

San Francisco Bay Conservation and Development Commission

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March 15, 2019

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Peggy Atwell, Director, Administrative & Technology Services (415/352-3638; peggy.atwell@bcdc.ca.gov)

SUBJECT: Draft Minutes March 7, 2019 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Bay Area Metro Center, 375 Beale Street, Board Room, First Floor, San Francisco, California at 1:06 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Ahn, Alvarado, Butt, Cortese (represented by Alternate Scharff), Lucchesi (represented by Alternate Pemberton), McGrath, Peskin (represented by Alternate Stefani), Pine, Ranchod, Randolph, Sears, Spering (represented by Alternate Vasquez), Tavares (represented by Alternate Nguyen), Techel, Wagenknecht, Ziegler and Zwissler (represented by Alternate Holzman). Senator Skinner (represented by Alternate McCoy) and Assemblymember Ting (represented by Alternate Sweet) were also present.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: U.S. Army Corps of Engineers (Bottoms), Alameda County (Chan), Department of Finance (Finn), Contra Costa County (Gioia), Sonoma County (Gorin), Secretary for Resources (Vacant).

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

Ms. Eva gave public comment: I'd like to thank Chair Wasserman for permitting Commissioner Sears to respond to my comments at the last meeting regarding the thwarted FPPC investigation of her conflict of interest with regard to Royal Dutch Shell.

That investigation was initiated because Commissioner Sears as chair of Marin Clean Energy gave millions of dollars in contracts to Royal Dutch Shell while holding shares in same.

Commissioner Sears' comments attempted to deny the serious nature of the investigation while suggesting that the original complainant was somehow politically motivated.

The character of any whistleblower should never be used as defense by corrupt officials and certainly not when the Enforcement Division of our state's Fair Political Practices Commission assessing the matter seriously enough to undertake an investigation and level a fine.

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In the case of the FPPC Enforcement Letter that fine could have resulted in criminal charges against Commissioner Sears by local prosecutors.

Sears did not disclose in her comments last week the details of the Enforcement Division's Letter which found that Commissioner Sears quote, "violated the conflict of interest prohibitions of the Political Reform Act."

Sears also did not disclose the details surrounding the final vote recorded in that FPPC Minutes overriding the concerns of Commissioner Odera and Glenna West, Brian Hatch the controversial lobbyist/commissioner appointed by Jerry Brown who also appointed Kate Sears to District 3 Interim Representative in 2011 insisted that an entirely different standard be applied to Kate Sears than had been applied to every other subject of investigation.

It isn't that Brian Hatch was somehow trying to split hairs between definitions of ministerial and applicability of data regulations which he did. It is that he literally bullied the rest of the Commission into his bizarre assertion that Shell Energy North America is somehow magically and against all available evidence not included in the vast number of Shell subsidiaries when in fact all of MCE's contracts are executed by Shell and the contracts remain at Shell's Texas headquarters.

Sears claimed as a mitigating factor that she forgot she owned the shares; again, how does a Harvard-trained attorney forget she owns over \$27,000 in Royal Dutch Shell shares not to mention tens of thousands of dollars in shares of each of nine other oil and drilling companies?

I am concerned that members of the Commission are so wealthy, so comfortable, so inured to corruption and frankly so white that they are losing touch of what your Commission is charged with doing.

You are supposed to take care of the Bay and you are supposed to take care of us. The threat of global warming and the attendant damage it will do to all of us with a far greater impact on the poor and communities of color must be addressed now. In order to do that I do think you will need to clean house and part of that is looking at how this person on the Commission reflects on all of you. Thank you.

Mr. Phillip Banta addressed the Commission: I am an architect who has been active in the Bay Area for about three decades in the East Bay and notably in Oakland. I am here today to speak in support of the Oakland A's proposed, downtown, waterfront ballpark in Oakland.

I am supporting it because I am heading up an urban-design project called the West Oakland Walk. It is a grassroots, community-driven, urban-design proposal that unites 23 different parks, 23 different, publicly-accessible places along a four and a half mile loop of existing city streets.

We are supporting the ballpark is that they stand to become Park Number 24 in our circuit of resources that this West Oakland Walk offers to citizens and visitors to Oakland.

The Oakland A's are incredibly proposing to have a gondola that stretches from the Twelfth Street BART Station down to Jack London Square and from there a short walk over to the ballpark.

This gondola will provide an amazing perspective of the City and the entire Bay Area. Once you get down to the ballpark they are proposing to have a surrounding, elevated park that will offer an amazing perspective of the waterfront.

So the ballpark really stands to be a significant contribution to the Oakland space resources that the city of Oakland has to offer its own citizens.

We've watched Oakland rise and fall and now in the past number of years we think it is really, finally getting to the place where we've always thought it should be. And we think that the ballpark will be the one of the crowning signatures that will establish Oakland as the world-class city that it deserves to be.

One of the interesting things about the West Oakland Walk is the way it celebrates the people of Oakland, past and present.

We think the Oakland A's Project will be an outstanding addition to this concept. Thank you very much.

Mr. Mike Jacob was recognized: I am with the Pacific Merchant Shipping Association and I appreciate the time this afternoon.

We have been before you previously with concerns about the Howard Terminal and we wanted to give you a quick update. On February 14th PMSA along with a coalition of stakeholders including the Ag Transportation Coalition, American Waterways Operators, California Trucking Association, Customs Brokers of Northern California, the Golden Gate Audubon Society, the Harbor Trucking Association, the Inland Boatman's Union, ILW-Local 6, ILW-Local 10, ILW-Local 34, ILW-Local 91, the Marine Engineers Beneficial Association, Marine Fireman's Union, PMSA, the Sailor's Union of the Pacific, Save the Bay, Snitcher Steel Industry, Sierra Club California, Sierra Club San Francisco Bay Chapter and Transportation Institute all sent a letter to our Oakland Legislative Delegation and cc-ed to the BCDC staff and the Bay Area Delegation asking them to avoid introduction of legislation that would, in part, change BCDC protections for Bay developments including those at Howard Terminal for the A's.

Specifically we asked for the Legislature to avoid any reduction of the oversight by jurisdiction of or planning and permitting requirements of BCDC with respect to the Seaport Plan.

In response to that and an article of February 17th in the San Francisco Chronicle the A's specifically said that there were no plans to ask Sacramento to shortcut the process of anything the team is pushing to include environmental justice issues.

And we are here today to let the Commissioners know that despite that we have received a copy of a draft dated February 13th circulated by the A's actually proposing, and I am quoting, "an act to remove the property from the Seaport Plan prior to use designation for purposes of the project and direct BCDC to make conforming changes to the Bay Plan."

And further – to direct BCDC to issue a permit to that effect as well with respect to the Oakland Waterfront Ballpark Project subject to several findings.

We bring that to your attention today because we would like the Commission to be advised that these are, in fact, underway. The discussions are ongoing. We ask the Commission to

BCDC MINUTES
March 7, 2019

be vigilant as this legislative session continues to please monitor AB 1191 which is the Spot Bill but also to protect the authority of the Board moving forward through the legislative session. Thank you.

Mr. Taj Tashombe addressed the Commission: I am the Vice President of External Affairs with the Oakland A's. It has been a pleasure representing this project as an Oakland native and a son of a city that is losing two of its three professional, sports franchises.

This project is a project that has an opportunity to really enhance our community and bring people to a waterfront at a particular site that is not accessible to the public right now. We are hoping that we can work with you all and continue to work with your colleagues at other agencies to ensure that this is a project that we can utilize for the benefit of the entire, Bay Area and our region.

Furthermore, we think it is really important to continue a very open and transparent process. We appreciate Mike and others and their express of concerns around the project. We are trying to create an opportunity for our community to utilize a site is not being utilized by the public right now.

We are hoping that through this process you can see we are really invested in our community. We are invested in things outside of baseball because this project is much bigger than baseball. It is about community. And it is about re-investment into our infrastructure and into our communities that actually don't see benefits typically of this magnitude.

We are hoping that our continued partnership in working with you all leads to a very successful outcome. I am here to continue to evangelize that. We are working with you all regularly and we appreciate the time considerations and look forward to a continued process. Thank you very much.

Mr. Jordan Vanderstuep provided public comment: I am a Fruitvale resident. I am here to urge you to consider the economic and environmental benefits of removing Howard Terminal from the Seaport Plan and remove its port designation to allow a ballpark to be built there.

The A's have committed to a strong, environmental agenda, LEED gold standard reducing car trips by 20 percent; net zero GHG and an electrically-powered gondola.

The A's are prepared to privately finance the entire, environmental, mitigation measure for the area. The A's are fully embracing community feedback and input. It is truly a community project. I am proud of the work the A's are doing.

This project represents a big step for Oakland. The A's have put forward a bold vision and I am proud to support them.

I believe that it is a beautiful design for the Waterfront Ballpark and creation for the surrounding neighborhood. They are committed to more than just building a ballpark. With this will come job creation, economic benefits and community development.

In addition, the Raiders and Warriors are leaving the A's. Give the A's the credit they deserve. They are trying hard to stay rooted in Oakland. Thank you.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the February 21, 2019 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of February 21, 2019.

MOTION: Commissioner Scharff moved approval of the Minutes, seconded by Commissioner Techel.

VOTE: The motion carried with a vote of 21-0-0 with Commissioners Addiego, Ahn, Alvarado, Butt, Scharff, Pemberton, McGrath, Stefani, Ranchod, Randolph, Sears, Vasquez, McCoy, Nguyen, Sweet, Techel, Wagenknecht, Ziegler, Holzman, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

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

a. **New Commissioner.** I would like to welcome Sonoma County Supervisor James Gore, who is now Commissioner Gorin's Alternate. Mr. Gore is not here today.

b. **Environmental Justice Commissioner Working Group.** I would now like to ask Commissioner Alvarado to report on the Environmental Justice Working Group meeting that was held this morning.

Commissioner Alvarado addressed the Commission: Commissioners Ahn, Vasquez, Pemberton and former Commissioner Showalter and guests attended a very robust meeting. I invite you all to attend.

We talked about draft, policy changes to incorporate environmental justice and social equity in the Bay Plan Amendment. We talked about access, shoreline protection, mitigation and habitat restoration in terms of prospective policy changes as well as resources and expertise needed to effectively address environmental justice issues and promote more effective engagement.

In terms of the timeline going forward there will be working group meetings taking place over March and April. Staff will have a background memo and report released in May and perhaps a Commissioner meeting in May or June and a public hearing on July 18th.

Chair Wasserman continued: I will admit I was distressed this morning to read an article in the Chronicle about a number of legislatures back East and one in the South denying climate change. Despite my distress it was not a distraction because we know in this state and this area we are all too aware that climate change is very real and its effects are real and will only get worse and particularly in the area that we are concerned with, as we all know, it needs to be a theme – even if by some miracle we were successful in stopping greenhouse gas emissions tomorrow; our job to figure out how to adapt to rising sea level would continue to be a challenging one.

We are continuing to take up that challenge. Vice Chair Halsted and I met with staff last week to talk about how we are going to move forward on the Regional Adaptation Plan and the additional resources that we expect to get from the State Legislature based on the Governor's approval will help us to do that although we will still need more.

We continue to be absolutely committed to addressing that and to working it in every creative way that we can. It is not going to happen as quickly as we'd like. But it is going to happen.

c. **Next BCDC Meeting.** Our next meeting will be held in two weeks on March 21st. We expect hold a Commissioner workshop on the Fill for Habitat Bay Plan Amendment and we may hold a briefing on the A's multi-use development proposal for the Howard Terminal site.

d. **Special BCDC Meeting.** I would like you to make sure that you have on your calendars on April 8th a rare event: a special BCDC Commission meeting. At this meeting we expect that we will present the draft findings of the audit of the Commission's Enforcement Program that is being conducted by the State Auditor at the request of the State Legislature. The timing is determined by the State Auditor who provides five days for review of the draft audit and a response. The meeting will be held here and will be in closed session at 1 p.m., Monday April 8th, 1 p.m. – five days from the time we receive it not from the time of that hearing.

And we expect we will receive it several days before that so staff will be working on a proposed, response subject to the Commission's input and approval.

