

# San Francisco Bay Conservation and Development Commission

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January 13, 2023

**TO:** Enforcement Committee Members

**FROM:** Lawrence J. Goldzband, Executive Director (415/352-3653; [larry.goldzband@bcdc.ca.gov](mailto:larry.goldzband@bcdc.ca.gov))  
Brent Plater, Enforcement Attorney (415/352-3628; [brent.plater@bcdc.ca.gov](mailto:brent.plater@bcdc.ca.gov))

**SUBJECT:** **Executive Director’s Recommended Enforcement Decision  
ER2020.021.00/CCD2023.001.00 (Family Gun Club)**  
(For Commission consideration on February 16, 2023)

## Summary

At the July 27, 2022, Enforcement Committee hearing, staff recommended that the Committee adopt proposed stipulated order CCD2022.004.00, which addressed violations at the Family Gun Club and would resolve ER2020.021. One of those violations involved an unauthorized development known as Family Club Clays, a competitive clay shooting enterprise hosting public events. In the proposed stipulated order, Family Gun Club agreed to limit use of the course to duck club members and their guests and based on this condition the Commission agreed to assess no penalties for violations associated with Family Club Clays.

The Committee adopted the staff recommendation with some clarifying language, but before the matter was heard by the Commission BCDC received reports that Family Club Clays continued to operate competitive shooting events open to the public, claiming that all participants were “guests” of the Club. Family Gun Club representatives subsequently told staff that it intended to continue operating in this matter, even after the stipulated order was adopted by the Commission. Staff determined this was a violation of both the letter and spirit of the stipulated order, and therefore reviewed the matter to determine if the stipulated order still provided the best resolution of this matter.

Based on that review, the Executive Director recommended that the Enforcement Committee adopt a revised Recommended Enforcement Decision as its recommendation to the full Commission. The revised decision proposed to resolve 19 McAteer-Petris Act (MPA) and Suisun Marsh Preservation Act (SMPA) violations at Suisun Marsh’s Family Gun Club. It did so through proposed Cease and Desist and Civil Penalty Order CCD2023.001.00,<sup>1</sup> which required Respondents to restore a wetland they were required to maintain pursuant to CCD2000.004.00 and M1999.022.00md; mitigate for an acre of interior waterways that Respondents filled without a BCDC-issued Marsh Development Permit; remove five unauthorized structures

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<sup>1</sup> CCD2022.004.00 was never finalized by the Commission. It will be preserved in the enforcement record with a notation explaining that it was not issued and was superseded by CCD2022.005.00.



Respondents constructed, unless after-the-fact BCDC authorization occurs before December 31, 2023; permanently remove all structures associated with Family Club Clays by April 30, 2023; remove the unauthorized clay shooting course and cease all public clay shooting events; and pay \$306,000 in administrative civil liability.

At the December 8, 2022, Enforcement Committee hearing, the Committee provided direction to BCDC staff to pursue a Stipulated Order that addressed 18 violations, eliminating one violation—for the unauthorized construction of a foot bridge—because it had been removed and disposed of outside BCDC jurisdiction. The Committee also gave direction to work with Respondents to agree on a stipulated Civil Penalty award.

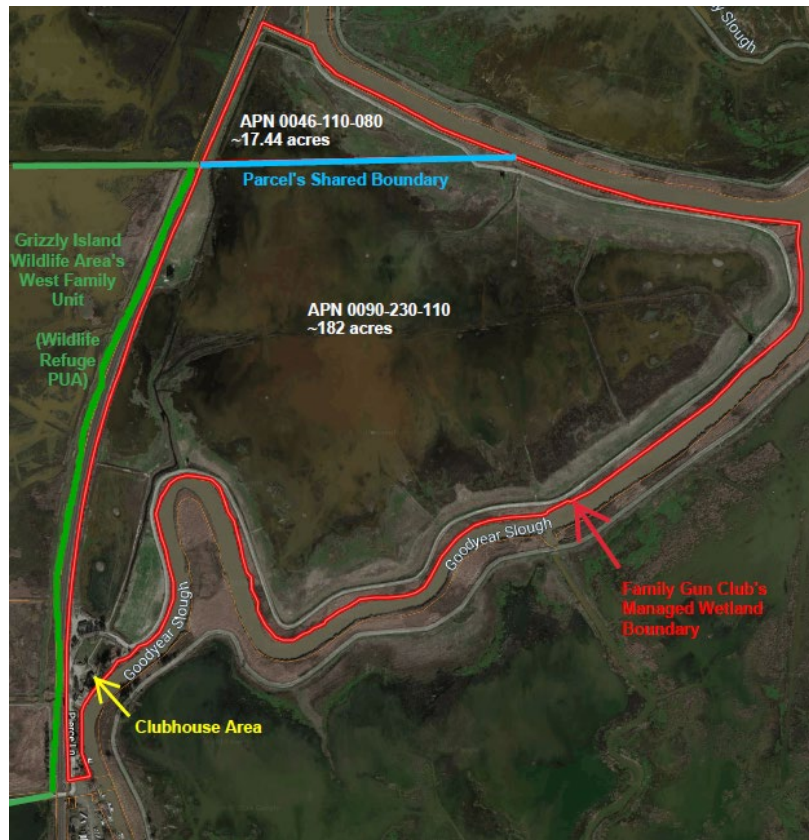
Staff and Respondents have now agreed on the terms of a proposed Stipulated Cease and Desist and Civil Penalty Order, CCD2023.001.00, and present it to the Committee for its consideration. The substantive elements of this new stipulated order remain largely the same as CCD2023.001.00, but dates for compliance have been extended to account for the amount of time that has lapsed since the July 27, 2022 Committee hearing. It also reduces the Civil Penalty amount to \$215,630 for eighteen violations to resolve this matter.

## Background

### I. Factual Background

The Family Gun Club (“the Club”) is an approximately 200-acre private hunting club on managed wetlands in the Suisun Marsh. It is comprised of two parcels: APN 0046-110-080 and APN 0090-230-110. Exhibit A, p. 1-2. APN 0046-110-080 is a 17.44-acre, triangle-shaped parcel constituting the Club’s northernmost land. It is bounded by a Southern Pacific Railroad easement to the northwest, Cordelia Slough to the northeast, and APN 0090-230-110 to the south. APN 0090-230-110 constitutes the rest of the Club’s 200 acres and is separated from the adjacent Grizzly Island Wildlife Area’s West Family Unit—which is designated as a Wildlife Refuge Priority Use Area in the San Francisco Bay Plan—by the Southern Pacific Railroad easement to the west and bounded by Cordelia Slough to the northeast and Goodyear Slough to the southeast. Its short, southern boundary abuts 21 Pierce Lane.

Figure 1: Family Gun Club Site Overview



Since 1999, the Family Gun Club has been party to two other enforcement cases—ER1999.012.00 and ER2009.004.00—and has received two BCDC Marsh Development Permits: M1999.022md and M2019.024.00md. The Club's prior owners were respondents to ER1999.012.00, which concerned the unauthorized placement of approximately 3,500 cubic yards of fill over a 36,000 square-foot area, including 4,500 square-feet of seasonal wetlands. It was resolved by CCD2000.004.00, which ordered respondents to restore the seasonal wetlands, Exhibit B, and by BCDC Permit M1999.022.00md, which incorporated these requirements and authorized the Family Gun Club to construct a new 175-foot-long levee adjacent to the restored seasonal wetlands, Exhibit C. BCDC's enforcement and permitting files indicate that the required fill removal was completed in 2003 and the restoration site was seeded with seasonal wetland plants. The enforcement case was then closed as the project entered its compliance monitoring phase.

