco Bay Regional Water
14 Quality Control Board as requested in a timely manner prior to the Island being taken
15 over by seasonal vegetation, and did not verbally acknowledge that he would grant
16 permission. It is my strong belief that Mr. Bazel, Mr. Sweeney, and the Point Buckler
17 Club, LLC will deny permission to access and enter the Point Buckler Island for this
18 inspection. I request that Dyan Whyte (Professional Geologist), Bill Hurley (Professional
19 Civil Engineer), Brian Thompson (Certified Engineering Geologist and Hydrogeologist),
20 and Agnes Farres (Environmental Scientist) from the San Francisco Bay Regional Water
21 Board be allowed to accompany me to perform the inspection.

22 32. I also request that Dr. Baye and Dr. Siegel, along with five survey members of CLE
23 Engineering, Inc. (most likely Daniel Gillenwater, James Kulpa, Darren Gewant, Kyle
24 Berger, and Justin Dankle, Professional Land Surveyor) be allowed to accompany me
25 and during the inspection executed under the requested warrant. Dr. Baye and Dr.
26 Siegel are presently retained by the Regional Water Board for their expert technical
27 abilities in performing a topographic survey of the Point Buckler Island and delineating
28

1 the extent of the high tide line to determine placement of fill in waters of the United
2 States.

3 33. I also request that Don Tanner, Special Agent of the National Marine Fisheries
4 Service, be allowed to accompany me and other Regional Water Board representatives
5 during the inspection. Mr. Tanner will employ his specialized skills in determining
6 whether there was a take of any endangered species during the unauthorized levee
7 construction pursuant to Endangered Species Act Section 9 (16 U.S.C. § 1531 et seq.).

8 34. I also request that Paul Jones, Wetlands Specialist for the US Environmental
9 Protection Agency, be allowed to accompany me and other Regional Water Board
10 representatives during the inspection. Mr. Jones will employ his technical skills in
11 wetland ecology and Clean Water Act section 404 (33 U.S.C. § 1344) enforcement in
12 helping determine the extent of fill to waters of the US and harm to aquatic resources
13 associated with the unauthorized levee construction.

14 35. I also request that the County of Solano Sheriff's Department be allowed to escort
15 me and the other participants during the inspection to ensure our physical safety and to
16 provide us with boat access. County of Solano sheriffs will have access to the same
17 areas described above to provide security for inspection participants.

18
19 WHEREFORE, I respectfully request an inspection warrant issue pursuant to
20 California Code of Civil Procedure sections 1822.50 et seq. to permit an inspection and
21 investigation of the premises named in the caption above, as set forth fully in the
22 Inspection Warrant,

23 AND to permit the inspection for a maximum of two days between February 24,
24 2016, through February 26, 2016, between the hours of 8:00 a.m. and 6:00 p.m. (more
25 than one day is requested should dangerous weather conditions arise).

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I affirm under penalty of perjury that the above information is true and correct to the best of my knowledge.

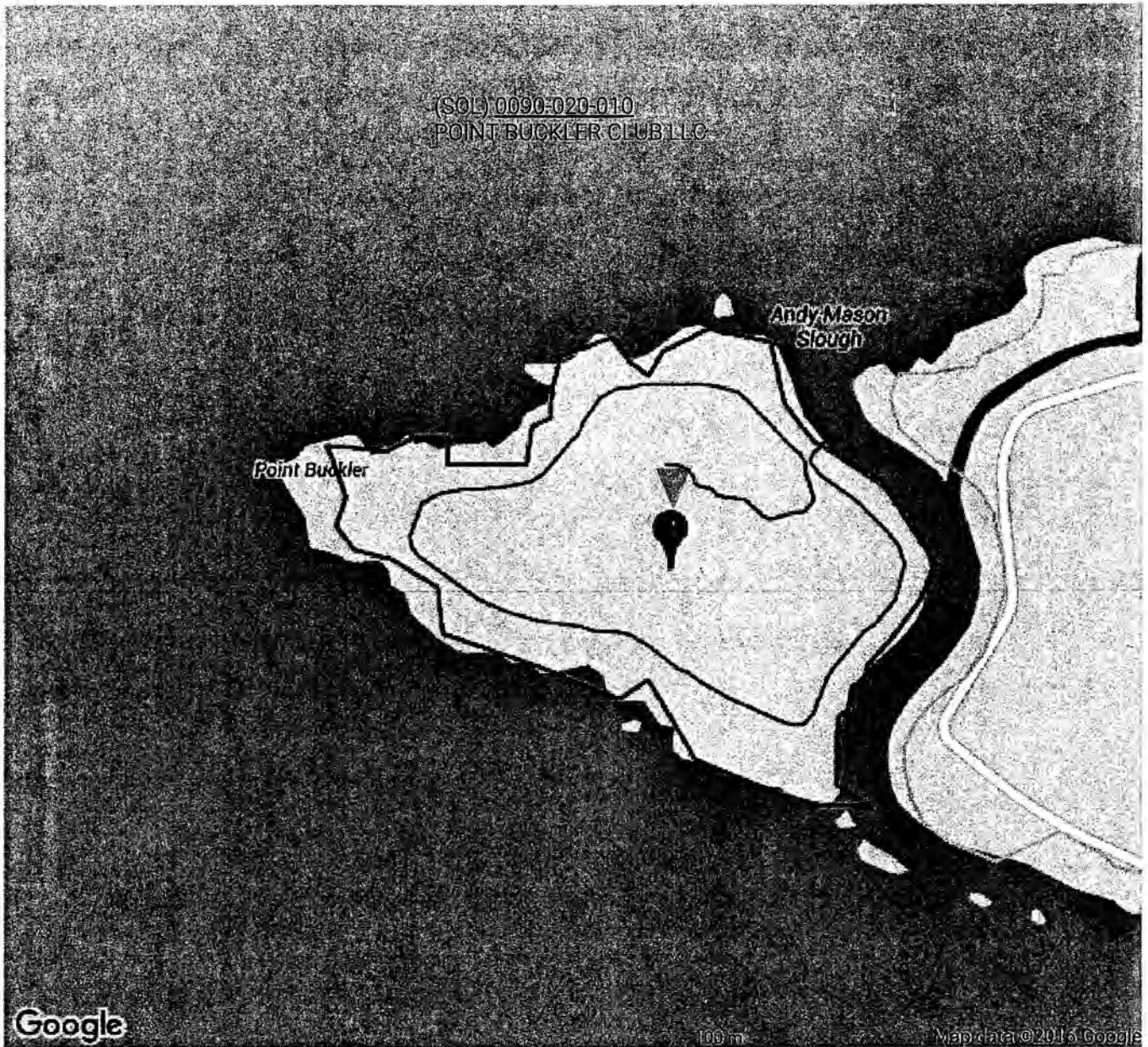


Benjamin Martin, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME,
DATE:

