

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

July 12, 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: Approved Minutes of June 20, 2013 Commission Meeting**

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the MetroCenter Auditorium, 101 Eighth Street, Oakland, California at 1:09 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Apodaca, Bates, Chan (represented by Alternate Gilmore), Chiu, Gibbs (represented by Alternate Arce), Gioia, Gorin, Lucchesi, McGrath, Nelson, Pine, Sartipi, Sears, Spring, Techel (represented by Alternate Hillmer), Wagenknecht, Ziegler and Zwissler. Senator Loni Hancock was also present.

Ms. Louie announced that a quorum was present.

Not present were: Santa Clara County (Cortese), Department of Finance (Finn), U.S. Army Corps of Engineers (Hicks), Governor Appointees' (Jordan Hallinan & Randolph), 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.

Seeing no speakers, Chair Wasserman moved on to approval of minutes.

4. **Approval of Minutes of the May 16, 2013 Meeting.** Chair Wasserman entertained a motion and a second to adopt the minutes of May 16, 2013.

**MOTION:** Commissioner McGrath moved, seconded by Commissioner Gorin, to approve the May 16, 2013 Minutes.

The minutes were approved as amended by a voice vote with four abstentions.

Vice Chair Halsted commented: I have read the minutes and I cannot find the comments that I made regarding my concerns about the height and bulk of the project being proposed. I would hope that we could correct them to reflect those comments.

Chair Wasserman replied: I am sure that the reporter will be able to find them and will double check with you and we will add those assuming that's acceptable to the maker and the seconder of the motion. Both Commissioners were agreeable to the amended minutes as described.



*Making San Francisco Bay Better*

**BCDC MINUTES  
June 20, 2013**

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

a. **New Business.** I would like to ask whether any Commissioner has an item of new business they would like us to address at a future agenda. Now is the time to say so. (No one responded to Chair Wasserman's request).

b. **Commissioner Appointments.** We have two new alternates who have been selected for the Commission. As an alternate to Commissioner Gibbs, we want to welcome Joshua Arce. And, as an Alternate to Commissioner Apodaca, we welcome Anu Natarajan of the Fremont City Council and Daniel Hillmer as an Alternate to Mayor Techel.

c. **Engineering Criteria Review Board.** Because all good things have to come to an end, three distinguished senior members of BCDC's Engineering Criteria Review Board have submitted their resignations from the panel. They are Professor Edward L. Wilson (appointed in 1984), Commissioner George Fotinos (appointed in 2001) and Mr. Maurice Power (appointed in 2007). We have prepared resolutions of appreciation for each of them. I would entertain a motion and a second that we provide these three individuals with those resolutions and our gratitude.

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

Staff will request that the Commission appoint at least two individuals to serve on the ECRB. As part of the agenda for that meeting, we will distribute the qualifications of those recommended.

d. **Meetings Concerning BCDC.** I want to let the Commission and the public know of two upcoming meetings. On July 1, Larry Goldzband and I will meet with Natural Resources Secretary John Laird and his staff in Sacramento to address a variety of issues, including our work on shoreline resilience and the rising Bay, the progress of the Joint Policy Committee, our BCDC's budget and proposed budget changes. We also will provide him with a copy of our newly adopted Strategic Plan and discuss our desire to move to the regional headquarters building in San Francisco with our sister agencies. On July 12, the Commissioner Working Group on Rising Sea Level will meet at BCDC headquarters to discuss with several representatives from the private sector how they are planning to deal with a rising Bay. Participants are invited from PG&E, Union Pacific, Chevron, Kaiser and the San Francisco International Airport. We plan to host a similar meeting with public sector organizations, including BART, the Port of Oakland and others, in August as we schedule around vacations.

e. **Next BCDC Meeting.** Our next BCDC meeting would be in two weeks but that is July 4<sup>th</sup>. Instead, our next regularly scheduled meeting will to be held on July 18th here at MetroCenter. We expect that that agenda will include the following matters:

(1) We will hear from the California Department of Fish and Wildlife regarding their progress on providing public access at the salt marsh restoration site in Napa County.

(2) Commissioners Wagenknecht and Techel will provide the Commission with an overview of the Napa County shoreline. I have been told that they may bring refreshments.

(3) We will expect to have a briefing on options to extend the Long Term Management Strategy which helps govern how dredging is conducted in the Bay and where dredged materials are relocated. Colonel Baker of the US Army Corps of Engineers, Bruce Wolfe (Executive Officer of the Water Quality Board) and representatives of the federal EPA and BCDC will provide that information and request Comments from the Commission.

(4) Also, depending upon the schedule of the Joint Policy Committee, we may receive a briefing on its actions and progress.

I do want to mention briefly two other items which are not on our agenda or future agendas but do relate to a continuing critical matter for us, rising sea level.

The first does relate to my trip. It's a sort of brief travel report. I was privileged to spend a week in Venice. I did spend a little time reading about and viewing the MOSE Project there, which is a series of mobile gates that can block sea surges from the Adriatic Sea coming into the Venetian lagoons.

It is based on gates that can be raised by expelling water that holds them down, air pulls them up and they hold back the water.

While I suspect that this technology will not work for us here in the Bay area, I do think there are some noteworthy items about that project.

One is that they are using new technologies, which we are clearly going to have to do.

The second is the fact that it took over 16 years from the approval of the concept in 1998 to its expected completion next year.

It takes a significant amount of time to get these things going once the concept is approved and we're not there yet.

The second item is similar in nature but a little closer to home. The report issued this month by Mayor Bloomberg on a stronger and more resilient New York.

Sections of the report are well worth the time to review and scan particularly the sections on infrastructure, insurance and finance. It's a project with a projected cost of \$20 billion and will take well over 20 years to complete.

One of the interesting pieces about finding the funding is the estimated cost of Sandy is \$19 billion. The estimated costs of destruction from similar hurricanes or simply rising sea level and sea surges approaches \$90 billion. It starts to put things in perspective in terms of costs.

The overall message from this that I would like us to think about is that although we have been diligently working on addressing rising sea level for a significant amount of time in the Bay area, we need this Commission and our staff and partners need to continue to be ever more diligent in our efforts to figure out how to address rising sea level and the consequences which we cannot avoid.

We need to repeatedly and diligently think about how we are actively addressing rising sea level.

f. **Ex-Parte Communications.** In case you have inadvertently forgotten to provide our staff through email or writing any written or oral ex-parte communications, I invite you to do so now. I do want to remind you that the discussions surrounding Agenda Item 10, because it is a legislative issue, are not subject to the ex parte rules and do not need to be reported.

Chair Wasserman received no reports from Commissioners.

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

Summer begins tonight a few minutes after 10:00. Technically, summer starts when the sun reaches its farthest point north of the equator. Many of us, however, think that summer starts when school ends and camps begin, when interns invade and offices are vacant more frequently and when we need to get our fix at the beach. However you measure the start of the season, I wish all of you a safe and healthy summer. Have a safe and delightful Fourth of July.

You all have heard that the Legislature approved a Fiscal Year 2014 budget ahead of the required deadline. We have no inside news of the Administration seeking to alter BCDC's budget allocation. Assuming that no news is good news, we expect to receive the same allocation as last year. That being said, I have asked our financial and administrative staff to prepare a three-year pro forma projection of our budget and staffing costs to determine whether we face the risk of running a structural deficit given past years' reductions of general fund dollars. We shall include that information in our presentation to Secretary Laird, which I shall share with all of you.

Speaking of summer and interns, we have five who either have started working with us, or will very soon. In the Legal Unit, Alexandra Babcock started last month. Alex has completed her first year of a dual-degree program at the University of Miami from which she will receive a law degree and a Master of Science degree in Marine and Atmospheric Science and she received her undergraduate degree from the Redlands. Also in the Legal Unit is Brian Flynn who finished his first year at Hastings last month. Brian graduated from Brown University with a degree in Environmental Studies and prior to attending Hastings, he was an environmental science instructor. Graham Owen is working in the planning section assisting with the Suisun Marsh Local Protection Program component upgrade. Graham earned his undergraduate at Virginia Tech in addition to being a graduate student in urban and regional planning there. Carla Wright is working with our Administrative staff, she is part of the LEN Business and Language Institute which provides computer and clerical training. Finally, Adolfo Luna, a third year student at Cal State Sacramento majoring in Civil Engineering will begin his internship next week; Adolfo will work with Ellen Miramontes, our Bay Design analyst and Senior Staff Engineer Rafael Montes. He is a part of the very successful Mesa Program.

Two days ago, I was pleased to attend a meeting of the four regional collaboratives who are working on climate change and rising sea level issues in San Diego, Los Angeles, Sacramento and the Bay Area. As Chairman Wasserman has noted, this group has tremendous potential to influence how California reacts to and plans for our changing environment. Each of the collaboratives is at a different stage of development and working on a host of issues; our job is to learn from each other and try to speak with a unified voice as the State develops its climate change policies.

Also, speaking of climate change, each of you has in your packet a copy of the Coastal Conservancy's "Climate Ready" grant announcement. This is a \$1.5 million pot of funding that will be disbursed in grants ranging from \$50,000 to \$200,000 to enable local governments and NGOs to plan and implement on-the-ground actions to reduce GHGs and lessen the impacts of climate change. I encourage each of you to spread the word.

That completes my report, Mr. Chairman and I am happy to answer any questions Commissioners may have.

There were no questions on this agenda item.

7. **Consideration of Administrative Matters.** Chair Wasserman stated that Bob Batha was present to address any questions or concerns Commissioners might have regarding the listing that was distributed on June 7.

There were no questions on this agenda item.

**8. Public Hearing and Possible Vote on the County of Marin and the Sonoma Marin Rail Transit Authority (SMART) Permit Application No. 2011.004.00 for the Central Marin Ferry Connection Multi-Use Pathway, in the City of Larkspur, Marin County.** Chair Wasserman announced Item #8 as a public hearing and possible vote on the County of Marin and the Sonoma Marin Rail Transit Authority (SMART) Permit Application for the Central Marin Ferry Connection Multi-Use Pathway in Larkspur. This is a public hearing and possible vote on the proposal by the County of Marin and Sonoma Marin Rail Transit Authority. The Application Summary was sent to Commissioners on June 7 and the Staff Recommendation was mailed on June 14. Michelle Burt Levenson will make the presentation.

Ms Levenson presented the following: The item before the Commission today is an application from the County of Marin and the Sonoma Marin Area Rail Transit or (SMART) to construct the central Marin Ferry Connection, Multi-Use Pathway proposed in the city of Larkspur, Marin County. The pathway would provide a continuous 1,977-foot path that would extend from the CAL Park Tunnel Pathway, over East Sir Francis Drake Boulevard and connect with an existing sidewalk and boardwalk on the southern side of East Sir Francis Drake.

The elements of the project proposed in the Commission's jurisdiction include a portion of a pedestrian bridge, an elevated ramp structure and an overlook.

All of the project elements are for the sole purpose of improving and providing new public access.

A total of 27,013 square feet of public access is proposed with the project, 6,690 feet of which would be in the Commission's jurisdiction.

The fill impacts associated with the project consist of a total of 5,135 square feet of permanent fill in a tidal marsh.

To offset this loss in marsh habitat, the applicants propose to restore approximately 62,000 square feet of degraded tidal marsh and transitional habitat at Creekside Park, located 1.5 miles upstream of the project site.

The staff summary for the project identifies three potential issues. These issues include whether the project is consistent with the Commission's fill policies; whether the project is consistent with the Bay Plan policies on public access; and whether the project has been designed to minimize impacts on natural resources.

Here to tell you more about the project is the applicants' representative, Bill Whitney, who is with the Transportation Authority of Marin.

Mr. Whitney presented the following: I report to the Executive Director and his 17-member board. We are the congestion management agency for Marin County and we serve as a transportation sales tax authority.

We believe the project meets the goals of the Commission by providing improved public access to the San Francisco Bay.

This project has been under development for approximately 10 years. It has been developed in partnership with a number of agencies.

Our local agencies support the expansion and creation of a non-motorized transportation network.

To the north of the project site, we've recently completed two major pedestrian bicycle facility improvements.

The new bridge will eliminate the need for pedestrians and bicyclists to cross the busy Sir Francis Drake Boulevard and will also provide an additional gap closure.

