

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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April 26, 2013

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)
Sharon Louie, Director, Administrative & Technology Services (415/352-3638 slouie@bcdc.ca.gov)

SUBJECT: Draft Minutes of April 18, 2013 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Metro Center Auditorium, 101 Eighth Street, Oakland, California, at 1:08 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Bates, Chiu, Cortese (represented by Alternate Scharff), Gorin, Jordan Hallinan, Hicks, McGrath, Moy, Pine, Randolph, Sartipi (represented by Alternate McElhinney), Sears, Spering (represented by Alternate Vasquez), Techel, Vierra, Wagenknecht and Ziegler. Assembly representative Feldstein was also present.

Chair Wasserman announced that a quorum was present.

Not present were: Association of Bay Area Governments (Addiego and Apodaca), Alameda County (Chan), Department of Finance (Finn), Speaker of the Assembly (Gibbs), Contra Costa County (Gioia), Senate Rules Committee (Nelson), and State Lands Commission (Pemberton).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda.

Mr. John Coleman addressed the Commission: I'm with the Bay Planning Coalition. We have our upcoming decision maker's conference on May 3rd in Jack London Square. The theme of the conference is "fueling California's economic engine and jobs, the importance of trade in northern California".

We will have Senator Boxer attending as well as Congressman Eric Swalwell and Mayor Quan. Some of the subject matter will be, what is the economic impacts of environmental agencies when making decisions and also looking at the study of international trade to the Bay area economy, modern infrastructure and trade and how it equals jobs as well as accidents on the Bay and the environmental and economic implications to job growth.

We're going to be doing a cap and trade workshop in Oakland on June 6th. We will do an energy and water nexus energy summit II, a follow up to what we did last year on September 12th in San Francisco. We are going to be doing a BPC expert forum on salt pond restoration and the impending shoreline study coming out from the Corps of Engineers on September 23rd. We are going to be doing a whole new area that has not happened on the west coast on October 11th on ocean planning. On November 16th we'll be dealing with dredging and salt pond restoration and that will be a workshop as well.



Making San Francisco Bay Better

BCDC MINUTES
April 18, 2013

Mr. Keith Miller spoke before the Commission: I'm the president of California Canoe & Kayak located in Jack London Square in Oakland. We've been providing public, non-motorized access to the Oakland Estuary since 1993.

I'm here to update Commissioners and staff on the knowing and intentional violations of BCDC Permit No. 19-85 (B) by Scott's Jack London Seafood Incorporated and the Port of Oakland's inability to correct these violations.

I ask BCDC to execute a cease and desist order against Scott's and the Port to put an end to ongoing illegal activity in the construction and operation of the public pavilion.

I'd like to thank BCDC staff for their onsite visit March 7th. They saw Scott's attitude toward BCDC permits; to hell with permits, we're going to do whatever we want.

Since BCDC's visit and follow-up letter of March 14th to Steve Fagalde and Steve Hanson of Scott's, nothing has changed.

In fact, Scott's has completely ignored BCDC's admonitions and proceeded as if nothing has happened, hence the immediate need for a cease and desist order.

Clearly, Scott's does not take this seriously, thus making a mockery of BCDC's mission.

At a Commission meeting in San Francisco in the 90s I endorsed the Public Pavilion Project having been asked to do so by Scott's owner Ray Gallagher and the Port of Oakland.

It has proven to be an embarrassment and an embarrassing endorsement as Scott's has historically ignored permit requirements has reduced public views to the water and access to the space.

To wit, recent construction of sliding walls and a permanent entryway in January and February of this year was done behind the closed tent, often at night without BCDC approval, without the city of Oakland design and review and without any building permits whatsoever.

The neon Public Pavilion sign is no longer lit at night. Steve Fagalde referred to the Pavilion as Scott's Public Pavilion. We are passing pictures around of what has been going on down there the last several months.

These are pictures of blatant disregard for the permit including the installation of 16 heavy steel planter boxes outside the Pavilion footprint in the Square's common area.

Commercial overuse is also part of the record. There were 89 uses in 2007, 16 more than the permit allows. In short, since Pavilion construction nearly every section of this permit has been and continues to be violated.

The current system is broken and it cannot work. There is a clear conflict of interest between the two permitted parties, the Port of Oakland and Scott's with one being the tenant of the other and revenue generated to the Port from a percentage of Scott's sales.

It is long past time to press the reset button on this permit. I have submitted my detailed suggestions to staff.

In conclusion, Scott's has shown a long history of abuse. They cannot and should not be trusted to do the right thing unless they are faced with a threat of losing the use of the Pavilion permanently.

If you force the issue, they might take BCDC seriously. If you don't force the issue you will get more of the same.

Ms. Sandy Threlfall spoke: I am currently the Executive Director of Waterfront Action. I am a proud member of the League of Women Voters of Oakland Waterfront Study that happened in 1992 when we let the city of Oakland, the Port of Oakland and the public in general find out that we have the longest waterfront on San Francisco Bay.

There have been moments of regret. By letting people know that we are a waterfront city suddenly it introduced value to property that heretofore was out of sight.

The way Jack London Square was built in the 60s it blocked off waterfront. The few other areas have been encroached by condominiums, all outside your jurisdiction.

My concern is that the waterfront belongs to everyone. What I see BCDC's role as is that it is up to you to protect that first 100 feet because we can't. We don't have clout.

That 100 feet is important. With the current development at Scott's a number of the restaurants no longer have a view of San Francisco.

