

# San Francisco Bay Conservation and Development Commission

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April 26, 2019

**TO:** All Commissioners and Alternates

**FROM:** Lawrence J. Goldzband, Executive Director (415/352-3653; [larry.goldzband@bcdc.ca.gov](mailto:larry.goldzband@bcdc.ca.gov))  
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**SUBJECT:** Draft Minutes of April 18, 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 1:04 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Ahn, Butt, Chan (represented by Alternate Gilmore), Gioia, Gorin, Lucchesi (represented by Alternate Pemberton – departed at 2:06 p.m.), McGrath, Peskin, Randolph, Sears, Spering (represented by Alternate Vasquez), Tavares (represented by Alternate Nguyen), Techel and Wagenknecht (arrived at 1:32 p.m.). Senator Skinner (represented by Alternate McCoy) was also present.

Chair Wasserman announced that a quorum was present.

Chair Wasserman added: If any of you are here for Item 10, regarding legislative matters, please note that Item 10 has been postponed to a later meeting without a date certain.

Not present were Commissioners: Association of Bay Area Governments (Addiego), Senate Rules Committee (Alvarado), U.S. Army Corps of Engineers (Bottoms), Santa Clara County (Cortese), Department of Finance (Finn), Secretary for Resources (Vacant), San Mateo County (Pine), Governor (Ranchod, Vacant), U.S. Environmental Protection Agency (Ziegler)

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

Mr. Bob Wilson was recognized: I am the Co-founder of the San Francisco Bay Stewardship Alliance. I am here today to thank you. We have our disagreements from time to time and I am sure we will have lively debates in the future but we had tried to get some help for a long time which we got from staff to get the Marine Science Institute Beach restored. I am happy to report that is an institution down in Redwood City. It was about 115 feet of beach.

It has been restored and thank you for helping with that. They had it done in time for the Earth Day. We had about 2500 people access the beach that day. Children are using it every day. It is a wonderful thing. And we really appreciate it.

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State of California | Gavin Newsom – Governor



There certainly are lessons learned. We would certainly welcome the opportunity to talk about how we can help the process going forward for those small projects.

But I am here today to say it is done and we appreciate your support. Thank you.

Ms. Eva addressed the Commission: I wanted to correct the record. On March 21st I mentioned that your Commissioner Kate Sears serves on approximately a dozen boards and commissions. Actually according to the County she serves on 28 separate boards and commissions. This list includes notably the chair of Marin quote/unquote Clean Energy despite the fact that the Fair Political Practices Commission, Enforcement Division assessed a fine to her for having violated conflict of interest with regard to Royal Dutch Shell.

Commissioner Sears gave out five million dollars in contracts to Royal Dutch Shell to Shell Energy. She was holding tens of thousands of dollars' worth of shares in Royal Dutch Shell at the time. That was in severe violation of conflict-of-interest laws.

Shell is a particularly lethal and egregious corporation. It has been found in violation of human rights in so many places it is hard to imagine.

Mr. Seraweewa was arrested and tortured and eventually executed by agents of Dutch Shell along with eight other Ogoni tribesmen for trying to protect their native lands.

I will be making a pilgrimage to Sacramento to the Fair Political Practices Commission to ask why it is that we have such a strange justice system where former prosecutors like Kate Sears are allowed to go Scott free for criminal, conflict of interest without any enforcement, without any punishment and innocent activists are condemned to death by agents of Royal Dutch Shell and later rewarded by our Commissioner Kate Sears with contracts.

The FPPC meeting will be on May 16th. I will be live-streaming my comments to the FPPC. I thank you for your time.

Chair Wasserman asked: Does anybody have a correction or comment on them? (No comments were voiced)

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

**MOTION:** Commissioner Randolph moved approval of the Minutes, seconded by Commissioner McGrath.

**VOTE:** The motion carried with a vote of 15-0-1 with Commissioners Ahn, Butt, Gilmore, Gioia, Gorin, Pemberton, McGrath, Peskin, Randolph, Sears, Vasquez, Nguyen, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and Commissioner Techel abstaining.

**5. Report of the Chair.** Chair Wasserman reported on the following: The most important thing in my personal life is that I became a grandfather for the first time on Saturday. (Applause) A baby girl, Juniper Margaret – thank you, they are all healthy and happy in Berkeley.

I, like many people in the East Bay, did not get a copy last Sunday of the New York Times magazine which was devoted to climate change.

There are a number of very good articles in that. It should be reading for all of us and everybody in the country.

There was also an article this week that is a little closer to home. Our glaciers are shrinking. The direct consequences of climate change are coming ever closer to home.

We are working and will provide you with some more information, probably at the next meeting, on appointing an advisory committee as we move towards developing the Regional Adaptation Plan which staff is desperately working on to come up with a better title and this will formalize some informal input we have been getting over the last several years but also allow for a more formal and directed input into the preparation, adoption and most importantly, implementation of that plan because everything before implementation is just preparation.

We are not going to hear Item 10 today and our Executive Director will explain why.

Director Goldzband addressed the Commission: The meeting will be a little bit shorter than anticipated because we have postponed the legislative briefing. The reasons are bad news and good news.

The bad news is that it is being delayed mainly because we didn't have the amendments that are now part of AB 1191 which is the legislation carried by Assemblymember Bonta that is dealing with the Oakland Athletics Ballpark Proposal in time to prepare and mail a staff analysis.

So while there is now amended bill language prepared by the Assembly Natural Resources Committee it is a spot bill. That being said the good news is that this spot bill explicitly preserves BCDC's planning and permitting processes in regard to the project.

And we intend to transmit our support for that affirmation of BCDC's prerogatives. And we thank the Assembly Natural Resources Committee for working with us on that project.