I will venture a prediction that it is not going to be fun but it is going to be better than we think or might fear.

e. **Design Review Board Appointments.** Staff has provided us with a recommendation that Roger Leventhal be re-appointed at his request from being a Design Review Board Member to being an Alternate Design Review Board Member and that we appoint Robert Battalio to serve as Design Review Board Member in his stead.

I support this recommendation and intend to make this appointment. I would ask for a motion and second indicating that the Commission concurs in my decision.

MOTION: Commissioner McGrath moved the appointment, seconded by Commissioner Pine. The motion was adopted via a voice vote with no abstentions or objections.

I would note that Roger has served on the DRB since 1997, attached to the recommendation is a Resolution of Appreciation for his 22 years of service. I would appreciate a motion and second to adopt the resolution.

MOTION: Commissioner Randolph moved adoption of the resolution, Seconded by Commissioner Sears. The motion was approved by a voice vote with no abstentions or objections.

Chair Wasserman continued: This brings us to Ex-Parte Communications in case you have any.

f. **Ex-Parte Communications.** Chair Wasserman announced: I would put one on the record. I did have a very brief discussion before the Commission commenced with representatives of Catellus on the Alameda Landing Project basically stating what they have previously discussed with us as well as staff on their views of phasing of the public park work.

Any others? (No one voiced other ex-parte communications) And that turns us over to Larry's Report.

6. Report of the Executive Director. Executive Director Goldzband reported the following: Thank you very much Chair Wasserman.

February is over and March is roaring like the proverbial lion. But, unlike the cowardly kind in the Wizard of Oz, this one has barged into our lives with flooding, thunderstorms and other reminders that nature is not a consistent beast. At some point soon I'm going to want to ask that creature behind the curtain that's sending the weather our way to give us just a bit of a break. As I was driving through sleet in Contra Costa County last weekend that was probably my last straw as I count the days to spring break in San Diego. If you need me the first week of April you can call and leave a message. (Laughter)

a. Budget and Staffing. I want your assent please to enable us to hire Emma Greenbaum to join the ART team. Emma is not here today but you will meet her next time. Emma earned her undergraduate degree from American University in International Relations and Economics and just earned her Master's degree in Environmental Planning from Yale. That makes her some combination of an eagle and a bulldog. Emma will work on the ART team and support its research and analysis of vulnerable communities, help lay out the final report for ART Bay Area, and use her experience as a staffer in the Resilience by Design Team to identify how best to implement adaptation strategies. You will find her, if you come to our office on Monday, in a cubicle unless I hear otherwise.

I also want your assent for us to hire a new Sea Grant Fellow, Rachel Wigginton. Rachel is a Hilltopper from Western Kentucky University, earned her Master's degree at Cal State Long Beach, which makes her a southern California 49er and is pursuing a doctorate in Ecology at U.C. Davis; now an Aggie with nine years of experience in ecological experimentation and conservation management. Rachel brings strong ecological and communications skills to the rising sea level adaptation work at BCDC.

You will have noticed in your Administrative Listing that on February 26th BCDC issued an emergency permit for the California State Coastal Conservancy to repair various breaches and areas of erosion in the Bel Marin Keys restoration site in Marin County. The emergency work involved repairs to seven separate sections of the northern portion of the exterior levee alongside San Pablo Bay. I am somewhat surprised, but also grateful, that this is the first emergency permit that BCDC has issued this winter and I want to commend Anniken Lydon for her prompt work in this regard.

Also, in your packet is BCDC's Notice of Proposed Rulemaking to amend the Commission's permit application fee schedule along with various supporting documents. I urge you to read them carefully. You will remember that staff recommended that the Commission review BCDC's permit fee schedule and hold a public hearing to determine whether to double those fees as requested by the Department of Finance. I urge you to review the notice and its accompanying materials prior to the Commission's April 18th public hearing. We have distributed the notice widely throughout the Bay Area and among our permittees.

Finally, you can see me do this (handing list of names to Chair Wasserman) I am providing the Chair with two lists today – Commissioners and Alternates who have not yet completed their ethics training and those who have not filed a complete FPPC Form 700. Those names are in yellow for the 700 but you have until April 2nd to do that. The names in yellow here (second list) are those people who still have not completed an ethics review training.

You will notice that I have now given them to Chair Wasserman and that completes my report.

Chair Wasserman continued: I think there are only three people on the ethics – just get this done folks. It is not that hard and it is the law. Any questions for the Executive Director? (No questions were voiced)

7. Consideration of Administrative Matters. Chair Wasserman stated: That brings us to Item 7, Consideration of Administrative Matters. Are there any questions on the Administrative Matters? (No questions were voiced)

8. Vote on Alameda Landing Waterfront Mixed-Use Development Project; BCDC Permit Application No. 2018.004.00. Chair Wasserman announced: Item 8 is a staff recommendation and possible vote regarding the proposed residential, commercial, retail and public development at Alameda Landing. The staff recommendation on this item will be provided by Rebecca Coates-Maldoon.

Ms. Coates-Maldoon presented the following: On March 1st you were mailed a copy of the staff recommendation for BCDC Permit Application No. 2018.004.00 for the Alameda Landing Waterfront Project, a mixed-use neighborhood proposed at Mitchell Avenue and 5th Street in the city of Alameda. You heard a summary of the application at your February 21st meeting.

The staff recommends that you approve the permit application with conditions. There have been several changes to the proposal since you heard about it two weeks ago.

The first change relates to the timing and phasing for construction and completion of public-access areas proposed as part of the project. When the project was before you two weeks ago, the presentations touched upon the phasing. As originally proposed the Waterfront Park was to be completed in two phases with the first phase of the Waterfront Park coming online prior to issuance of building permits for Phase 2 and the second phase of the Waterfront Park coming online prior to issuance of building permits for the last 20 percent of the residential units.

Since the public hearing the applicants have revised the phasing proposal. You can see a diagram for the phasing on Exhibit C to your recommendation and on your screen.

The applicants are now proposing to construct a larger portion of the overall public-access area in the first phase of the Waterfront Park. The applicants have also proposed to develop the residential development in three phases rather than the two originally proposed.

The Bay Plan requires that maximum, feasible access to and along the waterfront be provided in and through every new development. Staff has had conversations with the applicants about different possible phasing scenarios.

The issue with the applicants originally proposed phasing was that it was possible to envision a scenario in which the public access may be significantly delayed relative to occupancy of much of the residential and commercial development or that portions of it may be never be finished and open to the public.

Minutes ago staff and applicants came together on a recommendation to modify the phasing schedule to address this issue. This would modify the staff recommendation as follows: On page 12 of your staff recommendation under Special Condition II.B.7 Waterfront Park Construction Timing, page 12 Item 7 on page 12, Item 7a – Phase 1; the language would be changed for the second portion of that paragraph to read – “Shall be substantially completed within 18 months of occupancy of the first unit in Phase 1 of the residential project.”

On Page 13 under Phase 2, Item b at the top – the condition would be similarly changed such that the latter part of it would read, “Shall be substantially completed within 12 months of occupancy of the first unit of Phase 2.”

Mr. Brad McCrea suggested the following: Rebecca, you might explain the difference between what we recommended previously and what we are recommending today.

Ms. Coates-Maloon explained: Staff’s concern on this issue has been the need for a backstop within this condition to ensure that the public access is provided commensurate with the private development.

The staff recommendation previously had a condition that we thought represented a middle ground on this issue which would be 50 percent of occupancy, but we have since shifted the approach on this such that it would be time-based-so that there is still a backstop in this condition and the public access would be provided within a certain time period after initial occupancy of the residential development.

The second change to the project since you saw it two weeks ago relates to the adaptation measures proposed to protect public-access areas from flooding associated with sea level rise. You can find this discussion in your staff recommendation on pages 33 to 35.

As discussed there, portions of the project site could be subject to flooding during periods of particularly high tides and extreme storm events at the end of the century.

The applicants had previously proposed future measures that, if implemented, would protect a narrow band of shoreline access against the back of the wharf but that would allow much of the public-access area on the wharf deck to be flooded during occasional higher tides and storm events.

Again, staff and the applicants have had discussions and have come to agreement that adaptive measures could be put in place in the future as reflected in Special Condition II.E. The Special Condition requires that when coastal flooding begins to affect the wharf deck, a planning process will begin to identify the adaptation measures appropriate and feasible to protect to the maximum extent of the shoreline public access against tidal and storm-driven flooding given future sea level rise.

At very minimum a continuous shoreline public-access area of an average of 31 feet in width will be maintained which will contain the Bay Trail and other public amenities.

With these conditions and others related to achieving consistency with your policies on allowable Bay fill and maximum feasible public access, the staff recommends that you adopt the recommendation of approval.

Chair Wasserman stated: We have previously conducted and closed a public hearing. I would ask the applicant's representative as to whether they have reviewed the staff recommendation including these latest modifications and whether you agree with it and accept them.

Mr. Sean Whiskeman replied: I am Senior Vice President of Development for Catellus. Catellus is an applicant as is the City of Alameda and I am here also to speak on behalf of the City of Alameda to accept the conditions with the modification that staff has revised and presented to you.

So with that we are accepting. We worked very closely with staff. There are a few things in the conditions that we felt were sort of minor implementation-type matters that could be cleaned up a little bit but generally we are accepting of the conditions and also here again on behalf of the City to accept the conditions as presented. So thank you.

Chair Wasserman asked: Are there any questions or comments from Commissioners?

Commissioner Scharff was recognized: My first comment would be that I'm really glad that staff and the applicant came together on this. I think that is a real positive.

I need to understand a little bit in my head how this works. We are talking about 18 months from the occupancy of the first unit in Phase 1 they'll complete the Phase 1 improvements. They cannot start Phase 2 or can they start Phase 2 without completing the improvements in Phase 1?

Ms. Coates-Maldoon answered: They could start Phase 2 in that timeframe, yes.

Commissioner Scharff stated: I don't think they should be allowed to. It seems to me that they could complete this entire thing and then not build the improvements. So, yes we have a condition that they should. So what happens and that is what my concern really is; 18 months from the first one is a long time. What happens if they don't do it? What if they go out and build all of this and then just don't do it?

They come before the Enforcement Committee but we just fine them? What is our remedy?

Mr. McCrea replied: Well I think you have asked a couple of questions and I will skip the second one and move to the first one. The way it is currently crafted prior to the first home being occupied or within 18 months of the first home being occupied the Phase 1 part would be built.

And in my experience 18 months goes by very quickly. It is not a long time. I would say it is a very short amount of time in the construction world.

They could get started with Phase 2 prior to the completion of Phase 1 but within 12 months of the occupancy of the first home in Phase 2 the second part would come online.

I am struggling to understand the part where you said they could build the whole thing without something coming online.

Commissioner Scharff replied: Theoretically they could start Phase 1, Phase 2 if they timed their occupancy on Phase 2, right? You could finish Phase 1 and Phase 2 and not have built either of the improvements. So you could then have sold all the homes and then the question is; how would we then enforce that they actually build it? And who would we enforce it against?

Mr. McCrea explained: The enforceability of the permit is only as good as the language in the permit. So it is important that we make sure that the language in the permit gets us what we need for enforceability.

Commissioner Scharff continued: Well that's my concern. I mean my concern really is that once they have sold all these units – and I believe they said at their first meeting with us that they aren't building it themselves they are bringing in a residential developer – the permit runs with the development, right? So they sell all these homes to a bunch of homeowners. They don't do the improvements. We are then enforcing against the homeowners? We are enforcing against them? If they actually have to in order to get their occupancy permits build this or to complete Phase 2 then at least on Phase 1 I know that they can't extract the value out of Phase 2 and Phase 3 without having completed Phase 1.

So, my concern is that they don't complete Phase 1. And I am not sure why they would oppose this; why they think that they should be able to get an occupancy permit on Phase 2 without having completed Phase 1. That is really the core of my concern.

Mr. McCrea responded: Understood. I don't know that they disagree with what you are suggesting. Perhaps we can bring the applicant forward.

Commissioner Scharff continued: That is pretty much what I am saying. Finish the Park improvements on Phase 1 before you get an occupancy permit for Phase 2. I don't mind if you start Phase 2 I just don't want you to get an occupancy permit for it.

