San Francisco Bay Conservation and Development Commission
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July 29, 2016

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Draft Minutes of June 16, 2016 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman, at the Ferry Building, Port of San Francisco, California at 1:04 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted (represented by Alternate Chapell) and Commissioners Addiego (departed at 4:22 p.m.), Bates (arrived at 1:10 p.m.), Chan (represented by Alternate Gilmore), Cortese (represented by Alternate Scharff – arrived at 1:30 p.m. / departed at 4:07 p.m.), Gioia (departed at 4:22 p.m.), Hicks (represented by Alternate Galacatos), Kim (represented by Alternate Peskin), Lucchesi (represented by Alternate Pemberton – departed at 4:24 p.m.), McGrath (departed at 4:22 p.m.), Nelson, Sartipi (represented by Alternate McElhinney – arrived at 1:10 p.m. / departed at 4:12 p.m.), Sears (departed at 4:22 p.m.), Spering (represented by Alternate Vasquez), Techel (represented by Alternate Hillmer), Wagenknecht (departed at 4:07 p.m.), Ziegler (represented by Alternate Brush – departed at 4:29 p.m.) and Zwissler.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Secretary for Resources (DeLaRosa), Department of Finance (Finn), Speaker of the Assembly (Gibbs), Sonoma County (Gorin), San Mateo County (Pine) and Governor (Randolph).

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

Sandra Threlfall of Waterfront Action addressed the Commission: My public comment is regarding Scott's Pavilion in Oakland built without permits. We brought it to your attention in March of 2013. We were promised that there would be a public process.

There were a few design review meetings where they could not understand how someone could build a pavilion without permits. It was said that BCDC would take care of it because we have an enforcement program.

The standard clock for fines was started in May of 2013. To my knowledge there has been no resolution. The huge door has been removed but the frame is still there. This is all on public trust land.

They have built a dining area that they rent at extraordinary fees. There was a possibility of a cease and desist order; it is now three and a half years later and to my knowledge that has not happened.

What is the status of all of their violations and fines? It has to be a million dollars by now. I am speculating because none of this has been public other than the Design Review Committee. We were told that there would be a vote from the Commission this spring. This is now June. Tomorrow is the first day of summer. My main concern, other that the fact that it happened without permits, is that it has set the standard for people who have access to public trust land to build what they want without permits and cut that land off from public use.

That is not the purpose of the public trust. It belongs to all of us. We do not have enforcement powers. You do have enforcement powers and this involves major violations. Three and a half years later no action to date; I would like to know what is going on. I know you cannot answer public comment. Why is this still unresolved? Who knows why nothing ever happens? Thank you very much.

Chair Wasserman moved to Approval of the Minutes.

4. Approval of Minutes of the May 19, 2016 Meeting. Chair Wasserman asked for a motion and a second to adopt the minutes of May 19, 2016.

MOTION: Commissioner Vasquez moved approval of the Minutes, seconded by Commissioner Wagenknecht.

VOTE: The motion carried with a vote of 17-0-1 with Commissioners Addiego, Bates, Gilmore, Scharff, Gioia, Peskin, Pemberton, McGrath, Nelson, McElhinney, Sears, Vasquez, Hillmer, Wagenknecht, Brush, Zwissler, Vice Chair Chappell and Chair Wasserman voting, “YES”, no “NO”, votes and Commissioner Peskin abstaining.

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

a. **New Business**. Does anyone wish to add anything to our future agenda? (No comment was voiced)

b. **Bay Fill Policies Working Group.** I would like to start by requesting that Commissioner Nelson briefly report on the Bay Fill Policies Working Group meeting held earlier today in this room.

Commissioner Nelson reported the following: We had an excellent discussion and these meeting are open to the public. We had a number of the public that did attend and participated in the discussions and we appreciate this.

We have had over the course of the last year plus a series of briefings from a pretty wide range of interests from around the Bay to bring to us issues related to transportation, wetlands issues and a range of other issues that raise issues regarding sea level rise and Bay fill.

We are now starting to go back over that work and draw from the lessons learned from that. What we went over today was a series of seven issues that we thing are related to Bay fill and sea level rise adaptation issues that are related to habitat issues.

At a subsequent meeting we are going to start doing the same for issues that are related to shoreline development and the need to protect the built shorelines. We are also going to coordinate that work with the future work of the Commission as we come back following our previous meeting and think about potential future workshops and how we might use our working group to tee up issues for those workshops.

One item came up during our discussion that Chair Wasserman may want to address at the Commission. We are all very pleased that Measure AA passed which will put money on the table for habitat restoration and shoreline adaptation purposes. This will be a tremendous overlap with the work that our Bay Fill Working Group is doing but it also touches on the issues that the Commission was wrestling with.

An opportunity for the Chair to consider is doing a briefing for the Commission because if the Commission does not do one, my working group certainly should do one on next steps and implementation of Measure AA because it is a tremendous opportunity and it is also a moment where we need to step back and make sure that we are getting it right.

c. **Measure AA.** Chair Wasserman continued the meeting: Thank you. I think we should all take pride in the work that we did and commend the people who really put their shoulder to the wheel on getting Measure AA passed. It was a wonderful combination of support from the environmental and the business community. It was a very strong demonstration of support from the voters throughout the Bay Area.

It was the first regional measure approved by all nine counties. It is a very significant step forward in the work that we are doing. The Measure is not primarily focused on rising sea level. It is focused on preserving our watersheds and marshes. Those activities are very important in our efforts to address rising sea levels.

The campaign that they put on was terrific and a very significant part in the educational campaign for what we are trying to do and what we outlined in the report that we approved at our last meeting on May 19th. It is a great start and we will invite the Bay Restoration Authority and members of the campaign to make a presentation. It is worthy of the whole Commission hearing it.

d. **Chronicle Article.** I also want to note and hope that everybody on the Commission reads John King's article in *The Chronicle*. There is a copy in our packet today. It is a very thorough and very good coverage of the basic issues and the actions that we took last month. I want to publicly thank John and *The Chronicle* for that.

As we know, the problem is not going away. The projections as the scientists start to include the increasing melt from Greenland and Antarctica; the numbers are simply rising. They are going to continue to be uncertain as to how high and how soon the Bay is going to rise but that it is going to rise; there is no question.

When Commissioner Scharff arrives I will have him report on the ABAG/MTC merger talks.

e. **ABAG MTC Merger.** Commissioner Scharff reported the following: I am pleased to report that both ABAG and MTC have come to an agreement. ABAG will not cease to exist in the near future. ABAG is moving its entire staff over to MTC. There will be an implementation plan of how that works. It is actually fairly complicated and there is a 50 page report that they have put together. The best ways to do this will be worked out over the next year or so. There is going to be two boards. There is going to be the ABAG Board and the MTC Board and there will be one staff. The MTC Board will have direct control over the hiring of the Executive Director and the Executive Director will report directly to the MTC Board. ABAG will have a, quote, dotted line, towards the Executive Director. Responsibilities that are currently in existence will stay in existence. After the current Executive Director leaves office and a new Executive Director is hired, ABAG and MTC are supposed to have joint authority over the hiring and the firing of that Executive Director. That was the agreement. If there are any questions I would be happy to answer them.

Chair Wasserman asked: Any questions? (No questions were voiced)

f. **Next BCDC Meeting.** We will not have a meeting on July 7th. We will have a meeting on July 21st here at the Ferry Building. We expect at that time that we may take up the following matters:

(1) We may have a potential public hearing on the Treasure Island Development Proposal.

(2) A public hearing and vote on an enforcement matter regarding Park SFO in South San Francisco.

(3) A staff briefing on the ART Program mapping and analysis work.

g. **Ex-Parte Communications.** That completes my report. Does anybody wish to put an ex-parte communication about an adjudicative hearing matter that we have heard or are going to hear on the record now? (No comments were voiced)That brings us to the Executive Director's Report which will be made by Steve this afternoon.

6. Report of the Executive Director. Acting Executive Director Goldbeck reported: Thank you very much Chair Wasserman.

Summer begins next week, usually the pace of our permit applications slows down a bit but we have a lot of major projects in the pipeline. So we are going to be checking on your availability over the summer particularly in August when quorums are hard to come by.

I have two important pieces of budget news to share with you. First, BCDC has borrowed $435,000 from the State's General Fund to ensure that we have positive cash flow during the next couple of months as we begin to receive our income generated from the work our staff has conducted to fulfill our contracts and grants. The Department of Finance continues to be a tremendous partner as we continue without a chief budget officer and a viable billing system, and Finance is working hard on some collaborative solutions. Just to assure you – overall, our finances are solid.

Second, while we have not yet seen the full new state budget, we have every reason to believe it includes the funds BCDC will use to move to the new regional government center on Beale Street. We already have asked the Department of General Services to move forward on our relocation.

Chair Wasserman and Executive Director Goldzband have decided that it would be worthwhile to give you all a briefing on BCDC's FY16-17 budget after it becomes official.

With regard to the Planning Division, senior staff has met with Gina Bartlett, our consultant who worked with Lindy and the planning staff to help them think about how the Planning Division should change in strategy or structure prior to our moving forward with finding a permanent Chief Planner. We shall brief the Commission on the results of that process this summer.

I have several important pieces of staffing news to share as well. First, I am saddened to say that we are losing one of our most dedicated staff members who is actually a two-time BCDC staff member. Ellen Miramontes, our Bay Design Analyst who has served as our public access and design expert for many years, is leaving the agency next week to lead her family into the wilds of suburban Philadelphia. As a terrific and creative landscape architect and planner she has worked on hundreds of development projects that ring the Bay and has made each better for the visiting public. She has redesigned the agency's Shoreline Landscape guidelines, tirelessly promoted both the Bay Trail and barrier-free access into the water via the Bay Area Water Trail and has very effectively overseen your Design Review Board. Indeed, last week, Ellen managed the first-ever combined meeting of the DRB and the Engineering Criteria Review Board. Ellen, her husband Pete, and their two daughters are moving to take advantage of a great job opportunity and we all are sure that Ellen will leave her mark on eastern Pennsylvania, just as she has here. As Ellen's family has lived in the Bay Area since her great grandparents moved here, we expect to see them back here at some point and wish them the best in their temporary eastern digs.

On behalf of the staff and the Commission I want to say, thank you to Ellen. (Acting Executive Director Goldbeck presented Ms. Miramontes a bouquet of roses – applause)

You'll remember that we have lost two members of our planning staff to marvelous new positions – Sara Polgar and Maggie Wenger. Today, I would like to ask you to concur with our hiring decisions to replace them. First, I'm pleased to report that Adam Fullerton has accepted a position in our planning section. Adam earned his B.A. in Political Science with a Minor in Chinese at Bates College in Maine, a Master's Degree in Environmental Policy and a MBA from the Middlebury Institute of International Studies at Monterey. Adam has most recently worked as a contractor for NOAA Fisheries on strategic planning and ecosystem-based management and, prior to that, he worked for United States Senator Tom Udall of New Mexico.

Also, Eliza Berry has accepted a position in our planning section. Eliza earned her undergraduate degree in History from Carleton College in Minnesota and a Master's Degree in Environmental Science from the Bren School of Environmental Science at UCSB. Eliza has most recently worked for the Irvine Ranch Conservancy surveying trail systems to determine the impacts of public access on restoration activities and erosion and for the Wildlife Conservation

Society as the manager of foundation communications tasked with making the technical work of conservation biologists accessible to a wide audience. Both Adam and Eliza will be working on several planning projects and programs including providing support to the Adapting to Rising Tides Program. We would like to move forward with these appointments to the planning division unless we hear an objection. (No objections were voiced)

As a final note regarding staff, we are pleased to be joined by our second legal intern for the summer, Harsharon Sekhon. Harsharon is a third year student at Vermont School of Law. She earned her undergraduate degree from UC Irvine and completed a graduate gateway program in applied politics at American University in Washington, D.C. (Ms. Sekhon stood and was recognized)

Of course, the great news since we last met was the passage of Measure AA which will provide $500 million over 20 years to improve the quality of the Bay's water and habitat primarily and also will increase our shoreline's resilience. While there hasn't been a full analysis of the vote, the most recent account is that Measure AA received just short of 70% of the total votes cast. Most important, the measure received a majority in each of the nine counties, in four counties more than 70% of the voters approved the measure, and only two counties recorded majorities below 60%. We will have a briefing on this going forward.

We also have other good news. Earlier this month Caltrans awarded the Metropolitan Transportation Commission a planning grant of $800,000 – matched by MTC's $400,000 – for BCDC's Adapting to Rising Tides Program. ART will use these funds to work with Caltrans, MTC and other transportation agencies and interested parties to conduct a nine-county vulnerability assessment of flooding and rising sea level focused on three key areas: (1) transportation infrastructure; (2) Priority Development Areas (PDAs) as identified in Plan Bay Area; and, (3) communities of concern as defined by the Metropolitan Transportation Commission. Additionally, this project will prioritize strategies and create a road map to implement a more resilient, safe and sustainable transportation system. Lindy Lowe and Wendy Goodfriend of our staff, Alison Brooks of BARC and Steve Heminger of MTC deserve great credit for bringing this project to BCDC and MTC.

Some other good news to share comes from Washington, D.C. You will remember that the Senate's Environment and Public Works Committee approved a reauthorization of the Army Corps' authority in the Waters Resources Development Act that includes provisions to increase the beneficial reuse of dredged materials. Just a couple weeks ago, the House Committee on Transportation and Infrastructure approved a fundamentally different version that also would greatly increase our ability to reuse dredged materials. We hope that each chamber will take action on the different bills and go into conference and bring us out something that we can use to move forward working with our federal partners to beneficially reuse dredged material from the Bay. We want to thank both Senators Feinstein and Boxer and Representatives Garamendi and Denham for their support.