We continue to work closely with the State Lands Commission in discussion with bill sponsors. And we will bring you an analysis for AB 1191 and other pertinent bills at a future meeting.

You will see when Chair Wasserman describes the agenda for the next meeting that it will be on that as well. Thank you and I am happy to answer any questions and Steve Goldbeck is here with details.

Chair Wasserman asked: Any questions on that item? (No comments were voiced) The Chair continued on to the next Agenda Item.

**a. Next BCDC Meeting. At our May 2nd meeting in two weeks we expect to:**

(1) Hold a public hearing and possible vote on the proposed Encinal Beach Project in Alameda.

(2) May consider and possibly take positions on pending legislation that we originally expected to do today.

(3) Hold another of our ongoing Fill for Habitat briefings.

b. **Form 700.** Unfortunately, a few of us still have not filled out Form 700. Please do so. It would put yourself and us in compliance and hopefully avoid for you a contact directly from the FPPC which enforces that requirement.

c. **Ex-Parte Communications.** If anyone wishes to report an ex-parte communication now is the time to do it. This does not replace your obligation to do it in writing by which I mean electronically. (No comments were voiced) Seeing none we will move on to Item 8, the Report of the Executive Director.

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

Welcome to the second act of BCDC palooza. To the best of our knowledge BCDC has never held two Commission meetings in one day, although I recognize that some afternoon Commission meetings do seem to many participants to last all day.

That being said, our staff very much appreciates that Commissioners and Alternates are committed to making BCDC as productive as possible and I want to thank you for your flexibility and patience in attending two meetings today.

As a young baseball fan I loved to attend Sunday afternoon doubleheaders – I got to see 18 innings of ball for the price of nine. Now, as a middle-aged adult with a son in high school whose team plays doubleheaders every Saturday, I begin to feel the pain at about the third inning of the second game. So if any of you need to get up and stretch or walk around the dais as we enter our fourth inning this afternoon please feel free. Just know that there will be no beer hawkers or cotton candy salespeople to help you through.

While I was on vacation during the first week of April and Brad McCrea ably filled in during your last Commission meeting, Steve Goldbeck testified before the Senate Budget Subcommittee with authority over BCDC's budget. The hearing appears to have gone exceedingly well. We are scheduled to return to the Assembly and Senate subcommittees later this month to discuss possible additions to the Governor's budget proposal that involve both additional staff positions and the move to this marvelous building and we'll keep you informed of our progress.

Speaking of BCDC's move to 375 Beale Street, I am very, very pleased to let you know that Peggy Atwell and her team, California's Department of General Services, and the Bay Area Headquarters Authority (that owns this building) agreed on a lease with a projected move-in date of August 16th this year. (Applause) I signed the documents that required my signature last week and the entire package was approved and signed by the DGS last Friday.

BAHA will present the package to its Commission next week as an information-only, agenda item. So, assuming that everything goes as expected with the state budget between now and June 30, we'll be moving in late summer. I want to thank Chair Wasserman for his dogged determination on this issue during the past five years as well as Peggy and her team. Now comes the hard part!

You will remember that last month I told you of NOAA's Advanced Notice of Proposed Rulemaking that proposes to examine whether and how to change the Coastal Zone Management Act's federal consistency determination process vis-à-vis the oil and gas industry to make it more "efficient" due to the "unpredictable" nature of the consistency determination process. Our Chief Counsel, Marc Zeppetello, has been working with the Washington, D.C.-based Coastal States Organization to better understand the proposal and its ramifications and we are coordinating our response with the Coastal Commission.

In addition, Marc and I, with representatives from the Coastal Commission and the California Natural Resources Agency, have met with the Governor's Office on the issue. We expect to have a draft response ready early next week for Chair Wasserman's signature and we'll update you at the next meeting.

I'd like Brad McCrea to spend a few minutes now to give you an update on the multi-agency, permitting program that is starting to move forward.

Mr. McCrea addressed the Commission: I will give you an update on the BRRIT. The BRRIT is an acronym that stands for the Bay Restoration Regulatory Integration Team and it is set up to handle the projects that will be eligible for Measure AA funds; the 25 million a year that will come in for the next 20 years aimed at large, wetland, restoration projects.

That is a lot of work that will be coming in. We want to make sure that the regulatory agencies are set up to support that process and all those parcel-tax funds,

Historically the regulatory agencies have reviewed projects in seriatim and once agency review is relied upon by the other. For example biological opinions from the federal government happen prior to water-quality certifications. And water-quality certs by the Regional Board happen before BCDC permits. And BCDC permits happen before Corps permits. And to compound matters our agencies sometimes don't agree with each other.

The idea is to get everyone in the same room. So the BRRIT is going to be set up to challenge those old ways of doing business and it is truly government innovation.

This diverse team of government workers, these government staffers from six, different agencies will sit together and the goal of this team is to work side-by-side and help permit applicants avoid red tape. It is that simple.

The update is that the group is now funded. It is funded by the Restoration Authority, by the State Coastal Conservancy, MTC, the Santa Clara Valley Water District and the East Bay Regional Park District. Nearly all of the funding contracts are in place.

Staffing interviews and hiring has begun with five of the six agencies and the sixth one is close behind. And we should have the team convene this summer.

**BCDC MINUTES**  
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We are so confident that the BRRIT will be ready to go that the Restoration Authority staff will soon blast out an email to solicit projects for addition to the BRRIT's project, priority list.

We want those applicants who come out of this first BRRIT process to walk away sharing success stories because the stakeholders have put a lot of trust in this effort.

We know that there are going to be a lot of challenges along the way but we are bringing together the type of folks who can deal with those challenges and we look forward to bringing you more good news about this innovative process in the coming months.