Our architectural consultant recommended that we incorporate some of the surrounding contextual elements. Our design mimics some of these elements.

We've gone through a considerable amount of alternatives analysis for four or five years and we've complied with all of the CEQA and NEPA requirements. We've consulted with Fish and Wildlife and we've had discussions with the Coast Guard.

We've received permits and support all of the conditions of those permits.

We've worked very hard to minimize the potential impacts, while improving access to the San Francisco Bay.

Chair Wasserman opened the public hearing on this item.

Commissioner McGrath inquired: The project will have a little more than a 5,000 footprint of permanent fill and while there is restoration of 1.42 acres, there's actually a small loss of what is now wetland or Bay. Can you tell me how you made a decision to actually have a small loss here and what kind of consultation ended up there?

Mr. Whitney responded: We recognized the potential impacts when we were consulting with U.S. Fish and Wildlife Service. We do have endangered species in that habitat.

We looked at areas to mitigate for those impacts. We found an area upstream in Corte Madera Creek which was a high-quality habitat.

The area had been degraded over the years so we proposed to go into the Hal Brown Creekside Park and enhance the habitat at that area.

We are impacting 5,000 but we're restoring 60,000. It's a large ratio.

Commissioner Nelson had a follow-up question: Could you walk us through the site constraints regarding design to explain to us why it was necessary to go over the marsh in a U rather than in an L shape that would parallel Sir Francis Drake in order to bring it down to grade and reduce fill?

Mr. Whitney replied: We went through an extensive alternatives analysis looking at potential path alignments. We're heavily constrained both vertically and horizontally in the corridor. We had to weave our path around a potential crossing with the passenger rail.

Commissioner Nelson added: I want to confirm that the project is designed so that if at some point it's necessary to change or modify the ramp to accommodate for higher tides it won't be necessary to do something dramatically different; that you can retrofit a portion of that facility to accommodate a change in grade.

Mr. Whitney answered: That is accurate and the majority of the project is elevated far above the predicted tides. We're using materials and design elements that would allow a retrofit in the future.

Commissioner Sears commented: We received a letter from Audubon that raised questions about the sufficiency of the offsite mitigation and I wonder if you could address that issue?

Mr. Whitney responded: They offered the same comments that were provided on the CEQA document. We feel like we have mitigated those impacts.

Commissioner Arce inquired: I'm curious if the work to build out the project is covered under the Project Stabilization Agreement or other kind of agreement to ensure the work gets done on time and on budget supporting the local sustainable community workforce?

Mr. Whitney replied: I can tell you that we are fully funded. The project will be advertised and then competitively bid.

Chair Wasserman announced that there were two public speakers on the item.

Alisha Oloughlin commented: I am with the Marin County Bicycle Coalition. MCBC would like to request your support and approval of this project. This project has been a major priority for MCBC for many years.

This project is widely supported by many organizations and agencies in Marin.

The project will fill a critical gap in Marin's north/south greenway which is the primary north/south bicycle corridor that extends from the Golden Gate Bridge through northern Novato.

The project will significantly increase bicycle and pedestrian safety in the area. It will also provide a direct, convenient and safe connection to the CAL Park Tunnel, the Larkspur Ferry Terminal, the Bay Trail and the future SMART Station.

This project will encourage more people to make the mode shift from driving to non-motorized transit. We strongly request your support and approval of this extremely important, non-motorized public access project.

Maureen Gaffney spoke: I am with the San Francisco Bay Trail Project. The Bay Trail serves an important function as an alternative transportation corridor and forms the spine of MTC's regional bike and pedestrian plan.

The Bay Trail Project enthusiastically supports this proposal. This project and the connections it will make are very advantageous for the potential use of the Bay Trail by the public.

Non-motorized transportation is part of the equation in dealing with mitigating traffic congestion in the Bay area.

Commissioner Sears commented: The people of Marin are really excited about this project and it will help in promoting non-motorized transportation and pedestrian safety.

This is a fabulous project and I hope that we can approve it.

**MOTION:** Commissioner Sears moved to close the public hearing, seconded by Commissioner Wagenknecht. The public hearing was closed by a voice vote.

Commissioner Hillmer commented: This crossing over Sir Francis Drake replaces the bridge that was torn down and that bridge was the bridge on which Clint Eastwood stood at the end of the movie, Dirty Harry. We look forward to your action on this item.

Ms. Levenson gave the staff recommendation: The staff recommends that the Commission approve BCDC Permit Application No. 2011.004.00 of the County of Marin and SMART to construct the Central Marin Ferry Connection Multi-Use Pathway in the city of Larkspur, Marin County.

The project will result in the construction of .42-mile pathway that will connect inland trails to Bay Trails and will connect the existing Larkspur Ferry Terminal with a future transit station.

The staff recommendation before you contains several special conditions that will ensure that the project is implemented in accord with the Commission's laws and policies, among them Special Condition 2(b)(3) requires the pathway to be maintained and Special Condition 2(b)(4) requires the pathway to be reconstructed, adapted or removed in response to adverse conditions as a result of sea level rise. Special Condition 2(c) requires restoration of tidal areas disturbed during construction and Special Condition 2(d) requires submittal and approval of a marsh restoration plan for the offsite mitigation.

The staff would like to direct your attention to a modification to the staff recommendation. On page 5, Special Condition 2(d), the first sentence of Item 1, the applicants have requested additional time to apply for and receive Commission approval to restore the mitigation site. Staff would like to provide the applicants with this time and propose to change the requirement from 150 days to 240 days which is roughly eight months.

Commissioner McGrath commented: I agree that this is a great project. It's important to add a little bit of detail to the findings about why we are approving something that doesn't entail one-for-one fill.

There needs to be a context for this and we need to put language in there that recognizes that there are currently over 30,000 acres worth of habitat restoration projects in progress.

I would like to add to the findings section on page 15 between the end of the second paragraph, Special Condition 2(d) and the final one; this language which is in direct response, while this project will result in a very small loss in marsh area, the Commission finds that this is appropriate in this particular circumstance because first, habitat for Clapper Rail will be substantially enhanced in accordance with policy 2 of these provisions and two, the applicants were directed to pursue this particular form of mitigation in accordance with policy four.

All parties involved agreed with Commissioner McGrath's additional language as a modification to the staff recommendation.

**MOTION:** Commissioner Sears moved, seconded by Commissioner Hillmer to adopt the Staff Recommendation.

**VOTE:** The motion carried with a roll call vote of 20-0-0 with Commissioners Addiego, Apodaca, Bates, Gilmore, Chiu, Arce, Gioia, Gorin, Lucchesi, McGrath, Nelson, Pine, Sartipi, Sears, Sperring, Hillmer, Wagenknecht, Zwissler, Halsted, and Chair Wasserman voting "YES", no "NO" votes and no abstentions.

The motion carried unanimously.

9. **Commission Consideration of Mapping and Graphics Contract.** Now we will take up Item #9, which is to consider authorizing the Executive Director to enter into a two-year contract for mapping and graphics services. Joe LaClair will make the presentation.

Chief Planner LaClair presented the following: I am here to recommend that you authorize the Executive Director to enter into a two-year contract with GreenInfo Network to provide the Commission with mapping and graphics services with the contract not to exceed \$200,000.00 in value, but we're also asking that for administrative efficiency that you authorize the Executive Director to make two, one-year extensions of the contract not to exceed \$100,000.00 for each extension for a total of four years and \$400,000.00 of authorization, assuming that the funding is available in the Commission's budget to implement the contract.

The Commission needs these mapping and graphic services because, although the staff has some capability in this area, it's not sufficient to meet the demand for producing the reports and maps and other materials that the Commission needs to communicate its work to the public.

GreenInfo Network participated in the competition that the staff initiated through the issuance of an RFP. As you can see in the staff report, we had a wealth of responses from very qualified firms and GreenInfo network rose to the top.

Commissioner Nelson had a question: Can you talk about what happens if funds are not available?

Chief Planner LaClair replied: This contract is structured in such a way that there's no guaranteed work or dollars to the contractor in any year of the contract.

Chair Wasserman announced that there were no public speakers on this item. He asked for a motion on this item.

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

10. **Consideration of Proposed Legislation AB 1273 (Ting).** Chair Wasserman announced Item 10 on the agenda and recused himself from the proceedings. He exited the room prior to the beginning of this item.

Vice Chair Halsted stated: Now we will take up Item 10, which is our further consideration of AB 1273 by Assembly Member Ting.

Our Chief Deputy Director Steve Goldbeck will make the presentation and Tim Eichenberg is here as well, to answer Commissioner questions. After Steve has finished, Brad Benson of the Port of San Francisco will be offered an opportunity to provide remarks. I believe that the representative of the Warriors will join Brad. Following that we will have Commissioner questions and then public comment. We will limit public comment to two minutes.

Chief Deputy Director Goldbeck presented the following:

You have before you a staff recommendation dated June 14, 2013 regarding Assembly Bill 1273, the Piers 30-32 Revitalization Act by Assemblymember Ting, that would make a finding of trust consistency for a multi-purpose venue arena for the Golden State Warriors and other uses on Piers 30/32 along the San Francisco waterfront just south of the Bay Bridge.

The legislation for AB 1273 was introduced at the beginning of this year and the staff has been working with the bill sponsor as well as the State Lands Commission to address those concerns.

The author and sponsors have made some changes to the bill to address Commission staff's concerns. However, concerns still remain.

At your last Commission meeting you considered a staff recommendation of taking an "opposed unless amended" recommendation to address the remaining concerns that had been raised by staff.

Instead, you directed the Commission staff to continue to work to resolve these issues to this meeting. The sponsors committed to not hear the bill in front of the Senate committees until you had a chance to come back at this meeting and see what the outcome of these discussions are.

We have been working intensively with the Port, the Mayor's office, the Golden State Warriors and the State Lands Commission to try to address the issues that were raised by staff and also by Commissioners at the last meeting and see just how close we could get.

I will walk you through where we got to in those discussions. The staff recommendation itself, particularly the discussion in the beginning of what the bill provides for is the existing language of the bill as it sits in front of the State Legislature.

We also included another document marked, Agenda item 10 which is the bill language but with red line, tract changes that show the actual language that we worked on.

The first issue regarded independent oversight. The legislation as it now stands directs the Port of San Francisco to determine whether the project is consistent with the various requirements that are laid out in the bill in order to make a finding of trust consistency.

After discussion, the State Lands Commission volunteered to take on the role of being an independent body to assess that consistency. And that was agreeable to all of the parties, which is the first major change we made.

We also clarified the definition of public trust retail in the bill.

The next issue that we addressed regarded the retail uses. The legislation provided for "venue supporting retail" that is not defined. The staff is concerned that that could include non-trust retail uses and requested a definition in the bill, and also that all retail in the project be trust compliant.

The Warriors stated that they need to have some retail space for the major sponsors of the arena and the project and so that this venue supporting retail is for them. There was some back and forth in the discussion, but at the end we came up with language that limits the venue supporting retail that would be potentially non-trust to 20,000 square feet; this is out of around 105,000 square feet total retail that is proposed right now.

Staff believes that this is small in relation to the project and that this issue was addressed.

The size of the project is a major concern of the staff. The staff has been consistently telling the sponsor that we are concerned about the size and bulk of this project.

The staff was directed to try to clarify the project in terms of the size and bulk and did meet with the Warriors and the project sponsors and did get better definition on the project as it stands now.

But the project is still in design and the project sponsors are addressing some of the issues of the staff and, of course, other aspects that they're looking at in the design. So this is not something that can be resolved in the time period that we had to discuss the legislation.

One of the major aspects of the size and bulk of the project is the 500 parking spaces that are provided for in the legislation. The staff would prefer to have little or no parking on the Bay on this project site and instead rely on public transit and parking on land to serve the project.

The Warriors believe that they need some public parking on the piers. So we had much discussion about this and what the number ought to be and decided that we really could not come to a conclusion on a particular number at this time.

We agreed to a process with language in the legislation that would provide for minimizing parking on the piers and to preserve and enhance the Commission's authority to reduce parking to the minimum.

BCDC staff believes the project is going to need additional public benefits than those provided for in the bill. We were concerned that it could be perceived that this bill lays out those public benefits that will be needed for the project; so we had a discussion of the provision of public benefits.