Mr. Whiskeman replied: I think it is important to remind the Commission too that we have a land-use approval with the City of Alameda which has a phasing condition in it. And, frankly, that is where we started out and it was something that we have been very consistent about is we wanted the phasing condition that is already approved by the city of Alameda's Planning Board to be consistent with the phasing condition here.

We understand there are different priorities and different interests. And so, we've actually taken what the City of Alameda's condition of approval approved by the Planning Board that our home builders are relying on and taken it further along in order to give you the certainty that the public improvements would be completed.

I think that's where we've come today with a backstop with the public improvements. If you would like I am happy to read you the condition of approval with the city of Alameda.

Commissioner Scharff answered: Not really. Our job here is to make sure that the public-access improvements get built. I think that is our charge as a Commission. And that is what we care about among other things as well.

My question to you really is: would you be willing to agree that you will complete the Phase 1 improvements on top of the other deadlines we have prior to an occupancy permit for building on Phase 2?

Mr. Whiskeman replied: I appreciate your position. It is something that we need to consider. I mean, frankly, there is – again, the city of Alameda’s condition of approval is such that we have to start the Park, Phase 1 of the Park before the first, before the first building permit is issued for Phase 1.

Commissioner Scharff noted: But that means you just turn a shovel.

Mr. Whiskeman responded: We have to, I appreciate that. But then you then have a condition now that has kicked in that is going to start that clock 18 months from the start of the Park.

Commissioner Scharff disagreed: That is not the way I heard it, 18 months from the start of the Park –

Mr. Whiskeman answered: I’m sorry I apologize for that. That is 18 months from the –

Commissioner Scharff interjected: If it is 18 months from the start of the Park I’m fine with it –

Mr. Whiskeman continued: - from the completion of the – no, I apologize you are correct. There is a lot of stuff that is going to happen around here. So I appreciate that. It is 18 months from the completion of the first housing units.

If you will indulge me here while I read the phasing that is already approved with the city of Alameda. “The construction of Phase 1 Waterfront Plaza and Promenade surface improvements shall commence prior to issuance by the City of the first building permit for the first unit within the residential development. Construction of the Phase 1 of the Waterfront Plaza and Promenade shall be substantially complete prior to the issuance of the first building permit for the first unit of the second half of the residential units. Furthermore, construction of Phase 2 of the Waterfront Plaza and Promenade shall commence prior to issuance of the first building permit for the first unit of the second half of the residential units. And construction of the final phase of the Waterfront Promenade shall be completed prior to the issuance of the building permit for the first unit in the last 20 percent of the units in the residential project.”

So that is the City’s condition of approval that runs with the land. And I believe gets you to your concern. Maybe I am wrong but that is a land-use approval that is right now running with the land.

Commissioner Scharff asked: So how does it get me to my concern? You went by it quickly. We have our own approval suggesting frankly – and I wasn’t clear if you said it or not; if that you complete the improvements in Phase 1 before the Park improvements before getting your occupancy permit on your first unit in Phase 2. It is really a simple request.

And it was unclear to me whether or not the City of Alameda was requiring that already or not. And if it is not then I am not sure what the relevancy of that is.

Chair Wasserman chimed in: I am going to make a suggestion. And that is that we recess this matter to allow staff and the applicant to convene together again now – and I am making this because as I heard it the condition in the City of Alameda’s permit is actually fully consistent with Commissioner Scharff’s request. But as has been pointed out words are important and wordsmithing at the dais is not the best way to do it. Not that I haven’t done it that way; it is just not the best way.

Mr. McCrea asked: At which point in the agenda today would you like us to come back?

Chair Wasserman replied: As soon as you can after the next matter concludes.

Commissioner McGrath commented: To that point sir. I share the concern about timely completion of Phase 1. But I also want to make sure that if construction is stopped on Phase 2 for whatever reason that the first Phase is not necessarily held hostage.

There is before us a division of public access for Phase 1 and construction for Phase 2. We all anticipate the possibility of a market turn down and if there is not enough being done to generate money to pay for the Park improvements but I share the concern that there should be timely completion of the Phase 1 improvements.

And I want the staff’s take on that. If you want to push back against the Commission that is fine. We may or may not agree with you.

Mr. Whiskeman replied: I’d like to add for a little bit of color here. The Phase 1 as depicted on the exhibit before you isn’t 50 percent of the Park improvements. It is 65 percent of the Park improvements. It is 75 percent of the overall costs of the Waterfront Park.

That might not be as important but it is important to us. The Phase 2 is 35 percent of the Park improvements and 25 percent of the costs.

The first Phase is a substantial phase. It is the lion’s share of the public amenities, the playgrounds, the seating areas and all of the kayak storage and all of that fun and goodies that we love; the second half is more of the passive Park. So that the first Phase is larger by a decent chunk than Phase 2. So it is worth noting that for the record and it was in my presentation.

We will recess and talk about it.

Commissioner Butt was recognized: I wanted to express a concern that I’ve expressed before. It has to do with who is the tail and who is the dog on approval of portions of projects within BCDC jurisdiction?

I think I heard the applicant say that this has already been approved by the City of Alameda and it is like – okay, the City of Alameda has approved it, therefore BCDC has to approve it. I’ve expressed this before that these local jurisdictions should understand that whatever approvals they give within the BCDC area of jurisdiction should always be made subject to BCDC approval and not the other way around.

Without weighing into the deep details of this it just a concern I have that local jurisdictions have to realize that BCDC has authority that supersedes theirs and not the other way around.

Mr. McCrea spoke: I appreciate that comment. We have heard that before. I think in this case the city of Alameda is aware of that and the City of Alameda staff Andrew Thomas has said at many of the meetings that we have had candid conversations about this phasing issue.

Chair Wasserman added: And he did speak at the last meeting. So go and be productive. (Laughter) May the Force with you.

We will now turn our attention to Item 9.

(Upon completion of Item 9 and Item 10 Chair Wasserman returned to completion of Item 8.)

Mr. Goldbeck announced: I think Chair that they are ready to present on the Alameda Landing agenda item. So I think we can go back to that item now.

Chair Wasserman stated: Good timing, thank you. We will now return to Item 8, the action on the staff recommendation on Alameda Landing Mixed Use Development.

I don't think there is a motion on the floor.

Ms. Coates-Maldoon addressed the Commission: After discussing this further with the applicant we propose a slight modification to what we just read to you with most of it remaining substantially the same.

I will read to you on page 12 of your recommendations: the staff proposes the following modifications –

Mr. McCrea interjected: We have some language we will put up on the screen and also a graphic we will put up.

Ms. Coates-Maldoon continued: I will first read you the proposed modification to the staff recommendation and then I will show you on a graph what this would look like.

On page 12 of your staff recommendation under Special Condition II.B.7 which is the Waterfront Park Construction Timing, the language would read for Phase 1 the changes in bold here on your screen. And it would read: "substantially completed within 18 months of occupancy of the first unit of the residential project and prior to issuance of the first building permit for the first unit in the second half of the residential units."

For Phase 2 which is also shown here on your screen, it would change Phase 2 of the Waterfront Park Construction Timing. The language would be modified to read: "shall be substantially completed within 12 months of occupancy of the first unit in the second half of the residential units."

Phase 1 of the Waterfront Park, which is shown in the darker green, would be completed within 18 months of occupancy of the first unit of what is shown here as Phase 1 but essentially any unit within the residential project, and prior to issuance of the first building permit for the first unit in the second half of the residential units.

So together construction Phases 2 and 3 shown on your screen represent approximately half of the units in this project. The Phase 1 Waterfront Park would be completed prior to issuance of the first building permit for functionally any unit within Phases 2 or 3.

And then for Phase 2 of the Waterfront Park, which is shown here in light green, it would be completed within 12 months of occupancy of the first unit in the second half of the residential units which again collectively represents roughly Phase 2 and Phase 3 together.

Commissioner Scharff asked: Why didn't it say that? Why doesn't it just say that? Why doesn't it just say Phase 1 and Phase 2? That is what you said before and it is confusing to me.

Mr. McCrea explained: The reason we changed it is because the City's language uses the term, "half of the project," half of the units. So half of the units is defined by the City as half the number of units that will ultimately be approved.

They don't think of the project in phases. What we've come up with we think is not only consistent with the goals that you expressed earlier Commissioner Scharff but also is in line with the City's language.

Ms. Coates-Maloon continued: In addition to the changes here to the Special Condition we would recommend modifications to the findings that are associated with this condition which are shown on pages 25 to 26 of your recommendation.

On page 25 of your recommendation under Item E, Public Access Phasing we would keep the first paragraph as it is. We would strike the second paragraph that begins, "subsequently on February 27, 2019." On page 26 we would also strike the paragraph that begins, "The phasing proposed by the permittees provides deadlines." And then we would keep the last paragraph in this section that begins, "As Bay Plan public access policies require," with the following modifications for the last portion of this paragraph, which would be changed to read: "Special Condition II.B.7 also requires that the Phase 1 public access improvements be substantially completed within 18 months of occupancy of the first unit of the residential project and prior to issuance of the first building permit for the first unit in the second half of the residential units, and that Phase 2 public access improvements be substantially completed within 12 months of occupancy of the first unit in the second half of the residential units."

Chair Wasserman continued: I'm not asking for any change in this language but I do have a question. Does, "substantially completed" equal usable?

Mr. Ethan Lavine fielded Chair Wasserman's question: We are using the term, "substantially completed" rather than "open to the public" at the request of the applicants. And the concern there is that the Park could be developed, built in full and there may be a bit of a lag between the time that construction is finished and a time that the City accepts the Park and opens the Park.

This is to allow for the occurrence that there are some minor hold-ups in the City's acceptance of the Park which would actually allow for the opening day. But "substantially complete" is also a concept using the City approval. It means that it is built and ready to go. It just requires the City to open the Park.

Chair Wasserman asked: Any questions from the Commissioners?

Commissioner Vasquez inquired: For me it is the assurances. How soon is the City going to approve it? If it is completed what is the process for that?

Mr. Whiskeman replied: Again, this is a City public park and so at completion they will go through a process of accepting it. I am not from the City so I can't outline for you specifics of the steps that they need to take to accept and open the Park. I can't answer that on their behalf.

Andrew Thomas from the City could not be here today but I have his blessing to accept the conditions as stated but I can't answer that specific question about the steps necessary to open the Park from substantial completion.

Commissioner Vasquez noted: Our key responsibility is public access.

Chair Wasserman commented: The conditions as now modified are acceptable to the applicants?

Mr. Whiskeman replied: Absolutely, yes.

Chair Wasserman pointed out: And I said that in plural – you're speaking for the City as well?

Mr. Whiskeman answered: I am.

Chair Wasserman continued: I do understand Commissioner Butt's previous comments that the interest of the City and the interest of BCDC are not always the same. But I also think that the City of Alameda's interest in having this public park open is substantially similar, and in fact we've got some other leverage on the City of Alameda, more than we might have on the home developers or this particular developer, so I am comfortable with that, recognizing nothing is without risk.

Commissioner McGrath was recognized: I was going to agree with that comment. I am chairman of the Parks Commission in Berkeley. I've been to probably a couple of dozen park-segment openings. The city council members have a real interest in having events that re-open these parks.

And while the language is not perfect it is good enough.

Chair Wasserman asked: Is there a motion to approve staff recommendation?

MOTION: Commissioner Alvarado moved approval of the staff recommendation, seconded by Commissioner Scharff.

Chair Wasserman added: I am not adding this as an actual piece of the motion but would encourage staff to contact Andrew directly on behalf of the City to convey the sense and concerns that we have.

Commissioner McGrath stated: I do want to thank the staff and the applicant for resolving the concerns I had about the width of the public access and its adaptability. It was not only something that was very important to us but it was very well written and clearly established. Kudos to both.

Chair Wasserman added: And I want to thank the staff and the applicant for putting in the work on these modifications and coming to an agreement that is a very sensible one. The federal representatives cannot vote on this motion.

Mr. McCrea stated: And 13 votes are needed to approve the application.