Executive Director Goldzband continued: In the near future we will be asking you whether you still want to receive any paper communication from BCDC or would prefer to receive information only electronically. Our default moving forward will be not to distribute paper and, instead, simply send documents or links to documents electronically. Please respond either way when we ask and we will plan accordingly.

Finally, I was sad to learn of the death, a couple of weeks ago, of former, South Carolina Senator Fritz Hollings. Many of you probably have never heard of Fritz Hollings who was a decorated, World War II veteran and a 38-year veteran of the United States Senate from South Carolina.

I had the fortunate experience of being a staff member for a member of the United States Senate Commerce Committee while Senator Hollings was chair of that committee and was able to work with a tremendous staff that he had in order to improve aviation safety and a number of other public-policy issues. And he was one of the funniest men ever to be in the United States Senate. As a matter of fact his Charleston accent was so thick, as the Washington Post writes, that a close friend and fellow Democrat Senator Ted Kennedy once jovially introduced him as the first, non-English-speaking candidate for president.

Senator Hollings probably did more than any other individual legislator to create and support the National Oceanic and Atmospheric Administration (NOAA) and its functions. His hometown of Charleston is a major NOAA base and we all sort of know why. In your packet today is The Washington Post's obituary for Fritz Hollings. I encourage all to read it.

It is a great lesson in history. I encourage all to read it and recognize how people change over years, how people can be successful despite party affiliation and how you can be very forward-looking in ways that other people simply don't get, and that is how Senator Hollings was able to be able the real spur behind the federal government's creation of NOAA and improving those functions.

That concludes my report Chair Wasserman and I am happy to answer any questions.

Chair Wasserman asked: Any questions for the Executive Director? (No comments were voiced)

I do have two comments. One is just to thank Brad for the report and emphasize the real importance of BRRIT because in addition to the general need to make our processes more efficient, transparent and responsive getting in place a way to approve projects in an efficient and much-speedier manner will be critical when we get to the point of implementing the projects that are going to protect us from the slow-moving emergency of rising sea level.

Along with our Bay Plan amendments this is really one of the base stones of that effort.

The other is to report that last Friday Vice-Chair Halsted and Larry and Commissioner Barry Nelson and I had a very productive meeting with Secretary of Natural Resources Wade Crowfoot who was an Alternate Commissioner on BCDC.

He has good memories of BCDC and was happy to meet with us and very, very supportive and will continue to be in our efforts as we deal with the Governor's Office and the Legislature.

7. **Consideration of Administrative Matters.** There were no Administrative Matters to consider.

8. **Vote on San Francisco Fireboat Station 35 Project; BCDC Permit Application No. 2018.002.00.** Chair Wasserman announced: Item 8 is a staff recommendation regarding the San Francisco Fireboat Station 35 Project. We held a public hearing on the matter at our last meeting. Rebecca Coates-Maldoon will provide the staff recommendation.

Principal Permit Analyst Coates-Maldoon presented the following: On April 12th you were mailed a copy of the staff recommendation for BCDC Permit Application No. 2018.002.00 for the San Francisco Fireboat Station 35 Project.

You heard a summary of the application at your April 4th meeting. To review what was covered at the last meeting, the project consists of the construction of a two-story fireboat station on a steel float, an access ramp and gangway and approximately 3,622 square feet of public access including a public observation deck.

The project raised issues for the Commission's consideration related to allowable Bay fill, public access and views and sea level rise.

Staff would like to make a correction to page two of your staff recommendation which is reflected on the errata sheet in front of you. Under the section titled, In the Bay, of the Authorization Items, 1 and 2 are identical due to a typographical error. The second of those paragraphs would be deleted and the other items renumbered accordingly. This does not result in any substantive changes to the authorization.

As modified by this correction, the staff recommends that you approve the permit application with conditions. Staff recommends that you determine that the required Bay fill is allowable with inclusion of a number of special conditions to ensure Bay natural resources are adequately protected.

Staff recommends that Bay fill mitigation be required as a part of this project. Special conditions are included to ensure that the permittees complete both onsite and offsite fill mitigation.

Fill removal at Pier 70 has been identified for the offsite mitigation. Fill mitigation must be completed prior to the use of the Fireboat Station.

Staff also recommends conditions to require a plan to address access to the station from land in the event of damage to the seawall during a large earthquake.

Additionally, a condition is recommended requiring the permittees to provide flood reports and plan and implement adaptive measures to address sea level rise.

Staff also recommends that you include conditions related to the design and ongoing operation of the public access improvements. Conditions are included that require the applicants to submit final designs for review and approval on your behalf including a plan for public art work to ensure that any art work meets criteria to minimize impacts to Bay views and to designated view corridors.

Conditions are also included to ensure that the project provides appropriate, public-serving features and amenities at the site including tours of the new Fireboat Station, swimming access on at least two occasions per year, bicycle racks, signage, and interpretive components identified as part of the Bayside History Walk.

With these and other conditions outlined in the staff recommendation, the staff believes that the project is consistent with the Commission's law and Bay Plan and San Francisco Waterfront Special Area Plan policies and recommends that you adopt the recommendation of approval.

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

Chair Wasserman asked: Do the applicants accept the conditions?

Public Works Manager Magdalena Ryor replied: On behalf of Public Works we accept the conditions.

Senior Waterfront Planner with the Port of San Francisco Dan Hodapp replied: The conditions are acceptable to the Port.

Assistant Deputy Chief with the San Francisco Fire Department Anthony Rivera replied: We accept the provisions of this application and permit.

Chair Wasserman asked: Are there any questions or comments from the Commissioners? (No comments were voiced) Seeing none we will take a roll call on the vote.

**VOTE:** The motion carried with a vote of 16-0-0 with Commissioners Ahn, Butt, Gilmore, Gioia, Gorin, Pemberton, McGrath, Peskin, Randolph, Sears, Vasquez, Nguyen, Techel, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Chair Wasserman announced: The motion passes. The permit is approved. Thank you very much.