At this stage of design it really is impossible to determine specific outcomes in terms of additional public benefits. Also, any public benefits along the waterfront would need to be vetted through a transparent public process.

What we agreed to at the end of the day was language in the bill that would require additional public benefits associated with the project that would be determined by BCDC and the Port in a public process and that would be subject to review by BCDC for adequacy with our law and policy.

We believe that while we don't have the specific benefits, the language does preserve BCDC's right to fashion and require a public benefits package as part of your law and policy as you consider the project.

We also have the issue of balancing public trust and non-trust uses on the project. The bill is going to make a legislative trust finding of consistency for the project. Staff believes the arena is in the gray area of whether it's a trust-consistent use, however, it is the Legislature's right to make that trust determination.

We also think that as the discussions have reduced the amount of parking, the amount of non-trust retail and required an additional public benefits package as well as State Lands Commission independent review; that the balance is shifting in a way that staff believes provides a better mix of trust and non-use trust.

We worked under a very tight legislative deadline which is required in order for the bill to go through policy committees and be acted on this calendar year.

It is going to be considered next Tuesday in the Senate Natural Resources Committee. They have contacted BCDC staff and are very interested in the outcome of our discussions today.

That deadline really didn't allow time to come up with discreet and specific outcomes, but we ended up with some processes that we believe have improved the bill substantially.

We do believe that if we had more time we could further improve the bill and continue our very productive discussions that we've had.

If the bill was allowed to become a two-year bill meaning that we have a two-year legislative session. We are in the first year of the session. If it were allowed to continue into next year then it would become a two-year bill and could be moved within the time periods of the second year of the legislative session.

I will conclude by saying that staff has worked at your direction intensively to narrow and resolve the identified issues. We believe that all sides worked with us and we thank everyone's involvement in the process. I think everyone was working in good faith. Everybody gave something and leaned forward in the negotiations.

We think the additional language provides assurances for the Commission that weren't there before the negotiations. If we had more time we could further clarify the language and improve it, but staff believes that we have come far and so the recommendation that staff is putting in front of you today is that you not take a position on the bill. But that you also request that the bill be allowed to become a two-year bill so that we can further improve it.

I'd be happy to answer any questions and we also do have presentations by the Port and the Warriors and also Assembly Member Ting has a representative here.

Brad Benson of the Port of San Francisco made the following presentation: I am here representing the Port and the Mayor's office as well as the entire city team that has been working with the Warriors on the proposed multi-purpose venue at Piers 30/32.

We want to thank the staff for a very productive engagement since the May 16th Commission meeting. These discussions have produced very positive amendments before you today that will be considered by the Senate Natural Resources Committee on Tuesday.

Following the announcement about a year ago that the Warriors were eager at the end of their current lease term at the Oracle Arena to move to the San Francisco Waterfront, we immediately turned to reach out to BCDC staff and to State Lands staff because we knew that this is an unusual project.

We met repeatedly over the course of last summer and last fall. We stressed that while the project really represents what we see as potentially a last opportunity to save the pier, and it's the type of project that would bring new people to the San Francisco Waterfront, that we recognized that the multi-purpose venue alone is not a traditional trust use.

We provided detailed legal and policy advice on the public trust implications of the project. You've seen some of that in our prior presentations.

We knew that this trust question was a difficult question.

It's really important to understand that both State Lands Commission staff and BCDC staff in consultation with the Attorney General's Office recommended to the City and the Warriors that we pursue state legislation dealing with these public trust issues.

That was in part because of the prior legislation at the site, AB 1389. It was also because it's the province of the Legislature as ultimate trustee to weigh in on difficult questions like this.

This was not casual advice. This recommendation was made on multiple occasions to City staff and the Warriors.

It took a lot discussion with the Warriors and considerable persuasion to convince them to pursue the state legislative path. They were concerned about the prospect of regional rivalry playing out in the Legislature.

After the Warriors accepted the advice to seek state legislation on trust matters we got engaged in a very cooperative drafting exercise.

We introduced a bill at the beginning of the session. The legislation really represents the beginning of the process not the end of the process. It's a way to start with a shared understanding about base expectations for this project.

It answers the critical question of whether the project can be built at this site leaving to later processes after CEQA the question of whether the project should be built and if so, under what conditions.

The bill has proceeded in the normal course through the State Legislature. We negotiated with Assembly Natural Resources staff and took amendments that they offered during the process.

BCDC did articulate at the time two outstanding concerns about parking and about public benefits. We indicated that we were willing to continue talking along those lines.

This spring after the bill was already introduced and we had negotiated a certain set of amendments, the Commission expressed its desire to weigh in and we embraced that.

What was a little bit different was the perspective about it. It seemed to you that you were being presented with legislation that was rushing through the Legislature.

Our perspective was that we had been in a process with your staff for nine months. That process had already resulted in major changes to the project, to the maritime program and to the public access.

We appreciated your direction on May 16th to negotiate regarding outstanding issues. The amendments contain new public processes to determine the amount of parking, to determine an appropriate public benefits package that will couple with CEQA to allow you to make a later independent determination about the project.

We think the amendments create the kinds of checks and balances that project skeptics have been asking that the legislation contain.

We think it's been a deliberative and transparent process. We've had far more local public hearings on this state legislation than we've ever had.

I'll close by saying that we sought this legislation at your staff's advice. We think that there is in BCDC law and policy the concept of an early read on public trust matters.

We're proud of that early consultation. We think that we can only succeed in creating a great San Francisco Waterfront if we cooperate with you and with State Lands.

We would urge you to accept staff's recommendation to not take a position on the bill but we would discourage you from recommending a two-year bill at this point.

Mr. Weltz addressed the Commission: My name is Rick Weltz and I'm the President and Chief Operating Officer of the Golden State Warriors.

I'm here to express our support for recommendation number one and recommendation number three of the staff report.

We worked around the clock with the City team, the State Lands staff and your staff to hammer out amendments to address the four areas of concern articulated in the May 10th staff report.

I think we succeeded in reaching agreements with all parties on the new amendments that address each of these four issues.

Those negotiations were difficult. Your team won several key concessions not the least of which is a grant of authority to this Commission to require a package of new offsite public benefits that ordinarily would not be required by BCDC in connection with a major permit.

Equally important, the amendments further clarify and even strengthen the role of BCDC on future project-related decisions. BCDC retains the ultimate right to approve or deny this project through the major permit process and makes it clear that BCDC has the ultimate discretion on important design issues such as how many parking spaces this project may have.

This is a critical point. Nothing in the bill takes away this Commission's right to either materially change our project or even deny a major permit. It merely provides that all of the parties get an early read from the ultimate trustee, the State Legislature, on the trust consistency question.

This early read is important to all interested parties. To the Warriors and the City and the Port of San Francisco so that we can negotiate the specifics of the project and related agreements. To the city of Oakland and the County of Alameda so they can chart the future and develop a sustainable plan for the Oracle Arena site that ensures the best future for that location.

We're about to engage in the next round of a project review process that will necessitate the investment of tens of thousands of hours of time from many public agencies, community members and project team members that are committed to this process.

It seems irresponsible to delay answering the threshold trust question. That's why the two-year bill recommendation is such a head scratcher to us.

The Warriors are determined to design this project the right way in collaboration with BCDC and State Lands. So please, don't allow regional rivalry to get in the way of good policy.

Ms. Ho spoke before the Commission: My name is Eileen Ho and I will deliver this statement on behalf of Assembly Member Phil Ting.

One of my main purposes in authoring this bill was to help ensure that the project follows all requisite state and local regulatory approval processes.

Especially compelling for me was the fact that during early discussions between project staff, State Lands Commission staff and BCDC staff in consultation with the Attorney General's Office, it was recommended that state legislation be pursued early on in order to determine whether the project is trust consistent.

A two-year bill means that a signed bill is not operative until 2015. That means that the fundamental question of whether it is possible to locate the proposed project on Piers 30/32 site would be in limbo for over a year and a half.

Such uncertainty would definitely jeopardize financing options for the project and stall public review processes that cannot begin until this fundamental question is answered.

It is important that AB 1273 continue to move this year so that public discussions regarding findings of trust consistency can progress.

The bill has evolved significantly to maximize public trust principles. Most importantly, due to recent productive negotiations with BCDC staff at the direction of Commissioners, the bill is being further improved as detailed in your staff report.

It is entirely appropriate that questions remain about the final design and public benefits of the project at this time because those are issues that are traditionally settled by the BCDC permitting process and not through state legislation.

A finding of public trust consistency by the Legislature, the ultimate trustee of public trust lands held on behalf of the entire state of California is crucial to first determine whether a project can even be considered at the Piers 30/32 site.

As identified in the staff report, the concerns outlined by the Commission at the May 16th meeting have resulted in beneficial amendments to AB 1273 that I am pleased to adopt.

I respectfully ask that you adopt staff's recommendation to not take a position on the bill at this time and urge that you see the value in the bill being considered this year and not as a two-year bill in order to facilitate all other public review and vetting processes.

Senator Hancock spoke before the Commission: I actually am the Legislature's appointed member of this Committee. I wish I could be here more often and not under these circumstances.

I will share with you some of the concerns of the State Legislature. I do represent parts of the East Bay and I have issues around teams trading off around the Bay. There are, many issues around that and where the jobs are et cetera.

I want to talk with you about your role in this process. The precedent-setting nature of would be a stunning reversal of decades of decision-making authority lodged in BCDC to make decisions about the public trust.

This bill is highly controversial in the State Senate. Your action today will be important.

Legislators are confused and not all together happy about being put on the spot in this way, both for environmental reasons, because we realize the importance of the San Francisco Bay, and many of the legislatures are not familiar with the local issues and precedents.

The San Francisco delegation is split. Assembly Member Ting is carrying the bill and Assembly Member Ammiano opposes the bill.

We're being asked to decide something this important about the public trust and to go around a local process.

Let me say that if you read the bill, and no one in the Legislature has seen any of the amendments other than Assembly Member Ting, but when you read the bill it's intent language. We intend to do this. We intend to do that and we want it signed off and then we'll talk about the details.

It is not a defined project. There is no EIR. And there's no real conclusion about whether a basketball stadium is, in fact, in keeping with maritime uses.

We do know there will be a lot of permanent concrete landfill in the San Francisco Bay. This isn't just going to be a dock on the Bay. It's going to be tons and tons of building material and it's going to not only be there forever but inadvertently in and out of the water during construction.

So I feel that you were given certain duties, powers and authorities by the McAteer-Petris Act. You know the communities and you know the Bay. You should not give up that authority without a detailed plan, without an EIR, without a full vetting of the issue of maritime uses.

This place is defined by the San Francisco Bay. And there would not be a Bay today for us to be having a meeting about if three visionary women about 50 years ago had not decided that the projects that everybody just loved, all up and down and around the Bay, were going to destroy it.

There is no rush. I personally hope that you will oppose the bill and that you will retain your authorities. I think, at the very least, a two-year bill would be in order.

This is a very serious decision and it needs to be thoroughly talked about. It seems to me the State Legislature, at this time and in the next couple of months, is not the best venue in which to do that.

Commissioner Gioia had a question for Senator Hancock: There is a staff recommendation to continue to negotiate but not take a position. There is a hearing before a Senate committee on this bill next week. Is that correct? (Senator Hancock answered in the affirmative)

I'm unaware of when there's been a significant bill affecting the authority and powers of this Commission with a hearing before the Senate and not taking a position on it.

It's been customary that when there is a position on a bill affecting the authority of this Commission that at least we weigh in one way or another because ultimately this bill could pass out of that committee without a position by BCDC because there is no intent to not have this bill be heard next week. That's my understanding.

Senator Hancock replied: We have legislative deadlines and right now we're trying to hear all the bills before July 3rd. So that gives us a window of next week and then two days before the July 4th holiday.

Commissioner Gioia further queried: Is it your sense that the best way that we could get leverage to negotiate the rest of the issues that have been unresolved is to take a position on this bill to help achieve the leverage that we need to get provisions that are acceptable to BCDC, rather than a "no position."

In other words, an oppose position so that Legislators hear that we're not happy about the current form the bill is in because there has not been a resolution of all the issues that we have raised with the author of the bill.