On a different note, you may recall that in the May 5th ED's report Executive Director Goldzband mentioned that he had issued an Executive Director's Cease and Desist Order in April to begin resolving alleged violations of the Mac Act and the Suisun Marsh Preservation Act involving unpermitted fill and development activities at an island known as Point Buckler in the

Suisun Marsh. On the day you last met, on May 19th, the named parties filed a Petition for Writ of Mandate and Complaint for Injunctive Relief in Solano County Superior Court challenging the Order. Four days later, BCDC issued a Violation Report/ Complaint for the Administrative Imposition of Civil Penalties concerning the same alleged violations and scheduled the matter for a hearing before the Commission. Since that time our counsel has started negotiations with counsel for the named parties to prompt discussions among BCDC, the named parties and representatives of the San Francisco Bay Regional Water Quality Control Board and EPA Region Nine. I cannot provide the Commission with details concerning the alleged violations at this time and we have not provided the Commission with a copy of the Order or the Violation Report because this matter is likely to come before the Commission prior to the Order's expiration.

That completes my report, Chair Wasserman. I am happy to answer any questions.

Chair Wasserman inquired: Are there any questions?

Commissioner McGrath added: I wanted to thank John Coleman for his help with the Water Resources Development Act as well as David Lewis and all the coalition that was put together to support that. We appreciate all of the help.

Commissioner Gioia commented: When you indicated that the July 7th Commission meeting is cancelled, is there a Sea Level Rise Working Group Meeting that morning?

Chair Wasserman answered: No. For the foreseeable future we do not envision reconvening that group. That brings us to Item 7.

7. Consideration of Administrative Matters. Chair Wasserman stated: We have received a list of administrative matters. Does anybody have a question for Jaime Michaels about those? (No questions were voiced) Chair Wasserman moved on to Item 8.

8. Public Hearing and Possible Vote on Oracle America, Inc., Centrum Owners Association and Oracle Corporation's Application for Material Amendment No. Eight to BCDC Permit No. 1982.026 for Construction of a School Building and Parking Lot Located on 275 Oracle Parkway, in the City of Redwood City, San Mateo County. Chair Wasserman announced: Item 8 is a public hearing and vote on Oracle Design Tech High School adjacent to Belmont Slough in Redwood City. Tinya Hoang will introduce the project.

Permit Analyst Hoang addressed the Commission: On June 3rd you were mailed a summary of the application to construct the Design Tech High School on Oracle Parkway in the city of Redwood City, San Mateo County within the Commission's 100-foot shoreline band jurisdiction. The proposed project involves construction of a portion of a school and associated parking lot and student drop-off area, a raised levee and outdoor recreational spaces. The project does not involve any Bay fill.

The project also includes subdivisions of land. The application summary describes the creation of a new parcel entirely within the Commission's 100-foot shoreline band jurisdiction but a portion of this parcel is partially in the Bay as well. The recommendation mailed on June 10th includes the corrected description. The project is physically constrained by a limited area between the shoreline and the street and existing dedicated public access areas at the site.

The project would provide approximately 1.6 acres of new public access area. A portion of this area would be permanently guaranteed for public access while another portion would be required and remain available for general public use outside of school hours. Public access improvements include an improved Bay Trail and other pathways and various recreational amenities.

The amount of proposed public access is similar to that provided in comparable Commission-authorized projects. Two examples of comparable projects are provided on page 23 of the staff summary in Table 1. These examples are the Redwood Shores Branch Library Project which is located nearby and the Tidewater Aquatic Center Project in Oakland. Please note that for the Tidewater Project the table incorrectly describes the project as having two buildings as opposed to three and this will be corrected.

The project is expected to be in place until 2070 and the applicants have incorporated a projection of 36 inches of sea level rise into their project design. However, the project site and public access areas could potentially experience flooding within the life of the project due to overtopping occurring off-site.

In evaluating the proposed project you should consider; (1.) Whether the proposed public access would be the maximum feasible consistent with the project and would be constructed in a manner that would maximize opportunities for public use and minimize impacts to wildlife; (2.) Whether the proposed project would be designed and managed to avoid impacts from sea level rise and flooding and; (3.) Whether the proposed project would maximize views to the Bay and shoreline.

Unless there are any questions I will introduce Dawn Jedkins who will present additional information.

Ms. Jedkins addressed the Commission: I am with DES Architects and Engineers. We are the architect for the project. I have prepared a presentation to walk you through some of the aspects of the design. First, I wanted to introduce some key team members, Colleen Cassity with the Oracle Education Foundation as well as Dr. Kent Montgomery who is with Design Tech High School.

Ms. Cassity commented: I wanted to take a moment to give our sincere thanks to the BCDC staff who have worked with us so actively and generously over the last year. I am the Executive Director of the Oracle Education Foundation which I helped start in 2000. For the last eight years I have also managed Oracle's philanthropy globally which includes Oracle Giving and the Oracle Volunteers Program. Both our giving and our volunteerism focus on the same three areas, which will be of interest to the Commission. The first of those is protecting the environment and wildlife. The second is enriching community life and public life. And lastly, is education; advancing education globally.

Oracle gives millions of dollars in cash and millions of dollars in software and curriculum to help advance education every year. Our opinion about education and the quality of educational institutions is a very well informed one.

We have seen a lot of highly effective models all over the world. We have never seen one that has more promise and more potential than we see in Design Tech High School, which is why we propose to build a facility for this school.

Finding a good facility is one of the major challenges that new charter schools face. And Oracle is in a position to help d.tech by providing it with a permanent stable home and the right kind of infrastructure to support its continuing evolution and the fulfillment of that tremendous potential that we see in this organization to help young people become the designers of solutions to the world's problems.

This relationship began at a programmatic level. One of the ways that d.tech really stands out is through a program called Intersession. Through the Intersession Program d.tech invites the community into students' educational experience; invites them to provide elective workshops for students four times a year. That is where our relationship began: the Oracle Education Foundation beginning to engage Oracle employees as volunteer coaches delivering workshops for d.tech students on coding, electrical engineering and design thinking. Every one of these workshops opens into a design challenge.

In the two years that we have been running this program we have had 77 employees deliver 12 workshops, more than 3,000 donated hours of their time and talent serving 230 students. I want to highlight that this is an extraordinary example of a public/private partnership based in shared values. One of those is a commitment to making community life better, engaging the community in students' education, giving them a great civics lesson. Oracle's commitment to education is very well invested in our relationship with Design Tech High School.

Dr. Kent Montgomery addressed the Commission: I am going to give a brief overview about our school and some of the programmatic elements. We have some students that are going to speak.

We are a public high school so we are a charter high school. We are open to any student within the state of California. We are free so anyone can attend. The admission is by lottery if the number of applicants exceeds the number of spots that we have.

We are currently operating in Burlingame, California. What is amazing is how many different groups have come together to support the school. We are a public/private partnership with us possibly being located on Oracle's campus. The county office worked with the San Mateo Union High School District to give us a home for this past school year and the next school year. The two districts, San Mateo Union High School and Sequoia District have worked together to enable us to possibly be located on Oracle because San Mateo Union High School District is our authorizer but Oracle is located in Sequoia Union High School District. Those two districts had to come together and establish MOUs to make it all work.

Our mission is to develop students who believe that the world can be a better place and that they can be the ones to make it happen. Everything that we do is designed around building the students a sense of optimism that things can get better in the sense of efficacy that they can be the ones to do it; that they have the self-efficacy, the knowledge, the skills to improve it.

If you understand that this mission is at the heart of everything we do, that is really all you need to have to know about our school. That is what you have to know about our relationship with Oracle and if we are located there how we will take care of things because that is really what we are trying to develop in students, that the world can be a better place and they should actively be the ones designing it to be that way. We are guided by two principles, extreme personalization. We really try to personalize educational experience and also knowledge and action; that you take what you learn and you do something with it.

I am going to let the students talk about this with you and we also want to make sure that we have enough time to cover the building. Our students are actively engaged in solving real-world problems. We use design thinking. We are a partner with the d.school at Stanford to use design thinking as our tool for teaching students the optimism and efficacy; the mindset that they do not have to passively receive the world. They actively design that through the design thinking process. We take it very seriously that all of our students very much want to be good neighbors and there are big things they can do like solving sea level rise. There are also a lot of little things that you can do to make things better for people. We really take that to heart about being good stewards.

Ms. Jedkins spoke: Thank you for taking the time to hear us out on that. We really felt it was important for you to understand how this project came about.

This first slide orients you to the Oracle campus and where the project is located in relation to that. Oracle Parkway runs around the full perimeter of the project site. Outboard of that is landscaping and then the Bay Trail access that exists today. We are going to locate the school building on the northern most point on campus.

A good portion of the project site is within the BCDC jurisdiction. Currently on site there is a vacant lot as well as a small parking lot. Both of those will be removed to allow for the project to occur. Also, there are 14 public parking spaces to access the Trail. The existing pedestrian Bay Trail does actually run along the top of the existing levee and around the perimeter of the site. The Trail will remain in approximately the same location and there will improvements to the levee to accommodate sea level rise for the life of the project. We will improve the width of the Trail to 12 feet, 10 foot with a two-foot DG shoulder. The school parking lot is a relatively small lot for the size of the school. It is significantly smaller than what would typically be required. This is for staff and small number of visitors' parking spaces, 35 in total. The school has a strict, no-student-driver policy. We are providing no parking for students.

Around the perimeter of the parking lot is the drop off. It is a double-wide lane with 20 available spaces to pull in and then a free lane to drive all the way through and that will be a one-way arrangement. The building is to the east of the site following the shape of the site. We are constrained between Oracle Parkway and the existing levee. To the west of the parking lot are some high-power lines. We are actually required to keep the building away from those power lines. That drove the general arrangement of the site. There are three existing Trail access points from the public right-of-way. The proposed project maintains three. The school building is surrounded by patio space. All of these open areas will be accessible by the public.

We will be removing a significant amount of Ice plant from the current slough side of the levee. We have a restoration ecologist preparing a replanting plan for the slough side of the Trail to address habitat. We will also be installing a deterrent fence in the hopes that this will keep people from trespassing, keep their animals on leashes and keep them out of the habitat area. It is a post and rope low fence.

There are very nice views from the slough and it extends quite narrowly along the project site along the north edge and then opens up as you move east and then out to the Bay. When you come around from the west side, the levee is elevated and you can see the houses and the residential areas on the other side of the Trail.

There is an existing view corridor through the middle of the site. Due to the programmatic needs of the building and to have one continuous building we are respecting that view corridor with focusing the main entry of the building at that location making it very clear, glassy, transparent multi-use space, main lobby space through the middle of the building. When you are on the public right-of-way and you arrive at that place you can look through the building.

We have some educational nodes, picnic space, contemplative space, maybe some space with game tables but also some additional exercise nodes. The educational node is on the west side. There was some habitat work that was done for a previous Oracle project so a good amount of habitat that was restored on the west side of the site we felt was an appropriate place to have some informational signage about the kind of wildlife that is at the site.

When you get to the main entrance of the building through the middle we have a slightly larger plaza which is the most significant place to stop along the Trail but also something that defines the point of entry for the building from the Trail side. We have enhanced both the east and the west Trail access points. We have made them broader and added some nice decorative concrete. We have enhanced the planting and also added some bicycle parking in those locations for people that are coming to use the Trail.

One of the features that will no longer be here are the 14 parking spaces that were in this location. On lot 8 there is already a turnout, which accommodates a number of Trail parking spaces. We will be extending that to relocate the 14 spaces directly adjacent to the Trail access point in that location. We mentioned that the school patios in the parking lot will be available for use by the public on evenings and weekends when the school is not in session.

The parking lot is 35 spaces and we have two EV charges in the parking lot. We have also provided for a full court basketball court. It is kind of an open space that can be flexible and hoops that could be removed if there is some other kind of event that needed to occur within that parking lot. We can provide for maximum flexibility of views there. The genesis for the design was two-fold which was in response to the solar orientation of the building as well as the adjacent architectural style on the site.

Another reason for this location of the building; the reason the building can be so compact is because there are shared uses. Oracle is going to allow the school to use their conference center for any large events they might need to have as well as the fitness center that Oracle has.

Those two buildings are low buildings on the opposite side of Oracle Parkway. They have a slight look and feel to the towers that everybody is so familiar with. We have a couple of lower, single-story elements facing Belmont Slough. This is primarily because those are the pieces of the building that project into the shoreline band. We wanted to be sensitive to stepping down so it did not feel as large from the Trail.

Another great component of this is that the Slough side of the building happened to be north facing so we could really do a great deal of glass on that side of the building and not have to worry about heat gain but also take advantage of the views and the fantastic location that we have here. We will be incorporating bird-safe glass which is required of us by the EIR. It is a glass that has a regular dot pattern that is appropriately scaled so that the birds can see it and not be distracted or confused. We also have two different metal panels on the project. One is a silver gray color and we are using one which is kind of a wood look. We wanted to incorporate warmer, kind of more shoreline-appropriate look and feel to the building on that side. We have made a concerted effort to have the building complement the Trail wherever possible. We tried to go for a natural feel along the Trail.

A big aspect of the project is to increase the amount of dedicated public access as well as expand on that with the required public access, which will be the shared-use facilities. After 5:00 p.m. during school hours or on the weekends, those spaces would be open to the public for use. There is no fence around the building. Movement between the Trail, the right-of-way and these patio spaces is unencumbered. We also have additional dedicated public access over and above what is currently provided for. Our public access total is close to 72,000 square feet.

We also have about 71,000 square feet of improved landscaping. A lot of the area around the Parkway is currently turf, which is a high-water use plant material. The goal for this project was to put in drought-tolerant, native habitat-forming plant species that ultimately would need little to no water. Once these plants are established we will be maintaining them using reclaimed water from the city system.

This is a 50-year building. We are addressing the levee improvements to the three-quarters century with sea level rise assumptions of 36 inches with one foot of freeboard. The levee elevation is coming up to 14 feet, which is improved for the length of the project site and then as we get to the east and the west we are transitioning down to meet grade at the existing levee elevations.