Respondents Barto and Donna Price purchased the Family Gun Club from the prior owners in 2008 and have been the operators of the Family Gun Club ever since. Exhibit A, p. 3-4. Respondents retained Bill Esola, who was raised at 21 Pierce Lane, to manage the Club. Respondents also retained Matt Ellsworth Construction, Inc., to build, repair, and expand structures on site. BCDC staff have not identified any other equity members of Family Gun Club.

On February 4, 2009, BCDC received a report of unauthorized fill at Family Gun Club and opened ER2009.004.00. Exhibit D. In 2019, Respondents applied for a BCDC Marsh Development Permit to construct a 145-foot-long bulkhead wall on the Goodyear Slough side of Family Gun Club's exterior levee. BCDC Permit M2019.024.00md authorized this work, resolving some, but not all, of the violations alleged in ER2009.004.00. Exhibit E.

When BCDC received additional reports of violations at Family Gun Club in 2020, ER2009.004.00 was closed and its remaining issues merged into the instant matter, ER2020.021.00. The 2020 report was initially limited to an allegation that Family Gun Club had opened an unauthorized commercial sporting clays course. Follow-up reports alleged several unauthorized structures had been constructed near the clubhouse, and further emphasized the previously reported unauthorized fill of managed wetlands.

On April 17, 2020, BCDC staff sent an Initial Contact Letter to Respondents at their last known residence, but it was returned unopened. Exhibit F. In July of 2020 Solano County Code Enforcement's Scott Tippett posted a letter at the Family Gun Club's mailbox. Subsequently, a site visit with Mr. Tippett, Ms. Priscilla Njuguna of BCDC's enforcement staff, and Respondents occurred on July 21, 2020. Mr. Tippett's report from this site visit identified seven structures in the Family Gun Club's clubhouse area that were constructed or expanded without County or BCDC authorization. Exhibit G. Four of these structures appeared new or significantly expanded: a large barn, a club meeting hall, a bar, and a pump house. Through investigation of structures created for the clay shooting course BCDC staff identified a fifth unauthorized structure—a bridge spanning an interior waterway.

Ms. Njuguna's August 5, 2020, site visit follow-up letter explained that the structures created for the clay shooting course did not require a BCDC permit. Exhibit H. She went on to state:

"However, the repairs and unpermitted new construction at the site...require review and approval by BCDC.... It is our understanding that you intend to submit your permit application to BCDC after you obtain required approvals from Solano County.... We expect you to submit a fileable permit application no later than 90 days from the date of this letter.... Inform BCDC of any County related delays that could impact this 90-day period.... Further, while the report we received focuses on the activities identified above, we recognize the potential that there may be other violations at the site. We urge you to review your permits to ensure you are fully compliant with all of their conditions."

Respondents did not inform BCDC of any delays that might impact the 90-day deadline set by BCDC. However, the Family Gun Club did not file a permit application before the 90-day period expired. Ms. Njuguna followed-up with Respondents by email on December 18, 2020, with a simple request: "[p]lease respond to this email with a status update as to when BCDC can expect to receive a BCDC permit application and/or what has caused the delay in your being able to submit a BCDC permit." Exhibit I. No response to this message was received. However, Ms. Njuguna learned from Mr. Tippett on December 19, 2020, that Respondents' initial County permit applications had been rejected for failure to submit plans. Exhibit J.

On March 11, 2021, Respondents contacted BCDC for the first time since the July 21, 2020 site visit. The message requested another copy of BCDC's August 5, 2020, site visit letter, and suggested that the violations could be resolved if Respondents "pay BCDC for anything that may be owed." Exhibit K, p.3. Ms. Njuguna responded that day by attaching the requested letter and explaining that Respondents must "submit a permit amendment request so that the BCDC permit can accurately reflect the buildings at the site that can be authorized and any buildings that cannot be authorized will be or have been removed." Exhibit K, p.2.

Respondents did not reply to Ms. Njuguna's message, nor did Respondents submit the required permit amendment application. Instead on June 16, 2021, Respondents' representative sent a series of emails attaching "the signed off permits for 2021, as well as ALL permits and filings we can locate since the Price's [sic] took ownership of The Family Club property." The message also suggested that a BCDC permit application would face additional delays because "[w]e are STILL waiting for engineering drawings and Bart is preparing to find another engineer who actually wants to follow up with us. A significant amount was paid upfront so we have been waiting, but this is ridiculous for all of us." Ms. Njuguna responded that day, stating, "My recollection is that there are structures that were not authorized that need permits." Exhibit L.

BCDC did not receive any communications from Respondents over the next six months. Before leaving BCDC in December 2021, Ms. Njuguna instructed BCDC enforcement staff to elevate this matter to formal enforcement due to the history of violations on the site, the significant allegations raised by the public, the failure to meet the initial 90-day application deadline, the failure to timely explain why the 90-day deadline could not be met, and the Respondents untimely responses to each of BCDC's attempts to resolve this matter through the administrative enforcement process.

On July 27, 2022, the Enforcement Committee held a hearing in this matter, and recommended that the Commission adopt a proposed stipulated order to resolve this matter. Before the Commission held a hearing on the Enforcement Committee recommendation, BCDC staff received reports that Family Club Clays had continued and planned to continue to host public events. Exhibit T. Family Gun Club representatives subsequently confirmed these reports and expressed an intention to continue to operate public events even after the stipulated order was adopted. Exhibit U. This was contrary to BCDC staff's understanding of the stipulated order, which expressly stated that the Family Club Clays course would be used only by club members and their guests. However, the stipulated order did not define the term "member" or the term "guest," and Respondents exploited this oversight.

The Enforcement Committee Recommendation in this matter was taken off the Commission agenda so that staff and the Committee could revisit this matter and determine if different relief was warranted. Today, staff recommends that a stipulated order is not in the best interests of the Commission or the public, because Respondents have not acted consistent with the commitments made during the deliberations leading to the stipulated order. Staff instead recommends that the Committee adopt this revised Recommended Enforcement Decision, which includes a contested order that identifies additional violations and associated penalties compared to the stipulated order recommended on July 27, 2022.

A revised Recommended Enforcement Decision and a revised Proposed Order (CCD2022.005.00) was presented to the Enforcement Committee on December 8, 2022. The Committee instructed staff to eliminate one violation and attempt to reach a stipulated order on the terms of the remaining elements of the Cease and Desist and Civil Penalty Order.

Staff conferred with Respondents in December 2022 and now present a proposed stipulated Cease and Desist Order for the Committee's consideration.

## II. Legal Background.

Development<sup>2</sup> in Suisun Marsh is regulated by the Commission under the SMPA,<sup>3</sup> and fill, extraction of materials, and substantial changes in use in the Marsh's managed wetlands<sup>4</sup> is regulated by the Commission under the MPA.<sup>5</sup> To implement the SMPA's and MPA's requirements, the Commission has approved the Suisun Marsh Protection Plan and certified a Local Protection Program (LPP), which includes the Suisun Marsh Management Program (SMMP) prepared by the Suisun Resource Conservation District (SRCD). The SMMP includes a general management program and individual water management programs for each privately-owned managed wetland within Suisun Marsh's Primary Management Area (PMA) and requires each privately managed wetland within the PMA to be managed according to these plans. Exhibit M, p. 18. The individual management programs (commonly referred to as individual management plans or IMPs) were originally certified by the Commission in 1984, including Family Gun Club's IMP. The Commission conditionally approved updates to these plans in 2022.

