

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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May 10, 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 May 2, 2013 Commission Meeting**

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Ferry Building, Port of San Francisco Board Room, Second Floor, San Francisco, California at 1:08 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Apodaca, Bates, Chan (represented by Alternate Gilmore), Gibbs, Gorin, Jordan Hallinan, Hicks (represented by Alternate Monarres), McGrath, Nelson, Pemberton, Pine, Randolph, Sartipi (represented by Alternate McElhinney), Sears, Techel, Wagenknecht and Ziegler. Assembly representative Feldstein was represented by Nadia Conrad-Huayta.

Chair Wasserman announced that a quorum was present.

Not present were: City and County of San Francisco (Chiu), Santa Clara County (Cortese), Department of Finance (Finn), Contra Costa County (Gioia), Governors Appointee (Moy), Solano County (Spring) and California Natural Resources Agency (Vierra).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda. Comments would be restricted to three minutes per speaker.

Chair Wasserman acknowledged three speakers who had signed up for public comment.

The first speaker was Mr. Keith Miller: I am the president of California Canoe and Kayak in Jack London Square. At the March 23rd meeting in Oakland I informed the Commissioners about the knowing and intentional violations of BCDC Permit Number 1985(B) by Scott's Jack London Seafood Incorporated now known as Food Specialists Inc.

At that time I asked BCDC to consider executing a cease and desist order against Scott's and permit co-holder, the Port of Oakland to put an end to the ongoing illegal activity in the construction and operation of the public Pavilion.

I'm back today to report that violations continue blatantly and unabated. When some members of the public tried to use the shaded space in front of the Pavilion they were confronted by a permit violation, no tables and chairs to enjoy the space.

This week the public was able to enjoy the Pavilion on Monday only; an illegal tent was set up in the common area. This picture shows how access to the Bay Trail has been constricted.



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**BCDC MINUTES**  
**May 2, 2013**

An illegal tent was set up first thing Tuesday morning restricting access to the Bay Trail and encroaching on the common area. The walls were closed and stayed closed all day.

An event was held yesterday, Tuesday, and this event ended at approximately 2:00 p.m. The illegal tent was removed but the walls remained denying public access.

When BCDC staff did a site visit in March it was mentioned by Steve Fagalde that one person could roll the walls back in 20 minutes. If this is so, why are they up today? They are blocking the view corridors and denying access to the public yet another day.

This is so because of money. It costs Scott's payroll to set up the pavilion and there's another event tomorrow morning.

Permit 1985(B) allows Scott's 20 percent usage, yet in the city of Oakland basic applications for development review and zoning application for the Pavilion shown here dated March 25th. Scott's consultant states, "It is for use as a public pavilion in the common area for 25 percent use as a private event space when movable walls are closed. It is a public pavilion and used for private about one-third of the time currently". Otherwise it is open to the public.

If there's ever a time to issue a cease and desist order this is it. Another 35 days to fix the violations will be another 35 days of what all of us over there have lived with for 10 years, a clear abuse of permit and violation of the public trust. Please do not let another day go by without taking action. Thank you.

Mr. Rick Hackett commented: I own a restaurant in Jack London Square called Bocanova. I am here to support Keith and Tammy in their attempt to resolve the permit problem and the view corridor.

I have a beautiful patio on the estuary and when the walls are up and the Pavilion is in use, it totally eliminates the view from my patio out to the skyline of San Francisco.

Consequently, when it stays up which is approximately 50 percent of the time it's an eyesore for patrons that are sitting on my patio.

Executive Director Goldzband added: Based on more than one site visit by a number of BCDC employees, after discussions with Scott's management and based upon information provided by California Canoe Kayak and others BCDC will initiate an enforcement action against Scott's within the next three business days.

Chair Wasserman moved on to Item #4, Approval of the Minutes of April 18, 2013.

4. **Approval of Minutes of the April 18, 2013 Meeting.** Chair Wasserman entertained a motion and a second to adopt the minutes of April 18, 2013.

**MOTION:** Vice Chair Halsted moved, seconded by Commissioner Wagenknecht, to approve the April 18, 2013 Minutes. The motion carried by voice vote with Commissioners Gilmore, Apodaca, Nelson and Monarres abstaining.

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

a. **New Business.** As I mentioned at the last meeting, we have made a slight change to the Agenda. We no longer ask for new business since we really don't have the right to discuss it at the end. Instead I am asking now if there are any items that Commissioners wish us to put on for future agenda items. You are not precluded in any way from making suggestions to me or Larry.

b. **Joint Policy Committee.** Five members of BCDC sit on the Joint Policy Committee created by the state legislature consisting of representatives from MTC, ABAG and the Air Quality District. Currently, those five members are Commissioners Gioia, Sears, Wagenknecht, Gibbs and myself.

The JPC's internal working rules require that from BCDC must include three elected members. They have also changed the requirements so that the Chair and Vice Chair should be members of JPC. Therefore, I am appointing Vice Chair Halsted in place of Commissioner Gibbs. If there are no objections from the Commission I will proceed with this change. Seeing no objections, thank you very much. Both Vice Chair Halsted and Chairman Wasserman acknowledged Commissioner Gibbs contributions and thanked him for his efforts. I do want to note that representatives of the JPC met with Senator DeSaulnier over his bill last week and we had a very productive discussion. He is considering some amendments that we suggested to his bill on regional government, SB792. We think he will proceed with this and one of the things that they will do is give BCDC and the Air District a formal role in the preparation of the next *Plan Bay Area* which we're going to hear about later this afternoon.

c. **Legislative Committee.** Speaking of committees, I had asked at our last meeting for Commissioners who might be willing to serve on a Legislative Committee. I thank Commissioner Randolph for his volunteering to serve but I haven't had any others. Please think about it and this is going to be a fairly active legislative session in terms of issues that affect BCDC. Commissioner McGrath has volunteered, thank you.

d. **Next BCDC Meeting.** Our next regularly scheduled meeting will be held on May 16th. Normally, we would hold the meeting at the MetroCenter. It may or may not be at the MetroCenter. We expect a larger crowd for that event and we are exploring whether or not we can do it anywhere else in Oakland.

(1) At that meeting we expect to take up the following matters. We will continue our consideration of the Commission's draft strategic plan for 2013-2016, which we adopted in concept at our April 18th meeting.

(2) We will have a public hearing and possible vote on pending legislation, AB 1273, regarding the proposed project on Piers 30 and 32 that we will be hearing about today. There is no vote of this Commission on that item today.

(3) If time permits, at the next meeting, we will have a briefing on the Regional Sea Level Rise Strategy that will be prepared in conjunction with the Joint Policy Committee and be incorporated in future versions of *Plan Bay Area*.

(4) Also, if time permits, we will consider adopting the Commission's Annual Report that we got in a previous mailing but were not able to focus on. We are going to electronically distribute that to you and we would ask you to take a hard look at that and we will note any comments or edits that you might have. We will have a formal discussion of it in public.

e. **Ex-Parte Communications.** This brings me to the ex-parte communications part of our agenda. If anybody has not previously reported an ex-parte communication that they have had since the last meeting that they've not otherwise reported, they can do so at the present time.