### **9. Public Hearing on Proposed Rulemaking to Amend Commission Permit Application Fees.**

Chair Wasserman stated: Item 9 is a public hearing on proposed rulemaking to amend the Commission's permit application fees. There is no vote on this issue today. We will vote on it at a later date. Our general counsel, Marc Zeppetello will introduce the matter.

Chief Counsel Zeppetello presented the following: As you may recall in January of 2018 we presented a briefing and staff report on the Commission's permit application fees and a proposal to double the existing fees and the Commission approved a staff recommendation to commence a rulemaking process to that effect.

In March of this year we issued a Notice of Proposed Rulemaking with the Office of Administrative Law to start the rulemaking process.

The proposal is to double all of the existing permit application fees in the Commission's regulations, that is Appendix M of the regulations, and to increase the target revenue.

The target revenue is the proportion of the Commission's regulatory program costs recovered from permittees; to increase that target from 20 percent to 40 percent consistent with doubling the fees.

Today is a public hearing on this proposal as well as an opportunity for the Commission to provide comments and direction.

The existing fees were established in 2008 and have not been modified or amended since that time. As you know the fees are established based on the type of permit. There are larger fees for major permit applications and lesser fees for minor permits, also different fees for permit amendments.

And fees are generally increased with the size and complexity of the project, more specifically with total project cost. For more-costly projects there is a higher fee than for less-costly, simpler projects.

The fees that the Commission collects through the permit application process are not retained by the Commission. They are paid to the General Fund in Sacramento but BCDC receives the majority of its funding, or at least has and continues to do so, the majority of our funding comes from the General Fund.

However, we receive more from the General Fund than is collected by permit fees. We did an analysis last year that was part of the January 2018 Staff Report that looked at the prior five years of fee revenue and General Fund revenue, and in that period the fees ranged annually from about \$300,000 to close to 1.2 million dollars, whereas the General Fund revenue ranged from about 3.8 million up to 5.9 million dollars.

The further context for this proposal for doubling of the fees is that in 2015 the Department of Finance approved a budget augmentation of one million dollars provided that the Executive Director propose to the Commission doubling the permit fees, with the understanding that any action to amend the fees would be subject to a rulemaking process and to a decision by the Commission.

As part of the staff report that was distributed for today's meeting and also in our initial statement of reasons for the rulemaking that we submitted to the Office of Administrative Law there were a number of alternatives that we identified and proposed to the proposed action.

One alternative is the no-action alternative that the Commission would leave the fees as they currently exist. The proposal is to double the fees which would increase them by 100 percent or a factor of two.

The other alternatives; we proposed an alternative of increasing the fees by a factor of 3.75, which would correspond to increasing the target revenue from 20 percent to 75 percent, and another alternative would increase the fees by a factor of 5.0, which would correspond to a target revenue of recovering 100 percent of the Commission's regulatory program costs from fees.

Another alternative would be that the Commission could determine whatever factor and percentage it wants on a continuum of where we are today up to 100 percent.

I would note, and it is discussed in the staff report and in the initial statement of reasons, that under California law, regulatory agencies are allowed to charge fees that would be sufficient to recover 100 percent of the costs of the regulatory program.

So at 20 percent, the Commission fees are today, and have been since approximately 1991 as far as we can determine from prior staff reports, we are recovering significantly less than we could under the law.

There is one other alternative or variation that is discussed. Under the existing regulation there is a provision for adjusting the fees every five years, requiring an analysis of fee revenue and program costs over a five-year period.

The alternative that we are suggesting for consideration is that instead of going through that exercise the fees could be adjusted annually by variations in the consumer price index, and this alternative we identified because a few years ago the Coastal Commission amended its fees and they adopted a similar mechanism to allow for automatic fee adjustments annually with changes in the consumer price index, so it would eliminate the need to go through a process every five years to analyze fee revenue and program costs data.

I will conclude with summarizing the process. This public hearing today is for public comment and Commission comment, no action is proposed. The comment period actually closes tomorrow, the comment period under the Administrative Procedures Act. So we will accept written comments not only today but through tomorrow.

And then following the comment period we will prepare a response to comments document and bring the matter back to the Commission, probably in May, with a response to comments for a vote by the Commission on what action we should take.

Once the Commission acts then we need to submit the complete package to the Office of Administrative Law in Sacramento for review and approval. And once the Office of Administrative Law approves the process we also have a final step of getting a program change or approval from NOAA since the fees are part of the Commission's Coastal Zone Management Program.

So assuming that the Commission does vote to take action and we go through this process, the fees would not actually be changed for three to nine months, and I would estimate likely by the first of January of 2020.

So I would be happy to answer any questions now or at the appropriate time. Thank you,

Chair Wasserman stated: Let's hold questions for the moment. I will simply observe that the wheels of the bureaucracies grind slowly but they grind exceedingly fine. (Laughter) The public hearing is open. We have two speakers.

Ms. Ashley LaBass addressed the Commission: I am a policy associate with the Bay Planning Coalition, a non-profit, policy organization with over 150 members who collectively advocate for strong economic growth while protecting the environmental sustainability of the region.

Our CEO John Coleman could not be here today due to a scheduled flight later this afternoon.

Our members recognize a need for appropriate funding to BCDC's critical role in preserving the San Francisco Bay ecosystem, however our members are very concerned about this proposal due to double permit fees because of the impact it would have on future restoration, development projects around the region.

Prior to approving any permit fee increase our members respectfully urge BCDC staff to undertake a review of the permitting process program that would identify existing inefficiencies in the permitting process overall.

The current procedures have resulted in unnecessary and costly delays in projects including for public agency, non-profit and private applicants.