I called the Port and they said, we have no enforcement abilities. I asked, didn't you know the construction was going on? They said, oh no, we're very busy.

We called BCDC and you sent out a committee. This was after Scott's came to you with three separate interviews in the fall talking about this very plan. Every single proposal was turned down.

Scott's built it anyway. No one here knew that he was doing it so I'm afraid that the enforcement wing of your very overloaded agenda has been buried. And in being buried you are cutting off public access to tidelands trust and our incredible waterfront. I hope there is something we can do.

I want the Pavilion to be what it was designed to be and what it was permitted to be, a public pavilion.

Seeing no additional speakers, Chair Wasserman moved on to Item 4.

4. **Approval of Minutes of the March 21, 2013 Meeting.** Chair Wasserman entertained a motion and a second to adopt the March 21, 2013 minutes.

MOTION: Commissioner Wagenknecht moved, seconded by Commissioner Chiu, to approve the March 21, 2013 Minutes. The motion carried by voice vote with Commissioners Randolph, Ziegler, Techel and Vierra abstaining.

5. **Report of the Chair.** Chair Wasserman reported on the following.

a. **Joint Policy Committee.** The Executive Committee of the Joint Policy Committee met last Friday to discuss SB 792, introduced by Senator DeSaulnier addressing regional government. The bill would require the JPC to publish various plans regarding how it would work in the future and how regional government and regional issues should be addressed in the future. The Metropolitan Transportation Commission's legislative committee has taken an "opposed" position to the bill and has proposed, instead, that the bill be recast to expand the Plan Bay Area effort to include the Air Board and BCDC in a formal way in drafting the upcoming Sustainable Communities Strategies and the Plan Bay Area so that they can formally address climate change impacts and priority air pollutants. The Executive Committee endorsed that approach and endorsed that this agency be housed in the Regional Headquarters Building. Staff will provide an analysis of the full bill for consideration at our next meeting.

With regard to legislation, increasingly BCDC is either involved directly with or affected by legislation at the state level. We believe it would be advantageous for us to have a standing legislative committee that can authorize legislative positions in a timely fashion. If you would like to participate on such a committee, please let me know at your earliest convenience.

b. **Next BCDC Meeting.** Our next regularly scheduled meeting will be held on May 2nd at the Ferry Building. We will expect to take up the following:

(1) If necessary, we will continue consideration of the draft strategic plan which is on our agenda today.

(2) We will consider taking a position on SB 792 as I indicated and on SB 122 (regarding Department of Boating and Waterway's voluntary turn in program for boats – the VTIP program as discussed during our last meeting), and perhaps one or two other items.

(3) We will participate in a briefing on Plan Bay Area and how it is being presented at public town hall meetings and the status of the EIR review. The briefing will be given by senior representatives of ABAG and MTC, including Ezra Rapport (Executive Director of ABAG) and possibly Steve Heminger (Executive Director of MTC).

Some of you have noticed that our agendas include a section for “new business” even though we are not allowed to discuss new business unless it has been agendized under the Brown Act and Bagley-Keene. As a result, we are going to re-title that section and change its position on the agenda so that I will start asking Commissioners as part of my report whether they have items which they wish to be taken up on a future agenda. This is so that we have a mechanism for doing that but doing it in a more legally-appropriate way. I would welcome any other suggestions on how we can do this more efficiently.

c. **Ex-Parte Communications.** It is now time for us to make declarations of ex-parte communications that we may have not previously reported. I did go out on a site visit to Scott's to see the structures that you have heard about earlier during the public comment period and did have a discussion about those with representatives of Scott's. I did communicate this to the Executive Director and we did have some discussion about this.

Chair Wasserman asked for any other ex-parte communications from Commissioners.

Commissioner Chiu commented: Due to the recent briefing we had on ex-parte communications my understanding is that if there is not a formal application in front of this body the ongoing conversations that I've had with the Warriors would not constitute ex-parte communications. I wanted to clarify that for the record.

Chair Wasserman moved on to Item 6.

6. **Report of the Executive Director.** Executive Director Goldzband stated: As we move forward this year, we all are experiencing some great change. I say this to emphasize how proud I am of our staff's work on the strategic plan that you will discuss today. As I'll say at the beginning of that discussion, it's not perfect. But, overall, the staff thinks that it's really good and our very experienced consultant would agree that its development has been both revelatory in some ways and relatively smooth.

a. **Budget and Staffing:** Again, no news is good news for this upcoming fiscal year. However, to keep us on our toes, the Natural Resources Agency has asked us to prepare concept papers for the FY15 budget by mid-May. We are starting on four, including two to cover possible moving costs in December, one for technology development overall, and one to develop staff resources concentrated on climate change. We certainly welcome your suggestions and we'll share our more developed thoughts with you when they are ripe for discussion.

Unlike the last couple of meetings, I have no surprises to tell you about. However, I am pleased to report that the Commissioner Rising Sea Level Working group met earlier this week and had a very fruitful discussion regarding the types of issues it wants to discuss. It also held an enlightening discussion with Brad McCrea and Erik Buehmann of our permitting group regarding the application of the Bay Plan Amendments to the future development of Pete's Harbor.