Vice Chair Halsted reported: I have had a number of communications with the Port of Oakland and Oakland about the Pier 30/32 Project.

Commissioner Pemberton reported: I have had various discussions in regard to AB 1273 as well.

Commissioner Gilmore reported: I've had an email from opponent of the Piers 30/32.

Commissioner Apodaca reported: I have had communications regarding Piers 30/32.

Commissioner Bates reported: I have had discussion about the legislation not about the project affecting Piers 30 and 32.

Commissioner McGrath reported: I also was involved in a meeting with the staff and the Port primarily on the legislation but to some degree on the proposal for Piers 30 and 32.

Commissioner Hallinan Jordan reported: I just received an email on the project.

Chair Wasserman reported: I have exchanged emails and expect to meet with Mr. Miller on the subject of Scott's. Chair Wasserman moved on to Item 6, the Executive Director's Report.

**6. Report of the Executive Director.** Executive Director Goldzband reported:

We are delighted to welcome senior representatives of ABAG and MTC to discuss the current landscape surrounding *Plan Bay Area*. I had the very fulfilling experience of observing Contra Costa County's Town Hall meeting on *Plan Bay Area* on Monday night of last week. About 150 people attended, about half spoke, and over 85 percent of those individuals spoke in opposition either to the plan itself or to the process through which the plan was developed. The courtesy and the attention paid to those speakers by the public officials on the dais gave me, once again, even more appreciation for the work that many of our Commissioners carry out daily. We look forward to the presentation and thoughts from our Commissioners.

With regard to budget, again, no news is good news. One staffing note – we have hired a second analyst to backfill for Ming Yeung while she is working in the legal section. Alex Hirsig received his undergraduate degree in architecture from Cal Poly SLO and holds a Master of Technology and Design from Harvard's Graduate School of Design. Alex has worked as an architect in New York and Boston for a dozen years and has volunteered for non-profit organizations, including one in Sausalito, which instructs youth in traditional wooden boat building, history and environmental stewardship of local waters. We are fortunate to have Alex on the staff for the next few months during his limited-term appointment. You have in your packet an advertisement for a book called, "Sweet and Salt" which was written by a couple of folks who came to talk to BCDC staff this week. The book is about how the Dutch have controlled the water in their country. It's a marvelous work and I commend you all to take a look at it.

Chair Wasserman asked for any questions of the Executive Director by the Commission. He received no questions and moved to Item 7 on the agenda.

**7. Consideration of Administrative Matters.** Chair Wasserman asked if any Commissioners had any questions on administrative matters. He received no response so he moved on to Item 8.

**8. Commission Briefing on *Plan Bay Area*.** Chair Wasserman announced that Item 8 was a briefing by Ann Flemer, Deputy Executive Director for Policy of the Metropolitan Transportation Commission, and Ezra Rapport, Executive Director of the Association of Bay Area Governments (ABAG), on *Plan Bay Area*. This is very important and it is a new way of doing business, governing and planning. It is not taking over local planning control from local agencies. This is a very important level of coordination and it is important to hear about important changes with some creative repetition.

Ezra Rapport presented the following: I am the Executive Director of ABAG. I wanted to discuss some of our important principles in terms of what we are trying to accomplish with the Plan.

The first one is that we've discussed integrating land use and transportation for quite some time. We've never actually achieved a synthesis of land use plans that have actually been incorporated by cities who have the land use authority into the Transportation Plan. This is a really big step for the Bay Area in that all of the land use planning that you see here has actually been nominated and vetted and approved by local government.

The second is that we use greenhouse gas emissions as a metric to see how efficient the Plan is with respect to how much driving it requires. It is not intended to be a really serious effort at climate change mitigation. We all know that that is a global problem and requires conversion of our use of energy and transport globally. What we can accomplish here in the Bay Area is principally a metric. This will be a metric used to measure how efficient our plan is compared to other regional plans.

The third is housing for all the population. If we grow our economy and we have a housing need as a result, we'll supply the housing necessary to allow that to occur. There is a significant time gap between when jobs grow and the housing market can respond. The purpose of this plan is to advance-plan a great number of units so that the market is much more ready to react when the demand is there. We have demand now and we are behind the curve.

Number four is the gross misinformation that this is a top/down plan. This plan embodies local control because all of the growth areas were nominated by cities who are the land use control authority. The legislation [SB 375] does not cede any land use control to the regional agencies.

Instead of working with generalities and areas, we're working with specific neighborhoods. The incentive for local government to do this is that MTC has creatively treated this as a transportation demand measure and has used its funding to help cities do appropriate advance planning.

Planning neighborhoods, to us, is the solution, not project-by-project approvals. We think this is an efficient investment for the future in the sense that we have a tremendous commitment to infrastructure that's already been built. It's not operating at full capacity. In the main, we think we can squeeze a lot more growth with existing infrastructure, rather than sprawling or spreading and trying to build new infrastructure.

Our region's economic competitiveness looks good when you look at our industries. Our existing industries are constrained by an existing wage premium that occurs in the Bay area as a result of our housing costs. If we don't get a bigger supply of housing in locations that are proximate to these important employment centers, we will maintain the wage premium or add to it, and that just means that these companies won't expand in the Bay area or they may go someplace else.

The next major point that we tried to get through with this is our desire to preserve the beauty and the natural environment of the Bay area. It's one of the key reasons people like coming here. Almost all of the cities in the Bay area have decided to impose urban limit lines so that we don't continue building subdivisions.

One of the reasons they think it's a bad idea is because our highway capacity is at saturation. If we add more auto-dependent land use, we're going to fill those highways faster and their speeds will slow down and we'll get less throughput and the place will become much more gridlocked and less desirable to live in.

From our perspective, by using the existing urban footprint and developing infill neighborhood planning, we will preserve our open space because there will less pressure to break those urban limit lines.

Finally, we want to provide better choices than we have today for our children knowing that not everyone will be able to afford a single-family house. Some people want to live in nice urban neighborhoods with apartments and flats and we have very few of those. We see a demand for these types of units. It's something that we think we can fulfill with this plan.

We tried to measure how the Plan was succeeding by virtue of adoptive performance measurements. We tried out many different scenarios before we chose the preferred scenario. Each one of the scenarios that we approached was vetted with local government.

We've invested a huge amount of staff time throughout the Bay area in this plan. This is actually a very expensive plan that took many, many years to develop. It has resulted in a broad consensus of local government.

We first laid out the land use plan called the, Jobs-Housing Connection in May 2012 followed closely by MTC's Transportation and Investment Strategy. The final document that is up for final comment now synthesizes these two reports into one. They were done together and we were able to have frequent meetings about what each one of us was doing.