Senator Hancock replied: I am not a party, and no one in the Legislature has been, to these negotiations. Are they on the major issue of whether this is an appropriate use or is it on, instead of 500 cars, parking 525.

Commissioner Gioia interjected: There are some major unresolved issues about the authority of this Commission and the staff has come back and said, we haven't resolved these issues.

It seems to me that if we haven't resolved these issues, the only way for the legislatures to know that is to say that we oppose the bill until the issues are resolved.

Senator Hancock stated: So you're saying essentially a "no", unless amended.

Commissioner Gioia agreed: Right. Oppose this bill because we haven't resolved the issues, rather than a no position on the bill.

Senator Hancock replied: That would make sense. It's really up to you.

Commissioner Nelson had a question: You mentioned the legislative timeline, the legislative schedule for committee consideration. Could you just walk us through the schedule for final consideration on the floor and getting a bill on the Governor's desk?

Senator Hancock stated: We're in the first year of a two-year session. We will be adjourning for our summer break. We don't come back until August 12th.

We have from August 12th to September 12th to pass literally thousands of bills. It can get very wild and people don't always read the bills because you have 20 bills per legislator and you have 120 legislators.

Then we will adjourn until the first week in January. Then we're in the second year of the two-year session. So if the bill were a two-year bill it would not die. It would not have to be reintroduced. You could keep working on it.

It could come up in January for more consideration. That might be a good idea. It would give staff time to negotiate. It would give all the interested legislators around the Bay and all of you time to be involved and see what's really in the project and what's not in the project and how it could be mitigated, if it could be mitigated. And then the very basic issue of, is this a maritime use consistent with the public trust and is it in keeping with the protections.

Commissioner Gilmore commented: I have a quick question. As I was listening to the staff report it sounds pretty clear that if the bill were to go forward that the State Lands Commission would make the trust determination on the Warriors' Project.

Does that also include the State Lands Commission making the trust determination on the retail uses?

Chief Deputy Director Goldbeck replied: The Legislature is making the trust determination subject to conditions that are in the bill. What the State Lands Commission would be doing would be addressing whether those conditions had been met.

So the State Legislature is taking to itself as the ultimate arbiter of the public trust, that determination. So they would be saying, okay, did you do this, did you do this and part of that would be making sure that the venue-supporting retail wasn't more than 20,000 square feet.

Commissioner Gilmore made an observation: Since the Legislature does have the power to make the trust determination, at the 30,000 foot level, what makes this project any different than any other project that may come before this Commission? And if the Legislature feels fit to make this determination in this particular case, why not all of the cases and why not just say, well, Legislature, you are stripping the power to make the trust determination from BCDC that you had once given us and taking it for yourself.

If they can do it in this instance they can do it in any instance. We all realize that they can. So the question is, why don't they just take it back?

And the question for my Commissioners here, how do you feel about that? That is a question for discussion.

Commissioner Gioia inquired: What the staff recommendation is saying, don't take a position, ask for this to be a two-year bill and then we've got the proponents saying, don't take the position and don't make it a two-year bill but it's scheduled for a Senate hearing.

Is it your intent that this is still going to be heard by the Senate in its current form? There has been no effort to withdraw this bill.

It's been stated that there are unresolved issues between BCDC and the author of the bill. Is it still the intent to have this bill be heard before the Senate Committee next week? My understanding is that is on calendar for the Senate hearing next week.

Mr. Brad Benson answered: Yes. And we stated in our presentation that the amendments that we have negotiated with staff have been introduced through leg council. They'll be up in front of the Committee on Tuesday. We would like the Committee to consider those amendments.

Commissioner Gioia added: But at the same time the issues that you haven't resolved means that the bill is going to be in the form that still is unacceptable based upon the previous direction of the Commission because we haven't resolved all the issues.

Mr. Benson replied: We think that the two issues that staff raised in your staff report are one, a design issue, the massing of the project, the height of the project, how it impacts Bay views. We think that that is within the Commission's jurisdiction under the major permit.

The other issue is that the public benefits are not defined yet. We've developed, in the bill, language for BCDC to run a process to define public benefits and for the Commission in its sole discretion to approve that package as part of the requirements of the project.

Commissioner Gioia suggested: So maybe we should hear from our staff. It's not your interpretation but their interpretation, our staff's interpretation of where the differences are in the bill which is really key as we get to decide whether we should take a position later on in our discussion as this bill goes forward because it seems to me, we lose any leverage we have on shaping this bill when we just say, we don't have a position and yet we still have unresolved issues.

Vice Chair Halsted interjected: My question is, I think this may be more appropriate for after public testimony. I think that there are a number of questions that may be similar.

Commissioner Gioia directed comment to staff: The one issue for the staff to address is that at some point to delineate the substantive differences before we have our discussion.

Commissioner Pine had a question for the Port: In the staff report there is a description of how AB 1389 was handled in the past. It said that the project design was crafted and the mix of uses and the details were worked out between 1999 and 2001. There were all these briefings with BCDC as with the State Lands Commission joint review of the project, BCDC Design Review Board; all of that was done before the legislation went to Sacramento.

Why can't we follow that approach here?

Mr. Benson responded: We didn't think legislation was needed for that project. We had been working on that project for several years with State Lands and BCDC staff. It was a cruise terminal project.

We saw the office uses as being the financial engine. Actually the process involved with that was not perfect. It was late in the legislative session that there was a decision made by State Lands and BCDC that the office component of that project was too big a question for staff to decide at the administrative level and that legislation was required.

We think that the process that we've gone through on this legislation is a much better public process.

Commissioner Lucchesi asked: Do you know if the CEQA and local entitlements were obtained before obtaining legislation or after?

Mr. Benson answered: It was after but the CEQA had happened with the project. The major permit on the project trailed by several years.

Mayor Quan addressed the Commission: When the Warriors issue first came up I was pretty laid back on it. When BCDC was established everybody was building into the Bay.

If people can bypass you, which essentially is what I think this legislation does, then are we going to go back to the period of uncontrolled Bay development?

On the Oak to Ninth project we played by the rules. It seems that this doesn't play by the rules. We are a city that really cares about the environment.

The Bay is precious to all of us and we've all had to play by the rules. You should oppose anything that weakens your authority.

Vice Chair Halsted proceeded to public testimony.

Chris Fry-Lopez spoke: I am a lifelong Oakland resident and I am also a behaviorist at Spectrum Center in east Oakland. I am a member of Save Oakland Sports. I am here to strongly voice my opposition to the proposed legislation.

This will have a negative environmental impact on the Bay. This will cause traffic in an area with traffic issues already.

This will also have a negative economic impact on the City of Oakland. If this project were in the Coliseum area it would have less of an environmental impact.

Please don't approve this legislation and help keep our Bay clean.

Sue Bushnell commented: I am a resident of San Francisco. I oppose the Assembly Bill 1273. The project is too huge. It has too much of an impact on my city.

Please oppose this assembly bill and please don't give your authority up to the Port of San Francisco or the Warriors or anyone else.

Claus Niemann addressed the Commission: I am a resident of the city of San Francisco. I am asking you to uphold the integrity of the regulatory process and oppose AB 1273.

The legislation seeks to upend 48 years of waterfront planning that was overseen by BCDC and the State Lands Commission. This is a shortcut in the rush to approval of a 12-story high baseball arena entertainment complex with more than 1000,000 square foot of space on Pier 32.

Constructing a massive facility such as this that will extend 13 acres out into the Bay is inappropriate. At this point the City or the Port have not provided any meaningful or concrete information of what the impact would be on the City.

I am also concerned about the financial structure. There is \$120 million that is going to come from tax money and I would like to remind you of what has happened to the America's Cup; where did we start out, where are we now, where will we be in the future?

We don't know what is going to happen after this project is actually built. I strongly ask you to oppose this bill.

Lawrence Stokus spoke: I am with Save the San Francisco Waterfront that is comprised of people who live near Pier 30/32. Tens of thousands of people have worked over the last century to clean up the Bay and to prevent the City from being walled off from the water like Miami Beach or Hong Kong.

These people trusted that BCDC would defend our open waterfront tradition. This project is to be built out into the Bay on a monumental concrete Bay fill on a scale the Bay area has never seen.

The agencies promoting this project have repudiated our tradition of an open waterfront. There is a lot of money that stands to be made from this project.

This is a public land giveaway and a fantastic deal for the Warriors if they can get their permits.

Your mandate does not require you to accommodate an overreaching developer that desires free public land.

Please speak for us. Vote today to oppose AB 1273.

Dale Riebert spoke: I am a resident of South Beach and have been for the last 13 years. I ask you to oppose AB 1273 and reject the development on Piers 30/32.

In my mind the City, the Port and the Warriors simply colluded behind closed doors without any public input and made an announcement that this is where the Warriors were going to have an arena and that was it.

Don't abdicate your duties, please.

People don't come from around the world to see buildings. They come to see the Bay. They come to see nature.

We'll be faced with pollution from traffic, sewage, trash, noise, light and signage to no end.

Oppose AB 1273 and do not let this project move forward.

Deb Self commented: I am the Executive Director of San Francisco Baykeeper which has been your pollution watchdog for the last 24 years.

Today I am speaking on behalf of 2,300 members who live, recreate and enjoy the Bay and its surroundings. I am here to strongly oppose AB 1273 and to urge you not to give away your authority to make a public trust determination.

The Legislature has the right to make the ultimate public trust determination; however, this so called early read is completely wrong.

Basketball is a non-trust use. Under a common law, public trust doctrine you cannot install a use that is a non-trust use to the detriment of public trust uses.

The Legislature can make this determination but ultimately it will be subject to judicial review to determine whether or not that trust determination was correct.

I urge you to not give away your authority and to step forward and oppose 1273.

David Terheyden commented: I am with the Operating Engineers, Local 3. We support the project but representing the members in San Francisco.

My family came to San Francisco in 1880 which was a town then and is a city now.

We do not advocate a two-year bill. We support the Warriors and everybody who has tried to move this forward.

Manuel Flores spoke before the Commission: I represent the Northern California Carpenters. I am opposed to this becoming a two-year bill. If negotiations weren't going well, if there had been no dialogue, if there had been no communication and if things were moving slowly then more time would be needed.

This is moving quick because minds have come together to get resolutions and to get things done. They are moving in a positive direction.

If we don't do this project then nothing will be put here, nothing at all. This is a golden opportunity for the region and the whole Bay Area.

Rebecca Evans gave public comment: I am the Chair of the Sierra Club, San Francisco Group. We have 6,000 members in San Francisco and 30,000 throughout the Bay Chapter.

I was going to ask you to support the staff recommendation but since there is a groundswell of activity to oppose this legislation, I would like to say that the Sierra Club does oppose the project, it opposes the legislation.

We were involved in the creation of the McAteer-Petris Act as were thousands of people in the Bay area in the 60's.

It's really important that you not cede the authority vested in you by the original legislation for the Commission to make trust determinations.

The staff has said that this is not a trust-consistent project. You should listen to the staff.

I urge you to oppose this legislation and let's get on with it.

Maisha Everhart commented: I am Senior Policy Advisor to Mayor Quan. This is not just an environmental issue but this also affects jobs. If the Warriors are to relocate nearly 6,000 jobs would be lost in Oakland.

We need these jobs here in Oakland. We have an opportunity to build a new stadium here in Oakland on not one but two sites.

For that reason I would urge you to oppose AB 1273.

Josh Sonnenfeld spoke: I am speaking on behalf of Save the Bay. We urge the Commission to oppose this legislation for three reasons.

Number one, it's entirely premature. This project is still in flux. No EIR studies have been released.

Number two, the amendments do not resolve the core problem with this bill. This arena is not consistent with the public trust requirements.

Number three, this bill erodes BCDC's authority and undermines the Commission's ability to protect the Bay and the public interest.

The Commission must oppose AB 1273 or lose both its credibility as an institution and its ability to make public trust determinations at the appropriate time with full information and public input.

Jon Ballesteros addressed the Commissioners: I am with the San Francisco Travel Association. We are here to urge that your Commission adopt the staff recommendation to refrain from taking a position on this bill, AB 1273, at this time.