We urge you to direct staff to draft a proposal that identifies opportunities to reduce staff costs associated with the permitting process by at least 15 percent and hopefully more before you can take action on this proposed fee increase.

Our members would consider supporting a fee increase if it were accompanied by this corresponding exercise to streamline the permitting and enforcement processes.

We also respectfully ask that you delay the consideration of this item until the state audit of your agency has been completed and reviewed internally and externally which may reveal opportunities to reduce costs associated with the permitting processes.

In conclusion these fee increases will have a major impact on projects looking to improve the economic and environmental vitality of the Bay Area. Increasing the permitting fees so drastically without the first careful consideration of the permitting and enforcement programs' efficiency could be detrimental to many proposed projects in the region.

Bay Planning Coalition is eager to be a supportive partner in identifying opportunities to streamline the permitting and enforcement processes. And as always the Bay Planning Coalition looks forward to working with you on this task. Thank you again for your time.

Mr. Bob Wilson was recognized: I am Co-founder of the San Francisco Bay Stewardship Alliance. The Alliance includes local citizens who care about the Bay.

We promote informed conservation and responsible development of the San Francisco Bay.

On April 16th the Alliance submitted detailed recommendations on the proposed increases in fees. The Executive Director has assured us it will be part of the record.

While we have tangled with the BCDC staff on many issues over the last year, a better matching of fees and regulatory costs is an area where surprisingly we believe we could find common grounds – but there is a however.

However we are on the record that urgent reforms are needed first. We urged the California state audit of BCDC. This audit appears close to conclusion and the Board was briefed this morning on the draft findings. We urge the full, unredacted report be made public.

Given that BCDC is at this critical juncture, the Alliance strongly urges the Board not to make changes in permit fees until the auditor's report has not only been made public but is considered and appropriate reforms are in place.

Further, like the BPC we believe that streamlining the permitting process can yield significant cost savings. These would have far more impact than fee increases.

In fact the Bay Planning Coalition made recommendations as far back as November of 2017 to improve the permit process and we support those recommendations – acting on these recommendations first before considering fee increases should be a priority of BCDC leadership.

Cost reduction of regulatory practices and major process reform needs to be considered before fees are increased. We have many examples of opportunities.

We would start by increasing the threshold for when permits are required. By law today that threshold is an incredible 20 dollars.

An indicator of the breakdown in permitting and enforcement processes are that currently there are over 250 open enforcement cases based on permits issued in the BCDC backlog. Even staff admits resolving this massive backlog in the normal course is just not possible.

And back in a recent Enforcement Committee meeting they recommended a significant amnesty program. I think there were nine different amnesty options they suggested to be considered.

So unless there is reform, amnesty will be an ongoing issue. And for these reasons and others stated in our April 16th letter on the subject, now is not the time to increase fees. Thank you.

Chair Wasserman asked: Any questions or comments from the Commission?

Commissioner Gilmore commented: I am going to ask staff for a little bit of clarification on the potential to have new fees adjusted by a percentage change in the California Consumer Price Index.

What I am asking is how would that work? Would there be a review by staff and the Commission after a certain number of years to see how that is keeping up with the costs of doing business?

And also how does that compare to the five-year review under the other plans? In other words how long does the review take and timing and that kind of thing?

Mr. Zeppetello replied: I will try to address that by starting with the – I have here the provision from the Coastal Commission's regulations about their fee adjustment. And it is a very simple narrative provision that the fees established in this section shall be increased annually by an amount calculated on the basis of a percentage change from the year that this provision becomes effective and the consumer price index as determined by the Department of Industrial Relations pursuant to the Revenue and Tax Code and it shall become effective on July 1st of each year. The new fee amount shall be rounded to the nearest dollar.

So it is a very short narrative thing. As I was doing research for the rulemaking I found that the Coastal Commission had something published on their website where they get this information and then they post a notice to the regulated community and submit what the change is in the consumer price index and a revised fee sheet and they submit that to the Office of Administrative Law. But it is an automatic process where they don't have to go through a rulemaking again because they are just implementing this narrative provision.

I would envision something relatively similar that is what we would do if we adopted this approach. The process of reviewing the information as envisioned under the current regulation is really not all that burdensome. I mean we had an issue that we talked about in the staff report a year ago that it is supposed to be done every five years and it was not done in 2013 and 2014 as it should have been because there was no chief budget officer and no chief counsel. It wasn't done but with adequate staffing the data is there in the database. It is not that large of a task.

And finally I would say that if the Commission were to adopt this approach, I think it probably would be a good idea to recommend that staff do a periodic review anyway to see how we compare to a target, whether or not the target is expressed because one of the things that seems clear is that permit revenue does go up and down, and when we did the calculation for that five-year period we found that the fees would not need to be adjusted.

But in that five-year period we had two years of very high fees with Treasure Island and there was another large project. So we had two years of very high fees which contributed to meeting the target, but historically when the target was 20 percent some of the staff reports from the 2004 and 2008 time periods presented data and said the Commission is not meeting the target.

So it may be that although we met the target this time it would be good to do a check on that in the future. I hope I answered your question.

Commissioner McGrath was recognized: I have a couple of comments and historical context for this. Many years ago these things used to be paid from the General Fund and then they weren't reflected in the end products. And life was easier then and I wish that those days could be recaptured but I was at the Port of Oakland for 16 years when this changeover came about where applicants were asked to pay for the cost of processing.

And it has some unfortunate side effects. For example, if your funding comes with certain fences around it you couldn't, for example, put more resources into enforcement. So one of the side and unintended consequences of a transfer or increased reliance on fees is generally they come with restrictions.

We've had trouble with that at the Regional Water Quality Control Board in trying to figure out ways to fund preparing for resiliency. So it is not a blessing.