We are also responsible for looking at the growth trends in the Bay area. These growth trends follow an assumption that the U.S. economy by 2018 will become a full-employment economy meaning unemployment at around five percent. In that event, the Bay area should compete well from the national trend. We would then be eligible for about 1.1 million new jobs. This would result in enough demand to build 660,000 new housing units and would yield an additional population of about 2.1 million.

Our analysis also shows that this new employment is likely to be related to the knowledge and service industries most of which are demonstrating demand to return to the central city, especially social media firms, and locate in vertical space. This is good for our central-city motif because the firms want a closer connection to what people are actually doing so they can market their products better.

These industries are looking for how they connect with transit. This is because the projections are that our highway system is going to get slower and that transit is going to become a preferable way of getting to work because it will have a major time advantage if we have the housing located near transit.

We are going to become more diverse as a region. The really important demographic is the aging population. Our existing proportion of population over 65 is going to increase by more than twice. This means we will have a lot more seniors in the Bay Area than we have today. We would like to find ways to house the seniors in places where they're not dependent on automobiles and that also contributes to what the cities view as a potential demographic opportunity.

Housing trends have changed. Single-family homes used to be two-thirds of all construction. Now the market is starting to flip towards 50/50. And in the last few years we see more multi-family construction than single-family. This is a product primarily of the fact that cities are implementing their priority development areas (PDAs). Almost all the multi-family housing is occurring in existing PDAs.

We have 170 PDAs. Not all of these PDAs are planned, about 100 are planned. These have some form of entitlement for people who want to build in them. All the PDAs could use some planning updates.

Each one of these PDAs is vetted by ABAG. They have to be approved by ABAG before they get put on the list. This way we maintain some control to make sure that there is consideration of certain equity principles, affordable housing. We call this complete community status. Our goal is to not just build numbers but to build complete neighborhoods that are desirable to live in and have amenities.

This yields opportunities for potential acquisition of open space. ABAG did not nominate the conservation areas. They were nominated either by a city or by a stakeholder like a land trust. We have taken a lot of agricultural land in Santa Clara and Alameda County and urbanized it. We feel this needs to stop and we can accommodate the entire next 30 years of growth within the existing urban footprint.

If the Plan were to work the way we have it laid out, 80 percent of the new units would be in the PDAs and 60 percent of the new jobs would also be within the PDAs.

Ms. Anne Flemer presented the following: I will be describing what is going on with the investments in transportation and in land use. I will then wrap up a little bit on the connection to the BCDC's role moving forward with the next plan and what we've dealt with in terms of adaptation planning.

First and foremost the Plan needs to account for 100 percent of the transportation funding available to the region for the next 28 years, through the year 2040. Over two-thirds of the funding is generated locally. A lot of the decision making is being made right here as to the best use of these monies.

The other important point is that 80 percent of the total funding, which is a \$289 billion budget, is already committed to all the investments that are needed to maintain the current system, projects that are already underway.

This leaves about \$57 billion over that 28-year period to spend for discretionary programs to implement the objectives as has been outlined here today.

Over 90 percent of the budget is to maintain the existing system. When we consider that this is such a large portion of the investment, it is also very much geared to the developed land in the Bay Area. One of the most important things the Plan does is to make sure we have a good operating system and make sure that we will be having the program we have today.

The remaining 10 percent is for an expansion of transit and the roadway network.

The \$57 billion is being utilized on a series of about six different investment strategies. I will mention two of them today.

The first as already mentioned is the maintenance of the existing transportation network. In addition to that first 90 percent of the total we're adding \$15 billion more to rehab and replace the current system and maintain it in good operating condition. We still fall short of what is needed to maintain the entire system on an ongoing basis. This is going to be a major objective for our advocacy in the future.

We've set aside about \$14 billion or 25 percent to allocate to the counties to implement the land use strategy, the more focused growth pattern. This is a very important new item that the MTC and ABAG have worked together to implement.

Finally, for the county investment priorities; we requested each county to submit their projects. We were able to fund about one-half of what was submitted. There are about 900 total transportation projects to be dealt with.

About \$16 billion is going back to the counties to supplement the priorities that are outlined in the Plan. This includes transit investment as well as land use investment.

At the end of the day, adding both the committed and discretionary funding, we have about 88 percent of the total funding maintaining the existing system and the rest is left for transit and roadway expansion.

The roadway expansion is a very few projects as well as the Hot Lane Network that has been promoted by the Commission.

We spent a lot of time evaluating individual projects that came in through the outreach to public transit operators, the counties and local governments. It is pretty clear that the best performing projects are cost-effectively delivering a better system to the infilled and developed areas of the Bay.

These include things like the Bart Metro Project, which is all about finding a better way to squeeze efficiency out of the network that's already built. It is intended to be an opportunity to use the current system rather than just extending a system further out into the region. This would reflect the infill development pattern of *Plan Bay Area*.

There are also a number of bus network improvements, some pricing projects in San Francisco and on Treasure Island and there's quite a bit of technology to make the existing roadway network operate more efficiently.

There were performance targets identified by the MTC and ABAG and adopted. The two of them are statutorily required: to achieve greenhouse gas emission reductions and housing 100 percent of the population within the Bay Area's confine to the nine Bay Area counties.

In addition to that, there were 13 others that were of interest to the Commission and ABAG to measure how well we're performing when the entire plan is implemented.

We met or exceeded six of those 15 targets. We very clearly met the 15 percent reduction for greenhouse gas emissions reduction from cars and light-duty trucks. We exceeded this by three percent.

We achieved 100 percent of the housing. These were the two statutory requirements.

The others were important with respect to making sure we're maintaining the public health of the communities in the Bay Area and preserving open space and economic vitality.

We made progress on five targets with respect to healthy communities, system effectiveness and active transportation.

Where we're getting a lot of comment is where we're moving in the opposite direction from the targets that we set in four key areas; the reduction of injuries and fatalities from collisions. Certainly with a pattern that increases the number of people within the urban core and places more population within the areas that are more likely to interact between pedestrian and vehicles, we do see an increase in the collisions during the planned period.

Access was measured by housing and transportation costs. We went slightly in the wrong direction on this. This is a very important issue for us as well.

The other two is that we do have a very, very big transportation network that needs to be maintained. With the available funding that we have we cannot quite meet the 100 percent improvement of maintenance that we intended to set forth for ourselves.

This lines up for us what our advocacy should be for the future. The MTC and ABAG know that in order to implement this plan it's going to take a number of initiatives, both legislative, regulatory and working with all of the regional agencies, BCDC, ABAG, the Air District, MTC and local government.

There are a number of special-interest groups that are very keyed on some of the issues that we have laid out. We've identified land use as well as transportation objectives.

What is most important for BCDC is that we clearly only touched the surface of the issue of the impacts of sea level rise and adaptation planning.

We are going to be putting forth in the Plan two key areas of new work. This is to make sure that we have a vibrant economy with respect to linking economic development and housing and transportation as well as improving permitting processes.

We have a huge challenge ahead of us to create the housing stock that is necessary to meet the objectives of the Plan.

