

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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June 14, 2013

TO: All Commissioners and Alternates

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

SUBJECT: Draft Minutes of May 16, 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 1:08 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Apodaca, Bates, Chan (represented by Alternate Gilmore), Chiu, Cortese (represented by Alternate Scharff), Gioia, Gorin, Jordan Hallinan, Lucchesi, McGrath, Nelson, Pine, Randolph, Sartipi (represented by Alternate McElhinney), Sears (represented by Alternate Adams), Spering (represented by Alternate Vasquez), Techel, and Zwissler. Assembly representative Feldstein was also present.

Chair Wasserman announced that a quorum was present.

Not present were: Department of Finance (Finn), Speaker of the Assembly (Gibbs), U.S. Army Corps of Engineers (Hicks), California Natural Resources Agency (Vierra), Napa County (Wagenknecht) and U.S. Environmental Protection Agency (Ziegler).

Chair Wasserman announced: Agenda Item 10 was an update from the Joint Policy Committee on strategies regarding rising sea level. The JPC meeting for this month was cancelled. We will expect to hear about the JPC meeting in July. We're going to move Item 11, The Adoption of the Annual Report, up a level so we will consider it right after the Strategic Plan.

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

a. **Today's Agenda.** Agenda Item 10 was an update on rising sea level. The JPC meeting for this month was cancelled. We will expect to hear about this in July. In addition, we shall move Item 11 up a level. So we will consider it right after the Strategic Plan.

b. **New Business.** Under our new procedures, this is the time where I would ask if there are Commissioners who would like to suggest new items for us to consider at future agendas. Anybody eager? No. This is not your only chance.



Making San Francisco Bay Better

BCDC MINUTES
May 16, 2013

c. **Commissioner Appointments.** Governor Brown has appointed to the Commission Mr. Alex Zwissler, CEO of the Chabot Space and Science Center, replacing Stan Moy. I know the Commission will join me in thanking Commissioner Moy for his long and thoughtful and dedicated service to BCDC. Staff has prepared a resolution in his honor and I would welcome a motion to adopt the resolution.

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

I have had the privilege of knowing Alex Zwissler for a good long time. The institution he heads has been a critical institution for science and education.

The State Lands Commission has appointed its Executive Director, Jennifer Lucchesi, as its new BCDC representative. We welcome Jennifer as well. Sheri Pemberton, who has been serving is now the alternate for the State Lands Commission.

Finally, City of Larkspur Mayor, Daniel Hillmer will be joining the Commission as Commissioner Techel's alternate.

d. **Sad News.** Former Redwood City Mayor, City Council Member and BCDC Commissioner Bob Bury passed away earlier this month. Bob was a civic leader in Redwood City, served in the US Navy in the Pacific during World War II and was a thoughtful, compassionate and quick-witted public official. The Bay Area will miss him and I would like to entertain a motion now to adjourn this meeting in his memory when we do adjourn.

MOTION: This matter was moved by Vice Chair Halsted, seconded by Commissioner Nelson.

e. **Congratulations are in order.** "Capitol Hill Oceans Week" is hosted annually in Washington, D.C. by the National Marine Sanctuary Foundation. It will take place this year at the Newseum on June 4-6 in anticipation of Saturday, June 8 which is, "World Oceans Day" and will center on shoreline resilience. As part of its exhibit, the Coastal States Organization (the leading advocate on behalf of coastal zone management programs) will display BCDC's ART poster which was developed by Sara Polgar, Maggie Wenger and Javier Del Castillo. Mary Munson, CSO's Executive Director, is excited to demonstrate a member's commitment to community-based shoreline resilience planning and will include a shout-out to BCDC and point to the poster during her activities at the conference.

f. **Next BCDC Meeting.** Our next regularly scheduled meeting was to be held on June 6th. However, we shall cancel that meeting and meet at June 20 here at MetroCenter. We'll post the agenda during the next week. We expect that it may include the following matters.

(1) We may hold a public hearing and possible vote on an application for a multi-use pathway connection to the Central Marin Ferry.

(2) We expect to have a public hearing and possible vote on a contract for graphics and mapping for the Commission.

(3) We are looking forward to Commissioner Pine presenting a briefing on the San Mateo County shoreline.

g. **Ex-Parte Communications.** That completes my report. In case you have not had the chance to post any ex-parte communications on the website, I invite Commissioners who have had ex-parte communications, which are required to be reported, to wit, about applications or enforcement matters pending before us; to disclose them.

Commissioner Addiego reported: I received calls from Edward Evans with the NorCal Carpenter's Council of San Mateo County and Charles Lavery with the San Francisco, San Mateo District rep for Operating Engineers Local 380. This is on our Item 9. All of these are on Item 9. This morning I received a call from my State Senator Jerry Hill representing the 13th District.

Commissioner Gioia commented: Mr. Chair you mentioned the subject of applications before us. I received calls on a position on legislation. Do we need to report those?

Chair Wasserman answered: You do not. Almost everybody here has probably been contacted about legislation. We will assume this.

Commissioner McGrath added: I did speak with Keith Miller about the Scott's violation status.

Chair Wasserman reported: Mr. Miller and I have exchanged emails and phones. I do intend to meet with him and have not had the opportunity yet. I have gotten a couple of other calls concerning the Scott's enforcement matter.

Chair Wasserman moved on to Item 6, Report of the Executive Director.

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

Last week was very difficult. I think that all of us who work with the Bay were affected in different ways by the death of Andrew Simpson of the Artemis Racing Team during an America's Cup practice. Last month, a few of us from BCDC attended the launch of Oracle's racing machine and we were struck by the family atmosphere at Oracle. Last week, BCDC sent notes of condolence to the team and the event organizers. Today we extend our best wishes to the sailors participating in the world-class competition and wish them Godspeed.

With regard to budget, again, no news is good news for FY14.

Two short notes. First, BCDC and ABAG have requested that the State Coastal Conservancy join us to further our work on shoreline resiliency. The Conservancy has agreed to do so. Its excellent staff and strong local partnerships will help advance our work in this field and promote more effective regional collaboration. As part of the work plan that we are starting to develop, I am sure that we shall call on many of the County Supervisors and Mayors who are sitting among us to help us with outreach into your communities. Second, Commissioner Dave Pine testified yesterday at the first hearing of the Assembly Select Committee on Sea Level Rise and the California Economy which is chaired by Assembly Member Rich Gordon, a former BCDC Commissioner when he was a county supervisor in San Mateo County. The select committee heard from state agencies, including Natural Resources Secretary John Laird and Executive Director of the Ocean Protection Council Cat Kuhlman and experts from UC Santa Cruz, USGS, NOAA, the Pacific Institute and the Stanford Woods Institute for the Environment and so on. BCDC expects to provide testimony at the Committee's next hearing to be held in Half Moon Bay in July.

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

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

Chair Wasserman received two cards from people wishing to make public comments.

Mr. Miller addressed the Commission: My name is Keith Miller and I am president of California Canoe and Kayak located in Jack London Square in Oakland. At the past two Commission meetings I informed Commissioners about the knowing and intentional violations of BCDC Permit 1985(B) by Scott's Jack London Incorporated now known as Foods Specialists Incorporated.

I'm here today to thank Executive Director Larry Goldzband and the BCDC staff for the action taken in the enforcement letters sent today to the Port of Oakland and Scott's.

I look forward to working with the staff in resolving all the issues in a positive manner for the enjoyment for all who visit the Square.

I also send a thank you from the owners of Bocanova Restaurant, Rick and Meredith Hackett for your efforts.

Mr. John Coleman spoke to the Commission: I'd like to publicly thank Commissioner Randolph for his participation in our Decision Makers Conference a couple of weeks ago. Senator Boxer and Congressman Swalwell participated in that conference.

We do have another activity coming up. It is on cap and trade which impacts, literally, every business in the Bay area. It will be on June 6th in Oakland from eight to noon.

Chair Wasserman added: We should also congratulate Supervisor Gioia on his appointment to the California Air Resources Board.

4. **Approval of Minutes of the May 2, 2013 Meeting.** Chair Wasserman entertained a motion and a second to adopt the minutes of May 2, 2013.

MOTION: Commissioner Scharff moved, seconded by Commissioner Pine, to approve the May 2, 2013 Minutes. The motion carried by voice vote with Commissioners Zwissler, Adams and Chiu abstaining.

Chair Wasserman asked: Are there any questions for the Executive Director? He received no questions and moved on to Item 7, Consideration of Administrative Matters.

7. **Commission Consideration of Administrative Matters.** Executive Director Goldzband stated that there were no administrative matters to discuss.

8. **Public Hearing and Possible Vote on Strategic Plan.** Now we will take up Item #8, which is consideration of the Strategic Plan. This has been before us. There were some comments that we needed to address.

Before Larry makes his presentation, I want to take the opportunity to direct your attention to the letter that Natural Resources Secretary Laird sent to Commissioner Zwissler upon his appointment which is in the packet that was provided to all of us. I recommend it to you because it states very eloquently the task before all of us each time we meet, which is to make decisions "based on the mission of the commission, as well as what is best for the state of California as a whole." I think that we are all proud to do just that and to continue and enhance BCDC's reputation as a thoughtful steward of the Bay. I do this now because I think the Strategic Plan that I expect we're about to approve carries this forward.

I turn it over to Larry to introduce the Strategic Plan in its current iteration.

Executive Director Goldzband presented the following: I wanted to make sure that the Commissioners could see how we made changes or propose to make changes to the current edition of the Strategic Plan and that's why you have received your copies in the form that they are in.

We took to heart the comment that we need to make sure that the public recognizes that BCDC has been very successful in its history. We added a few thoughts and it now says that BCDC was created to stop the Bay from shrinking and has a successful track record of maximizing public access and minimizing Bay fill.

We really wanted to drive this point home in the section, Challenges and Opportunities. You'll see that we added an entire point, which says that BCDC must take advantage of its innovative policy record by retaining its successful policies and practices and learning how to capture and use those accomplishments in the future.

We wanted to talk about more and diverse public access being needed.

Finally, in the actual strategic plan itself, we had a long discussion on Goal 1, Objective 3. This has been a hard one to really figure out in terms of how we can say what we think we want to say and how we can say it clearly.

We added the language that was suggested to us by all of you. It says, minimize Bay fill given that rising sea level, changing sediment supply and changing public needs may require additional Bay fill. We think this should satisfy the questions.

Chair Wasserman had a couple of comments: There was a huge effort put in by staff, the Commission and by public constituents who participated in doing this.

This is a very good document and it will guide us well over the next several years. It is not a document we simply intend to put on the shelf. We will revisit it both at a staff level as well as periodically at a Commission level and there will be another document, which we will review which will be the performance measures.

I would like to suggest one small correction. On page six in the purpose section, in the middle, Item 2 which says, expand the variety of public access and activate existing public access required through BCDC's regulatory process.

I think that should read, and activate existing and future public access. I think that was the intent. That's consistent with the way it is referred to later on.

If after discussion there is a motion to approve, I would ask that that be included in the motion. Any comments of the draft or on the process?

Commissioner Nelson commented: It's important for public agencies to do strategic planning.

Under Goal 1 on page nine, Objective 3; could you explain what was meant by, changing public needs?

Executive Director Goldzband responded: One of the real issues that BCDC faces is that we recognize that we don't operate in a vacuum. We recognize that with rising sea level there will be fundamentally different challenges and new challenges that we're all going to have to face here at BCDC and in our local communities.

It may be that the public believes that one of the best ways to temporarily resolve or help counteract rising sea level will be to restore marshes, doing so requires fill. We need to make sure that we as an organization examine how that works vis-à-vis changing public needs so that we can figure out whether and how we should do that.

Putting fill into the Bay voluntarily very much cuts across what BCDC historically has always said it looks to. That's the purpose of the language.

Commissioner Nelson added: I wanted to make sure that it did not suggest that we're open to uses like residential. I wanted to make sure that we're not opening that door.

Executive Director Goldzband agreed with Commissioner Nelson.

Chair Wasserman asked for any other questions or comments. He stated that there were no public speakers on the item. The Chair entertained a motion to close the public hearing on this matter.

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

Chair Wasserman then asked for a motion to adopt the staff recommendation and adopt the Strategic Plan.

MOTION: Commissioner McGrath moved adoption with the changes suggested by the Chair, seconded by Commissioner Nelson. The motion was passed by a voice vote with no abstentions or objections.

Chair Wasserman thanked everyone involved with this effort for their help and determination and hoped that the document would be a useful one.

Chair Wasserman moved on to Item 11, Consideration of the 2012 Annual Report.

Chair Wasserman stated: Executive Director Goldzband will handle this. This is not a public hearing but if there are comments we certainly welcome them.

I think there are useful things in this annual report. I do expect that annual reports from here on out will look somewhat different because they will be tailored a bit more to the Strategic Plan and some of the issues addressed there.

Chair Wasserman stated: I would entertain a motion to approve and adopt the 2012 Annual Report.

The item was approved as noted under Item 11.

Chair Wasserman recused himself from Item 9.

9. **Consideration of Proposed Legislation AB 1273 (Ting).** Vice Chair Halsted stated: Now we will take up Item 9, which is our consideration of AB 1273, legislation proposed by Assembly Member Ting at the request of Mayor Ed Lee of San Francisco and the Port of San Francisco regarding the Pier 30-32 Revitalization Act. Steve Goldbeck will introduce the issue. Former BCDC Chief Counsel Tim Eichenberg will discuss those issues and how they are treated in the legislation. And then Steve Goldbeck will make a full staff recommendation.