VOTE: The motion carried with a vote of 18-0-0 with Commissioners Addiego, Ahn, Alvarado, Butt, Scharff, Pemberton, McGrath, Stefani, Pine, Randolph, Sears, Vasquez, Nguyen, Techel, Wagenknecht, Holzman, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

9. Vote on the Amendment to Solano County's Component of the Suisun Marsh Local Protection Program and on Staff's Recommendation to Initiate an Update to the Suisun Marsh Protection Plan and to Consider Whether Changes are needed to the Suisun Marsh Preservation Act. Chair Wasserman stated: Item 9 is the staff recommendation and possible vote on Solano County's proposed amendment to the County's component of the Suisun Marsh Local Protection Program. Cody Aichele-Rothman will present the staff recommendation.

Ms. Aichele-Rothman presented the following: I am a coastal planner here at BCDC. I am here to present the proposed amendment and final recommendation regarding the Solano County component of the Suisun Marsh Local Protection Program.

As you may recall the Suisun Marsh is the largest, contiguous, brackish marsh in the United States. It covers a range of salinities from fresh to saltwater. This is where they all kind of mix together.

This is a really big area. It is broken up into two management sections. There is 116,000 acres which is the Primary Management Area and then there is the Secondary Management Area which consists of 22,500 acres of significant, buffer lands.

The Solano County LPP is focused on these significant buffer lands. Because this has a range of salinity levels it is also the most productive type of marsh supporting the widest variety of marsh-dependent wildlife.

The Suisun Marsh Protection Plan was from 1976 and it was then codified into law by the Suisun Marsh Preservation Act of 1977. The Suisun Marsh Protection Plan directs the local agencies to compose their own Suisun Marsh Local Protection Program components.

These components include the Solano County component, the Suisun Resource Conservation District component, the Fairfield component, the LAFCO component, the Suisun Marsh Mosquito Abatement District component and the Suisun City component.

These were all certified by BCDC in the early 1980s. The only component that the Commission has seen for any amendments was the Solano County component which amended in 1999. BCDC certified that amendment at that time.

The Solano County component also came back to BCDC for certification in 2012 but it was ultimately withdrawn before the certification was completed.

So here we have the process that BCDC undergoes in order to certify a component. We have followed this pathway and we are now here at the last step which is the public vote. After today's vote the amendment will continue on to the Delta Stewardship Council for their approval.

This is a brief list of changes that we have seen in the LPP component amendment. There have been revisions to the 2012 Solano County Zoning Code. It added some definitions which are now included.

Solano County has also updated their General Plan in 2008. Those changes are included. They've updated some of their maps and land-use tables as well as a couple others, added some formatting and clarifying changes found throughout the document.

While analyzing the LPP component staff has recognized that there were a few issues that needed to be addressed. While some of the issues were addressed within the LPP component itself, analysis of the document as well as the SMPP and SMPA have shown that it may be necessary to update some of these other documents to address ongoing concerns that are not found in the current documents and that there are some changes in technology and science that have occurred in the past 40 years that we may want to incorporate.

You may remember some of the Commission discussion on the Potrero Hills Landfill. Within this LPP amendment the county staff and BCDC staff have worked together to modify the language so it is agreeable to all of our parties.

The Landfill will continue to operate as permitted and once it has reached capacity and is closed it will revert back to agricultural use and that permanent designation will be in effect.

At the previous meeting Commissioners asked for more information regarding the lawsuits surrounding the Landfill. While there is a better description of the events in the Final Staff Recommendation I would just like to sum it up by stating that there were two lawsuits.

The first lawsuit challenged the County's EIR and Marsh Development Permit which eventually the Court found to be sufficient and valid.

The second lawsuit challenged BCDC's Marsh Development Permit for the expansion of the Landfill in 2010. By 2014 the Court of Appeals had upheld the validity of the BCDC permit which is now valid through 2051.

In conclusion the staff at BCDC has two recommendations for you today. The first recommendation is because the Solano County's amendment to its component of the LPP conforms to the public resource section 29000 through 29612 the policies of the Marsh Plan and the San Francisco Bay Plan that the staff recommends that the Commission certify the amendments to the Solano County LPP component by adopting the resolution attached to the staff recommendation in your packets.

The second recommendation that we have for you today is that the Commission direct BCDC staff to work with local elected officials, a broad array of landowners and interest groups, and members of the State Legislature to review the Suisun Marsh Protection Plan and the Suisun Marsh Preservation Act and propose amendments so that they accurately reflect the diverse needs of the Marsh and its interests and direct the Executive Director to procure the funding to implement that recommendation.

We have received a few comment letters from some local jurisdictions. The comment letters ask the Commission to delay this recommendation until all possibly, interested parties have been contacted.

Staff would like to note that contacting all of the interested parties and jurisdictions would be the very first thing that this recommendation aims to do so that we can initiate this process and move forward together.

I would like to thank you for your time and attention. I am now available for questions as is Mike Yankovich from the Solano County Planning Department.

Chair Wasserman asked: Is there a motion to approve the staff recommendation?

Commissioner Vasquez requested a bifurcation: If I could I would like to separate the two recommendations and vote on each one of them individually.

Chair Wasserman assented: You may.

Commissioner Vasquez continued: So I will move the first one, the first recommendation.

MOTION: Commissioner Vasquez moved approval of the first staff recommendation, seconded by Vice-Chair Halsted.

Commissioner McGrath had a question for Commissioner Vasquez: I've read the letters asking us to delay. I am reasonably familiar with the underlying issues. It seems that there is not a substantive concern as to whether or not the changes in the amendments are sufficiently protective of the resources that we are charged with protecting.

Do you want to comment on what you think we should do with the request to delay?

Commissioner Vasquez stated: I'm going to be supportive of Recommendation 2 also. I do have some clarifying language I'd like to speak to so we can get past that misunderstanding.

What comes first as we discussed earlier today; is it the head of the dog or the tail that is wagging? It is really about procedure and process that I want to talk about in Recommendation No. 2.

Chair Wasserman continued: If there are no other questions on the first recommendation I would ask for a vote and this needs to be a roll-call vote. And the federal representatives may vote on this.

VOTE: The motion carried with a vote of 19-0-0 with Commissioners Addiego, Ahn, Alvarado, Butt, Scharff, Pemberton, McGrath, Stefani, Pine, Randolph, Sears, Vasquez, Nguyen, Techel, Wagenknecht, Ziegler, Holzman, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

MOTION: Commissioner Vasquez moved approval of the second staff recommendation, seconded by Commissioner Scharff.

Commissioner Vasquez added: For my own clarification on this I would like staff to sit down with the affected agencies to work out in a collaborative effort for the scope of those changes for review and then we would then look at all of those concerns. I would like to initially just have a collaborative meeting with everybody that is involved to talk where we think those changes need to occur and how they may impact everyone.

I think that is what the second staff recommendation says and I just want to make sure that this is what we do and then bring back that scope of work and the funding that is going to be needed to do that.

Chair Wasserman added: I will state what I think the intent of the modification is. It is essentially adding the words, “starting with a collaborative meeting of all of these entities and groups.”

Commissioner Vasquez stated: I think the three letters we received, and I know there are supposed to be others coming, they just want assurances that we are going to sit down before we start proposing changes. That’s all.

Chair Wasserman consented: Right. And I understand that. So that it starts with a collaborative sit-down with all of those groups and representatives.

Executive Director Goldzband added: On behalf of staff: A. That was the intent, B. That will happen, and C. We look forward to doing it in your home county.

Commissioner Vasquez stated: Thank you. I will be more than happy to convene that group.

Chair Wasserman clarified: I would say that at the end of the Suisun Marsh Preservation Act in the middle, starting with, “a collaborative meeting with all interested landowners, with all of the above” and then proceed.

It is only making explicit staff’s absolute intent.

Mr. Mike Yankovich commented: I am with the Solano County Planning Division. I just wanted to make sure that as our representative Supervisor Vasquez has stated, we just wanted to make sure that there was clarification as to where the language was coming from and we’ve got that.

Second of all, I’d like to commend Shannon and Cody for all of the work that they have done and making this less onerous than something we normally associate with a task like this. (Laughter) That’s it.

Mr. Goldbeck commented: I just wanted to make sure that the Commission understood that we aren’t expecting to launch into this, and weren’t and won’t, next week because we, as you know, we have a lot on the plate already in terms of Bay Plan amendments and work that we are doing but what we plan to do is sit down with interested parties as the staff recommendation says and work out a scope and then we need to work out the funding and the resources needed to do it which we will bring back all of that to you. I just wanted to make sure that was clear to everyone.

Chair Wasserman reiterated: That is an important clarification for everybody's information and part of the reason why we didn't want to delay this motion is because the action is already overdue. We need to get the process started. It will not be a short process and we need to get the process started in order to find the funding to get it done correctly and completely.

VOTE: The motion carried with a vote of 20-0-0 with Commissioners Addiego, Ahn, Alvarado, Butt, Scharff, Pemberton, McGrath, Stefani, Pine, Ranchod, Randolph, Sears, Vasquez, Nguyen, Techel, Wagenknecht, Ziegler, Holzman, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

10. Public Hearing and Possible Vote on Revising the Brief Descriptive Notice for San Francisco Bay Plan Amendment No. 1-17 Regarding Bay Fill for Habitat Projects. Chair Wasserman announced: Item 10 is a public hearing and possible vote on revising the Brief Descriptive Notice for the Bay Fill for Habitat Bay Plan Amendment No. 1-17. Megan Hall will provide the staff recommendation.

Ms. Hall presented the following: I am a coastal scientist here on the staff and part of our planning division. I am here to talk to you today about our recommendation to revise the scope of the San Francisco Bay Plan Amendment 1-17 to address Bay fill for habitat restoration projects.

A lot of fill is likely going to be necessary in the Bay in coming years as we try to make the Bay's habitats more resilient to sea level rise. And we have heard a lot about this in the past two Commission meetings when we've had briefings from Michelle Orr and Roger Levanthal.

We have different types of Bay fill that will be needed. We have beach nourishment like at Arambu Island, potentially thin-layer placement to augment marshes. We have potentially deep-water fills like Middle Harbor Enhancement, and transition zone or horizontal levee construction like we see at Hamilton Wetlands.

All of these types of fill are very important. They will be especially more important in the coming years.

Our project goal for this amendment is to amend the San Francisco Bay Plan to address the planning, design and permitting of necessary Bay fill for habitat projects in the San Francisco Bay and to increase the region's resilience to rising seas using the best available science.

When you all first voted to approve the initiation of this amendment there were sections that were outlined in the initial Brief Descriptive Notice that would be included as part of staff's consideration. Those sections are listed here and they are the natural resource policies as well as the dredging policies and shoreline protection policies.

And these were primarily included because this is where most of the key language lies that does currently limit the amount of fill that we can place in the Bay for habitat projects.

However, as staff and also staff with the Bay Fill Policies Commissioner Working Group have been reviewing the Bay Plan and been thinking about what we need to be changing and how we should be updating things to better reflect our current paradigm where Bay fill is still a nuanced thing but definitely an important thing in many cases; we came across this part of the Bay Plan. It is

in the introductory section and it is called, "The Major Conclusions and Policies Section." And so this section of the Bay Plan was last updated a long time ago right when the Bay Plan was written actually. It has not caught up with some of the other parts that do now talk about how fill is a useful feature in order to help us make habitat more resilient and help with restorations.

The Major Conclusions and Policies Section is not typically used in permitting. So, it is not limiting us right now per se. However, it reflects this outdated paradigm and doesn't really show how BCDC's perspective on fill has changed in many ways.

Just as an example one of these major conclusions and policies talks about justifiable filling and has a list of things that are justifiable filling but you see that there is an absence of fill for habitat creation, enhancement or restoration on this list.

Additionally, the next one talks about the effects of Bay filling and it talks about the effects of Bay filling in a solely negative light. It is not to say that, yes, Bay fill is still potentially problematic in certain situations but we have now recognized that Bay fill is a more nuanced thing that we need to consider.

You can see here that it says that any filling is harmful to the Bay. All Bay filling has one or more of the following harmful effects including destroying the habitat of fish and wildlife which, as we know, is not always inevitably the case.