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<sup>2</sup> "Development' means on land, or in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water or in access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes." Cal. Pub. Res. Code § 29114(a).

<sup>3</sup> "In addition to obtaining any other permit required by law from any local government or from a state, regional, or local agency, on and after January 1, 1978, any person wishing to perform or undertake any development in the marsh shall obtain a marsh development permit." Cal. Pub. Res. Code § 29500.

<sup>4</sup> "For the purposes of this title, the area of jurisdiction of the San Francisco Bay Conservation and Development Commission includes: ... (d) Managed wetlands consisting of all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature as a duck hunting preserve, game refuge or for agriculture." Cal. Gov. Code § 66610.

<sup>5</sup> "Any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission...." Cal. Gov. Code § 66632(a).

Activities authorized pursuant to the SMMP are not required to separately obtain a BCDC Marsh Development Permit. Cal. Pub. Res. Code § 29501.5.<sup>6</sup>

Suisun Marsh is also regulated by the United States Army Corps of Engineers pursuant to the Clean Water Act and the Rivers and Harbors Act. The Army Corps has developed Regional General Permit 3 to regulate operations and maintenance projects in the Marsh's managed wetlands, covering activities in ditches, on levees, in managed wetlands, and associated with water control structures. Exhibit N. SRCD coordinates RGP-3 applications for most of the Marsh's managed wetlands, and most activities authorized by RGP-3 are exempt from BCDC permitting requirements. However, BCDC's Consistency Determination No. C2017.007.00 determined that "certain activities proposed for authorization under the reissued RGP-3 would not be exempt from permitting under the SMPA; landowners proposing such activities would be required to apply to the Commission for a marsh development permit." Exhibit O.

### **III. Procedural Background.**

BCDC enforcement staff identified at least ten violations at the Family Gun Club that have not been resolved by previous enforcement and permitting actions. On March 25, 2022, staff sent a Violation Report and Complaint to Respondents via certified mail. It described the ten violations, proposed \$300,000 in administrative civil liability, and scheduled an Enforcement Committee hearing for May 12, 2022.

On April 21, 2022, Respondents' attorney, Mr. Casey Cummins, requested an extension of time to file Respondents' Statement of Defense. BCDC found that unexpected delays in providing Respondents with access to the full enforcement record constituted good cause for this request and extended the Statement of Defense submission deadline to June 17, 2022. To accommodate Mr. Cummins previously arranged vacation schedule the Enforcement Committee hearing date was extended to July 27, 2022. Pursuant to Cal. Gov. Code §66641.6(b), Respondents agreed to waive the right to a hearing within 60 days of service of the Violation Report and Complaint.

Respondents' timely-filed Statement of Defense stated that four of the violations were in fact different elements of two distinct projects and argued that BCDC should merge them into two violations. BCDC staff finds this argument persuasive and has reduced the number of identified violations accordingly. In addition, the Statement of Defense and subsequent information submitted by the public indicate that Family Club Clays hosted eleven unauthorized public shooting events since this enforcement investigation started, each of which constitutes an additional violation. Two violations are discussed individually below. Four violations—one for each of the remaining unauthorized structures Respondents built in the Family Gun Club's clubhouse area—are discussed as a class. Finally, the operations of Family Club Clays and the eleven unauthorized events it hosted are discussed together.

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<sup>6</sup> The SMPA also exempts "[r]epair, replacement, reconstruction, or maintenance that does not result in an addition to, or enlargement or expansion of, the object of such repair, replacement, reconstruction, or maintenance" from BCDC permitting requirements. Cal. Pub. Res. Code § 29508(b).

**Admitted and Contested Allegations**

**I. Seasonal Wetland Destruction.**

CCD2000.004.00 ordered the prior owners of Family Gun Club to restore 4,500 square feet of seasonal wetlands they had destroyed by importing fill on to the property.

CCD2000.004.00's requirements were incorporated into BCDC Permit M1999.022.00md with some minor modifications. Other minor changes were approved through BCDC plan review, consistent with Special Condition II.A, "Construction".

Figure 2 presents the conceptual seasonal wetland restoration plan shown in CCD2000.04.00's Exhibit 1. The restoration area is labeled "damaged seasonal wetland." The "extent of seasonal wetland" before the unauthorized fill is also labeled.

Figure 2: Conceptual Seasonal Wetland Restoration Plan, Family Gun Club

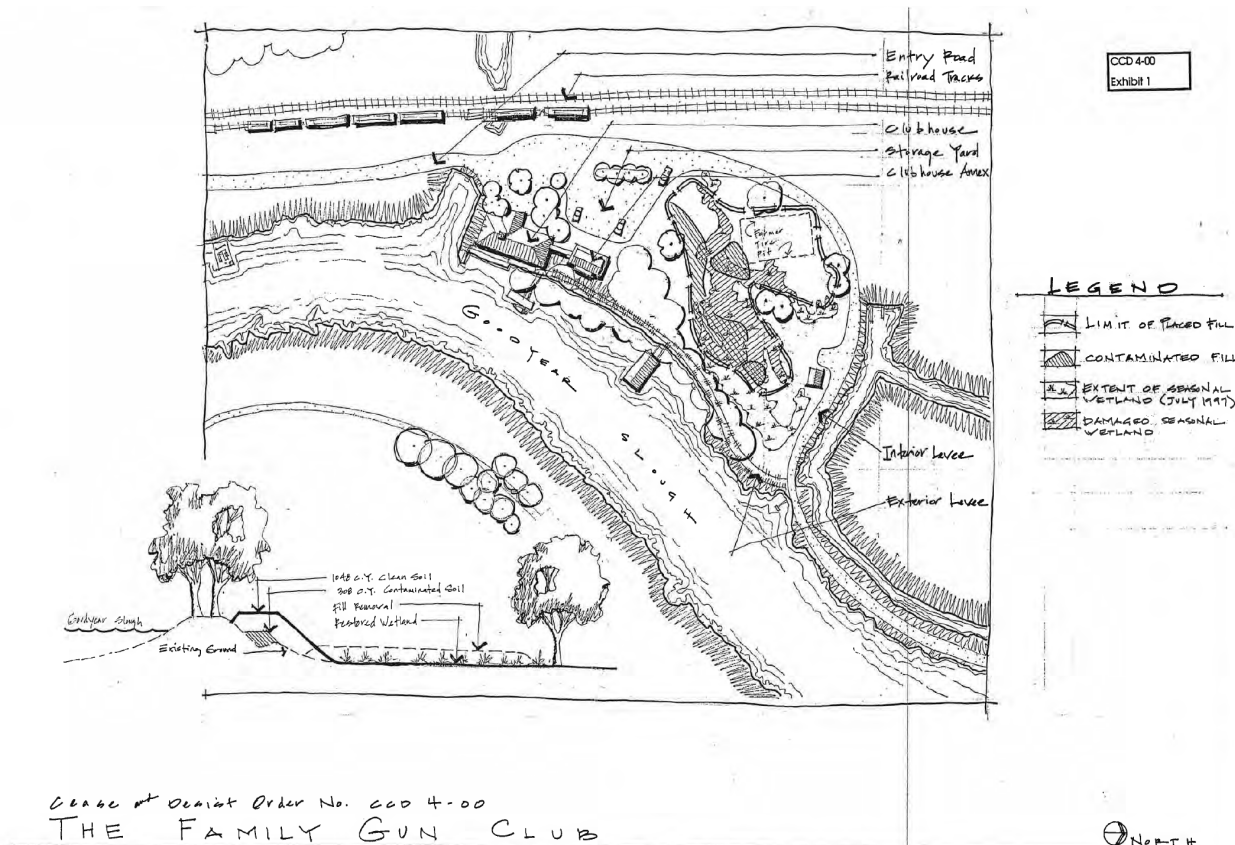




Figure 3 presents the wetland restoration area in 2007, the year before the Respondents purchased Family Gun Club. This satellite image shows that the contours of the restored seasonal wetland were intact.