The building has to connect to the existing roadway and sidewalk system, which is lower than the building. The building meets FEMA requirements for finished floor elevation, which is the 100-year flood plus one foot. The building elevation is right around 11 and the levee is up at 14 feet. There is a soft elevation change in slope down to a sea wall height, which is around 18 inches and then the patios.

This concludes the presentation that we have prepared. We have our project team here if you have any questions. Thank you for hearing our presentation and we are here for questions if you have them.

Chair Wasserman asked: Questions?

Commissioner McGrath commented: There is a statement that the sidewalks are narrowed from eight feet to five foot, six inches. Could you go back to the site plan and show me where those locations are. (The slide in question was shown to the attendees)

Ms. Jedkins stated: Those sidewalks are along the city right-of-way. It is the city sidewalk, which is contiguous to the road.

Commissioner McGrath inquired: So there is no narrowing along the Bay Trail?

Ms. Jedkins replied: No, absolutely not.

Commissioner Bates commented: I don't like the color scheme and I don't – (Laughter) Thank you for providing all of this information that is not relevant to our decision such as the color scheme et cetera. How many parking spaces are you going to provide and where are they going to be located?

Ms. Jedkins answered: Oracle had applied for a previous BCDC permit to put some recreational uses out here. The parking lot was constructed and the recreational uses were not. Right now that is overflow parking. It is not the base requirement for the campus. It is just additional parking spaces that are utilized by whoever is on that side of the campus.

Commissioner Bates continued his inquiry: Don't you think that those people who work at Oracle are going want to park someplace? And this basketball court you have; looks like it is going to be difficult to make shots there when there is a car there in the middle of the lot.

Ms. Jedkins replied: Well the basketball court is clearly for use after the school is in session. It was just to provide some flexibility and some additional parking.

Commissioner Bates continued: I think it would be very helpful to know. I personally do not have a car. The point is that they are going to go someplace and that is an isolated place. Where on campus are these additional parking spaces going to go? Are they going to go in the BCDC parking lot to the south of the campus?

Ms. Jedkins commented: These rectangular buildings are actually parking structures. Right across the street from the parking lot that is going to be removed, directly adjacent to the conference center, is a large parking garage which is significantly underutilized right now.

Commissioner Bates concluded: So the answer is, they have enough to absorb those without having to provide additional parking space someplace on the campus.

Ms. Jedkins agreed: That is right.

Commissioner Bates had more questions: What are the requirements for physical activity for students if this is the only activity around this basketball court?

Dr. Kent Montgomery fielded this question: The physical education requirements in independent study programs are that the students have to log a certain number of minutes, 200 minutes per week.

They can do this is a variety of ways. We have sports teams, basketball teams, cross-country teams. When they participate in those they can keep track of the minutes to satisfy the requirements or running along the Bay Trail or riding their bike. We have a few kids that are fencers and that satisfies it. It is all independent study for their physical education requirements.

Ms. Jedkins added: Oracles' fitness facility does include a full gym, outdoor volley ball and a swimming pool. There is also a baseball field just across the slough.

Commissioner McElhinney commented: I am quite impressed with this facility. Thank you for considering all of our concerns. I really am impressed with expanding the public access versus what is current. The improved landscaping is going to be terrific. What is the construction timeline and during that stage are there any impacts to the access or the parking?

Ms. Jedkins answered: The project is pretty time sensitive. The school is going to open in August of 2017. We have one year to construct the project. We have every hope that we are going to get there. We are very committed to meeting that schedule. For the construction of the project, the Trail will be diverted. They are going to take a portion of the roadway and use the barricades so that the public can come around the project safely and then reconnect to the Trail at either end of the site.

Commissioner Zwissler had questions: The levee is being raised to 14 feet but just in front of the building?

Ms. Jedkins replied: For the length of the project site, yes.

Commissioner Zwissler continued: And then on either side it is back down to the existing height which is about 2.1 feet or 25 inches above the 100-year flood level?

Ms. Jedkins agreed: Yes.

Commissioner Zwissler inquired about the levee: What is the point of building up the levee?

Ms. Liane Ware replied: The real point of raising the levee where Oracle is now is to get ahead of guaranteed levee raising in the future when FEMA comes through with updated requirements for the existing levee to address sea level rise and if flooding levels were to increase with that. Oracle wants to get ahead of that so that this project has the lifetime it is intended to of the 50 years. Therefore, we are constructing the levee adjacent to our portion of the project right along the site improvements and the building to the elevation of 36 inches plus 12 inches of freeboard over the current base flood elevation of the slough, which is elevation 10. We are conforming at the ends. It is lower and those portions will at some point in the future be raised when the entire Redwood Shores citywide levee system has to be upgraded.

Commissioner Zwissler had additional questions: I am curious what the thinking was in terms of designing the building just assuming that the levee alone was going to be the protection and had you considered other adaptation strategies in the design of the building?

Ms. Jedkins replied: It is a pretty narrow site and we have challenges raising the building to that elevation given the tight proximity and the opportunity to transition back down to Oracle Parkway and the existing infrastructure. The idea here is that Oracle is a large corporation and they have an asset to protect which is much larger than the building we are constructing here. Clearly they have interests in adaptation strategies going forward to protect the campus as a whole.

This project is required to improve the levee for its portion of the site. We have had some discussion with staff and with our civil engineer in terms of how the grading works around the site in terms of intermittent flooding if that may occur. Oracle Parkway is higher at the northern most edge of the site where our project is going to be located and then flows down towards Marine Parkway in both directions.

Any floodwater that were to come around the end in an incremental amount would flow away from the project site. In terms of near-term project protection the finished floor elevation of the building, we believe, is adequate to protect the asset.

Clearly, going forward there would need to be an adaptation strategy to improve the levee for the length of Redwood Shores as a whole. There is an issue that needs to be addressed there. There is already work going forward with the city of Redwood City and FEMA to address those levees and what would be required of landowners in order to improve some of those things.

Commissioner Zwissler continued: I am trying to understand building along the shoreline. At what point do you think about programmatically having a different use on the ground floor, having it adaptable; stuff you can get in and out fast as other countries and other locations do? It's okay you have answered the question.

Commissioner McGrath had questions for staff: As I look through the recommendation I see not just these 14 parking spaces, but 41 for Phase 1A, 10 for Phase 1B and these 14. So that is a fair amount of parking for public access and I am comfortable that it is probably a good number. How do we have a system to assure that they are not used as overflow parking for people that are not using the recreational facilities of the Bay Trail? How do we enforce that?

My second question, I am not concerned about a sidewalk that is narrowed. I am concerned about a Bay Trail, active use, where there are both bicycles and pedestrians that any narrowing is dangerous. It does say on page 12 a portion of the bicycle/pedestrian path will be narrowed.I want to make sure that is not the main section of the Bay Trail. Those are my two questions.

Ms. Jedkins fielded Commissioner McGrath's questions: The Oracle facilities immediately adjacent to the Trail have significant parking available to them. Any guests of the conference center are directed to a location to park. Oracle also has 24/7 security and part of that is monitoring the area to make sure it is being used appropriately. If cars are sitting there for a long period of time they are going to notice and they are going to talk to their employees about not using those spaces. They already give clear direction to employees that those are for Bay access only. And with the significant amount of parking onsite it is not an issue from our perspective in terms of overflow use potentially using the Bay access parking.

Commissioner McGrath continued: And so you think that is clearly indicated in the application so there is no need for a special condition should enforcement ever be needed?

Ms. Jedkins replied: Well I just wanted to comment on the signage package that we have. Staff has been pretty particular about the types of signs that are applied to these locations to direct people to the Trail, to direct for the use of the parking lot and for the use of the permanent public parking spaces. We have an extensive signage program that is going to address that also. We could amend the language of the signage in any way that you see fit to make sure that public access parking is respected.

Chair Wasserman referenced a previous point: And there was a question about the narrowing of some part of the Bay Trail.

Commissioner McGrath clarified a point: Well it does not say that it is the Bay Trail. It says it is a combined pedestrian access.

Ms. Jedkins added: It is a city sidewalk. It is contiguous to Oracle Parkway.

Chair Wasserman asked: Any other questions? (He received no comments) With that we will open the public hearing. We appreciate that we have a significant number of students and parents here. I have nine cards in total.

Ms. Daphne Palmeter was recognized: I am currently a freshman at Design Tech. I would like to tell you what d.tech means to me and what it has done for me. It is a place where I feel safe and where I have a community and a lot of people who I can connect with. At d.tech we focus a lot on empathy and building empathy between our students and our staff and also the people we are designing for. It has always been kind of challenging for me to really empathize with other people because I really just wanted to get to a solution. What I learned at d.tech was that things will come out a hundred times better when you connect with the people who you want to make things better for. In the end that was myself really. I can truly say that this year has been the best year of my life. I would like to thank d.tech for that. That is all I have to say, thank you.

Ms. Jaya Reddy addressed the Commission: I am also a freshman at Design Tech High School. About a year ago I would have been very mortified of talking in front of you right now. I would not be up here if I didn't care so deeply about this school. Before this school I was completely reliant on my teachers. I did not know how to do things or what to do. I blocked out my guidance on the inside. When I came to this school, I was completely self-directed, not only academically in school but artistically and I thought differently. Even outside of the school d.tech is important to me. I feel the environment around me and I am always self-directed. Thank you.

Ms. Courtney Sullivan Wu spoke: I am a student at Design Tech. D.tech has always encouraged me to try new things and pursue my passions and push me to reach my fullest potential. One way we do this is through intersession classes, which you have heard about earlier. I am only 14 and thanks to Design Tech intersessions, I have already gone through expecting something to be one thing and having it turn out to be completely different but still loving it.

I like to dance so I took the dance intersession and usually at a regular school you would learn things like jazz and ballet. At Design Tech I learned how to African dance and Salsa dance. That is very unique and different and I am so glad that I took that class because I have fallen in love with it ever since. I have also learned things about wearable technology and how wireless connections work. These are things that I never would have learned at a regular school and they would never have given me the opportunity to learn about these things. Having this new building would mean we would have more space for more classes. This would give more students an opportunity to continue to try new things and pursue and discover new passions and reach our fullest potential. Thank you.

Ms. Vani Suresh addressed the Commission: I am also a student at Design Tech. I think this new school building at Oracle will be a big help to d.tech. Our community at d.tech has been a wonderful one and really accepting and empathetic of other people. We have had an opportunity to have a partnership with the Burlingamer on Rowlands Road so we have used their facilities and through intersessions we have had access to a lot of different facilities both on the Oracle campus and other places. D.tech students have been really caring and aware of the property that they are on and have always been aware of the environment and that would continue at the Oracle campus.

Fred Colman spoke: I am not a student at d.tech. (Laughter) My son Sam is a student at d.tech. We live in Palo Alto just a couple of minutes from the Palo Alto High School. This is a teenage kid who decides to get up early and get on to a train to go up to Millbrae so he can attend. I have asked him why a number of times. He says he likes the smaller size; it is 150 people in his class rather than 400 or 500. He also likes the empathy that one of the students spoke about earlier. He also said that when there are issues he does not understand he or any other student can meet with the teacher and they will work with the student until that student understands it well enough to teach it themselves. He also very much likes the opportunity to work at his own rate and the opportunity that a student can delve as deeply as they want into a subject. So when they find something they really are interested in the school offers them the opportunity to do so. My wife and I are extremely excited about this school and I think they are well on their way on the trajectory to be one of the best schools in the United States. One of the hindrances or challenges is facilities. Last year they were in a single hallway at Mills High School where they were made to feel less than welcomed sometimes. This year they are in a warehouse facility which they have done remarkable clever things with space but it still is a warehouse. The opportunity that Oracle offers to build a facility and this magnificent public/private cooperation is just spectacular and it removes that biggest impediment that the school is facing. Thank you.

Ms. Jaime Dal Porto spoke: I come to you with three hats on today. I am the proud and founding d.tech parent of Nicolas who will be a junior at the school. I am also a Design Tech High School Board Member. I am the parent representative on the Board. I also live in this community, the Belmont/Redwood Shores community. I would like to speak to you about my perspective on all three of these. As a parent I have always been passionate about education. In looking for an alternative for our son, we got involved with Design Tech High School. It is a very different type of education. We believe in this model of self-direction and individualized learning.

Our son Nicolas has thrived. He has learned a skill set that will prepare him for life, not just for college, not just for the next two years, but life skills. And for that we are grateful. We are also for his ability to really pursue his passions which for him happen to be technology, engineering and robotics. In fact, he is the captain of the build team on the robotics team that we have.

I continue to be extremely impressed and pleased in the commitment that Oracle has made to our school starting with providing volunteers to teach our intersessions, to promoting our school and to really give us a home which is why we are here today. As a Board Member when this position became available last year, I immediately threw my hat into the ring and wanted and was honored to be selected to be our parent representative. I have been fortunate to sit on a subcommittee, which is to interface and liaison with Oracle along with Dr. Montgomery. I have been even more fortunate in being a part of designing this building. It was a wonderful process where the school, the architects and Oracle allowed some of us parents and even our children to come in and design this school to meet the needs that we have in our unique learning environment. I can tell you that in every session I sat in on, we talked about the Bay Trail, the Slough and the environment. I feel very confident in going through that process that every measure has been taken to make this a wonderful place for the habitat, the environment and for users of this area. As a community member there is great support for our school and this new Oracle location. There has been great consideration for the Bay Trail and as a user of that we are going to have a lot of great enhancements. This is a great school. We have a great partner in Oracle, a thoughtful and well-designed plan. I continue to be extremely excited to see this facility get built in time for my son to share in it his last year before he graduates. Again, thank you for consideration of approval of this plan.