Planning for resilience is also very important. We are working with the Air District on infill development, promoting healthy environments and curbing greenhouse gas emissions. We're going to spend quite a bit of time between now and the next plan working on the climate adaptation sea level rise issues.

With your Bay Plan Amendments there was a very strong interest of this group to work with the four JPC agencies to come up with a strategy. This is something that we intend to outline very clearly in this Plan and use the next plan four years from now to tackle this issue.

Within this plan we conducted an Environmental Impact Report. Sea Level Rise and adaptation and mitigations are clearly laid out in that report. We are going to be issuing some specific ideas with respect to continuing to build on the Adapting To Rising Tides Project which is a partnership of the regional agencies.

We have within the EIR a number of mitigation strategies that were contributed quite heavily by the staff here at BCDC to allow us to give some good direction to project sponsors.

Finally, the remaining plan milestones. Our public comment period for the EIR and the Plan ends on May 16th. We are going to wrap up the comments in terms of presentation to the Commission, MTC and ABAG in early June with a final adoption of the Plan in July. This will wrap up almost a three-year process of developing this plan.

Joe LaClair of the BCDC staff worked very closely with us throughout this entire process and is going to be a key partner along with the rest of the organization.

Chair Wasserman thanked the presenters and asked for any questions or comments from the Commission. The Chair received no questions or comments so he moved on to Item 9.

**9. Consideration of proposed Legislation SB 792 (DeSaulnier).** Now we will take up Item 9, which is our consideration of SB 792 by Senator DeSaulnier regarding the Joint Policy Committee. Steve Goldbeck will make the presentation.

Deputy Executive Director Goldbeck presented the following: You have before you a staff report dated April 19th regarding SB 792 by Senator DeSaulnier. The Bill would add new duties and responsibilities to the JPC including a regional organization plan to identify efficiencies from combining like functions of the JPC agencies. It would also require the JPC to review the consistency of the policies, plans and regulations of the members of the JPC agencies with the provisions of SB 375.

The MTC has taken a position of opposition to the bill because they believe the bill would not significantly improve the functioning of the JPC, but instead, recommends that the bill focus on *Plan Bay Area* by including BCDC in future preparation of *Plan Bay Area*, to bring in our expertise on sea level rise and climate change, and similarly bringing in the Bay Area Air Quality Management District to address air pollutants.

The JPC Executive Committee has endorsed this proposal as well. They further recommend that BCDC be required to relocate to the new regional headquarters facility at 390 Main in San Francisco.

Staff believes that the Commission should request that SB 792 be amended to implement this approach. It sounds like the Senator is open to this discussion.

Chair Wasserman called for questions or comments from any Commissioners.

Commissioner Nelson commented: One of the limitations of SB 375 is the fact that the Commission's role is not addressed. This is not a surprise given that as a regional agency our role is somewhat different from the other planning agencies that were captured in SB 375.

The idea of an amendment that brings BCDC into the planning process would be a real step forward and address a limitation in the original law.

Chair Wasserman addressed those in attendance: One of the things that we talked to the Senator about is that we believe that we are making significant progress at the JPC and in other forums in regional cooperation.

The best way to continue this is to march forward and do it rather than deal with mandated studies on how to do it. Now if we stop making progress then we will re-evaluate the situation.

The concept of BCDC co-locating with the other three agencies is very much a part of the process in terms of good regional coordination as well as effective and efficient use of government resources.

I would entertain a motion to adopt the staff recommendation.

**MOTION:** Vice Chair Halsted moved to recommend that the Senator adopt these amendments, seconded by Commissioner Sears. The motion passed by a voice vote with no abstentions or opposition.

Chair Wasserman announced that Item 11 would be taken out of order for Commission Consideration.

**11. Commission consideration of pending legislation SB 122 (Lieu).** This legislation by Senator Lieu would extend the Vessel Turn In Program for recreational boats. Steve Goldbeck will present the staff recommendation.

Deputy Executive Director Goldbeck presented the following: You have before you a staff report dated April 19th regarding SB 122 by Senator Ted Lieu. This would extend the Vessel Turn In Program which allows boaters to voluntarily turn in their boats to local authorities as opposed to potentially abandoning them.

The program has been very successful and is over-subscribed. The cost of the program is far less than the alternative of abating the boats once they're abandoned.

This program sunsets and the bill would extend the program. The staff recommends that the Commission support SB 122.

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

**10. Commission Briefing on the Port of San Francisco's Proposed Development of an Event Facility and Associated Improvements at Piers 30-32 (City and County of San Francisco).** Chair Wasserman announced: Now we will take up Item #10 and I will recuse myself because I do represent a client who has matters that could be affected by this issue.

Chair Wasserman exited the room.

Vice Chair Halsted stated: We will move to Item 10 which is a briefing on the proposed development of an event facility and improvements at Piers 30-32 by the Port of San Francisco.

During our last meeting there was a big discussion among Commissioners regarding AB 1273.

As the project sponsors wished this legislation to be approved before the end of this legislative session, it seemed unwise for the Commission to comment on the legislation without having been briefed on the project.

It seemed important for us to have a briefing prior to considering the legislation. The Commission has asked the project sponsors, the Port and the Warriors to present a preliminary briefing which hopefully will prepare us to consider AB 1273 at our meeting on May 16th. It is common for project proponents to give a presentation to the Commission prior to an application. There has been no application submitted.

While this project's design will likely change in the near future, clearly from discussions at our last meeting, Commissioners want to learn something about the project in addition to what they read in the newspaper. The Commissioners would like to hear the public's thoughts about the project and provide their thoughts about what issues surround them.

We do not want today's briefing or discussion to center on public trust issues and AB 1273. This discussion is to provide Commissioners and the public with as much information as possible on the project proposal itself and gauge public and Commissioner reaction to it.

We have asked that the briefing be limited to about 20 minutes followed by a couple of minutes of remarks from BCDC staff, then public comment and Commissioners' questions.

Public comment will be limited to three minutes per person and we ask you to be concise and not to repeat other people's comments.

Brad McCrea of BCDC staff will introduce the topic and our speakers prior to the Port making its presentation. Jaime Michaels, the lead on this project, will provide some concluding remarks after which we will take public comment.

Mr. Brad McCrea addressed the Commission: I am the Director of the Regulatory Program at BCDC. This is an early and preliminary briefing on the project which is a proposed development of an event facility. There has been no application submitted on this.

The project is in flux. There was a design and we understand there is a new design coming out next week. We may learn some things along with you today.

Generally as we understand the project it includes a few large components. It has a renovation of the pier structure itself to support the venue. There is an approximately 135-foot tall, multi-use event center that would be a sports and entertainment venue. It would be home to the Golden State Warriors. It would also be used for events such as concerts.

The project would include a parking garage. The project has some number of retail buildings. There is open space proposed and then supporting uses such as office space and practice courts that would support the venue itself.

In addition, there would be some maritime uses that are at the margins of Pier 30/32.