And so in adding this part of the Bay Plan to our consideration for this amendment we would not change the timeline at all. We would still have the initial public hearing on June 20th and the vote early in the fall either August or September of this year.

That leads to staff's recommendation. Staff recommends that the Commission adopt the attached Notice of Revision of Scope to add consideration of the Major Conclusions and Policies Section of the San Francisco Bay Plan as part of Bay Plan Amendment No. 1-17 to address Bay fill and habitat projects in addition to those sections of the Bay Plan previously identified.

So the other sections would still be in there. We would just be considering changes to the language that I just showed you in addition.

And with that I will take any questions or comments.

Chair Wasserman stated: Before that we will open the public hearing. The public hearing is open. I do not have any speaker cards from the public. So are there any questions or comments from the Commission? (No questions were voiced)

Seeing none, I would ask for a motion to close the public hearing.

MOTION: Commissioner Ranchod moved to close the public hearing, seconded by Commissioner Scharff. The motion carried by a voice vote with no abstentions or objections.

Chair Wasserman asked: Any questions or comments before we actually vote on the recommendation?

Commissioner Pine asked for clarification: When we will actually see new language? When will that actually be in circulation?

Ms. Hall replied: The public workshop on March 21st in two weeks we're going to present policy options. That won't be direct language per se but it will be much more specific options. And then we will publish the background report and staff report on May 10th. And that is where all of the actual strike-throughs and underlined additions will be shown.

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

VOTE: The motion carried with a vote of 20-0-0 with Commissioners Addiego, Ahn, Alvarado, Butt, Scharff, Pemberton, McGrath, Stefani, Pine, Ranchod, Randolph, Sears, Vasquez, Nguyen, Techel, Wagenknecht, Ziegler, Holzman, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

11. Consideration of and Possible Vote on the Enforcement Committee's Recommended Enforcement Decision Involving Proposed Cease and Desist and Civil Penalty Order No. CDO2019.001.00, Salt River Construction Corporation. Item 11 was postponed.

Commissioner Techel inquired: Why are we not hearing Item 11 today?

Executive Director Goldzband replied: Our legal staff has been informed that the individual who would ordinarily have been here today who is the operator of Salt River is ill and cannot be here which is also the reason we are told that he was unable to come to the Enforcement Committee hearing as well.

And so in the spirit of comity we decided that we would wait until he is available.

12. Briefing on the Port of San Francisco's Request for Interest. Chair Wasserman announced: Item 12 is a briefing by the Port of San Francisco on their recent Request for Interest regarding port properties. Shannon Fiala will introduce the briefing.

Ms. Fiala addressed the Commission: It is my pleasure to introduce Rebecca Benassini from the Port of San Francisco. She is Assistant Deputy Director of Waterfront Projects and she will be giving you an update on the Port's recent Request for Interest seeking concepts for public-oriented uses for 14 historic piers in need of rehabilitation along San Francisco's Waterfront.

In her presentation she will outline how this RFI or RFP process aligns with the Waterfront Land Use Plan Update, the San Francisco Waterfront Special Area Plan Amendment and the Port Seawall Program which you heard about two weeks ago.

Ms. Benassini presented the following: I am joined by a number of my colleagues today. We have here today Diane Oshima from the Port's Planning and Environment Division, Kari Kilstrom from the same division, Lindy Lowe is also here our Resilience Manager and others may trickle in.

I am here today to talk to you about primarily the Embarcadero Historic District. I want to focus on the District today. And I also want to focus on the Waterfront Land Use Plan and those are the two foundational documents that led to the Request for Interest. And I want to talk to you about our goals for the District as they have been expressed to the Port through many years of public outreach.

The District was created by the actions of both of our agencies. In the 2000 Amendment to the Special Area Plan BCDC required that the Port nominate the District to the National Registry. The Port did that. And it was listed to the National Registry in 2005.

The goal was to really balance BCDC's mission for fill removal, and public access while preserving the defining characteristic of the Waterfront and we can all be really proud of what we've done in nominating and registering the District is to preserve this cultural heritage of the City and of the state.

Since the Embarcadero was registered we've had some great rehabilitation projects that have made the Embarcadero the special place we know it today.

The District is a little bit more than three miles long. It is an incredible generator of visitors – more than 24 million people walk along it each day. More than five million ferry riders come through along with numerous maritime and other types of businesses that are located along the District.

I want to talk a little bit about the successful private partnerships that the Port has been able to solicit and that resulted in these wonderful, rehabilitation projects. There have been four since the year 2001. The first public/private partnership was Pier 1 shown in the upper left hand corner. The next one was the Ferry Building completed in 2003. The one on top is Piers 1½, 3 and 5 and the Exploratorium was the last one that we completed in 2013.

These are our full, rehabilitation projects. One hundred to two hundred million dollars in costs, really special locations and all of them were built to Secretary-of- Interior standards.

These are wonderful, successful examples but there are many others that need quite a lot of rehabilitation and investment in order to get the public into these piers.

These are all beautiful. They are 14 still in need of rehabilitation. They are beautiful but difficult.

We want to get more people into the piers. We want to bring people into the piers. That is our ultimate goal but time is not on our side in undertaking these types of projects.

We've done about four piers over a 20-year period. That is a good rate but it is not something that I think we can continue if we want to get to many of the piers because primarily the realities of sea level rise.

The properties I showed you earlier were 66-year leases. Standing here today we wouldn't anticipate the next lease that we find for a full, rehabilitation project could be for 66 years; it might be a little bit less than that because of the realities of sea level rise.

We also are very much more now aware of the immediate risks of seismic and earthquake damage and the deterioration to the piers as our capital budget doesn't match the maintenance and capital needs of the Port. Deterioration makes the costs of piers go up more over time than they would if we were able to maintain them as we'd like to.

There is also a call to act now because we have the Seawall Program going in tandem and there is an opportunity to bring in private investment that could be used to support the Seawall Program.

We also have a clear idea of what the public wants in terms of these piers that came out of the Waterfront Land Use Plan Update. The public process is pretty much complete and we're now drafting the amendments to update the Plan.

And we have this interesting opportunity to bring an adaptation, demonstration project to historic facilities that don't have the adaptability that a newer development has. It would be a very interesting and unique opportunity to see what we can do with historic facilities that are facing sea level rise challenges.

We are mirroring the wonderful work that the Seawall Team did to put an approach around the risks that we face. The immediate risk is seismic. Any public/private partnership or pier project that we brought to you or any of our regulators would have this sort of approach.

The first goal is to address the immediate risk of seismic. Over time we will have contemplated this adaptation-type of process.

And the types of pier adaptation projects that we currently are scoping out to have our consultants help us understand what those might be. You can imagine it would protect both the aprons of the piers and then the pier structure itself. And you can imagine solid structures that protect those areas in the coming decades as there is episodic flooding. This would be when there are quite large waves that would over-top the aprons and then recede back.

And then the last portion of the piers would be envisioning what the end-of-the-lease term and what the end-of-the-lease term means. And that is not something that we can do on our own. We'll be planning that as a region of what the new waterfront looks like.

I want to also point out that in the Port's Building Code our Chief Harbor Engineer has the authority to determine whether or not health and welfare is still intact for any particular project that he is responsible for permitting. So we will be relying on him or her to help us with these adaptation strategies.

I will briefly touch on the Waterfront Land Use Plan and then I'll talk about the Request for Interest. The Waterfront Land Use Plan Update has been going on for about two years. We have 160 recommendations out of our Citizen Working Group that are forming the basis for the Waterfront Land Use Plan Update.

We have representatives from every district of the City. We are very happy that 160 of the recommendations were unanimously approved. The recommendations that impact the District are the ones that are very briefly listed here.

Historic pier preservation and rehabilitation is a priority. The public really wanted to see more reasons to get into the piers and enjoy the piers.

And there were also tools given the contemplated, financial feasibility constraints.

Those amendments are anticipated in the summer of this year to be open for public review, the draft amendments and then the Special Area Plan amendments we'll be working on concurrently.

Here you see one of the key recommendations for the District. This was recognition that the piers are difficult and over time they get more and more difficult to meet a project that makes sense. And in recognition of this our staff, the Working Group, the public members of the Working Group and State Lands staff developed public trust objective draft paradigm or a public trust objective just for the Embarcadero Historic District piers. The five bullet points shown here are the criteria we thought of and agreed to.

And for any pier project we are going to try to meet as much as of these that we possibly can: historic preservation, seismic life safety, public access, generate market rent back to the Port for use in other facilities and public-oriented uses.

That last bullet is a new term that we generated through conversations with the public and with State Lands staff. The idea is that any public-oriented use is something people can do or something they can eat, something they can buy, something that brings them into the piers and gets them inside the piers.

Part of this diagram is financially, feasible projects. All of the projects we showed earlier are public/private partnerships. None of those did the Port bring on its own resources. We had to attract private partners and they require financially feasible projects in order to invest dollars into the piers.

Out of the recommendations we didn't have a clear idea of what public-oriented uses meant. And that was the genesis for issuing the Request for Interest.

Last summer we issued a Request for Interest, non-binding call to any entity that thought they met the definition of public-oriented use. And we put out 14 piers that are in great need of rehabilitation dollars and we had a three month process where we invited respondents and we tried to get the word out far and wide that this was out there.

The outreach during the three month period was extensive. We are very excited about the response we got. At the end of the day we received 52 responses by our deadline from an array of users. This slide shows the nine categories that we put the projects into.

They ranged from education which was a lot of co-working types of spaces that had a component where they educated the public in the industry that they worked in. We had performance, food and beverage because people love to eat on the Embarcadero, museums, waterfront-wide concepts were really not respondents but people who had ideas and were looking for partners to implement their idea, they weren't operators themselves, several recreation providers, art and artist studios where items are being made and then sold to the public, maritime excursion, charter and transportation types of uses and two mixed-use projects that contemplated hotel use with the understanding that Prop H prohibits hotels on piers. The respondents just noted that hotel use would be a financially feasible use and they had a concept for hotels with another type of use mixed in.

We think we've done quite a lot of foundational work to set the stage for bringing a private partner on with us in the near term.

I want to define a little bit of the project goals that we have in mind for doing that and then go over some of the concurrent processes that are going on right now.

Success for any project for us would at least meet these bullets and we'll be going out to some of our members of the public to hear from them whether or not we are getting right.

The first one – a successful solicitation process has to be open to be considered successful. We are very proud of how the RFI went. We held a number of meetings and you can see photos there. We also had an online poll that received almost 300 responses which is the basis for the chart below that shows where along the waterfront people are interested in seeing public-oriented uses.

Another success bar is receiving the most amount of trust benefits through any project that comes forward. We've had a number of starts and stops. We sometimes ask for projects to go forward and something craters them. So we are trying to develop a process that results in an implementable project. That is really important to us because it takes quite a lot of everyone's resources to undertake these and we want one to get to the finish line.

Our ultimate goal is to bring more of our resources back to life. And back to life means people are going into them and they are being used in a vibrant and a dense sort of way that many of them are not being used today.

We are in a perfect waltz with all of our concurrent processes. Diane Oshima is leading up the Waterfront Plan Update. I mentioned earlier that we are working on the amendments to be released in the end of the first half of this year. I am leading the pier solicitation process. We also have the Seawall Program that you heard about earlier and we are staying closely connected because much of the data that they are developing will be extremely useful and important for any pier, seismic retrofit.

And the Special Area Plan amendments are also beginning. I think there have been quite a lot of meetings between Port staff and BCDC staff and we are going to be continuing those and staying in close lockstep with one another.

I want to leave the vision for the District up here as my closing slide. This is Pier 38 on the top and Pier 19 on the bottom. Our vision is simple and hard to get to. Simple in that we want to significantly increase public and maritime access to the piers. And we want to have some urgency around this action because we think time is short to get these improvements into the ground but we have a lot of time even if you think about sea level rise to keep these piers available for the next generation's enjoyment as we determine what our new waterfront is going to look like.

We are really ready to bring foot forward and to get this done for more of our pier facilities. With that I am happy to take any questions or comments.

Chair Wasserman continued: Before we go to any Commissioner questions we have one public speaker. That speaker is Jim Chappell from SPUR.