JUDGE OF THE SUPERIOR COURT

Exhibit 1



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1 Property Address: UNINCORPORATED CA

Ownership

County: **SOLANO, CA**
 Assessor: **MARC TONNESEN, ASSESSOR**
 Parcel # (APN): **0090-020-010**
 Parcel Status:
 Owner Name: **POINT BUCKLER CLUB LLC**
 Mailing Address: **171 SANDPIPER DR PITTSBURG CA
94565**
 Legal Description:

Assessment

Total Value:	\$159,901	Use Code:	6100	Use Type:	MISCELLANEOUS
Land Value:	\$159,901	Tax Rate Area:	060-003	Zoning:	
Impr Value:		Year Assd:	2015	Census Tract:	
Other Value:		Property Tax:		Price/SqFt:	
% Improved:	0%	Delinquent Yr:			
Exempt Amt:		HO Exempt:	N		

Sale History

	Sale 1	Sale 2	Sale 3	Transfer
Document Date:	10/27/2014	04/21/2011	12/17/2004	10/27/2014
Document Number:	201400082755	201100034988	200400181367	201400082755
Document Type:	GRANT DEED	GRANT DEED		
Transfer Amount:			\$150,000	
Seller (Grantor):	SWEENEY, JOHN			

Property Characteristics

Bedrooms:	Fireplace:	Units:
Baths (Full):	A/C:	Stories:
Baths (Half):	Heating:	Quality:
Total Rooms:	Pool:	Building Class:
Bldg/Liv Area:	Park Type:	Condition:
Lot Acres: 51.510	Spaces:	Site Influence:
Lot SqFt: 2,243,775	Garage SqFt:	Timber Preserve:
Year Built:		Ag Preserve:
Effective Year:		

Exhibit 2

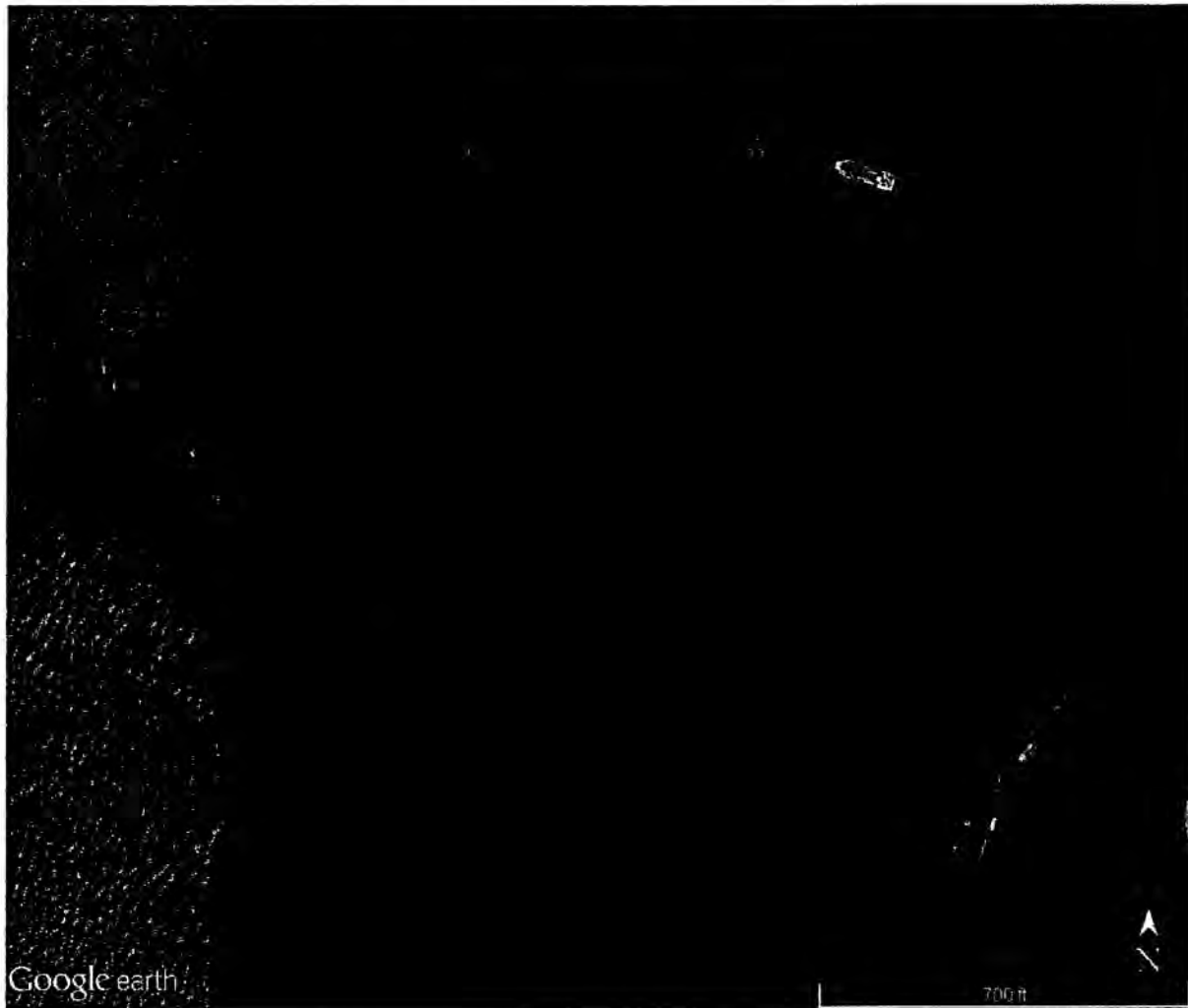
Suisun Club 801 – Buckler Point: Historic Aerial Interpretation

September 18, 2011: The island continues to be fully tidal. (Google Earth)



Suisun Club 801 – Buckler Point: Historic Aerial Interpretation

May 26, 2014: Levee construction is initiated at the island's southeast corner, working clockwise around the island. Multiple boats, piers, and structures can be observed, as well as the excavator constructing the new levee. The new levee generally follows the rough alignment of the 1958 levee, except in the island's westernmost tip, where it deviates considerably. The levee cuts off tidal action through the island's southwest corner, but tidal action continues through the northern sloughs and 1948 borrow ditches. The new levee footprint appears to be placed on top of the 1948 borrow ditch. (Google Earth)



