

# San Francisco Bay Conservation and Development Commission

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May 17, 2019

**TO:** Bay Fill Policies Working Group Members

**FROM:** Steve Goldbeck, Deputy Director (415/352-3611; [steve.goldbeck@bcdc.ca.gov](mailto:steve.goldbeck@bcdc.ca.gov))  
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**SUBJECT: April 26, 2019, Commission Bay Fill Policies Working Group Draft Meeting Summary**

**1. Roll Call, Introductions, and Approval of Agenda.** Chair Barry Nelson called the meeting to order at the BCDC offices, 455 Golden Gate Avenue, McAteer-Petris Room, San Francisco, California, at 10:07 a.m., and asked everyone to introduce themselves. Bay Fill Policies Working Group members in attendance included Commissioners Barry Nelson, Jim McGrath, Katerina Galacatos, and Sam Ziegler (via conference phone). BCDC staff in attendance included Executive Director Larry Goldzband, Shannon Fiala, Megan Hall, Jaclyn Mandoske, and Anniken Lydon. Also in attendance were former Commissioner Ms. Patricia Showalter, Roman Berenshteyn of the Bay Planning Coalition, Jessica Davenport of the Coastal Conservancy, and Ellen Johnck of Ellen Johnck Consulting.

**2. Approval of March 21, 2019 Meeting Minutes.** The Working Group members approved the meeting summary for March 21, 2019 as presented.

**3. Update on Fill for Habitat Bay Plan Amendment Timeline.** Ms. Hall announced: This meeting is important to touch base before we launch into publishing the Staff Report and the public hearing.

Right now internally we are in the throes of discussions on policy language. We took what came out of the workshops and what we already had drafted before then and we have been polishing that using the feedback we have received to make any changes and add anything to that.

It is not a complete consensus. There are areas needing more discussion. I do think that we still we be able to get things through by no later than May 20<sup>th</sup>.

We will continue to develop that policy language and finalize our reports by May 17<sup>th</sup> ideally but no later than the 20<sup>th</sup> we will send this out. I will note that May 16<sup>th</sup> is when we have our next Bay Fill Working Group meeting scheduled.

You may remember that at the March meeting we discussed how full that May 16<sup>th</sup> meeting will be considering it will be the day before we mail.

Chair Nelson noted: Let's just say that this meeting on May 16<sup>th</sup> is one in which staff might not welcome extensive input from the Working Group. (Laughter)

Ms. Hall agreed: Yes, that is true. We really can't do much with feedback at that stage.

Commissioner McGrath asked: Can't we just cancel it Barry?

Chair Nelson responded: Let's visit that at the end and unless there is some other reason to hold it – it doesn't seem like we are going to.

Ms. Hall stated: Our suggestion would be to cancel because I don't think that there are many specific things that would be worthwhile.

We will also be giving a briefing at the Commission meeting on that day too. There will be an update given.

Then on May 20<sup>th</sup> to June 20<sup>th</sup> the report will be out there for opportunity to comment. June 20<sup>th</sup> is the public hearing.

We also have a Bay Fill Working Group meeting scheduled for the morning of that public hearing which could potentially be useful. We could go through the public comment we have received. We could talk about strategies.

Then July 18<sup>th</sup> we have another Bay Fill Working Group meeting. We will know pretty soon after June 20<sup>th</sup> whether we are ready to plan for a vote or if we need to schedule another hearing.

The utility of that July 18<sup>th</sup> meeting may depend on how the 20<sup>th</sup> goes. It is hard to say at this point how useful it will be.

For that reason we wanted to make sure that today we were touching base on the status of things. I think getting a more thorough review from you all during that public comment period would be useful to make sure that we are getting substantial feedback making sure that we didn't misinterpret things that we had been hearing from you.

In terms of what your role during that comment period is, it is open to everybody and so review on the Background Report and all of that would be great.

Chair Nelson stated: It might make sense for us to have a brief meeting to prepare for the public hearing but that is not as critical as dealing with the input. I am thinking about whether it would be smarter for us to have an end-of-May meeting where we will have seen the documents and had a chance to chew over it and we can give you some input after we have actually seen the document.

One option would be the 27<sup>th</sup> through the 30<sup>th</sup> of May. Another option would be rescheduling so the July meeting is earlier than the 18<sup>th</sup> because you are going to want to chew over the input from the 20<sup>th</sup> and think about the next hearing because all three of those meetings are just at the wrong time.

Ms. Hall replied: Yes the timing is a bit unfortunate. When you say make the July 18<sup>th</sup> meeting earlier –

Chair Nelson explained: I was just thinking about public hearings on the 20<sup>th</sup> we will hear what we hear. It seems to me that it would make sense for us to have a Working Group meeting relatively soon so that we can talk about those issues.

I don't know how rapidly you folks need to make a decision about whether there is a second hearing but having some input on that would be useful as well.

Ms. Hall surmised: I think most likely September would be earliest that we would have either the vote or the hearing because August -

Chair Nelson interjected: So from the hearing from the perspective of setting another hearing or not July 10<sup>th</sup> would be fine.

Ms. Fiala added: I would say whether we are going to have another public hearing will be determined at the first public hearing because the public hearing would be continued on June 20.

Chair Nelson stated: So that would be continuing instead of closing it?

Ms. Fiala answered: Yes.

Chair Nelson noted: It sounds as though there is a bit of delay – almost a month between the initial, public hearing and the July 18<sup>th</sup> but if we are going to chew over the results of that public hearing that doesn't set staff back.

Ms. Hall replied: I think that date could be fine.

Ms. Fiala stated: The other thing is that depicted here is that on July 18<sup>th</sup> we are having the public hearing for the other Bay Plan Amendment and so staff will be busy preparing for that in between June 20<sup>th</sup> and July 18<sup>th</sup>. The next public hearing if there needs to be one would not be until September.

Commissioner McGrath inquired: Let me ask the underlying question of the amount of revisions that are possible with the comments we receive.

So we get comments and we should respond to those comments too. At what point do those changes reach the viewpoint that we would have to have another hearing rather than simply go to a vote with response to comments?

Ms. Hall replied: I actually have been wondering about that as well.

Ms. Fiala asked: Were you on the Commission in 2011 when we were going through the climate change policies? My impression is that somewhere –

Commissioner McGrath interjected: We didn't have a 2/3 vote. Let's just get right to the point.

Ms. Fiala observed: It is similar to a permit decision as well. If it feels as though there are questions that remain unresolved and there isn't a clear path forward in terms of an easy edit then we need to have a second public hearing. It would be a judgement call.

Commissioner McGrath asked: Have you talked with your legal staff about adopting CEQA findings on this?

Ms. Fiala answered: Yes.

Commissioner McGrath continued: This is about three steps above programmatic. It doesn't approve any projects. It is not a development agreement or anything like that which triggers CEQA.

Ms. Fiala stated: Our staff reports have a CEQA equivalency. So the staff report that Megan has drafted include the section called the, "Environmental Assessment" which satisfies that requirement.

We are taking a similar approach to what was taken in 2011 with the climate change policies: this amendment would not approve any development. Any development would go through a CEQA process on its own and would receive a BCDC permit.

The Background Report does go into the potential impacts of adding Bay fill because it explores some of the biological resource impacts that could result from these policy changes. It would not actually approve any development.