*Figure 3: Family Gun Club Seasonal Wetland Restoration Site, 2007*



Figure 4 presents the wetland restoration site in 2020. This satellite image shows that the restored wetland has been replaced by a pond, sidewalk, and landscaping.

*Figure 4: Family Gun Club Seasonal Wetland Restoration Site, 2020*



Respondents admit constructing all structures and features currently found on the seasonal wetland restoration site since 2008. However, Respondents argue they should not be liable for this violation because they lacked knowledge of CCD2000.004.00's and M1999.022.00md's requirements, stating that "[t]here is nothing in the title documents delivered to them at the close of escrow proceedings that indicated any such restrictions."

These contentions are not relevant. "It is well settled that the burdens of permits run with the land once the benefits have been accepted." *Ojavan Investors, Inc. v. California Coastal Com.* (1994) 26 Cal.App.4th 516, 526; *see also* BCDC Permit M1999.022.00md § IV.G ("Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land."). This means once the original permittees accept the permit, both they and their successors in title are barred from challenging permit conditions. *See, e.g., County of Imperial v. McDougal*, (1977) 19 Cal.3d 505, 510-511.

Family Gun Club's prior owners accepted the benefit provided by the levee improvements BCDC authorized in Permit M1999.022.00md, and Respondents must, therefore, continue to comply with the permit's conservation conditions. While state law requires sellers to disclose BCDC jurisdiction wherever it applies<sup>7</sup> and a standard BCDC permit condition requires sellers to assign the rights and duties of the permit to new owners,<sup>8</sup> a seller's failure to comply with these requirements does not invalidate permit conditions or relieve the buyer(s) of the burden of permit compliance.

Respondents also argue they had no reason to believe restored wetlands were found on the property because when they purchased Family Gun Club the site was "loaded with debris" such as "tires, culvert pipes, old broken levee gates, and the like," and go on to state "[h]ow this area could be designated as needed for wetland or upland habitat defies imagination." These statements are not supported by the enforcement record. In 2003, the prior owners submitted

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<sup>7</sup> *See* Cal. Civ. Code § 1103.4(2) ("In responding to the request, the expert shall determine whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, as defined in Section 66620 of the Government Code. If the property is within the commission's jurisdiction, the report shall contain the following notice:

NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.")

<sup>8</sup> *See* BCDC Permit M1999.022md § IV.E. ("The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective Until the assignee executes, and the Executive Director receives an acknowledgment that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.")

photographs to BCDC demonstrating that truckloads of old tires and other debris had been removed from the area, the unauthorized fill removed, and the area graded and seeded for wetland restoration. Exhibit P. None of the subsequent satellite images from 2003-2007 depict the junkyard-like conditions Respondents suggest. Exhibit Q. While BCDC staff cannot rule out the possibility that site conditions deteriorated over time, whether this occurred is irrelevant; even if the site was a junkyard, the MPA and the SMPA required Respondents to obtain permits from BCDC before conducting this work. Respondents admit they did not do so.

Respondents also contest BCDC jurisdiction of the site, claiming that the clubhouse area of Family Gun Club is located on APN 0046-110-080—the 17.44-acre parcel forming a portion of Family Gun Club's property—and that this parcel is not a managed wetland. Both assertions are incorrect. As shown in *Figure 1*, APN 0046-110-080 constitutes the northernmost portion of the Family Gun Club. No clubhouse development is located on this parcel. The clubhouse area is in the southernmost portion of APN 0090-230-110. Moreover: all portions of both parcels are "managed wetlands" as defined by the McAteer-Petris Act at Cal. Gov. Code § 66610(d); both parcels are entirely within the Suisun Marsh as defined by the Suisun Marsh Preservation Act at Cal. Pub. Res. Code § 29101<sup>9</sup>; both parcels are entirely within the Primary Management Area as identified in the Suisun Marsh Protection Plan; both parcels are entirely within the club boundary identified in the Family Gun Club Individual Management Plan the Commission approved in 1984; and both parcels are entirely within the club boundary identified in the Family Gun Club Individual Ownership Adaptive Habitat Management Plan the Commission conditionally approved earlier this year.

## **II. Perimeter Ditch Fill.**

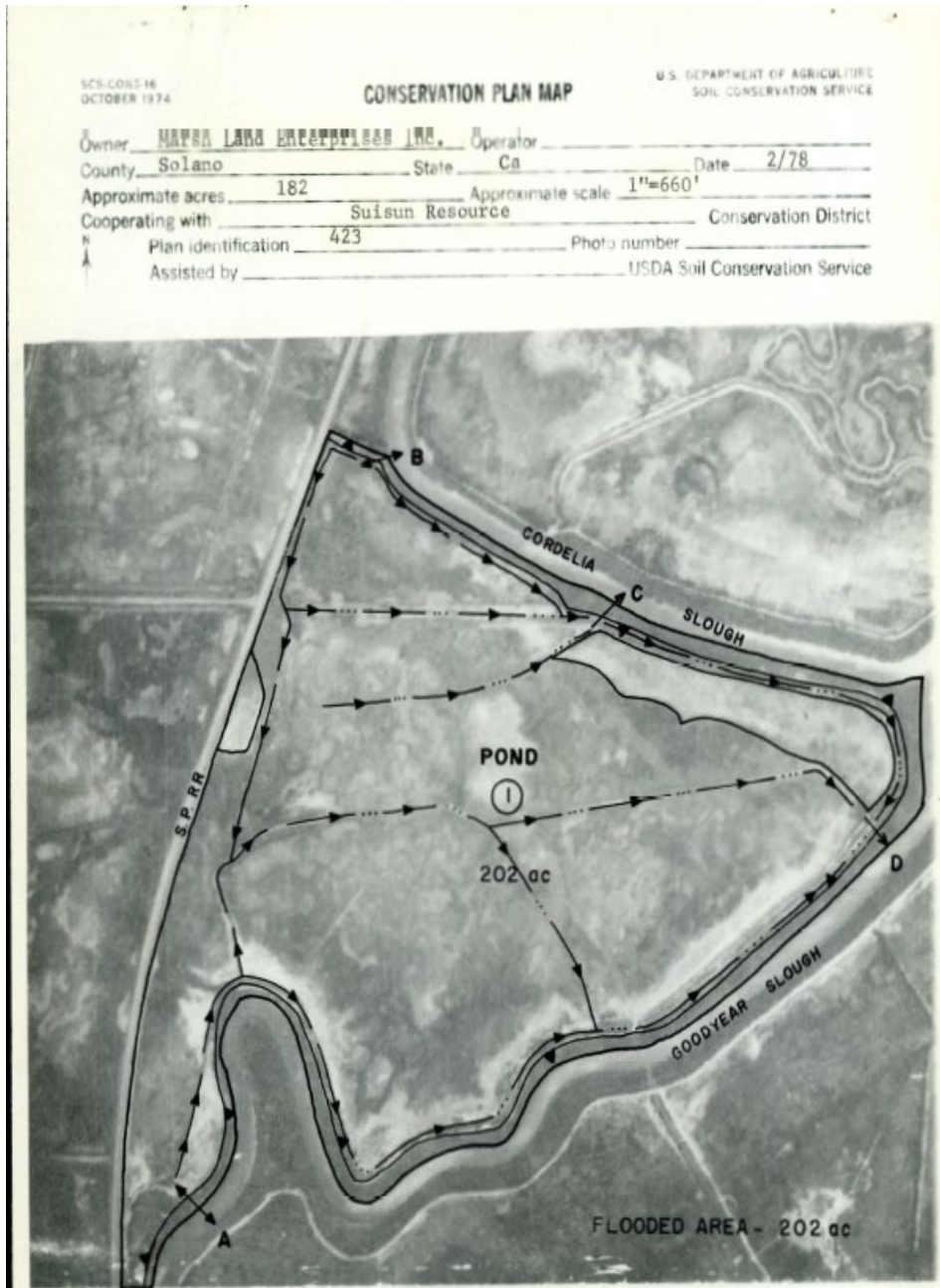
Family Gun Club's original Individual Management Plan mapped the essential water management features found on the site: the exterior levee, the drainage ditches, the water control structures, and the ponds.