Suisun Club 801 – Buckler Point: Historic Aerial Interpretation

April 1, 2015: Levee construction is complete and the island is now fully diked off from tidal action. Heavy equipment criss-crosses the marsh plain, and excavators have cut 4 crescent-shaped ponds in the marsh approximately 80 feet in diameter. What appears to be four large storage trailers are present in the western portion of the now-diked marsh. (Google Earth)

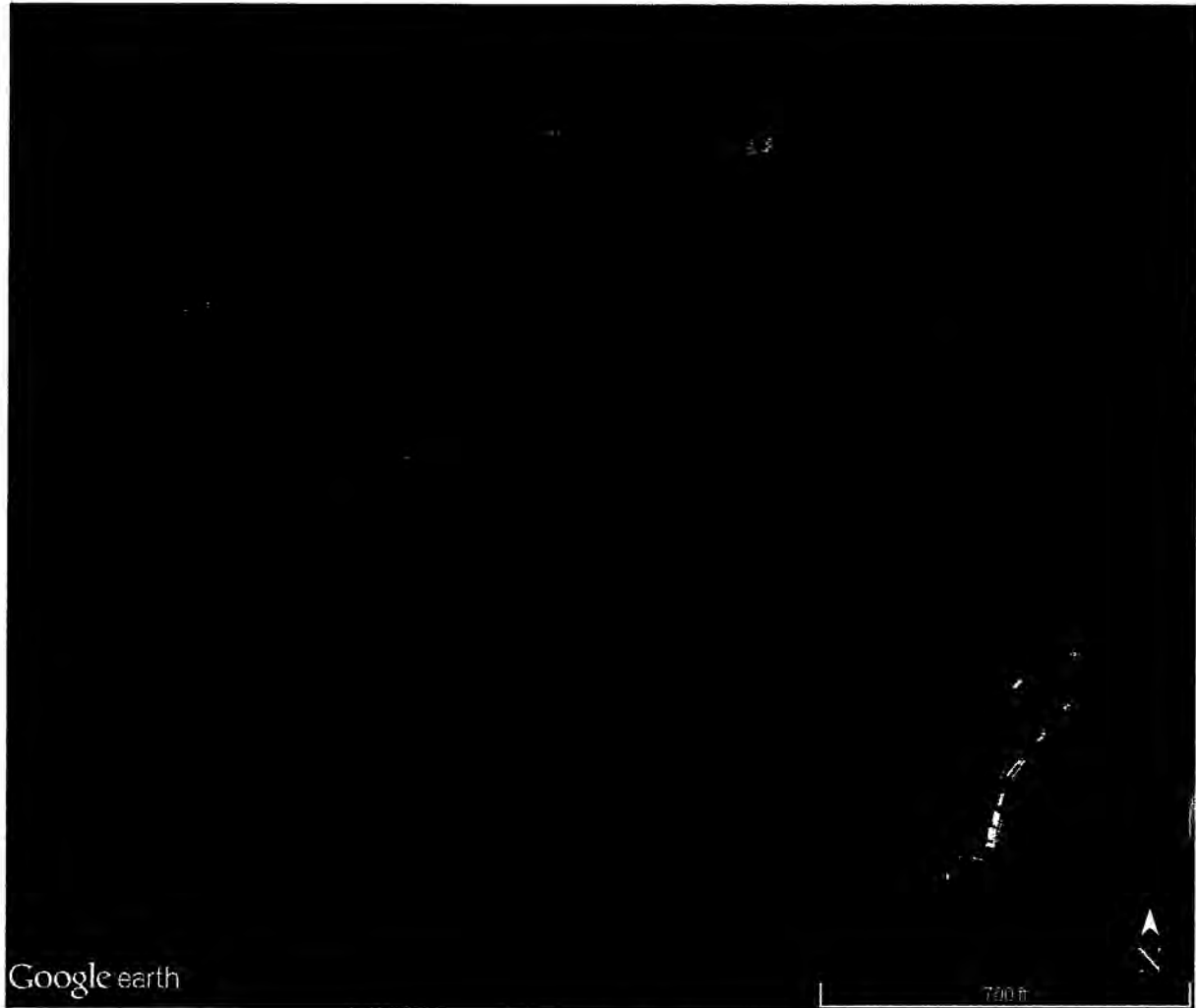


Exhibit 3

1 JOHN BRISCOE (053223)
2 LAWRENCE S. BAZEL (114641)
3 BRISCOE IVESTER & BAZEL LLP
4 155 Sansome Street, Seventh Floor
5 San Francisco, CA 94104
6 Tel (415) 402-2700
7 Fax (415) 398-5630
8 jbriscoe@briscoelaw.net
9 lbazel@briscoelaw.net

10 Attorneys for Plaintiff
11 POINT BUCKLER CLUB, LLC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SOLANO

14 POINT BUCKLER CLUB, LLC,

15 Petitioner and Plaintiff,

16 v.

17 BRUCE H. WOLFE, Executive Officer of the
18 California Regional Water Quality Control Board,
19 San Francisco Bay Region; CALIFORNIA
20 REGIONAL WATER QUALITY CONTROL
21 BOARD, SAN FRANCISCO BAY REGION;
22 and DOES 1 through 20;

23 Respondents and Defendants.

No. FCS046410

DECLARATION OF JOHN D. SWEENEY
IN SUPPORT OF EX PARTE
APPLICATION

Date: December 29, 2015

Time: 9:30am

Dept.: 3

Hon. Harry S. Kinnicutt

24 I, John D. Sweeney, declare as follows:

25 1. I am manager of Point Buckler Club, LLC (the "Club"). I have personal knowledge
26 of the facts in this declaration, and if called as a witness could competently testify to them.

27 2. Duck clubs use levees to maintain control over water levels in the duck ponds. An
28 aerial photograph from 1948 shows that Point Buckler was ringed by a levee at that time. Attached
as Exhibit I to this declaration is an accurate copy of an aerial photo of Point Buckler that I obtained
from the website historicaerials.com showing the island in 1948. It is fair to conclude, from this
photo alone, that the island was being used as a duck club at that time. Conversations with previous
owners of the island confirm that it was used as a duck club for many decades.

1 3. Staff of the Bay Conservation and Development Commission (“BCDC”) provided me
2 with an “individual management plan” (the “Plan”) dated 1984 for Point Buckler, which was then
3 called the “Annie Mason Point Club”. Attached as Exhibit 2 to this declaration is an accurate copy
4 of the Plan. BCDC staff reported that the Plan was certified.