Before I finish, I do want to spend a couple of minutes on an issue that has received considerable attention lately – the proposal by the City and Port of San Francisco to enable the Oakland-based Golden State Warriors to move to Piers 30/32 on the Embarcadero. BCDC is participating in the various policy venues in three ways. First, BCDC staff submitted a lengthy list of issues and questions as part of the Port’s CEQA process, and we look forward to the public examination of those issues; you will remember that BCDC will not be able to consider an application for a permit for this project without there being an approved EIR to accompany the project’s application. Second, about four weeks ago, the Port asked BCDC and the State Lands Commission to provide comments on the draft of AB 1273 by Assembly Member Ting. AB 1273’s enactment would provide the Port with a legislative remedy to the complex public trust issues that currently affect the use of Piers 30/32. BCDC staff worked with Port staff to identify a wide variety of issues with the bill as originally drafted and provided numerous specific suggestions to the Port. I should add that the staff of the State Lands Commission echoed many of our staff’s concerns. The Port staff accepted a number of our staff’s suggestions and did not accept others. The Assembly Natural Resources Committee approved the legislation on Monday. There was both support for and opposition to the legislation voiced at the hearing. Committee members Nancy Skinner and Mark Stone voted against the bill which now moves to the Committee on Local Government. BCDC staff has told administrative, legislative and port staff that the Commission has not taken a position on the bill. That being said, BCDC staff believes that there remain some very difficult issues to be discussed as part of the legislative process. These include enumerating the public benefits emanating from a determination that the project is consistent with the public trust, the upper limit of the amount of parking to be allowed on the piers and the types and amount of retail services that would be allowed on the piers. The third major issue, and certainly as important, is that the Port appears to have accepted our staff’s rewritten provision in the bill that maintains BCDC’s ability to fully enforce the McAteer Petris Act and our regulations should a public trust determination for the piers be made by the State Legislature. Because this issue has garnered so much attention, we plan to schedule a presentation and briefing on the proposal and its myriad issues next month, most likely in combination with an update on the Port’s and BCDC’s waterfront planning process.

Finally, staff is beginning to discuss how we can best schedule and present a walking tour of the Embarcadero to provide context to these and other issues. In addition, we are hoping that you might have ideas about possible issues that we should bring before the Commission and other avenues for Commissioners to become more familiar with BCDC’s work and our collaborations.

I shall end by thanking you – each of you provided your FPPC Form 700 to Reggie Abad by its due date, April 2nd. Thank you very much for your willingness to do so in a timely manner!

Chair Wasserman asked for any questions pertaining to the Executive Report.

Commissioner Bates commented: I share concerns with this legislation along with many others (AB 1273). It is my understanding that this legislation would say that this body would not have an opportunity to review the project that is being considered. If this is correct then we can’t just sit back and not take a position. I think we need to actively oppose this legislation because it goes to the heart of this Commission. We were established to protect the Bay against inappropriate development. We were established to have the public have the right of way to be able to have access to the Bay.

I don’t know this project and I have stayed away from it. All I know is what I hear. Time is of the essence and I would like us to take a position on this legislation in opposition and be able to express this as the bill moves through the Legislature.

Commissioner Chiu commented: I wanted to thank BCDC staff and the Executive Director for your involvement on providing feedback. On behalf of the City and County of San Francisco, we are extremely committed to engaging in discussions and negotiations about this as it goes through the legislative process both with BCDC and State Lands to ensure that the project is addressing all of the issues that we care about.

The reason the legislative process in Sacramento is being undertaken because of questions that were raised by environmental groups and everyone wanted to have a very public and transparent vetting at the state level around issues of public trust. There is some confusion around the suggestion that BCDC's jurisdiction is being thwarted here and that is not the case.

Public trust issues will be dealt with in the legislation but we still have many approvals particularly when it comes to Bay fill, public access and other issues.

Commissioner McGrath stated: I've been on various sides of this in different venues. The State Lands Commission has transferred the public trust from property to property in the past. Clearly we can't take a position today without notice under the Brown Act.

I do think it's appropriate to have discussion of the legislation and to have the legislation before us. I also think it's appropriate to see what other types of approaches to the public trust have been taken. I think to look at it without some understanding of what else the Legislature has directed and what else State Lands has directed or allowed in terms of transferring would be inappropriate.

There are two issues. One is the trust issue which while we are a trustee, we are not the primary exerciser of the trust, that's the State Lands Commission.

We need to have a clear understanding of how the legislation applies to us as well as how the trust has been resolved in other cases so that we can understand what has actually been proposed.

Commissioner Pine added: I know very little about the bill. I do agree with the sentiment that this complete Commission should come up to speed on it very quickly.

It seems like this should be agendaized for next meeting so that we'll have a thorough understanding of the intent of the bill and how it impacts BCDC.

Vice Chair Halsted commented: I would be disinclined to support anything that would diminish our jurisdiction. I think the bill is changing as it's moving so we really don't know what it is. My instinct is that we should not give up our authority on this issue.

Commissioner Bates added: I wouldn't be so worried about this if there wasn't so much muscle behind this thing. We should understand that and I appreciate that we can't take a position today. We need to examine all the concerns. It's very important for us to have a very clear position that anytime this bill is amended to take away any of our jurisdiction we're going to actively oppose it.

Commissioner Chiu stated: If anyone is thinking that this bill would exempt the EIR process, that is not going to be the case.

Executive Director Goldzband commented: We will agendaize this ASAP. We will invite the Port to present in a short way its vision of the project and to have a discussion of the San Francisco Waterfront planning process. We really can't discuss one without the other.

We will have a discussion about the legislation and about the different tracks that this project would go through which would involve CEQA, involve the public trust and involve McAteer Petris.