Mr. Chappell addressed the Commission: I am Jim Chappell and you know me as Anne Halsted's Alternate Commissioner although she is so diligent I rarely get to participate in these meetings. (Laughter)

I am here with a different hat today representing SPUR, the San Francisco Bay Area Planning and Urban Research Association of which I was Executive Director for 15 years.

I've been involved in Bay and Port planning issues for over 25 years and SPUR has been involved much longer. In 1963 SPUR lent its then deputy director Joe Badavits to lead the state commission formed by Senator McAteer to study the Bay and Bay fill.

This resulted in the 1965 McAteer-Petris Act and Joe went on to be your first executive director. In 1968 SPUR authored the report and developed the financial strategy that resulted in the 1969 Burton Act enabling San Francisco to regain control of the Port.

Since then we have been involved in each iteration of the Waterfront Plan. Most recently SPUR along with many other members of the public has participated in the Waterfront Plan public process and recommendations.

We are keenly interested in activating the historic piers and the entire waterfront increasing public accessibility thus we strongly support the Waterfront Plan recommendations to prioritize with all deliberate speed as many more pier repair and rehabilitation projects as possible which also deliver these highly desirable and popular major public-access benefits.

The Waterfront Plan recommendations include financial strategies to make historic pier development projects financially feasible and thus able to realize public objectives for an active, urban waterfront with a wide variety of public-oriented uses.

We are enthusiastic about the many cultural, arts and entertainment entities that are interested in utilizing the piers and would like to be included in pier development projects.

And finally, we also support the opportunity to apply adaptation designs to these historic resources to maximize public use and enjoyment while envision and plan for long-term, waterfront resilience.

I want to thank BCDC for partnering with the Port in past, historic, rehabilitation projects; the Ferry Building, the Exploratorium and the Port's offices at Pier 1 demonstrate how the waterfront can continue to evolve to adapt to new and modern uses while celebrating our shared history.

SPUR looks forward to more similarly successful projects that will come out of the Embarcadero Historic District RFP. Thank you.

Chair Wasserman continued: Questions, comments from the Commission.

Commissioner Nguyen commented: In context of the urgency or urgent need to do the proposed work that you mentioned as well as taking advantage of the coordination with the Seawall Program and particularly in terms of the criteria for success; have you prioritized the most urgent needs in terms of rehab or capital improvement and seismic and life safety before the other in terms of public access and historic preservation revenue generation?

I am just curious that out of the 14 facilities that are left there must be a priority of which one you want to do first, right?

Ms. Benassini replied: That is up for debate right now. So we had the 14 piers in the RFI. The Port staff recently went to our Port Commission to recommend phase one and phase two of a potential strategy. And the phase one piers were Piers 19, 23 and 29 with an option for Pier 31 because in our view they met those criteria. Our Commission has asked for more analysis to be done.

We also had the phase two piers which the other piers to work on those just because we think we can't tackle them all at once. But our Commissioners are having us dig into that much more closely. So we will be coming back to them and providing more information.

But you are right. We view where we are still going to have some segmentation for how these things are delivered and we are going to have to begin somewhere and then cycle through the process as we get to as many piers as we can.

Chair Wasserman commented: Could you go back to the slide that has the priorities listed? Conceivably this is wrapped up in seismic and life safety. But I don't see adaptation to rising sea level on here. And if it is intended to be wrapped up in that line that ain't enough.

Ms. Benassini responded: This isn't enough to wrap it up in that line you mean?

Chair Wasserman answered: Yes. It needs to be there because there is going to be – there is tension amongst all of these issues of course, but there is going to be tension between adapting to rising sea level, accomplishing some of these and a financially feasible project.

And a big part of that is likely to be wrapped up in the length of leases versus the cost of improvements directed right at adapting to rising sea. So I would encourage the Port to think about adding that as its own separate line there because I assure you when the project gets here that will be a major issue.

Commissioner Pemberton commented: I wanted to thank you for the update and presentation and all the work to try to rehabilitate these historic piers and improve the waterfront and for involving BCDC and the State Lands Commission in that process. Thank you.

Ms. Benassini replied: Thank you for participating.

Commissioner Scharff was recognized: I just wanted to say that I am really glad you are moving forward on this. It would be a real shame to lose those piers over time. And there are clearly a lot of financially feasible uses that would work and to not take advantage of it because of not being able to get everyone together would be a shame. And you've made huge progress in the public outreach and the people in San Francisco are excited about it.

I think the most important thing is that we don't put up obstacles to making this happen, that we allow this to move forward and that it happens.

I do think it would be good to put out sea level rise as an issue. I do think we would clearly be looking at that as something.

But I did not want to end on what seems like a noted obstacle. I wanted to say I support this and would really like us to move forward on it.

Commissioner McGrath was in agreement: I agree with everything you just said. I've done this as a developer at the Port of Oakland trying to deal with piers and I've got a broken pier in Berkeley. And even though I've been involved in efforts and Berkeley voters have been generous to raise 100 million dollars for infrastructure repairs and a big increase in our parks tax is really hard and people ask me, well why isn't the pier re-opened and – God, it is on my list.

But trying to deal with an old pier and seismic safety and the public; I wish you the best of luck and if you get there before Berkeley does, tell me how. (Laughter)

Commissioner Scharff noted: We just re-opened our pier in Palo Alto. I was really pleased and I want to thank BCDC staff for any help that occurred on that because that just opened and we are all happy about that.

Vice Chair Halsted added: Years of work and trial and error and experience have led to a very deliberate and thoughtful process. I commend you on that. And I know that there will be many more complications and challenges ahead but I do feel your staff is moving in a very successful way.

And I thank you for that and I wonder when this will come back to us again.

Commissioner Pine had questions regarding protection: These historic, finger piers are so unique and it is exciting to think about how they may be re-purposed. But one thing that I struggle with when I think about sea level rise particularly substantial sea level rise like three feet; how are we going to really protect these piers? Can you shed any light on that?

Ms. Oshima fielded the question: Good afternoon Commissioners, Diane Oshima with the Port staff. I actually don't have a definitive answer to that but in terms of the steps and the layers and that trial and error reference that Commissioner Halsted made I think it is a little bit of everything.

Our chief harbor engineer would be the best spokesperson on this but we are very cognizant of sea level rise and flood exposure over time. Many of the piers are actually at around six feet or higher but we know with storm surge and the 100-year storm that there is going to be an increasing frequency of wave action and wetness even without changes in projections and rising waters.

So we will be doing engineering studies. We are working on some contracts now to be able to look at what are some alterations that can be made to these historic piers that are respectful of the architecture that basically buy time assuming that there is a seismic retrofit plan that enables the rehabilitation or the major repairs that we are talking about and that this can happen.

And these would be conversations with our development partners with our chief harbor engineer and the Port staff on different types of strategies that are particular to these historic resources that can be incorporated into the development design of a project.

And some of these projects may try and go for the long-haul for a full rehabilitation. Some of them may be going for a partial repair and rehabilitation. From the Port's perspective the bulkhead buildings along the Promenade are the highest demand spots for really bringing people into the piers because fewer of them go walking all the way out to the end.

And so if you look at it that way and if you were looking at it as your house maybe your kitchen is the most important place to make those improvements and to protect it and that there are other places where you can live with higher levels of risk and access to water if you need to and then ultimately it is the chief harbor engineer, the building official for the Port of San Francisco. So he or she has those responsibilities to give warnings or ultimately to shut down a facility if it is not meeting the building code requirements in place at that time.

Within that framework I think that there is a good opportunity for the Port and the City and BCDC, particularly through your ECRB, to really work and talk amongst each other about what are the comparable standards that we should be paying attention to so that we could come up with some standards that recognize that there are checks and balances in place that a development partner understands so that through our development agreements and lease agreements we can have some enforceable measures to make sure that we are protecting the public safety.

Commissioner Sweet commented: As a former resident that used to live around the corner from here and served on a couple of advisory committees for redevelopment of the Port, I want to commend the Port on being a great steward over the years watching the Berannan Street Wharf go up.

I am curious to know if there is anything specifically that has been discussed with regards to Piers 30 and 32, a great piece of property and a great location which we understood from years back needs a lot of work but, again, to commend the Port on the Ferry Building to the greenway to the ballpark and all that you've done in this area to really embolden the properties and provide access and the continued efforts.

But I am interested in knowing strictly on Piers 30 and 32 whether there has been any progress.

Ms. Benassini replied: Thank you for your words and for asking about that. At the same Port Commission meeting about one month ago we provided an informational presentation on Piers 30 and 32. The new Commissioners and some of the old Commissioners were interested in figuring out whether or not there is a long-term path forward. We didn't make any recommendation at that point. We were providing information about what you are well aware of.

Some of the reasons that previous projects failed to go forward on those piers and what might be future potentialities. And at that meeting we were asked to continue difficult engineering work which is kind of the crux of the one of the problems with those piers.

And so we were asked to do a little bit more diligence and come back. So, at this point we don't have plan any other than parking or temporary special events and that is what we are working on now at Piers 30 and 32. I'd be happy to get that informational, staff report perhaps to BCDC staff to share with you.

Chair Wasserman stated: So just to end on a fully positive note I absolutely welcome this effort and applaud it. As Larry knows before Resilient by Design started, I was pushing very hard for precisely this kind of study focusing on the piers after the abandonment of 30-32 by the Warriors and indeed had a student workshop down at Stanford for preparing a working paper on how the procedure might go.

So this is much needed and terrific. Thank you very much.

Ms. Benassini replied: Thank you so much.

Commissioner Alvarado announced: I just wanted to acknowledge on behalf of SPUR that Diane Oshima received a major award last night from SPUR, our Good Government Award. It was quite a wonderful event and I just wanted to congratulate you publicly. (Applause)

13. Briefing in Support of Bay Plan Amendment No. 1-17 Regarding Bay fill for Habitat Projects. Chair Wasserman announced: That brings us to the last item which is one of our continued scientific briefings and Megan Hall will introduce the item.

Ms. Hall presented the following: Today we will have the third briefing in our series of science briefings on the Fill for Habitat Amendment. You've now learned about the history, current issues and future of restoration in the Bay from Michelle Orr and heard about the different types and purposes of fill that we may begin to see on a larger scale and to a greater extent in the Bay from Roger Levanthal.

What we have not yet addressed is the potential trade-offs of allowing more fill in the Bay. While more fill is important for restoring and creating more resilient Bay habitat, some of the proposed fill we've shown you will convert one type of habitat to another or potentially have other impacts. And the consequences of this conversion are important to consider.

So how do we decide when and where it is appropriate to temporarily impact or convert habitats to preserve other habitats or to make the system more resilient to sea level rise? Also, how do we assess the right mix of habitats in the Bay and how we can determine how that should all look on a region-wide scale?

Today we will have a small panel present on various aspects of this question. They will address the value and need for various habitats throughout the Bay and touch on how we should make these judgement calls to prepare our Bay for a more resilient future.

Our panel consists of Isa Woo, Dr. Kathy Boyer and Jeremy Lowe. Jeremy Lowe is a coastal geomorphologist at the San Francisco Estuary Institute (SFEI) with 30 years of experience in tidal, wetland restoration and sea level rise adaptation planning on the Pacific Coast and in Europe.

He has lived in the Bay Area since 1999 and is working on adaptation planning for the counties of Marin and San Mateo, as well as the beneficial re-use of sediment in wetlands.

Dr. Kathy Boyer is a professor of biology at San Francisco State University's Estuary and Ocean Science Center. Her research focuses on ecology and restoration of shallow, estuarine habitats including seagrass beds and salt marshes.

And Isa Woo is a biologist with the U.S. Geological Survey, Western Ecological Research Center. Her research focuses on wetland ecology, benthic ecology, assessing restoration benefits for wildlife and food webs.

We are really lucky to have such an experienced and knowledgeable panel join us today. I look forward to hearing all of their different perspectives on this issue.

Mr. Jeremy Lowe addressed the Commission: Thank you for having me here to talk to you about the work we have been doing about sediment in the Bay and how we can use that for adaptation. The picture here is the Petaluma Ancient Marsh and it is one of the few remaining natural marshes that we have in the Bay and it has been working well. It has been working well for the last several thousand years.