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<sup>9</sup> "Suisun Marsh" or "marsh" means water-covered areas, tidal marsh, diked-off wetlands, seasonal marshes, lowland grasslands, upland grasslands, and cultivated lands specified on the map identified in Section 16 of that chapter of the Statutes of the 1977-78 Regular Session enacting this division. It includes both the primary and secondary management areas as shown on the Suisun Marsh Protection Plan Map and includes the entire right-of-way of any state highway that is designated as a portion of the boundary of the marsh."

Figure 5. It also assessed their condition and made management recommendations for the Club. Exhibit S.

Figure 5: Individual Management Plan Map, Family Gun Club



The IMP stated that the “exterior levees are generally in good shape but there is a low section near the club house where some recent work has been done. The rest of the low section will need more work done to prevent further overtopping.” Exhibit S, p. 2. The area described was the subject of the levee and bulkhead construction BCDC authorized in M1999.22.00md and M2019.024.00md.

The IMP also addressed the largest ditch at the Club, which ran close to the Club’s exterior levee along Cordelia and Goodyear Slough: “The entire perimeter ditch along Cordelia and Goodyear Sloughs should be cleaned out and deepened by at least one foot to achieve proper drainage. Dredge spoils can be used for levee topping or used to fill in low areas of the pond.” Exhibit S, p. 2.

Figure 6 is a satellite images of Family Gun Club from 2007. It shows that the ditch along Goodyear Slough and Cordelia Slough was intact.

Figure 6: Family Gun Club Ditch, 2007

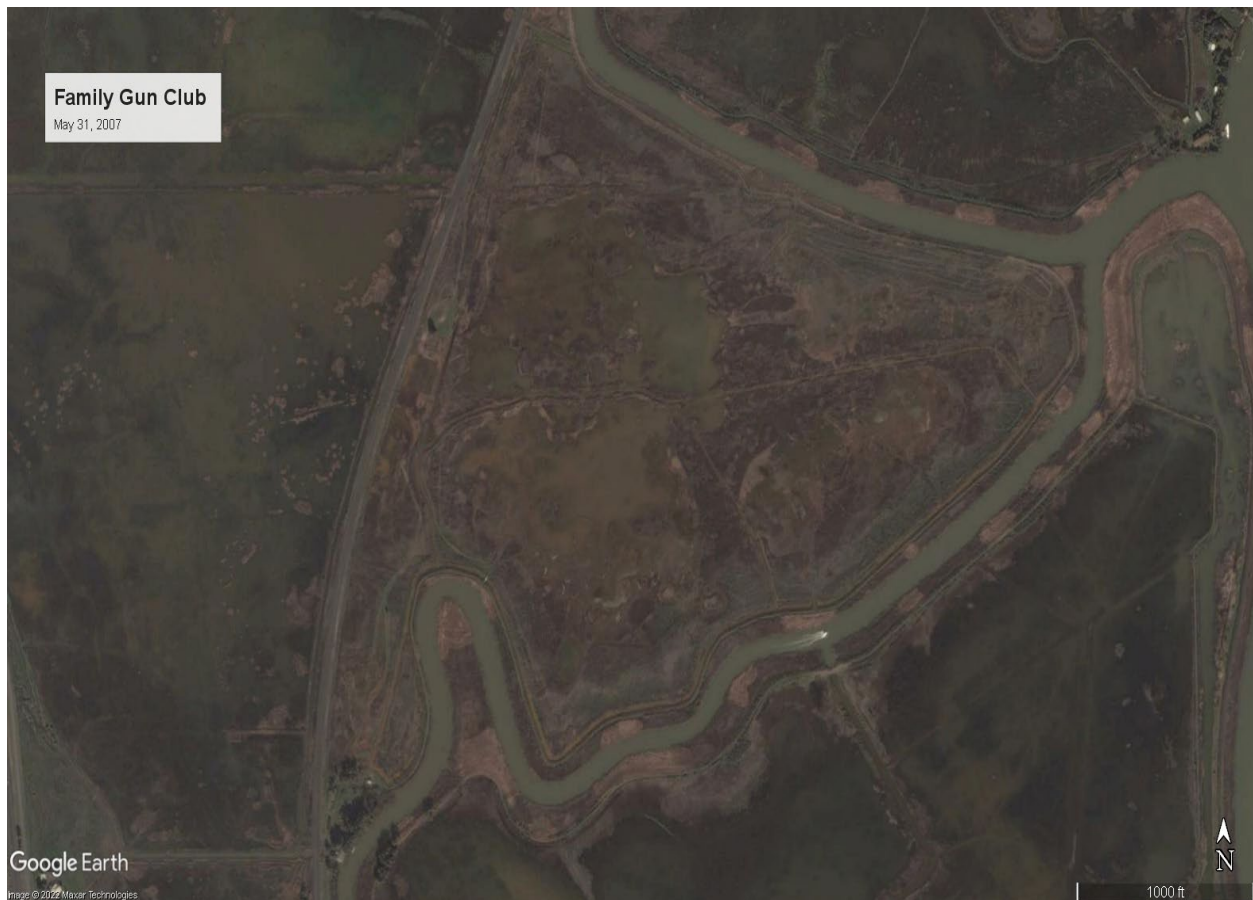


Figure 7 is a satellite image of Family Gun Club from 2020. It shows that the entire ditch along Goodyear Slough and Cordelia Slough had been filled in.<sup>10</sup>