Commissioner Pine stated: I think it's appropriate that we are getting the Legislative Committee set up because over the next couple of months BCDC will need to engage these issues.

Commissioner Chiu commented: I am in support of the legislation as it goes to the legislative process. I am very open to changes as the discussion proceeds. However, I will be in Israel if you take up this matter on May 2nd.

I want to thank BCDC and all the staff in helping the Exploratorium to become a reality. It will be one of the best science museums in the world.

Executive Director Goldzband added: Ms. Ming Yeung was at the opening of the new Bay exhibition yesterday and gave a rousing, positive affirmation of that exhibit.

7. Consideration of Administrative Matters. Chair Wasserman asked if there were any comments on Item 7, Administrative Matters. He received no comments on this item.

8. Commission Consideration of a Contract for Supervisory Training. Chair Wasserman announced that Item #8 was a contract to provide supervisory training for staff. Executive Director Goldzband will make the presentation.

Executive Director Goldzband presented the following: The staff recommends that the Commission authorize the Executive Director to enter into a contract with Cooperative Personnel Services which will not exceed \$9,500 dollars so that it can provide supervisorial training to employees with supervisorial responsibilities.

BCDC is committed to increasing the investment in our staff. All BCDC managers and supervisors must receive continuous training in the areas of the state's personnel management process and leadership competencies according to state law.

Staff recommends that the Commission authorize the E.D. to amend the contract as necessary including the amount or duration of the agreement so long as it doesn't involve substantial changes from the services provided.

We plan to start the training at the end of this month. We will do it in five separate days.

Chair Wasserman asked for any questions on the matter. He received no questions and asked for a motion on the item.

MOTION: Commissioner McGrath moved this item, seconded by Commissioner Vasquez. The motion passed by a voice vote with no abstentions or opposition.

Chair Wasserman moved on to Item 9.

9. Commission Consideration of a Contract to Digitize Files. Now we will take up item 9, consideration of a contract to digitize the files. Deputy Director Steve Goldbeck will make the presentation.

Deputy Director Goldbeck presented the following: The staff recommends that the Commission authorize the Executive Director to enter into a contract for \$60,000.00 with a state-approved vendor to begin digitizing BCDC permits and associated documents.

This will support disaster recovery and also start moving BCDC into the digital age.

We have these funds in a grant from NOAA to get us started on the digitization process.

The resulting PDF files can be used immediately by staff and also be used in whatever IT strategy and databases that BCDC develops for permits going forward.

As we get further funds we will try to bring all of BCDC's key files into the digital environment. This contract would only start the process.

The staff further recommends that the Commission authorize the Executive Director to one, amend the contract as necessary, including revising the amount or duration of the agreement so long as the amendment does not involve substantial change to the services provided.

And two, enter into similar contracts in the future, subject to availability of funds so long as the Commission has an ongoing need to digitize BCDC's permit and other files.

I'd be happy to answer any questions.

Chair Wasserman called for any questions from the Commission. A motion was made. The phrase, clarity, consistency and direction are apropos when discussing this matter. And these need to be applied a little bit better than it has for a full range of issues. Having BCDC records in digital form so that they are more accessible is a critical part of this.

MOTION: Commissioner Vasquez moved this item, seconded by Commissioner Randolph. The motion passed by a voice vote with no abstentions or opposition.

Chair Wasserman moved on to Item 10.

10. Public Hearing and Possible Vote on Application 1994-013.08 – Bay Ship and Yacht Company and Alameda Gateway Ltd. for the Bay Ship and Yacht Dry Dock Project, City and County of Alameda. Now we will take up item #10, which is a public hearing and possible vote on an application for a floating dry dock at Bay Ship and Yacht's Alameda ship repair facility. Ming Yeung will make the presentation.

Ms. Yeung made the following presentation: The project before you today is a proposal to construct and moor a new floating dry dock at Pier 5 in Alameda for the repair of large ships and vessels.

The dry dock would be moored within Bay Ship and Yacht's existing ship repair facility located just east of Alameda Point Ferry Terminal and adjacent to an existing dry dock of approximately the same size.

The new dry dock would result in approximately 32,770 square feet of new floating fill.

To mitigate for the new Bay fill the applicant proposes to contribute \$75,000.00 to CalRecycle for the removal of a derelict dock, vessels and marine debris within the Oakland Estuary.

In addition, the project would create approximately one and a half acres of new open space and a 970 foot long segment of the Bay Trail with landscaping seating and overlooks.

Representatives from Bay Ship and Yacht are here today to provide more information on the details of this project.

The staff believes the proposed project raises three issues. One, whether the project is consistent with the Commission's fill policies, including safety of fills, climate change and sea level rise. Two, whether the project is consistent with the Commission's public access and scenic views policies. And three, whether the project is consistent with policies on natural resources including water quality, fish and other aquatic organisms and wildlife.

I'd like to introduce representatives from Bay Ship and Yacht who will provide a more detailed description of the project.

Ms. Christine Boudreau addressed the Commission: I am with Boudreau and Associates. Bay Ship and Yacht is a dry dock and repair facility in Alameda across from the Port of Oakland.

There has been a demonstrated need for larger and wider vessels to be serviced. The current dry dock is unable to service these larger vessels.

A construction barge has been purchased from the federal government. This will be converted into a floating dry dock.

This dry dock will be located on Pier 5 west of the existing dry dock. There is enough capacity at this pier to accommodate this vessel and the operations of the dry dock.