This will help avoid any delay that could jeopardize this vital and important project. This project will play an important role in generating tourism and tourism generates economic activity in all of the region.

We know from our convention and meeting planners that there is a tremendous need for large, indoor-arena style facilities throughout the Bay area.

This project greatly enhances the community around the area. It transforms deteriorating under-utilized piers into a destination with opportunities for enhanced public access, enhanced open space, greater security through activation of the area and opportunities for pedestrian and bicycle safety.

We urge your Commission to direct staff to work with the proponents, to hammer out the last minute issues and adopt the staff recommendation.

Kevin Carroll spoke to the Commission: I am the Executive Director of the Hotel Council of San Francisco.

We are here to support AB 1273 and also to request that you honor the staff's recommendation of not taking a position on this bill.

When someone stays in a hotel they will spend twice as much money outside of the hotel than they will inside.

AB 1273 provides the Warriors with a simple determination from the State Legislature about whether the core of their project is consistent with the trust.

We urge you to not take a position on this bill and to not support a two-year bill.

Rob Black commented: I am the Executive Director for the Golden Gate Restaurant Association. We're a trade association that represents over a thousand restaurant locations around the Bay area.

I'm here to urge this Commission to take no position on AB 1273 and recognize the immense efforts put forth by the Port staff, the Warriors and your own staff.

Will Travis used to remind at the outset of nearly every meeting that this is the Bay Conservation, "and," Development Commission. I urge you to recognize the incredible importance of this project to the Bay and to the Port of San Francisco.

If this project does not go forward, those piers will not be saved. It is essential that we take advantage of this opportunity to preserve that important part of the waterfront and access to the waterfront in San Francisco. There are not a lot of options left for this space.

We urge you to not support the staff recommendation to delay the legislation but to support the staff recommendation to have no position.

Dee Dee Workman made public comments: I am the Director of Public Policy for the San Francisco Chamber of Commerce. The Chamber supports AB 1273. It is appropriate for the State Legislature, the ultimate trustee, to determine a project's consistency with the public trust doctrine.

It is not an end run around BCDC's regulatory permitting authority or CEQA. Revisions to the legislation reflect detailed and collaborative discussions with BCDC and State Lands.

The project opens up portions of the San Francisco waterfront to public access that simply does not exist today and may never exist if this project doesn't get built.

BCDC has always focused on the issues and its charter, protecting and enhancing San Francisco Bay. It has avoided fights between cities and counties in its jurisdiction.

The Chamber believes that supporting AB 1273 in its current form is consistent with that approach and we urge BCDC to support the measure. And we urge you to not support it becoming a two-year bill.

Patrick Valentino addressed the Commission: I live a block and a half from the proposed site. I am here in support of the Warriors site at Piers 30/32 because I think consistent with the Special Area Plan this project provides increased public access, greater views and a public benefits package to be worked out by this Commission.

This project returns this location to the public and reactivates it in ways that is great for the entire region.

This project engages the waterfront with the public for more public uses that we don't have right now.

I do ask that the Commission adopt the staff recommendations to not take a position and to recommend to the Legislature that it accept the proposed amendments to AB 1273.

Rudy Nothenberg commented: I am a retired city official from San Francisco but I'm here speaking on my own behalf.

I am here to ask you to oppose AB 1273. There is nothing in this bill that will, as amended, restore to you the rights that this bill takes away from you.

There is nothing in the amendments that will provide you anything that you would not get in any event in the absence of this bill.

Every right that is supposedly given to you already exist under the current statutes. You maintain them under McAteer-Petris. There is no threat to these rights.

The only threat is a passage of a bill that, as it was introduced, would have completely removed you from this project. It is only because some of us screamed about it that you're back in it and you don't need to be grateful for that.

If you reject 1273 you are not making a judgment on the project. What you're doing is bringing back to your jurisdiction those rights that you already have.

This is nothing but an enabling bill to let somebody else do a job that you're entitled to do by law. If this bill is defeated all of that will come back to you.

Corinne Woods spoke: I am a member of the Pier 30/32 Arena Citizens Advisory Committee and have spent many months trying to learn everything we can about this project.

I'm not speaking for the CAC because we don't know enough yet to know whether or not to support the project.

I am here to say that I hope that you will support the amendments to this legislation. I think they do bring BCDC back into some kind of control over the situation.

I don't see what the problem would be making it a two-year bill. The MTA is working on a waterfront transportation assessment which will be a critical piece to find out if this project actually will fit where the Warriors want to put it.

I urge you to support the staff recommendations and at the very most take no position on the bill.

Jacqueline Flin addressed the Commission: I am the Executive Director of the A. Philip Randolph Institute, San Francisco. We serve San Francisco residents from low-income communities of color.

I am here today to offer another perspective that is rarely represented in these proceedings. I applaud BCDC's efforts to bring in interns.

Unemployment is a reality to all members of low-income communities. We work closely with trade unions to prepare workers for the job market. We advocate for silent members of the communities we serve because they are often unaware of what it means to participate in public processes.

We are in support of moving AB 1273 forward and bringing the Warriors to San Francisco. We'd like to see it move forward in a timely fashion.

Donald Forman spoke: I am representing the Sierra Club, San Francisco Bay Chapter. We have some real concerns about this project.

This is a huge project on the waterfront at a time when global warming is leading to sea level rise. This is not the time to be creating large, waterfront projects without "very" clear thought about how to make that compatible with the long-term climate realities.

The project would lead to tremendous traffic problems which means limitations on public access to the waterfront.

Reading the staff report I would summarize it with a slightly different tone from the presentation today. What the report said was, we don't have enough information about the project even to draft amendments.

In other words, we don't know enough to go ahead with a bill, putting off to be a two-year bill is really getting ahead of what we know.

There's no bill that can be acceptable.

Andy Fields spoke: I represent the California Alliance for Jobs. We're a construction advocate that represents 80,000 labor union construction workers.

Rarely have we seen a private development project that has worked so closely and in such cooperation with a body such as this. I'd like to applaud all the interested parties for really trying to work together to come up with a plan that's amenable to everybody.

I'd like to urge you to adopt the staff recommendations of not taking a position on this bill. It doesn't take away your voice. It just makes sure that what comes out of this process is what is best for everybody.

This process has been transparent from the start and not opposing at this point and not taking a position on the bill would allow the process to go forward so that you can continue to work with all parties involved to come up with something that we all agree on.

Gayle Cahill commented: I am here on behalf of the San Francisco Waterfront Alliance. We oppose AB 1273 for the violence it does to the customary processes that have historically and effectively balanced the interests of the public, the environment, project sponsors and affected communities on and around San Francisco's Bay.

Despite what appears to be the best efforts of all involved, the work of the last few weeks has confirmed what many observers and critics have contended. This bill cannot be reconciled with a need for a transparent, public and deliberate process to consider and evaluate the Warrior's desire to build a new multi-purpose event center, luxury high-rise condo tower, twin tower hotel and attendant retail and parking facilities in, on and next to the Bay.

The Warriors co-sponsored in this enterprise, the mayor's office and the Port have contended that the City and the Warriors are entitled to an early read as to whether the Warrior's plans for Piers 30/32 are consistent with the public trust.

Thanks to the conscientious work of BCDC staff they now have an answer. The Warrior's Project, at heart, is not trust consistent.

The preliminary nature of the project design has forced your staff discussions to center around potential processes rather than specific outcomes, and in plain English, that is a big deal.

The location of this project leaves no room for mistakes. The negative ramifications of building this project at this site are numerous.

Is the Commission willing to accede without a fight to an act that could launch a fleet of similar bill whose cumulative effect would likely be the piecemeal dismantling and dilution of BCDC's authority.

Sue Hestor commented: I am an attorney who has been dealing with the waterfront off and on for a long time. I have dealt with three projects south of the Bay Bridge in the last 20 years. Not one of the EIRs even mentioned sea level rise. They never dealt with the cumulative effect of this area.

McAteer-Petris has evolved because we know there is a clear sea level rise issue that you have to deal with. The Burton Act in the 60s did not deal with sea level rise either.

The basic issue you have to face is your mandate and look at the Bay. How are we going to work through all of the issues that we have to confront right now on the Bay?

If you go forward with supporting this project, you're supporting the mealy-mouth legislation of future resolution. You are abdicating your responsibility and you should just evaporate.

Mike Jacobs spoke: I am with the Pacific Merchant Shipping Association. We represent ocean carriers and marine terminal operators that operate at all 11 of California's public ports.

We oppose this bill. We also are completely agnostic as to where sports teams play. This project is patently and facially and unquestionably in violation of the tidelands trust of a non-trust use on top of the grant of the Port of San Francisco at that location.

The question for BCDC is twofold. Have you pre-judged this project; of course not, and your staff gave the correct advice to the proponents.

The question is on the table, do you want to support non-trust uses on grants of state property? We think you set a tremendously bad precedent by going about it this way through this legislation.

The legislation puts lipstick on a pig. The question is, do you mitigate the actual use away by putting in all these mitigations that are semi-trust facilitating? No, of course not.

But do you set up the precedent for the Legislature to come back and then say, I'm going to facilitate multiple non-trust uses just because I allowed a view or I allowed public access.

David Cincotta commented: I am from Jeffrey Mangles, Butler and Mitchell and I'm here to speak against this bill for you to adopt. AB 1273 is not necessary for anything.

We're here because someone wants to streamline the process for the City and the Warriors. That's what this bill is about.

Your staff has spent the last couple of weeks trying to get back into the bill protections and preservation of your rights. Why would you have to do that? You don't need this legislation for anything.

There's a difference in the way the City and the Warriors are looking at this legislation. The staff talks about these amendments that have been added are a preservation of your rights.

In the Warrior's presentation he believes that they gave you a gift of weighing the public benefits. He sees the public benefits analysis that you would have to do as a gift to you.

Section 7(e) does describe a public benefits package that would not normally be in your authority. I'm afraid that if you rely on this legislation, you begin to underline your authority to deal with the Special Area Plan.

It begins to say, well, maybe the public benefits plan can override what we have in the Special Area Plan.

We don't need this legislation. You should either recommend against it or get a two-year bill.

Eddie Ahn commented: I am with Brightline Defense Project, an environmental justice non-profit dedicated to promoting sustainability in low-income communities.

I will second the comments of Jacquie Flin the Executive Director of APRI about how this project provides good jobs.

I have two points on AB 1273. First, that the recommendation of making this a two-year bill would be an act of bad faith by this Commission. The one year nature of this bill was based on the assumption that minimum trust requirements would be established by the Legislature.

AB 1273 provides a vital framework for the minimum trust requirements to be established. There is legislative precedent for this as well.

The two-year bills cited by staff do not necessarily have to do with waterfront development. It has traditionally been a one year process and it should remain a one year process.

Second, that BCDC retains its authority with these amendments. Major permit approval is still happening based on the massing and design. A public benefits package can be approved by the Commission.

The BCDC staff acknowledges that negotiations are happening in good faith. Putting this on a two-year bill track ignores the incredible deference that courts have placed to the Legislature to make these determinations.

It is ultimately a political question for the Legislature to decide. For BCDC to dictate otherwise is not acceptable.

Dennis MacKenzie spoke: I am with Round the Diamond Consulting and Education. I've been a public high school teacher for the past 12 years in San Francisco.

I have provided you with a packet of my update on my proposal.

First of all, I would suggest that this Commission and the Warriors continue to negotiate to find some middle ground.

I'm asking that all the projects along the waterfront include a high school classroom inside them.

Our educational institutions need to be included in all these decisions.

Sonny Hoang commented: I am a Bay area native. I grew up in the East Bay. I am currently a San Francisco resident.

We've heard that the arena impairs the public trust in some ways. I haven't heard any specifics on this. I believe that the arena is consistent with the public trust.

The arena would fall under the public assembly prong of commerce where the spirit of the public trust is encourage public use, access and enjoyment of the waterfront. An arena would clearly do that.

The Warriors have been very responsive to BCDC staff and there is no reason to think that they will not continue to do so after this bill is passed in the Assembly.

This Commission should take the staff recommendation not to take a position on this bill. It should be allowed to go through in one year instead of two.

Nadia Conrad commented: I am here on behalf of Assembly Member Tom Ammiano who is the Assembly Member representing this area.