5 4. In 2014, I personally did work (the “Work”) to maintain and repair the levee ringing
6 the island. I understood from the previous owner that the levee maintenance was supposed to be
7 done, and was not aware of the need for additional approvals. I dug out material from an artificial
8 ditch inside the levee and placed the material on the existing levee. Some material was placed where
9 the levee had been breached, and (where part of the levee had eroded away) on solid ground inside
10 the former levee location. I repaired one of two tide gates. The Work stopped in September 2014,
11 when the Club learned that there were regulatory objections to the Work. The Club would like to do
12 the additional work necessary for a fully functioning duck club, including the repair of the other tide
13 gate, discing the ponds, planting the vegetation that would provide food for ducks and other
14 waterfowl, and otherwise restoring the duck ponds and waterfowl habitat. However, the Club does
15 not intend to proceed with this work unless the issues raised by the Order have been resolved.

16 5. Since the fall of 2014, the Club has been discussing the situation with several
17 regulatory agencies, including BCDC, the U.S. Army Corps of Engineers (the “Corps”), and the U.S.
18 Environmental Protection Agency (“EPA”). The agencies have been invited to tour the island, and
19 have accepted the invitation. The Corps has advised the Club that an “after the fact” permit could be
20 issued for the Work, and the Corps accepted an application for that permit. None of the agencies,
21 other than respondents and defendants in this action (“Defendants”), have taken enforcement action.

22 6. On September 11, 2015, a year after the Work stopped, Defendants issued cleanup
23 and abatement order No. R2-2015-0038 (the “Order”). Attached as Exhibit 3 to this declaration is an
24 accurate copy of the Order and its transmittal letter and attachments. No hearing was held before the
25 Order was issued.

26 7. On September 18, the Club requested a hearing. Attached as Exhibit 4 to this
27 declaration is an accurate copy of that request.
28

1 8. On September 23, Defendants denied this request. Attached as Exhibit 5 to this
2 declaration is an accurate copy of that denial.

3 9. Even though the water level in the channels and ditches is now maintained near high
4 tide, the island is dry. Virtually all of the land is firm enough so that motor vehicles can be driven
5 across it.

6 10. The Club was not present, or even aware of, those meetings in which the prosecution
7 team convinced Mr. Wolfe to issue the Order.

8 11. Undoing the Work has a cost in the hundreds of thousands of dollars. Mitigation
9 banks charge approximately \$100,000-200,000 per acre. The total cost of complying with the Order
10 could exceed \$1 million. Costs of this magnitude are beyond the financial assets of the Club, and
11 threaten the Club's existence.

12 12. As part of the Work, the levee and tide gate were repaired, so that water can now be
13 let into the small channels and artificial ditch on the rising tide, and held within the levee at an
14 elevation near the high tide. These improvements allow the small channels and artificial ditches to
15 function as small ponds, thereby providing a modicum of habitat for ducks and other waterfowl.
16 There is no evidence of any harm caused by the creation of these small ponds. Most of the island is
17 above high tide, and is not affected by the presence or absence of tidal flow.

18 I swear under penalty of perjury under the laws of the State of California that the statements
19 in this declaration are true and correct.

20 DATED: December 28, 2015

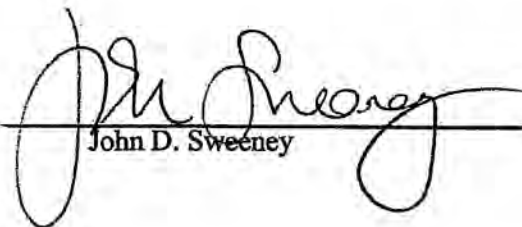
21 
22 John D. Sweeney
23
24
25
26
27
28

Exhibit 4

MAR 22 2016

By: [Signature]
DEPUTY CLERK

1 Christian Carrigan, Director, SBN 197045
2 Laura Drabandt, Senior Staff Counsel, SBN 235119
3 Office of Enforcement
4 California State Water Resources Control Board
5 1001 I St., P.O. Box 100
6 Sacramento CA 95812
7 (916) 341-5180

8 Attorneys for Applicant San Francisco Bay Regional Water Quality Control Board

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SOLANO

11 IN THE MATTER OF THE)
12 INSPECTION AT:)
13 Point Buckler Island)
14 APN 0090-020-010)
15 SEC 18 & 19 T3N R1W)

16 Case No. MISC002135

17 **AMENDED AFFIDAVIT FOR**
18 **INSPECTION WARRANT**

19 **A. Affiant Information**

20 1. I, Benjamin Martin, declare as follows: On behalf of the San Francisco Bay
21 Regional Water Quality Control Board, I submitted an Affidavit for Inspection Warrant
22 and proposed Inspection Warrant to the Superior Court of California, County of
23 Solano, Old Solano Courthouse Clerk's Office at 580 Texas Street, Fairfield, CA, on
24 February 19, 2016.

25 2. In the lobby area of the Old Solano Courthouse, State Water Resources Control
26 Board Office of Enforcement Senior Staff Counsel Laura Drabandt and I physically put
27 together the affidavit with its exhibits. I reviewed the affidavit and its five exhibits in
28 their entirety. I signed the affidavit and watched Ms. Drabandt use a stapler from her
tote bag and stapled the front side of the affidavit papers, and then staple them again
from the back side. I saw Ms. Drabandt then place a binder clip on top. We walked to
the counter and provided the entire packet to a woman who assisted us.

1 3. Ms. Drabandt told me that she called the Clerk's Office, Department 16, and
2 Department 3 February 22-23, 2015 and learned that the warrant request and affidavit
3 were first assigned to Department 16, and then transferred to Department 3.

4 4. The Honorable Harry S. Kinnicutt issued the inspection warrant on February 24,
5 2016.

6 5. Ms. Whyte e-mailed Point Buckler Club, LLC's attorney, Lawrence Bazel, and
7 Ms. Drabandt left a voice mail message for him, early on February 25, 2016, to provide
8 more than 24 hours notice of the inspection planned for February 26, 2016.

9 6. I obtained a copy of the inspection warrant on February 25, 2016.

10 7. During the day on February 25, 2016, I learned that a member of the survey
11 crew from CLE Engineering, Inc., was working across the water from Point Buckler
12 Island and saw a man matching John Sweeney's description firing off a small gun.
13 Ms. Drabandt told me that she would contact Sheriff's Deputy Jaime Garcia. That
14 afternoon, I heard from Ms. Drabandt that the Sheriff's Department would not have
15 enough deputies available to escort the inspection team to Point Buckler Island on
16 February 26, 2016. The Sheriff's Department updated their threat risk assessment;
17 the Sergeant was concerned for the safety of the inspection team and wanted more
18 deputies present than were available. We called off the inspection and started making
19 efforts to re-schedule.