Ms. Whitney Wisnom addressed the Commission: I am a sophomore at Design Tech High School. I wanted to talk about the personalization at the school and how we learn. I have always gone to a traditional high school. At Design Tech, we have personalized learning. If I don't understand a subject then I can stay back and keep learning it and understand it more. If I do understand a subject then I can thrive. I can keep learning more. I have never experienced anything like that. I have done so well at Design Tech High School because of the personalization. I am so lucky to have been on the design team to help build the new school. I really hope I get to spend my senior year there. Thank you.

Ms. Elizabeth Ouren spoke: I am a parent of a boy who is finishing his sophomore year. We live in Menlo Park. My son also gets up early to ride the train every day to school. When we were looking at high schools, we looked at a lot of different high schools. The big high schools were not a good fit for my son. There are a lot of kids out there who are looking for something different. When he went to the open house that d.tech had and heard Kent Montgomery explain the vision for the school, he knew he had found the place that was right for him. It has been a wonderful experience. He feels like he is very safe and encouraged and challenged there. There is no bullying. The kids are so nice to each other. The staff is so nice to the kids and to each other.

I went on the camping trip for the whole school this year and last year and I can tell you that that is an experience where there can be some stress involved and just seeing how everyone treated each other the whole time was amazing. I have never been with a group of people that treated each other so well. I think it goes to the empathy and the advisory that they have at the school that is built in. I am so fortunate and blessed to be part of this school. There is a great vision, great staff, great students and the only issue has been where is their home going to be. We are so excited that Oracle has come along with this wonderful offer to build a school for d.tech so they can have a home for the current students and students to come. Thank you so much for listening to all of us and for supporting building on the Oracle campus.

Chair Wasserman continued: Thank you for all of you who spoke and all of the students and parents who came to support this.

Commissioner Gioia had a question: This sounds like a very great school. It sounds like you draw from students from outside the Redwood City School District. Charter schools normally draw from a particular school district. What is your screening process?

Dr. Kent Montgomery replied: Right now we draw from students from all over the Bay Area; from San Francisco in the north to Sunnyvale in the south to San Leandro to Half Moon Bay. That is going to change because you put in an application and it is a lottery. There is no screening or testing, no interview, no essay. You apply and then your name is chosen out of a hat. In this last year we had for the incoming ninth grade class about 500 applications for 137 spots. The selection is all electronic now. We give preferences to siblings, to children of d.tech staff and then also San Mateo Union High School District residents. That is San Bruno to Foster City roughly and then Sequoia Union High School District residents. The new school will be located in the Sequoia Union High School Union High School District. They have a four-to-one preference in our lottery. We do see as we are maturing that most of the students will be San Mateo and Sequoia students.

Chair Wasserman continued: I would entertain a motion to close the public hearing. Oh wait, we missed a card.

Ms. Maria McAlister Young addressed the Commission: I am also a freshman at Design Tech High School. I want to clarify that it is not an all-girls school. (Laughter) I realize that a lot of people talked about intersession and self-direction and I wanted to go a little bit more into the academic part. In this school year, I have actually completed two years of math. The way I was able to do that is because the teachers were very helpful. If you wanted to go ahead of what the teacher was teaching at that class time, you could. They provided you with the resources and they helped you with the math. The other interesting thing is that if you are on pace with your classes you also have free time to follow your own passions; passions outside of the intersession classes that you may have taken. It is amazing that d.tech gives us the opportunity to understand the material so well and then go further into things that we are interested in. They give us the time and the support to do that. Thank you.

MOTION: Commissioner Wagenknecht moved to close the public hearing, seconded by Commissioner Nelson.

VOTE: The motion carried with a vote of 17-0-0 with Commissioners Addiego, Bates, Gilmore, Scharff, Gioia, Peskin, Pemberton, McGrath, Nelson, McElhinney, Sears, Vasquez, Hillmer, Wagenknecht, Zwissler, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Ms. Hoang presented the staff recommendation: On June 10th, you were mailed a copy of the staff recommendation, which recommends that the Commission authorize the proposed project. The staff recommendation contains special conditions that require the permittees to take a variety of measures including:

a. providing 26,900 square feet of dedicated public access area,

b. making the school patio parking lot and student drop-off area available to the public outside of the school hours,

c. providing an improved segment of the Bay Trail, additional new and improved public pathways, landscaping and other public access improvements, and

d. reporting on flooding of the public access areas and measures to address sea level rise adaptation.

As conditioned, the staff believes that the project is consistent with your law and Bay Plan policies regarding public access and appearance, design and scenic views. With that, we recommend that you adopt the recommendation.

Chair Wasserman continued: Before I ask the applicant's concurrence, any questions of staff?

Commissioner Bates commented: Did I hear you say that they are going to provide parking for the public outside of school hours?

Ms. Hoang replied: It is making the parking lot available to the public outside of school hours for recreational uses. There is the school parking lot which is 35 spaces that would be available to the public outside of school hours. And then there are existing parking spaces that would be relocated.

Commissioner Bates asked: So the 35 are on the basketball court?

Ms. Hoang answered: Yes.

Chair Wasserman asked: Does the applicant concur in the staff report?

Mr. Michael Bangs, Vice President of Real Estate for Oracle replied: We concur.

Chair Wasserman added: This is a terrific project in all kinds of ways. Oracle's commitment to this is terrific. This is really putting the rubber to the road and getting very directly involved in making this kind of contribution and integrating the education with Oracle itself is really wonderful.

It is nice to have Oracle before us because you are in the forefront of sea level rise. I think that I am happy that you are putting the children right there. (Laughter)

I do want to recognize that there are a couple of things in this report that are important models for addressing sea level rise as we go forward. One of them is, how do you deal with overtopping and the overflow and Oracle has some physical resources that some other spaces will not have. I think this is important for us to look at. The reality is how what you are doing relates to your adjacent properties. We know you can't take care of it now but we are addressing it and we are starting to look at that and all of those items are very important.

I would now entertain a motion on the staff recommendation.

MOTION: Commissioner Zwissler moved approval of the staff recommendation, seconded by Commissioner McGrath.

Commissioner McGrath commented: I did look again at the conditions and I am satisfied that the requirements to submit all the documents and make these available assure that the parking spaces will be available during the period of time. I am comfortable with this project and the footprint.

VOTE: The motion carried with a roll call vote of 17-0-0 with Commissioners Addiego, Bates, Gilmore, Scharff, Gioia, Peskin, Pemberton, McGrath, Nelson, McElhinney, Sears, Vasquez, Hillmer, Wagenknecht, Zwissler, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Chair Wasserman continued: Before we go to Item 9 I am going to ask Commissioner Scharff to give us a report on the ABAB/MTC merger discussions. (See Chair's Report in the Agenda)

9. Public Hearing and Possible Vote on the grand Marina Village Owners' Association's Application for Material Amendment No. Fifteen to BCDC Permit No. 1983.005 to Divide Permit between Co-Permittees. Chair Wasserman recused himself and exited the room.

Acting Chair Chappell stated: Item 9 is a public hearing and vote on a permit amendment request by the Grand Marina Village Owners' Association to divide the permit between the co-permittees. Ethan Lavine will introduce the proposed amendment.

Principal Permit Analyst Lavine addressed the Commission: On June 3rd you were mailed a summary of an application for a proposed material amendment to BCDC Permit No. 1983.015.11. That permit originally issued in 1983, as well as subsequent amendments, authorized the development of Grand Marina and associated facilities, including a shoreline park at the location of Grand Harbor in the city of Alameda.

The most recent amendment, issued in 2008, authorized the adjacent Grand Marina Village residential development, a portion of which is located within the Commission's jurisdiction as well as additional public access areas and improvements.

Unlike most projects before the Commission, this application concerns no new development. Rather, the applicant is seeking to divide the specific authorized activities and responsibilities of the previously-issued permit between the two co-permittees, which are Grand Marina Village Owners' Association, which is a homeowner's association, and Encinal Marina Limited, the owner of Grand Marina.

The effect of the proposed amendment would be to create two separate permits that identify the rights, responsibilities and duties of each permittee. The proposed division would occur along the lines of underlying legal control of the land, as shown here on the screen, with the area in orange under the control of Encinal and the area in blue under control of the HOA.

This amendment request is an unusual one for the Commission in that the proposed permit split was applied for by only one co-permittee, the HOA, and without the consent or concurrence of the other, Encinal. Encinal is objecting to the request to split the permit and thus did not sign the application for the subject amendment.

This raises a procedural matter that the Commission may wish to consider. The Commission's regulations require that an application for a material amendment to a major permit be signed by all co-permittees. However, in this unusual case the request for the amendment is based on the very inability of the co-permittees to agree on whether or how the permit should be split. The effect of rejecting the application on the basis of Encinal's refusal to sign the application would be to prevent the Commission from considering the HOA's otherwise routine request to amend the permit.

Given the nature of the dispute between the co-permittees and the procedural issues it raises the staff directed the HOA to apply for a material amendment so that this matter could be heard before the Commission and with the benefit of a public hearing.

The staff believes that the proposed permit amendment raises a threshold question for the Commission to consider. That is: Whether to materially amend this or any major permit jointly held based on the application submitted by only one of the co-permittees and over the objection of the other co-permittee.

On this threshold question the staff believes the Commission should consider the proposed permit amendment even though it is lacking the signature of one of the co-permittees. From a permit administration standpoint, the responsibilities and duties of the permit could be clearly divided along the lines proposed by the applicant. In addition, splitting the permit would clearly define the permittee's respective public access maintenance obligations and thus potentially avoid a situation where public use and enjoyment of the area is adversely affected in the event that maintenance is deferred.

But fundamentally, in a dispute such as this, the effect of rejecting the application on the basis of one co-permittee's refusal to sign the application would be to prevent the Commission from considering an otherwise legitimate and reasonable request to amend a permit.

Should the Commission agree it will then consider the other primary issue raised by the proposed amendment: Whether a permit split would be consistent with the Commission's law and Bay Plan policies related to public access.

First, the Commission should determine if public access areas provided under the two resulting permits would continue to provide maximum, feasible access. The McAteer-Petris Act and the Bay Plan state in part that maximum feasible public access consistent with the proposed project should be provided.

The division of the permit proposed here would not change the total area or nature of public access required under the permit. Rather, division of the permit would assign the responsibility for continued provision and maintenance of public access improvements to each co-permittee on the basis of their underlying legal control of the land.

A second consideration is whether the proposed action would in any way impair the ability of the permittees to comply with the required public access maintenance responsibilities.

To this point, all previous authorized public access improvements would be required to be maintained by each permittee.

The lines along which the permit would be split generally correspond to physical markers on the ground such as sidewalks, such that the boundaries delineating public access maintenance responsibilities would be clear cut.

It's important to note that there is a dispute among the co-permittees as to the costs associated with maintaining public access if the permit is split.

Encinal contends that it should be not solely burdened with the cost of maintaining access improvements on its property, some of which came about as a result of authorizing the residential development.

The HOA contends that at no point was there an agreement that it would be responsible for maintaining public access areas or improvements on property it did not own or control and that it was always the intent to split the permit along these lines.

While the co-permittees are in disagreement, the Commission's ultimate concern is whether a permit split would impair the ability of the permittees to comply with their access maintenance responsibilities.

In summary, in evaluating the proposed project the staff recommends you first consider the threshold question of whether a permit can be amended by one permittee without the consent or agreement of the other.

If you decide the answer is "no," the action would be to deny the permit. If you decide the answer is "yes," you should next consider whether the proposed split would be consistent with your law and policies on public access, specifically if the split would guarantee maximum feasible public access consistent with the project authorized under each permit and whether the split would ensure continued maintenance of the required access.

If you find the proposed split consistent with your law and policies you would adopt the two motions found on your staff recommendation with a single vote, which will be presented after the public hearing.

If you find the proposed split inconsistent with your public access law and policies the action would be to deny the amendment request to the permit.

With that, Chief Counsel Marc Zeppetello would like to add a few points. Following Marc we will have additional presentations by Wendy Manley who is representing the HOA and by Chris Anderson and Eric Shaw who are representing Encinal. Thank you.

Chief Counsel Zeppetello addressed the Commission: I would like to address three issues. First to provide a little more background on why the staff is recommending that the Commission consider this matter with the dispute between the co-permittees: Last fall the HOA applied for this permit split as a non-material amendment and the Executive Director initially denied that request because it was only signed by one of the co-permittees.

The HOA submitted a letter appealing that decision to the Commission as they had a right to do under the Commission's regulations. They made a number of arguments about two signatures not being required and that they were being denied due process. And without needing to go into those arguments the point was that this issue was going to come before the Commission one way or another so that was one of the reasons we directed the HOA to resubmit the request as a material amendment with an opportunity for a public hearing before the Commission.

Another issue in terms of background is that last fall I reviewed the complaint in the underlying litigation between these parties and the complaint raised a number of allegations regarding the BCDC permit and how it should be interpreted and that raised, for me, two concerns. One was that it was possible that one or both of these parties might ultimately name the Commission as a party to that lawsuit and try to bring us in there on some grounds that we were indispensable to resolving their dispute; or in addition, that the Court might make a ruling at some point interpreting our permit as a judicial matter in a way that staff or the Commission might not agree with. We felt it would be more appropriate to bring the matter before the Commission for resolution as an administrative matter.

The second issue that I would like to mention that I don't believe is stated in the staff report is that as you may know, we typically include a standard condition in permits that says that the permit is not effective and no work may be performed under the permit until the permittee signs the permit and sends it back. We have not included that condition in the proposed amended permits, instead we have included a condition that says each of the permits will be effective when signed by the Executive Director and mailed out to the co-permittees.

We do not believe that in these circumstances, because the permit does not authorize any new work and both co-permittees already are enjoying the benefits of the existing permit, that it is necessary to have their signature. And also we do not think it would be appropriate to allow a dissatisfied party to refuse to sign the amendment and then create uncertainty or

continue the uncertainty about their obligations where we would have the existing permit still in effect as to one co-permittee and another co-permittee signing an amendment. So that's the reason for that special condition.