We have heard today that there continues to be issues with this project that haven't been resolved. The multiple environmental ramifications and impacts of this project are concerns.

The most important issue is the public access to the waterfront in regards to the California public trust.

We want to make sure that you have this time and this discussion to be able to look and determine what is the best thing for this area.

Vice Chair Halsted requested information from BCDC staff: I'd like to ask our staff to respond to the three questions that were raised earlier by Commissioners.

Executive Director Goldzband responded to Commissioner Gilmore's comment: Commissioner Gilmore said, why would this project be different than previous projects to require state legislation. Is that pretty much what you're asking?

Commissioner Gilmore replied: Essentially the question is, yes, why is this different and if we can't determine how it's different, why don't we just give our trust determination powers back to the state?

Executive Director Goldzband answered: Okay. And Commissioner Gioia's question was, he wanted staff to delineate what the substantive differences are between the BCDC staff and the Port staff. And Commissioner Pine's question was, to ensure that we answer the question about why this process or is this process parallel to the AB 1389 process.

Chief Deputy Director Goldbeck commented: In terms of how this project is different than other projects, most of the projects are sited in your Bay or shoreline jurisdiction. If they're in the Bay then they have to be water-oriented uses in order to be there. And water-oriented uses are public trust uses.

This is on a pier that is subject to the Special Area Plan. That test isn't there. All of a sudden the public trust issues become more problematic.

The staff believes that the fundamental use, the arena or the venue, is in the gray area of the public trust. The staff isn't sure that it is a public trust use.

The Legislature is the ultimate arbiter of whether a use is a public trust use or not. I think the other part of your question was more rhetorical so I'll let the Commission discuss that.

In terms of what the substantive issues that remain, we got as close as we could. We all worked really hard to address the project and we resolved some of them. But size and massing of the project still is a real concern and a real issue for the staff.

In terms of the parking, we have worked out language that, again, is not a specific outcome in terms of a number based upon an exact design and looking at the impacts of the parking traffic on Herb Caen Way. It lays out a process and criteria that strengthens BCDC's ability to address those issues as a part of your permit process.

The public benefits aspect is still, again, we have a process because the design is still being designed and finalized. We would need to go through a public process to look at what public benefits should be provided on the waterfront.

The agreement in the amendments is to require additional public benefits as a part of the project and to lay out a public process that the Commission would engage in with the Port and that would be subject to your review and in the end to see if they were adequate.

The staff believes in those regards we have gotten, within the timeframe allotted, to a place where we do not believe that this bill has the kinds of issues that you faced before we went through this process but we think it has greatly improved. It can be improved more and that's why we're recommending a two-year bill.

Executive Director Goldzband chimed in: Last month staff recommended an oppose-unless-amended position on the legislation and provided an alternative. The Commission chose the alternative which is to direct the staff to do its best to narrow and/or resolve the open public issues.

Before that happened, my question as Executive Director to the Commission was for the Commissioners to think hard about whether the legislation, as it existed then, provided enough certainty for BCDC to voluntarily relinquish its authority to make a public trust determination because by agreeing to the legislation, by BCDC endorsing the legislation it would voluntarily relinquish its authority to make that public determination independently.

The same question currently exists. Does this legislation, as amended through the discussions we've had with the Port and the City and the Warriors, provide enough certainty for the Commissioners to feel comfortable voluntarily relinquishing their authority to make a public trust determination?

There are five issues that were dealt with, actually six. Two, we believe, have been pretty much resolved, the independent oversight and the retail uses.

Three, there are processes set up in the legislation with regard to project size and parking and so on, the provision for public benefits and balancing the trust and non-trust uses to try to get those answers through the normal processes.

The staff believes that because the staff negotiated in good faith with the folks around the table, that the staff came back with a no position, take no position on the bill but believes that by having a two-year bill instead of a one year bill and requesting the Legislature to have a two-year bill, not dictating certainly because BCDC doesn't have the ability to dictate that it be a two-year bill.

That would give BCDC Commissioners more concrete assurance that local public processes that are described in the legislation and the amendments would be going forward and that the project would be coming forward with more certainty and that then, BCDC perhaps in six months, perhaps in eight months, perhaps in four, depending upon how long these processes take, would be able to determine better, with more certainty, whether the Commissioners wanted to relinquish their ability to make an independent public trust determination.

That is why the staff believes that it would be important to have a two-year bill as opposed to a one year bill because that's how we set up the processes.

Vice Chair Halsted continued: Thank you. We have exactly 60 minutes left. And if each one of us gets three minutes then we're out of time. So, I would like to go around the room and make sure that the Commissioners have their questions answered. But, please be brief and to the point. Commissioner Gioia first.

Commissioner Gioia stated: To move this along I'm willing to make a motion as well. To put a motion on the table if you're fine with that. And we can get to our discussion.

Vice Chair Halsted agreed.

Commissioner Gioia continued his commentary: And then we can have people comment as they go through this. I'm willing to make a motion that we oppose unless amended, to take a position of oppose unless amended with regard to the bill and that it become a two-year bill. So that's the motion I'll put on the table.

Vice Chair Halsted responded: Is there a second to that motion?

Commissioner Bates answered: Well, I will. I would like to reframe the bill. I think it should be that we would request that the bill be made a two-year bill. In the event that doesn't happen, if the author refuses, that we oppose.

Commissioner Gioia replied: That's fine.

Commissioner Bates added: So I'll move that.

Commissioner Gioia responded: And I'll second it.

**MOTION:** Commissioner Bates moved that the Commission request that the bill be made a two-year bill; in the event that this does not happen, then the Commission should oppose the bill. Commissioner Gioia seconded this motion.

Vice Chair Halsted continued the meeting by stating: Can we have questions on the subject matter rather than go to whether we support it or not?

Commissioner Gioia interjected: But we have a motion on the floor.

Vice Chair Halsted agreed: Yes, we have a motion on the floor but that's –

Commissioner Gioia continued: I'm just trying to save time because people may have questions and comments at the same time rather than go through things twice.

Vice Chair Halsted replied: That's fine. I've had a request that the motion be restated. So, could we do that?

Commissioner Bates answered: Well, let me try again. I just said that we request the author make the bill a two-year bill; in the event they decline to do so that we oppose the legislation.

Vice Chair Halsted added: And that's been seconded. It's on the floor. So, Commissioner Sartipi would you like to speak to the matter?

Commissioner Sartipi declined to comment.

Commissioner Gilmore commented: I see this as a policy matter. While we are not dictating anything to the legislature I think it is appropriate for BCDC to weigh in on this. I'm not reaching to the issue of whether the Warriors proposal is appropriate or not. I'm only speaking to the legislation.

I will not state that there has been an implication that if BCDC votes against this that the Warriors proposal will go poof.

I think that BCDC should definitely weigh in on this because as our Executive Director talked about we are ceding some of our authority if we go along and approve the bill.

I will note that the State Lands Commission is not giving up any authority under this bill. One could argue that they are gaining authority under this bill.

Finally, if we were to vote to oppose this bill, it does not mean that the Warriors proposal cannot move forward. It simply means that the Warriors have to go through the regular process just like any other applicant.

Commissioner Pine had a question for staff: If we had this additional time, staff stated that there is not a public trust use at its core here. Would the objective of staff simply be to gain more public benefits and more clarity on what those public benefits are?

Chief Deputy Director Goldbeck answered: The time would be to allow the staff to work with the applicants to further refine the bill in terms of the massing, the size, the mix of the uses on the site because although the arena is the core use there's also a lot of other uses that are trust consistent.

What you would look at in your permit process is the entire project. We are not taking a position solely based upon whether this was a public-trust use. We were concerned about the overall mix of the uses.

We would also be working on the public process to try to identify what additional public benefits that are required as a part of this amendment legislation, what it actually entails.

We would have better specificity so that you would better know what you are gaining in terms of giving up or ceding to the Legislature the authority to address the public trust aspects.

Commissioner Apodaca spoke: What I heard today was that the bill is still going to move forward through another committee even though we are still having discussions on this, correct? So that one for me is a concern of mine because this bill should not move for another vote in the legislative process while we're still having these negotiations.

What I heard is that the amendments are before leg council to be submitted at the time of the hearing. So if we go with this motion, and the author does not accept a two-year bill, therefore, we oppose unless amended; will those amendments that we have worked on be rescinded?

Commissioner Bates responded: We didn't say, "or amended", just oppose.

Brad Benson added: We've negotiated these amendments with your staff in good faith and we would continue to pursue the amended version of the legislation and not withdraw these amendments.

Commissioner Sperring commented: I would like staff to respond to this question. Does this put our staff at a disadvantage by taking this action? Everybody has negotiated in good faith and are addressing the issues assuming that there wouldn't be opposition to the bill.

I would like to hear from staff on the proposal, the motion that's made and what position does that put our staff in? If staff could respond to that.

Chief Deputy Director Goldbeck asked for clarification: Do you mean vis-à-vis the legislation or when a project should come before the Commission?

You directed us to negotiate in good faith with the sponsors and with the involvement of the State Lands Commission, and we did. If you directed us to take a position we would do that as well. I don't think that puts us at a disadvantage, one way or the other.

Commissioner Sperring added: If I was negotiating with you knowing this thing is going to constantly change, I don't know that I'd be making very many concessions and I'd start working with the Legislature.

If I was negotiating with you I'd start bypassing you and start going to the Legislature. And I'm not sure that is good faith because they've made some concessions. Commissioner Sears commented: I want to applaud the progress the staff has made to date. I understand why they recommend the bill be a two-year bill. We have heard that this recommendation is not supported by the Port and it's not supported Assembly Member Ting's office.

I am somewhat skeptical that our request would receive support from those who would need to support it for it to become a reality.

It is very important at this point that BCDC clearly communicate a position. I don't feel there is enough certainty to voluntarily relinquish BCDC's authority to make a public trust determination. I also think we dilute that authority by not taking a position.

I strongly support our taking a position of opposing.

Commissioner Gorin commented: I would agree with the comments of Commissioner Sears. I'm very protective of the authority of BCDC in making the public trust determination.

Whichever way can help us get there, I would be supportive of. Originally I thought, oppose unless amended, that might be stronger incentive to move this forward more expeditiously. But I'm willing to listen to the staff recommendation and the comments of my colleagues in supporting the staff recommendation about requesting that this be a two-year bill.

Commissioner Chiu addressed the attendees: I want to thank everyone for all the work that has been done in the last couple of months on this.

At the last meeting there was a lot of skepticism about whether there would be headway made with potential amendment conversations. I think, clearly, we have heard that there has been a lot of progress. I want to acknowledge this.

I have some questions for BCDC counsel. We've heard from opponents to this bill that somehow our Commission might be giving up our authority, that somehow we're undermining our authority. My understanding is, even if this bill passes and we've dealt with all the issues that we've known about at this moment and we don't know specific other amendments that we want to add at this time; we can still resolve future issues during the major permits process, right?

In other words, in the future we still have the opportunity to decide whether this project is terrible and we can reject it or whether it needs to be changed. This legislation is not the final decision. It's really the beginning of the processes.

I'd like BCDC counsel to tell us, for you to opine on your perspective on this.

Deputy Attorney General Tiedemann replied: The legislation will make the final trust determination. The legislation has savings clause language that preserves the Commission's permit authority.

The Commission will decide whether to grant the permit for this project.

Commissioner Chiu continued: I do not support making this a two-year bill. A two-year bill was not one of the five major issues that we directed the staff to consider. It was not put on the table during the discussions as an issue to be solved, and frankly, the city that I represent and the Warriors were a bit blindsided by this after a good faith negotiations with major concessions.

Now despite this move, my understanding is that the Warriors have agreed to allow the amendments that were agreed to be part of the new bill in front of the Senate. Frankly, if it was me, I think if this body decides to take the position that it should be a two-year bill; I'm not sure I could in good faith ask the Warriors to continue to commit to the amendments but that is their choice.

I am concerned that this move is going to reduce our credibility as a body in negotiating with this particular party as well as future parties. That is my perspective on the two-year issue.

On the issue of whether we should oppose it, I have to say I wasn't completely thrilled with the recommendations because I thought about offering a motion that we consider supporting this. Clearly, there is probably not going to be support for that here but the staff has recommended

that we not take a position. I think we should seriously consider that because, again, to take an opposed position after all these negotiations without being able to articulate what it is that you want right now, I think is problematic.