Commissioner McGrath opined: I think that was a worthwhile thing to consider because we have a fair amount of discretion to modify it in response to comments.

The question in 2011 was it is hard to get 2/3 of the Commissioners to show up and get them all on the same page when you've got the housing industry in strong opposition was impossible.

Chair Nelson summarized: So we cancelled the 16<sup>th</sup>. We leave the 18<sup>th</sup>. For the 20<sup>th</sup> to me it would be more useful to have something end of May when can give you some thoughts before the public hearing.

Commissioner McGrath noted: Since you are our staff and we are Commissioners we have no Brown Act provisions that indicate we cannot give guidance to staff.

Chair Nelson added: We are just a working group. We are not providing any direction on behalf of the Commission.

Ms. Fiala asked: Would it make sense to try to find a date right now?

Chair Nelson noted: That is not going to work because you are vanishing two days after your mailing. We are not going to have time to process that and think about it the next day. So that just might not work.

I think the answer may be for you to meet without me when you guys are back in early June.

Ms. Hall replied: I could see that still being helpful if the rest of you still have comments.

Chair Nelson added: We are going to have our discussion today but you can't share a formal draft with us. Other than that we would be waiting until July 18<sup>th</sup> to get your feedback and that seem to me to be too long.

Commissioner McGrath offered: But if you feel compelled to make some observations before you go off and have fun you could do so either directly to staff or another Commissioner.

Ms. Fiala clarified: So the resolution is that we will not meet on the morning of the hearing on June 20<sup>th</sup> but we will meet on June 6<sup>th</sup>.

Ms. Hall observed: That makes a lot of sense to me. So we are cancelling the 20<sup>th</sup>. Any other thoughts on timeline and next steps? (No further comments were voiced)

**4. Review of Policy Feedback from Workshop and Staff Discussions.** Ms. Hall continued: Let's talk about the policy options and the feedback that we got from the workshops.

You all did receive this memo that reprints the information from the posters. It also includes all of the feedback that was given to those posters. With this you can see pretty much what was captured on the flip charts during the workshops. These are just some high-level comments about the workshops. It did seem like generally there wasn't anything too earth shattering or too much disagreement about anything in particular.

In general most of the comments were supportive. There were definitely a lot of questions and comments addressing things that do go outside of the Bay Plan which we were inviting to an extent because we have that as a category for discussion on the posters.

That just highlights the fact that there is still a lot of work in the general area of habitat projects and how we are going to prepare for sea level rise with this amendment, feature amendments and beyond.

Today we are going to focus mostly on the actual Bay Plan policy options and what people felt about those. In this coloration scheme I did include thoughts and comments received also after this workshop as well. And we have discussed other stakeholders afterwards.

This is going to be what I showed you all on the morning of the workshop which is the table with the policy options pros and cons. Green is for options that were generally supported – maybe there were a few caveats in there but in general people were saying, that's more like the direction you should be going.

The yellow color is when we had a range of opinions where some people were saying, you absolutely should not do that and some were like, yes – that's great. Those are things that we might have to work through a little bit more.

And red were things that were generally not supported which are things we would probably not go down that route.

Chair Nelson added: You weren't here for our last poster session when we did one of those workshops. At the end of that workshop the first workshop, poster session we had was a working session. People were sitting and writing their recommendations. It was really substantive and you've done a nice job of capturing the input we got there.

At that workshop we were getting a lot of substantive input and people really had a sense that they were really wrestling with this stuff.

In this workshop I wandered around and I felt very much like people were saying – yep, that is where we need to go. The tone of those two workshops seemed very different. Does that make sense to you Jim?

Commissioner McGrath agreed: Yes – I had the same observation.

Ms. Hall acknowledged the input: That is really good to hear. I feel it does mean we have made progress.

Commissioner McGrath added: There is also an appreciation for the fact that the first workshop supported the second and they were being asked about the appropriate way forward. I thought in terms of the psychology of consensus building that there was a lot of buy-in.

Chair Nelson continued: My particular test was when I was chatting with Arthur and (Laughter) I don't remember specifically – in that first workshop Arthur had lots of questions, lots of uncertainty, lots of concerns and I don't remember the details of it.

But in this one I made a point of standing next to Arthur and discussing the guts of the Bay fill and the dredging options and Arthur was very much – yes, yes we just need to move past this; I'm there, we need to move past those issues. It was very different from the previous one.

David Lewis was not there but that input I found really interesting.

Ms. Showalter commented: It's been a year since we had those workshops. And in that time there has been so much more evidence about sea level rise and it is coming faster than we thought before so the other thing is that there is this feeling that has really changed that we can't delay any longer.

And that was really reflected in attitudes too.

Chair Nelson noted: And in the environmental community there is that paradigm shift from the solution to the Bay's problems is to not fill it. And we have a paradigm shift to – we need to do creative management things in the Bay. That paradigm shift has really happened.

And things like the Middle Harbor dredging policy just looks more like an anachronism in that context.

Commissioner McGrath responded: And the author is an anachronism too. (Laughter) If I think back to the first time that Phil Williams presented the loss of sediment in the State of the Estuary Conference – that is about 25 years ago and it was the beginning of research that is now pretty well established that the whole cycling of an understanding to the actual; I mean there was a problem without sea level rise.

Now with sea level rise there is finally a realization of the scale. This is like at least a two-hundred million cubic yard-scale problem. And it may be more like 400 million.

And that is now accepted rather than – the hell you say? (Laughter)

Ms. Hall agreed: Right. The number does not feel as shocking.

Commissioner McGrath reiterated: Well it still is shocking.

Ms. Hall qualified her statement: Right but people are more recognizing that we need to do something about it then. Any other thoughts from those that went to the workshops?

Ms. Mandoske commented: I concur with what you just said. I felt that a lot of people were in agreement with the posters but then it was the finer points that people went back and forth on.

Ms. Hall continued: For the minor-amount-of-fill questions everyone was actually onboard with removing the “minor amount of fill” language and relying on the language in the McAteer-Petris Act to some extent.

People thought that removing the language was okay if no other method of enhancing the restoration was feasible. And changing the language to reflect the fact that we do need the fill to maximize the benefits of these projects was evident.

This was also intended to capture the feedback that you all gave on the morning of the workshop. And so we feel that it does not do so.

Adding language to guide determinations for the minimum amount of fill necessary; I think people generally thought that should be in a guidance document but not in the Bay Plan. And so that is something we are keeping in mind and noting in the Background Report but will not be considering language to specifically address any of those aspects in the Bay Plan.

The things here aren't every single bit of language that we are considering modifying. These are the main gist of it.

The one that is mostly yellow is using dredged sediment for habitat projects in tidal waters and this is a Dredging Policy 11b question. We did get overwhelming support for removing Dredging Policy 11b in our discussions with the Bay Fill Working Group last time at the workshop but from discussions with David Lewis that is not an option – like hands-down not an option.

He likes the idea of amending the policy to some extent. Internally as a staff we are also back and forth on this.

From David's perspective he wanted something in there still to hold the Corps accountable to complete Middle Harbor.

And from our perspective we still are unclear on how effective the Bay Plan actually is in holding the Corps accountable for that.

Chair Nelson called attention to the bifurcation of issues: There are two issues there. One is enforcement of a permit. We don't usually have Bay Plan amendments designed to enforce an individual permit.