We have been in discussions with the development team for about one year. We've been looking at this project in three different ways or three different tracks.

The BCDC staff commented on the preparation of the environmental document. So we have been looking at it through the CEQA lens.

We've also commented on the legislation that was recently introduced by Assembly Member Ting, AB 1273.

The purpose of today's briefing is to comment on the project's conformance with your laws and policies, specifically, the McAteer Petris Act, the San Francisco Bay Plan and the San Francisco Waterfront Special Area Plan.

In the history of BCDC we haven't had a project that's exactly like this one. We are looking at this project and taking it through the regulatory process as we would any major waterfront development in any community around the San Francisco Bay.

We are providing advice at the same time that local government is providing its advice to provide some efficiencies. And we are trying to do these things at the appropriate times.

We are holding this meeting today to get your guidance and feedback so that you can direct us on how to proceed.

If there are significant policy issues that arise that show that the project is not in alignment with your laws and policies, the project proponents usually have a few options.

They can change the project itself so it's consistent with your policies.

They can request that this Commission change its policies to be consistent with the project or they can change those aspects of the project that are inconsistent with the policies.

With the help of the advisory boards and the Commission, we try to help the project proponent to shape the project so it is in conformance with existing BCDC laws and policies.

Some of the policy aspects of the project that we have talked about so far include a number of different things.

Massing and scale of the buildings is one of the issues that we have brought up and talked about.

Another thing is the amount and quality and accessibility of the open-space areas which are part of our analysis and will be part of your determination of whether the project meets the portion of the law that ensures that maximum feasible public access consistent with the proposed project be provided.

We've also been discussing the proposed uses and programming of the site including the actual need for parking at Piers 30/32, the need for practice courts and the appropriate amount of retail buildings.

And lastly, we've been looking at the policy on public trust. We're going to take up the legislation at the Commission's next meeting. The legislation dealing with the public trust is working its way through the process in Sacramento.

This Commission is required under the San Francisco Bay Plan to make a trust determination whenever the Commission takes any action affecting land subject to the public trust.

This authority flows through BCDC's enabling legislation, the McAteer-Petris Act. You will need to make that determination unless the Legislature through AB 1273 makes that determination for you.

Mr. Brad Benson addressed the Commission: I am the Special Projects Manager at the Port of the San Francisco. It's been about a year since the Warriors and several other interested agencies announced a desire to come to San Francisco at Pier 30/32 and build a new venue for the team.

We immediately reached out to BCDC and State Lands staff to start the kind of dialogue that is always started early in a project of this magnitude.

The City of San Francisco has formed a Citizens Advisory Committee specific to this project. This committee has been meeting very frequently over the past seven or eight months.

The Board of Supervisors adopted a fiscal feasibility report on the project finding that it's a feasible project and it will generate significant revenues to the City and to the region and be able to pay for the service demands that it requires and we've started environmental review.

This is significant public policy and it is a major potential regional asset. This does bring up significant policy issues and so it's appropriate to be here before the Commission.

The site consists of Pier 30/32 which is a 13 acre concrete pier and Seawall 330 across the street.

The Warriors have proposed the multi-purpose venue on the pier with the uses that have been mentioned. There is another component of a residential hotel and retail development across the street.

Pier 30/32 is an incredible challenge in terms of its costs and some of the regulatory considerations.

This is an amazing opportunity for the Bay area especially in light of the development that is taking place around it.

You could not have a better location in San Francisco when you consider its strategic location for potential users.

The Piers were built in 1912 and connected in 1950. There was a fire in 1984 and the sheds were lost. Since that time the Port and the City have been trying to think about what to do with this location.

Both the Port's Waterfront Use Plan and the BCDC Special Area Plan have designated this site as a mixed-use development site subject to the requirements set forth in both plans.

Very soon after those plans were adopted, the Port finalized its negotiations with our first development partner at this site. The goal was to build an international cruise terminal at this location.

The cost of the site required a significant non-trust component to that project. It consisted of 300,000 square feet of private office space, 200,000 square feet of retail, about 425 parking spaces plus a major open space.

There was legislation associated with this site that made a public trust finding similar to that in AB 1273.

The developers went underneath the pier and found much worse conditions than they expected. They walked away from the project.

The Port and the City tried to shop that fully entitled lease around in the private sector and there were no takers.

What we were left with as a result is a very poor use at this location. It's mainly used for parking. There is occasional cruise ship berthing at the east berth of the pier.

There are serious load restrictions on the pier. You can't drive trucks on it. The most recent look at what it would cost to rehab the pier for a regular mixed-use development suggests that these costs are now more than \$100 million.

One of the reasons that we're excited about this project is because it has the resources to accomplish this task.

We've looked at removing the pier. Our estimate is that it would cost \$45 million to take out the 13 acres of the deck and thousands of piles underneath the pier. This is money that is not available.

These piers are a blight to the area and they are a poor complement to the Brandon Street Wharf. With the parking use on the pier there is no storm water management.

After the America's Cup effort, which contemplated a development at this site and the event authority walked away because of the subsurface costs, the Warriors asked City staff and the Mayor if they could look at this site for consideration.

Maritime uses are something we always try to promote as we are rehabilitating our piers. A lot of what we do when we're thinking of potential uses for the different piers is to look at them through the lens of public trust.

The City through the fire department has identified a need to rebuild the existing fire boat station at Pier 22 ½ and this would have required new fill and a new concrete pier in the Bay with a new building on top of it.

The cruise ship use is something that we want to preserve at Pier 30/32. It is ideal for overflow cruise ships.

We are looking at water transit connections at the pier. We maintain a water taxi network along the San Francisco Waterfront and to and from points across the Bay.

The Warriors and City staff are beginning conversations with WETA about whether or not a ferry service would make sense at this location like we have at the ballpark.

This is going to be one of the best seismically-reinforced areas along the waterfront and will provide good emergency water access.

A core issue for BCDC is open space and public access. The site doesn't afford public access today. The design features call for over 50 percent open space.

There is an open-air walkway that is one of the design features that the Warriors have proposed around the facility. The restaurant at the top of the arena will offer amazing vantage points.

When thinking about the public trust issue, a lot of what we try to do is clearly defined as public trust, e.g., maritime uses, habitat and these things are clearly articulated in the public trust doctrine.

Given the number and variety of events that could happen at this location, we think that this project will bring a whole new population to the San Francisco Waterfront.

The Warriors have hired an incredible team consisting of AECOM and Snohetta who have developed arenas around the country.

We have looked to see if there is precedence in the past of public assembly uses on public trust land. In the current day we have the example of ATT Park. Its capacity is very large in comparison to the capacity we are contemplating in the arena.

There are great examples of public assembly uses around the world, the Sydney Opera House, the Boston Waterfront Renaissance and the Oslo Opera House.

The final components of the public trust include the fact that this project will have to treat storm water falling on the pier in a way that does not happen today.

The Warriors have committed to saving Red's Java House, which is a local historic resource.