On the other hand, when I was at the Port of Oakland time was money. And trying to get the resources devoted by the different agencies to actually look at what we were intending, help us with the analysis and get us to a project that could be approved was extremely important. So having resources is very important.

I would point out two things. On page two it is not very much money. You see on 2012, 2013 a little less than eight percent of the actual general funds were being collected. And then if you look on page four and you look at my city in particular and the cost to do projects in Berkeley, which I know very well, we seem to be a bargain.

While I yearn for some of the old days, at some point you have to move on and realize that actually getting the work done is important. I want to make sure that the Legislature continues to give us enough funds to do our work. And if we have to gather 20 percent of the fees in order to have them in a good mood we probably should do so.

Commissioner Vasquez offered a hypothetical: So if one year you made your expectations of covering the cost from the General Fund you wouldn't get any credit for it would you for the following year?

It doesn't roll over. We don't get credit for exceeding our collections?

Mr. Zeppetello responded: I think that is correct, yes.

Commissioner Vasquez continued: So unlike a city or a county where you would – if you had a fee in place and you collected more you could use that as a fund balance and the Department could roll it over into the other one and that would kind of take the waves out of the costs of the operation.

Mr. Zeppetello agreed: Yes I think that is right but I will add that, again, looking historically at this issue as the Commission has looked at it over the years, at a certain point I think it was in 2004 when the Commission was amending fees, there was discussion of whether the Commission should try to become self-sufficient with fee revenue. And the thought was it is better the way it is because fee revenue is so variable to have the General Fund as the primary source.

And so at least at that time it was a consensus decision to continue to contribute the fee revenue to the General Fund and have the General Fund provide a steady stream of known, predictable, income stream as funding.

Commissioner Vasquez observed the following: Because of the way we are set up we really do need that help. We are doing the work that maybe the state might do or probably couldn't do.

So we need to be attached to the state and to the General Fund in order to do the work that is being required of us. But I don't know how you go from 20 to 100 percent. Somewhere we have to find that balance of what we charge that makes sense not only to us but to the community that is paying the bill too.

Would it not be better to use the construction cost index as opposed to the CPI?

Executive Director Goldzband answered: If you would like to suggest that we take a look at the construction cost index as an alternative to the California CPI – can we do that Marc? Is there a problem with actually looking at that?

Mr. Zeppetello replied: No with direction we could certainly do that.

Executive Director Goldzband added: We certainly could provide that as an alternative as well.

Commissioner Vasquez had an additional suggestion: And then I would suggest that maybe the Chair appoint a group to look at this and come back with a recommendation to the entire Commission.

Commissioner Butt pressed for clarification of the issue: I am still trying to understand this. So currently we are collecting, on the average, 20 percent of our costs to processing applications or permits. The state General Fund is essentially subsidizing the other 80 percent.

By going from 20 to 40, the state is saying we are still going to subsidize 60 percent – no?

Executive Director Goldzband chimed in: No – not really. Let me explain what goes on. This law was written in 1965. All permit fees go to the General Fund. It doesn't matter what level we put it at. It doesn't matter how much we collect.

At this point the state is subsidizing 100 percent of our permit application costs. If the Commission decides to change the permit, application fees from 20 percent of our costs to 40 percent of our costs the only effect that will have is that it will double the amount of funding that would otherwise have gone to the General Fund.

It will have no impact on BCDC's permitting costs.

Commissioner Butt rephrased his question: Let me put it another way. The state is currently recovering 20 percent of the cost they pay us to do this. If we go to 40 then they are going to recover 40 percent of the costs and they are still going to subsidize 60 percent.

Executive Director Goldzband replied: No. They will recover 40 percent and they will give BCDC 100 percent of the costs as part of the General Fund.

Commissioner Butt continued: I understand. But if I am the state, I am getting 20 percent from the applicant and I the state am paying for the other 80 percent. Is that fair?

So, again, I am the state. I am not BCDC. So with this change, I the state am going to get 40 percent and I am going to pay for the other 60 percent.

Executive Director Goldzband agreed: And that is correct assuming they make the link between the 40 percent and the 60 percent and so on.

Commissioner Butt continued: And the quid pro quo is that if they are going to try to provide an additional million dollars for (Executive Director Goldzband shaking his head) – no? Where is that million dollars going to come from?

Executive Director Goldzband explained: That million dollars already was provided to BCDC three fiscal years ago and is part of our baseline.

Commissioner Butt acknowledged the response: Okay. So that is not going to change.

Executive Director Goldzband reiterated: That is not going to change.

Commissioner Butt continued: You know the local agency I am involved with – we operate our permit operation as a cost center and our goal is to recover 100 percent. But this is a different kind of deal.

So there is no benefit for BCDC to go from 20 to 60 or 80 or 100 or whatever – right?

Chair Wasserman commented on the subject: I am going to exert Chair privilege here for a moment. I don't think that is right. One, this is not a zero-sum game. Two, we have been and we are going to continue to ask for more money from the state.

We know that in order to do our job, while perhaps we can be more efficient, I don't care what efficiencies we get; we are going to need more money from the state for our enforcement activities and for our planning activities.

We are in a funny position. At times many of us feel it would be better if we were in control of our own destiny and we could control our income to meet our costs.

Having said that our activities as an agency go way beyond the permitting issues. So when you are looking at this chart on page two those amounts coming from the General Fund are not just covering our permitting and enforcement activities; they are covering almost all of our activities. It is almost because we do get some grants.

So I think this is much more in a bargaining, political context. The statements of everybody that what permit fees we collect and go to the General Fund does not have a direct relationship with the amount of money we get from the General Fund.

But let's not kid ourselves. Psychologically it has some effect. The Department of Finance asked us to do this. It doesn't mean we have to. It certainly meant we had to consider it. But in that context of we have gotten more money and we are continuing to ask for more money and we continue to believe that we will get more money; this is a reasonable thing to do particularly when you come back to Commissioner McGrath's comment – it is not all that much money.