One question that I know we are going to hear from our State Lands rep, our State Lands colleagues said at the last meeting, this state bill is really a starting point in the way that a typical project sponsor might want to seek the advice of a local zoning administrator regarding the consistency of a particular proposed development with existing zoning.

The legislation talks about what, "could," be built but it's not the decision of whether a particular project, "should," be built. We have so much process in front of us, this is really the beginning of that process.

Because of that I really have issues with the second part of the motion.

Commissioner Zwissler had questions: I have a question on process and a question on precedent.

On precedent, has legislation ever been passed that didn't have support from BCDC? Is there an example of this in the past?

Chief Deputy Director Goldbeck replied: Yes there is and it has happened more than once.

Commissioner Zwissler further inquired: But taking away trust authority?

Chief Deputy Director Goldbeck answered: No.

Commissioner Zwissler stated: There is no precedent for this.

Chief Deputy Director Goldbeck added: There have been other bills, in fact, the prior Pier 30/32 bill made a trust determination for the prior cruise terminal determination. But I think your question was, whether when we oppose something, and not to my knowledge.

Commissioner Zwissler continued: I am not understanding how two-year bills work. What happens? Could the bill be passed at any time during those two-years? Does this stop the permitting process or other planning processes in other ways?

Chief Deputy Director Goldbeck answered: It would not have to wait until the end of the next session. It could be moved. It's already moved from one house to the other and so, it could complete in the Senate and be passed early or late depending on the legislative deadlines that would apply. And then it would go to the Governor's desk unless it was an urgency measure it wouldn't take effect until the following January but if they're looking for the certainty, the bill has been passed and signed then they would have that.

Executive Director Goldzband added: It can be taken up early in 2014, the next legislative year.

Commissioner Zwissler asked: I'm not too concerned about that detail but can other planning and approval and processes continue while this bill is being considered?

Chief Deputy Director Goldbeck replied: Yes.

Vice Chair Halsted inquired of the Port: Do you think that this project is in compliance with our Special Area Plan as it stands?

Mr. Benson answered: We've had some discussion with staff about that. The main debate has been about a phrase in the Special Area Plan that talks about development being generally low scale.

We interpret the word generally in that case to mean, along the entire waterfront. That policy is talking about the whole waterfront and there are moments of height like the Ball Park or the Ferry Building Tower.

I think staff has articulated a different view that it's not consistent with the Special Area Plan. We confronted that issue in the actual crafting of the amendments. We specifically stated that the public benefits package that the Commission would be authorized to adopt could be either through the major permit or through a Special Area Plan amendment to deal with that inconsistency.

Vice Chair Halsted continued: That is one matter that worries me. A month ago I supported the request by the mayor to have us extend this and look at it more. I'm not confident that the staff has gotten far enough on the negotiations on this matter.

I am inclined to support the motion on the floor with some regret. I've always been a big supporter of the Port bringing in more revenues as well as preserving the Bay.

I don't want to set a pattern of doing this regularly and I don't want to find ourselves having, when we see a use that we're not sure is compliant with the State Lands trust, to walk away from our own judgment.

I feel fairly strongly that we should oppose this as it stands unless it's agreed that we can continue to work on the bill. That would be my statement.

Commissioner Bates addressed the participants: I served 20 years in the Legislature. I actually introduced over 500 pieces of legislation and I had the pleasure of having 220 of those actually get signed by Republican governors and Jerry Brown when he was there for a few years.

When you chair a committee, they first hear from the sponsor of the bill and then they want to hear from the opposition and they want to know who is in support and who is in opposition. And if we don't have a position we're not in the ballgame.

If you don't have some leverage in the game they'll go right by you. This bill passed the Assembly with only five negative votes. It passed every committee like it's going through so fast that's unbelievable.

The big test is next Tuesday because that committee is one of those committees that happens to be staffed by a group of people who are thinking and caring individuals.

They're saying, where is BCDC? And if we say, well, we don't have a position, guess what, that's support. That translates into support.

Do we really want that to happen to us? Do we want to be out of the game? Do we want to just let it go through?

I want to make it clear too, even if we're opposed and they say, screw you, we're not going to make it a two-year bill, we're going to make this thing go; being opposed is important. It's the most important time for us to be opposed now. Now is the time.

I want to talk about the time. What is the hurry? What are we hurrying for? First of all, the Warrior's lease expires in 2017. It has a month-to-month provision. They can stay afterwards.

It took the Giants nine years to get their ballpark. We had a project here earlier today of building a bridge that took 10 years. What's the hurry?

What does it mean to be a two-year bill? It means that the bill does not go through the committee. It means the committee holds the bill. Staff is absolutely right. Negotiations don't end there. This is when they really begin because, how are we going to get it out of this committee?

What are the amendments we can take to get BCDC to change their view? What is the amendments we can change to get the votes in the committee? That's when the compromise is really going to come in.

There has been an issue, why don't we come up with amendments? How can we come up with amendments when we don't know the scope, the size, the massing, we don't know the impacts.

The other bill that went through that allowed the cruise terminal, we had the EIR. We knew exactly what the impacts were going to be, so you can negotiate. We don't have a clue. So we're asking about a pig in a poke. It's all about the money.

The new owner comes along and sees a great opportunity to make a real estate deal because that's what this is about. They're going to have 160 other events and it's not about the Warriors. It's about money. It's about a hotel. It's about condo units.

I will just conclude, there is not a time problem. They can make it a two-year bill. They can easily negotiate for it. We should understand that we don't know what the project is. Until we know, we're making a big mistake by abdicating our responsibilities and going on.

If we're opposed they will negotiate. If we're just neutral, they're not going to negotiate.

Commissioner McGrath weighed in: At the last meeting I voted to not take a position to afford a fellow Commissioner who has proved to be a master at getting projects to yes and to work his magic.

But now I think it's time to identify the very serious problems that this project faces that are more fundamental than the question of the trust finding but go to the heart of the strategic approach. I think it is only fair to provide some warning.

The Commission has the responsibility. I would have taken a position of opposition on this. I will support the motion as it is because I think it provides another opportunity to continue the negotiations.

But the issues are profound. The Commission has a responsibility to protect the potential navigational sites and this is one of them, so that the navigational needs of the Bay can be met when fill is minimized.

There are factual questions whether or not this site is vital, whether or not the loss of this site as a navigational site would lead to other fill.

I was absolutely willing to consider innovative approaches whereby a non-trust use such as this was implemented if it made the other use feasible. I told the staff that about six or eight weeks ago fairly clearly that it seems that we ought to focus on what our authority and our responsibility is.

Two of the many communications that I've received are not just persuasive but they are compelling. First comes the letter from PMSA that says, "The fact that some trust or trust-related uses may be approved as ancillary to a primary use is not enough to save a non-trust primary use"; particularly if the issues raised by the Baykeeper are that there is, in fact, an impairment of those uses.

Those are factual questions that we don't have a body of information one way or the other. They are important.

The second goes to the heart of what our responsibility is in minimizing fill and protecting the Bay but allowing fill. Questions have been raised about the fundamental feasibility and reversed the matter. We're not using the Warriors Stadium to make an otherwise infeasible public trust use feasible but, in fact, we're subsidizing that use.

There's a lot of money on the table and factual questions about the level of subsidy that go to the heart of whether or not you want to make, at this time, a public trust determination.

One of the key roles of BCDC in public trust is, in fact, to protect that maritime resource. I think it's fundamental and I think it's fact driven. We will get those facts as time goes on but we don't have them now.

Feasibility is not just a matter of the deal between the Warriors and the city of San Francisco. It's fundamental to whether or not we can make the balancing findings.

I want to point out to you the difficulty of getting to a two-thirds vote on something like this particularly if the Commission feels a little bit run roughshod over with the legislation. It's a very difficult site to get to yes, because of those issues and because of the responsibility,

For those reasons, and with a cautionary note that you think long and hard about getting to a two-thirds vote on a Bay Plan amendment, that I'm going to support this motion.

Vice Chair Halsted stated: I failed to close the public hearing. Is there a motion to close the public hearing?

**MOTION:** Commissioner Nelson moved to close the public hearing, seconded by Commissioner Sperring. The public hearing was closed by a voice vote with no abstentions or opposition.

Commissioner Lucchesi offered some clarifying commentary: The first aspect of this bill that I want to clarify is that this bill is authorizing not directing a particular use. It's getting a determination by the ultimate landowner. The landowner of this site in the first instance is the Port of San Francisco that was delegated this ownership by the Legislature.

The Legislature is now through this bill taking that determination back as the landowner as to whether this is a use that could be sited at this particular site.

The next thing I want to address is the public trust. The conclusion by staff that it is not a public trust consistent use is a very simplistic conclusion to a very complex question that has been addressed time and time again by the courts.

A public trust use does not always equal a maritime or water-dependent use. The courts have opined and decided that the uses that facilitate the enjoyment of the waterfront for the public are also uses that are consistent with the public trust. So, for example, hotels, restaurants, parking lots and that's a specific use that the court has determined is an appropriate use on public trust lands.

When you're looking at uses that are not water-dependent, you look to the category of what facilitates the enjoyment of the public of its waterfront.

I am not saying that this particular project does that. I'm just saying that this is the analysis that needs to be involved in determining whether the use is consistent with the public trust.

Other examples of that are the Exploratorium, the Giants Ballpark, all non-water dependent uses that were determined to be consistent with the trust because they facilitated the enjoyment of the waterfront by the public subject to certain conditions that were negotiated, whether by State Lands staff or/and BCDC staff.

The next point I want to make is, yes, this bill does increase a role for the State Lands Commission that never existed before. The Commission at a public meeting not only has to make a determination that all the conditions have been met but on the backside, if this project after it gets through the local entitlement process and is certified under CEQA, it has to come back to the Commission five years later to determine whether the promises of the benefits are actually realized.

This goes to the public trust and the benefits that this project really will provide enjoyment and facilitation of the public of its waterfront.

Finally, there's been some examples thrown out about, for example, Brooklyn Basin and Oak to Ninth, formerly known as the Oak to Ninth Project. That did go through a very long public process but it started with a bill in the Legislature that facilitated a title settlement and land exchange and the uses out at that site that the State Lands Commission was involved in at the time.

Commissioner Nelson made a couple of points: We've seen the difficulty of providing clear answers this early in the planning process. I want to highlight two issues here.

Steve Goldbeck said that this is not a debate about an arena. This is debate about a much larger development with a lot of uses. I want to highlight a couple of places where we might unintentionally back into some things if this legislation were to pass in its current form.

One of the issues that Steve and staff have mentioned is the nature, the density of the buildings on the site. This is also true to parking as a whole. The bill indicates that we would still have final authority over parking but I also want to make sure that that is consistent with the proposed project. The staff recommendation has a really important sentence and it says, "There is a yet-to-be reviewed NBA requirement for parking". We don't know what that final policy may be. But that may be an NBA policy by the time we have to make a permit decision and that the applicant has also indicated that financing the arena would depend in part upon parking at the venue for premium ticket holders.

What I'm concerned about here is if the Legislature makes a finding about the arena, it is a complicated question. We could find ourselves in an uncomfortable position where the Warriors could come back to us and say, well the Legislature really made a decision about parking. If they made a finding about an arena and if an NBA policy or the financing requires a 500-car garage, then we may find that the authority we thought we had preserved is actually more limited than we think.

If the buildings at that scale and if the parking at that scale is required, we also may find down the road that it has an impact on public access.

The staff report also says that right now about 130,000 square feet of the public access would be 30 to 50 feet off of grade. Now, that might be wonderful public access. It might be terrible public access. We don't know this early in that planning process.

My concern is that if this legislation passes in its current form, there may be a lot of implications down the road. We could find ourselves backed into a position where we wind up with a project that doesn't look like the project we would hope it would be.

The final comment is a follow up to Commissioner Bates' comments. Having been through quite a few of end-of-sessions over the last 20 some odd years, we're not entirely out of time to influence a one year bill at this point but I think as a practical matter, we're nearly out of time.