After the presentation I will ask for a motion to open the public hearing and I will ask the Port of San Francisco to make a presentation. We are happy to have full input.

Also, a representative from Assembly Member Ting's office and from the Warriors will speak. The public will then be given an opportunity to comment on this matter.

Public speakers will be given three minutes to comment.

After the hearing is closed, Commissioners will be given time to ask questions and provide comments.

In addition, Jennifer Luchessi of the State Lands Commission is available to answer questions about how the State Lands Commission manages and implements the public trust.

This discussion should center upon the legislation itself and is not a discussion of the details of the proposed project.

This legislation deals with the public trust considerations surrounding the project. The purpose of the hearing is to determine whether the Commission should take a position on the legislation based on how and whether it affects BCDC's jurisdiction and authority, not whether the project should be approved or not approved.

Are there any questions from the Commission on this matter before we proceed? Seeing none, we will move to Executive Director Goldzband who is filling in for Steve Goldbeck today.

Executive Director Goldzband presented the following: You have before you a staff summary dated May 3rd and a staff recommendation dated May 10th regarding AB 1273, the Piers 30/32 Revitalization Act by Assembly Member Ting and sponsored by the Port and city of San Francisco.

AB 1273 has three main components. It authorizes the Port to approve, subject to certain conditions, a multi-purpose arena and mixed-use development at the piers for the Golden State Warriors.

It makes a legislative determination of public trust consistency based upon the Port's findings that the project is consistent with the provisions of the bill in lieu of any BCDC or State Lands Commission determination of trust consistency.

And it contains a savings clause that preserves the discretion and authority of BCDC to approve, deny, condition or enforce permits for the project under the McAteer-Petris Act, the Bay Plan or the Special Area Plan including maximum feasible public access, except for findings of consistency with the public trust doctrine.

Staff has been working with the staff of the City and the Port since it was introduced. The staff has identified a number of issues affecting BCDC's laws and policies and has discussed potential solutions.

The bill has substantively changed since those discussions began. However, in doing so the staff has always said that it would not commit the Commission to any particular position which you will be considering today. Those discussions have been productive but other issues remain and staff continues to meet with the Port.

We are looking forward to hearing the Commission's comments and getting direction today on the public trust doctrine issues.

AB 1273 has been approved by two policy committees in the State Assembly so far. The Assembly must vote on the bill by the end of May if this is to be a one-year bill.

And if it passes out of the Assembly, it will be taken up by Senate policy committees. It must be approved by these committees under the legislative schedule by July 12th.

Tim Eichenberg, our former Chief Counsel, has been working with us on this issue since we began. He will provide a background on the public trust and staff thoughts. In addition, Jennifer Luchessi is here as well to address questions with regard to the public trust issue that were raised by Commissioners during the previous meeting.

Tim Eichenberg addressed the Commission: The Commission was briefed on the Port's project on May 2nd. This report is about the effect of the legislation on BCDC's decision-making process.

This project involves an arena and event center that would be the new home for the Golden State Warriors. It also visitor-serving retail and non-maritime office space, a 500-car parking garage, the Warrior's practice facility, public plazas and public access around the perimeter of Piers 30/32 and a maritime program that includes a fire boat station, water transit docking and a deep-water berth for overflow cruise ship traffic and other large ships.

It also includes retail, residential parking and hotel development across the street to enhance the trust uses at the Pier on Seawall Lot 330 which is outside of BCDC's jurisdiction to help finance repairs to the substructure of Pier 30/32 which is crumbling and falling into the Bay.

The bill confers the State's authority to make public trust determinations to the Port if the Port makes certain findings.

The public trust doctrine has been incorporated into state common law and state statutes and even the State Constitution. A lot has been written about the public trust doctrine.

The public trust doctrine varies from state to state. It generally holds that lands under navigable waters, including filled tidelands, are owned and held by the state in trust for the public and reserved for public uses.

Traditional public trust uses are water-related uses including fishing, commerce and navigation. In California they also include recreation and conservation purposes.

The State Legislature is the trustee of public trust lands and has the ultimate authority to decide how public trust lands can be used subject to judicial oversight and judicial review.

The state can convey away or grant public trust lands. But these conveyances do not terminate the trust. The trust stays on those lands unless the state specifically finds it no longer useful or suitable for public trust purposes or public uses.

The state has done this in San Francisco Harbor. In 1968 the state conveyed waters and lands within the San Francisco Waterfront to the city and county of San Francisco under the Burton Act which requires the Port to manage waterfront lands consistent with the public trust doctrine.

The California State Legislature delegated authority to State Lands as well to manage public trust lands in 1938. The State Lands Commission is authorized to lease and convey trust lands for trust purposes and make formal and informal determinations on public trust consistency if requested or on its own behalf.

For example, the State Lands Commission issued formal trust consistency findings for Pacific Bell Park on the waterfront and the Mills mixed-use development on Piers 27 and 31.

The State Lands Commission staff provides informal trust consistency opinions to BCDC and BCDC typically relies on those opinions and they have done so for the Ferry Building, the Exploratorium, Piers 1, 3 and 5, Treasure Island, Candlestick and Hunter's Point. It's a very common procedure that the staff would weigh in and provide opinions that BCDC commonly reviews and relies upon.

The public trust doctrine itself is flexible and accommodates changing public needs. And the Legislature may authorize non-trust uses that are ancillary to water-related uses and often does so.

For example, AB 1378 was enacted in the year 2001. It authorized the cruise ship terminal at Piers 30/32. It had substantial ancillary non-trust uses attached to that project which included office space and parking which was deemed necessary for the feasibility of the terminal.

The project also included substantial public benefits including pier removal and funding commitment for the Brannon Street Wharf which is now nearing completion.

AB 1273 which is the subject of this hearing authorized primarily a non-trust use, a non-water-related use which is the indoor arena, parking and office and retail space but has substantial ancillary public trust uses that are attached to it including a maritime program, public access and other trust uses.

The Legislature is the ultimate trustee or the decider of state lands and can authorize non-trust uses such as ballparks and convention centers if they find that it serves a broader statewide purpose and does not impair trust uses.

The State Lands Commission staff is here today and is available to provide more information on some of these other projects.

How does this bill affect BCDC's review under the public trust doctrine? AB 1273 authorizes the Port to approve an arena and a mixed-use development on Piers 30/32 if it finds that it meets the conditions in Section 5 of the bill.

Our staff recommendation has a list of those provisions in Section 5.

The Port finding of consistency with Section 5 also satisfies any legislative or regulatory requirement for findings of consistency with the public trust or the Burton Act trust.

Essentially what this does is it waives provisions in the Bay Plan and the Special Area Plan that require BCDC to find that any action it takes is consistent with the public trust needs for the area in the Bay Plan uses and that requires the Commission to find those permitted uses on Piers 30/32 are consistent with the public trust doctrine and the Burton Act that's in the Special Area Plan.

The public trust doctrine is important to BCDC because it provides independent grounds for BCDC's review of the proposed development action and it also provides additional legal support for any action that the Commission may take.

Section 7 of the bill contains a savings clause that preserves BCDC's authority under the McAteer-Petris Act, the Bay Plan and the Special Area Plan. However, some of the findings under Section 5 may be inconsistent with BCDC's permit standards and impede BCDC's ability to develop a public benefits package.

Therefore, the staff recommends that the bill be amended to ensure that it more equitably balances trust and non-trust uses, reduces non-trust uses like parking, clarifies and resolves potential conflicts between the two determinations and specifically preserves BCDC's ability to review and provide for public benefits.

With respect to the information that's provided in the bill. The bill doesn't have any details on the size, height and bulk of the project making it very difficult to determine what its impacts might be on public views and other public trust uses, other water-related uses of the property and the character of the Embarcadero Historic District.

So the staff recommends that the bill be amended to provide more information on the size and mass of the arena so we can determine what its effect might be on those uses.

With respect to venue-supporting uses that are in the legislation but are not defined. AB 1273 authorized about 70,000 square feet of non-maritime office space for what are called venue-supporting uses or trust retail uses. It limits retail space to venue-supporting or trust retail uses but it doesn't define what it means by, "venue-supporting" which could also include non-trust purposes.

The staff recommends that the bill be amended to indicate the amount of authorized retail space because that is not specified in the bill authorized by this project and by the legislation, and define what it means by, "venue-supporting".

And finally, regarding the involvement of the State Lands Commission on implementation of trust-related activities, AB 1273 requires the Port to report to State Lands on implementation of the trust-related activities on the site and authorizes State Lands to require an implementation plan to ensure that the bill's objectives are being met.

The bill does not require State Lands oversight of the trust consistency findings that the Port makes under Section 5. The State Lands Commission has proposed amending the bill to allow State Lands to review compliance with the trust consistency standards in Section 5. The Port staff has indicated that it's not opposed to that.

BCDC staff supports this suggestion and recommends that the bill be amended to provide State Lands Commission oversight of the trust determination findings that are made in Section 5.

Executive Director Goldzband commented: We're not really presenting the staff recommendation fully now. What we want to do is make sure that you see where it is which is on the first page of Agenda Item 9. It's summarized in front and I want to make sure that the Commissioners recognize that the staff recommends that there continue to be staff discussions and that the Commission adopt a position of opposed unless amended until such issues are resolved and transmit that in writing.

The Commission will direct staff to return to the Commission with further recommendations on the legislation. But alternatively, the Commission may want to consider the City's and Port's request which is to inform the Legislature of BCDC's concerns and consider a position on the bill after further discussions.

We wanted to make sure that the Commissioners saw that there is that alternative and we made sure to put it in the staff recommendations.

Vice Chair Halsted stated: I believe we can move to the public hearing. Is there a motion to open the public hearing?

MOTION: Commissioner Zwissler moved to open the public hearing on this matter, seconded by Commissioner Nelson. The public hearing was opened by a voice vote with no abstentions or opposition.

Vice Chair Halsted added: The first to speak will be the Port of San Francisco which has a longer-than-normal public presentation as a sponsor of the project. They will be followed by a representative from Assemblyman Ting's office and then a representative from the Golden State Warriors.

Brad Benson from the Port of San Francisco spoke: I am the Special Projects Manager for the Port of San Francisco representing Port Director Monique Moyer and the broader Port/City team that is working with the Warriors on the Piers 30/32 multi-purpose venue project.

There is a big public debate about this bill and the project. Since we were not able to address these public trust issues and the state legislation at the last meeting, that's the purpose of this presentation.

We were also not able to share with you the new design of the multi-purpose venue. We're going to do that in this presentation as it relates to the state legislation to show how comments from BCDC staff, State Lands staff and the public are addressing these policy issues.

The project design has changes since the initial design that was released last October. This slide shows the October version of the multi-purpose venue. You can see that the arena was all the way at the east end of the pier overhanging that east berth. Most of that was elevated.

There has been a lot of comment about that initial design. The Warriors team has been working hard to redesign the project to address some key concerns mainly by moving the arena 40 feet towards the Embarcadero to open up the east berth.

Other moves involve moving Red's Java House from the northwest corner of the project to the southwest corner and trying to create more pier-level open space and a more robust maritime program.

We believe the architecture team has done a pretty good job responding to these comments.

They have reduced the height of the facility from 135 feet to 125 feet. They've reduced the square footage associated with the event center by a little over 40,000 feet. Parking is down from 630 spaces to 500 spaces and all of this is creating the opportunity for expanded open space including at the pier level.

We have included some design features that we heard directly from BCDC and State Lands staff has been worked in the plan. Some of these include public views into the arena.

The rationale for the legislation. This is important because some people feel that there's not a need for the legislation. We want to point to the California Supreme Court Citation from Marks versus Whitney. Essentially, the Court said that it's a political question within the wisdom and power of the Legislature acting as trustee to determine whether or not public trust uses should be modified or extinguished.

That key role resides with the Legislature. The Legislature can delegate its powers over trust lands to other agencies. It generally does so to the State Lands Commission but also to local grantees like the Port of San Francisco.

We interpret the trust on a day-to-day basis and try and promote it through projects like the cruise terminal and other major developments along the waterfront.

It can also interpret the trust by establishing a regulatory regime as it did with McAteer-Petris.

Finally, there are other circumstances that require legislation. And the Legislature has adopted trust-related legislation for former military bases that went into federal ownership, the seawall lots on the other side of the Embarcadero. They've enacted legislation for this site at Piers 30/32.

It was in the context of that prior legislation and a policy direction from the State Legislature that we along with the Warriors approached the staff of BCDC and State Lands to talk about this issue about how the public trust determination should be made for this proposed project.

And thinking about that prior legislation, thinking about the delegated roles to staff and the various agencies there was agreement, we thought, at the time that state legislation was the appropriate path to go.

We've spent a lot of time encouraging the Warriors to consider state legislation when that was not first choice.

Going to AB 1273 there are findings in the beginning of the bill that go to the unique site conditions at Piers 30/32. These findings were in the prior legislation, AB 1389 for the mixed-use cruise terminal project.

Essentially, it describes the limited use of the pier, the short expected lifespan, other attempts to develop the pier that have failed and the fact that the fair market value of the pier is far less than the cost to rehabilitate it.

We both, BCDC and the Port, have designated this site as a mixed-use development site in our respective plans.

We've worked hard in the drafting of the legislation to protect the trust in AB 1273. The legislation sets minimum standards for maritime use, public access, design, views, parking and retail.

It does not affect BCDC's McAteer-Petris authority. It does not attempt to change CEQA as we've seen with some other sports proposals around the state.

It's attempting to make a trust policy finding that is unique to this set of circumstances and to this project to avoid setting a broader precedent.

The design standards are clearly articulated in the bill and many of these standards came from recommendations from staff at the State Lands Commission and at BCDC.