20 8. I executed the inspection warrant on Point Buckler Island on March 2, 2016, with
21 other members of the San Francisco Bay Regional Water Quality Control Board, the
22 Solano County Sheriff's Department (four deputies and two boats), United States
23 Environmental Protection Agency, and United States National Marine Fisheries
24 Service. Mr. Bazel was again provided more than 24 hours notice via e-mail prior to
25 the inspection.

26 9. On March 10, 2016, I received a copy of a letter from Mr. Bazel addressed to the
27 Honorable Harry S. Kinnicutt and dated March 9, 2016, via e-mail from State Water
28

1 Resources Control Board Office of Enforcement Senior Staff Counsel Julie Macedo.
2 The letter implies that my affidavit did not contain e-mails between Mr. Bazel and San
3 Francisco Bay Regional Water Quality Control Board Assistant Executive Officer Dyan
4 Whyte, specifically an e-mail from February 16, 2016.

5 10. Knowing that I included the specific e-mail with my affidavit in Exhibit 4 as
6 referenced in the Consent Denied section, I went to the Old Solano Courthouse the
7 next day, March 11, 2016, to obtain a copy of my affidavit in the court file. I arrived at
8 the Old Solano Courthouse and reviewed case file number MISC002135. Exhibits 4
9 and 5, which were submitted with the affidavit, were no longer attached. The original
10 affidavit appeared to have been unstapled and re-stapled. I did not see the affidavit
11 Exhibits 4 and 5 anywhere in the court file.

12 11. Therefore, I am submitting this amended affidavit with additional copies of
13 Exhibits 4 and 5 to assist with completing the Court's records.
14

15
16 I affirm under penalty of perjury that the above information is true and correct to
17 the best of my knowledge.
18

19 
20 Benjamin Martin, Affiant

EXHIBIT 4

FW: Site access request

Whyte, Dyan@Waterboards

Sent: Thursday, March 10, 2016 2:40 PM**To:** Martin, Benjamin@Waterboards

Dyan C. Whyte
Assistant Executive Officer

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

510-622-2441
510-926-2870

From: Lawrence S. Bazel [mailto:lbazel@briscoelaw.net]
Sent: Tuesday, February 16, 2016 9:16 PM
To: Whyte, Dyan@Waterboards
Cc: Austin, Tamarin@Waterboards; Matthew Bullock; Matthew Goldman
Subject: RE: Site access request

Dear Dyan,

Actually, my availability is limited this week and next, not for the entire next month. I figured that I'd give myself the beginning of March to get whatever experts I needed, and have the inspection in the second half of March. Since you want to move more quickly, I'll see about an inspection date in the first half of March, but next week is not good.

Although I hear your concern about plants beginning to grow, I can't imagine that your studies will be invalid if they are done in early March rather than the last week of February—or that there will be any real difference in the difficulty of conducting the studies or interpreting the results.

If you're planning for a hearing in April or May, we should talk about scheduling and other procedural issues. I would like sufficient time to evaluate your team's report and prepare a response to it. Since your team's report will apparently be based on technical data and evaluations, I'll need at least 30 days to respond. Here's a suggested schedule: You provide me with your team's report 60 days before the hearing; I provide you with my response 30 days before the hearing; and you provide your reply 15 days before the hearing. We should also discuss a schedule for disclosing witnesses and the substance of their testimony.

The Regional Board meeting on 8 April seems too soon for a hearing. The meeting on 13 May is a possibility, but 10 June might be better.

I'd like sufficient time before the Regional Board so that we can cover all the issues, and so that I can cross-examine your witnesses. Do you have proposed time limits for the hearing? Do you have any objection to cross-examination?

Although I've seen e-mails copied to people who were identified as being part of one team or another, it would be helpful to see a list of who is on your team, and who is advising the Regional Board.

Thanks

Larry

LAWRENCE S. BAZEL
155 Sansome Street, Seventh Floor
San Francisco, California 94104
Office: (415) 402-2700 Direct: (415) 402-2711

From: Whyte, Dyan@Waterboards [mailto:Dyan.Whyte@waterboards.ca.gov]
Sent: Friday, February 12, 2016 4:37 PM
To: Lawrence S. Bazel <lbazel@briscoelaw.net>
Cc: Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>; Matthew Bullock <Matthew.Bullock@doj.ca.gov>; Matthew Goldman <Matthew.Goldman@doj.ca.gov>
Subject: Site access request for Feb 24-26

Dear Larry,

Thank you for your response and agreeing to provide us site access in mid-March. However, it is imperative that we access the Island before March. Given the warm weather and increases in daylight hours, we need to observe existing conditions before spring vegetation growth. The spring growth will obscure some of the information we need to evaluate. In order to have a shared understanding of the site, we need to see the ground surface in tidal areas and transitions to uplands areas before the spring growth fully emerges. We are happy to work with your experts so that we can gain a common understanding of facts, but cannot wait another month do so in the field. You stated that your availability is limited for the next month. I note that you have retained Terry Huffman to assist on wetlands issues, so perhaps he or his field crew can be present for this inspection. If you are concerned about groundtruthing or overseeing the work of the professional survey crew, we would be happy to come back afterwards with your experts to locate any bench marks and critical survey markers so that they can independently verify accuracy.

You asked about the schedule for issuing a cleanup and abatement order. While I have not had any contact with the Water Board's advisory team on this matter, I remind you that in my January 4, 2016, communication to the advisory team, for which you were included, I stated that "In order to address the procedural due process claims, the Prosecution Team in the attached memo recommends that you rescind the CAO at this time and further recommend that the full Board hold a hearing on a revised CAO in the April or May timeframe."

Again, our request is for access to the Island February 24-26. Please confirm whether you intend to

grant access by Tuesday, February 16 so that I can begin rescheduling our work crew.

Thank you,

Dyan

Dyan C. Whyte
Assistant Executive Officer

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

510-622-2441
510-926-2870

From: Lawrence S. Bazel [<mailto:lbazel@briscoelaw.net>]
Sent: Thursday, February 11, 2016 4:37 PM
To: Whyte, Dyan@Waterboards
Cc: Austin, Tamarin@Waterboards; Matthew Bullock; Matthew Goldman
Subject: RE: Water Board Feb. 22 Mtg. and site access request

Dear Dyan,

Thank you for the information on the people you intend to bring and the kinds of information they will be collecting. We do not doubt that you will be collecting data in a scientifically sound manner, but I still feel a need to be advised by our own experts. We expect to bring Terry Huffman, whom we have retained to assist us on wetlands issues. We will need some time, however, to find other experts to advise us on the other types of information you will be collecting, and I'm very busy this month.