Once we're past that last committee action in the last house, there is still a time to amend before the floor, we would have one more meeting before that end-of-session. As a practical matter, making additional progress, bringing it back before this body and then getting it amended into the legislation that late in the process is an extraordinarily difficult thing to do.

So as a practical matter this really is a choice between taking no position or supporting the motion.

Chief Deputy Director Goldbeck added: We believe that the savings language in the legislation preserves the Commission's ability to limit parking to whatever you determine is appropriate. And you could even deny, if they say that in order to have an arena you have to have whatever number of parking spaces, you can deny the use entirely.

Commissioner Hillmer offered some cogent comments: I have no prejudice against the proposed project or the Port's intentions. I would hope the Commission could find its way to take a position on the legislation. I feel a position to oppose the legislation, while not having any prejudice against the project, is the most clear statement of both defending the authority of the Commission and making it clear statement about how we think that authority stands in relationship to everything else.

What I'm perceiving as, we're being asked to pick a winner or a loser with a gamble of sorts. I would hope that we would see clearly here, and without prejudice to the project, be able to take a position on the legislation which I feel would be best if we take an opposition position.

I am not in favor or throwing in a request to make a two-year bill out of the legislation as a means of buying time to negotiate. I think if BCDC staff negotiated in good faith with the Port and if the Commission wants to take no position on the bill and allow those amendments to go forward, I think that's one clear statement.

I also think it's a very clear statement, again without prejudice toward the project, to state a position on the legislation in opposition to the legislation.

Commissioner Arce had a couple of questions: If staff could confirm that three of the other bills that are in some ways related because of their impacts at Pier 70 and the other seawall lot, AB 1389 and 30/32; but that AB 1389, AB 418 and SB 815, those are all one-year bills, not two-year bills?

Chief Deputy Director Goldbeck responded: I'm not certain on all of them. The ones that I'm aware of were one-year bills. The point made was that at the time that they were moved there was more of the design clarified.

Commissioner Arce continued: Having reviewed the meeting of our last meeting I didn't see any discussion of the idea of a two-year bill versus one-year bill as one of the negotiation points when this was urged to the negotiation table. I'd like to ask Mr. Benson if, apart from the minutes, was that something that was actively discussed over the past month, whether this would become a two-year versus one-year or is that something that just kind of came late in the game.

Mr. Benson responded: Staff asked a question about whether it could be a two-year bill and we articulated that we thought that there were serious problems with that given the large spend that has to happen over the coming two-year period of time to engage this public process.

Essentially that would put off until January 1, 2015 the effective date of the bill. We didn't think that was workable given all the public and private resources that have to be spent on the bill.

We didn't realize that it was actually a position that staff might recommend to the Commission. That was not clear to us in the negotiations.

Commissioner Arce responded: I saw it in the minutes but I didn't see that as something to be negotiated. As a representative of the Speaker of the Assembly, can someone rectify for me where there's the comment of BCDC relinquishing its authority to the Legislature versus the Legislature is the ultimate arbiter of the public trust. Where do the two meet?

Executive Director Goldzband offered some salient points: Under current law the Legislature is the arbiter of the public trust. The Legislature holds the public trust and then delegates it to local, public governments in order to administer it as a grantor. The ultimate responsibility still rests with the Legislature.

Commissioner Lucchesi further expounded: The Legislature on behalf of the people of the state own this property. They granted the management and the ownership to the Port in trust.

The Legislature through this bill would be making a determination as the ultimate landowner.

Executive Director Goldzband continued: Through the McAteer-Petris Act and the Bay Plan, BCDC has the authority to make a public trust determination and must make a public trust determination prior to providing a permit for a project. BCDC must find that this is consistent with the public trust.

By acceding to the bill, by saying yes to the legislation, BCDC voluntarily relinquishes that duty. In BCDC's staff view and says to the Legislature, not only do you have the ultimate authority but we are not going to make anything, we are not make an independent determination.

Commissioner Arce commented further: Let me say why I'm voting against the motion. Going through the minutes I see Mayor Bates a few times says, if we take away our opposition at this point in time we've given away all of our opportunities to negotiate anything. There was comments of, if we don't take a position no one is going to give us anything, there won't be any negotiation.

I don't see that going from opposition unless amended to neutral is going to improve that bargaining. There were some pretty dire predictions about if we didn't oppose last month that there would be no progress. And, in fact, there has been tremendous progress.

It was stated again tonight that, if we're neutral they won't negotiate. But that is what was said last time. And they negotiated. And they negotiated well. I think there is potential to keep having more progress.

What I don't want to be a part of is, this like putting up a cannon and saying, you're going to do this. It's very strong. It doesn't sound like it's in good faith and in line with some of the negotiations. I'd rather see the negotiations continue. I'd support some kind of alternate motion. But this isn't a motion that I'm going to be support of.

Commissioner Wagenknecht followed up on a previous question: When we went through the previous process for Piers 30/32, what was the process that we used? Did it go all through our process and then it went to the state?

Chief Deputy Director Goldbeck clarified: We worked with the applicant as Brad Benson mentioned as the project was moving forward. We then determined that the mix of non-trust uses that they said they needed to fund the project was so great that we were uncomfortable with it.

And then we went to the Legislature. It hadn't gone through the permit process yet. But it had gone through the environmental review process and the project was very well defined in terms of the constituent parts.

Commissioner Wagenknecht continued: At this point I'm going to agree with the previous speaker that this has been worked on and negotiated in good faith and I would back the staff recommendation.

Commissioner Ziegler asked for clarifications: The Port indicated that staff recommended that state legislation be pursued concerning the public trust finding. Is that accurate and is there anything that you could say in terms of how you thought that was going to go conceptually contrasted with where we are today?

Chief Deputy Director Goldbeck offered explanations: Early on in the project the staff met with the project proponents and was concerned that the arena aspect is in the gray area and concerned that the staff couldn't recommend that it was a public trust use.

Therefore, as with the prior Piers 30/32 Project and legislation that perhaps this needed to go to the Legislature to clarify the public trust aspect.

That wasn't to say that the staff was committing to support such legislation. We would hope to be able to clarify the design but we did tell them that we had concerns at the staff level as to whether this was a public trust use that the staff could support.

Commissioner Addiego commented: I find myself swaying back and forth because the arguments are very strong.

When Director Goldzband talked about relinquishing our authority, actually, the Legislature at some point relinquished it to us. They are the pre-eminent body, they grant it. They are choosing to exercise their power. I'm not comfortable in opposing that.

Many people spoke about giving away authority, seeking authority that develops something in our base instinct where we want to fight back and take the authority. It's not our authority.

When we talk about a rush to judgment and we're looking at our state Legislature I think we need to look at ourselves because there's a lot of strong opinions at this table and we haven't seen the final project. But we shouldn't go too far down that path.

I think what the staff has done is remarkable in the short time. If we are really going to be in the process, in the mix when it comes to the size and massing of the project because I'm not convinced that it's going to work at that size.

I think most of the arguments really come down to expressing displeasure with the Legislature for doing this to us by seizing control of the public trust. I'm not so displeased with the Legislature in that regard.

If we do end up opposing I would like us to house some language without prejudice for the project at the very least.

Commissioner Chiu made a point of order remark: A quick point of order. I'd like to propose that we divide the question. And let me explain what I mean by that. There are two halves to what this motion is.

One is that we oppose the bill, the other is that we request that this become a two-year bill. I think there are really two halves to this question.

One issue, we delay this. The other is, should we oppose this. I think there are a lot of folks who came here today who were prepared to support the staff recommendation. I actually will vote against both of these but I want to suggest that delaying may make some sense. I understand why staff recommended that.

I really think that opposing this at this point doesn't make sense. It does not acknowledge the progress that the staff has made. I think it puts us in a less-than-credible position not having directed the staff to consider this. We will have plenty of opportunity to oppose.

And I do think if we do oppose at this time the Warriors are going to run faster than Stephen Curry down the court away from us to the Senate to figure out what they need to get it done. But they're not going to engage with us.

So, I'd like to divide the question and hope we can vote on both halves.

Commissioner Gioia added: When I made the motion I didn't make a comment. Let me just make a brief comment.

Everyone has talked about the progress we have made. There is a senate vote coming up on Tuesday. There is no way in the world that there could be a resolution between now and Tuesday on the outstanding issues.

Folks involved in this matter understand that if you want to advance your position, you take a position. The best leverage we have to negotiate is to say, we don't like the bill in its current form, otherwise, as Director Bates points out, the legislators considering this bill, they're going to ask, where is BCDC on this?

And if we're silent they're going to assume we support it, period. I think this is about the integrity of the Commission. This is about saying, we're trying to put forward the best issues with regard to considering this project. We haven't predetermined this project. And we're taking a position that this bill, while it takes away our authority, we have unresolved issues. We want to work on this. And the only way we're going to work on this is to tell you that we don't like the bill in its current format.

To be silent doesn't get us there. So I think taking a position is really important. And I think we should vote on it all at once. If it goes down, there could be a separate motion.

Commissioner Bates commented: Just briefly on the division. My intent is to allow the Warriors and the other people the opportunity to make it a two-year bill. And it's a friendly gesture and if they don't want to do that then we would oppose.

I object to the division.

Vice Chair Halsted responded: Commissioner Chiu tells me that Robert's Rules require us –

Commissioner Chiu interjected: My understanding under Robert's Rules of Order is that if there are two halves to the question that we can vote on both halves.

Commissioner Gioia answered: I don't even know if we've adopted Robert's Rules of Order.

Commissioner Chiu replied: I'm not sure exactly what are the procedures that govern us here but I want to suggest a particularly, a pretty good precedent on procedure.

Vice Chair Halsted stated: Is there any legal guidance on that matter?

Deputy Attorney General Tiedemann commented: I'm not aware of any legal requirement that the question be split. The maker of the motion can make the motion in whatever form he wishes.

Commissioner Gioia added: I've been involved listening, supporting and opposing plenty of motions in the past where the staff recommendation gets changed, there's multiple parts to the motion and it can be different than the staff recommendation and we vote them up or down.

Vice Chair Halsted continued the meeting: Thank you. The motion is on the floor.

Commissioner Chiu inquired: What do you rely on for parliamentary procedure?

Deputy Attorney General Tiedemann replied: I believe it's Robert's Rules of Order.

Commissioner Chiu answered: So, I'm making my point that this is from Robert's Rules of Order.

Deputy Attorney General Tiedemann stated: That the motion must be split?

Commissioner Chiu replied: Must be divided if –

Commissioner Sears interjected: Madame Chair, you can entertain a substitute motion. That's all. And there has to be a second to that substitute motion.

Vice Chair Halsted commented to Commissioner Chiu: I think that we don't have consensus on what you're saying.

Commissioner Chiu responded: If that is the case then I will make it a substitute motion that we adopt the staff recommendation.

Commissioner Chiu's motion was seconded from the floor.

Vice Chair Halsted stated: We will vote on the staff recommendation which is as listed on the board up there, on both matters. I believe it needs to be a voice vote.

The staff recommendation is to not take a position and request that the bill be allowed to become a two-year bill.

All in favor of the staff recommendation as it stands please signify by raising your hand.

There were eight hands raised in support of the staff recommendation and there were eleven hands raised against adopting the staff recommendation.

Vice Chair Halsted continued: Well then we'll fall back to the original motion, I believe.

Commissioner Gilmore asked that the motion be restated for the record and Vice Chair Halsted agreed to have that done.

Commissioner Gioia stated: The motion is to ask for the bill to become a two-year bill and if not, to oppose the bill.

Vice Chair Halsted continued: All in favor of the motion as proposed please raise your hand. There were twelve hands raised in support of the motion.

Vice Chair Halsted continued the vote: All opposed. Motion carries. There were six hands raised in opposition.

Vice Chair Halsted added: This has not been an easy matter. We have about two minutes left. I appreciate the respectful discussion.

11. **Overseas Reymar Incident Update.** This item was not discussed.
12. **BCDC Participation in Golden Guardian Exercise.** This item was not discussed.

13. **Adjournment.** Upon motion by Commissioner Gilmore, seconded by Commissioner Hillmer, the meeting adjourned at 5:00 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND  
Executive Director

Approved, as corrected, at the  
San Francisco Bay Conservation and  
Development Commission Meeting  
of July 18, 2013

R. ZACHARY WASSERMAN, Chair