I'm going to share these with you to show you how the architecture team has responded to actual requirements in the amended legislation.

The project is supposed to be designed to attract people to the waterfront. We think that it does that. It brings a new population to the waterfront like the Exploratorium and Pac Bell Park.

It's got a very wide open space component that will be available to people who do not buy tickets. There is an emphasis of free public access through most of the site.

The team has designed this open-air ramp that wraps around the facility where any member of the public with or without a ticket can go up to the top of the facility to experience these Bay views.

Elevated views. We've talked in the past about the fact that there are not opportunities along the San Francisco Waterfront to get up and look down at the Bay mainly because of the historic resources that we maintain.

A lot of discussion about how to minimize view impacts of important public views of the Bay. The design team has done a good job in this.

I've talked about the significant public plazas. We've been working hard to get more pier-level open space. A lot of the design moves were meant to accomplish that including the South Grove and the South Plaza overlooking the Brannan Street Open-Water Basin. There are elevated portions that you can reach from the grand staircase.

The legislation requires maximum feasible public access as determined by you. There are great opportunities here even when it's not a fully activated site by large crowds to provide interesting experiences going around the pier.

The idea of being able, if you don't have a ticket, to see into the arena; the design team has worked to accomplish this.

There are minimum maritime requirements in the bill that are articulated, the fire boat station that we've been trying to find a new home for, the need to preserve the naturally-deep east water berth for cruise use, we're looking at water transportation, water taxis is a definite. We're talking with WETA about ferry service to the site.

There are other requirements in the bill, free or low cost community room, limits on the amount of non-maritime office and the type of retail, parking capped at 500 spaces. But that's just a maximum and that could be addressed further in the major permit process and the City's approval process.

The next idea came from BCDC staff. The idea that the site would be available for public-trust consistent events 15 days a year including three days inside the venue; including free and no-cost events so that you don't have to spend a lot of money to experience the site.

Of course, plans to address sea level rise and the Port finding that Tim spoke of.

We believe that there are substantial opportunities to amend the bill as it goes into the first policy committee in the Senate. We welcome the opportunity to address these open issues that have been raised by staff.

This issue about balancing trust and non-trust uses. We continue the dialogue with State Lands and BCDC about the overall use program, the amount of parking and other uses that are included in it.

We don't agree with the assertion in the staff report that the venue itself is a non-trust use.

We previously provided to the Commission examples of public assembly uses on trust property. We don't find in case law or common law any prohibition against this kind of use on trust property. It's an undecided question.

In that vein we think it's important that the Legislature weigh in.

On the public benefits question, we believe that we've already incorporated in the legislation a substantial public benefits package. We acknowledge the conversation about the right balance between development and public benefits on a public waterfront. We would engage with you in a discussion about additional public benefits in the form of historic rehabilitation, a Bay Trail extension or habitat restoration.

On the project size. We've gone over some of the massing already in this presentation. We hear what is being said by staff about articulating limits in the legislation.

We would like to engage with you in that further analysis. As we look at the mixed-use cruise terminal project that was approved at this site, it was an intense use of the piers.

As we compare it to the multi-use venue we see that it compares pretty favorably. And the open space that is available in this project is much more contiguous, a much better experience than you would have seen with the prior project.

The cruise terminal project included an element that went up to 85 feet. We think that there is a good comparison to be made and a way for you to issue a major permit under the Special Area Plan.

We acknowledge the lack of a definition about the venue-supporting uses. We'd be willing to provide that definition in the form of an amendment.

Tim mentioned switching the role of the Port Commission in making a finding of the project consistent with the legislation and transferring that role to the State Lands Commission.

We agree that people need to feel that there's an independent check to make sure the project is meeting the standards set forth in the legislation.

Finally, the issue about BCDC's trust finding. It is a finding that you have to make when you issue a major permit. We have always cooperated with you in trying to provide the basis for that determination.

Often it's come in the form of these informal trust consistency letters prepared by the executive officer of State Lands.

BCDC has participated in this process. Those letters reflect your policy goals as well. Sometimes it's the State Lands Commission taking a vote. Sometimes it's state legislation as happened with AB 1389.

In any case, that analysis, that process, has been a cooperative process between State Lands, BCDC and the Port. We think that's important. It's important when a local grantee is seeking advice from the state through its various agencies that the state speak with one voice on trust consistency issues.

We conclude by saying, that in this case we think the issues are significant public policy issues about whether or not a use like this is appropriate on a public waterfront. It rises to the level of the state legislature.

In conclusion, we will continue to engage with BCDC staff and we would request additional time before the Commission takes a position so that we can negotiate specific amendments to address the public policy issues.

Vice Chair Halsted introduced Emily Salgado with Assembly Man Phil Ting's office: I am here to deliver our statement to the Commission. I, Phil Ting, introduced this bill (AB because 1273) and support the project described because I believe that the proposed multi-purpose venue, maritime uses and public open space will help restore a section of our beloved waterfront that is crumbling into the Bay and re-imagine the site as a premier gathering place for all of us to enjoy.

My other purpose in authoring this bill was to help ensure that the project follows all requisites, state and local regulatory approval process. I would not have even considered introducing this bill if it contained any exemptions that circumvent any state or local public process.

In no way does this bill diminish BCDC's authority to fully review the project, impose conditions or even prevent it from being built.

However, as you have heard from the State Lands Commission, it is appropriate that the state legislation make a determination of trust consistency for this project because of prior legislative actions regarding Piers 30/32.

AB 1273 makes findings about the proposed project as consistent with the public trust. It only does so after extensive discussion between the City, the Port, State Lands Commission and BCDC staff.

The bill has evolved significantly since it was first introduced to reflect the productive feedback from State Lands and BCDC. I commit that the bill will continue to be refined as those discussions carry on.

In light of this commitment, I respectfully ask that the Commission consider not taking a position on AB 1273 at this time. It seems that the Commission, City and Port and all other stakeholders share the same goal; to ensure that any development on Piers 30/32 is trust consistent and reflective of an open public dialogue.

I agree with the staff recommendation that, quote, the bill should be and likely can be improved through further discussions. I believe that a, quote, oppose-unless-amended position from the Commission, would prove disruptive to otherwise productive negotiations and move us backward rather than forward.

For these reasons, I urge you to continue this item until the Commission's June 20th hearing allowing more time for staff to work on the referred amendments with the City and Port.

Commissioner Gioia had a question: In the memo it says that the State Assembly is required to vote on the legislation by June 1st and that the final day for Senate Policy Committee to approve bills is July 6th.

One of the issues is to keep a relationship and leverage to negotiate. If the bill is going to get voted on by June 1st in the Assembly, I'm trying to understand how that is held off if we're still continuing negotiations.

Ms. Salgado answered: I believe there would still be time for an amendment process.

Commissioner Gioia responded: But we don't meet until June 20th. So if we wanted to have input into that we may not have an agreement on the balance that needs to be put into the bill by June 1st but yet if the current version is approved June 1st we lose some leverage on the negotiations.

Mr. Brad Benson spoke: The Assembly Natural Resources Committee retained jurisdiction of the bill. It was this committee that carried the amendments that we had previously negotiated with State Lands and BCDC staff.

We believe that even with your June 20th timeframe, there is ample time to negotiate amendments with staff that can be considered by the Policy Committee on the Senate side and would commit to working with the author to give you time, both at the staff level and at the Commission level, to make your final determination.

If there are amendments that are made on the Senate side there has to be a concurring vote on the Assembly side. We would expect that that would happen.

Commissioner Gioia continued: So the intention is still to take it for a vote in the Assembly in whatever form you have it by June 1st.

Mr. Benson agreed with Commissioner Gioia.

Commissioner Gioia added: And then if there is a change made at the Senate Policy Committee which must be by July 6th. When does the Policy Committee actually meet?

Mr. Benson responded: I don't think that they've set all of the schedules for all of the policy committees at this point in time. We would expect Senate Natural Resources and Senate Local Government at a minimum but there would probably also be a referral to Senate Appropriations which happens after July 6th. It's gone to Assembly Appropriations as well on the Assembly side just to look at state cost impact and local government cost impacts. And that would happen on the Senate side as well.

In any event, there is ample time to amend the bill on the Senate side. And the City is committing in this discussion with you to give you time at the staff level to negotiate with City staff and the Warriors and to give the Commission time to come and hear the results of that negotiation.

Ms. Jennifer Matz addressed the Commission: I am the Mayor's manager of this particular waterfront development project. One of the things that we were prepared to pledge to you with Assembly Member Ting and the Warriors is that we would not bring this legislation to Senate Natural Resources until BCDC had the opportunity to take an official position in the hopes that we could work towards finalizing amendments that would then be brought to you, actual substantive amendments, that would be brought to you for your consideration at the June 20th meeting. We would not move this through the Senate and through any policy committees until you had the opportunity to actually take a position that could then inform the Senate side of the discussion.

Commissioner Pine commented: June 20th, unless we schedule a special meeting, would be the date that we would have to weigh in. We should perhaps consider whether we might need to have a special meeting.

Commissioner Apodaca inquired as to whom was the Senator carrying the legislation on the Senate side.

Commissioner Bates responded: Ting will carry it until it gets to the Senate floor and then he'll select somebody. He will carry the bill in the policy committees and in the fiscal committees.

When it gets to the floor he will designate an author to take it off.

Commissioner Bates spoke: Have you considered making this a two-year bill so we can actually have a chance to analyze this? It certainly is being rushed. If you're going to make these amendments and try to meet the timeframe, this is an extremely complicated bill. To have a quick up and down doesn't make a lot of sense. If you make it a two-year bill you can actually take time to make sure everybody gets a proper input.

Mr. Benson commented: We've been in discussion with State Land Commission staff and BCDC staff about this legislation since last October. We welcome a continuing discussion about it. We would prefer to work with you to get to your next Commission meeting with a proposed package of amendments so that you can consider those.

Commissioner Bates added: I just think that it's going so fast that we probably need a time out so we know exactly what's happening because there are a lot of issues that you're raising here. A lot of these, need to be negotiated.

I don't know that a bill rushed through the Legislature could be done properly with not having a deliberative opportunity for the public to be involved in the schedule that you outlined.

Commissioner McGrath clarified a point: I appreciate the commitment to hold the bill in the Senate until there's been an opportunity. I want to make sure that that opportunity is for the Commission as well as the staff.

Ms. Matz responded: Absolutely. This is why we were saying, until the Commission meets again and has the opportunity to take a position.

Commissioner McGrath answered: So the commitment you make is that if BCDC does not take a position today that there will be another opportunity before it goes to the first policy committee in the Senate side.

Ms. Matz replied: Exactly.

Commissioner Randolph commented: Another option would be to actually have us hold a meeting on June 6th, a special session.

Vice Chair Halsted called for the next speaker.

Mr. Rick Welts spoke: I am President and Chief Operating Officer of the Golden State Warriors.

On behalf of our ownership group and our entire organization I'm here to express our deep enthusiasm for our proposed multi-purpose event center on Piers 30/32 and underscore our commitment to working in partnership with BCDC and State Lands Commission on this important endeavor.

We feel we have already engaged in a collaborative process with your staff and we acknowledge there is much more work to be done together.

I can say that I have never been involved with a project that has simultaneously offered so much private capital investment with so many measurable public and community benefits.

The Warriors have made an historic commitment to the region to build an entirely privately financed multi-purpose venue.

Yesterday the owners of the NBA teams met to consider whether or not to continue our franchise in Sacramento which we are going to do. They were balancing two competing proposals from Seattle and Sacramento each of which involved a commitment by each of those cities of in excess of \$250 million of public money to build a multi-purpose facility similar to the one that we are describing.

Despite my best efforts neither President Chiu nor Mayor Lee seemed to be particularly in that as a pathway going forward. We are pleased that we continue to move forward with a completely privately financed proposal.

The proposal itself maintains and celebrates the magnificence of the waterfront. It's an architectural crown jewel that the entire Bay area can be proud of.

It provides unprecedented public access and delivers significant maritime uses. It represents \$1 billion investment in the regional economy creating thousands of new construction and permanent jobs.

When we decided to make our move to San Francisco we considered several sites. We finally landed on Piers 30/32 after the America's Cup dropped the piers from their long-term development plans due to the unexpectedly high cost of renovating the piers.

However, it's important for you to know that we did not make the decision to focus on Piers 30/32 lightly. On the contrary, before we made the decision to focus on Piers 30/32 we spent a lot of time looking at the regulatory construct that exists for the site understanding the goals for the site under the Waterfront Land Use Plan and the Special Area Plan.

And we looked at the history of past attempts to develop the piers and why they failed. We evaluated the opportunity to create meaningful public access and maritime use while still meeting the needs for a state-of-the-art multi-purpose event center.

We talked to a number of stakeholders and concluded that our project goals were very much in line with the policies and plans for this site.

We went into this process with our eyes wide open knowing that there are myriad policy issues to weigh and to balance on this complex site.

We knew however, that if we approach this with an eye towards listening to and working with our partners and various stakeholder agencies we had a good chance of success.

That is why, when asked by the State Lands Commission staff and BCDC staff to consider special legislation to confirm the trust consistency of this project we agreed. This is a not slam-dunk decision for us. There were certainly precedents for not going the legislative route.

One only needs to look half a mile down the Embarcadero at the other jewel of the waterfront sports facility, AT&T Park in San Francisco to see a precedent for a trust consistency finding without legislation.

That said, we heard it was important to our partners and we consented to the legislative approach.

The Warriors are determined to do this project the right way, consistent with the shared environmental and sustainability values of our community.