Commissioner McGrath stated: Well it's a consistency determination.

Chair Nelson noted: A good point, good point; but nevertheless, and we want to keep that project on track, but the key here is we are saying no more fill projects until Middle Harbor is proven to be a success. So when David says keep it but amend it what is he saying about the second half of that and what it means for other projects?

Ms. Hall replied: The idea he likes is to have similar projects still be restricted to using a minor amount of fill, projects similar to Middle Harbor which would be things where you are

placing large volume of fill to create shallow habitats and deep habitats or just filling to create eelgrass habitat in general.

Filling deep-water habitat to create shallow-water habitat; I can see that being an okay thing to still have in there if he really wants it in there because there aren't that many projects that would actually do that so it is not really holding up that many projects.

But then the question is – is it actually serving the purpose that he wants it to serve meaning is that affecting the Corps in any way?

Chair Nelson answered: No.

Ms. Showalter noted: Well we have someone from the Corps here. (Laughter) Do you think that is so?

Commissioner Galacatos replied: I am not going to answer that question because this is the civil works side of the Corps and I am in the regulatory side of the Corps. So I would like to keep that distinction there.

I think from a policy perspective it raises the question – are you doing policy to address a particular issue? Are you doing policy for policy's sake?

Chair Nelson had a caveat: We don't want to put something in there to enforce a consistency determination. Unless we were to learn that there is some problem we have learned through the consistency determination we want to apply to future projects; that is totally appropriate.

But if it is just making sure that the Corps Civil Works Program does the project right that doesn't sound to me like a proper Bay Plan amendment.

Let's assume for a moment that somebody wants to build a new eelgrass project. And then let's assume for a moment that we get through Middle Harbor implementation and we run into a glitch and there is some piece of that program that just isn't going to work; does that mean we are never going to do another eelgrass project?

Ms. Hall replied: We have been toying with the idea of changing successful completion into more lessons learned have been gathered or something like that. That itself was considered a little too vague.

But then it seemed like David still wanted it to be – the project has to be completed, meaning it has to provide habitat benefits that it said it would provide.

Ms. Fiala noted: Essentially it lifts language directly out of the consistency determination into the Bay Plan around the project purpose and the definition of success.

Commissioner McGrath weighed in on the issue: So let me back up. You guys realize that when I speak I speak more as a Port-of-Oakland person and I am not going to advocate for a position. But it is in the nature of the consistency process and what it means.

The consistency regulations and law requires federal agencies to be consistent to the maximum extent practicable. And the factual difficulty with Middle Harbor in terms of is important.

It is that Congress, in fact, has not provided money? And it is very different from the current litigation battle between BCDC and the Corps where I am clearly on the BCDC stand where the Corps did not ask.

But the take-home message may well be that the ability of Congress to fund or not fund poses too great a risk to work with the Corps rather than with the permittee.

I am just trying to track the facts. When we put together that project we wanted an all-habitat project because we thought that this would be the easiest way to get funding. That as long as no one was shooting at us for taking material out to the ocean it was still very, very difficult to get funding.

And the person we had working for us in Washington was the best lobbyist I've ever seen. There is a lesson there that we should reap and understand. That even with a project designed in that way Congress may not give you the money.

And that then complicates the ability to enforce because of the nature of the legislative language.

Chair Nelson chimed in: That is a problem with regard to the individual projects.

Commissioner McGrath added: And similar projects involving consistency and the Corps.

Chair Nelson continued: But LMB doesn't just apply to consistency projects. To me it is worth discussing; amending 11b so that it says, we are not going to do similar projects until staff produces a lessons-learned project that addresses x, y, and z. And when the project reaches a certain point of completion and the staff produces a lessons-learned document. That is something I could live with.

But I kind of hate the idea of saying if any aspect of the Corps' restoration project doesn't work all future restoration projects, all future eelgrass projects involving fill are just off the table. That just doesn't make sense.

Ms. Hall commented: And actually the language and the things you just said were helpful because those are with more specific end-points than what I had originally been thinking. Having a more specific end-point like that would maybe be helpful in terms of reducing some of the complications around successful completion; I mean how high of a bar it is to literally lift the language from the consistency determination because we may never get there.

Chair Nelson stated: I could absolutely imagine that some aspect of the project doesn't work. And we may learn from that. This is how science works of why that didn't work and apply that in the next project and get closer to success.

Ms. Showalter opined: I still think this is obsolete. I don't think this is appropriate to have in the Bay Plan at all. I think that what you are talking about is something that we should be putting in our recommendations for the adaptive management program and that would be the first thing on the list to do.

I just don't think it belongs at this place. I think it's obsolete.

Ms. Fiala commented: I will add that yesterday David Lewis acknowledged that the whole

objective here is to motivate the civil works side of the Corps in order to complete this project. And if this is not effective in achieving that outcome then it just clutter.

We can attempt to convince him that this is in fact clutter and that it would not be an effective tool for motivating the Corps.

Chair Nelson stated: I am not advocating that approach I am just saying it is worth considering. I tend to agree with you. There are two issues here.

First is appropriately making sure that the project moves forward. The second is deciding how we learn lessons from that project and apply them to future projects.

The difference here is it is a big project. Any time we have a similar project we are going to learn from that previous, similar project. If we can in and did Sears Point again what we learned from the previous project we probably learned that we didn't actually give them enough ability to fill.

Ms. Showalter chimed in: And I know that you probably think that on adaptive management I am beating a dead horse but (Laughter) I have been talking about it for 20 years and it is not going to stop.

I do really think that restoration science is evolving so quickly that as we look at making these changes that we really have to make on a very, very, small, time scale here we need to put extra effort into making sure that the best available science is evaluated and communicated to the people who use it.

We might call it something better than an adaptive management plan but given how we work now I think that is what it is.

And to tie this to a specific project; we want to learn from all the projects. We don't want to just learn from Middle Harbor. We want to learn from all of them.

Commissioner McGrath pointed out a nuance: I think there is a distinction here that we need to think of between using the best available science recognizing that if you have 45 metrics and you get 35 of them; you've done pretty well.

There is a difference between that which is best available science and adaptation and accepting what you get if it is good enough and security of funding which is – maybe if we retitled the questions here.

Chair Nelson acknowledged: And then the problem is solved.

Commissioner McGrath continued: And there is a policy question of at what level of insecurity of funding are you willing to experiment?

Chair Nelson agreed: I tend to agree with you that we should get rid of it.

Ms. Davenport commented: On a related note for the San Francisco Bay Restoration Authority on their projects there is a requirement to do lessons-learned report. And that could be complementary.

Ms. Johnck mentioned some historical facts: There is a little bit of history here which Barry

may remember. You stated at one point there was a push for a Bay Farm Island to become dredged material – the borrow pit.

Certainly antipathy and negativity around that – I don't think that is a question anymore. The extent of the Corps and the consistency determination; the other thing is we are just talking about deep-water habitats which maybe wouldn't affect the salt ponds and so maybe we want to look at some metric or definition of deep-water habitats.

And I can see where David is coming from. They find some of this historical stuff. If it prohibits further enhancement of the levees and salt ponds then that would not be good because we want to do more restorations.

Chair Nelson noted: That is a completely different issue. If we are going to adopt a policy that says thou shalt reuse all the dredged material and not dispose it somewhere; that is a very different reason.