This dock is 324 feet by 106 feet and it is 32,770 square feet of space and this would contribute to an impact of shading of substrate adjacent to Pier 5.

This particular dry dock comes with a retractable cover. It can be closed during all operations when you have a vessel on for maintenance or repairs and such. It is then deretracted when they do the offloading procedures.

To address the mitigation related to fill under shading we worked with CalRecycle as well as with Ming. This program is run by the state and they identify locations throughout the Bay that have debris, sunken vessels, derelict vessels, dilapidated docks et cetera.

We identified a mitigation site as close as possible to our site. We are contributing \$75,000.00 to remove the dock at Union Point Park. There are two vessels here that will also be removed.

The second mitigation that we will be doing is public access and I will turn that over to Matthew.

Mr. Matthew Gaber spoke: As part of the mitigation efforts Bay Ship and Yacht has agreed to construct over 900 lineal feet of Bay Trail immediately to the west of the existing site and the Ferry Terminal.

As part of the process we went through a deep analysis of the impacts of this site from climate change and sea level rise. The site would potentially be submerged in 2100 but we have mitigated for that.

One of the other major impacts will be the view sheds that are going to be impacted from the existing Bay Trail. The existing Bay Trail is immediately adjacent to the Bay Ship's facilities.

We went through the site and we did a view shed analysis to show what all the new views are going to be from this new Bay Trail.

We will provide new additional enhanced views out to the Bay along the Bay Trail.

The views on this project will very much resemble those of Point Isabel in character. It is intended to be covered with native grasses creating somewhat of a wild landscape within an urban context.

The Bay Trail will be constructed in a fashion that will enable it to withstand impacts of climate change in the future.

Bay Ship and Yacht was willing to take some of the elements that they have in their shipyard and bring them out and place them along the Bay Trail. So there will be an interpretive component of the Trail as well.

We have worked very closely with the city of Alameda in integrating this project with what they propose for their section of the Bay Trail.

Chair Wasserman requested: Would you take us into a little more detail for those levels of water as they go up based on the best reasonable projections that we have. I would like to see what your building relates to what we are projecting as risen sea level.

Mr. Gaber responded: What you see there in the red is how high it will be in 2050. The yellow is 2100. There is an exhaustive analysis of sea level rise as it pertains to this project. We were able to re-scope the site and take soil from the existing site and raise the Trail up so that as the sea level rises we have this buffer area.

We also pulled the Trail back to the edge of the property. It will be integrated with the existing dog park in place currently. It's going to feel seamless.

Chair Wasserman inquired: What is the projected life of the new floating dry dock?

Mr. Gaber answered: It is to 2050.

Vice Chair Halsted commented: I'm not familiar enough with this part of Alameda to know how many people will use this Trail. Can you give me some sense of how people get to it and how many might use it or how it will change in usage over time?

Mr. Gaber responded: The impression I get is that it is used. There are also a lot of active uses at the existing property right next to Bay Ship and Yacht. This is a dynamic area of Alameda and there are a lot of new residents moving in.

Vice Chair Halsted continued: I wonder if over time we might develop some standards for evaluating what the actual numbers of people who visit the area might be.

Chair Wasserman responded: There is at least one project that will come before us which will prompt that discussion. As we move forward, building in some monitoring sense of usage makes a whole lot of sense.

Public use here would need to be measured by a very different standard than use at, say, the Ferry Plaza.

Commissioner McGrath commented: I thought the staff report and recommendation on this one were very clear. I used to be amazed to see people at King Harbor come down and watch the fish come in, the marine facilities and people are fascinated by the active waterfront.

If you make it part of the fabric it actually gets used. I thought the staff did a particularly good job in the Design Review Board of locating visual elements.

The current dry dock is a substantial structure and it also provides the kind of control of dust in ship repairing that could hardly be better.

It also provides an element of visual attraction. People will come down and look to see what's going on.

Commissioner Scharff commented: I'm also not that familiar with this area. How much further does the Trail need to go around Alameda?

Mr. Gaber responded: The vision is that it will continue around Alameda Point and wraps all the way around the entirety and ties into existing trails further south than Alameda.

We spent a fair amount of time coordinating that location with sea level rise, with the City and their engineers so that could be in the future a very seamlessly integrated whole. This will be part of a major trail in the future. We are just doing the first leg.

Commissioner Scharff continued: When we look at these issues on the public benefits, how do we decide how much of a public benefit there should be? How do we decide that they shouldn't have done three times the length of this Bay Trail?

Ms. Yeung answered: We typically look at previous projects and what we've done in other projects. And we take a look at what the impacts of the project would be.

In this situation we didn't anticipate a lot of new folks coming down to the waterfront to use the Trail so we worked out an area that we thought was appropriate that was consistent with the project.

Chair Wasserman continued the dialogue: I also think one of the limits, generally speaking that has some application here, is the ownership of the land.

We have no public speakers on this matter. We are prepared to close the public hearing. I need a motion for that.

MOTION: Commissioner Pine moved to close the public hearing on this item, seconded by Vice Chair Halsted. The hearing was closed with no objections.

Chair Wasserman asked for any further comments from Commissioners.

Ms. Yeung read the staff recommendation: The staff recommends that the Commission approve the major permit amendment for the dry dock project. The staff recommendation includes a number of conditions designed to assure that the project is consistent with the Commission's Bay Plan, including requiring fill mitigation and the construction of a new Bay Trail segment to provide maximum feasible public access.