When built, this project will be, at a minimum, certified LEED Gold and its location ensures that it will be the most public transit-accessible sports facility west of the Hudson River.

Ultimately as a team we are excited about this historic project. We stand ready to invest in an unprecedented way in our regional economy delivering the kind of waterfront public access that was envisioned for this site when plans were first put in place for the piers more than 15 years ago.

The next speaker was Garret Law: I am a resident of the South Beach neighborhood. We have a lot of neighborhood concerns.

These entertainment venues are going to take place on numerous piers. How many of these entertainment venues are we going to have on the San Francisco Waterfront?

These events are getting bigger. The AT&T venue integrates with the neighborhood and fits with the brick facades. This Pier 30/32 is magnificent but it doesn't integrate with the neighborhood.

I'd like to see you folks remain independent and either pass on this opportunity to not vote in support of it or vote against it because I don't think it quite fits yet.

Ms. Gayle Cahill spoke: I am the Chair of the San Francisco Waterfront Alliance, a newly formed entity in San Francisco that's responded to this proposal. I'm also a neighbor who lives about two blocks from the proposed site.

A vote up or down on AB 1273 is not a vote up or down on the project. It's a vote up or down on the process. The process as set forth in your mission statement acknowledges that local governments acting alone cannot fully address regional issues.

The interests at stake are not simply San Francisco interests.

It is also worth noting that in the short time that BCDC has existed you have taken us from having four miles of publicly available shoreline to having more than 200. I think that's the result of taking into consideration the regional considerations for the Bay and that things interrelate.

I know that in the memo that the City provided to you there was a reference back to prior legislation. We seem to be getting a little closer to what was done before in prior legislation insofar as the prior legislation provided for a credibly and partial third party to review findings of applicable standards contained in that bill.

Today we hear that the State Lands Commission may now step and do oversight of the Port's findings. We're still a little too much of a fox-guarding-the-henhouse situation and the closer that we get to every measure that restored the ordinary course of business, the more this bill becomes unnecessary that all that really is required is a piece of cleanup legislation down the road and that the normal processes of BCDC and the State Lands Commission can be allowed to go forward.

We also have to note that we are standing perhaps on the edge of slippery slope. It's worth asking the question, if we start letting projects come in one by one and pick off a little piece of the Bay here and a little piece of the Bay there, where does it stop? Who is going to come in next? Who is going to want another little special arrangement for a piece of land in their jurisdiction, in their city?

This is too important. It's public trust lands. They're here for all of us and you have done magnificent work.

Mr. Patrick Valentino addressed the Commission: I live about a block and a half from the site. I'm very excited about this proposed project as a public open space in our neighborhood.

The Bay area itself has over seven million people. Our neighborhood is designed for a project like this. We've got office buildings, residential, retail, light industrial uses and other commercial uses. We have a ballpark and we have a bridge.

Prior to the conversation, no one was talking about this space on the waterfront. Now we've got an opportunity to bring the public in an engage the public.

This is truly a space that is engaging the public. We've got significant transit right next to this proposed use. We're within one-quarter mile walk of BART Station, CalTrain, Ferry TransBay not to mention MUNI which stops right there.

This will help the entire Bay area, not just the City and not just our neighborhood but the entire Bay area will have access to this site.

I'm looking forward to having access to the Bay and the views of the Bay that the Warriors are proposing.

Mr. Mark Kyle commented: I am here representing Operating Engineers Local Union Number 3. We're the largest building and construction trades local in North America with about 35,000 members in four different states; 24,000 of those members live in northern California.

Almost half of these live in the nine Bay area counties touching the Bay. Over 70 percent of our members recreate outdoors and it's a topmost concern that the Bay be kept in pristine condition.

Local 3 supports the proposal for the Warriors Project. We support the restoration of Piers 30/32. We support the construction of multi-use facility. We want to participate in the rehabilitation of the piers and the construction of the multi-use facility.

We support AB 1273 and we urge this Commission to direct its staff to continue to work with the staff of Assembly Member Phil Ting to address the very legitimate public trust issues that have been articulated to you earlier and it today's hearing.

We would urge you to continue this item over to June 20th and to direct the staff to continue to work with the legislative staff rather than in opposition to this legislation unless there is an amendment.

Mr. David Lewis spoke to the Commission: I am the Executive Director of Save the Bay. You have our letter in support of the staff recommendation. The chief reasons are laid out in the letter.

This discussion today is about the Commission standing up for its statutory authority and for the Commissioners standing up for staff and a very strong staff recommendation.

The staff has told you they need you to be on record, oppose unless amended with these particular amendments for there to be any productive continuing conversations towards that end with the Port.

In laying out the Port's case, Brad Benson has actually made my case for me because Brad said that in the last nine months there have been productive discussions and changes in the legislation but not the changes that you need to preserve your statutory authority.

That is the best reason for you to go on record as the staff has recommended. You can always change that recommendation, that position on the bill in the future if there is a change.

I wish that process had been used ten years ago when Kevin Shelley's legislation on this same pier was actually not opposed by the Commission. The Commission could have preserved its authority to make an independent judgment on public trust.

This project is very different so that should not be used as a precedent.

Furthermore, it's not acting in bad faith, as the Port may be suggesting, for the Commission to take a position opposing unless amended. It's exactly what is needed. It is exactly what the staff needs.

Save the Bay moved the Legislature to create this Commission four decades ago. And we have always stood up for your preservation and your prerogatives. And sometimes those attempts to undercut the Commission are broad and visible as when Governor Wilson tried to eliminate BCDC's budget two years ago.

Sometimes they're surgical and more self-interested but with much bigger implications. This is one of those today.

When the Mayor of San Francisco is calling individual city council members and county supervisors on this Commission and I would suggest trying to strong arm you because a particular interest wants to fast-track this proposal; that's a good indication all the more reason for BCDC to stand up for its authority and stand up for its staff.

Finally, on Commissioner Bates' suggestion, there's no reason that this legislation has to be done this year. It's premature for the Legislature or the Commission to reach a finding about what is public trust consistent in this project. The project is changing repeatedly, that's why it's a bad time for the Legislature to fix that in law.

Mr. Anthony Urbina addressed the Commission: I am with the Sheet Metal Workers Union, Local 104 out of San Francisco. At this time we have an unemployment rate of about 15 percent at our dispatch office. Our out-of-work people want to see this project go. We do support the Warriors Project.

It's estimated to create over 28 hundred permanent jobs and we're looking at 5,000 construction jobs. We want to be a part of that.

Additionally, Piers 30/32 are perfectly suited to house this incredible facility. Our members are excited to be a part of this project.

Mr. Art Swanson spoke: I am representing the San Francisco Small Business Network. I am here to speak in support of the Warriors Arena and Assembly Bill 1273.

If this proposal fails because of a difference between cities or regions in the Bay area we're concerned that the proposal will never get built at this site.

It's the right location with the right team. And we'd like to see this beautiful and amazing multi-functional facility move forward at Piers 30/32.

Some have said that the building should be built elsewhere on the waterfront; perhaps Pier 70 was one of the choices. There isn't a single community in the City that is better served by all of the public transits.

Before they built AT&T Park nobody used to come to our neighborhood. Now everybody walks down those streets to the ballpark. All those small businesses that didn't exist before or existed on a penny of a dollar; they now get business every time somebody walks down there.

The houses were not worth much. The people actually complained about it and now they're thriving in that neighborhood. I am certain that the same is going to happen down at Pier 30/32.

I also want to point out that on May 9th twenty-nine years ago, fires burned those two piers. Twenty-nine years ago there was nothing there. And all that's been there between then and now is a parking lot.

I am for you to move forward with this project as best you can and allow for the Warriors to build this wonderful facility.

Mr. Myron Lee commented: I am a native San Franciscan. I'd like to express my support for the Warriors Arena and AB 1273.

Many of my fellow residents know that having the arena there definitely improves the site. The location is perfect there for the arena because it's very close to public transit. It opens up a central part of the waterfront that has been not as vibrant as some of the other areas around there.

For as long as I can remember the pier has been sitting there empty and crumbling into the Bay. If the arena doesn't go through I'm not sure that the City has the means to demolish or renovate it.

Mr. Jon Ballesteros addressed the Commission: I am here today on behalf of San Francisco Travel and the Hotel Council of San Francisco. I am here to support AB 1273 and to urge your Commission to provide your staff with the time needed to develop clear amendments that they can work out with the City to move this item forward.

San Francisco Travel is committed to this project because of the unique opportunity it provides to create jobs and to generate economic activity in all areas of the Bay area.

Travel and tourism is vital to every community in the Bay area. According to California Travel, in 2010 travelers spent \$26.6 billion in the Bay area.

Our clients who are large convention meeting planners tell us that there is a tremendous need throughout the Bay area for large indoor facilities such as the one that is being proposed that can house a capacity of 17,000 people.

We need one in a gateway city such as San Francisco. This project fulfills that need.

In addition, it gives the Bay area an iconic signature building that can rival other facilities that are world class and recognized throughout the world.

We urge your Commission to continue this matter until your staff has the chance to create clear amendments that will allow this measure to move forward and balance the concerns of all parties.

Mr. Jim Lazarus spoke: I am with the San Francisco Chamber of Commerce also a civic partnership of business labor and community groups, the Alliance for Jobs and Sustainable Growth. We strongly support this project and we support AB 1273.

We urge you to direct your staff to continue those discussions over the next few weeks with Port staff and the Mayor's staff from San Francisco.

Nobody wants to lose sports teams. This should not be the issue before you today. Perhaps the suburban-style coliseums of the 1960s may not be the model for the 21st Century. We as a Bay area need to come to grips with how we're going to accommodate these teams and the economic benefits that we can all share by keeping these franchises in our region.

We believe that this is the right thing to do from a public trust point of view. A sports facility open to the public is public recreation.

Mr. Matt Prieshoff addressed the Commission: I am the Chief Operating Officer for Live Nation in California. Live nation is extremely excited about the opportunity for a new state-of-the-art arena in San Francisco for both Bay area concert bands and special event presenters.

We support AB 1273. We urge the Commission to take as much time as possible to allow BCDC staff to work with potential bill amendments for you to consider.

Mr. Jon Robles spoke: I am here as a private citizen representing myself. I am a resident of Oakland and I work in San Francisco. I've been a Warrior fan for 20 years.

I personally recommend that you support this project and AB 1273. I think that this is a good use of this land that currently has no major use at all.

Mr. Todd Wilkerson commented: I am a Bay area resident. I'm a small business owner. I'm here in support of the Warriors on the waterfront. I'm in support of the project.

The Golden State Warriors have been rated as the eighth most valuable franchise in the NBA. The average franchise is worth \$509 million, the Golden State Warriors are around \$555 million.

Mr. Micah Allen spoke before the Commission: As a former Housing Authority Commissioner and CAC Member for a project in the City I know you guys have a tough row ahead of you.

With that said, I would like to say that I am in support of the Warriors Arena Project being built on the waterfront. This arena can be used on different occasions and at various days throughout the year. That is what is important to me.

Mr. Rueben Hechanova spoke: I am a practicing architect of over 33 years and have lived in San Francisco. I support the Warriors Arena and AB 1273.

I have always endorsed and supported quality architectural projects through the years. The Warriors Arena is a terrific opportunity for this place and space and will add to the skyline of San Francisco a new architectural icon that in itself will be a contribution, not just to San Francisco, but for all those who will come to the new categories of economic, cultural and social venues and benefits that this place will bring.

In addition, I also know the challenges of making the right decisions with the right data and facts. This is a golden moment and a golden opportunity.

Dr. Joe Marshall commented: I live in San Francisco. I am the Vice President of the Police Commission in San Francisco. I want this project.

This is a marvelous thing that the Warriors have put together to revitalize the central part of the waterfront that nobody has come up with.

The biggest thing here is the private money. I know that this Commission will do their job correctly.

Mr. Nick Belloni addressed the Commission: I want to talk about the open space element aspect of this. I am part of the San Francisco Recreation Parks Open Space Advisory Committee and we are talking about an area that is very deficient in open space.

This arena project brings in a ton of open space to an area that has nothing.

I helped write the acquisition policy in San Francisco. One of the things that we looked at was high-needs areas. This was one of those spots where I looked at and saw, this is a high-needs area. For us to have people wanting to put in an open space is huge for our city.

We talked to the Port about what they were going to do with their bond money for the open space issues. I asked about this area. I asked what they were going to do in this area. They said, it will be an arena. And we asked, well, what happens if it doesn't pass? They said, well, we really don't know. It'll just sit there.

I ask that you continue the discussions and continue to work on this and make this a reality.

Mr. Celestino Ellington commented: I am a longtime resident of San Francisco and I represent the YMCA of San Francisco. I am excited for the Warriors to come back to San Francisco where they can reach out to more youth here in the City.

Mr. Kirk Grimes spoke: I am here to answer the question, is the space being used appropriately once the Warriors arrive in San Francisco? My answer is a resounding, yes.

This arena will create a pride that comes along with not just a winning team but the economic results of it.

Finally, one this that this arena will also offer is, hope. Hope to future generations.

The Warriors have signed a historic workforce agreement with the construction trade unions. This is a conscious effort on behalf of the Warriors to incorporate the concerns of the community.

This effort also includes plans for fire safety, pedestrian safety and pollution.

Mr. Vince Courtney gave public comment: I am here on behalf of 35,000 men and women in Northern California District Council of Laborers. We enthusiastically endorse you moving this project forward.

We're interested in talking about people. We're talking about people and good policy. We're talking about our workforce.

Brother Grimes just mentioned this unique agreement. The Warriors were respectful of the community that they were coming into. This workforce agreement is a unique unprecedented move by a developer.