So it's that the exact balance that many of you are used to because you do have cost centers doesn't apply here.

Commissioner Nguyen asked: The question is - are there any provisions or mechanisms to provide for a different fee structure for different types of projects or applicants?

Mr. Zeppetello replied: The existing fee structure which I summarized earlier – different fees for different types of projects and different types of permits and based on project costs, that has been the fee structure since at least 2004.

So it certainly would be possible to take a look at the entire fee structure. But that was beyond the scope of what we've done so far.

Another couple of considerations is that our permit applicants include local governments, state government and private parties. In fairness should they be treated the same? Would there be a justification to treat them differently?

There have been some questions raised – could restoration projects be treated differently? If that were proposed we would have to define what a restoration project is.

And how do you deal with a project that has multiple benefits or multiple purposes? It would certainly be possible to take a fresh look at the entire fee structure and whether certain projects should be treated differently.

We didn't do that at least at this point given that the request was to just propose a doubling of the fees.

Commissioner Nguyen asked: Are we aware of any other agencies or commissions that have that type of arrangement?

Mr. Zeppetello responded: I'm not, at least with what we did in the comparison that is talked about in looking at different agencies in the Bay Area and also the Coastal Commission. I didn't come across anywhere there were exemptions or different fee structures depending on the nature of the permit applicant or the purpose of the project.

Commissioner McCoy asked: If you had used the CPI over the past five years how much would the fees have gone up?

Mr. Zeppetello answered: I'm sorry I didn't look at that.

Commissioner McCoy further inquired: You don't even have an approximation?

Mr. Zeppetello replied: No. I could certainly take a look at that.

Chair Wasserman stated: Either we will have it by the end of this discussion or we will have it when it comes back.

Commissioner Gioia commented: I am looking at Table 2 which has BCDC major permit fees and the administrative fee compared to the Coastal Commission. As pointed out in the staff report our permit fees for projects of up to 10 million are less than the Coastal Commission. And then for 50 million and up are a little more.

Had there been consideration by staff to adjust the fees differently in different categories, whether it is double at some level and maybe not double at the highest level?

It would be interesting to know how much total permit fees come in at each of these categories. I am trying to understand that.

So looking at this chart if our fees are being doubled that means that our fee would go from 600,000 to 1.2 million for projects over 600 million.

I am just trying to understand that had you considered something like that which was a graduated scale?

Mr. Zeppetello replied: We did not consider that during this process. I will say that in 2008 when the Commission revised the fees there was a focus on relatively increasing the fees for larger projects and decreasing the fees for smaller projects because there was a feeling that smaller projects should not be charged at the same proportion.

But in this process over the past year we did not try to go back and look at different scales.

Commissioner Gioia asked: How does it work when there are co-applicants? I know sometimes there are co-permittees. Sometimes there will be a private entity and a city as permittees but is the permit fee being paid by the applicant which would be the developer as opposed to the city?

Mr. Zeppetello answered: There is one fee and it is on a case-by-case basis. Usually I think it is the private party.

Commissioner Gioia continued: So even if the permittee is a public agency it is the applicant or the private party that would pay the fee. You often make the local jurisdiction a co-permittee sometimes.

Mr. McCrea agreed: Correct. We often have co-applicants. It is up to the co-applicants to work out how they pay.

Commissioner Gioia stated: So if the co-applicants applying for a permit are a city and the private party; the city could work out with the applicant that it is the private entity that they pay the fee.

Mr. McCrea replied: Correct.

Commissioner Gioia inquired: How often do we get public agencies alone coming in as an applicant? And what project costs amount do they normally come in at?

Mr. McCrea replied: It is not infrequent and it is not uncommon that public agencies submit applications. To your second question I don't have the data on that. I would imagine mostly in the administrative realm being minor permits because just by our normal distribution that is where most permits lie.

So the word from behind me in the audience is that Caltrans often comes in for permits and usually those are major applications.

Commissioner Gioia stated: I am one that believes that we should have a different and lower fee schedule for public agencies of government. It is not like these are funding this Commission. I get it – it's money that goes to the General Fund of the state.

And in a sense for those of us in local agencies who often are looking at spending the public dollars on these, it is just transferring public dollars from one agency to another agency and in a sense philosophically there should be a different fee for public agencies.

Mr. McCrea stated: I don't know this for sure but the Coastal Commission may waive some or all of their application fees for public agencies.

Commissioner Gioia noted: We don't do that.

Mr. McCrea agreed: Correct.

Commissioner Gioia continued: I think we should look at that issue. I think that is relevant for us.

Executive Director Goldzband commented: Commissioner McCoy asked if we had used a rate of inflation over the past five years what would have been the effect?

So I just took a look and found the consumer price index for the state of California from 2014 through 2018. If you had a 100 dollar application fee starting in January 1, 2014 the annual consumer price index rates were in order 1.62, .12, 1.26, 2.13 and 2.44 which makes sense given that we are in a period of historically low inflation.

The annual, compounding of those rates would have moved a 100 dollar application fee on January 1, 2014 to \$107.80 in January 1, 2019. That is a quick calculation. It is probably not terribly far off.

Mr. Zeppetello added: I have the Coastal Commission fee regulation here and they do have a provision for modifying fees under three circumstances.

One is the executive director shall waive the fee where requested by resolution of the Commission. Second that the executive director of the Commission shall waive the fee in full or in part for an application for housing development that contains housing units occupancy by persons of low or moderate income. And third is a provision for – the executive director shall reduce the following fees for projects are certified at a minimum of the U.S. Green Building Council's Leadership and Energy and Environmental Design (LEED) gold standard or equivalent.