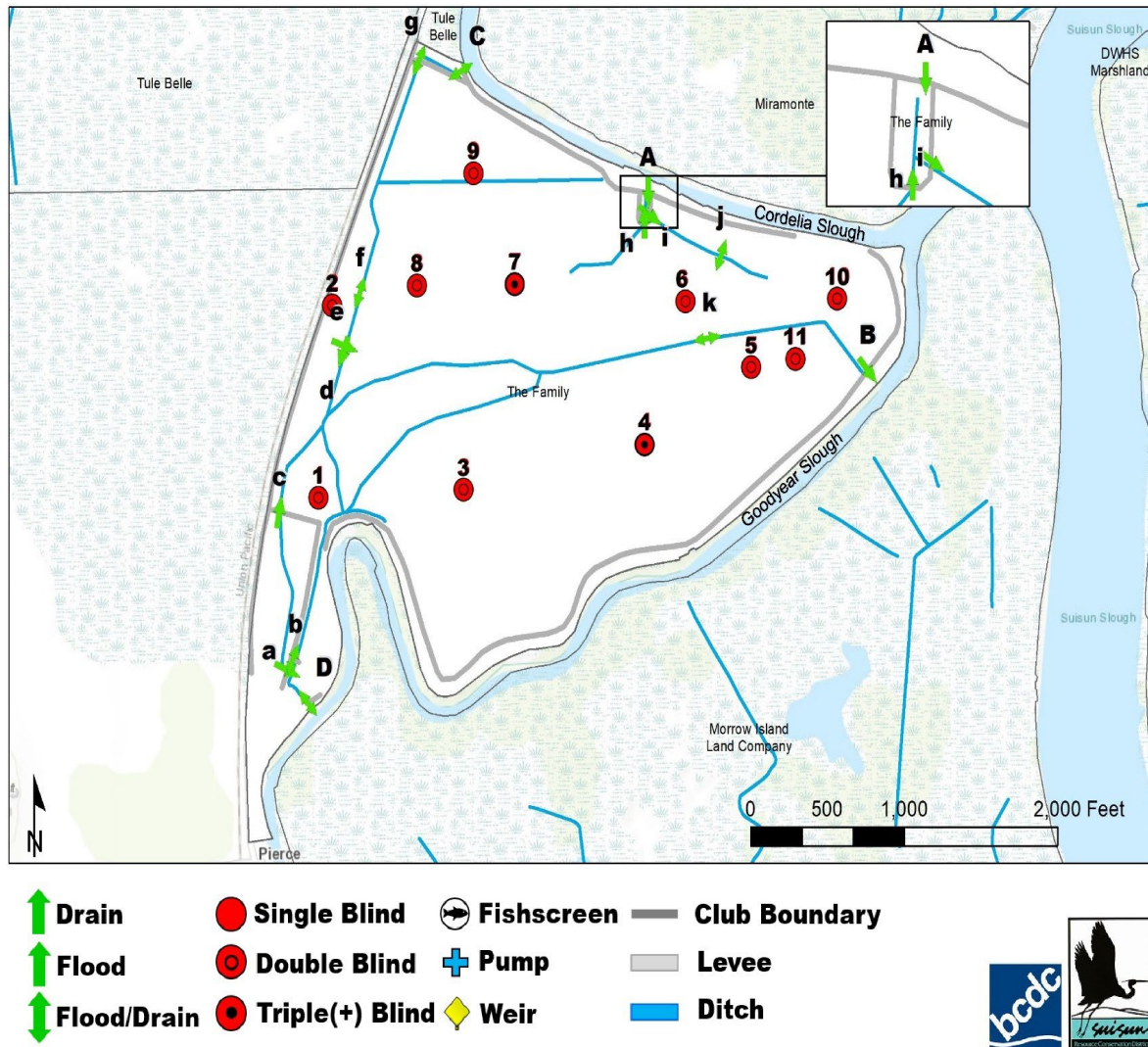
Figure 7: Family Gun Club Ditch, 2020



<sup>10</sup> BCDC staff originally charged this as two violations, because Respondents also filled a portion

Figure 8 presents the Family Gun Club's 2022 Individual Ownership Adaptive Habitat Management Plan map, which demonstrates that the ditch along Goodyear Slough and Cordelia Slough no longer exists.

Figure 8: Family Gun Club 2022 IOAHMP Map



Respondents admit filling the ditch, beginning in 2008. Satellite imagery demonstrates that the ditch was completely filled by June 2009, although Respondents suggest that additional fill was added in subsequent years. The total amount of fill is substantial: the ditch was approximately 7,500 feet long, and during the dry season Respondents admit the water was approximately 2.5 feet deep and approximately 6 feet across. Satellite imagery suggests it was much larger. Using Respondents' admitted but contested numbers indicates at least 4,166 cubic yards of fill was used to complete this project.

Respondents claim the work was authorized by the Army Corps of Engineers' Regional General Permit 3 as a project to grade pond bottoms, or alternatively as a project to repair existing exterior levees. *See, e.g.*, Exhibit R. BCDC staff acknowledges that such projects are generally exempt from BCDC permitting requirements. However, this is not such a project. As explained in BCDC's conditional concurrence of RGP-3, projects to grade pond bottoms need not obtain a Commission permit when conducted to "obtain material for levee maintenance, improve water circulation (including the creation or maintenance of swales), raise subsided areas, or expand wetland habitat." Filling a ditch does not fit within this definition: it cannot qualify as a levee "maintenance" or "repair" project because it clearly "result[ed] in an addition to, or enlargement or expansion of, the object of such repair, replacement, reconstruction, or maintenance." Cal. Pub. Res. Code § 29508(b). Indeed, the conservative estimate of fill is at least four times more than the fill authorized for levee repair in BCDC Permit M1999.022.00md, and at least 800 times more than fill than was authorized for levee bulkhead construction in BCDC Permit M2019.024.00md. When completed, the project transformed more than an acre of managed wetlands into a structural component of the exterior levee.

Moreover, RGP-3 expressly defines the activities it authorizes in ditches. Those activities are limited to extracting material from interior ditches; replacing riprap and adding new riprap on ditch banks; and maintaining and creating spreader ditches. Exhibit N, p. 1-2. This project does not fit within any of these categories.

Respondents have suggested that the perimeter ditch had become too close to the interior toe of the Club's exterior levee, and no longer met specifications established by SRCD. This may have been the case, but a project of this scale is not contemplated in the SMMP, Family Gun Club's IMP, or RGP-3. It required a BCDC permit, and Respondents admit they did not obtain one.

### **III. Unauthorized construction of four structures: a meeting hall, a large barn, a bar, and a well/pumphouse.**

Respondents admit to erecting or expanding all four of these structures without authorization between 2008 and present. However, Respondents claim their contract with Matt Ellsworth Construction, Inc., required him to obtain all requisite permits on Respondents behalf, and that they believed he did until this enforcement matter was initiated. Mr. Ellsworth passed away in the intervening years, and his records are no longer available.

Respondents also claim that the barn was an original structure that was disassembled by previous owners, and that they reconstructed it from those materials; and contest the exact scale of the expansion of the meeting hall. However, none of these arguments negate BCDC's permitting requirements, and the failure to permit each structure constitutes a distinct violation. However,



BCDC Staff has agreed to combine the well and pumphouse expansion into a single violation, as Respondents state that the well is inside the pumphouse structure.

On August 8, 2022, Family Gun Club provided photographic evidence demonstrating that the bridge was dismantled. Exhibit V. On September 20, 2022, Respondents provided receipts indicating that the bridge was disposed of outside of BCDC jurisdiction. Exhibit X. In the stipulated order, staff proposes that because the structure was removed and disposed of outside of BCDC jurisdiction no penalty will be assessed for this violation.<sup>11</sup>

#### **IV. Unauthorized construction and operation of Family Club Clays.**

Family Gun Club constructed a public clay shooting course branded Family Club Clays in 2019. Staff's investigation indicates that neither Family Gun Club nor Family Club Clays is a registered business entity with the state, and no permits have been issued by any government agency for the shooting course operated on Family Gun Club land. The creation of a public clays course constitutes "development" requiring a BCDC permit, because the clay shooting stations, cranes, and other components of the course constitute "the placement or erection of any solid material or structure" under the SMPA. Similarly, the course constitutes the placement of "fill"<sup>12</sup> under the MPA. This constitutes a violation of both the SMPA and the MPA.