But it is facing new issues now with rising sea levels. And protecting the investments like you heard from Michelle Orr and thinking ahead of how to protect our communities from sea level rise is an important aspect that we can apply sediment to and ensure that we have a more resilient shoreline.

I am going to talk through three parts of the shoreline. The marshes at the Bay's edge are number one. Number two is looking at that area between the marshes and the uplands. Many of our uplands now are urban areas. We have a few natural areas but how will we manage that area? And number three we built a lot on these historical Baylands. They are very low-lying. How do we manage those areas? We use them for agriculture. We use them for cities. They are important areas but in the longer term we got to think about how they might change.

So this is the first thought about marshes that exist today. We've heard a lot about how you restore marshes by adding sediment, by placing them in salt ponds and so on. This question is about, how do you manage the existing marshes? The marshes that are vegetated at the moment; how do you add sediment to that?

In the Bay it is difficult to get sediment to the marshes. We have very wide mudflats, and very shallow areas.

This shows three different ideas that we have. One idea is to spray it is called rainbowing. It sounds better than it actually is because you are rainbowing mud. And you are putting it through the air and you are trying to land onto the marsh. That has been tried down at Seal Beach in Orange County down in Southern California. It has been tried a lot on the East Coast.

Here we haven't really tried it. But it is something to consider. It has its benefits. You can aim where the mud lands and you can be quite specific where it goes. But it only has a short range and it does tend to fill in channels and does tend to make it a bit of a moonscape of the whole marsh. So that is one opportunity that we have.

Maybe we can use natural processes. So the second bullet there is releasing sediment into the channels, into the tidal flows and allowing natural processes to move sediment into the marshes themselves.

The problem with that is you've got to judge the tides. You've got the release of the water column. You are going to have impacts on the water column itself and on the fish and the biota that live in there.

The third one down is actually releasing sediment directly onto the mudflat into the shallow sub-tidal. This is an area that we have been valuing much more particularly with the release of the sub-tidal goals illustrating the value that this area has to us.

Where sediment is naturally placed allowing waves to re-suspend and taking up into the water column is accomplished and then allowing natural processes to move that onto the marshes is also part of the process.

So these things we haven't really tried in the Bay but as we move forward in time and as we try to maintain these marshes, we've got to think more about those.

So I wrote down some questions that you might want to ask of people who are proposing these. And potentially there are ways to answer them.

Firstly, we can't do all the marshes everywhere. There are a lot of marshes. We have a finite amount of sediment. So how would we prioritize those? Which marshes will be maintained? Will we maintain the highest ones which may be the most resilient to sea level rise or should we think about the lowest ones? The lowest ones that need catching up might be considered.

We've got to think of not just the value of wildlife but the value for flooding and for wave attenuation. We need to think of the value of those marshes for water quality. And we must think of the landscape scale not just the individual parcel but how they all add up.

So you could be guided in your thoughts and your questions by the Bayland goals and the sub-tidal goals; great information sources and particularly the 2015 Climate Change Update.

We are producing an Adaptation Atlas. You might have heard about these OLU's. We are putting this information into the Adaptation Atlas and resilience maps. There are a number being produced. You should be thinking about how you compare elevation and sediment supply to how long the marshes are going to last.

And then how do we balance those impacts? Because while you may be maintaining the marshes if placing sediment into other parts of the Bay, into the mudflats and so on; we are going to be impacting those. How do we balance those?

We can learn from those pilot projects like in Seal Beach. The Corps of Engineers is doing a lot of work on those. Think about outside of the Bay. And within the Bay there is potentially going to be pilot projects with the Corp of Engineers. We should be thinking about firstly how the impacts of placing sediment onto mudflats and into the shallow areas might affect things. And then think about how things might move.

But one of the questions you should think about is what does recovery of those areas that we bury look like and how long does it take?

The second area I'd like to talk about is upland areas. The upland areas are those areas behind the marshes, the wetland/upland transition. Here we heard the word, "horizontal levee" from Roger Levanthal. A horizontal levee is an artificial version of that. It is where you build upland in front of the levee, a long slope going into the marsh.

It provides habitat which we need today. It provides space for the marshes to migrate. And it also has flood management potential as well as thinking ahead in terms of the Oro Loma experiment and thinking about water treatment and water quality impacts.

So we build a pilot project. The Oro Loma Horizontal Levee in San Leandro is built at 90 degrees to the shoreline and it is behind the wastewater treatment facility so it is not actually much good for sea level rise but it is an experiment. It is a way of finding out about how these systems work.

And the key here is to think about placing of these. You could build these anywhere you like. However, we should be thinking about how this fits into the landscape. We should be thinking about this nexus of marsh and wastewater and flood risks and thinking about how water used to go into the Bay and how we could put that into the Bay in the future.

The map on the left is showing the historical creeks and wet meadows that used to go into the marshes on the East Bay. On the right is all the sewers and wastewater that is how we re-plumb that East Bay.

And so when we think about horizontal levees and when you ask, "Is this appropriate"; you should maybe be thinking about we should be working around these new creek mouths, these new creek mouths which are focused on wastewater treatment facilities which are focused on storm water channels rather than what used to be there historically.

So using the historical understanding to guide a future landscape is useful. And so the questions that you might want to ask is whether horizontal levees make sense?

Michelle talked about the complete marsh. They are part of the complete marsh but to make a complete marsh you've got to consider what is in front of it, the marshes, the mudflats, the shallow Bay and that is important.

But there are also transition zones. So you have got to think about what is behind it. What are the land uses that are there? There is not transitioning to a cliff.

And so how do we balance these as well. We have a three-legged stool of wildlife, flood risks and water quality. That is something that we need to consider when we are thinking about a working shoreline, a resilient shoreline. And maybe we can use the present day types of maps of hydrology and so on to guide that future landscape.

And the last point I'd like to make is about the future landscape. Here you see the Hamilton Airfield and the discussion here is about disconnected, low-lying areas. These are areas that will get wet if you took the levees down on every tide. So you don't have to wait for a flood for this to happen.

They are also properly called polders but nobody is really keen on that name. (Laughter)

What you are seeing here is a picture in color of the elevation. What you can see on the right hand side as you are coming from the Bay across the mudflats, across the marshes and then you go into another brown area, another low-lying area which could potentially be mudflats because it was connected. It is an agricultural field at the moment. These are the low-lying areas. These are holes that we have around the Bay behind our levees, behind our marshes and we have to think about what we do about sediment.

This is the Hamilton Airfield and we put 3.6 million cubic yards of dredged material for the tidal areas and some other seven million or so to build up the upland areas and so on. It is a great beneficial use of material. But that is just one hole. Next door to it is Bel Marin Keys which needs another 13 million cubic yards. Next to that is Petaluma which needs 47 million cubic yards. Next to that is Skaggs Island which needs 28 million cubic yards and the list goes on.

The amount of sediment that we have available is less than we actually need. So we've got to think about how to re-use some of that. And one idea is to re-route creeks and sediment supplies from the local watersheds into the backs of our marshes. This is an example from Calabazas Creek in Pond A8. So undoing some of those levees and so on and connecting the flood plain back to the Creek, putting that sediment back; we're not going to solve the problem overnight but at least we can start making a change.

And so the questions here are how do we manage these disconnected areas? Do we fill them with air by maintaining the levees? Do we fill them with water or with sediment? That is a big question. They are going to do that anyway because those levees are going to fail if we don't maintain them.

And can we allow these areas to fail gracefully by connecting them back to creeks by allowing sediment back into them gradually and managed them in the long term because otherwise we are going to end up storing up a whole lot of issues for ourselves if we don't manage this sediment correctly. Thank you.

Dr. Kathy Boyer presented the following: I am from the Estuary and Ocean Science Center. I was asked to speak specifically about these bottom habitats in the open Bay that will be impacted by more Bay fill and considerations for those habitats.

You are aware that within these shallow, sub-tidal regions of San Francisco Bay that there are projects that are ongoing that involve simply restoration of species or habitats without a sea level rise component. Even those are fill as far as we are concerned and as our policies call them.

We are really more interested in these green, infrastructure projects that are intended to address and adapt to sea level rise. So this is really the ramping up for the larger fill quantities that will potentially lead to impacts to existing habitats.

A lot of the projects in the Bay right now focus on habitat-forming species, in particular Olympia Oysters, putting down reef balls or bags of oyster shell and trying to attract our little tiny native oysters to those, planting Eelgrass for restoration purposes. It could be planting Pacific Cord grass and thinking this continuum of habitats and restoring those for all the many reasons why we care about those habitats.

Mostly these have been projects on native oysters and Eelgrass. There is a new one that will also include a macro-algae species called Rockweed.

So if it is Olympia Oysters that we are interested in placing some kind of hard substrate. This could be a reef ball like I said or any kind of really hard substrate that will attract and provide a place for these oysters to attach and then grow.

For Eelgrass we are putting it in with a bamboo stake or with a Popsicle stick, something that anchors in place until it gets a chance to root. Again, all of these are types of fill but these projects are on a pretty small scale. And we are doing them because of all the various values we think that these species have. They are native species. They provide habitat for many others by simply being present in the Bay.

And there are species that we believe we have a lot less of than what was here historically. We also believe we have a lot of available habitat that could support these species. So that is what drives these kinds of projects.

These species-focused projects provide complex structures on places that otherwise are sort of featureless mudflats or sandflats. It is not to say that those don't have value but when we provide these complex structures we tend to attract all sorts of organisms that like that structure.

And depending on which species you are putting in as this foundational habitat you attract different sorts of species to that. By having more than one you can maximize the number of species that you can have present.

What we are really talking about is ramping those kinds of projects up and we could call those living shorelines, green infrastructure projects, green/grey hybrids; all of them just thinking about them as alternatives to these fully grey kinds of infrastructures. And all of them have the same idea that we're interested in shoreline protections, solutions that bolster habitat values of coastal ecosystems.

Think about a hard retaining wall versus something that has more of a continuous range of habitats available that also provide shoreline protection but that connects habitats, and allows those organisms and processes to connect.

So this could be a horizontal levee. This could be placement of coarse material. This could be placement of oyster reefs. There is a whole, wide variety which you all are very familiar with.

So most of the pilot projects so far that have been done with these kinds of things in the Bay have been pretty small. And they are demonstration projects for us to think about how to scale up and what benefits can we get from those.

One of the first is the California State Coastal Conservancy's Living Shorelines Project which is in San Rafael. This was focused on restoring Eelgrass and oyster reefs together versus alone.

When we start to scale those kinds of habitats up we do see potential synergies between those. So for example if we put in these oyster reefs we know that we can get about a 30 percent reduction in wave energy by having a small oyster reef.

And then if we plant Eelgrass on the back side of that on the shore side of that, we can protect that Eelgrass and it grows much better if it has oyster reefs on the Bay side.

So when we start to think about these kinds of fill we can think about how these different types of projects can work together to provide the most habitat and the benefits.

Scaling up can also enhance other kinds of wildlife values. Work from U.S.G.S. shows that if these oyster reefs are available then the birds that are using those reefs are foraging about 70 percent of the time versus about 50 percent of the time if there is no reef present.

So there is an increased opportunity for foraging by adding this kind of complex habitat.

By scaling up these types of projects we can go from the smaller versions up to learning from those and going to the next level. This is a project that is going in at Giant Marsh, fully permitted, in the spring and summer. Giant Marsh is at Point Pinole.

And then there are all sorts of other parts of these types of green infrastructure. There are components done in an experimental way to try to facilitate our monitoring and our learning about how to move forward with larger scale.

I do think that even if we put protecting human infrastructure aside and we're just thinking about trying to maintain tidal marshes and all the many values that they have if we are trying to maintain Eelgrass beds and oyster reefs we're going to have to do fill in order to maintain those in the future as sea level rises.

In general when we put those kinds of features in we do increase habitat value by providing this complex, physical structure that all kinds of other organisms are attracted to.

At the moment there are a lot more mudflats and sandflats than there are these other kinds of habitats. I don't think any of us would say we should fill the Bay with oyster reefs or we should fill the Bay with coarse material placement or horizontal levees, but we can choose places where they are most appropriate and where they minimize impacts to existing habitats but also provide those nice benefits that help us to maintain tidal marshes and other kinds of habitats we want to keep into the future.