Ms. Johnck reiterated: I think we have to try to get beyond those concerns. It sounds like he was onboard with one of these.

Ms. Hall stated: He also was like – I don't want it to restrict tidal-marsh projects. He wants to interpret similar projects broadly.

Realistically none of these are – it is another option that we have.

Chair Nelson asked: So when you look at your adaptive management language elsewhere in here does it get to the point of Number 1? How well does it meet David's goals? It is totally appropriate to say that before we build eelgrass project number two let's make sure we can learn lessons from eelgrass project number one.

Ms. Hall opined: I don't think it does because his goals – he didn't like the idea of just until we can learn from it. For him it was about making sure that the Corps provides what they said they were going to provide.

And it seemed like that was – it wasn't like we were going to say oh we have learned from it now we can move on. It seemed more like they have to do what they said they were going to do.

Ms. Davenport was recognized: I am wondering could the Commission have some kind of a resolution about what it wants to see happen at Middle Harbor at this point as opposed to it being in the Bay Plan?

Ms. Fiala mentioned options: The other option that we could do is potentially moving this notion to the Bay Plan Maps where we are actually much more prescriptive about what should and shouldn't happen at particular sites.

So there already is a dot – Bay Plan Map Policy 28 talks about Middle Harbor Shoreline Park. And you can imagine a new dot about Middle Harbor and hints at projects and the successful completion of that project.

So that was an option moving forward. There are certain logistical challenges that we would have to change our brief descriptive notice again to add the Bay Plan Maps.

Ms. Davenport stated: That might be worth it. And then you could clear the clutter from being applied to everything. And it could apply to that one.

Chair Nelson chimed in: I'm actually wondering if it would make sense for the Commission or staff to make some sort of – if what we decide and what you just described to me sounds sort of like keeping a Bay Plan policy in order to try to enforce against the Corps and being a little bit punitive. We are not going to do that.

But it is completely appropriate for us to make sure that the Middle Harbor Project stays on track and that we track that carefully and that we learn lessons from that project to be applied elsewhere.

That is a commitment staff could make or the Commission could make completely separate from the Bay Plan. Maybe we might want to make them at the same time.

Executive Director Goldzband commented: You would want to make sure that it is done concurrently.

I have a question putting on my former-Commissioner, non-biology, sort-of-a-normal guy which is when you take a look at what we think is going to happen in the Bay during the next 15 years in terms of reusing sediment and in terms of just dumping dirt in the Bay in order to create what we need to create; how much of it is deep-water versus non-deep-water?

If the Working Group were to decide in order to get David's approval or consent we could keep 11b in some way, shape or form for deep-water restoration; how much of what is going to happen over the next 15 years deep-water versus non, deep-water – what actual restriction will that put on; not much.

Ms. Fiala stated: It is essentially an analysis of what is at stake. If we were to restrict the construction of these projects – how many of these types of projects are in the pipeline?

Executive Director Goldzband continued: That is what I am asking.

Ms. Hall informed the Group: David actually addressed that yesterday. He was like – even if you consider how many projects would be placing large volumes of fill for eelgrass he was like; I don't think it would be many which even furthers the question in my mind if you are not restricting much then –

Executive Director Goldzband interjected: Because it is not about future projects. It is about Middle Harbor.

Commissioner McGrath chimed in: Well so the two ideas that have been presented – it depends how you define "deep" too. The three projects that have been suggested – one is the re-handling phase in San Pablo Bay, Hamilton and Bel Marin Keys and other potential sites which involve digging down so that you have a whole, dump and dredged material there.

A similar concept has been suggested for the South Bay. There are technical questions about whether or not the South Bay Salt Ponds are getting enough sediment without that.

Executive Director Goldzband stated: To me as a layman that is not a restoration site. I am talking about a deep-water, restoration site not a process to move dirt from one place to

another.

Commissioner McGrath acknowledged the statement: Okay. So the other one that was suggested which had a lot of merit was a sacrificial, sand berm in front of the salt ponds along the Hayward shore which would have moved ashore and created a not deep-water situation.

The thing to think about from a policy perspective, and this is Jim McGrath, this is not Port of Oakland, this is a viewpoint I've had for 40 years from regulation dredging on the coast; if you artificially increase the price of a dredging solution or habitat or beach restoration and have it be politically correct and you get less done. Why?

Executive Director Goldzband responded: I got you. From my perspective this is why I don't sit in working group meetings. (Laughter) I think you are going have to convince the Commission that there is a substantive/material reason to keep 11b in there.

If either it is going to somehow delay or hamper the ability for us to do whatever kind of restoration comes along because who know who is going to provide money for what when or if it doesn't make a darn bit of difference and so because everybody looks at 11b when they look at this and say – why is there this prohibition with regard to one project in the Bay Plan?

Commissioner McGrath posed a hypothetical: So if we are specific and I am thinking about the restored salt ponds along the north shore of San Pablo Bay; if one has been opened to tidal action and it is not filling in fast enough – what I want to make sure is it doesn't prohibit bringing a barge of dredged material and dumping it knowing that it is not going to come out it is come up in.

Executive Director Goldzband replied: Right, right.

Ms. Davenport stated: I agree. It could actually be a problem to leave it in because of situations like that and also a lot of the projects that we are seeing developed now are the living shorelines projects which are placing fill in deeper water like oyster reefs and then sometimes there could be other materials, gravel – there could be a variety of materials that may or may not be dredged sediment but it could involve dredged sediment.

I do think we would be putting restrictions on those types of projects moving forward. It could hamper the overall purpose of this amendment to allow fill for habitat.

Executive Goldzband noted: Without meaning to.

Chair Nelson weighed in: Another suggestion is that anytime we try something new that this approach – we've got a policy that says we are going to do a horizontal levee, we are going to do one horizontal levee and then we are going to wait until we see if it will work.

I think the solution is make a commitment with regard to Middle Harbor that is roughly contemporaneous with what we –

Executive Director Goldzband interjected: Okay, so this is why – again, I don't sit in because I am just thinking from a policy basis from 20,000 feet.

I would argue that if you want to think about doing those things concurrently that you need to let us know somewhat quickly because what I would do is I would call Bryan Perkins in

Congressman's Speer's office and say here is where we are at we are going to need some help and part of this resolution is going to be a request of the Bay Area Congressional Delegation to get funding for the Corps and for Middle Harbor.

And there is stuff going on in Sacramento now for beneficial reuse. I want to be able to demonstrate to the Commission that this is what we want to do that we are not going to strike out blindly but that there is actually perhaps a plan to try to advocate for reuse and that would include working with Sam and the Conservancy.

Chair Nelson stated: There are three things I can think of with regard to Middle Harbor in particular. The first is funding. The second is actual tracking of the project and pushing civil works and continuing to push and doing that in a way where we make commitments, such as "we are going to do this every six months," or whatever the cycle is. And the final one is making some sort of commitment for a lessons-learned document at the appropriate point. This could be applied to future projects.

Ms. Johnck informed the Group of the following: By the way I want to add one thing. At the last TAC meeting for Middle Harbor we started to look at the public access. I was really insistent on saying we need to get that beach.

And the place where they originally put the beach is not working. Maybe the Corps will put in some money for that.

We do need some more Middle Harbor projects and it does need some more money as we go through the lessons learned and what we need to remediate and improve upon.