During site visits to Family Gun Club, BCDC staff were assured that the structures necessary for this operation were not intended to be permanent fixtures; that lead shot would not be used on the course; and that only members and their guests would use the facility. Subsequent information and investigations indicate that these assurances were inaccurate. While the structures are modular to allow the clay course to create different stations with unique shooting challenges over time, it appears there was never any intention to remove the stations from the site. Exhibit Y. Similarly, public comments received indicate that lead shot may be allowed or is at least being used by patrons without adequate controls in place by staff, at Family Club Clays. Exhibit T.

After the Family Gun Club matter was pulled from the Commission's August agenda, Respondents informed staff that it would continue operating the course publicly through September 2022 but would thereafter remove the course structures permanently. Exhibit U. For these reasons staff now believe the course was never intended for the sole use of Respondents, and therefore some penalty is warranted. However, staff finds that there is at least some basis for Respondents to have believed that Family Club Clays was simply an extension of traditional duck club practices ranges. While this was not enough to at least inquire about whether permitting was necessary

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<sup>11</sup> However, when the Commission finds that a violation has occurred waiving penalties below the threshold set by the McAteer Petris Act may be unlawful. See Cal. Gov. Code. § 66641.5(e).

<sup>12</sup> Previously staff believed that the value of each shooting station that was part of the course was the appropriate unit for assessing the cost of the materials under the MPA and believed that each station was below the minimum \$20 threshold defining "materials" that constitute "fill" under the MPA. However, it is now apparent to Staff that each station is a component of the larger course and cannot be evaluated in isolation from the other stations. Collectively the cost of the materials, particularly when including the restrooms, cranes, and other accessory course materials easily exceeds the statutory threshold.

before beginning operation, it constitutes a reduction in culpability for this violation compared to the others addressed in this matter.

As noted in the Violation Report and Complaint in this matter, Family Club Clays was opened to “host competitive special events that are open to the general public.” Based on information provided by the public in comments to the Committee and the Commission and by Family Gun Club in its Statement of Defense, BCDC staff have now determined that Family Club Clays hosted 11 3-day events at Family Gun Club from April 2021 to present.<sup>13</sup> These events constitute eleven independent violations of the SMPA because they resulted in “a change in the density or intensity of use of land” and a “substantial change in use” under the MPA and BCDC regulations, because the scale at which these events operate far exceeds the traditional trap shooting ranges typically associated with private duck clubs in the Marsh. Exhibit W.

Some of these public events were hosted after the Enforcement Committee’s July 27, 2022 hearing on this matter. The stipulated order presumed that Family Gun Clubs’ membership would be defined typically: duck club membership is usually limited to equity members (i.e., a person with an ownership stake in the club) or individuals that have leased a blind or other element of the club for a hunting season. Family Gun Club’s only equity members are Barto and Donna Price, and our investigation has not found any leaseholds or other agreements that expand the possible scope of “membership” beyond Respondents. Respondents therefore must have been using the term “guest” liberally to mean any individual that signs up to participate in a shooting event and pays an entry fee. However, this was not the intention relayed to staff by Respondents during the deliberations up to the initial stipulated order, and materially affects the value of the original stipulated order to the public and to the protection of the Marsh.

Because Respondents have now agreed to remove the course from Family Gun Club by a date certain and have not held additional events since the end of September 2022, staff believes the revised stipulated order with reduced penalties can be issued and relied upon by the Commission with adequate certainty. As discussed below, staff further believes that a \$2,000 penalty per event, rather than per day of the event, is adequate considering the reduced culpability applicable to these events; the limited commercial benefit obtained by Respondents by hosting these events, and the additional staff costs incurred to pursue these violations since the July 27, 2022 hearing on this matter.

### Defenses and Mitigating Factors; Staff Rebuttal

Respondents’ original defenses and references to mitigating factors are primarily directed at the calculation of administrative civil liability. BCDC agrees with Respondents that four alleged violations should be merged into two (two areas of perimeter ditch fill became a single violation, and the well and pumphouse construction became a single violation), which reduces

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<sup>13</sup> April 16-18, 2021 (Spring Fling); May 14-16, 2021 (Family Fun); June 4-6, 2021 (Pre-state Warm-up); July 2-4, 2021 (Pautzke); August 6-8, 2021 (Breezeway Classic); September 3-5, 2021 (Breaking into the 90s); April 22-24, 2022 (Cal state Warm-up); May 13-15, 2022 (Family Fun Event); June 10-12, 2022 (Belt Buckle Classic); July 8-10, 2022 (Pautzke); and August 5, 2022 (Breezeway Classic). A scheduled event for September 2022 was cancelled after BCDC informed Family Gun Club of its inconsistency with the stipulated order.

administrative civil liability by \$60,000. Based on the factors provided by MPA Section 66641.9, a \$30,000 penalty for six violations; a \$13,630 dollar penalty for the unauthorized construction of Family Club Clays; and \$22,000 for the 11 3-day events is appropriate and stipulated to as follows:

**I. Seasonal Wetland Destruction.**

The nature and extent of harm caused by this violation is significant. Destroying a seasonal wetland Family Gun Club was ordered to restore directly contravenes a prior Commission order and violates the terms of a subsequent permit. While staff believes the area can be restored, the temporal loss of the habitat cannot be undone. The cost to the state in pursuing this matter has been relatively high, both due to the duration of some violations and the difficulty caused by Respondents' unresponsiveness to administrative resolution, resulting in the escalation of the matter to formal enforcement. Respondents claim it did not know of BCDC requirements, which if true suggests reduced culpability. However, Respondents had constructive notice of these requirements as they were incorporated into a permit that runs with the land. It is Respondents' burden to demonstrate inability to pay, but they did not introduce any such evidence into the record, and enforcement staff has no other evidence to indicate that Respondents' ability to pay is in question. Based on these penalty factors, Staff finds this violation eligible for the maximum daily administrative penalty of \$2,000. Even at the statutory minimum penalty of \$10 per day, because the violation has been ongoing for more than 3,000 days the maximum allowable penalty for the violation is reached. The maximum allowable penalty of \$30,000 is thus appropriate.

**II. Perimeter Ditch Fill.**

The nature and extent of harm caused by this violation is significant. It is a large-scale violation and cannot be squared with the labels Respondents gave it in permit applications submitted to the Army Corps of Engineers. Staff does not believe the area can be restored or the fill removed without destabilizing the levee. The cost to the state in pursuing this matter has been relatively high, both due to the duration of some violations and the difficulty caused by Respondents' unresponsiveness to administrative resolution, resulting in the escalation of the matter to formal enforcement. Respondents claim it received authorization through the RGP-3 permitting process. However, the permit applications do not reflect the nature of the project, which suggests additional culpability. It is Respondents' burden to demonstrate inability to pay, but they did not introduce any such evidence into the record. Based on these penalty factors, Staff finds this violation eligible for the maximum daily administrative penalty, but even at the minimum daily penalty of \$10 per day The maximum allowable penalty of \$30,000 would apply because the violation has been ongoing for more than 3,000 days. A \$30,000 penalty is thus appropriate.