We need to scale up these projects beyond what they are currently and we need to do it pretty quickly. I think everyone understands the urgency of that.

I think we can do this in a careful way. One of the main things I work on is Eelgrass. I would not want to see an Eelgrass bed just filled in with sediment but Eelgrass makes up about one percent of the Bay bottom habitats. There is a lot of room to do these kinds of fill projects that are beneficial fill that provide all the many benefits that we have talked about while also being careful and sensitive about the habitats that need to be protected.

This was meant to open up discussion. I know we are going to continue going but I am just going to leave it there for now.

Ms. Isa Woo addressed the Commission: I was asked to fill in for Susan De La Cruz because she wasn't able to be here today. I am going to talk about habitats and wildlife benefits, and how we assess that.

In the high-marsh transition zone that Jeremy talked about, the habitat supports pickleweed and a lot of other high-marsh plants and supports other species such as Black Rails, Salt Marsh Harvest Mouse and Song Sparrows, and it functions as high-tide refugia.

In your mid to low marsh you also have pickleweed and your native cordgrass but you also have these cool little channel features that support fishes and their access to the food that the tidal marsh provides. And your Ridgway Rails are endangered and they use these little channels as little corridors and also your Salt Marsh Harvest Mouse will be found there.

Mudflats and shallow benthos are also very important. And most of the time when you look upon a span of mudflat you don't really see it. But when you peer underneath as in this illustration you will see that it is teeming full of invertebrates. It is like a smorgasbord for fishes and shore birds. And it also supports bio-film resources and food web support for fishes and birds.

But these habitats are essential habitats for fishes. This really is this kind of continuum between your upland high-marsh transition zone all the way to your tidal marsh, your mudflats, and also your sub-tidal areas.

It is not surprising that San Francisco Bay supports a myriad of wildlife despite having lost so much habitat and being such an urbanized estuary. We still have over 500 species of fish, amphibians, reptiles, birds and mammals and almost nearly as much of invertebrates. This is very near and dear to my heart.

Almost 150 species of birds are using tidal wetland habitat from this upland transition zone all the way to your mudflats and ponds.

You have a number of tidal marsh endemics that are covered for endangered species and also the Fish and Wildlife Recovery Plan.

Intertidal mudflats are essential foraging habitat for shore birds and for a lot of benthic, foraging fishes but in this area they are a bit under-studied and so I am going to focus on that because Jeremy and Kathy had covered the other habitat types.

The cool thing about these mudflats is that they support millions of birds every year. And the San Francisco Bay is the site of hemispheric importance for shore birds, supporting over half a million shore birds per year.

And these are birds that are migrating up and down the entire West Coast all the way from Alaska and Canada to South America and they need important places where they can stop, rest, fuel up before they continue on their migration.

Thinking outside of San Francisco Bay worldwide there has been a loss of this inter-tidal habitat through development and urbanization. And there have been studies that link this habitat loss to declines of shore bird populations. So we really want to be mindful that this habitat is actually pretty important for animals.

Although my talk will be primarily focused on birds I would be remiss if I didn't talk about fish. I wanted to illustrate that these fishes you see on the slide are foraging on these mudflats and there is a way that you could functionally look at these habitats.

You could look at the access of the shallow areas and the deeper areas and what is being produced there because of small sardine can't really forage that far down, or if it's a juvenile (a different life stage) they are going to be eating different things and then have different mouth sizes so you really have to put yourself in the perspective of what your actual wildlife functions are.

So we have size classes and no one is crazy enough to do size classes for invertebrates but we do as part of our mission.

And then we look at biomass because we also look at numbers of invertebrates but it is really important how much they weigh, how much substance are you getting? It is kind of like, if you are really hungry, you are trying to fuel up for a marathon and you are just getting fries when you really want a tasty burger. Amount and biomass matters. It is not just abundance.

I want to get your thoughts wrapped around foraging and how we assess wildlife benefits from these habitats. We all know that these tidal marsh ecosystems are vulnerable to climate change. And going back to the Baylands Ecosystem Habitat Goals or Science Update two main questions emerged: how will these populations of plants and animals and Bayland habitats be affected by climate change?

And the crux of it; what management actions can be most effective in keeping populations healthy and restoring population health?

That question to be answered requires the best available science, number one, and pilot projects and the flexibility in case you get unintended consequences and unintended things that happen.

I am going to focus mainly on the first part; how will wildlife be impacted by sea level rise? I am going to go through three different themes here in terms of the sea level rise impacts to this marsh/mud flats and sub-tidal continuum just focusing mainly on the mudflats.

How will these changes in the inundation actually impact the access and availability of habitat to something like a small shore bird? And then also how does the inundation impact your prey resources that are inside your mudflats?

We've partnered with UNESCO in terms of doing a hydrodynamic, one-dimensional model for Delft modeling. They've modeled this over time, two different mudflats in the red boxes. So we have one at Dumbarton and the further South Bay and then Eden Landing in the South Bay as well.

And the modeled results looked at your wave actions, sediment characteristics, winds forcing and tidal hydrodynamics. And it spits out these transects of what they think the elevation might be. So we used some sort of interpolation to create a surface.

And then we overlay what the projected sea level rise scenarios are. This is one, particular scenario using the high, sea level rise up until 2100 and 2050 and 2000 and 2005. We are seeing that these two mudflats will have different trajectories. Not all mudflats are the same. Not all mudflats will react the same in terms of sea level rise.

In Dumbarton you see that the higher elevations are in brown and the lower elevations are in darker blue. Dumbarton seems like it is projected to persist which is great. Eden Landing is projected - not so much.

What does that mean? What do the changes to these mudflats geomorphology mean to the habitat that is accessible to something like a small shore bird? And these are really, really small. This is a Western Sandpiper and it has really tiny legs and really tiny bills. It is so small that they are foraging in water levels that are less than five centimeters; larger shore birds about a 10 centimeter water depth.

What we did is we modeled – we took our bathymetry surface, we overlaid water levels and then we looked at what are the actual habitat that is accessible to such a small shore bird? We looked and we came up with this habitat availability for your different time periods using your high sea level rise.

You have your habitat availability on the Y axis, the year on the X axis and then in yellow those are your small shore birds and you see that at Dumbarton on the left graph you have more than 57 percent of it is declining until 2100.

And at Eden Landing 100 percent of it is gone. So there is no available habitat at all at 2100. The larger shore birds fare a little bit better.

We know that the habitat can change. We know that the accessibility doesn't look so great for mudflats but what about the actual invertebrates in your mud flats? How are they responding to inundation levels?

U.S.G.S. did this long, crazy, intensive study from 2008 to 2011 and on the map are individual locations where we collected samples every month and we looked at invertebrates, numbers and biomass and we also took elevation so we know your inundation percent. And we integrated that into statistical models.

We came up with these biomass productivity curves. This is specific to each species. They behave differently for the percent exposure which is on the X axis and then your Ash Free dry weighty (AFDW) on the Y axis.

What you are seeing here is for Gemma gemma which is a small bi-valve that shore birds really love to eat. You are seeing that the biomass peaks when your tidal flat is exposed at 40 percent of the time and then it decreases on the other side.

What does that mean in terms of projected biomass through time? In the near future it doesn't seem so bad but at 2100 we see a dramatic decline. That is going to be a 93 percent decline.

There are a lot of graphs I threw at you and I was trying to synthesize it. The loss of foraging habitat in terms of what is actually accessible to birds with small legs and small bills can be dramatic. The loss of the invertebrates in those mud flats can also be dramatic. In combination the ability for these mudflat habitats to produce prey to support these millions of birds can be greatly reduced. So that is a concern.

The mudflat shape, slope and geomorphology are all important factors in determining the rate and magnitude of habitat loss as sea level rises.

The foraging habitat could be recovered if we allow land migration through levee replacement and in many areas that is not as feasible because we have urbanized areas. But in some areas it might be more feasible such as in the North Bay where you have more agricultural lands.

We can also maintain these areas by maintaining managed ponds but that is also very, very expensive to maintain and to manage for sea level rise.

But we also have this opportunity to use sediment augmentation which we are going to have to do. There is so much need for sediment, we don't have enough but it is going to have to be selective in certain areas.

I want to summarize with a pilot project that was done at Seal Beach. It was about a 10-acre pilot project where they sprayed about 10 inches of sediment onto a marsh in Southern California. And there were some things that were unanticipated like the sediment substrate was more sandy and certain areas got more than 10 inches and some got less.

In 2106 that is when the sediment was applied but there is the idea of recovery that the vegetation is still continuing to be re-established. Benthic invertebrates have not reached their pre-augmentation levels. And Eelgrass decline is still recovering. It is going to take time to do that.

Other ways to making this recovery a little faster could be with plantings but in general I want to also impress upon you that the term "recovery," especially when leading to benthic invertebrates, is not well defined at all.

I think we need to go beyond just numbers and look at these functional foraging or functional aspects for wildlife whether it is high-tide refugia. But in terms of foraging I really look at biomass and size classes can they actually eat it and can they actually benefit from it because you really want these energy-rich resources.

We need a closer linkage of wildlife response to the physical changes that are being projected. A lot of times we live in our own silos but I think the communications and working together will help a lot.

But also in terms of foraging putting yourself and thinking about what a wildlife, what an animal will experience is going to have differences in accessibility, biomass and energetics. That is kind of all I have. Thank you.

Commissioner McGrath commented: Sediment augmentation is no longer my middle name. (Laughter) But I've been there and done that. At the scale of what we see I'm worried about – I mean the problem is a mess. And I'm worried about scale and affordability. So I have a question for Kathy who is renowned.

The Coastal Conservancy and the Corps of Engineers worked on the idea of a re-handling site in San Pablo Bay about eight years ago. And it kind of crashed and burned on the Green Sturgeon issue for good reasons.

My question to you in looking at these ideas and trying to keep up with the task before us; what did we learn from that effort? And can that concept be somehow revived either in the North Bay in San Pablo Bay where so much of the wetlands that need restoration are or in the South Bay? Is the issue of turbidity and endangered species intractable so we are going to have to pump things behind levees or can we do some things with re-handling?

Dr. Boyer asked for clarification: Are you talking about the plan for sediment storage in San Pablo Bay in particular?

Commissioner McGrath explained: It was an excavated site and bottom sediment into it and then pumping on kind of a steady state lower rate where you could take advantage of tides and economies of scale. What is your sense of that?

Dr. Boyer replied: Well as far as the Eelgrass is concerned, turbidity is a definite issue. Eelgrass is stuck on the bottom. It can't swim away or whatever. It is subject to whatever light is available to it in the water column.

So turbidity is an issue but Eelgrass is also very well adapted in San Francisco Bay to low-light conditions. It depends on where you are. You can move around sandy sediment with much less turbidity impacts than trying to move around very fine, high clay and silt sediments.

It will depend on what the specific material is that is being moved or stockpiled. How close it is to the resource like the Eelgrass bed or the use by a particular fish of concern is important.

I think we are going to have to look at specific cases as these projects come up in terms of how far away do you have to be? What sort of procedures will you need to follow in order to protect the resources?

Commissioner McGrath continued: To some degree I wanted to – the stake I wanted to put in the ground is even though we are talking about modifying the Bay Fill Policies we are not talking about paying no attention to impacts. And we are fortunate to have a scientific community here who will help us try to steer our way to something that balances those things. It is hard stuff.

Chair Wasserman continued: Thank you all for your presentations. It is an important element of what we are going to have to figure out how to do. And it is a very important illustration of the challenge or one of the elements of the challenges before us that is the uncertainty and the problem of consequences partially foreseen and unforeseen that we need to try and probe and figure out and experiment about and share our information but we can't let it paralyze us into inaction.

And that is the tension that we are going to have to be going through as carefully and thoughtfully, but at the same time as courageously as we can, over the next set of years in figuring out how we do this adaptation.

That concludes this matter. I thank you very, very much for the presentation and the information. And that brings us to the most exciting action of the day. Motion for adjournment.

14. Adjournment. Upon motion by Commissioner Vasquez, seconded by Commissioner Scharff, the Commission meeting was adjourned at 4:01 p.m.