Ms. Fiala stated: I agree with this conversation that central to this seems to be what would help the Corps? What would help to get this to a successful completion? Is it a resolution? Is it funding from some other sources?

I know we have litigation going on. I'm not sure how that plays into all of this. I know Brenda has been writing comment letters and trying to push the Corps along as well as she can. Beyond that what other tools do we have to try to get this to a successful completion?

Ms. Hall continued: In terms of potentially convincing David that the Bay Plan is not or at least the dredging policies of the Bay Plan are not the right place for this; who are the right people to say that actually isn't going to work? Is it the Corps? Is it the Port or something? If we at BCDC are kind of like we don't think that is going to be an effective tool – will they listen to us?

Chair Nelson replied: I think the answer is two of us.

Commissioner McGrath stated: You know I can't do this. I mean I am in a constrained position.

Chair Nelson agreed: Yes you are right. You are totally right.

Commissioner McGrath stated: I am the developer on this one.

Chair Nelson suggested: Maybe me and Larry. And I will go talk with Larry. The idea of making this sort of contemporaneous commitment with regard to the project itself so that if we

give up this piece of leverage there is something else we are offering that goes beyond the scope of what we are doing here.

That is the solution here. If the whole point of this in David's mind is to keep Middle Harbor on track let's keep Middle Harbor on track.

Commissioner McGrath stated: Unlike every single Trump appointee I actually read the conflict of interest rules. (Laughter)

Ms. Hall asked: Any other thoughts on this before we move on? (No comments were voiced)

Regional goals and restoring complete ecosystems. Most of these policy recommendations were things just trying to add more language, encouraging projects consider the principles that come out of the Baylands Ecosystem Habitat Goals Update. The Sub-Tidal Habitat Goals Report and to an extent the Adaptation Atlas considering it is not a giant, consensus document which the other two are but still a really good guide for how we should be thinking about project sustainability throughout the region.

Generally, people were on board with adding references to the principles of these documents and even referencing the documents themselves in the findings a bit more.

Chair Nelson added: But doing it in a way that doesn't result in out-of-date references.

Ms. Hall agreed: Yes. So far I have referenced them in the findings of documents that are there as good sources to kind of give a nod to them but recognizing that they will be updated and future documents may come as well.

Commissioner McGrath commented: I agree with Barry. I am going to be a little bit more explicit because this was litigated all the way to the Supreme Court during the Axis Guidelines of the Coastal Commission and they have got to be such-as documents not regulatory standards.

Ms. Hall agreed: It is such-as, exactly.

Commissioner McGrath continued: The process to make them standard is really rigorous and it also is not wise because you want to account for geographic variance and you want to account for changes in the science.

So such-as or similar documents that allows somebody who thinks that they've got just the hottest science in the world to bring it in.

Ms. Hall replied: Right, exactly. And also because it is in the findings it is more just a supporting statement for the actual policy which would just be saying to reference the best, available science in your project goals.

These three things were all supported. The extent of a project adherence to regional frameworks should scale with the size like time and a purpose of the project.

Commissioner McGrath suggested the following: I think you should take that out. With the Atlas coming out next week again that should be guidance not a hard-and-fast rule.

It becomes a rebuttable presumption and you don't need it in the regulation to have it a rebuttable presumption.

Ms. Hall noted: It felt unnecessary in addition to adding the requirement for applicants to show how their project is sustainable with natural processes and how it fits with the regional framework.

Chair Nelson stated: I can imagine smaller projects being treated less rigorously with regard to things like monitoring or even sustainability over the long term because we may be building a project that may drown in 20 years.

But this isn't the place where we need to have that.

Ms. Hall added: Those aspects, the monitoring, the design, adaptive management and how that should scale is captured in another poster.

I think this is something that could be a decision made by the analyst on a project-by-project basis.

Any other thoughts before we move on? (No further comments were voiced)

So moving on to Number 4 – pilot projects monitoring, adaptive management. These everyone was pretty much on board with all across the board.

There was a lot of discussion around and it is still unclear to me a bit how exactly this would play out. But Number 4 adding policy language to ensure that applicants are able to financially and logistically support monitoring and adaptive management needs.

Everyone seemed to understand this isn't a thing we should be thinking about because you do want to make sure that people are able to support the project to the extent that it needs to be supported.

But then the actual mechanisms for that aren't entirely clear yet. How that would play out is unclear.

Commissioner Galacatos commented: From a regulatory perspective it can be extremely difficult because different federal agencies will have different requirements of what they can and can't do to support different projects.

We have grappled with that a lot with some of the larger mitigation things – the larger mitigation sites that on the federal side the Clean Water Act requires financial assurance.

Ms. Fiala stated: We met with the Regional Water Board staff on the regulatory side and they were talking about they require a demonstration of ability. You can't so much say we cannot afford it. You have to demonstrate that no one could afford it. It is sort of like a city or a project of similar means could not afford it. It was a very, particular calculation that they do over there.

Ms. Hall added: So they considered is this an affordable thing generally? It is not for just you the applicant.

Chair Nelson noted: And I understand that as a test because you could imagine a

monitoring program that a small outfit would look at and say you've got to be kidding me. I just don't have the resources to do this not because I am an unreasonable applicant but just because that is too much of a burden on a similar project.

Ms. Fiala stated: The question is how does an analyst decide whether or not that is true?

Ms. Hall added: And also from that conversation with the Water Board it sounded like they have specific legislation already laid that out or something.

Chair Nelson stated: We have other requirements that extend over time. So you now have to be ready to adaptively manage your project over time. Given sea level rise you have to do that in particular with regard to the public access which we can actually enforce.

And you have to maintain your public access over time. So in those areas where we are concerned about applicants actually implementing their permit requirements over the long term; do we have any sort of requirement to demonstrate financial and logistical capacity?

Ms. Mandoske commented: I've heard Erik before say that and it terms of this point that we actually already require to some extent that applicants demonstrate they are able to continue maintaining their public access.

I don't know what that mechanism is if it is policy. I remember him addressing this point and saying we do that already.

Ms. Hall responded: Interesting.

Chair Nelson chimed in: That poses two questions. The first is do we do it? And the second one is – is it in the Bay Plan or is it just something from an analyst?

Ms. Hall stated: I don't believe there is a policy like this in the climate change policies requiring that. I am not sure what the mechanisms are.

Commissioner McGrath questioned the reasonability involved: Aren't there limits to the reasonableness of that? I know Bruce talked a number of times about a mitigation project that was in an area – and a mitigation project was conceived at a time when we were not thinking as much about sea level rise to protect a dike and lo and behold salt water has overtaken it. So is going to remain a wetland but it is not going to be a freshwater wetland for the next 40 years.

And if that was approved at some time in the past maybe you could make the same question about public access. Is there an open-ended commitment to bring sediment in to keep the site up with sea level rise?

I don't think that would be a reasonable thing to go back to in a previous permit. It might be something to consider going forward but I would sure hate to see an enforcement action on that. (Laughter)

Commissioner Galacatos chimed in: I think the one thing that I would probably try to differentiate in terms of financial responsibility and adaptive management so there are two different components there.

There is the one in terms of the short term to do the project and to the short-term monitoring of that project and the financial ability to do that. And the second one is the long-

term monitoring and the adaptive management.