The Warriors are moving the arena back 50 feet from the east edge of the berth to accommodate the cruise ship use.

They are looking at a more generous pier level plaza overlooking the Brannan Street Wharf.

There is a concern about how the bulk of the facility will affect public view corridors and how the proposal interacts with those view corridors. The Warriors are looking at these view corridors and some are listed in the Special Area Plan that are of special importance.

The architects are showing a great creativity in terms of how you design the arena itself.

This is the first pier project where we have a development partner who is going to address sea level rise with respect to the project.

They are planning to raise the pier deck several feet so that it will be resilient to expected sea level rise and the transaction agreements will have adaptive management components to them.

The Warriors are doing everything they can to address the height and the scale of this facility so that it is appropriate for this location and provides for the views that are needed.

The parking capacity is a conversation that needs to continue. We want to minimize those car/pedestrian conflicts and make sure that this is a safe design.

There has been some hint in the press about a too-accelerated process or cutting corners in the process. I want to try and put this to bed because the legislation does address the public trust finding that is needed for the project.

This leaves intact all of the public processes that we are used to for a major project like this.

City Planning has initiated CEQA and that will be a robust CEQA process.

The Port Commission will consider the term sheet probably this summer which will go on to the Board of Supervisors after CEQA is done. We will then consider real transaction documents for the site including the sale of Sea Wall Lot 330.

All of the planning and Port actions are forwarded to the Board of Supervisors for public consideration including appeal rights.

BCDC will maintain its public design review process and its ability to judge the project vis-à-vis your adopted plans. We would come forward and apply for a major permit for the site in the normal course of business.

We continue discussing the project design and the legislation with the State Lands Commission.

The Regional Board would issue a 401 Water Quality Certification for the project dealing with stormwater.

And if there are any improvements outside of the footprint of the pier the U.S. Army Corps of Engineers would have to permit those in consultation with the federal resource agencies.

This is an exhaustive public process and it's likely to last a couple of years. We welcome this process.

Ms. Jaime Michaels addressed the Commission: The project is in the early stages of development. The staff has prepared comments on the CEQA Document and they cite a comprehensive list of issues related to your laws and policies.

One issue relates to the massing and the bulk of the project and whether the scale would fit within the context of this waterfront, provide maximum feasible public access and preserve views.

Another issue is whether the project could provide maximum feasible public access considering the elevations of some of the public areas, potential conflicts with private uses and the distance of certain public areas from the water's edge.

Lastly, there's a question about the parking and how that facility and vehicles using it will impact access on the Embarcadero, along the Herb Caen Way and also into the project site itself.

As the project evolves the staff will continue to identify relevant Commission issues and areas of consistency or potential concern.

Prior to coming back to you with any major permit application, the staff will assess whether the project requires an amendment to the Special Area Plan. In that case we would bring it back to you for a public hearing and a vote.

It will also be necessary to seek the advice of your Engineering Criteria Review Board as well as the Commission's and the City's Design Review Boards.

Since this is only a briefing there is no specific action for you to take today. However, we do welcome your questions and your guidance.

Vice Chair Halsted asked for a motion to open the public hearing on this matter. A motion was made to open the public hearing.

Vice Chair Halsted proceeded to the public hearing portion for this item. She mentioned that she had nine cards for people wishing to make comments.

Ms. Nadia Conrad-Huayta spoke: I will be reading this commentary on behalf of Assemblyman Ammiano. A project of this sort is going to have many questions that need to be answered.

First, although the project is located near some of the public transportation hubs, there is no question that it will bring extensive auto traffic. How that will be handled is a key issue.

How in particular will public and private transportation capacity be handled in a perfect storm event?

What will the impacts be on those who live in the neighborhood? Assemblyman Ammiano is concerned about the design of the visual impact on a section of the waterfront that has been carefully opened up to the public.

He is concerned about waterfront access. And this development should make some improvements in how San Franciscans and future tourists can access a Bay coastal area that belongs to the people of California.

Construction is a big environmental question mark. There will be issues involved in the demolition of the area. There is no reason to overlook environmental destruction for a project as big as this.

Apart from construction, the assemblymember thinks it's imperative that we consider the potential ramifications on the environment. Not only do we have to consider earthquakes but we must consider the potential effects of the global climate change of which we are increasingly aware.

What can we expect from the rising sea levels that accompany polar warming and melting ice caps? How will this project accommodate those potential issues?

Is this really the best place for this project? The San Francisco Bay and Conservation Commission is responsible for protecting and overseeing the use of our Bay front.

The assemblymember hopes that all of these questions will be asked and answered adequately before the project proceeds.

Mr. Jeffrey Leibovitz addressed the Commission: I am the former Chair of the Redevelopment Agency's Rincon Point South Beach CAC. We were an instrumental partner with San Francisco Giants in developing ATT Park.

I'm intimately familiar with BCDC and the McAteer-Petris Act and the Bay Plan.

AB 1273 is an end run around the McAteer-Petris Act. We need your protection now more than ever before.

If this legislation is passed and is not modified correctly, you're going to open up the door.

This project is for San Francisco County but it will have impacts for the future development on this Bay.

The amount of fill that is going to be necessary for this pier is phenomenal. As the Port has pointed out, this pier is falling into the Bay. This means a lot of additional fill.

I don't believe that AB 1273 affords compliance with the McAteer-Petris Act and the State Lands doctrine.

Your mission and your role is to protect the Bay. What San Francisco wants is what San Francisco wants but what you need and what your constituents are asking you to do is to protect the Bay front and the Bay itself.

This project does not contribute regionally. The transportation in this neighborhood is a mess as it is now. MUNI will not be able to accommodate the growing demand that will be placed on it. It takes three years just to get a MUNI car. There are no plans to get MUNI cars.

The maritime uses are critical. This is the only deep-water port in San Francisco, the only deep-water berth.

This is going to be an active cruise ship terminal and they want to do an entertainment complex here. You need to think about the multiple uses when you think about this project.

This is the livelihood for the Longshoremen and the initial plan called for no cruise terminal. The Port said, this is an ancillary use. If, in fact, this is going to be a berth for cruise ships then we need to have shoreside power just like they provided at Pier 27.

There have been 10,000 residential units constructed directly across the street. Thousands of more units are ready to come onboard or will be in the next three years. This area is growing in San Francisco.

The impacts of an arena like this are going to be felt on this neighborhood. These people have invested hundreds of millions of dollars in their homes.

The type of language that is being used; what does it mean? What do terms like feasibly economical mean?

Mr. Josh Sonnenfeld spoke: I'm with Save the Bay. Save the Bay's position has been clear and consistent. Piers 30 and 32 are not an appropriate place to build a thirteen story private facility that would block views and enjoyment of the Bay.

San Francisco's remaining piers are reserved by law for maritime activity and public uses that provide a connection to the Bay.

As we have told the Legislature in opposing AB 1273, the proposed arena shifts use of a deep-water pier away from primarily maritime and trust uses to a private indoor use that should be on land.