It is already paying dividends in that other developers are following suit. They are being respectful of the men and women that we represent and the men and women that we don't represent who are looking for those jobs.

We are urging to move this project forward as quickly and diligently as you can.

Mr. Tom O'Connor gave public comment: I am the President of the San Francisco Fire Fighters, Local 798. On behalf of the men and women of the San Francisco Fire Fighter Department I'm here to urge you to support AB 1273.

Our Local strongly supports the Warriors Arena Project for 2017 and we are dedicated to ensuring that it is built at Piers 30/32.

We are especially excited about the building of a new home for our fleet of fire boats which serves such an important role both in large-scale natural disasters and on a smaller scale with local smaller emergencies.

The Warriors Arena Project is a catalyst for enabling the fire department to build a new home for our fire boats which will save the City money and enable the Port to remove existing Bay fill where the current facility is located.

This maritime use has been a central feature of the City's waterfront for generations. The Warriors Arena Project is helping ensure that fire boats continue protecting our waterfronts across the Bay.

The project will include Core maritime functions like the fire department's use of the fire boats, like the deep-water berth for cruise ships and these couldn't have been built without the investments being made by the Warriors to build this new arena on this site.

Commissioner Jordan Hallinan spoke: I'm very inspired by what I'm hearing tonight. In terms of whoever else is speaking, I'm hoping that somebody will address why we should abrogate our responsibilities as BCDC, our due diligence responsibilities to support this bill.

It seems like we're talking a lot about supporting the project or opposing the project and we're not voting on the project today.

If any of you out there can tell me why we get rid of our responsibilities and delegate that away to somebody else, I'd really like to hear that.

Mr. Eddie Ahn commented: I am with Bright Line Defense Project an environmental justice non-profit serving low-income communities of California.

Our interest is indicated by the broad range of support you've seen today. The project itself is an avenue for growth in the form of jobs.

These are jobs particularly for low-income communities. These jobs will be in construction and those participating will be trained for good-paying jobs.

This bill explicitly preserves BCDC's authority in the provision that has been outlined.

There has been a remarkable commitment to postpone the vote itself until there's discussion before this Commission as well. That commitment should be repeatedly noted because there are good-faith negotiations going on right now.

Acknowledging that these negotiations are going on right now, there's no abrogation of BCDC's authority. There is no cutting of the responsibilities of BCDC.

We ask that you continue this item until June 20th.

Mr. Dennis MacKenzie commented: I am with Round the Diamond Consulting and Education. I also teach high school in the San Francisco Public Schools.

I have provided you with a proposal that requested the Warriors, the City and all the public agencies to include a high school, college career classroom inside this arena.

I am here to provide information as to why this project needs to be built. I support this multi-purpose cultural arena on Piers 30/32 as well as the integration of my high school classroom proposal.

I believe the Warriors and everyone involved have the integrity and visionary leadership with respect for all the citizens of San Francisco and the state of California.

I have also provided copies to the Warriors and all the official letters I received from the Hopi Nation elders and leaders in 1991 in support of developing cross-cultural cooperation regarding my original proposal to the Giants organization in 1985.

Also practical city-sister relationships can be traded with our neighbor nations and people of Mexico, Central and South America.

One additional component that could be explored is the potential of a visitors' housing facility located within Seawall 330 Project.

Mr. Manuel Flores spoke to the Commission: I represent the Carpenters Union of northern California. We have over 30,000 members.

There are issues and amendments that are currently in negotiations. They need to be addressed properly in a timely and smart fashion so all the major stakeholders can make this work.

Vice Chair Halsted asked for a motion to close the public hearing on this item.

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

Commissioner Chiu commented: I do support this legislation. I do think that the staff report was well received and thoughtful. I have one issue with it.

I do think that there is a partial disconnect between the staff analysis and the ultimate recommendation. I do plan to make a motion at the end of my comments that we adopt two of the three recommendations.

The two recommendations that I think we should adopt are, one, that the Commission support continued staff-to-staff discussions to continue to resolve and narrow the issues.

Secondly, that BCDC return to the next meeting whether it be on June 6th or the 20th with further recommendations based on those discussions.

On the third recommendation, be opposed unless amended, I do have some issues with that.

I had noted in the Minutes that Vice Chair Halsted had represented that I was very supportive of the project. I want to clarify that statement.

I am supportive of where the project is at this time in the development process. I'm also supportive of us adopting the state legislation as we did on this site some years ago and as requested by BCDC and State Lands.

Now, my support though doesn't mean, as I think this is the case for most folks around the table, that I blindly support this project which is still in the design phase with zero changes. It doesn't mean that I don't think this project can be improved. It doesn't mean that I think there aren't issues that ought to be worked out with the public and with BCDC.

I also think that the issues that have been raised by BCDC are legitimate around balancing trust and on trust uses, public benefits, project size, retail uses and independent review.

I also want to reiterate, I think that the staff has provided a very good framework for negotiations. I do know that the project sponsor and the legislative sponsor are willing to negotiate.

Today you've heard assurances from the project sponsor, from the legislative sponsor and the City team that they are committed to not taking this up in our State Senate before BCDC has had a chance to negotiate.

I think this is all very important. It's critical if BCDC wants to preserve our ability to make amendments it behooves us to continue negotiating.

As I think about the duties that we have, we all wear two hats. I am wearing one hat as a representative of San Francisco but I'm also wearing one hat as a BCDC Commissioner.

I want to speak to what our interests are as a Commission. I am concerned that an opposed-if-not-amended position will be understood by the press as an opposed position, by the public as an opposed position and by Sacramento as an opposed position.

I am concerned that at that point the Warriors and the City team will need to spend and focus their energies on getting this through Sacramento and they will not have the incentive, unfortunately, to devote as much energies to reversing BCDC's opposed-if-not-amended position; particularly, if they are able to move forward legislation in Sacramento.

I know we are going to have a lengthy conversation about this. I very much hope that we can consider that as we move forward.

I have received commitments from all the parties involved that if we are able to, over the next few weeks, have an intensive negotiation on these issues, that that I hope will lead us to a better place than we are currently today.

There is one last point I want to mention. This is in response to a comment that was made by David Lewis at Save the Bay which is the suggestion that there has been nine months of productive conversations that has not led to change.

It is my understanding that there have been a number of meetings on these topics. There have been in the last few weeks at least three meetings lasting five hours where essentially the project sponsors have met with BCDC staff but were told, present what you are looking to present but we're not going to, at this point, provide specific amendments on what it is we're talking about.

So in other words, there haven't necessarily been negotiations in the way that we understand it. There's been the opportunity for the City and the project sponsors to present their perspectives but, there has not been from BCDC specific amendments that have been offered as a way to try to move this forward.

It is my hope, in the next couple of weeks, that that could happen. We could hopefully bring this to a better place.

With that I do wish to make this motion. I'll just put that out there during the course of this discussion. And, of course, I look forward to hearing comments from colleagues.

I'll restate my motion. BCDC has laid out three elements of their staff recommendation. My suggestion is that we move forward two of those three items which is, the first piece that the Commission support to continue staff-to-staff discussions in an effort to narrow and resolve outstanding issues as well as the third element of the recommendation that the Commission direct staff to return to the Commission with further recommendations after such discussions but not move forward the second piece which is the oppose-unless-amended position.

MOTION: Commissioner Chiu moved to adopt points one and three of the staff recommendation as noted above, seconded by Commissioner Scharff.

Commissioner Gioia commented: I am a fan of the Warriors and I am a fan of jobs. I'm also a fan of San Francisco Bay and the process that we've had to protect San Francisco Bay.

I've been on this Commission since 1999 and I've been really proud how thoughtful this Commission has been in approving things like AT&T Park, improvements at the Port of Oakland, development along the San Francisco waterfront, open space access and it's done all of that in a thoughtful deliberative way taking its time and resulting in many thousands of new jobs, good thoughtful development, good public access and following a process that was laid out when this Commission was established in the 1960s.

When this Commission was established many local governments were unilaterally taking action to fill San Francisco Bay. Folks thought it was important that we step back and look at the Bay from a regional perspective and say, what happens in one part of the Bay affects the rest.

I appreciate all the comments made today and we share everybody's enthusiasm for doing things right. I feel that what we have with the way that this bill is rolled out, that we sort of have a gun to our head.

We're basically being forced to very quickly, over a short timeframe, renegotiate the rules under which this project will get reviewed.

Instead of taking the time that we normally take, we're saying, here's a bill, sit down and negotiate with us in a legislative process the rules that will be used by this Commission to balance public trust.

If this project goes forward, the way it goes forward is impacted by the rules we're negotiating. We didn't do this when we thoughtfully approved AT&T Park.

I think we have a responsibility to the whole Bay area to think about this because in this case it happens to be the City and a developer agreeing. We may have a situation around the Bay where a developer comes forward somewhere else and the City is not in support and gets a bill introduced and says, let's renegotiate what it means to look at public trust. The whole city may not support it.

I'm concerned about the way this is rolled out. The idea of working quickly under this timeframe, when in fact, the process that we have has worked.

And there is a reason that folks sat down with BCDC is because they heard comments from staff that expressed concern. The staff memo identified a lot of the issues that we need to think about and sort out in the bill.

We actually have better leverage by having the opposed-unless-amended position as long as we make clear, we're not saying we're opposed to a project; we're saying, we're opposed to the bill the way it's drafted to renegotiate the rules under which projects are looked at, in this case with regard to public trust issues.

I think as long as we convey that it's clear. We have a responsibility, if we're opposed to changing the rules and changing the way we look at things; we need to say that.

That helps get the Legislature, the City and everyone and the other stakeholders onboard to figure out how we thoughtfully resolve this.

I would like to make a substitute motion that we approve the staff recommendation as laid out and then still have the meeting on the 20th and our position may change on the 20th or have a special meeting prior to that, if that's needed. I think we're all committed to making sure this goes on a timeframe that's as quick as possible but respects the whole integrity of San Francisco Bay and the way we've evaluated projects.

So, I will make that substitute motion.

Commissioner Adams stated: And I'll second it. I appreciate the comments that Supervisor Gioia made. I'm excited about having the Warriors here in San Francisco.

As was pointed out, we had a process that worked really well for AT&T Park, for the Aquarium by the Bay, for even the Exploritorium and I don't know why we need the legislation which has some risks of taking away BCDC's authority to help with the regulatory aspects and the oversight of how we do this in a way that's sensitive to the Bay.

I think we can have a beautiful Warriors stadium on 30/32 but I don't understand why we need the legislation.

In the beginning we had a presentation about a whole cadre of issues that still need to be hammered out. I would be a little bit more comfortable if, as Mayor Bates has pointed out, we can have a two year bill which would still allow the design and the other process to go through but give us a little bit more time to really be able to think through the long term impacts of changing how we do business here at BCDC.

I may have it completely wrong but I think that there are enough issues that have been raised and the work that we've done in the Bay to actually restore it and have it be a beautiful jewel for all of us to enjoy; I don't want this agency to get on the slippery slope of abrogating their responsibility, duty or authority that we have that has helped to be a partner in bringing this forward.

Commissioner Pine commented: A number of folks have mentioned that the discussion is really about process. I'm trying to really understand AB 1273 and what's unique about this particular project.

If this legislation fails, put aside what BCDC might do, I really want to understand how it would work. I believe what would happen is the Port would have to make the public trust determination.

Meanwhile, there would be existing legislation AB 1389 from a couple of years ago which said that we find trust uses for a cruise terminal.

Are we really being driven here because of the AB 1389? What is the significance of AB 1389?

Mr. Eichenberg answered: AB 1389 approved a cruise ship terminal at that site. And that cruise ship terminal was never built.

It had a similar process of delegating the public trust determination to the Port. So there was precedent for that.

Essentially AB 1273 substitutes the Warriors development for the cruise ship terminal with the same process of delegating the determination of the public trust to the Port of San Francisco.

If the Port finds that all of the conditions in Section 5 are met then that will automatically satisfy the public trust determination that would be made by BCDC under our Bay Plan and our Special Area Plan.

Commissioner Pine inquired: Why is it really? There are other ways to determine the public trust. If this never existed, was not proposed, I assume there is another track for this to occur.

I assume the Port would, under its delegated authority, presumably find a public trust usage.

Mr. Eichenberg replied: If this bill does not pass then we go into the normal procedure which would be that BCDC would make a determination when it looks at the permit of this project that it also meets the public trust.

So BCDC would make that determination.

The Port is also required under the Burton Act to find that any development it approves is consistent with the trust. So there would be several different trust determinations.

And the State Lands Commission could also weigh in and also render an opinion.

Commissioner Pine added: But as a matter of practice BCDC usually looks to others or collaborates with others on the public trust decisions.

If there was no AB 1273 we would work with the Port presumably. And we could have a difference of opinion with the Port.

Mr. Eichenberg agreed: We could. This is the procedure that has happened under some of the other developments that I listed in the presentation.

Commissioner Pine stated: But the existence of AB 1389 and maybe this question is for the Port; I hear them suggesting, is it required to go the Legislature to fix AB 1389. AB 1389 rules on this trust with respect to a cruise terminal. Are we required to go to the Legislature? That is what the Port seems to imply.

Mr. Eichenberg replied: We're not required to go to the Legislature. The Port is not required to go to the Legislature but they felt that that was the most prudent thing to do because of the ambiguities and the gray area that Brad was talking about in his presentation with respect to this development's consistency with the trust.