You expressed an urgency to the visit, for reasons several including "the pending schedule for a revised Cleanup and Abatement Order." I haven't received any scheduling information. What is the pending schedule?

The other items you mention, tides and seasonal vegetation, do not seem like they will be changing much over the next few weeks. I took a quick look at the tides over the next month or so, and I didn't see any major differences.

Under the circumstances, we would like to schedule the site visit at a time beginning in mid-March. Thursday and Friday, 17-18 March, are available, as are the weeks of 21 March and 28 March.

Thank you for your willingness to meet with us as soon as you complete your findings. We remain hopeful that a resolution can be found. Thank you also for accommodating our concerns about Dr. Siegel.

Larry

LAWRENCE S. BAZEL
155 Sansome Street, Seventh Floor
San Francisco, California 94104
Office: (415) 402-2700 Direct: (415) 402-2711

From: Whyte, Dyan@Waterboards [mailto:Dyan.Whyte@waterboards.ca.gov]
Sent: Wednesday, February 10, 2016 12:08 PM
To: Lawrence S. Bazel <lbazel@briscoelaw.net>
Cc: Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>; Matthew Bullock <Matthew.Bullock@doj.ca.gov>; Matthew Goldman <Matthew.Goldman@doj.ca.gov>
Subject: RE: Water Board Feb. 22 Mtg. and site access request

Dear Larry,

This is my fourth request for access to Point Buckler Island. I note that you still have not confirmed whether your client will grant or deny informal access, you have not proposed an alternative date, and you have not stated the basis for the denial of access on the dates previously requested. We are hoping your client will grant informal access on February 24, 24, or 26, without the need for a warrant.

I will do my best to provide you with the additional information you have requested and a proposal for an alternative date. I emphasize again that we are trying to confirm and augment existing data and answer many of the questions you have raised, so that we can expeditiously resolve this case. We plan to bring a survey crew to conduct a high resolution topographic survey. This work will be performed by CLE Engineering. I do not have a list of names for the survey crew, but can provide that beforehand. We also plan to do a reconnaissance of the Island conducting activities such as making exploratory soil and vegetation observations, surveying in any identified areas of interest or concern, and taking measurements and samples of soil and water. In addition to the survey crew, the technical professionals will include the following Water Board staff: Dyan Whyte (Professional Geologist), Bill Hurley (Professional Civil Engineer), Brian Thompson (Certified Engineering Geologist and Hydrogeologist), Ben Martin (Environmental Scientist), and Agnes Farres (Environmental Scientist). We will also be inviting Dr. Peter Baye (Coastal Ecologist/Botanist), Dr. Dan Martell (wetlands expert), and Don Tanner (NOAA Fisheries). Although we are surprised that you wish to limit site access to Dr. Stuart Siegel, since he has significant background in this area, if it will facilitate gaining informal access to the site, we will accommodate your request.

I emphasize that given tides and seasonal changes in vegetation, as well as the pending schedule for issuing a revised Cleanup and Abatement Order, we have an urgent need to inspect the Island. Since your client has denied access for the week of February 16, 2016, we have worked with our experts and crews to be available February 24, 25, or 26. If your client wishes to have experts observe our work, we welcome that. We will be collecting data in a transparent and scientifically sound manner using appropriate licensed and qualified professionals. As previously stated, we'd be willing to meet with you as soon as we compile our findings so that we can discuss next steps and possible resolution of this matter. If you've collected any additional data, we can compare our findings. Please confirm whether you intend to grant access by Thursday, February 11 so that I can begin rescheduling our work crew.

Thank you,

Dyan

Dyan C. Whyte
Assistant Executive Officer

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

510-622-2441
510-926-2870

From: Lawrence S. Bazel [mailto:lbazel@briscoelaw.net]
Sent: Monday, February 08, 2016 6:01 PM
To: Whyte, Dyan@Waterboards
Cc: Austin, Tamarin@Waterboards; Matthew Bullock; Matthew Goldman
Subject: RE: Water Board Feb. 22 Mtg. and site access request

Dear Dyan,

It is common, in my experience, for the property owner to have its own experts present when a site inspection is done. We would like to know what your team will be doing on the island, so that the club can figure out whether it should bring its own professionals to see what they see.

You say that one boat will bring a survey team of 4 to 6 people. Can you tell us who will be doing the survey work, and in general what kind of survey or surveys will be done?

The other boat, you say, may bring up to 8 technical professionals. What work do you expect them to be doing, and who do you expect to do that work?

If you are thinking of using Stuart Siegel, we request that you choose someone else. Bad blood has developed between Dr. Siegel and the club, and I have concerns about his ability to provide impartial unbiased testimony. As you can see from two e-mails dated 14 May 2015, Dr. Siegel characterized "dealing with Sweeney" as a "HIGH RISK situation", and yet 16 minutes later made a pitch to Mr. Sweeney to be hired by the club, with the tempting offer that "BCDC will accept my work whatever its findings are."

Among other things, Dr. Siegel and the club disagree about the map attached as Suisun-Map-2. As you can see, this map was prepared by Wetlands and Water Resources, Dr. Siegel's firm. It shows Point Buckler (identified as Taylor #801) as a "Completed Project" under the heading "Wetland Project". Everyone now seems to agree that no restoration project was ever planned for Point Buckler, much less completed. What may also interest you about the map is the green shading underneath the cross hatching, which characterizes Point Buckler as "Managed Marsh", a designation Regional Board staff seem to disagree with. Dr. Siegel may now be saying that by "completed project" he meant natural restoration---i.e. no project---but if so we have good reason to doubt either his use of language or his veracity.

When the Regional Board, BCDC, and other agencies toured the island last October, Dr. Siegel reported that "yes, the site is tidal wetland" (as you can see from the attached extract from BCDC's notes) even though he was standing on dry solid ground. Perhaps he used the phrase "tidal wetlands" loosely, as some people apparently do, to refer both to wetlands inundated by the tides, and also to nearby uplands. Perhaps, having reported that the site is a completed project in which tidal wetlands have been restored, he indulged his interest in proving himself right.

Whatever the case may be, this long list of issues---his past interest in working for the club, his personal dispute with the club, his loose use of language, and his personal interest in having the results of his investigation confirm his earlier work---should all disqualify him from providing testimony in this case.