And so for a lot of the larger mitigation sites that we have in the Corps those are two separate funding mechanisms. And they are treated very differently in terms of how they are calculated and the mechanisms by which you put them in place.

So for the short-term you could have a letter of credit and other very, short-term, financial mechanisms. For the long-term, management needs it is usually considered something where you have a very large project, lots of acreage and you are going to need a CE and you have an endowment fund that has the principal that needs to be in place before it goes through.

And that endowment fund basically is there for the adaptive management in perpetuity.

Commissioner McGrath asked: Don't you have to distinguish between mitigation where if the impact that is being mitigated is permanent the mitigation should be permanent.

And enhancement where if you are looking at something where you expect by a public agency an improvement in habitat and the improvement is not as great or as long-lived but it is still a temporal benefit then I think you need different standards for those two things.

Commissioner Galacatos replied: It all depends if they are both considered to be able to meet the purpose of mitigation.

Commissioner McGrath clarified: The first one I was saying was mitigation and the second one is enhancement.

Commissioner Galacatos noted: But we routinely have mitigation. So you have to be really careful.

Commissioner McGrath stated: You have to be precise.

Ms. Davenport chimed in: I think that is a good point of a totally, non-mitigation project would have a different form of adaptive management because especially with sea level rise we are expecting these projects to evolve over time and adaptive management doesn't mean try to keep it the way it was or try to get it to tidal marsh and keep it that way forever. That is not realistic with sea level rise.

We when we create these habitats a lot of them we want them to be tidal marsh but not all of them are going to be tidal marshes when sea level rise overtakes them. It doesn't mean we shouldn't do that. And it doesn't mean those people should be penalized financially for that. It is non-mitigation.

Ms. Hall emphasized: The point of this policy isn't to say that every project has to adaptively manage to be sustainable to sea level rise. It is to say that for those that are saying that their lifetime is going to be really long into the times of sea level rise then if that is what you are saying is your goal of the project then you need to show something financially to back that.

Whereas if you are saying this is temporary habitat that could then that we are saying we can let go of in 30 or 40 years then I think this would be flexible based on what your monitoring and adaptive management needs that you and the analyst decide are.

Ms. Showalter chimed in: This item of having the financial set-up for monitoring in perpetuity has been something that could stop a number of projects from happening.

I know at the Santa Clara Water District this was something with respect to California Fish and Wildlife Service's requirement for endowment that was really –

Commissioner Galacatos interjected: We've actually come up with a solution for that. We do now have a solution for that particular process where a public entity cannot have an endowment principal, an endowment fund but has a different funding mechanism.

It took us a while to come up with it.

Ms. Showalter stated: It was really a serious issue. And then the other thing is my experience when I worked running a non-profit was that again this was something that stopped projects from happening, little projects.

And I do think there will be a lot of little projects that will have value as pilot projects and I think that we might be better served by adding to Number 2 something about a little language that says financial capability instead of having a separate one in four.

Add language stating that the level of design, amount of monitoring and level of detail and adaptive management required – maybe just add the level of design and commitment and put it in there.

We really want things to happen quickly and my experience says that this is something that really cuts out a lot. It can slow things down dramatically.

Chair Nelson added: The other problem I can imagine is Santa Clara is well funded. Small NGOs are not. If CDFW came in and applied for a permit to do a pilot project X and we applied a strict standard – they don't control their own funding. They can't guarantee what a future legislature is going to do.

So that is not a core issue. They are getting a permit but they still can't make a long-term, financial commitment.

Commissioner McGrath noted: But the language in Number 2 of scale with the project size I think gives the appropriate amount of discretion to BCDC staff.

I think that is pretty artfully crafted.

Ms. Hall stated: I actually already did combine Number 4 with Number 2 in the actual writing of the draft. I also thought I could rework it a little more to make sure that it is really clear that the financial statement stuff should scale as well.

Ms. Johnck added: I think scale is good to use but somehow it seems to me aren't we beyond some of this? Don't we have some examples about where performance standards that worked over time and the other point is that there has been plenty of permits that BCDC has issued.

There is language in there the conditions on permits and on the Fireboat Station that I worked on I mean there are specific things that we had to do to address if the water goes up to a certain level and affects public access then we have specific plans on what you are going to do

to redo the dock and build it up et cetera. There are some very specific actions that have to be taken.

But that is not mitigation. That is just enforcing permit conditions relative to performance on sea level rise.

We have examples. We have a huge template on the South Bay Salt Ponds Restoration Project for adaptation. That is on a very large scale. But any project that comes in under that the first one you are going to see is Abe Landing will fit into that adaptation program.

Ms. Hall continued: Impact and habitat conversion caused by fill. The first one was just adding language and this one would most likely be a finding noting the potential impacts that may be associated with restoring ecosystems and creating valuable habitat.

This is just noting that there are tradeoffs that you do have to consider.

Ms. Showalter noted: In the current language there is just negative. So we want to add in some positive with the negative.

Ms. Hall agreed: Right. And so we are adding or considering adding a lot of findings around how important fill can be for these types of projects but we are recommending that the Commission add these things.

It is two sides of the coin and we do want to make sure that we are still also acknowledging both sides. This can't be a free for all. You still have to be thinking about adding a lot more fill will also introduce considerations like type conversion.

How to actually handle type conversion is something especially in our policies and the potential for type conversion is something that we are still discussing a lot internally. We are talking about policies that are some version of what Number 2 and 3 state here. A lot of the issues that have been raised are just the fact that there are so many unknowns still about exact habitat needs for a lot of different species in the Bay.

That makes it hard to make these kinds of judgement calls in a lot of cases. When you take how habitats are already going to be converting with sea level rise and think about where do we want to step in, at what point do we want to step in? And how can we do this in the most beneficial least-impactful way? There are a lot of moving factors and a lot of unknowns.

The EPA is working on a type-conversion, guidance document. But that won't be ready until probably early next year. The question is if we do open it up to allow more fill in the Bay now do we feel comfortable doing that without providing some guidance on our thoughts on type-conversions?

Should we just say we are opening it up and let permit analysts make that call on a case-by-case basis? Do we want to include some kind of statement on it – a policy on it?

Commissioner Galacatos weighed in: I think when you have it on Number 3; consider the individual facts. That kind of helps frame what they should be looking at. The question does come down to – are you going to frame it by habitats for certain species? Or are you going to frame it by sea level rise? Are you going to frame it by the need for different habitats all around?

Ms. Davenport stated: I was going to say this could be partly address by the Number 3 regional goals, Policy Number 2 requiring information about how the project will fit in the regional, habitat, restoration framework. What you really talking about is the idea that we have habitat goals for the Bay Area.

And when you are doing type-conversion a lot of times you are doing so to try to achieve those regional goals. You could make a strong case for that. Maybe you can get some leeway on any mitigation requirements.

Chair Nelson commented: I tend to think of those meeting different needs. I mean the language under regional goals and language here. You could try to meet some of those restoration goals by restoring the salt crystallizer on some land that doesn't have much habitat value today.

Or you could meet those goals through habitat conversion but it seems to me that where you are doing habitat conversion – I'm trying to understand why this is yellow because where you are doing habitat conversion and if you are doing Bay fill you are doing habitat conversion.