As conditioned, the staff believes that the project is consistent with the Commission's law and Bay Plan policies and recommends approval of the staff recommendation.

Commissioner McGrath commented: There is not mitigation in kind in this case. I would like to make sure that it's clear for the record that there is no loss of surface; there is some shading of surface.

There is substantial removal of fill which does, now, interfere. I think mitigation is sufficient and I would like to add that clarification.

Chair Wasserman agreed: I think that's important for the record in terms of consistency looking at mitigation issues in the future.

MOTION: Commissioner Wagenknecht moved this item, seconded by Commissioner Moy. A roll call vote was taken and resulted in:

VOTE: The motion carried with a roll call vote of 17-0-0 with Commissioners Bates, Chiu, Scharff, Gorin, Jordan Hallinan, McGrath, Moy, Pine, Randolph, McElhinney, Sears, Vasquez, Techel, Vierra, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting "YES", no "NO" votes and no abstentions.

11. Public Hearing and Possible Vote on Strategic Plan. Item #11 is our consideration of approval of our Strategic Plan. Executive Director Goldzband will make the presentation.

Executive Director Goldzband presented the following: I want to make four comments. The first is that the staff and the Commissioner working group has done an absolutely terrific job. The staff really appreciated the public discussion.

Second, having a Strategic Plan allows BCDC not simply to respond but to help shape its own agenda; to set priorities to address the big issues and do so in a way that staff and commissioners can feel very, very comfortable about.

Third, adoption of the Strategic Plan will enable BCDC to start making its public case. That is, be able to demonstrate to the public what it is exactly that BCDC needs and wants to do and how it can best do it.

And then finally, I want to say that when we started this process we were able to sign up in a contract a woman named Gina Bartlett as our facilitator.

The Plan is simply three goals and ultimately 13 objectives. And I think it is incredibly important for you all to make sure that you are familiar with these and we want to be able to help you use them as you explain to your constituents and you explain to your friends and your neighbors what it is that BCDC does.

Vice Chair Halsted commented: I am pleased with the breadth but particularly with the succinctness and the clarity of the goals and objectives and the process by which we came here so I appreciate everyone's effort to get to that point.

Commissioner Sears stated: It was a real privilege for me as a commissioner to be involved in this process. But really I think that the process was very valuable for all of us on thinking things through and getting to know each other better and I think we have come up with a good work product here.

Commissioner Ziegler added: I would just agree with that. It really was great to be involved with it. I think it's a great product.

Chair Wasserman opined: I have over my years in public and private life been involved in a good number of strategic plans. I think both in terms of process and outcome, if this is not the best, it is very close to it that I have seen.

I very much appreciated the engaged and active participation of staff.

I think it is very important to note that while the first seven pages are very important to set the context, this is a two page Strategic Plan, which is pretty impressive. It is very important in terms of the follow-up, the next stage for the performance measures. We want to use this as a consistent measuring stick and a little bit of a goad, frankly, both to the Commission and to staff.

There may be a little bit of changing. I just want to alert you that we are going to dress it up graphically, recognizing that we have a number of different audiences for the Strategic Plan.

Mr. John Coleman spoke: First of all I'd like to applaud staff and the Commissioners who were involved in the strategic planning process. I really appreciate the fact that staff and some members of the Commission reached out to the Bay Planning Commission as well as Save the Bay and other organizations which have strong interests here in the Bay to try and get our input so we could have broad views represented in your Strategic Plan.

I would just ask when you are looking at your Challenges and Opportunities section to comment that when making decisions that you make that you evaluate on an equal basis to the greatest extent possible both the economic and environmental impacts when making those decisions and reflect that as part of your policy statement in your Strategic Plan, to put on an equal footing both the environmental and economic impacts of your decision-making in that process.

One thing I'd like perhaps a clarification or a comment. Under your Goals and Objectives under Goal 1, Section 3, you talk about "minimizing" Bay fill given sea level rise. And I know that's why BCDC was formed and that's a lot of what you've done, a phenomenal job in that area. But to make a broad statement I think you are not taking into account that at times fill and reuse of materials from the Bay actually is a benefit.

Mr. Richard Sinkoff addressed the Commission: I am the Director of Environmental Programs and Planning at the Port of Oakland. I really do want to commend your Executive Director, Larry Goldzband, and the entire Commission and the working group on your process.

The concept of productive use of the Bay goes directly to the heart of the challenge before BCDC and also the Port of Oakland.

I also very much appreciated the reference to the Oakland Sea Port and also to two of the international airports.

Finally, I wanted to talk a little bit about the Goals and Objectives. Specifically, you do raise in your Challenges this concept of more public access and then you say "More and diverse public access" and it's reflected then in the Goals statements about expanding and activating public access.

So I am very much looking forward to seeing how the staff and the Commission unpack those concepts.

Also on the concept of innovative partnerships. I want to mention for the Commission and also staff that the Port of Oakland is also engaging in strategic planning.

And then finally, where you talk about a high performing workplace and technology. I think one of the areas to definitely look into is the ways in which technology will help the regulated community in our permitting process to access those permits.

But long-range planning really provides the regulated community, the stakeholders, with an understanding of how you are looking at these issues. They are very, very valuable tools for us to understand where you are going, what your policy priorities are.

Chair Wasserman continued: I think there are no other public speakers. I would entertain a motion to close the public hearing.