**III. Four unauthorized structures: a meeting hall, a large barn, a bar, and a well/pumphouse.**

The nature and extent of harm caused by these four violations is moderate. The clubhouse structures have significantly increased in size but are contained in a small part of the managed wetland and at least some structures preexisted on a smaller scale. Each violation is capable of resolution through removal or after-the-fact authorization. The cost to the state in pursuing

this matter has been relatively high, both due to the duration of some violations and the difficulty caused by Respondents' unresponsiveness to administrative resolution, resulting in the escalation of the matter to formal enforcement. Respondents claim they were led to believe by its contractor that permits for all four structures were obtained, which reduces culpability. However, Respondents had actual knowledge that some permitting was necessary for this work and failed to confirm these requirements were met. It is Respondents' burden to demonstrate inability to pay, but they did not introduce any such evidence into the record. Based on these penalty factors, Staff finds that a reduced daily penalty amount of \$250 per day for each of the four violations is appropriate. All four violations have been ongoing for more than 3,000 days. The maximum allowable penalty of \$30,000 for each violation is thus appropriate.

#### **IV. Family Club Clays Course.**

The nature and extent of harm caused by this violation is moderate. The course station structures are relatively small and unsophisticated, but they would have remained on the property permanently in some configuration absent Commission enforcement. This violation is capable of resolution through removal or after-the-fact authorization, although after-the-fact permitting of this use as a commercial operation would be in tension with several Suisun Marsh Protection Plan policies and, based on existing facts, is likely unpermittable. The cost to the state in pursuing this matter has been relatively high, both due to the difficulty caused by Respondents' unresponsiveness to administrative resolution resulting in the escalation of the matter to formal enforcement, and by the inaccurate information provided by Respondents during initial attempts at case resolution. Respondents may have reduced culpability due to its understanding that traditional duck clubs do include practice ranges but was mistaken that Family Club Clays was a lawful extension of that traditional use. Nonetheless, staff finds reason to find reduced culpability for this violation. It is Respondents' burden to demonstrate inability to pay, but they did not introduce any such evidence into the record. Based on these penalty factors, Staff finds that a minimum penalty of \$10 for the 1,363 days the record shows it operated between 2019 and September 2022, for a total penalty of \$13,630.

#### **V. Eleven 3-day Family Club Clays Events.**

The nature and extent of harm caused by these eleven violations is high. The events were significantly larger than traditional trap shooting events in the marsh, likely used lead shot, and for most of each 3-day event caused disturbance to wildlife during the non-hunting season. These violations are not capable of resolution through removal or after-the-fact authorization; only an order prohibiting future similar harm is possible. The cost to the state in pursuing this matter has been relatively high, both due to the difficulty caused by Respondents' unresponsiveness to administrative resolution, resulting in the escalation of the matter to formal enforcement, and by the inaccurate information provided by Respondents during case resolution. Respondents have expressed an intention to continue operating the course through September 2022, so additional events beyond the 11 identified by staff may occur. It is Respondents' burden to demonstrate inability to pay, but they did not introduce any such evidence into the record. Based on these penalty factors, Staff finds that maximum daily

administrative penalty of \$2,000 per day for the violation is appropriate. Each violation lasted for 3 days. The total penalty for the 11 events is therefore \$22,000.

The total recommended administrative civil liability is \$215,630 for eighteen violations of the MPA and the SMPA. Respondents have stipulated to this penalty amount, as well as the terms of the proposed cease and desist order.

### Unresolved Issues

There are no unresolved issues in the stipulated resolution of this matter.

### Previous Enforcement Actions

As described above, Family Gun Club has been subject to two prior enforcement proceedings: ER1999.12.00, which was resolved by CCD2000.004.00, and ER2009.04.00, which was closed and merged into this matter.

### Recommendation

The Executive Director recommends that the Enforcement Committee adopt this Recommended Enforcement Decision as its recommendation to the full Commission. The Proposed Order (CCD2023.001.00) requires respondents to: restore the seasonal wetland onsite pursuant to current BCDC mitigation policies and pay \$30,000 in administrative civil liability; mitigate for perimeter ditch fill pursuant to BCDC mitigation policies and pay \$30,000 in administrative civil liability; remove four unauthorized structures unless after-the-fact authorization occurs before December 31, 2023, and pay \$30,000 in administrative civil liability for each of the four unauthorized structures; remove all structures associated with the Family Club Clays course by June 30, 2023, and pay \$13,630 in administrative civil liability for its unauthorized construction; and pay \$22,000 in administrative civil liability for the 11 unauthorized 3-day events that occurred on the Family Club Clays shooting course at Family Gun Club. The total recommended administrative civil liability is \$215,630 for eighteen violations of the MPA and the SMPA.

### Proposed Order CCD2023.001.00

The Proposed Order is attached to this Recommended Enforcement Decision.

#### Exhibit List

- Exhibit A: Family Gun Club Parcel Maps & Real Quest Report
- Exhibit B: Commission Cease & Desist Order CCD2000.004
- Exhibit C: BCDC Permit M1999.022md
- Exhibit D: Enforcement Report, ER2009.004
- Exhibit E: BCDC Permit M2019.924.00md
- Exhibit F: Initial Contact Letter, ER2020.021
- Exhibit G: Family Gun Club Site Visit Report, Solano County Code Enforcement
- Exhibit H: August 5, 2020 Site Visit Follow-up Letter, BCDC Enforcement
- Exhibit I: December 18, 2020 email from Priscilla Njuguna to Respondents
- Exhibit J: December 19, 2020 email from Scott Tippett to Priscilla Njuguna

Exhibit K: March 11, 2020 correspondents between Priscilla Njuguna and Respondents

Exhibit L: June 16, 2020 correspondence between Priscilla Njuguna and Respondents

Exhibit M: Suisun Marsh Management Program

Exhibit N: Regional General Permit 3, United States Army Corps of Engineers

Exhibit O: BCDC Consistency Determination No. C2017.007.00

Exhibit P: 2002 Wetland Restoration Site Photographs, Family Gun Club

Exhibit Q: Historical Satellite Imagery, Google Earth

Exhibit R: Family Gun Club Annual RGP-3 Applications, 2009-2020

Exhibit S: Family Gun Club Individual Management Plan

Exhibit T: Email from Peter Tira dated August 12, 2022

Exhibit U: Email from Donal Casey Cummins dated August 22, 2022

Exhibit V: Email from Donal Casey Cummins dated August 8, 2022

Exhibit W: Email from Peter Tira dated September 14, 2022

Exhibit X: Email from Donal Casey Cummins dated September 20, 2022

Exhibit Y: Email from Ethan Lavine dated August 15, 2022

**Enforcement Committee Recommendation to the Full Commission:**

Please check one of the three boxes indicating your decision, then sign and return the memorandum to BCDC Staff:

By a vote of \_\_ yeses, \_\_ noes, and \_\_ abstentions, the Enforcement Committee adopts the Executive Director's Recommended Enforcement Decision as its recommendation to the full Commission.

By a vote of \_\_ yeses, \_\_ noes, and \_\_ abstentions, the Enforcement Committee conditionally adopts the Executive Director's Recommended Enforcement Decision as its recommendation to the full Commission as specified in the attached memorandum.

By a vote of \_\_ yeses, \_\_ noes, and \_\_ abstentions, the Enforcement Committee declines to adopt the Executive Director's Recommended Enforcement Decision and recommends that the full Commission decline to issue the proposed Cease and Desist and Civil Penalty Order for the reasons specified in the attached memorandum.

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Marie Gilmore, Chair  
Enforcement Committee  
San Francisco Bay Conservation and Development Commission

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Date: