

# San Francisco Bay Conservation and Development Commission

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March 30, 2017

**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 March 16, 2017 Commission Meeting**

**1. Call to Order.** The meeting was called to order by Chair Wasserman at the Bay Area Metro Center, 375 Beale Street, Yerba Buena Room, First Floor, San Francisco, California at 1:05 p.m.

**2. Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Butt (represented by Alternate Russo Cutter), Chan (Represented by Alternate Gilmore), Cortese (represented by Alternate Scharff), DeLaRosa, Gibbs (represented by Alternate Arce - arrived at 1:08 p.m.), Gorin, McGrath, Nelson, Sears, Showalter, Spring (represented by Alternate Vasquez), Techel, Wagenknecht and Zwissler.

Chair Wasserman announced that a quorum was present.

**Not present were Commissioners:** Department of Finance (Finn), Contra Costa County (Gioia), Governor (Randolph), U.S. Army Corps of Engineers (Hicks), City and County of San Francisco (Kim), State Lands Commission (Lucchesi), San Mateo County (Pine), Department of Business Transportation & Housing (Sartipi), U.S. Environmental Protection Agency (Ziegler).

**3. Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda. Chair Wasserman asked John Coleman of the Bay Planning Coalition to report on his trip with Executive Director Goldzband to Washington, D.C.

Mr. Coleman reported the following: We had some great meetings in Washington, D.C. that included Larry Goldzband, Marc Zeppetello and Richard Sinkoff. The purposes of our meetings were varied. One of them was to make sure that under the WIIN Act where we worked with BCDC, the Bay Planning Coalition, Save the Bay, the Coastal Conservancy and the Bay Institute that there be 10 test pilots for beneficial reuse directing the Corps of Engineers to do beneficial reuse in the country. This process will take several years. We want to make sure that the San Francisco area is designated as one of the 10 spots.

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**BCDC MINUTES**  
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Our meetings were to push that effort with members of Congress and the Senate and to make sure that when the budget comes around that funding be allocated for the Corps of Engineers so that there is no net loss of funding so they can continue their O&M operations on dredging and we can have a successful pilot project in the Bay that would enable us to put that dredged material that is clean for shoreline beneficial reuse for wetlands as well as shoreline resiliency.

Some of the meetings that we held were included with Congressman Garamendi. We also met with Congressman DeSaulnier and Mark Copeland. We met with Alexis Segal from Senator Feinstein's office. We talked with Joaquin Esquivel who was working with Secretary of Resources John Laird at the time that we met him. Mr. Esquivel has since been appointed by Governor Brown to the State Water Resources Control Board. He is currently in transition. We also met with John Pawlow who is the Senior Counsel for the Republicans on House Transportation and Infrastructure and then met after that with Ryan Seiger who is the Senior Counsel for the Democrats on House, Transportation and Infrastructure. The staffs on both sides of aisle were very supportive of our efforts. They want to make sure that this does happen and they are going to do what they can to move this in that direction.

The next day we met with Bret Manley from Congressman Denham's office, Logan Feree from Congressman Huffman's office and then Joe Sheehy with Congressman Grace Napolitano's office. She is the senior Democrat on House T&I. If she does not like something that the Democrats are pushing; it is not going anywhere. It is very important to get her on our side as far as these efforts are concerned.

We met with Zac Commins from Congressman Swalwell's office. We also went to Congressman Graves' office. He is from Louisiana and is the Chair of Power and Water and T&I. He worked for the Corps at one time and has a very strong opinion of the Corps. Ian Bennitt who works for Congressman Graves is going to be very beneficial to us. He understands what we are doing and they are supportive of what we are doing and the Chair of that committee will be supportive of our efforts.

We also met with Drew Spence from Senator Harris' office and then I met with Liz Lee from Congresswoman Lee's office. Our, "ask for" was, will you support us in a letter to the Corps of Engineers asking for a designated test site in the Bay Area for one of the 10? Last Thursday we received a letter from 10 members of Congress and one from the Senate, Senator Feinstein followed by another letter from Leader Pelosi advocating just that. We were very successful in that endeavor and we are trying to make them understand that it needs to be fully funded. We are really happy with this and there is going to be more follow-up effort.

Two days ago BPC signed on to AB 388 by Assembly Member Mullin. It is being sponsored by the California Coast Keeper. When we can work together we should work together. This effort is to provide funding from the Greenhouse Gas Fund for using beneficial dredged material or other materials for beneficial reuse for wetlands as well.

We have our own effort going on and it is going to be part of the budget bill that is going to Senator Glazer's office. It will provide money to do an economical and environmental study to why the state should be making investments for dredging and beneficial reuse since we are one of the few coastal states where no state funds are put in that category. We believe we can do it for under \$150,000.00.

We have an extra briefing coming out on March 30<sup>th</sup> and will talk about cleanup and environmental risk around the Bay wetlands and properties. With the budget that is going on right now, and with this Administration; who knows what is going to happen. We are seeing everything being slashed, cut, burned and trashed and it will have a huge impact.

On May 11<sup>th</sup> we have our Spring Summit and it is entitled, Unchartered Waters – Finding Opportunities in Uncertainty. We are looking at having the regulator and business community talking together about how we can get through these issues to find common ground because the business community likes certainty as do many others from the standpoint of making investments.

Chair Wasserman moved to Approval of the Minutes.

**4. Approval of Minutes of the March 2, 2017 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of March 2, 2017.

**MOTION:** Commissioner Zwissler moved approval of the Minutes, seconded by Commissioner Nelson.

**VOTE:** The motion carried with a vote of 16-0-1 with Commissioners Addiego, Russo Cutter, Gilmore, Scharff, DeLaRosa, Arce, McGrath, Nelson, Sears, Showalter, Vasquez, Techel, Wagenknecht, Zwissler, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and Commissioner Gorin abstaining.

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

a. **New Business.** Does anyone wish to flag new business that they would like us to take up at a future meeting? (No comments were voiced)

Chair Wasserman continued the meeting.

b. **Next BCDC Meeting.** At our April 6th meeting, which we expect to be in the Boardroom across the way, the following matters may be on the agenda:

- (1) We expect to have a public hearing and vote on the Enforcement Committee's recommendation regarding the Scott's enforcement matter.
- (2) A closed session on pending litigation against the Corps of Engineers.
- (3) A discussion and possible votes on pending legislation.
- (4) An update on our strategic planning process.
- (5) A possible briefing by the Port of San Francisco on its waterfront planning.
- (6) A staff briefing on the Policies for a Rising Bay project. And we may have a discussion on ex-parte communications.

We know we are in way more challenging times than a lot of us would like. One of things that become important in these times is that we reach out to other groups that we might not normally join hands with. When we shift to the environmental area or the regional area; we do not always reach out enough to people who we may have opposed in the past. It is going to be very important as we struggle locally, regionally, statewide and nationally to keep funding sources together to figure out how to keep a whole range of programs and policies in place that are critically important to our country.

c. **Ex-Parte Communications.** This brings us to the technical piece of whether anybody wishes to make an ex-parte communication since we have no adjudicatory matters today. (No comments were voiced)

That brings us to Larry's Report.

**6. Report of the Executive Director.** Executive Director Goldzband reported: I am very cognizant of the fact that Lindy and Eliza, who will be running our workshop, are staring at me intently as I say these words.

So, I shall try to complete this report as quickly as possible despite the fact that we have a lot to cover. If I go too fast, please remember what the unluckiest race car driver in the history of the 20<sup>th</sup> century, Mario Andretti, used to say: "If everything seems under control, you're not going fast enough."

We should have our second quarter budget report for you at our next meeting – our friends at the Department of General Services are working on it now. One thing that I do want to let you know is that our senior staff reviewed the results of the audit performed by the Department of Finance on the Coastal Commission last year and we appear to be in solid alignment with most of Finance's recommendations already. We have a couple things to work on and we'll get them done by the end of next quarter.

I want to introduce Elena Perez to you today. (Stood and was recognized) You'll remember that Brad asked you to approve her hiring earlier this month. Elena started with us on Monday. More important, she returned to us on Tuesday. She's working in our Regulatory unit and we are thrilled to have her. (Applause)

Acting Executive Director McCrea, while Steve and I were in D.C. and Chair Wasserman approved two emergency permits earlier this month. On February 10, 2017 the Commission received notification that the U.S. Army Corps of Engineers of had issued two emergency permits to authorize emergency repairs of the levees around: (1) the Kirby Ranch Managed Wetland; and (2) Grizzly Island Wildlife Area, both located in the Suisun Marsh in Solano County. The work was completed in January but we had not been notified while the emergency was underway. Brenda Goeden of your staff got in touch with the owner and the Department of Fish and Wildlife began the process of permitting the activities.

The Kirby Ranch managed wetland requested an emergency permit to authorize the placement of approximately 200 cubic yards of sediment that was dredged from the center of adjacent Montezuma Tidal Slough to ensure that the island would no longer be overtopping. And it required approximately 200 linear feet of repairs to stop the flooding at the site. Consistent with BCDC's emergency marsh development permit practices, Mr. Beebe, the owner, is now working with the Commission staff to complete and submit a marsh development permit application for the work.

The Grizzly Island Wildlife Area, also a managed wetland, requested an emergency permit to authorize the placement of 4,900 cubic yards of sediment that was dredged from the center of adjacent Montezuma Tidal Slough and was placed on top of its levee to repair five separate areas totaling about 2,000 feet in length that had eroded.

You have likely heard that the Trump Administration released its "Skinny Budget." It is a top line list of how it would like to see the federal government funded for federal fiscal year 2018 which starts on October 1<sup>st</sup> of this year. In general, the Administration is attempting to radically downsize domestic operations to pay for a sizable increase in Defense and Homeland Security spending. While it is unlikely that the cuts of the magnitude that they are proposing will become law; it seems prudent to know what is being proposed. The budget proposed this morning fully eliminates NOAA's grants and programs for coastal management.

This includes both Corps operating funds that are used for regulatory and enforcement work that aligns federal and state priorities; and the more planning-related Section 309 grants, some of which are competitively bid and BCDC does receive both types.

If the Skinny Budget were to become law BCDC would lose somewhere around \$300,000.00 of federal funds. The Coastal Commission would lose far more and the Coastal Conservancy much less.

That being said, I do not expect the president's entire wish list will become law. Specifically regarding the coastal management program, while I am sure that the California Senators and a sizable majority of our House Members would oppose NOAA cuts; it is important to remember that the Gulf and Mid-Atlantic states that have Republican governors are grateful recipients of NOAA state grants and they appreciate the need for an active coastal zone management program given their severe storms and the like that occur frequently in their states. In other words, California, Oregon and Washington do not amount to a hill of beans on this issue. It is going to be the Mid-Atlantic and Gulf states that will do the heavy lifting.

That being said, we and the Coastal Commission and the Coastal Conservancy started last month to educate our California members of Congress about the importance of the state grants vis-à-vis, this expected budget. There will be a direct communication from our three Chairs, Chair Bochco from the Commission, Chair Bosco from the Conservancy and Chair Wasserman from BCDC to each member of the delegation in a letter that will be sent tomorrow. And Steve and his counter parts were in Sacramento on Tuesday arranging for the Assembly and Senate to pass resolutions decrying the cuts.

In addition, the Coastal state's organization will soon release a letter in support of these programs that will be signed by local, state and national organizations. As soon as these documents become public we will distribute them to you.

I want you to know that on Monday, March 27, your Chief Counsel and a few of us will actively participate in a federal court-required mediation discussion with the Corps of Engineers to determine whether we can settle our lawsuit against the Corps amicably and quickly. Marc is working with our Deputy Attorney General, Tara Mueller, and we are hoping for the best but, I must admit, I fear the worst. Please be assured that we shall do everything in our power to close a deal. We are concerned that the Corps may not be receptive to any kind of compromise. We are scheduling a closed session for our next meeting to discuss whether we have made any progress.

On the same front, but in a new battle, the Corps' District Office announced two weeks ago that it would not dredge the Richmond Outer Harbor Channel that leads to the Chevron Refinery because, to comply with the Water Board's order that protects endangered species, it can use a "hopper dredge" in only one channel. This would cause Chevron to run an extra 70 or so ships to its refinery if it wants to keep its production constant because they are going to have to reduce their load in order to ensure that there are no navigational accidents. In response, I have asked the Corps to be flexible and decide later this year whether to dredge the Pinole Channel because, so far, there is very little sediment buildup at Pinole. If that remains the case, the Corps could instead dredge the Outer Harbor which would allow both channels to operate without interruption. That would require the Corps to prepare two separate contracts concurrently. The response I received to that suggestion was lukewarm but I remain full of hope.

When Marc Zeppetello and I walked the halls of Congress with John Coleman and Richard Sinkoff we told many of Members of Congress and their staffs about this issue. Their response was almost universal that this decision not to dredge the Richmond Outer Harbor Channel was essentially payback for BCDC's lawsuit and they were exasperated when we demonstrated that it was a decision made by Corps' staff in Washington, D.C. and certainly not a decision made by the San Francisco District.

As a matter of fact the Corps' staff in D.C. redirected funding for the Channel away from the Corps District Office.

Clipped together are two letters that we, the State Coastal Conservancy, the Bay Planning Coalition, Save the Bay and the Bay Institute persuaded our congressional delegation to send. The most important thing is that it demonstrates that people whom some might not expect to work together, can work together.

The final document in your packet is testimony provided to the House of Representatives Subcommittee on Water Resources by the Bay Planning Coalition regarding the need for increased beneficial reuse. While John, Richard, Marc, and I were meeting with the Subcommittee's staff talking about the Corps' reluctance to engage with us to end the lawsuit, increase beneficial reuse, and its decision not to dredge the Richmond Outer Harbor; the staff suggested that we offer testimony at its hearing a week later. John Coleman took the lead and I encourage you all to read it because it is short and it is powerful.

Finally, this is a description of how the California Ocean Protection Council, which is part of the Natural Resources Agency, is updating its rising sea level guidance. We expect in late April to receive a new set of projections. We have scheduled a briefing on those projections for the first meeting of May. This document may be your first opportunity to learn about the process that is now under way that will lead to that late April announcement.

Finally, two quick announcements. We have provisionally scheduled a new commissioner and Alternate orientation session for April 20<sup>th</sup>. You don't have to be a newbie to attend. Treat it as a refresher. We will hold it in this building prior to the meeting if we do it on the 20<sup>th</sup>.

You have 18 days to complete and file your FPPC Form 700s. So far eleven of our Commissioners and Alternates have done so. Please get them done and make sure you do them as quickly as possible.

That concludes my report, Chair Wasserman, and I'm happy to answer any questions.

Commissioner Zwissler commented: I was under the impression that the new sea level rise guidelines were coming out this spring. But they are not going to be adopted until January 18<sup>th</sup>; is that right?

Executive Director Goldzband replied: They are going to be released April 26<sup>th</sup>. And then there is a series of discussions and workshops about them.

Chair Wasserman added: I want to welcome our new Commissioner, San Leandro Mayor Pauline Cutter, to our Commission. I think it may be appropriate at a future meeting to think about the level of fines for not contacting us on emergency permits. We are very quick on emergency permits. It is frequently happening that we are only consulted - afterwards. I don't think that is right.

That concludes my report.

**7. Consideration of Administrative Matters.** Chair Wasserman announced: Does anybody have any questions about administrative matters? (No comments were voiced)

**8. Adjournment.** Upon motion by Commissioner Vasquez, seconded by Commissioner Nelson, the Commission meeting was adjourned at 1:32 p.m.