MOTION: Vice Chair Halsted moved to close the public hearing, seconded by Commissioner Chiu. The public hearing was closed.

Commissioner McGrath commented: I appreciate John Coleman's comments. We certainly tried to provide a context to allow that and I think it's done under Goal 1 with Objective 1 and 3.

First number 3, in using the term "minimize" it recognizes that some of our public access ways are going to be flooded with sea level rise and we may have no choice but to fill the Bay. So that was the reason for the choice of "minimize." It doesn't mean "prevent."

Policy 1 is in the context of the larger efforts that are going on in the sediment management effort and the various Bay Plan amendments, which I think do recognize that efforts such as living shorelines might actually involve Bay fill.

If we are going to fill the Bay to adapt to risk we do want to make sure that it enhances values and is the minimum necessary to accomplish the purpose.

Commissioner Chiu added: I have a global comment. First of all I want to add my thanks to staff and everyone who took part in this.

One of the comments that I had made and others have made was about how to make sure that the goals and objectives are laid out in a way that feel measurable so that we can actually track progress to them over time and I do think that the new language really does incorporate a lot of that.

I'm assuming that every year we can go back to these plans and look to see progress to goals and progress to objectives and I would ask staff to think about ways to really quantify what that means.

Executive Director Goldzband commented: We have actually already started working on performance measures. Staff has done a great deal of work in starting on the action planning which support the performance measures and which go to individual plans and the ways the individuals actually work at BCDC.

What I will end up doing over the next couple of months is developing what we think will be a pretty darn good dashboard that we can come at you at the Commission with, say every quarter, and say, here's generally how we are advancing on the plan.

Commissioner Pine added: A couple of times we talked about activating public access and I wasn't quite sure what that meant and how we would do that.

Chair Wasserman responded: There are a couple of reasons why it's there. One is that my sense is that there are times in the past when the concept of maximum feasible public access has been interpreted, with or without intent, to mean the most space the public can get to with minimal obstructions without enough attention, both physically and in terms of activities, to bring people to those places, coming very much to the question of, how much is that trail used. And my hope is that as we move forward, both in new permits and amending permits, we are able as both a Commission and the staff level, to encourage the active use.

Commissioner Pine continued: I thought it was helpful also that it was pointed out that BCDC has a lot of legal duties.

If you were going to put a percentage on how much of our effort these days is discretionary versus non-discretionary could you do that?

Executive Director Goldzband answered: I would argue that over the past three years that with regard to climate change it has moved from a relatively discretionary work effort to something which now is far less discretionary and far more imperative.

I would hesitate to say what percentage of the work is mandatory or statutory versus what is discretionary. But what I think this is trying to do is to flush out what it is we do and what is most important of what we do. So that when new stuff comes at us we can look at it through this filter and say, does this rise to the level of what we need to do?

As the Chairman pointed out and we will see this in two weeks with SB 792 is that BCDC is essentially required to work on rising sea level.

Chair Wasserman added: It's also evolving. Clearly as, you know, with the permit we talked about, we need to address rising sea level as part of evaluating that permit, that's not discretionary.

There are other activities that we have been and will continue to be involved with at a bigger policy level, which are very much discretionary and very much critical and essential.

Commissioner Pine stated: I think it might be helpful when we talk about challenges and opportunities to talk about our success with the largest marsh restoration project in the nation.

I also kind of stumbled over the words "minimize Bay fill." You might want to use the same words we used in our charter document, which are, "prevent unnecessary Bay fill."

Perhaps in Goal 2 where we say "Lead innovative partnerships to meet the Bay's ongoing challenges." Maybe we just put right there in the header, "particularly sea level rise."

Commissioner Wagenknecht stated: I second that motion. We will take note of those and discuss it as we produce the final. It would be my hope that we can end up today with a vote to approve this, recognizing that when we look at the performance standards that alone may cause us to go back and make some changes.

Commissioner McElhinney commented: A great thank you to the working group of commissioners, our Chair and our Executive Director and for those able to participate in the January public workshop. That was terrific work overall by our staff and the facilitator.

Goal 1 really sets the vision, purpose and results clearly.

Goal 3 empowers the team, however resourceful we can be, for BCDC staff has really brought us a lot of success and moving forward that is going to be excellent.

And Goal 2, local, regional, statewide, national efforts depend on these innovative partnerships.

Commissioner McGrath commented: Were we establishing legislative language I would absolutely agree that to use "minimize" rather than "prevent unnecessary" would create confusion and the courts would eventually say, that's a different standard. But I don't think we are doing that here.

And when I think of sea level rise I tend to think of Strawberry Point out in Marin County where you have a subdivision on dredge material right next to the Bay with the Bay Trail there. If you wanted to literally prevent unnecessary Bay fill you might say that the only solution possible is to put the dike, you know, put a higher revetment.

You might have to put it outside of the Bay. But if a case could be made that you would have a better Bay if you created a soft, living shoreline with some Bay fill that entailed marsh, I don't want to prevent that. I don't want to allow it. I want to allow innovation and provide a context for it if we end up with a better Bay.

I think we are not creating legislative language, we are creating a policy framework to try to encourage innovation.

Commissioner Pine agreed: I agree 100 percent with the point that there are times where a certain amount of Bay fill is appropriate.

Commissioner Feldstein commented: I also want to thank the staff and the commissioners who drafted this, I am very impressed. I think it's a beautiful piece of work.

My one concern in the first section is that all of the language is future and there is nothing about maintaining the good work that has been done to date.