I don't see anything here about special provisions for local agencies. But those are the exceptions that they authorize.

Mr. McCrea added: And to restate – under BCDC's regulations there is no allowance for the executive director to waive permit application fees of any kind.

Chair Wasserman asked: Any other comments or questions? (No additional comments were voiced) I think that Commissioner Vasquez's suggestion of putting together a small working group of Commissioners to talk through some of these things with staff as they take the next steps to bring the proposal back to us would be a good idea.

And so if there are volunteers in the room will you let me or Larry know before you leave please.

I would entertain a motion to close the public hearing.

**MOTION:** Commissioner Techel moved to close the public hearing, seconded by Vice Chair Halsted. The motion carried by a voice vote with no abstentions or objections.

Chair Wasserman stated: The public hearing is closed and this matter will then come back to us.

Commissioner Gioia asked: Is there more discussion or direction here about whether we want to consider any exemptions or waivers especially for public agencies?

Chair Wasserman answered: My thought would be is that the small working group will take up the issues that have been raised here. I try to avoid making the sausage when we are actually sitting up here.

10. **Commission Consideration of Legislation.** This item was postponed to a future meeting.

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.** Commissioner Wasserman stated: Item 11 which is consideration and a possible vote on the Enforcement Committee's recommended enforcement decision involving proposed cease and desist and civil penalty order for Salt River Construction Corporation. I understand there may be a suggestion that we consider a remand in this case.

Ms. Karen Donovan with the Enforcement Team addressed the Commission: I am going let Commissioner Gilmore introduce the recommendation as it was on the Agenda but we do have the respondent here. I would prefer after the recommendation is introduced that we defer to him so that you can hear his comments.

Commissioner Gilmore presented the following: So the Enforcement Committee met to hear this item. And the Enforcement Committee unanimously recommended to the Commission to accept the enforcement decision regarding the proposed cease and desist penalty.

I would make two comments about that. The first is that the entity has had previous violations and the Committee took that into account. And also the entity did not appear at our meeting.

Ms. Donovan added: A representative of the entity is here today. Mr. Moseley is here for Salt River and he would like to give some comments.

Mr. Rick Moseley addressed the Commission: My name is Rick Moseley with Salt River Construction. There was an Enforcement Committee meeting on this matter back in February that I was not able to attend because of health reasons. But I am better now and am able to attend an enforcement meeting in the future.

I am asking to be able to attend another, future, enforcement meeting in order to explain the facts on this matter.

Commissioner McGrath spoke: I may move to remand this particularly what the staff recommended. But Mr. Moseley I am sorry for your health issues. I want to make sure that there are no longer any activities moving dredges around using the buckets or any barges in places where they shouldn't be.

Have those two issues been resolved?

Mr. Moseley replied: Yes those have been resolved and we've instructed all of our operators that they are not allowed to use the excavator and the bucket to move the barge except in the footprint of the dredge area.

Commissioner McGrath responded: Okay. And is staff satisfied with that as well? I thought it was important to have that on the record that –

Chair Wasserman stated: I agree. So could we have an affirmative on the record?

Ms. Donovan replied: Yes. Staff is satisfied with that and currently there are no dredging activities being undertaken by Salt River to our knowledge.

Chair Wasserman asked: Can we have the staff recommendation?

Ms. Donovan continued: And the staff does concur with the recommendation to remand this back to the Enforcement Committee so Mr. Moseley can present Salt River's evidence and dispute the facts as he has indicated he would like to do.

Chair Wasserman asked: Any questions on that?

Commissioner McGrath commented: Well I will move but I would like a comment from Commissioner Gilmore on this issue. I will move and hope for a second and then we will discuss it. I will move that it be remanded.

Chair Wasserman asked for a second: Vice Chair Halsted seconds.

Commissioner Gilmore commented: I am very sorry for your health issues. However you do run a business and as far as I am concerned there was no communication either from you or your organization that you couldn't attend the meeting and that you would have requested a continuance. There was just radio silence and staff please correct me if I am wrong.

Ms. Donovan stated: That is correct.

Commissioner Gilmore continued: And also I do understand that at some point in time between either before the enforcement meeting and after the enforcement meeting there was no dispute from your organization that those were indeed your barges and they were indeed doing things that they were not supposed to have done. Is that correct?

Mr. Moseley replied: That is correct. There is no dispute that those were not our barges. The facts as to why the barges were in that area for the time period they were there we would like to explain further.

So we do not dispute that those were our barges.

Commissioner Gilmore acknowledged: Okay that is fine. I just wanted to get that on the record. Thank you.

Chair Wasserman stated: There has been a motion to remand, made and seconded. Any other comments on the motion before Peggy takes a roll-call vote? (Ms. Atwell proceeded with a roll-call vote)

**MOTION:** Commissioner McGrath moved to remand the matter to the Enforcement Committee, seconded by Vice Chair Halsted.

**VOTE:** The motion carried with a vote of 11-4-0 with Commissioners Ahn, Gioia, Gorin, McGrath, Randolph, Sears, Vasquez, Nguyen, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", Commissioners Butt, Gilmore, Peskin and Techel voting "NO", and no abstentions.

Chair Wasserman announced: The motion to remand passes. My comment echoing what Commissioner Gilmore said is we are doing this because we want to be very careful and thoughtful and considerate and give you full, due process.

The kind of silence that Commissioner Gilmore spoke about will indicate, if that occurred from you, that will indicate you are waiving due process.

So we fully expect you to stay in touch, to have a representative appear and I too am sorry for your health conditions and I hope they do not reoccur but you need to stay in touch and not go silent.

All right – the matter is remanded to the Enforcement Committee.

**12. Adjournment.** Upon motion by Commissioner Peskin, seconded by Commissioner Gorin, the Commission meeting was adjourned at 2:26 p.m.