And we always want to consider those tradeoffs. We always want to recognize that if we are doing x to a tidal marsh we can be pretty clear that if we are doing conversion we are degrading the existing values of the tidal marsh and betting that we are going to get better habitat down the road. We always should be assessing what the tradeoffs are and what the uncertainties are.

This just says that we should do that. I kind of tend to think we should say that we should do that. We should give direction to analysts that say if you are taking a crystallizer pond that has little if any habitat value or you are doing something else to existing tidal marsh one of those comes with dramatically greater risks.

And this is just codifying that we are going to pay attention to the risks and the uncertainties and the potential impacts that come with conversions that is different from other kinds of habitats.

Ms. Hall added: And I think the question is how can you actually add a valuable new policy? How can you add a valuable analysis of some sort that doesn't require crazy amounts of information?

A lot of it has been well if you say analyze impacts versus benefits that sounds very vague and we already have language like that in the McAteer-Petris Act and is it really necessary to add again? But then when we start talking about specific considerations like assessing cumulative impacts or relative distributions of habitat how those are changing and if that could be a potential concern.

We think do we have the tools to assess that? And for certain habitats we don't. I think there is already a lot there saying we don't want to harm these environments but we do want to enhance them so that they can be resilient to sea level rise.

So those kinds of things are there but then we don't want to get into – it's hard to get into the details of how we would do it.

Commissioner McGrath sought clarifying information: I am kind of lost in why this is so much yellow. I think conversion matters. And if want to define a policy that says conversion will be considered under such circumstances then that would be clear. It is not in Number 1 and it is not in Number 2 and it is kind of obliquely in Number 3.

And it says incrementally but it doesn't give us a policy standard. For example would we fill – I wouldn't support filling a marsh which is good habitat for Ridgeway Rail or Salt Marsh Harvest Mouse that was threatened by erosion 10 years from now.

On the other hand if I have a high marsh and I might be able to put some maintenance material from creek dredging in Sonoma Creek along that where it is not really high-value habitat and I know the system will redistribute that material and help sustain that marsh over a period of time – I kind of approve of that.

So converting habitat on the come is not a good idea based upon future impacts. But ignoring drowning habitat is also not a good idea.

Is that the underlying debate that you found from your audience? Is there a better way to define this?

I like what Jessica said about conversion. It is something that should be approached very carefully.

Ms. Davenport responded: I think one thing that is not clear and maybe it is clear when you go back to what was actually written on the posters. How does this specifically relate to mitigation requirements?

I know that BCDC has been somewhat flexible with the idea of creating upland transitions like an ecotone levee that is an area for future, marsh migration but it involves filling a salt pond now before it is breached.

In the future there might be a situation where you even build an ecotone levee in an area that is already tidal but is still clearly part of a real – I think the thing is you want a well, scientifically-vetted, habitat, restoration project.

You are creating an ecotone levee for flood protection and environmental purposes. It can be a resilient project down if you then are given a mitigation permit you need to create this many hundreds of acres of wetland somewhere else.

Even though overall your project has a great, ecological upland or accounts for sea level rise and future marsh migration but yet you are still being penalized and told to do more as if your overall habitat has a negative impact.

I think that is what we have come up against. And we would hope the policies would provide us the flexibility for that so that this wouldn't happen.

Ms. Hall explained: I am not thinking of it that we are proposing that these kinds of projects would have to do mitigation. It is more thinking about – if anything it would be more like potentially needing to slow down if there are proposals to do a lot of conversion all at once that could have cumulative impacts.

It isn't saying your project now needs to mitigate because of referring – it is more like thinking about how could we do it in a potentially, incremental way or even with adaptive management.

Commissioner McGrath suggested a real-world discussion: Let's go over a real project and apply that. Let's go to the mouth of Sonoma Creek.

The problems at Sonoma Creek are a result of a combination of agricultural practices, urbanization and changes to the hydrologic system and a very long J at the mouth of the Napa River that has caused accumulation of sediment along the shoreline and accumulation of upward marsh really rapidly and has altered the tidal circulation in that system.

So you've got these newly formed wetlands in there that are tidal marsh that are poorly drained and they are not part of a system that evolved slowly enough to have the broad series of denigrated channels.

And BCDC staff was just completely flummoxed by what to do with the restoration idea. It is going to get worse with sea level rise because more sediment is going to try to be deposited upstream unless you've got some countervailing force distributing it where it is really more needed which means that the driver should be restoring a workable tidal prism out of the system which you have.

And I wouldn't consider modifications that achieve that goal conversion. I would consider making a broken ecosystem that happens to have marsh in it work in a more sustainable way.

I want to see policies that allow it and don't necessarily encourage it but don't prevent it based on minor fill. We need a better set of policies to make a project like that a good project.

Ms. Showalter offered her perspective: I look at it from the lens of the South Bay where we are really trying to do height conversions as fast as we can because we think the salt ponds the sooner they are marshes and the more marshes probably the better. We need to maintain some ponds.

So to me I know that on individual projects planners are doing these calculations of changes of type and it is another gating item. It is another thing that they have to talk through and it seems to be very counter-productive.

I feel like we want to shift the language in here to make this sound like type-conversions and be very positive. To me when I read this it sounds like type-conversion is a bad thing that we want to avoid.

Ms. Hall stated: It is something we have to be careful about.

Commissioner Galacatos commented: That is the nuance is that sometimes it is not about things but sometimes it is about things. That is the whole thing and that is why the Corps and EPA and the other resource agencies are trying to address this and look at it because if it was a simple thing we would already have had an answer.

We are grappling with it with small and large projects. You are going to have a hard time saying oh you have this clover habitat here or a Least Tern habitat here and it is really valuable for the Least Tern but we want to make it now rail habitat; how are you going to say that one is

better than the other?

Conceptually that is the problem and why this is such a difficult thing to get right or try to figure out exactly how to parse the language.

I think we have to leave it somewhat vague to allow for the fact that people are looking at the question and we don't have the answers but we want to have some flexibility in how they are going to be looking at it on a project-by-project basis.

Chair Nelson cited former Executive Director Travis: This is a place where I will cite the wisdom of Trav. Trav always said that the most important word in BCDC is, "and". And that applies here.

There are going to be places where habitat conversion is something that is essential and there are other places in the system where habitat conversion -

Commissioner McGrath interjected: Sacrifices a rare and valuable habitat.

Chair Nelson continued: - is a bad idea. And we don't have anything in here right now that captures both of those ideas.

I don't think we want to or can be overly prescriptive because I think we want to say to our analysts you guys have to figure this out.

Commissioner McGrath added: It is not forbidden but there better be a good story.  
(Laughter)

Chair Nelson stated: Yes but we want to tell both of those stories. There are places where habitat conversion is a bad idea and there are places where it is a really good idea.

Ms. Hall spoke: And this is a case where I really do wish we could share the language with the Working Group because this doesn't capture very well the language that we are looking at.

I think it does capture better that this idea that it is good in some places and bad in some – there are tradeoffs. But the issue comes down to yes; are we going to be adding the things that help an analyst decide in which case it is a good idea or a bad idea because those things are super hard.

Commissioner McGrath referenced the salt ponds: The salt ponds this was the issue. Can you extinguish, can you dramatically reduce habitat for Western Gull?

Ms. Davenport commented: I know you said that you can't share the draft language with us now. What I was wondering is if some of this is going into findings and more of a discussion about this issue that it is complicated?