Thank you for considering these requests.

Larry

LAWRENCE S. BAZEL
155 Sansome Street, Seventh Floor
San Francisco, California 94104
Office: (415) 402-2700 Direct: (415) 402-2711

From: Whyte, Dyan@Waterboards [mailto:Dyan.Whyte@waterboards.ca.gov]
Sent: Thursday, February 04, 2016 12:01 PM
To: Lawrence S. Bazel <lbazel@briscoelaw.net>
Cc: Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>; Matthew Bullock <Matthew.Bullock@doj.ca.gov>; Matthew Goldman <Matthew.Goldman@doj.ca.gov>
Subject: RE: Water Board Feb. 22 Mtg. and site access request

Dear Larry,

As stated earlier, we request access to the Island in order to delineate habitats, survey topography, and document the nature and extent of levee construction activities. This information is needed in order for us to confirm and augment existing data, and answer many of the questions you have raised and asked to discuss. We anticipate two boats arriving at the island: one boat will carry a survey team of 4 to 6 people; and the other boat may bring up to 8 technical professionals. We are trying to see who may be available to join us onsite depending on the schedule we work out with your client; the technical professionals may include representatives from other regulatory agencies and consultants in addition to Water Board staff. It is not necessary for you or your client to be present during the inspection, but we understand if your client or a representative would like to attend.

In your court documents you note that a hearing is needed to determine fundamental facts. The Water Board's Executive Officer agreed to grant a hearing. We assert that if we hope to resolve this matter, we need access to the Island such that we can gather the information needed to have a constructive and transparent dialogue about the fundamental facts.

Please propose an alternative time for access or clarify whether your client is denying this request and the basis for the denial by Monday, February 8.

Thank you,

Dyan

Dyan C. Whyte
Assistant Executive Officer

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

510-622-2441
510-926-2870

From: Lawrence S. Bazel [<mailto:lbazel@briscoelaw.net>]
Sent: Wednesday, February 03, 2016 3:47 PM
To: Whyte, Dyan@Waterboards
Cc: Austin, Tamarin@Waterboards; Matthew Bullock; Matthew Goldman
Subject: RE: Water Board Feb. 22 Mtg. and site access request

Dear Dyan,

A site visit during the week of 16 February is not good for us, and we should therefore postpone the 22 February meeting.

Please let me know what you plan to do on the island, and who you intend to bring.

Thanks very much,

Larry

LAWRENCE S. BAZEL
155 Sansome Street, Seventh Floor
San Francisco, California 94104
Office: (415) 402-2700 Direct: (415) 402-2711

From: Whyte, Dyan@Waterboards [<mailto:Dyan.Whyte@waterboards.ca.gov>]
Sent: Monday, February 01, 2016 4:21 PM

To: Lawrence S. Bazel <lbazel@briscoelaw.net>
Cc: Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>
Subject: RE: Water Board Feb. 22 Mtg. and site access request

Dear Larry –

We are in receipt of your emails and attached figures sent on January 31, 2015. I appreciate you identifying issues for discussion and noting a desire to finding a way to resolving these issues. We are happy to meet with you and your client; however I must note that we would like access to Point Buckler Island beforehand so that we can gather some additional data to help inform our conversation. We are not prepared to answer many of the questions you pose in your email without a better understanding of the existing condition of the Island. I for one have not been to the Island and would like to look at the levee work and channels first hand before engaging in a conversation about the regulatory aspects of the work performed. Furthermore, since there have been a number of questions about topography of the Island and State jurisdiction, we prefer to generate this data ourselves using licensed professionals.

As mentioned in my most recent email, we request access the week of February 16, 2016, for 2 days and request some flexibility in the dates if weather conditions create a safety hazard. If there is a logistical reason why you cannot accommodate this request for that week we can come at a later date, and reschedule our February 22 meeting accordingly.

Dyan

Dyan C. Whyte
Assistant Executive Officer

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

510-622-2441
510-926-2870

From: Lawrence S. Bazel [<mailto:lbazel@briscoelaw.net>]
Sent: Sunday, January 31, 2016 7:27 PM
To: Whyte, Dyan@Waterboards
Cc: Austin, Tamarin@Waterboards; Matthew Bullock; Matthew Goldman
Subject: RE: Water Board Feb. 22 Mtg. and site access request

Here are the first two of the files I referred to. The third and fourth are each 8 MB, so I'll send them separately.

Larry

LAWRENCE S. BAZEL

155 Sansome Street, Seventh Floor
San Francisco, California 94104
Office: (415) 402-2700 Direct: (415) 402-2711

From: Lawrence S. Bazel
Sent: Sunday, January 31, 2016 7:21 PM
To: Whyte, Dyan@Waterboards <Dyan.Whyte@waterboards.ca.gov>
Cc: Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>; Matthew Bullock <Matthew.Bullock@doj.ca.gov>; Matthew Goldman <Matthew.Goldman@doj.ca.gov>
Subject: RE: Water Board Feb. 22 Mtg. and site access request

Dear Dyan,

Thanks for e-mailing me to talk about an agenda for the meeting on 22 February, and inviting me to talk about what I hope to accomplish at that meeting.

I would like to find a way to resolve this matter, and hope that the meeting will give us some sense of the path that will get us there. Although I understand that the Regional Board is very unhappy with Point Buckler Club, I'm not clear about what the real concerns are---and therefore can't intelligently respond to them. Here are my thoughts about some issues that we should put on the agenda, along with my explanation of why I'm proposing them.

1. Tidal wetlands. The Regional Board appears to think that the island consists entirely of tidal wetlands. We think that with the exception of a few small channels and the artificial ditch, the island inside the work area is not and was not tidal wetland, but rather is dry and was dry before the work was done in 2014. This issue appears to need resolution before anything else can be worked out.

Some data may be helpful here. Last October, we submitted a technical report in which Applied Water Resources used NOAA aerial photographs, taken at MHW and MLLW, to identify the parts of the island that were wet before the work was done. Figure 3 from that report, attached, shows that even at high tide water was found on the island inside the work area only in a few channels, plus the artificial ditch (which was shown in another figure). The rest of the island inside the work area was dry. I'm also attaching a figure prepared by Regional Board staff showing that, according to Lidar measurements, the great majority of the island is above MHHW. These data seem more than sufficient to establish that the great majority of the island was not tidal wetland before the work. If the Regional Board thinks differently, we could really use some information about why.