Mr. Benson commented: We might have a little bit of difference of opinion about that. We think that what happened with the prior project is that it included 400,000 square feet of non-trust uses, 300,000 square feet of office, 100,000 square feet of non-trust retail. Back then all of the staff of the various agencies made the determination that it was not appropriate to approve that amount of non-trust use on trust land acting within our delegated authority from the state Legislature.

So, it was necessary to go to the Legislature. I think that we are making a similar argument here. It's a two-prong argument.

One is, the Legislature already weighed in at this site as the ultimate trustee that created all three agencies and set policy for the site.

And given the big policy question about whether or not an arena is appropriate on trust property; that it is appropriate to go to the State Legislature and have the State Legislature weigh in which is why we quoted that Marks versus Whitney case.

I want to suggest that we're talking about the public trust here and we have the state's preeminent expert on the public trust sitting on your Commission and it might be appropriate to get Jennifer's opinion.

Commissioner Lucchesi commented: I don't want to take up your time Commissioner Pine. I do want to add a perspective on process.

The State Lands Commission was delegated the authority to manage the state's public trust lands by the Legislature.

The Port was delegated that very same responsibility to manage the waterfront of San Francisco.

BCDC has been delegated regulatory authority over certain lands within San Francisco Bay, both public trust lands and private lands as a regulatory authority.

BCDC exercises that trust responsibility through the McAteer-Petris Act and other enabling acts similar to the way the Coastal Commission implements the Coastal Act, Fish and Game has similar public trust responsibilities; same with the Department of Water Resources.

The Legislature on behalf of the people owned this property. They own the public trust lands in San Francisco. Tim and I have had many conversations over this subject. I tend to not think of this as a waiver of BCDC or the State Lands Commission's responsibility or authority to make a public trust determination but the Legislature coming in and taking their authority that they've delegated back into their own hands and making that determination themselves, albeit with certain conditions.

That leads me to commenting on kind of process. The Legislature, while there's numerous examples along the San Francisco Waterfront of State Lands Commission itself and staff weighing in on certain development projects, there are also many examples of the Legislature coming in and basically setting up a framework about how a project going through the various entitlement processes would get approved.

Examples include not only the cruise ship terminal legislation, it also includes developments and land exchanges at Treasure Island and at Candlestick Hunter's Point, the Oak to 9th Development and the Port of Oakland and others around the Bay.

That's how I view this piece of legislation. It is not a direction from the Legislature saying, Port of San Francisco, you shall allow this development to occur or a development fitting these standards to occur whether rather, it's enabling.

It's setting up a process or a framework, saying, a proposal such as what is being described in the legislation may be authorized at this site if certain conditions are met.

I think especially with an accepted amendment of having the State Lands Commission as the independent commission coming in and ensuring that those conditions as written and as may be amended as negotiations continue, is appropriate both from the Commission's oversight authority and to ensure that the legislative authorization is being met.

All of that would occur, this is one step in a very public process. Going through the Legislature itself is a very public process. This is just the first step kind of setting that framework.

The project or the proposal still has to go through the numerous local entitlements not only at the city level and the county level but with BCDC and the CEQA analysis and that public input that is involved in that.

And then, hopefully, if the amendments are accepted, the State Lands Commission would come in a public meeting and consider whether as the project as entitled, as certified under CEQA, whether the project meets the conditions as specified in the legislation.

Commissioner Pine had one last question: Assuming this legislation is passed, how would Pier 30/32 be distinguished from future major projects? Won't this be a precedent?

Is there something really unique about this that does not cause it to be a precedent? Can the legislation even say, it will not serve as a precedent?

Mr. Eichenberg answered: The legislation says that it will not serve as a precedent.

Commissioner Pine inquired further: How are we going to distinguish this one from the next one?

Mr. Benson replied: I think the two other projects that you are talking about are the Pier 70 Project and the Seawall Lot 337 Project. The Port has been in the process of planning those projects since 2010 and 2007 respectively.

The Port actually worked with the State Lands Commission on legislation for those projects. In the case of Seawall Lot 337 it was SB 815 that Senator Migden carried that terminated the trust use restrictions on the lot because the Legislature found, and we believe correctly, that most of that parking lot was not needed for trust purposes and that it would be better to develop the site as a mixed-use neighborhood with a major park and have the revenues resulting from that go into the Port's harbor funds to fix trust assets.

At Pier 70 the Legislature authorized a trust exchange.

In both cases that legislation occurred very early, before the project proposal was complete because we needed to answer the basic question about whether or not we could pursue these development plans on these locations given the existence of the trust.

We think that the Legislature found the right balance in those cases. And we think the right balance is available here as well.

Commissioner Jordan Hallinan commented: The question that I have is, why does the process have to change for this project? I'm not sure I've actually heard the answer. Why this project and why not every other project? Why don't we just do that for every project? Why go through the process that we've gone through for everything else?

Ms. Jennifer Matz answered: I am from the City. I don't think that we think that we are changing the process. I think that we think that we are doing it in a way that is best suited to this project.

And in the sense that there are many projects on the San Francisco Waterfront in which it has been important to get an early read of trust consistency; and in this case, starting about nine months ago talking to BCDC staff and State Lands staff, we said, for this project in order for it to move forward with a framework of certainty, that the totality of the program is consistent with the trust because there is so little written about and there isn't precedent for this sort of public assembly, we need to get a read at an early stage in order to have confidence to move forward with this project.

That read can come from State Lands Commission or it can come from the State Legislature. In consultation with staff in both agencies, we determined that the most prudent route was to go to the State Legislature in part because the State Legislature had weighed in numerous times and in numerous ways at these sites because it was prior authorization for a project that would never occur now because we built our cruise ship terminal at another location.

You have this sort of ultimate trust authority having weighed in on what is and isn't appropriate at this site.

And then we're coming in with something different that we arguably think is more trust consistent. We need an early read in order to move forward with confidence around all of the other regulatory approvals none of which are altered in any way by this legislation.

I do just want to correct one comment that I heard from Commissioner Adams, none of your regulatory authority under McAteer-Petris is altered or adjusted or sped up or in any way compromised by this legislation.

It was language that we took in its entirety that's in the legislation from BCDC staff to make it as clear as possible that the authority that you retain to issue major permits and make findings under or around the Special Area Plan were completely preserved in this process.

What we were trying to do, similar to what we did for the shipyard and similar to what we did for Treasure Island, and I would argue different subject but in some ways similar, we went to the State Legislature on Pier 70 before we even had a private development partner secure in order to talk about a trust swap there; a swap from putting the trust on certain lands and taking it off certain lands within the site because we needed to have some certainty as we moved forward in the project process that the concept meets the standards of the public trust.

Commissioner Gioia had a question: I think something that this speaker said was not entirely correct. Our staff report says, in making its trust determination BCDC normally consults with and relies upon the advice of State Lands Commission and its staff. For the major development projects approved by the Commission in the northeastern waterfront BCDC has relied on the advice of the State Lands Commission staff, a determination made by the State Lands Commission or the Legislature or the Port. However, and I underscore however, the Bay Plan and the Special Area Plan authorize BCDC to make an independent, and I'm going to underscore that, independent determination, of consistency with the public trust doctrine.

This bill as I understand it, in its current form, so you were incorrect in your statement; takes away our independent determination, period.

Under the Special Area Plan and the Bay Plan in our own staff report – so I just want to understand your point of view on that.

Executive Director Goldzband clarified: What 1273 includes is what is called or Tim has called a savings clause which ensures that the decisions BCDC is required to make under McAteer-Petris, the Bay Plan and the Special Area Plan regarding the permitting of this project we made in the purview of and the responsibility of BCDC.

McAteer-Petris through the Bay Plan directs BCDC to make a positive public trust determination for any project which is permitted in BCDC jurisdiction.

What this legislation does is it says, takes that determination from BCDC and takes that determination from the State Lands Commission and brings it back to the State Legislature which has the ultimate public trust determination authority.

So, should the legislature approve this legislation as it is currently written and should the Governor sign the legislation thus making it enacted, BCDC would be unable to make a public trust determination with regard to this pier but after that determination has been made by the State Legislature then BCDC continues in its normal course to work through the process under McAteer-Petris.

We have to make sure that we agree on facts prior to discussing whether we agree that that's what should happen.

Vice Chair Halsted asked: Does anyone disagree with that?

Mr. Eichenberg added: There was one extra step that the Legislature did take that back, did take the public trust determination that we have under the Bay Plan and Special Area Plan back; but then the delegated it to the Port.

And the Port then makes the determination of whether or not this is consistent with the trust based on the Section 5 conditions.

I say it's a waiver of our public trust determination but it's really more of a delegation.

Executive Director Goldzband added: Should the legislation pass then the Port makes its findings with regard to the consistency unless an amendment is done that State Lands does.

Mr. Benson spoke: I want to clarify what these findings are because I disagree with one thing that Tim said which is that the Legislature under the bill is delegating the ability to make the trust consistency finding to the Port. That's not how we read the finding in the bill.

The Legislature is actually, as ultimate trustee, making the finding about a project that is described in the legislation. All that's delegated to the Port is responsibility to find that the project is consistent with the legislation.

We've talked in this meeting about transferring that responsibility to the Lands Commission but the bill does not delegate the decision about trust consistency on the project to the Port.

Commissioner Gioia commented: Folks have asked what the rules are with or without the bill. Without the bill BCDC can make an independent determination of consistency with the public trust doctrine.

With the bill, it loses that. That's all the point I was making.

And the public trust determination is relevant in the whole picture of how to eventually look at the project and the balance and so forth.

Commissioner Nelson commented: I more confused than when we began about the issue of the need for this bill. The Mayor's staff just said that this legislation is required to get clarity in advance of project design because there isn't precedent for this kind of use on trust land.

I'm confused because the Mayor and the Port directors detailed memo to the staff lays out quite a few examples of public facilities of this general type on trust lands.

Tim, did any of those facilities require or receive this sort of a legislative trust finding?

Mr. Eichenberg replied: Not to my knowledge.

Commissioner Lucchesi commented: So if I remember correctly, what was identified in the Port and the City's memo, a number of the examples were either built before the State Lands Commission came into existence or were built out of the country.

The few that were built relatively, that is not recent, but relatively in the recent past that were identified were the Long Beach Convention Center, the Santa Monica Pier and then the San Diego Convention Center.

All three of those structures were built on lands that were granted in trust similar to the Port to those local jurisdictions.

Generally speaking, when the Legislature delegates the land management responsibilities, the responsibilities to manage these lands in the best interests of the state and consistently with the public trust and the terms of the statute, the State Lands Commission retains oversight authority but not necessarily requires approval authority over specific projects.

In the case of the Santa Monica Pier the Legislature did require that the State Lands Commission approve expenditures of trust revenues in excess of \$250,000.

In accordance with that requirement the city of Santa Monica in the 80s came to the State Lands Commission for authorization to expend those monies to build the Santa Monica Pier. The State Lands Commission approved that.

For the Long Beach Convention Center a similar requirement for approval of trust revenues that were derived from oil and gas operations in the city of Long Beach are required to get approval by the State Lands Commission if they're above a certain amount.

That the arena and convention center in Long Beach came to the Commission, litigation ensued primarily over the purchase of the Queen Mary by the city using trust funds. A settlement agreement was then reached between the Attorney General's office, the State Lands Commission and the city of Long Beach as to allowing the convention center and the arena to be built but also setting certain terms on how that center was to be used and where revenues would go.

In the San Diego situation the State Lands Commission never had any approval authority over the convention center and never weighed in on that.

There was not specific legislation. It was in accordance with the Port of San Diego's grant.

Commissioner Nelson replied: Which is similar to case here where the Port has delegated authority to manage these trust lands.

That's very helpful because it suggests that facilities like these have been constructed on trust land that has been delegated to local jurisdictions, very much like this has.

I'm still a little bit confused about the need for the legislation. I'd like to add a point on that. It's interesting that we just approved the Commission's Annual Report which shows that the rules the Commission has in place today have allowed for more than 95 percent of permanent applications to be granted for \$19 billion worth of development.

Some of these are extraordinarily complicated projects.

The existing rules have worked very well for doing what Travis used to say was both conservation and development of the Bay shoreline.

I am concerned. Some might inaccurately claim that a vote on this bill is a vote on the project. It's certainly not.

I want to put that on its head. And that was that the Legislature passage of the previous legislation on this, 1389, was not a guarantee that that project would be constructed. It ultimately wasn't constructed.

What troubles me is that the legislation on Piers 70 and the Seawall Lot was a debate about the parcel itself. Do we need this parcel for trust purposes?

And I think it's entirely appropriate for the Legislature to say, this parcel we no longer need, is no longer appropriate for trust purposes, we're going to extinguish the trust on that parcel in order to allow other uses.

That's a debate about the parcel itself not the project. I think that's an important distinction because it's important for the State Lands Commission to say, we're going to change the way we manage the trust on this parcel, on this seawall lot where enough time has passed; we're going to make a determination about the trust on that parcel.

But here we're not doing that. Here we are, no one is proposing extinguishment of the trust. Here what we're debating is whether this project is consistent with the trust.

And what troubles me is, again, Supervisor Chiu is absolutely right, this project as it moves forward is a very complicated project. It's going to evolve. It has evolved since our last briefing in the presentation today.

What the Commission is being asked to do on a very short timeline is to negotiate the details of this project and if the project is consistent with those details, those legislative requirements it would be found consistent with the trust.

I'm troubled that we're being asked to do that very early on. This is troubling particularly given the Commission's excellent track record in working with local jurisdictions and working with project applicants in order to find successful outcomes.

What is that outcome here? I think we can all say that none of us know. What troubles me is that we're being asked today to negotiate what the new rules would be for a project that all of us know is very much emotion when the existing rules have a 40 year track record of working remarkably well.