The final point I would like to make is that on the merits the issue before you is whether to split this permit in order to clarify the obligations of the parties going forward; interpretation of the existing permit we don't believe is an issue that is before you. From the staff's point of view, both of these co-permittees are jointly and equally responsible for their obligations under the existing permit.

In that regard I would mention that staff went out to the site yesterday because we wanted to have a baseline report of what the conditions are now, and the staff did note some compliance issues with maintenance of the public access areas. So the staff is intending to write an enforcement letter to address those issues. That letter will be addressed to both parties because as of today, and for everything in the past, our view is that they are both responsible and if they have got a dispute that is between them to work out but it is not the job of the Commission to do that. The purpose of splitting the permit or considering it at this time is to clarify obligations going forward.

If there are any questions I would be happy to answer them, otherwise I will turn it over to the applicant.

Commissioner Gilmore inquired: Did I just hear you say that there is no new proposed work under either the permits or splitting the permits; it is just about what happens going forward?

Mr. Zeppetello replied: Correct.

Commissioner Gilmore continued: Yet if we decide to go forward and say that we are going to split the permit, staff is saying one of the things we need to consider is if there is maximum feasible access. But why are we considering that if there is no work to be done?

Regulatory Director McCrea answered: This is a clarification of the permit that we have in front of us. The Commission originally determined that the Marina project and then the subsequent subdivision residential development that came to the Commission some number of years ago and the corresponding public access were sufficient to meet the Commission's laws and policies, particularly as it pertained to maximum feasible public access consistent with the project.

Any time the Commission makes an action we have to maintain that standard. So what Ethan was pointing out was that when we split the permits we will have a permit related to a residential subdivision and we will have a permit related to Grand Marina operated by Encinal. In each of those permits you need to determine that each of those permits still provides maximum feasible public access consistent with those approved projects, if you will.

Commissioner McGrath commented: I kind of believe we're always in a better situation of having two people jointly responsible for maintenance and improvements rather than one entity, two entities rather than one entity. And particularly in the case of marinas, which are not necessarily the most fiscally robust organization compared to a home which is accelerating, a series of homes which are increasing in value and have a tax base.

But to go back to the starting point: Putting this responsibility on the legal control of the land does not appear to me to capture what was originally the package of things that made us able to determine that maximum feasible public access was attained. Nothing in the record that I was able to review said the improvements for each different part of the whole project fall neatly on the land; and in fact there's a little bit of evidence that suggests that in order to provide maximum feasible access for the 40 new homes they had to provide some of the facilities on the Encinal Marina parcel. So if you have two entities not of equal fiscal robustness, allowing some of the maintenance, for example, of some of the facilities that were necessary for the housing project to be maintained by an entity where we did not know up front that the fiscal responsibility was there and separable seems to me to be a significant loss of our capability to enforce.

I have a lot of trouble with the threshold. You are perhaps letting one entity off the hook for maintenance of facilities that were part of the package that the Commission found was maximum feasible access. That's not a question; I understand that. (Laughter) It's a little bit of lobbying.

But let's take the question part of it which is: What happens if, for example, the marina goes out of business for fiscal reasons? I know enough about marinas in the Bay Area that they are struggling a bit. What happens then to the public access that they're required and what might happen in the case of the public access that the Commission found was part of the whole project, which included the 40 homes?

Mr. McCrea clarified a point: Under that unlikely scenario it would be no different than any other business around the shoreline of the Bay that goes out of the business and the commensurate associated public access improvements that are part of that project. They would cease to be maintained. In some cases around the Bay when projects are closed, usually it's restaurants and things like that, sometimes the public access is maintained and continued by some larger entity - I'm thinking of the Port of Oakland - and in other cases the area is closed, the public access is closed because the authorized project ceases to exist.

Commissioner McGrath posed a hypothetical: So if there was a clear record that said, this much of the public access is associated with the marina and the burdens of the marina then we know what is at risk. The difficulty that I have here is that division line is not so clear. Yet if we kind of assign it to the property we're declaring it to be clear without necessarily knowing that that was the intent of the original decision.

Mr. McCrea stated: Mr. Chair, I'm happy to entertain more questions. I recommend that we hear from the project sponsors.

Acting Chair Chappell concurred: I would agree. We'll come back and have plenty of Commission discussion. I would now like to invite the applicant's representative from Grand Marina Village Owners' association to describe the project in greater detail.

Ms. Manley addressed the Commission: Good afternoon. My name is Wendy Manley; I am an attorney at Wendel, Rosen, Black & Dean in Oakland. I am here with my colleague, Bruce Flushman, on behalf of the applicant, Grand Marina Village Owners' Association to urge the Commission to approve the application to split the permit, Amendment Eleven of this permit, into two permits along property boundaries of ownership and control.

I want to thank the Commission for the opportunity to be here today and I also especially want to thank the staff who has been exemplary in their professional handling of a rather challenging situation.

Here is a location map. The project as authorized by Amendment Eleven was a 40-home development in Alameda adjacent to Grand Marina.

This is a view of the area. The light yellowish-green line outlines the project that was authorized by Amendment Eleven. You can see a dashed line; it goes through the parking lot and around the edge that's the 100 foot shoreline. There was about 7,800 square feet of area within the home development that is within the 100 foot band.

At the time of permitting Encinal Marina owned all of this property. As a result Amendment Eleven, was issued as a joint permit for Encinal the owner and the developer and purchaser, Warmington Homes.

After BCDC issued Amendment Eleven in 2008 the sales transaction closed. The development was completed in 2010. And then as contemplated in the permit itself, the public access area on the development property was conveyed to Grand Marina Village Owners' Association, the HOA, for management under the conditions, covenants and restrictions that were specified in the permit.

Just to give you a quick view of the area. Amendment Eleven did require some replacement of some improvements in the public access area that had previously been established along the shoreline. For Encinal there were some signs and benches and some landscaping done. This was a preexisting public access area from prior versions of the permit. These pictures are taken along the shoreline and show the area that had been part of the public access under prior versions of the permit, prior amendments.

As a result of the project approximately 27,000 square feet of public access was added to this area, mostly in two triangle parks that are outside of the 100-foot shoreline band. These are just two views of the two triangle parks.

The application seeks to split Amendment Eleven along the lines of property ownership and control to create two permits, one for Encinal and one for the HOA. The area owned or leased by Encinal as shown in orange includes the water area of the marina boat slips, the shoreline parking lot and the Alaska Packer Building to the far left of that picture, which is the west.

The orange cross-hatching shows the public access area that is mostly along the shoreline within the 100-foot band and most all of that was part of the public access that was required in amendments issued solely to Encinal prior to Amendment Eleven.

The area under the ownership and control of the HOA is shown in blue. Again, the cross-hatching reflects the public access areas.

So creating separate permits is a straightforward matter of following readily identifiable boundaries as described in our application.

This photo provides an example of a boundary between the two areas that would be split and enables a clear, physical division of the maintenance responsibilities.

Splitting Amendment Eleven completes the final and intended step in BCDC's authorization of this home development. Encinal declined to sign the application because it now seeks to use Amendment Eleven as leverage to force the HOA to pay for maintenance on Encinal's public access property, public access that had been established by prior amendments to the permit.

The home development project was not a joint project. The issuance of Amendment Eleven as a joint permit where a permittee in the singular was uniformly replaced with permittees in the plural was not intended to make the HOA responsible for Encinal's preexisting obligations from earlier amendments such as informing marina tenants about the permit or properly disposing of dredge spoils or maintaining their public access area.

Amendment Eleven in fact expressly limited the HOA's responsibility to areas under its legal control. Amendment Eleven clearly contemplated that the homeowner's association would be formed and created to own and maintain the public access areas on the home development site under CC&Rs that were prepared in accordance with requirements of the permit. Among those requirements of the permit was a specification that the HOA's responsibility would be limited to the property and to the areas over which it has legal control.

And this is what happened. The HOA was created. The CC&Rs were reviewed by BCDC. They were recorded in 2009 and they incorporated the language that limits the HOA's authority and maintenance responsibility.

The public access property was transferred to the HOA in 2010 and '11 and the HOA has been maintaining that public access area ever since.

This specific provision respecting the HOA's responsibility effectively created an exception to whatever joint co-permittee obligations were created by uniformly changing permittees throughout the permit that incorporated all the prior amendments.

Encinal was in agreement at that time. It signed Amendment Eleven and it signed the application for Amendment Eleven, which very clearly stated that at the conclusion of the project the Marina would continue to maintain its public access area along the shoreline.

So as addressed in our correspondence to the Commission earlier this week, BCDC has the authority to grant this application and to issue separate permits, even without Encinal's signature on the application. The Executive Director has the authority to waive permit application requirements and the statute requires that permit application requirements be reasonable.

In addition, there have been numerous attempts to address Encinal's concerns and engage them in this process. We have met with the BCDC staff, we have tried to negotiate a resolution with Encinal, and they have been provided with the application and all supporting documentation and afforded ample time and opportunity to voice concerns, and so far as we know, have provided no responses until about two weeks ago. They are here today and so there has been no denial of due process.

The Commission should approve the application and issue separate permits. Separate permits would clarify Amendment Eleven and eliminate the confusion that has allowed the issue over maintenance responsibility to arise.

Consequently, approving the application would actually enhance the ability of the co-permittees to comply with their ongoing public access maintenance responsibilities. Separate permits will also ease BCDC's administration and enforcement. Separate permits will enable each permittee to seek Commission authorization in the future, unencumbered by a co-permittee that has no common interest. Separate permits are in the public interest because they will ensure the maximum feasible public access in Amendment Eleven will be protected and maintained. And finally, separate permits are fair to all involved because they do not change any of the existing obligations or any substantive measures in Amendment Eleven. Issuing separate permits would not authorize any new work, would not change any previously authorized project or alter any existing public access.

Encinal and HOA are very separate interests and they share only a property boundary. Separate permits are a logical arrangement for separate projects on separate properties owned by separate parties.

Thank you for your time and your thoughtful attention. Bruce is going to add something.

Mr. Flushman spoke: The BCDC jurisdiction over the project, the homeowners' project, was a total of 7,800 square feet. If this is truly a joint permit where the homeowners would be responsible for maintenance, for those four homes that were affected the remaining 36 homes plus the four, would be responsible jointly to pay for maintenance of 90,000 square feet, which is the total public access area. That couldn't have been the intent of the permit and is the reason for the exception in the permit which limits the homeowners' responsibility to the property that it owns or controls. I think that goes directly to your question, Commissioner McGrath.

Acting Chair Chappell continued the meeting: Could we now hear from the Encinal Marina Limited representative.

Mr. Chris Andersen addressed the Commission: I also had to make some notes. The Grand Marina is our name so I had to scratch it out. I'm going to try to stick to the Encinal to keep it from being too complicated here.

Encinal Marina has been a BCDC permittee in good standing since around 1983. The Encinal Marina has documented history of working with the BCDC as partners in a common goal to proudly maintain nearly two acres of public shoreline.

In 2009 Encinal Marina welcomed Warmington Homes, which is now the HOA, as a co-permittee for no consideration other than what it sought as a partner in the permit. Since the HOA Warmington was able to save a considerable amount of time and expense of such a new permit it was always assumed that they would share in the ongoing maintenance of the permit.

The HOA or Warmington at the time was added as a co-permittee to the 83-5 as Amendment Eleven for the sole purpose to build new executive shoreline homes. Encinal Marina was not a partner of Warmington at the time nor shared in the profits.

Because Encinal Marina's long history and experience with BCDC and its 83-5 permit, through the years 2010-2012 the Encinal Marina made numerous attempts with Warmington at the time to establish the shared responsibilities of the permit in the shoreline maintenance before the homes were even sold.

Encinal Marina continues to maintain the shoreline permit without the help of Warmington or the HOA. The landscape installation that was a condition of the permit was entirely paid for by Encinal Marina. The landscaping prior to the Warmington Homes project was in compliance with the 83-5 permit. It was efficiently maintained and drought-resistant. The new landscaping that was required by the Warmington project currently requires tremendous irrigation, constant replacement due to a poorly designed and mismatched species to the environment. The burden of the cost is Grand Marina's alone, although the installation was a requirement of the Warmington project. With the current drought conditions and plant replacement costs the average yearly maintenance costs have doubled for the Marina since the Warmington project.

That's all I have but I would like to invite Eric up here, Eric Shaw.

Mr. Eric Shaw commented: Good afternoon. My name is Eric Shaw and I represent Encinal Marina. Thank you for your time and the consideration.

The public access here was designed to serve two projects on a single large parcel of property originally owned by Encinal. There is a path, a parkway that accompanies the path, two small parks, two bathrooms and parking.

The permit as issued and understood by the Marina created two co-permittees which shared maintenance responsibility. Historically the Marina maintained its areas and it acknowledges that it has responsibility for those uniquely marina-related things such as placing riprap along the shoreline and improvements like its own shower house and bathrooms and the piers on which it sits.

But the changes required in Permit Eleven, as alluded to by Chris, increased the Marina's cost of operations with respect to running the project and the existence of the residential community.

The Marina increased the usage of the parkway. Indeed, most of the parkway is used by not the public but by the members of the homeowner's association. HOA residents have been even observed using the Marina's trash dumpsters to discard their excess garbage.

And the Marina believes it is forced to incur a disproportionate share of the maintenance costs. The exact extent of that difference is an issue in the pending litigation.

The Marina understood the permit as creating a joint maintenance obligation and read the permit as requiring some type of agreement on a common plan. If you look at part II.C.3 of the permit it says, prior to any assignment there will be an agreement on a joint deal and how to control, operate or maintain all public access areas. The Marina tried to negotiate this with Warmington. It was never done. You must read condition III.C.4 in that light. There should be a jointly-owned entity by the Marina and the HOA that controls all this so it would be under the HOA control as provided for in C.4. That has never been done. Warmington has purported to assign some but not all rights of the permit and it has not entered into any kind of maintenance agreement.