In Goal 2, number 2, "Define and build strong relationships." We have some strong relationships that we probably want to continue to nurture. It's important to look forward but I also think it is equally important to have as part of a Strategic Plan an acknowledgement of what you want to carry forward with you. And that I don't see here.

Commissioner Scharff stated: I just wanted to get back to the "Minimize the Bay fill." So the way I understand it is that our legislative charge is to prevent unnecessary Bay fill and that's our legislative charge. So I wasn't even sure it was necessary to say "minimize Bay fill."

But it seemed to me that maybe we should say "encourage innovation given rising sea level" as opposed to "minimize Bay fill" because that's really what you're saying, let's encourage innovation. And that may be part of using Bay fill in that, to encourage innovation.

Deputy Attorney General Tiedemann commented: I want to caution that you do not want to adopt a Strategic Plan that becomes an underground regulation. I have not been involved in the strategic planning process but a strategic plan cannot become a standard for permitting by BCDC. To the extent anything in the Strategic Plan is inconsistent with the underlying legislation it cannot be enforced. To the extent it is intended to be a standard of broad applicability for permits it cannot be enforced being adopted as a Strategic Plan.

Chair Wasserman continued: Let me talk a little bit about what I think why this phrasing was there. It's not to say we shouldn't change it at all. A part of it came from the concept that our perception that given rising sea level, changing sediment supply and changing public needs -- which includes economic needs. It's not limited to that but it includes that. We're going to have to do some Bay fill.

And the intent was almost, minimize Bay fill given that rising sea level, changing sediment supply and changing public needs are likely to require additional Bay fill.

It came up in a range of different ways. Most forcibly in recognizing that figuring out how to adapt to rising sea level means that in some places we are going to do some things to fill. That's the correct solution both under our mission and scientifically. So it was really getting at that.

That sort of concept, give us a little leeway to play with that and I think we can do that. It is absolutely not the intention to in any direct or indirect way create regulation, that's not what this is about.

On the issue of recognizing that we have been and are doing some very good things, I think that's a very good observation, a very important one. And my suggestion to that is that we think about incorporating that in some way. It may be in part of the preface as opposed to the actual goals, although I also appreciate your point that part of the goals should be maintaining what's good.

We had a fair amount of debate about Goal 3, Objective 2. We were very clear internally that we in no way were saying we don't have excellent staff, we think we do, and we think the results of things we have seen today and in the past all demonstrate that.

Part of me would like to adopt this because I think we've got some momentum going and I want to do that. And part of me says, we've got a couple of issues that are worth clarifying so we're absolutely certain. I'd just as soon have more people at the table when we have this motion.

All those in favor of closing the public hearing say aye. The public hearing on this item was closed by a voice vote.

Commissioner McGrath commented: I would like to move that we adopt this with a single amendment that to Goal 1, Objective 3, "Minimize Bay fill given rising sea level, changing sediment supply, and changing needs." Understanding that some Bay fill will be needed. Because I think that was a common understanding.

And I think given that our intent is not to make this a shadow regulation and given that we already encouraged innovation by the language "pioneer policies," this provides guidance for our efforts in our regulatory efforts and any future Bay Plan amendments.

I would add the phrase, "Understanding that some Bay fill will be needed to deal with sea level rise." I think that just simply makes explicit what was implicit in our discussion.

Commissioner Ziegler asked: Can I make a friendly amendment?

I am just wondering about if it's more palatable to switch "will." Put "may" as opposed to "will."

Commissioner McGrath replied: I'm certainly willing to accept a friendly amendment from you or the Chair.

Chair Wasserman added: Let me try one if I may. "Minimize bay fill, given that rising sea level, changing sediment supply and changing public needs may require additional Bay fill."

Commissioner McGrath stated: I prefer your language. So it's a friendly amendment now incorporated into the motion.

Vice Chair Halsted added: A second with a comment. I'm wondering if we might want to adopt it subject to further input as we review it with our final objectives and goals.

Commissioner Vasquez agreed: That was going to be my comment also. Could we not adopt it in concept?

Commissioner Pine commented: I think I'm leaning towards the idea that I think Chair Wasserman is going towards, which is, why don't we take a little time and give some thought to that. So if we don't approve it today we'd have to, we'd have to adopt the specific language in this section. And maybe the language that you just read is fine.

And then there would also be some understanding that there would be other minor changes made in the discretion of the Chair or whatever because there are -- you recognize the need for those. So it wouldn't be quite as simple as the proposal on the table. And then it gets to the point, what's the hurry? I mean, why don't we just bring it back?

Chair Wasserman commented: So do I take that as either an offer of a friendly amendment or a substitute motion to adopt it in concept to bring it back to the Commission with final language based on the comments that have been made?

Commissioner Pine replied: Yes, I'd submit that as a substitute.

Commissioner McGrath added: I'll withdraw mine.

Chair Wasserman acknowledged: The first motion is withdrawn, the second is a new motion.

MOTION: Commissioner Pine moved that the Plan be adopted in concept, seconded by Commissioner Vasquez.

The motion passed by a voice vote with no abstentions or objections.

Chair Wasserman added that a final vote reflecting today's discussion would be scheduled.

12. **New Business.** No new business was discussed.

13. **Old Business.** No old business was discussed.

14. **Adjournment.** Upon motion by Vice Chair Halsted seconded by Commissioner Techel, the meeting adjourned at 3:02 p.m.