This troubles me because it suggests to other applicants that rather than going through the normal course of business, the smarter thing to do might be to go to the Legislature and try to renegotiate the rules in advance of a permanent application. We don't have a permanent application in front of us.

Commissioner Bates commented: I agree with the last speaker about we're being asked to rush to make findings and to make decisions that – who knows, we're talking about a very short timeframe.

I want to put this into perspective. I would like to ask the Port and the Mayor's office if, assuming we don't reach agreement on these amendments, would you stop the bill at that point?

Mr. Benson replied: It's hard to answer that question in the absence of specific amendments. What we have been unable to do is have the conversation over the last month with staff about how specifically staff would propose amending the bill.

We've taken virtually every recommendation that's been made thus far. I don't want to answer that question without knowing what the amendments are.

Commissioner Bates continued: It would be reassuring for us to know that because what we read in the papers is that this is all about the Warriors lease expiring in 2017. What we're doing is we're frontloading everything to get it done so the Warriors can walk out of Oakland in 2017 and go across the way.

So everything is being rushed to judgment when there's no need for that. The Giants took eight years and we had a fabulous project. They're asking to do this in the fastest timeframe ever.

It really concerns me. The Legislature does have the authority. But look at the past history, recent past history. The Legislature has approved through CEQA amendments that gut CEQA for two stadiums down in Los Angeles. They just overrode everybody else. And the Legislature just moved forward and did this.

Neither of those stadiums are being built. The Legislature becomes a way to get around the procedures that normally would apply which are safeguards.

Time is actually important because in time you find out things. To have the Legislature set the rules, it's going to be negotiated behind closed doors, not a great public process.

They're going to come up with rules that are going to be seen before the Legislature but they will be greased. They've only gotten two negative votes in the Legislature to date. Those were by representatives from the east Bay.

What's the hurry? There is no hurry except for this arbitrary deadline because there's no particular reason why we have to rush to judgment.

You could make this a two-year bill or you could go through the process, one of the two. At least in this case we have enough opportunity to go what's going on.

Commissioner Randolph commented: I'm very comfortable with the motion that Commissioner Chiu made. It strikes me that we're not being asked should there be legislation or not legislation. There is legislation and it's moving through the Legislature.

It doesn't strike me that there's a lot of precedent being broken here. There has been a trust determination on these piers already through a similar process.

It's been for a mixed-use purpose. That's already there. Now that exact mixed use alignment is being changed.

The practice as I understand it from all this conversation has been that there has usually been a discussion between State Lands and BCDC and the Port about exactly how this determination is made and the details.

Everything I've heard says that that discussion is taking place now. And that is an ongoing process that we should see continue. As long as that's the case, as long as that conversation is taking place, I was reassured about the role that State Lands is playing in this process and could play with the proper amendment to the proposed bill; that we're not wildly out of precedent here with how this kind of thing has been managed in the past.

In terms of BCDC's authority to make an independent determination on public trust, I think the language is authorized but it's not required. So if there is another process by which this issue is being addressed in cooperation with the Port and with State Lands then we're not required, we're not abrogating the requirement to make an independent determination. It's being made with us cooperatively with other agencies.

I basically feel comfortable that we should let the process of discussion of specific amendments go forward between staff and the Port and State Lands without making a determination of that process.

Commissioner McGrath spoke: I am going to support, at this time, Commissioner Chiu's recommendation for more time but with some conditions and some direction.

I'm not as troubled by a legislative fix. I spent 30 years as a trustee. The maritime industry is dramatically different than what it was like when these lands were granted. I was involved in developing new and modern marine facilities. In that process there were lands that were left that really had no feasible remaining trust use.

And there were adjustments made in boundary line agreements with the State Lands Commission in litigation settlement.

I've also seen a little more controversial items such as the battle over trust revenues that happen when Mayor Riordan was elected and decided that he could uniquely redefine the trust.

I remain open minded both about the project and about the current legislation as something going forward. There are advantages to having the Legislature weigh in not merely because they're the ultimate trustee but because it represents a high threshold for ensuring that an innovative use that mixes traditional trust uses and, arguably non-trust uses are given high visibility.

I think in many circumstances it is better to negotiate those in a legislative framework than to trust to litigation. Much of public trust policy has been set that way.

Given that there has been legislation to deal with trust on that site for the prior proposal, there is some advisability. But is now the time and is the legislation the way it is?

I remain troubled by the replacement of BCDC's authority over public trust although I'm sympathetic to the argument of the Port that the state should represent its interests. I think that should be by the State Lands Commission and I think it should be with consultation from BCDC.

And I think there are some very good reasons why. But I think they're in the City's interest as well.

BCDC's mission includes preserving land and water areas that are suitable for maritime purposes and preserving the future maritime facilities that we are going to need with minimal fill.

This is geographically close to unique. It's one of just a handful of sites along the Bay with potential for such use and with potential for such use with minimal dredging.

This is a valuable asset and it becomes important in a trust consideration. We don't have before us a record to determine whether or not this deep-water berth is essential to the maritime future of the Bay and thus important to BCDC's mission to preserve it and protect it and whether or not it can be achieved and preserved with a smaller footprint or fewer non-trust uses.

But arguably if it's necessary to preserve it and this is the only feasible way to do it, then I think a trust determination that balances what's vital to the public trust and the maritime and the incented uses that bring those about and make it feasible can be made and can be made by BCDC.

There are traditional trust uses that have value, perhaps not enough to weigh in on and extinguish or remove the pier.

We are facing sea level rise. We are facing the need for fill and having looked for mitigation banks, boy are they valuable when you want one.

We don't have a complete record at this time to weigh in on the feasibility of alternatives. We do have testimony from Rudy Nothenberg arguing that there's a substantial subsidy in the fiscal elements of the proposal. We can't determine whether or not – there is a public use out there that's important to us. We can't determine whether there are other feasible ways to achieve it or whether or not abandoning it actually results in more fill elsewhere in the Bay which is critical to our mission.

Finally, I think there are public process and legal advantages to both the developers and the environmental groups in having coastal management agency remain in the picture on public trust and to grapple with these issues.

I made these arguments working for the Port of Oakland when Wilson proposed to remove BCDC's jurisdiction. It is important to have a credible coastal management agency that weighs the controversial issues.

Balance then develops on record. It's important that the record include the value of the deep-water berth, feasibility of demonstrated alternatives.

A credible coastal agency moves many of these issues from the courts into the administrative agencies. I'm not so naïve to think that there's no potential for litigation; there is potential for litigation. I do think that if you have a process including the public trust that weighs these things and weights BCDC's interest in the public trust and those findings are made, there's a very good chance that many of those decisions pass into the agency discretion arena rather than simply the naked public trust litigation arena.

I think that having BCDC have a role in advice to the State Lands Commission along the line of the amendment suggested and to make sure that the trust considerations which are important factually and important in the credibility of the process are given consideration.

I'm willing to oppose the motion at this time, the subsidy motion at this time and support Commissioner Chiu's but I expect there to be significant movement.

Commissioner Zwissler commented: In the staff's report there were five conditions on page eight and nine that you've outlined several important issues that affect the project's trust consistency.

Is it your suggestion or are we to understand that if these five things are satisfied the staff will change its recommendation? Is this an exhaustive list?

Mr. Eichenberg replied: Those are the issues that we've identified now. Those are the reasons why the staff has recommended an oppose unless amended. If those five were fixed and we dealt with those in the legislation then I think that the staff would support or alter its recommendation.

Commissioner Zwissler inquired further: And does the staff have an opinion on its ability to negotiate these in the next two weeks?

Executive Director Goldzband replied: I would argue that no matter what recommendation the Commission makes, how the Commission votes, either one of them directs BCDC staff to work as much as we can with Port and City staff to try to resolve and try to discuss and try to narrow differences.

And that's what we will do because that's what we should do. One of the things I've seen in my nine months here is the closeness between BCDC and Port and City staff and the staffs have worked together for years and have worked together productively for years and it's sort of like a family.

This is not a guarantee that A, resolution will be reached, or B, that BCDC staff would look at Commissioners today and say that BCDC staff would support if this or not support if that because we don't know what this or that is.

But, as I have told the Mayor's staff, as I have told Supervisor Chiu, as I have told Brad and Jennifer and as I have told Monique, Brad's boss, we're more than willing to give it the college try no matter what it is you tell us to do. And both the original motion and the substitute motion direct us to work together.

Ms. Matz commented: I just want to say that from the City's perspective that we don't feel that there is any disagreement on the issue list or on the framework as presented and that we are very eager to actually come up with substantive amendments.

Commissioner Zwissler inquired: I've also heard that there's been no cooperation to date on working on these.

Ms. Matz answered: It's been our experience that since the Director's Report was brought to you on April 18th that we have engaged with BCDC staff and that we have sat down several times to offer specific amendments but that for whatever reasons staff has not been authorized or able to negotiate specific amendments during that time.

So we think that we are ready with very specific offers and negotiations are in this framework that you have.

Executive Director Goldzband responded: I'll respond by saying that where you stand depends upon where you sit many times. When we first brought this issue in an Executive Director's Report to the Commission because we thought it was important for the Commission to know what was going on.

The Commission had a short albeit lively discussion about what should occur. It became pretty evident to staff that we needed some direction from the Commission. So, for the next two weeks we told City and Port staff, let's wait for the May 2nd briefing. Let's get some direction from the Commission.

We got direction from the Commission on May 2nd and the next Monday I talked to the Vice Chair and said, if it's okay with you we want to go the Port and City and say, let's talk. We got the approval to do so.

So we have over the past couple of weeks sat down a couple of times. It's hard to do so while you're also preparing for the meeting and so on and so forth.

We have heard at least one really interesting idea with regard to how we might be able to narrow differences on at least one of these issues.

Like most discussions of this nature there were even prior to the April 18th meeting suggestions made by BCDC staff that were not accepted by Port and City staff. And that's the way these things work.

We will go back and work together and we'll engage in dialogue with each other and try to piece something together if it can be pieced together in a way that staff believes benefits the Bay.

Commissioner Scharff commented: I really appreciated Commissioner McGrath's comments. The issue before us seems to be whether or not we do this now in terms of an oppose and amend or let the process work and give staff time to go ahead and negotiate these out.

It doesn't seem that there is any pressing need to do this right now, make that determination. And I think that's a different determination that a lot of Commissioners have spoken to, do we need this legislation?

That's really what we seem to be discussing today. We seem to be discussing the issue of should we give it a few more weeks or to June 20th. And one of the questions I had from staff is, what would be the optimal date if we had a special meeting to come back and discuss this after you've had a chance to have intensive negotiations. You can back to us and be able to tell us, these are the points that we didn't get that we wanted.

You've given us these five things but I haven't really had clarity on what exactly you'd like to see changed in the bill. I'm assuming that you're not ready to say that at this meeting; that you need to negotiate that out and come back and report to us.

So before I go forward and say we should oppose or whatever, I'd like to know the answers to all that. So, can you answer that?

Mr. McCrea replied: I think that of the five items on pages 8 and 9 some are probably easier than others. Number two is one of the more complex ones, public benefits.

What are the public benefits that are incorporated into this project?

Commissioner Gioia asked: How are you going to predict how these negotiations are going to go? The public benefits issue is really important to how this project shapes out.

The whole issue is that we're being forced to figure out all this stuff about a complicated project over two weeks, three weeks, when normally we would take a lot longer.

Who can predict whether we can come back before the 20th and get a quorum?

Executive Director Goldzband stated: I think the direction we're getting from the Commission is come back on the 20th with something. We will do that.

Commissioner Addiego commented: I think the mood and tenor of the Commission proceedings is sending a strong message to the people who are going to be at the negotiating table.

I think we've greatly enhanced our staff's ability to negotiate. I will cast my lot with Commissioner Chiu's motion.

I think the word, oppose, has become the incendiary word of the day. I don't care to use it at this time. We have to have some good faith and allow the process to proceed.

Sometimes it seems that the Legislature with their AB 1273 is emasculating our role. That doesn't feel right. I think we're not quite at that brink yet. I'd like to give it time and not use a premature word.

Commissioner Feldstein commented: I want to associate myself with Commissioner Gioia's comments which I thought were very important. I also want to say that I was asked specifically by Assembly Member Ammiano to remind everyone of the comments that he made at the last meeting.

They really do go to the subject of public trust. I cannot report to him that I am reassured by this conversation. I'm not reassured by the Port's position that this will all be taken care of in a way that is fully responsive to the public trust.

I have some grave concerns about that. I've been thinking about the image in Brad's slide show from slide number 23 which is designed to show us what the view shed will be with the building that is lower Pac Bell Park.

I am not physically tall enough to see over a building that's 125 high. That difference ends up not making a difference.

I am quite concerned about what role we will ultimately be able to play when the permits ultimately come to this Commission, how much discretion will remain to us.

It's very unclear to me if the public trust determination has been made by the Legislature whether or not saying that the permits do or do not fall within the public trust as we understand it will actually be meaningful.

I don't understand how that process is supposed to work. I feel like we're being told, just have faith, it'll all be fine.

And finally, I have not heard a response to Commissioner Bates' excellent question, which is, why can't this be a two-year bill? When we're told that this has been negotiated for nine months, if it has actually been negotiated for nine months then it is striking to me that at this point we have substantive matters yet to be decided and that those substantive matters are still outlined because there hasn't been enough detail to actually talk about these things.

I don't see how one negotiates something that lacks detail and does so for nine months. I don't know what's been going on over the last nine months but it seems to me that it would be far more responsible for the Assembly, for the Port and for all other bodies that have a role to play in this to stop rushing to make this a two year bill.