The parties disagree. We disagree with each other's interpretation and that disagreement as to what the permit means has been festering for some time. It came to a head with the request to split. Staff met with both parties, it urged them to negotiate, but staff indicated it would not get involved in the dispute. In fact, you heard Mr. Saputo (sic) earlier say, interpretation of the permit is not an issue here before you.

But a central and underlying issue here and not one addressed by the staff is the interpretation of the permit. Warmington's arguments assume their interpretation. A split is only appropriate if their interpretation is correct. If the Marina's interpretation is correct and if the Marina has rights vis-à-vis Warmington and the HOA to share in maintenance costs, the precise issue in the litigation, then splitting the permit and removing those rights would be taking away a vested right that belongs to the Marina without due process.

It is said that the due process is this hearing. No. The interpretation is not at issue, according to Mr. Saputo (sic), so this hearing is not providing due process on the fundamental issue of what the permit means.

Indeed, with regard to the question of interpretation, staff advised the Marina that interpretation was an issue for the parties to deal with and resolve themselves and that the Commission had no position on that issue. Staff advised us such issues should be dealt with in a forum other than before the Commission. And in looking at the Commission's regulations we saw no regulations concerning adversary proceedings or how to maintain adversary proceedings between co-permittees.

Reliance on the Commission remaining neutral on this issue the Marina filed a pending lawsuit, which we believe we should have a right to maintain to conclusion. Until that is finally resolved, either for or against the Marina, there will be no definitive legal interpretation of our rights under the permit. And to split the permit now is merely to erase the Marina's claim without providing them a proper adversarial forum for resolving them.

This forum is ostensibly merely to consider the logistics of the permit or the jurisdictional appropriateness of proceeding in the absence of one permittee's signature. It is not the forum for resolving debates over the interpretation of the permit. American and English law have for centuries provided rules and substantial experience in interpreting documents and we believe that issue should be left to the courts. There is a threshold issue there that needs interpreting before one can talk logically about how to resolve and split those responsibilities.

Second, throughout the entire history of the permit the staff has repeatedly advised that the Commission would not consider a unilateral permit split. In fact, the first letter requesting a permit was mistakenly assumed by staff to be a letter from the Marina and they sent us a letter chiding us for not getting the signature of Warmington on that letter. That was our first notice that a permit split had been requested. While they say it was an initial application, it was not in the application, it was in the supplemental materials provided with the application and there is no record those were provided to the Marina.

Further, it's not in the permit. If this was so important why doesn't the amendment itself say it will be split at the end of the day when the improvements are completed? That logically would have been the place to put it so that everybody was on notice.

Again, the Marina has relied upon and even been inconvenienced and placed at risk by the interpretation of the staff that you need both signatures. Our building was falling down and threatened by earthquakes when the piers were rotting.

We sought an emergency permit amendment to allow that. Warmington in an effort to stronghold us into agreeing to their split refused to sign off on that supplemental application for an emergency permit and we could not get action. The only way we could do it was because we filed a separate permit just to allow the renovation of the pier.

So Warmington all along has been trying to strong arm us and that is more of what they are doing here, attempting to forum-shop to avoid having a court resolve these issues. I don't know if we'll win or lose in court, but until the court has determined definitively what the permit means, which it will do either by denying our claims or allowing us to litigate them further, it seems premature to be discussing this permit.

Finally, as discussed by Mr. Andersen, there is a question of economic fairness here in the proposed split. Had the Marina not existed it seems likely that the burden on the development of the townhomes would have been significantly greater. If there was not already a shoreline path wouldn't the Commission have required that the southern and northern ends be connected by putting a pathway through the HOA property? If there were not already existing bathrooms would you not have required a public bathroom in two public parks? I would not want to be the maintenance department of the HOA if there were not a public bathroom across the street from this public park. Clearly that is a greater expense. And while

we talk about public access, again as noted before, we believe the facts on the ground is that the parkway and the associated areas of public access are primarily for the benefit of the HOA and it benefits their values and their property values to have this maintained.

Nor is it correct to say, as Ms. Manley alluded to, that the Marina's position is that it would not have responsibility for the public access park. If some disaster befell the parks and they were destroyed we acknowledge that we would have to help replace those if in a certain year there was more burden on the HOA. We are only asking for the right to determine in court how to responsibilities should be adequately allocated.

Further, we only lease this. Most of this property is merely leased from the City of Alameda. The marina docks can easily be moved away. If our project becomes economically inviable because we are now in lease negotiations to get a new lease with the City of Oakland, who has asked for about a 5,000 percent rent increase, we will move those docks away and there will be no one left to maintain this parkway. And I don't know that the City of Alameda is going to want to undertake that since it's mostly on their property. So it should be considered that having more responsible parties rather than fewer responsible parties might be good for the public access.

And with that I would close. Thank you for your consideration.

Acting Chair Chappell continued: Thank you. Would the HOA's representative care to make a brief comment? You have two minutes.

Mr. Flushman commented: I'll be brief. The allegation is that there was no consideration for the joint permit. The property was purchased. It was purchased with its existing attributes, one of which was the permit, the path, the bathrooms, and it was paid for as part of the purchase price. That was what was bought. So they did receive millions of dollars for their property.

The example of the emergency permit that Warmington or the HOA refused to sign is a perfect example of the problems here. Because that permit, which was needed for Encinal's property, would have increased the responsibilities, if it is truly a joint permit, of the homeowners' association. It's a perfect example of the reason that the permits need to be separate. It was entirely an Encinal matter.

The other couple of points I would make is if it is truly a joint permit where it's joint maintenance responsibility for the entire public access area, where is Encinal's contribution to the maintenance of the homeowners' public access? It's joint. And if it is a joint obligation, if all the permit obligations are joint how are the homeowners supposed to comply with the requirements for Bay fill, for dredging, for notices to the tenants of the Marina, all of which are purely Marina responsibilities, have nothing at all to do with the homeowners.

And I would just remind the Commission again politely that for 7,800 square feet of shoreline band jurisdiction affecting four homes, Encinal's position is that the homeowners, 40 homeowners, have responsibility to maintain all of the public access in this area that was created, at least two-thirds of it was created specifically for the Marina long prior to there being homes. And with that I'll sit down, thank you.

Acting Chair Chappell continued: Thank you. Would the Encinal representative have further comment?

Mr. Shaw commented: With regard to the last point, I believe I addressed that earlier. The Marina acknowledges that there are certain marina-related functions that are purely ours. Our docks are ours, our showers are ours, and the responsibility for maintaining riprap is ours. We're talking about the parkway, the path, the bathrooms; those are what we're talking about.

With regard to sharing costs, it is my understanding, and again, based on the information previously provided to us by Warmington's counsel, that we pay more every year right now than they pay to maintain these public access improvements. All we're asking is to equalize that in the lawsuit. That's the point of the lawsuit. If in a given year the homeowners' association had paid more than we paid then by our logic we would owe them money and we are not shying away from that responsibility.

Finally, with regard to the value: The point is that when these homes were built the Commission required us to redo our landscaping to match the landscaping in the parks. We had to put in lawns. We didn't have lawns previously. We had low-water, low-maintenance landscaping. We had to put in this lush landscaping which certainly materially enhances the value of the homes and that has greatly increased our expense so it is only fair therefore that we should have some share. But again, that is the issue in the court. We may lose in court; I don't know how that is going to be resolved. And that is not before you, according to your own attorney. Thank you.

Acting Chair Chappell opened discussion for Commissioners: Thank you. Before we open the public hearing there is now opportunity for comments and questions by the Commissioners.

Commissioner Scharff had questions: Thank you. I had a couple of questions just so I understand it from our staff. The first one is: Right now it's a joint and several obligation for the maintenance. That's what I heard, I understand, I just want to make sure I'm right on that.

Mr. Zeppetello replied: That's correct, that's the staff's view.

Commissioner Scharff continued: So if that's true, I agree with Commissioner McGrath; I don't understand why we would ever give that up. Why we would want to wade into what is basically a civil matter and say, this is how we're splitting it, it makes no sense to me. What do we get out of it? It seems much more appropriate for us to say, 'You're having a civil dispute. We don't care who pays for the maintenance, you guys work it out, but in the meantime we're going to do enforcement actions if no one pays for it.' I don't understand why we would basically put ourselves in a situation where we split the permit and then somebody doesn't pay for it and we have less of a deep pocket, which would basically be the Marina most likely, the homeowners are going to pay for it. And I also did actually think that the argument that we are wading into a civil suit and preempting their rights to work this out in court seemed inappropriate because I, first of all, don't understand the claims between the parties. I don't want to sit, in fact, as a judge for their lawsuit and preempt it, that doesn't seem appropriate. I find it really hard to imagine why we would want to split that permit given the financial issues. I don't know if you want to address if we have the joint and several liability why do we want to give that up.

Assistant Attorney General Tiedemann commented: I am not going to comment on what action the Commission should take but the homeowners' association has filed the application for the material amendment so staff didn't initiate this on its own. What's before the Commission is consideration of what to do with that application.

Commissioner Scharff replied: That's very helpful. So there is no staff recommendation, so to speak, to do this?

Mr. Lavine answered: There is a staff recommendation. And the recommendation, which I will present, following the public hearing and which you have in your summary, does recommend the Commission consider first this threshold question and then we do provide a recommendation in terms of how we think this impacts public access in relation to the law and policies.

Commissioner Scharff continued: I guess I would say in terms of the public access issues, it does seem to me that if we split it it's really just a matter of maintaining. If we lose that ability we lose public access, I guess. If there comes a time that you want to address why that would not be so, but that's sort of how it seems intuitively to me, that it's really about maintaining it. And if we don't maintain it or if it doesn't get maintained public access is lost. I did sort of buy into the due process argument that if we do split the permit it does seem that we have made a material decision and preempted the court's authority or changed the court of who is going to pay for what. And at the end of the day this is a civil dispute between two parties about money: That the homeowners don't want to pay for something and the Marina wants them to pay for it; and we shouldn't care who pays for it, we should just care that it's paid for. And I am very concerned about us basically playing that role of making that choice about who pays without having all of the facts of a lawsuit and understanding the equities involved and the legal of who should pay and who should not. When the Marina's counsel said, that's not before us and staff said it's not before us to wade in to make that decision I didn't understand how we wouldn't be wading into it and making that decision if we split the permit because we're saying who is responsible if we split the permit for who pays what. And so it seemed to me that we, in fact, were wading into that and making that decision. If I'm wrong about that let me know but that was sort of how I saw it.

Mr. Zeppetello clarified a point: My point earlier was that we are not interpreting the existing permit and their obligations as they have had a dispute in terms of their obligations from the time Amendment Eleven was adopted to the present time. That we are not getting into that. But going forward we have a request to modify the permit. It seemed both logical and perhaps the only legally permissible grounds would be to do it based on ownership and control. It also appears that the square footage at least of area that would be Encinal's responsibility under the amended permit would be less than what it was prior to Amendment Eleven when Warmington got involved. I don't know if that responds fully to your question.

Commissioner Scharff responded: No, I think that's helpful and I appreciate that. I think that clarified in my mind that we actually would be making a decision on the equities of the matter between the two parties in terms of who pays what. As a threshold matter I don't think we should be doing that if we don't have a good reason to and we, in fact, give up the ability of having two parties who would pay for it. And frankly, I think the homeowners are probably the

deeper pocket at the end of the day but I could be wrong. But I see no reason to wade into that either and why not just have both parties responsible and have the enforcement action against both parties and enforce it if they don't and let them figure it out. And I think through their litigation they actually probably will figure out who is responsible for what portion of paying. That struck me as the legal framework for this but I'm open to understanding if I'm misunderstanding it.

Mr. Zeppetello reiterated a previous point: But to be clear, perhaps I'm reiterating. We are simply processing the application to split the permit. We are not deciding how their obligations are; we are deciding whether to split the project. And of course we believe under the current permit it is joint and several so they are both on the hook.

Commissioner Scharff added: But if we do split the permit we have made that decision. We have made that position so we have made that choice.

Commissioner Peskin commented: Aren't we really right now considering the appeal of the Executive Director's initial denial because they were not joint applicants? Isn't that the first threshold question? Aren't we really considering the appeal of the Executive Director's decision, staff?

Mr. Lavine answered: In effect, yes. The HOA originally applied for an immaterial amendment and the Executive Director determined and communicated to the HOA that his decision would be to deny that permit for two reasons. One is because the application was lacking a signature and the second was that he believed it was a material amendment and should be heard by the Commission with the benefit of a public hearing. At that point rather than going forward and having the denial happen for the immaterial amendment the HOA withdrew and resubmitted a material amendment which had the same effect.

Commissioner Peskin stated: Let me just say I agree with the previous statements by two members of this Commission and if we were to rule I would say that the Executive Director's initial decision was the correct decision and that we should just rule on the threshold question and not move on to maximum feasible determinations. I think the Executive Director performed correctly.

Commissioner McGrath spoke: I would like to add to that.

Acting Chair Chappell interjected: Commissioner, I think at this time since the public hearing hasn't been held we shouldn't be giving opinions but we should be just asking for clarifications.

Commissioner McGrath spoke: As I understand the position of the attorneys from the HOA they're arguing, and I think it's great to have this up, that they will be responsible for maintaining the blue areas, which meets a burden test in their mind, and that the maintenance of the other area was a preexisting responsibility. I've heard from the attorneys from the Marina that indeed there were new responsibilities in terms of maintenance and landscaping costs that were added. So from the perspective that I have in trying to weigh in on the equities here I am not clear as to exactly what and of what consequence is an existing pre-established responsibility that solely went with the Marina and what was new that went with the 40

houses. If I can see that I might be willing to entertain an amendment. So that's the real question is that it's not clear to me – and I want the staff to respond not the applicant or the opponent – as to what was a preexisting responsibility that didn't change, what was a preexisting responsibility that perhaps got more expensive because of the 40 homes and then what's a separable element that's the responsibility only of the 40 houses? That to me is the information that we must have to be able to act on this.