The proposed arena significantly degrades the hard won and important public benefits of the Brannon Street Wharf.

Project proponents are making conflicting promises of public access alongside potential maritime uses. Cruise ships and fireboats would severely impact public access on these piers.

BCDC should not take actions that help the Port and the developers preempt public consideration or rush the process for this massive and controversial structure in San Francisco Bay.

We believe that legislative action is premature at this time when even the most basic facts about project components costs and choices are untested assertions from a project proponent.

No detailed project or rationale has yet been examined and vetted through any public process. The Port of San Francisco has not yet indicated whether even a draft environmental impact report for the project will be completed in 2013 nor when the final EIR would be completed.

The Port of San Francisco is undercutting San Francisco Special Area Planning that just started with BCDC by encouraging the use of piers that is not compliant with current plans and has not been evaluated through a public process.

Mr. Rudy Nothenberg spoke: I used to be a public official in the County and have had considerable amount of experience in waterfront projects.

I would ask you to read the letter that I submitted to you that expresses some of my concerns and expresses my skepticism about your ability to reconcile your responsibilities under the McAteer-Petris with this project as it is being proposed.

I want to respond to some the things that Brad from the Port told you. First of all, with respect to the cost of the substructure of the pier which according to Brad has driven away the prior potential developers; what he did not tell you is that the Port itself is going to pay \$120 million to repair and replace that pier.

It is not being paid for by the Warriors. It is being paid for by public money which the Port is going to have to borrow from the Warriors at 13 percent interest in order to repair the pier.

It is not accurate to compare this proposed development with what may occurred before because the subsidy was not offered to the other developments. The biggest subsidy that one can believe would be offered by a port is being offered to this development and it is public money and we should not close our eyes to that.

Secondly, the schedule issue which Brad addressed is incredibly aggressive as you all know. That schedule has slipped by many, many months. What has not slipped is the end of that schedule. That schedule still requires approvals very, very quickly in order for the Warriors to meet a construction schedule that is wholly artificial.

They have established that schedule. They are making the Port and the City adhere to it. And you the regulatory agency are going to be faced with making very quick decisions at the very end of that process because everything has slipped except the end. Everything is being compressed so you will be faced with a very quick process at the end.

Finally, the maritime facilities that Brad speaks about are the bases upon which the consistency finding is made in the legislation which I'm not supposed to discuss.

I want to point out that those maritime facilities are not being paid for by the Warriors. They are going to have to be paid for by public money and that money is not in evidence. There is no assurance that these maritime facilities be constructed unless you're in some fashion assured that that will occur.

Rebecca Evans commented: I'm here on behalf of the Sierra Club. We oppose this proposal at this site. We also oppose AB 1273.

I was also a former Chair of the Rincon South Beach CAC and I also helped prepare the Special Area Plan back in the 1970s.

Back in the 1970s the Ferry Port Plaza was stopped by BCDC and citizen action as well. The blessing of the state legislature does not make this proposal trust compliant. It's like putting lipstick on a pig.

If San Francisco can exempt its shoreline from the constraints and oversight of the State Lands Commission, of BCDC and the protections that you afford to our Bay shore, what's to stop other municipalities from doing the same thing?

Scott Littlehale commented: I am resident of the Bay front city of Richmond and I am a senior research analyst for the Carpenters Unions. I'm proud to represent the thousands of low and moderate income households and families that those members comprise.

These folks highly favor high quality, transit friendly development that will provide good jobs for regional residents as well as have positive ripple effects indirectly throughout the economies of the communities of the Bay Area.

We're here to react to the proposal favorably. When we consider the fact that many east, north and south Bay communities are highly dependent on construction jobs, I think it's worthwhile to note that you may hear the number of 5,000 construction jobs related to this project, there will also be nearly two to one additional induced or indirect jobs inducing effect of additional development.

This is going to benefit housing values in communities that have taken hard hits in recent years.

When I consider the final support of this, which is transit-friendly nature of activating a Bayfront property; as a member of the community of Richmond, I would want nothing more than there to be greater ferry accessibility across the Bay, not just from Vallejo and Alameda but from communities that are across the Bay.

In conclusion, members of the Carpenters Union support this concept proposal.

Manuel Flores addressed the Commission: I represent the Carpenters Local 22 of San Francisco. The developer has a vision of a first class arena at the pier.

We look at it as smart development. This is not just for San Francisco. This is for the Bay Area. This is for everybody not just here.

The developers realize that there are issues associated with a project like this one. They want to make it work for everybody.

Paula Kindrachuk spoke to the Commission: I am a resident of this area. I have a view along the waterfront that I think is incredibly important.

I am extremely concerned about public trust land being used for this private enterprise. The environmental issues that will exist are vehicle emissions from the traffic for the events that will be nearly 200 per year on top of the events that are already happening.

Brad mentioned that the transit is an easy way to get to the park. It is not an easy way to get there. BART and MUNI are completely packed whenever there is a game. We can't use it to get from our neighborhood to anywhere else.

The rising sea levels are a deep concern. One of my other concerns is this big concrete structure that in 20 years will probably be obsolete as every arena is in the country.

David De La Torre spoke: I'm with the Laborers Local 261. We are a building and construction crafts union. Locally we represent over 4200 members covering Marin, San Francisco and San Mateo County.

I've been asked on behalf of our membership to speak on behalf of the proposed Warriors Arena. The livelihood of our members depends on projects such as the proposed arena.

This project will generate hundreds of millions of dollars in new economic growth for our region. This arena will also reconnect people with the Bay's edge in a spectacular spot beneath the Bay Bridge, which is currently underutilized now as a massive parking lot.

The Warriors have engaged with organized labor early and are committed to building a powerful partnership on this arena project.

With various transportation modes, the new arena will be perfectly located for pedestrian and public transportation options.

This project strikes an important balance between repairing and activating a crumbling pier while still maximizing public access and preserving view corridors on the site and throughout the surrounding streets.

Our brothers and sisters in labor strongly support this project and urge the members of this Commission to do so at the appropriate time as well.

Dale Riehart spoke: I am a resident of South Park. I'm opposed to this arena being on Piers 30/32. What is really going on here is a battle of egos?

The first one sits in the mayor's office. The second ego is a group of people that sit at the Port and want to turn this into an entertainment strip moving up and down the wharf. The third set of egos are the two that sit at the top of the Warriors.

AB 1273 is a circumvent to usurp your power, State Lands Commission and other boards that oversee this.

I support all the people here that want jobs.

The traffic here is horrendous. This is the most polluted corridor in the city. Transit authorities here aren't prepared to even handle today let alone tomorrow.

The Brannan Street Wharf affords some the best views on the Bay. Now you're proposing to put a monolith in front of it. You have suddenly lost the reason for that park being there.

I don't know why this facility needs its own special fire station.

Walking from the BART to the arena during the wintertime is going to be a cold and wet experience with a lot of wind and temperatures not a lot different than during the summertime.

There are alternate sites that are not being considered in the City and that needs to happen. Even the CAC isn't allowed to talk about that which is completely wrong.