If there is a private entity whose lease is up in the east Bay perhaps they can negotiate an extension. I don't think that it is our responsibility to support a rushed process in any way simply because there is a private entity that is up against the wall.

Commissioner Vasquez commented: I'd like to call the question. We have two motions on the floor. The original one and a substitute motion with both of them having seconds.

Commissioner Jordan Hallinan stated: I'm willing to withdraw my second on the second motion. I've been thoroughly enlightened by the thoughtfulness, experience and intellect; everything that I've heard from both sides makes me feel like opposing the legislation.

Are we really going to change the Legislature's mind because we oppose it? I think talking will so I throw my support behind Supervisor Chiu's motion that we keep talking.

Commissioner Pine continued the conversation: I think it's a high probability that this bill is going to pass regardless of what we say. I want to have the best bill possible.

My question is, to achieve that end are we better off not taking a position today and telling our staff and all of the things that we have said, the message here is very clear to the City that this project as proposed is not very satisfactory to many people on this Commission.

We would expect some pretty substantial changes between now and when it comes back or are we better off, if we want to strengthen the bill by simply saying, we oppose it unless amended.

I think it's a very subtle nuance. We've been asked by the City, and I don't have an issue with waiting until the 20th, because I want the best bill possible. I don't think the City's request is unreasonable. My question to staff is, if the goal is to achieve the best bill possible do you really have a strong preference between these two alternatives?

Executive Director Goldzband commented: Let me make sure that the Commissioners understand what has made this process today exist.

It is not regular procedure to do so. Staff included the City's and Port's preferred alternative in the staff recommendation because BCDC staff believes as well the previous discussions have been fruitful.

That being said, BCDC staff recommends the position of oppose unless amended. That is the normal position of an agency in the Executive Branch while it examines legislation and works with the legislation's author to determine how it can make it better.

This is especially true if the legislative proposal affects an agency's authority which AB 1273 does as it is currently written.

As it is currently written the legislation would remove BCDC's authority to make a public trust consistency determination.

Now relinquishing this authority may be appropriate for BCDC to do if doing so is part of the complete legislative package that improves the Bay.

However, at this point such a package has not been completed. And the legislation very likely will be voted upon by the State Assembly prior to such a package being finalized.

So in the opinion of the Executive Director, I take this on as my responsibility. I do not believe BCDC staff has the authority to relinquish that right on behalf of the Commission.

Therefore, we believe the Commission needs to vote to relinquish that authority, at least for the time being which would occur if the Commission votes for the City's and the Port's alternative.

Commissioner Techel spoke: I think in recognition of the positive responses we've gotten from the speakers about willing to work with us, I'd rather go into negotiations in a positive way and say, we heard you, we heard everything you were willing to do for us. We heard that you're willing to work with us. We've heard all the issues several times.

I think we're in a stronger place. I would like this back in my jurisdiction if people would come in with this kind of an attitude and say, yeah, let's sit down together. Let's work it out.

We still have the opportunity on the 20th if they can't come to that resolution to make a different decision.

Commissioner Gilmore commented: I want to make an observation. I agree with a lot of what Mayor Bates said and what Supervisor Gioia said. One of the things that occurred to me, and I believe it was when the City was speaking, the comment came out that the applicant-to-be was unsure how to proceed and was going to go through the normal process and the normal channels. But it sounds like City staff and the Port staff got together and decided that they needed to make this trust determination or get an early read on the trust determination.

That leads me back to Mayor Bates' point about, well, what's the rush with this legislation because it seems like the applicant-to-be was perfectly content to follow the rules as they were in place.

I'm not getting the sense from listening to the staff talk about it that it's the applicant-to-be that's really pushing this, what I perceive to be, this unseemly haste here.

Vice Chair Halsted opined: I'm not terribly optimistic about the results of the negotiations. But I do think it would be wise for us to attempt to reach an agreement with the Port about the terms of this.

So I would be, while in no way inclined to support the legislation in no way, I would be inclined to support Supervisor Chiu's motion.

Commissioner Gioia spoke: A very important issue is, what is the best strategy? Clearly what's brought the City and the Port to the table is this expression of concern and opposition about issues regarding the bill.

Usually you change your position once you get something in return. We don't have anything in return here. We have some promises.

In fact, what we've just heard from the City was whether they would continue with the bill if they did not reach agreement with us. And their answer was, they didn't have an answer. They couldn't commit.

We're all adults in this room. An oppose-unless-amended position doesn't mean we don't like you. It doesn't mean we're not going to work with you. It means, we need to express our position to legislatures.

The Assembly is going to vote on this bill with no position by BCDC, stripping BCDC of very important authority.

We don't know what the schedules of the policy committees are going to be. We're taking the City at their word and it's good faith. But we may not come to an agreement in which we're going to repeat the same discussion here on the 20th.

All we're doing is laying out our strongest position so we can get the amendments that we all say we want.

I don't believe that going from opposition unless amended to neutral is going to improve that bargaining. The City full well knows it has to address BCDC on permitting issues anyway.

I think we need to express to the Legislature what the position is as the bill in its current form because we don't know if it's going to change. And if it changes, great. We change our position on the 20th before it goes to the Senate.

I'd like to reverse it and put us in the position of a little greater leverage and authority and say, we're opposed unless you amend this bill. And then we come back on the 20th and we'd be glad to remove that opposed before it goes to the Senate Policy Committee.

Commissioner Gorin commented: I am at a loss to figure out where I go and to what I can contribute. I am somewhat of an optimist. I hear very clearly that there may not be an agreement arising from the negotiations.

I'm very concerned about giving away BCDC's authority over this and I share that with Supervisor Gioia. I am willing to accept my colleagues' motion here. Let's come back either at a special date or the 20th, whatever works, knowing that you're right John, that that message might go through and they might be taking a vote without us weighing in on that.

I think that they will be knowledgeable about this discussion here today. I think that we pretty firmly established that we have some grave concerns going forward.

Commissioner Lucchesi commented: We've talked about the public trust and BCDC weighing in on what's trust consistent, what's not and the Lands Commission weighing in on what's trust consistent, what's not. The public trust doctrine is a common law doctrine.

It's the courts that decide through their decisions what is a consistent or an appropriate public use. So it's from our past court decisions dating back to the early 1900s that we look to interpret what is consistent with the public trust today.

Over the years that determination has evolved from very maritime-dependent commerce, navigation and fishery to including habitat and conservation; to including hotels, visitors-serving facilities, parking lots to convention centers and that is one of the reasons why the San Diego and the Long Beach Convention Center were appropriate trust uses in those grants because the court had already decided that a convention center is an appropriate use not only because it facilitates trade through the ports but it also facilitates the public's enjoyment of the trust lands.

The question was asked numerous times in variations about, why is the Legislature the appropriate body to make this determination?

That's because there is not a black and white list of what's a trust-consistent use and what's not. There is a spectrum. There are uses that are truly trust consistent like a port and there's uses like residences that are clearly not consistent.

This public assembly arena use is a gray area. From the representative of the State Lands Commission staff that is precisely why I recommended that they go to the Legislature because as the ultimate trustee it's the Legislature that should be determining what are the statewide public needs for this particular property, not on very finite details that should be addressed, analyzed, debated in the public process in terms of CEQA analysis and local entitlements but from a broad, 10,000 foot level of, what as a trustee of these lands, as the landowner of these lands, what should be the general use here.

I wanted to weigh in the third wheel for the negotiations that will hopefully occur between BCDC staff and Port staff and State Lands Commission staff. That's our perspective leading up to this.

Another perspective about weighing in on legislation, while we're not under the Executive Branch like BCDC may be, we're an independent commission staffed by the Lieutenant Governor, the State Controller and the Director of Finance; we don't typically take positions on bills like this but rather work with the sponsor, work with the author to make sure that that bill is consistent with the law and is the state's best interest.

We have a good track record with most of our grantees but especially with the Port of San Francisco in negotiating numerous statutes over the past 30 years.

Commissioner Chiu commented: I really do think that regardless of what happens this is going to inform the discussions and negotiations as we move forward.

I'm going to read a list of projects that have been developed along this waterfront. I want you to think, how many of them involved BCDC making the trust consistency analysis, doing that work; the Ferry Building, Pier 1, Pier 1.5/3.5, the Exploratorium, Pac Bell Park, the Cruise Ship Terminal, Pier 27 and some ten years ago, Piers 30/32; none of them, there's a suggestion that again somehow the authority has been taken but the initial analyses were all done either by the Legislature or by State Lands.

The Warriors team wanted to go to State Lands and probably it would have been a far easier path than going either to the Port which it could have done, which I don't think anyone here wants that to be the case, or to the Legislature. But because BCDC and State Lands asked for it to go to the Legislature that's why it went to the Legislature.

Secondly, I think there's a difference of perception of what opposed position is going to be but I really need to reiterate, I think if we move forward with an opposed-if-amended that will be interpreted in the way that I have suggested and the battleground will go to Sacramento.

We are hopeful that it's going to move through Sacramento. I want the focus to continue here at BCDC in these discussions.

Supervisor Gioia had suggested that the project team and the City team needs to be bringing back amendments and why haven't they done that before? And the fact of the matter is they have presented project specifics and they have amended project specifics to address the issues that BCDC has raised. And BCDC has raised general concerns but there haven't been specifics and that's what we are looking and hoping to do.

With the motion that I have made we are directing staff to provide those specific amendments that will hopefully be negotiated. I did hear from Brad that he believes that except for the public benefits issue that other issues hopefully can get resolved very quickly.

I am optimistic that we can move forward on that. Now that being said, let me close with one point echoing Commissioner McGrath. I think if we don't have the kind of progress that we're hoping for, in four weeks we come back and at that point folks will be voting their consciences on whether they think we've done enough. I think that would be an appropriate decision at that time.

Commissioner Bates commented: I want to second Commissioner Gioia's motion. The other thing I want to point out is that this bill is going to come before the California Assembly and where are they going to look; they're going to look at BCDC and I don't know how anybody in this room who is a Commissioner could possibly say this is a good bill at this time.

And yet, we haven't bothered to even step and say, we have problems. An opposed position at this time is worthwhile just from no other standpoint than the fact that we don't like it. It needs to be amended. And that's a logical conclusion to come to and to put forward.

It's going to pass because the building trades are working this. They have 10 lawyers, 10 different lobbyists whirling around the building. This bill is going to pass.

Now it comes back to us and we make an amendment. And let's just say they say, screw you guys we tried to work it out but we couldn't work it out; that bill is going to go through the Assembly and the Senate the same way it went through the Assembly. There will be more votes against it in the Senate because people there have a better opportunity because of the procedures it has to go through.

So the only reason it's going to stop is if Governor Brown says, enough and he's not going to go along with it. If we take away our opposition at this point in time, we've given away all of our opportunities to negotiate anything.

I'm sorry to say that but that's the truth. They sit down with us, they won't agree if we can't agree, they won't make it a two-year bill. They won't slow it down. It's going to go through.

In the Legislature nobody cares what we say. They care about who is for it, who is against it and that's how it goes.

Vice Chair Halsted added: I think we would still have a chance to vote against or for in June.

Commissioner Gioia replied: After it's passed the Assembly.

Vice Chair Halsted continued: I think we'd better vote on that substitute motion. I think we need to call the roll. We'll try a hand vote. Do you want to restate your motion?

Commissioner Gioia answered: It's spelled out in the staff report which is – the only difference between Supervisor Chiu's motion and mine is that Supervisor Chiu's made motion doesn't have the oppose-unless-amended in it. It incorporates all the other staff recommendations but it remains neutral while the staff has the oppose-unless-amended position.

Executive Director Goldzband asked for clarification: Does Supervisor Chiu's proposal include BCDC sending a letter to the Assembly expressing concerns while not saying, oppose-unless-amended because I need to make sure that I understand.

Vice Chair Halsted continued: All in favor of the substitute motion, the staff recommendations, please raise your hands, all opposed. The motion fails.

I think it falls to Supervisor Chiu's motion. Now would you respond to Executive Director Goldzband's question as well.

Commissioner Chiu commented: I was just trying to keep things simple and focus on the staff recommendation. This document is a public document so I assume that the Legislature probably knows already about it. If that is the will of this body I'm fine either way.

I just wanted to keep it simple and focus on one, two and three.

Vice Chair Halsted added: It would be my preference that we express our concerns. Does the seconder accept that change? The seconder does accept the change, thank you.

Does anyone have questions about this motion on the table?

Commissioner Chiu asked: How would that get expressed in the letter?

Executive Director Goldzband replied: I would imagine that the letter would say that we look forward to working with everybody to resolve the issues.

Commissioner Chiu added: And I assume the letter is going to say, at this time the Commission has not taken a position, here are a number of concerns, the parties are meeting to work them out et cetera.

Vice Chair Halsted called for a vote: All in favor of the motion as proposed please raise your hand. All opposed please raise your hand. The motion carries.

10. **Briefing on the Joint Policy Committee Regional Sea Level Rise Strategy.** (Postponed)

11. **Consideration of 2012 Annual Report.** Vice Chair Halsted moved to approve the 2012 Annual Report, seconded by Commissioner Techel. The motion passed by a voice vote with no abstentions or objections.

12. **Adjournment.** Upon motion by Commissioner Chiu, seconded by Commissioner Gorin, the meeting adjourned at 4:58 p.m., in memory of Bob Bury.

Respectfully submitted,

LAWRENCE J. GOLDZBAND
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of June 20, 2013

R. ZACHARY WASSERMAN, Chair