Mr. Lavine commented: In terms of the preexisting requirements under the amendment prior to Amendment Eleven, Amendment Ten. I'll just pull that up and I can just read them off for you and then I can tell you what the differences are. In terms of public access under Amendment Ten, which is the last amendment prior to the developer joining the permit, the public access areas consisted of essentially the area in orange and a little bit of the section in blue in the shoreline park to the east. It was about 2,000 square feet more in terms of the amount of public access that was required under the existing permit. It included different landscaping but it had both bathrooms and roughly the same amount of square footage. Whenever the developer joined the permit - and the successor of the developer, of course, is the HOA, - there were additional public access requirements. The obligations included work on the pathways and changing over existing benches to new benches, new lighting, seating, trash receptacles. There were landscape improvements, the addition of barbeque areas and new signage along the shorefront park.

Mr. McCrea summarized some points: I think we can summarize by saying that the shoreline was augmented with new public access improvements, a small plaza, better entry into the area, crosswalks and crossings from the new development to the shoreline. The look and feel of the shoreline is essentially the same, just better.

Commissioner McGrath added a point: But if not for the homes those would not have been required.

Mr. McCrea agreed: Correct.

Commissioner McGrath added: So that crosses over from the blue area to the orange area.

Mr. McCrea replied: That's right.

Commissioner McGrath continued: And there is a responsibility for maintenance that goes along with the construction?

Mr. McCrea agreed: Typically, yes.

Commissioner Zwissler addressed the threshold question: I would like to get back to the threshold question. Does addressing this question today set any precedent? I am just concerned if the facts and circumstances were different in a future consideration, when do we weigh in and when don't we weigh in? I'm confused; I would like to get some guidance on that.

Ms. Tiedemann commented: As people have said, it's an unusual situation. The matter before you today isn't really the threshold question of acceptance of the application, it's whether to grant or deny this application.

Commissioner Zwissler asked: The application is to split?

Ms. Tiedemann clarified: The Commission's regulations provide that applications for material amendment or major permit should be signed by all of the applicants. The regulations also provide that the Executive Director may waive that requirement. The Executive Director has really punted that waiver to the Commission but he has done that in the form of putting before you the application that was filed by the HOA. I disagree somewhat with Commissioner Peskin's suggestion that there be some kind of threshold vote of whether to consider this application; you are considering this application.

The Commission could vote to deny it because it believes both permittees should be required to submit the application, the Commission could vote to deny it because it doesn't want to eliminate joint and several liability, it could deny it for a number of reasons. But my recommendation would be you vote to grant or deny this application and that we not have a series of procedural votes.

Commissioner Zwissler added: So there is just going to be one vote. Then I won't make a comment at this point then.

Commissioner Nelson discussed a hypothetical: I'm sympathetic to the perspective we have heard from a couple of Commissioners, that we don't want to bifurcate this permit and reduce our options for enforcing down the road in terms of maintenance for the public access. But there is another implication here that I would just like to make sure I understand. In that scenario if the permit were to be bifurcated and if the Marina were to go bankrupt, if there were activities in the marina side, what would become a separate marina permit, if we were to bifurcate the permit, then any enforcement we would take regarding that permit we would have to take against the Marina and they may or may not have gone bankrupt at that point. So let's assume for a moment that there is a problem with riprap or maintenance of the docks or something that's clearly a Marina responsibility in terms of operations today. If we were to not bifurcate the permit, if we were to leave the permit as is with two permittees, then wouldn't that mean that our only alternative for enforcement, that we would have the alternative for enforcement at that point against the HOA to make sure that they were doing whatever was required with the marina docks and so forth? I am not entirely sure I'm comfortable with that. I tend to feel that we shouldn't be in the business of settling a dispute between parties. But it does seem to me if we do not bifurcate this and if the marina should for whatever reason cease operations and we were to need to take enforcement we might be forced to take action against the HOA for a lack of maintenance on the Marina's properties. So the first question is whether I have that right, then I have another question.

Mr. Zeppetello advised: I think you have that right. I think there would be issues of either equity or control. The HOA would not have a property interest to go out and do work in the Bay. They would have the permit but not a right to go on that property and take corrective action. And then if we came to you with an enforcement action and were seeking a penalty the HOA would certainly have equitable arguments as to why it couldn't or shouldn't be obligated for liability.

Commissioner Nelson inquired further: The next questions are with regard to the dueling letters we've received from the attorneys. The first is the letter from the Weyland law firm on behalf of the Marina that asserts that splitting the permit would deprive Encinal of vested rights and would constitute "an improper taking." A question for our AG: Do you feel that there is a potential taking here issue if we were to bifurcate the permit?

Ms. Tiedemann commented: I've considered that argument and I'll just give you a preliminary opinion. They will have an uphill battle with that argument because they are ending up with less public access maintenance responsibilities after the split of the permit than they otherwise would have had so I don't know how far that argument is going to go in court.

Commissioner Nelson had another question: The other question is with regard to the letter on behalf of the HOA that says that the court is waiting "to allow BCDC to vote on June 16." I don't know whether you have reviewed any of the court documents or whether we should care what the court thinks but is that accurate that the court is waiting to see if we resolve this issue to make this case moot before the court?

Mr. Zeppetello stated: I believe they provided a copy of a status conference statement from the Court where the Court had deferred a hearing on a demurrer that the HOA has filed until after the Commission considers the matter. The only thing that would be decided at that hearing is whether Encinal has stated a claim. But there won't be any ruling or any determination from the Court on any legal issue that would go to the substance of the dispute any time soon.

Commissioner Zwissler asked for clarification: Could you restate that? I didn't understand what you just said. In other words, they're claiming that the Court is waiting for us to act. But if we act then that settles the lawsuit; isn't that correct?

Mr. Zeppetello replied: No. As I understand it and maybe they can clarify, it's just putting off a hearing on a demurrer, which is a failure to state a claim. The HOA is responding to the complaint; their response is that Encinal hasn't stated a claim. So the Court is going to decide that issue but it's a very threshold issue and doesn't go to the merits.

Commissioner Gioia made a point: I take it that this Commission has never either through action of the Executive Director or the Commission waived the requirement of all parties to a permit signing on to a permit amendment?

Mr. Goldbeck agreed: As far as we know.

Commissioner Gioia continued: So as far as we know. Is there any guidance in the statute or regulations about standards that would be applied in considering whether to grant a waiver?

Ms. Tiedemann replied: There is not.

Commissioner Gioia continued: So it's just plain language that says, Executive Director has the authority to waive but there is no guidance to the Executive Director in exercising that discretion.

Mr. Goldbeck agreed: Correct.

Commissioner Gioia reiterated: And we are unaware that this has occurred before?

Mr. Goldbeck answered: Correct.

Commissioner Gilmore commented regarding the demurrer issue: I want to get back to that demurrer issue because talking among my colleagues here there still seems to be a little bit of confusion. So the way I understand it is that the Court has postponed the ruling on the demurrer, in the sense waiting to see what BCDC does. If BCDC acts to split the permit, that is essentially a decision on the merits because we will have decided the very issue that they are in court arguing about.

Ms. Tiedemann stated: We should probably let the attorneys for the parties talk about this but my understanding of the litigation is it concerns past expenses, so I don't think the Commission's vote today would render the lawsuit moot in any event.

Acting Chair Chappell opened the public hearing: I would like to open the public hearing now. Do we have any speakers from the public? Seeing none we can close the public hearing.

MOTION: Commissioner Wagenknecht moved to close the public hearing, seconded by Commissioner Bates.

VOTE: The motion carried with a vote of 16-0-0 with Commissioners Addiego, Bates, Gilmore, Scharff, Gioia, Peskin, Pemberton, McGrath, Nelson, McElhinney, Sears, Vasquez, Hillmer, Wagenknecht, Zwissler and Acting Chair Chappell voting, "YES", no "NO", votes and no abstentions.

Commissioner Vasquez commented: Why wasn't a separate permit issued if this was going to be an issue anyway, for the development itself?

Mr. Lavine answered: At the time that Amendment No. Eleven was applied for Encinal Marina Limited was the landowner. It is our practice to have both the landowner and any other permittees as joint permittees.

Commissioner Vasquez asked: So the new buyer assumed those responsibilities under that agreement then?

Mr. Lavine replied: They are jointly shared by both parties.

Commissioner Vasquez continued: Much like a Mello-Roos. The developer creates a Mello-Roos district and the homeowners are responsible for those agreements individually.

Mr. Lavine replied: I am not sure I know how to answer that. I don't know if Marc wants to. Essentially both permittees are equally responsible for all the requirements of the permit and they enjoy the authorizations equally as well.

Commissioner Vasquez inquired: So now they have a difference in who is responsible for what.

Ms. Lavine stated: In our eyes they are both responsible for them now. How they achieve that is a matter that is up to them. In our eyes they are jointly and severally liable to meet those obligations.

Commissioner Vasquez asked: Why would we change that at all?

Mr. Lavine replied: That's the question before you.

Commissioner McGrath moved negative approval: I am going to move approval of acting on this and urge a "NO" vote.

Commissioner Gioia asked for clarification: You're saying that that's a motion to uphold the "NO" position by the Executive Director?

Commissioner McGrath clarified: I think we've passed over this; staff has said we've gone beyond that. What I would like the Commission to do is deny the application for amendment.

Commissioner Scharff asked: So would you move that, deny approval of the amendment? Just move denial of the approval.

Mr. Goldbeck added: Before we go to that, Commissioner McGrath, could we have the recommendation? But if there are other questions or comments before that this would be a good time.

Commissioner McGrath finished his commentary: To finish the comment, the thing that troubles me, I am sympathetic to the arguments made very ably by counsel for HOA that they are perhaps being held hostage, but there is no neat line at the property boundary for the access improvements that were put in, in part, for the homeowners, which are on the other property. Until I see some agreement that would assure that those get maintained I don't think we can separate the project. That's the connection.

Acting Chair Chappell asked for the staff recommendation: Could we have your staff recommendation, please.

Mr. Lavine presented the staff recommendation: On June 10th you were mailed a copy of the staff recommendation, which recommends the Commission approve the proposed amendment to split the permit. Staff recommends that the Commission approve the application for a material amendment to Permit No. 1983.005, which will divide the permit in accordance with the staff's division recommendation. The staff believes the project is consistent with your law and Bay Plan policies regarding public access. And with that we recommend that you adopt the recommendation.

Commissioner Gioia added: I have a question.

Acting Chair Chappell interjected: Can we have a motion and a second on the staff recommendation?

MOTION: Commissioner Scharff moved denial of the staff recommendation, seconded by Commissioner Gioia.

Ms. Tiedemann stated: You are not denying the permit; the motion is to deny the material amendment.

Commissioner Gioia reiterated: Deny the material amendment, correct. I have a question. I just heard a staff recommendation to support the split of the permit but I thought that the Executive Director denied that.

Mr. Goldbeck clarified: The Executive Director denied the non-material amendment request previously.

Commissioner Gioia: I see, the non-material request. Then it was resubmitted as a material, which goes to the full Commission.

Mr. Goldbeck replied: Correct.

Commissioner Peskin added: Which did not need to go to the full Commission had staff determined that it was not signed by both the parties but that got punted to us.

Commissioner McGrath had a point of order: Point of order. Do we have a recommendation to deny or a recommendation to approve where a "NO" vote would be to deny?

Mr. Goldbeck requested Commissioner Scharff clarify his motion: Can the maker please clarify.

Commissioner Scharff replied: The motion is to deny the material amendment, which means if you vote "YES" it's denied.

Commissioner Nelson commented: Can we just make sure we are all clear on the motion. The motion is to deny the staff recommendation.

VOTE: The motion carried with a roll call vote of 15-0-1 with Commissioners Addiego, Bates, Gilmore, Scharff, Gioia, Peskin, McGrath, Nelson, McElhinney, Sears, Vasquez, Hillmer, Wagenknecht, Zwissler and Acting Chair Chappell voting "YES", no "NO", votes and Commissioner Pemberton abstaining.

Acting Chair Chappell announced: The motion has passed. (There was a pause in the proceedings to allow Chair Wasserman time to reenter the room)

10. Public Hearing on Potential Port of San Francisco Legislation. Chair Wasserman continued the meeting: Item 10 consideration of Port of San Francisco sponsored legislation regarding Pier 48 in San Francisco. Steve Goldbeck will introduce the topic.

Chief Deputy Director Goldbeck presented the following: You have a staff report dated June 3rd before you on Assembly Bill 2797 with the title of *City and County of San Francisco Mission Bay South Project Redevelopment Plan*. This bill is being carried by Assembly Member David Chiu.

The bill is sponsored by the Port of San Francisco and presently is regarding the public tidelands delegation and use of non-trust revenues by the proposed Mission Rock development at Pier 48 and the adjacent Seawall Lot 337.

However, the Port has approached BCDC staff suggesting that the bill could be used to address two inconsistencies regarding Pier 48 in BCDC plans. First, a designation for neo-bulk in the Seaport Plan; and secondly, how the pier is treated in the San Francisco Waterfront Special Area Plan. The Port has been clear that it will only address this in the legislation if BCDC does not oppose it. Brad Benson is here from the Port of San Francisco to walk you through the bill and provide the context. After Brad's presentation you will hold a public hearing.

Mr. Benson was recognized: I am here representing Interim Port Director Elaine Forbes. AB 2797 is a bill that amends prior legislation that the Port sought in 2007 and negotiated with the help of the State Lands Commission related to the Port's seawall lots.

That earlier bill made a finding that those seawall lots were not needed for trust purposes, were cut off from the water and that the Port would be enabled to lease those seawall lots on the other side of the Embarcadero for non-trust purposes for 75 years to generate revenues mainly for historic rehabilitation of the Port's historic assets. Also for parks called for in BCDC's plans.