This thing was decided before it came out of the box. We can't talk to the mayor. We can't talk to the Port. We can't talk to the Warriors because they have all decided that this is where it goes and the public has no real open forum.

Please don't build it on Piers 30/32. Build it on land.

Vice Chair Halsted asked for any additional public speakers to come forward and be heard. No one responded so she moved to Commissioner comments and questions.

Commissioner Randolph had a question: In the slides we saw earlier there was a visual for the original plan for the first cruise ship terminal on that property. There appears to be a considerably greater massing of structures on the pier.

How far had that project advanced before the sponsors withdrew and specifically, had there been a public trust determination for that particular project?

Mr. Benson responded: The project was through the entire approval process. We were in contract with lend/lease. It was a fully entitled project.

Regarding the public trust issues, there was state legislation for that project to make the public trust finding for that project that had been passed.

And then regarding the massing, I think it's a good question and I know the Warriors are looking at the massing of this project versus the massing of the proposed project.

Commissioner Randolph added: It just struck me that besides the question of consistency determination that in terms of open space and view corridors, there appears to be considerably more open space and view opportunities with the current proposal than there was with the cruise ship site.

Commissioner Nelson commented: There is quite a list of factors that complicate the public trust issues on this site. There is the design of the retail facilities, the needs of the arena itself, the parking access, the requirements for the potential berthing of the fire boats and the cruise terminal. There's lots of stuff potentially happening on this site.

All of this potentially conflicts with public access. It's far too early to draw any meaningful conclusions about how these issues will be balanced.

I can't think of many sites where the Commission has had to wrestle with so many competing uses potentially touching on public access.

I suspect we're going to need a fair amount of briefing before we get to the point of making a permanent decision. I wanted to ask the staff and the Port if you had any additional thoughts on how to strike a balance that would make sure that we don't encounter conflicts between private and public uses.

Mr. McCrea responded: We have, for example, maritime versus public access, the inherent conflicts between whether it's Homeland Security issues or just the ability to utilize a pier for maritime use and whether you want people around. You have issued several permits that have dealt with this issue.

This site is not proposed as a cruise ship terminal. There is an interesting public trust issue that we should put on the table. The proposed cruise ship terminal was clearly a trust-consistent use that was supported by non-trust uses.

In this instance we have a questionably trust-inconsistent use, a basketball arena and concert venue that is supported by maritime uses.

Commissioner Gibbs commented: It seems that there are two main issues here. One is the issue of maximum feasible public access. We, as a matter of course, get a staff analysis of whether or not the project complies with that requirement. Is that correct?

Executive Director Goldzband responded: When the permit is actually applied for.

Commissioner Gibbs continued: So we will get that from the staff. What about the public trust?

Executive Director Goldzband answered: In two weeks what will happen is that there will be a public hearing on AB 1273 at which staff will make a presentation regarding its analysis of the public trust issue and its comments on the legislation. State Lands Commission will do the same thing and the Port will do the same thing.

The public will have a chance to comment on that. The Commissioners will have a discussion and decide whether or not to take a position on AB 1273 relating to that public trust issue.

Every major permit that BCDC has in front of it has a public trust determination as part of that.

Commissioner Gibbs added: I would ask our counsel to provide us with the original rationale and record as appropriate from the determination from the Santa Monica Pier and also the Long Beach Auditorium facilities as to how those were determined to fall under the public trust as part of what we receive in two weeks.

Commissioner McGrath commented: I agree with the questions by Commissioner Gibbs and the comment by Commissioner Randolph. I see six questions that we need to answer as this project makes it through.

The first is it consistent? And second, will it require a special area plan amendment? We kind of glossed over that, at least the Port of San Francisco did.

Third, how does the question of maximum feasible public access work with the amount of subsidy that's involved in here? What is it really and how does that affect our considerations about incentive uses.

And fourth, what are the alternatives both for this site and then for the facility?

Fifth, and I think this goes to Commissioner Gibb's question, what kind of precedent does this set? What has been done on filled land? What has been done on land still over the water? How "trusty" does it have to be?

And then sixth, and I want to return to this, is the schedule reasonable?

I do want to hear some more about a Special Area Plan amendment. And that's the reason for most of my comments here.

I spent four years of my life working to get the Bay Plan amendment because I wanted to restore habitat. A project like this is not very simple. When the Port pursued Middle Harbor Shoreline Park we had a Plan B and a Plan C.

This goes to the question of, you want to make sure strategically you've got a Plan B if you've got something, which arguably requires a Special Area Plan amendment.

You can't push the schedule on that any faster than it really can reasonably be done. I know what it's like to be yelled at by Port management. And it took exactly as long as I told them it would take, exactly, four years.

It's really hard to do something that requires a full plan in a highly visible and public scrutiny arena.

I'm a big fan of design solutions. And I'm a big fan that you can do and should do and should consider bold things. The solution has to be intrinsic in the design.

That design has to compel both the public to come there and to interact, not just once and not just for attendance at an arena or concert. It has to truly be public access.

It's not impossible but it's not easy. I recommend a Plan B. Those are the questions that I want to see answered as we go through this.

Commissioner Randolph commented: I could put a finer point on what I think Commissioner Gibbs was asking. It would be helpful when we come back in two weeks to have a guidance from our legal counsel or from staff as to whether the proposed legislation does or does not constrain or limit BCDC's jurisdiction.

Vice Chair Halsted added: The elevated open space, I don't know how much of the space is going to be elevated and I'd like to understand how that really works.

The parking and traffic implications on the Embarcadero seem very real to me. I think it would be a huge error to elevate and spend too much based on parking that didn't develop or wasn't necessary.

These are the things I'd like the staff to raise and try to work out making sure this meets our needs.

Commissioner Pine commented: Once we get past AB 1273, BCDC will be very, very involved in this project no matter what the outcome may be.

I think given the incredible complexity of this project it would be really helpful to hear from staff as to the process by which the Commission will be kept informed and brought along because this will take multiple reviews.

I would ask staff to give some thought to how they see working with the Commission on a project of this magnitude.

Commissioner Ziegler commented: Down the road in terms of looking at benefits, I'm interested in the water quality benefits that were claimed. Down the road we need a close look at that and good quantification versus potential benefits and tradeoffs of what the benefits really could be.

This is a very challenging site in lots of ways.

Vice Chair Halsted added: Supervisor Chiu is unable to be here today because he is in Israel. He is very supportive of this project and had asked me to voice his support and his enthusiasm for moving ahead with this project.

If there are no further questions I think this item is concluded. This is the final matter on our agenda. I would entertain a motion to adjourn.

12. **Adjournment.** Upon motion by Commissioner Pemberton seconded by Commissioner Nelson, the meeting adjourned at 3:28 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND  
Executive Director

Approved, with no corrections, at the  
San Francisco Bay Conservation and  
Development Commission Meeting  
of May 16, 2013

R. ZACHARY WASSERMAN, Chair