2. Drying up the island (or the wetlands). The CAO accused the club of drying up the interior of the island. We think that the areas that were dry before the work generally remain dry now, and the areas that were wet generally remain wet. The small channels remain wet, although they are no longer affected by the daily tides. The interior ditches have been expanded, and moved in places, and four small semicircles have been dug, but the result is a wetter interior, not a drier one. The rest of the area inside the levee looks no drier than it did before the work was done, as you can see from the attached aerial photos from 2013 and 2015. If the Regional Board thinks differently, we would like to know why.

3. Duck ponds and a condition of pollution or nuisance. There were duck ponds on the island for decades, and the work was done as part of an effort to repair and maintain some of the duck ponds. To issue a cleanup and

abatement order here, the Regional Board would need to identify a condition of pollution or nuisance. I don't see how the duck ponds can be a condition of pollution or nuisance. They provide wildlife habitat and recreation, both of which are beneficial uses. Isn't a beneficial use pretty much the opposite of a nuisance? The Suisun Marsh Protection Act and the Suisun Marsh Protection Plan recognize that duck ponds are especially valuable because they provide food and habitat for waterfowl—food and habitat that are not provided by natural conditions. I also don't see how the Regional Board can act consistently with the Suisun Marsh Protection Act (which it is supposed to do) if the Regional Board is prohibiting a duck club from implementing its individual management plan. Am I missing something?

4. Corrective action and restoration plan. It isn't clear to me why the club can't restore the tidal wetlands and also the duck ponds, and also maintain some uplands. In a typical 404 situation, the project proponent wants to fill wetlands in order to build a project, and the regulatory agencies want to maintain wetlands. Here the club wants to create wetlands out of uplands. I'm not clear on why the creation of wetlands is so problematical.

5. Scope of the corrective action and restoration. Some of the work consisted of placing material on an existing levee. That work is squarely within RGP3, and should not be the subject of a CAO. Is this part of the work really in dispute? Another part of the work consisted, in places where the levee had eroded away, of putting material on dry land. Is the Regional Board's main concern the placement of material, or is it more interested in something else, such as maintaining tidal flow?

Because of this uncertainty about the key issues, the club is not ready to propose specific corrective actions, mitigation, or restoration. As we come to understand the key concerns, it can have more specific proposals. It can also collect relevant data. The club has previously provided access for site visits to several regulatory agencies, including the Regional Board, and expects to provide additional access in the future, but I would prefer to postpone these discussions until after our meeting.

Thanks again for inviting my comments on the agenda, and please let me know what you think.

Larry

LAWRENCE S. BAZEL

From: Whyte, Dyan@Waterboards [<mailto:Dyan.Whyte@waterboards.ca.gov>]
Sent: Friday, January 22, 2016 12:55 PM
To: Lawrence S. Bazel <lbazel@briscoelaw.net>
Cc: Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>
Subject: Water Board Feb. 22 Mtg. and site access request

Dear Mr. Bazel,

Per your request, we will be meeting on February 22 from 10-12 at our office in Oakland to discuss Point Buckler Island. Please propose an agenda for the meeting and let us know the purpose, or what you hope to accomplish, and who you will be bringing with you. This information will help us determine which staff should attend. We would like to hear about the following items from your client:

- Proposed corrective actions for work done at the island;
- Plans for future restoration or mitigation; and
- Plans for current and long-term use of the Island.

To have a productive meeting, we need a better understanding of Point Buckler Island and request access to it. There is information about habitat, topography, construction activities, and potential impacts to waters of the State that we need before decisions can be made and we can move forward with your client. We request access to the Island on February 8 and 9 so that we have time to get more information (i.e., delineate habitats, survey topography, document the nature and extent of construction activities) before our meeting. Please let us know no later than Wednesday, January 27, 2016, if your client consents to provide access to Pt. Buckler Island for this work. We can coordinate these activities with Point Buckler personnel, if you wish.

Thank you,

Dyan

Dyan C. Whyte
Assistant Executive Officer

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

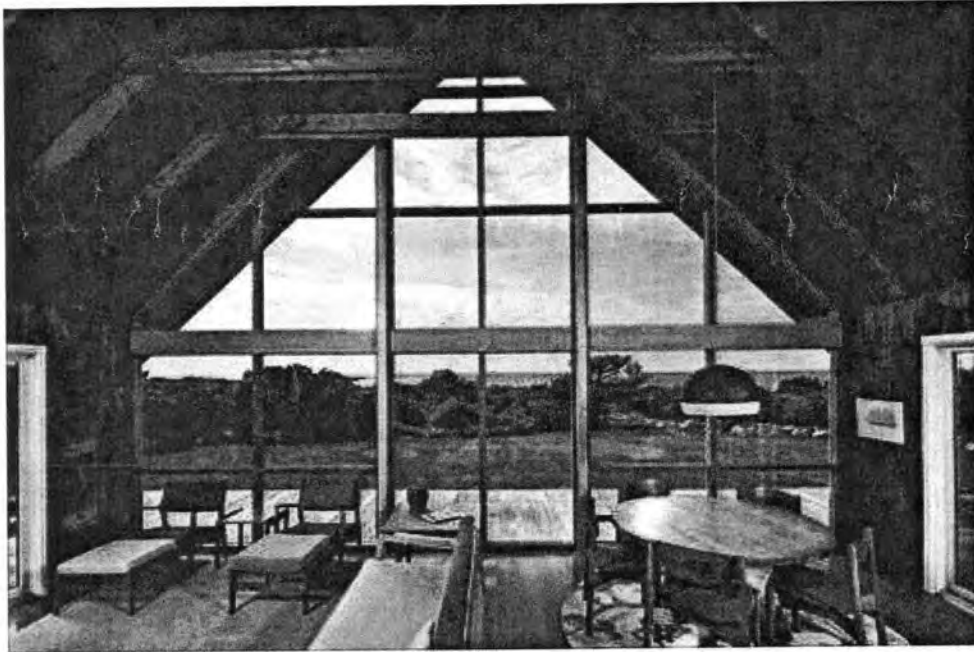
510-622-2441
510-926-2870

EXHIBIT 5



John Sweeney updated his cover photo.

February 22, 2014 · 🌐



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Jack Sweeney Is this old photo from creator of planned house?

February 22, 2014 at 11:14pm



John Sweeney Yes that's what buckler house will look like

February 22, 2014 at 11:18pm · 👍 2



Kurt Feeter Need a local contractor?

February 22, 2014 at 11:23pm · 👍 1



John Sweeney I need a crew to frame and out the prefab together but won't be till August. Not building to code or w permits

February 22, 2014 at 11:30pm · 👍 1



Steve Gunn gonna B NICE!

February 23, 2014 at 9:06am · 👍 1