There was extensive public outreach about that bill. It was negotiated with State Lands and went through a public process before the Port knew about the details of development on those seawall lots.

Since that time the Port went through a competitive process, selected a development partner, an affiliate of the San Francisco Giants, who have continued public planning for development on that site and now there is proposed a mixed-use development on Seawall Lot 337 that would include approximately 1,500 residential units, 40 percent of which would be affordable to low- or middle-income residents, 1.3 million square feet of office, about 250,000 square feet of retail and 8 acres of open space and importantly, rehabilitation of Pier 48.

The current proposal is to redevelop that pier with Anchor Brewing as the tenant along with retail, restaurants, tours, public access and maritime berthing around the pier.

So that's the background for the bill.

The project itself is going through environmental review right now. We expect a Draft Environmental Impact Report to come out this fall, a copy of which will be subject to review by BCDC and State Lands. There has been a public vote on the project just this last year approving height increases for the project that was well-received by San Francisco voters.

After that vote we turned to the enabling state legislation and realized there were some things that needed to be changed about the 2007 legislation and I'll be brief about it.

We have been working with State Lands since approximately December or early January to come up with amendments to AB 2797.

What we have learned since 2007 is that we needed some of the land value from Seawall Lot 337 to fund the parks, the streets, the utility infrastructure for the site so that it could be developed. The amendments that have been adopted by the Assembly were permit loans of that land value to fund the infrastructure, subject to repayment by public financing sources, basically property tax increment.

The 75 year leases that I mentioned could extend beyond a date that was in the prior legislation, 2094 and we found a little parcel that used to be part of the Mission Bay South Redevelopment Area that was going to be a landscaping parcel that needs to be added to the site.

So that is what is in the bill today. It has been well-received in the process so far.

We have gotten unanimous votes up until yesterday where we got a single "NO" vote in Senate Government and Finance.

As to the proposed amendments:

Pier 48 is a unique animal. In 2000 the BCDC Commission adopted amendments to its Special Area Plan in recognition of the historic piers and eliminated the Replacement Fill Policy in the area between Pier 35 and China Basin. The Commission also authorized the full range of public trust uses in the historic piers. Pier 48 at the time was not known to be part of the historic district and it is just south of China Basin so that is one issue that we would like to address because right now to take on that pier, half of the pier would have to be removed or converted into a park.

The Seaport Plan, jointly published by MTC and BCDC, currently lists Pier 48 as an inactive bulk terminal/neobulk terminal. It hasn't operated as a freight facility for more than 30 years. There is no freight rail access to the facility.

In lieu of going through approximately a year-long public planning process the Port's proposal is to use the state legislation to address these two narrow issues to allow us to rehabilitate Pier 48.

We would propose that Pier 48 be treated under BCDC permitting rules like all of the other historic piers in the northeast waterfront. Nothing about that amendment would change the Commission's major permitting authority over a project at the site. And that the Seaport Plan be amended to remove that "inactive neo-bulk status."

Chair Wasserman announced: I am going to open the public hearing. We have one speaker, Corinne Woods.

Ms. Woods addressed the Commission: Good afternoon. My name is Corinne Woods. I have been involved with the Port's Central Waterfront Advisory Group for more than ten years and I chair the Mission Bay Citizens Advisory Committee, which is contiguous with this project.

I am here to urge you to support this legislation and to support the Port's requested amendment to bring Pier 48 into the Northern Waterfront rules for the historic piers. It is part of the Embarcadero Historic District. There is a really interesting plan to rehabilitate it and it makes sense to be logical and bring it in.

I am kind of here with a further wish and that is, this legislation gives the Port and the developer a significant advantage in terms of financing and time and I want to be sure that the public benefits are the priority in this legislation.

It will open up this whole part of the waterfront for more public access, improve public access; the beginning of the Blue Greenway, which we have been working on for a long time.

I want to see that China Basin Park, that five acre park at the northern end, be built in the first phase of development. I think that public benefit is important for the whole project and for the neighborhood and that BCDC could, in fact, maybe ask for an amendment to the legislation that prioritizes the China Basin Park and encourages the public benefits to be the first thing on the agenda.

Chair Wasserman recognized Commissioner Peskin: Commissioner Peskin.

Commissioner Peskin replied: I would like to close the public comment.

MOTION: Commissioner Peskin moved to close the public hearing, seconded by Commissioner Gilmore.

VOTE: The motion carried with a vote of 14-0-0 with Commissioners Addiego, Bates, Gilmore, Peskin, Pemberton, McGrath, Nelson, Sears, Vasquez, Hillmer, Brush, Zwissler, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Commissioner Peskin commented: I just wanted to thank Vice Chair Halsted and Executive Director Goldzband for their work with the Acting Director of the Port which produced her letter of May 24 and I support the staff's recommendation on behalf of the City and County as the motion.

Chair Wasserman interjected: We at least need very briefly to get the staff recommendation on the record.

Mr. Goldbeck presented the staff recommendation: The staff recommends that the Commission remain neutral on Assembly Bill 2797. BCDC could handle this through its existing process but you have heard that there aren't substantive issues. This would move the bill forward and it preserves your authority to consider any project that is proposed coming down the line and maybe address some of the other issues that are raised today.

Commissioner Nelson had a question: A simple question for Brad. You stated that one of the benefits of this project is it allows you to finance improvements. I was hoping you could talk about the actual connection in terms of phasing. What is the linkage between the development of this parcel and the improvements to Pier 48?

Mr. Benson replied: We don't know exactly which phase Pier 48 will come in. It's an expensive facility. The seawall needs to be repaired in that area; there are extensive seismic improvements to the pier so we're still examining the financing of the pier. I'm pretty sure the Giants and Anchor Brewing would like it to be in Phase 1 and if they can figure out a way to make that happen it will be in Phase 1.

Just to Corinne's request about the park: China Basin Park is that five-acre park. We have talked to the Giants to see whether or not they could deliver that park in Phase 1. So if the Commission wants that added to the legislation that's something.

Chair Wasserman stated: We have a motion on the floor.

Commissioner Bates asked: Did they accept that amendment? You're making that an amendment?

Chair Wasserman stated: I would ask at this moment not to accept the amendment. There's going to be a whole lot of process here. The sense is we are going to have some time to weigh in. I think at this moment we ought to move forward.

MOTION: Commissioner Zwissler moved approval of the staff recommendation, seconded by Commissioner Peskin.

VOTE: The motion carried with a roll call vote of 14-0-0 with Commissioners Addiego, Bates, Gilmore, Peskin, Pemberton, McGrath, Nelson, Sears, Vasquez, Hillmer, Brush, Zwissler, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

MOTION: Upon motion by Commissioner Sears, seconded by Commissioner Vasquez, the Commission meeting was adjourned at 4:22 p.m. and continued as a Committee.

11. Briefing on Highway 37 and Rising Sea Level. Item was postponed.

12. **Briefing on Policies for a Rising Bay Project.** Chair Wasserman announced: Item 12 is a staff briefing on the Policies for a Rising Bay project. Isaac Pearlman will provide the briefing.

Planner Pearlman addressed the Commission: The Policies for a Rising Bay project is funded through NOAA's Section 309 Project of Special Merit Grant program and has the following objectives:

To collaboratively evaluate the Commission's policies to determine what changes are needed, if any, to support sea level rise resilience and adaptation.

To assess how the Commission can allow fill for resilience and adaptation projects.

And to evaluate existing laws and policies that can be used to ensure disadvantaged communities are protected.

Just to give a little context: If some of the language seems familiar that's not a coincidence. BCDC has several sea level rise initiatives, including the Adapting to Rising Tides Program, the Commission's sea level rise workshops, the Bay Fill Working Group, amongst others.

Ideally, these initiatives are all informing and building upon each other as part of BCDC's larger climate change program.

To dive into the project's specifics:

The Policies for a Rising Bay Project developed a four-step process to achieve its objectives:

First was to form the Steering Committee, which is composed of external stakeholders.

The second was to work with both the Steering Committee members and BCDC regulatory staff to assess BCDC's policies and identify which are key for sea level rise resilience and adaptation projects.

Third was to test these policies against hypothetical case studies in order to evaluate where certain gaps, limitations and uncertainties may lie.

Last, the stage that we are currently in is developing the final report.

The Steering Committee members include representatives from over 30 institutions, which represent government, nonprofit and the private sectors and they represent perspectives from BCDC's four frames of sustainability, which include governance, social equity, environment and the economy.

In the Policy Analysis step BCDC staff worked with Steering Committee members and regulatory staff in order to assess their perspectives on key policies relating to resilience and adaptation including: fill policies; public access, mitigation, recreation; as well as policies relating to environmental justice and social equity. In the end, perceived challenges and limitations were also assessed from both sides of the table.

Then four hypothetical case studies were developed in order to test these policies and also evaluate what sort of resilience and adaptation actions can potentially be permitted using our current policies.

The Shoreline Community Case Study evaluated proposal to implement a horizontal levee, a tidal gate and marsh sediment augmentation in order to protect a community.

The Transportation Case Study evaluated a seawall along with mudflat recharge and barrier beach creation in order to protect a coastal highway.

The airport scenario evaluated an instance of incomplete adjacent property's shoreline protection making an airport more vulnerable to sea level rise.

And last, the Landfill Case Study looked at installing a new shoreline revetment and a cutoff slurry wall in order to protect a closed landfill.

The final report stage that we are in is basically summarizing information from all of those steps into a Policy Analysis and Findings Section which has identified four central policy issues, identified how BCDC's current laws and policies address those issues, and summarizes Steering Committee findings and policy options.

The four overarching policy issues include: (1) Fill for wetland restoration protection and adaption; (2) fill for innovative green shoreline protection; (3) policies on environmental justice and social equity and (4) adaptive management policies.

For the first policy issue, the main question identified is wetland protection, restoration, and adaptation may require large amounts of fill, and how can BCDC reconcile that with policies that require minimizing fill?

Possible actions that were garnered throughout this process from Steering Committee members and staff include:

Organizing and working with technical experts and partners to develop guidance or best practices for what minimum fill for wetland resilience adaptation looks like.

Ask permit applicants to clearly identify benefits and impacts of using fill for wetland adaptation.

Potentially exploring the possibility of developing a region-wide permit for sea level rise habitat resilience and adaptation.

As well as exploring specific language to amend the Bay Plan or legislation.

The second policy issue is the fact that BCDC's limited jurisdiction in the shoreline band as well as their current permitting requirements can sometimes hinder innovative, green shoreline protection projects.

Some of the possible actions that came out of this process to address that issue include:

Organizing and working with partners to develop a guidance or best practice relating to green, innovative shoreline protection.

It includes giving assistance to project applicants via a technical "help desk."

Developing a region-wide permit for innovative green shoreline adaptation strategies.

Exploring the additional jurisdiction that BCDC has in special area plans and priority use areas in order to encourage innovative green shoreline adaptation projects.

Amending the Bay Plan.

One of the significant issues arising from this project is BCDC's current policies severely limit it in terms of addressing environmental justice concerns in regard to sea level rise.

Some of the possible actions that the Steering Committee and staff identified are to:

Continue highlighting disadvantaged community vulnerabilities through the Adapting to Rising Tides program.

Actively engaging environmental justice communities in BCDC's planning and permitting process.

Explore amending the Bay Plan to include explicit policies on social equity and environmental justice.

Lastly, adaptive management policy issues include – we heard time and time again from members that clear guidance is needed on what constitutes an adaptive management plan and/or risk assessment. So again a possible action is to:

Work with technical experts and partners to develop criteria and guidance for adaptive management plans and risk assessments.

To start to require projects to include key thresholds and triggers. For example, if public access is closed due to flooding for X number of days that would trigger potential adaptive management actions.

Also specifically to increase coordination and collaboration with the Regional Water Quality Control Board to ensure contaminated lands are adaptively managed to protect the environment and human health.

Just to close out with our project timeline. We met at the end of May with the Steering Committee to present these draft findings and possible policy responses and collect their feedback. We are currently integrating feedback from that meeting and from our draft report, both from BCDC staff and the Steering Committee into the final report. June 30 is our deadline to submit that report, which is why I am here briefing you today. After the report is done we will continue to work with partners to refine policy options.

With that said the only last thing I would mention is that BCDC staff, Miriam Torres who is not here, has done a lot of heavy lifting on this project. She is now doing a different kind of lifting as she is on maternity leave. To conclude, go Golden State Warriors and I am happy to answer any questions from the Commission.

Commissioner Nelson commented: Just a couple of quick comments. First, I want to thank Isaac and especially Miriam and the rest of the staff for their work on this project, which has really been interesting. I just want to point out that this project predates a lot of the other things that the Commission is currently doing on sea level rise.

And you will note at the end of this, Isaac, at the end of three of your four slides on three of those four issues it ended with 'consider amending the Bay Plan.' So we will be, both at the Bay Fill Working Group and then at subsequent likely future Commission workshops, picking those recommendations up and I just want to thank the staff. This process has been really helpful to engage stakeholders and start fleshing these issues out and I think really inform some of the workshops that the Commission has held as a whole and I look forward to continuing to move forward with many of the issues and recommendations that the staff has come up with here.

Chair Wasserman added: I concur in that and recognize that this did start before many of our activities, the Rising Sea Level Working Group and so forth. They are obviously much related, working in parallel. And hopefully with the conclusion of this phase of the work we report to NOAA we can, in fact, integrate them more and bring those in as part of fully part of the work plan so it is not sitting out there on its own. I think it is very good and I think we need to make sure the final report is distributed to the Commission and probably a very brief report on it, particularly if we get any response from NOAA.

13. Committee Adjournment. Upon motion by Commissioner Gilmore, seconded by Commissioner Nelson, the Committee meeting was adjourned at 4:35 p.m.