Ms. Hall replied: Right now yes there is definitely a discussion of the facts that there are tradeoffs and it is complicated in findings or proposing something like that.

Ms. Davenport suggested: Maybe like some examples of why it is complicated. It could be useful to view this type of conversion because of sea level rise or it could be useful to do this type of conversion because this is a very rare habitat type. It seems like it would be helpful.

Ms. Hall stated: That is there and still being worked with a bit. I think those things are

there.

Ms. Davenport noted: I was also noticing in the tidal marshes and tidal flats policies and the subtidal areas policies there already are a lot of protective policies against adverse impacts. So even without adding anything we have a lot of ability to use those policies against habitat loss.

Ms. Hall agreed: Exactly. And so I think that was part of the internal discussion too we do have protective things. We are adding now more things like encouraging – well permissive things. And so the question is also do we want to add something else?

I think even considering those two things it will still be that there are still a lot of tough calls that analysts will have to make. The question is do we want to try to flush out some more type-conversion principles here and now? Or do we want to wait on those kinds of things?

Ms. Johnck stated: Well I think there are going to be more conversions. I am with you on your train of thought here. At the same time we don't there to be a penalty on certain things.

I do think applicants should be required to identify why a particular conversion is good, what it is going to benefit. There should definitely be an analysis.

We have to do that for the Corps permits. We have to do that for the complications on National Marine Fisheries and with Fish and Wildlife. We have to defend that already but even with more conversions I do think – and what I have been following is trying to do the utmost for addressing the criteria for endangered-species, habitat plants.

I don't know how updated they are. But I know with Hamilton we ran into kind of a duel with Fish and Wildlife Service because one site of habitat was going to be lost versus another thing and we got stuck in the process up there in Hamilton. That was 10 years ago.

But I think a particular reference point is the endangered species and essential, fish habitats, conservation measures that we already have to do.

Chair Nelson surmised: It sounds like what you are telling us is that you hear what we saying. There are a lot of important concepts up here. We should have this discussion after we see your language.

Ms. Hall concurred: Yes. I think that would be – yes, I mean it is hard because even with staff there is a lot that we are struggling with right now about how much to include here and in what capacity. I guess maybe it would be easier when we have the actual language to see if you guys also agree with what insert on language.

Chair Nelson noted: This is a place where you are clearly trying to strike a balance. As we are having this discussion in general and that is a bad discussion to have.

We need to have that discussion about language when it is in front of us.

I do have a question about Number 4. It sounds like in Number 4 there were objections to deferring. Do I understand why it is red correctly?

Ms. Hall responded: At the workshop almost any of the options about deferring people were saying, no – it must be done now. We could yes and that is not to say –

Ms. Fiala interjected: That is something that we have explored with staff whether or not we can defer action on this issue.

Ms. Hall stated: It is an option still.

Commissioner McGrath asked: But you are going to try?

Ms. Hall replied: I think we are going to try to finish having the discussion amongst ourselves and make sure that there isn't anybody who is feeling like this kind of language is absolutely essential.

People are still feeling that having this kind of language is really important to have in there now. The permit analyst staff is going to have to be making these decisions once we start allowing more fill.

That is where it becomes a really critical question because we don't want to open it up to –

Commissioner McGrath stated: I am willing to wait and see the language.

Chair Nelson agreed: I have the same answer so on Number 4 that we need to wait and see your language.

Ms. Hall added: Knowing that this is an option is a nice safety net for all of us.

Chair Nelson announced: We have two items. We have Number 6 here and then we have upcoming amendments and guidance. How long is Number 5 going to take?

Ms. Fiala answered: We recognized that we might not get to it.

Chair Nelson then stated: So let's try to finish Number 6.

Ms. Hall continued: So fill for natural shoreline protection. People were pretty much all on board for adding language requiring that the best, available science is used in the substance of appropriate, shoreline, protection strategies.

There was some debate over that one. It was added later including language noting that shoreline protection options exist along a spectrum. That was feedback we got at the workshop and that is not going to be yellow. I think people were a little concerned about non-structural solutions always having to be the first task.

Commissioner McGrath stated: Well I share that concern.

Chair Nelson continued: I mean if you are a big permittee and you are applying to build a new levee around your facility we should say demonstrate to us that you can't make a nature-based solution work.

But on a place like the Alameda shoreline where you've got one property owner after another it is just not going to be realistic to say to a homeowner you might 50 to 75 feet of property that you have to demonstrate to us that you can't build a horizontal levee. (Laughter)

Commissioner McGrath noted: And Number 1 does it. I mean Number 1 is enough guidance.

I also came from an era at the Coastal Commission where as a coastal engineer in training

people will sell you snake oil. The snake oil of the time was artificial seaweed.

You have to have a realistic assessment of what your natural system is going to do when you reconfigure the system. I don't want to over-promise. I think over-promising gets us in trouble.

Commissioner Ziegler commented via telephone: This was one area that it struck me that in terms of this being restoration projects they are already nature-based. I don't really see how you have a structural restoration project; there may be a structural component to it.

But isn't it by definition a non-structural solution?

Ms. Fiala stated: I would say that this is in reaction to the existing Bay Plan language which talks about some of the protection policies that focus on how to construct rip/rap essentially what the Bay Plan refers to as structural solutions.

There is this one policy that acknowledges the existence of other types of protection options and it refers to them as non-structural solutions.

So the exploration here is how could we bolster that policy?

Commissioner McGrath spoke: And I can point to places in the Bay where you've got a natural beach with a nice marsh behind it that is anchored at one end with an artificial structure.

Ms. Davenport stated: The feedback I got from Marilyn Lata of our staff who is a national expert on natural, shoreline protection is that she really supports the idea of acknowledging the green/gray spectrum and things that could be included. She was very strongly against this idea of language that would make it down binary if it was structural or non-structural.

And I think inherently to say you must demonstrate why a non-structural is not feasible you sort of are classifying it into two different solutions. If it could be discussed as to all the advantages there are moving toward a green side of the green/gray spectrum but that each situation is different and you need to evaluate what is feasible in that situation.

Ms. Hall added: There was also a question around what does feasible mean? And that could mean different things in different situations.

Ms. Fiala gave an example: Foster City is proposing a structural solution. How could this policy be different for BCDC to try to encourage Foster City to consider a more of a spectrum of options or maybe a combination of options in front of their city.

Ms. Davenport commented: I think that goes to the following one about lessening the mitigation requirements. Sometimes people say well it is easy to get a permit for the typical rip/rap. The analysts have done it a million times.

But it is harder for me to get this living shoreline permit. So I think that maybe at least that part of it would offer a greater incentive if we had a much easier permitting for the natural solutions.

Ms. Hall noted: There was a lot of discussion about incentives and how that is an important component.

I think that the draft language that we are actually working with right now addresses a lot of those points.

Chair Nelson observed: Number 1 captures much of what is in Number 2.

Ms. Hall continued: And Number 5 people didn't want to defer. We are not amending much of the shoreline, protection policies other than just these main points. There is certainly a lot more opportunity that could be there for the shoreline protections amendment – fill for flood protection.

**5. Upcoming Amendments and Guidance.** This item was not discussed.

**6. Adjournment.** There being no further business, Chair Nelson adjourned the meeting at 12:01 p.m.