

Alliance Comments for the May 16, 2019 BCDC Commission Meeting

Agenda Item Covering the CA State Audit

For May 16, 2019

Mr. Blackmore will address the Commissions at the meeting

My name is Peter Blackmore, a co-founder of the Bay Stewardship Alliance.

The Alliance is very pleased to see the recommendation in the Audit report – they vindicate and endorse many of the points we have been making for some time about BCDC.

We were surprised and disappointed to see the response from BCDC. Refuting the need for the legislative change recommendation is a denial of the problem. The organization is not working and needs reform, which will be very difficult from within. We are also frankly astounded to see Mr. Goldzband's comments which was "we need to up our game and need more money". This shows he does not understand the problem. It starts with accountability for bad practices. There is a lot of inefficiency and waste of money in the current processes as highlighted by the Audit. Before any more \$ are committed to the BCDC budget we need reform first. In addition, we suggest that BCDC should abandon its move to the new offices which were agreed by commissioner's earlier this year, and immediately freeze any expenditures related to such move, including the budgeting process. Adding several million \$ of cost just for an office move is unacceptable at this time. Also, a freeze on all hiring at all levels should also be immediately enforced until reform has been agreed. Any monies and budgets should have a thorough review

From the Alliance viewpoint, we have an issue of accountability as well as of governance. From my personal experience as a CEO for several companies I know how hard reform can be. It certainly does not happen by the current team saying we shall "up our game". The only secure approach is a change in executive leadership and together with much better oversight and governance. Having 27 commissioners is cumbersome and unwieldy.

We encourage genuine reform supported by executive and legislative change so that we can all regain confidence in BCDC and feel that is committed to reform and execute its mandate in a professional manner. Right now, it is clear from the Audit report that is not happening. This is an urgent call to action.



The SF Bay Stewardship Alliance BCDC Reform Recommendations

1. The current BCDC governance structure is too large and complex. We recommend that the McAteer-Petris Act be amended to streamline the BCDC Commission. The new seven-member Commission would consist of 6 elected local office holders, plus 1 gubernatorial appointment. Commissioners would serve four year terms as follows:
 - Six local elected representatives selected from the nine counties surrounding the SF Bay;
 - One member appointed by the governor selected, from a secretary level from one the following departments - Cal EPA, State Lands, Department of Boating and Waterways, the Coastal Commission or the Attorney General's Office;
 - Once an elected official leaves office, they would be replaced by another elected local official.
2. Due to a loss of credibility and trust among all stakeholders, new qualified BCDC executive leadership needs to be recruited by the reconstituted Commission. A change in culture and process is needed. This can only be successful by recruiting new people in key positions. We recommend replacing the Executive Director and most major department heads in order to streamline process and assure a new sense of integrity, purpose and urgency. Key hiring criteria should include experience in environmental science and management, bay and wetland preservation and development and demonstrated problem solving across regional governments and agencies.
3. Many of the problems that have arisen at the BCDC and caused extensive resources to be wasted are due to a flawed permitting process. The Bay Planning Coalition (BPC) issued a white paper dated November 21, 2017 titled *Shoreline Restoration/Resiliency Projects in SF Bay: An Opportunity for Improving Regulatory Efficiency* suggesting major changes in the BCDC permit process. Early involvement in planning, fast response to applications and limiting the scope of permitting are addressed by the BPC. We support their recommendations (pages 16 & 17) and include their white paper here as an exhibit.
4. The BCDC mission should be revised to be one of compliance and NOT enforcement. The current enforcement process has become bogged down and focused on just raising money. Enforcement has been an ineffective and costly exercise that has not improved the

environment or the public's access to the shoreline. BCDC does not properly separate its functions as follows: permitting, inspection, enforcement and adjudication should not be in one department or agency. These functions are often performed by the same people. The lack of separation of functions improperly make the BCDC staff and Commission "judge and jury". Stakeholders caught up in the BCDC enforcement process have been denied due process rights and access to appeals guaranteed by the BCDC Bill of Rights leaving them no recourse short of mounting expensive litigation that is costly to them and taxpayers. The lack of separation of functions and poor oversight by the BCDC Board has allowed major abuses to flourish.

5. The BCDC needs to replace enforcement staff with competent inspectors who possess the knowledge, skills and abilities to implement a new compliance function. The courts have determined, and our experience has reinforced, many instances of alleged "non-compliance" without any supporting facts. An improved permit process and new leadership will help eliminate this problem.
6. Any enforcement actions recommended by the BCDC staff should be referred to the Attorney General's office for enforcement. BCDC has over 260 "enforcement cases" in its "backlog". Based on cases we have studied, we believe alleged enforcement cases cannot be supported by the facts. In the December 13, 2019 Enforcement Committee hearing, BCDC Staff indicated it cannot pursue the huge backlog of enforcement cases. Staff indicated that only 40 open cases could be pursued. There is a confusing nine option "amnesty program" being considered by the Enforcement committee to address past Staff abuse of enforcement. We recommend that all enforcement activity be suspended until the Attorney General can carefully review the facts for each case. This situation is an example of gross staff over-reach and failing leadership at the BCDC.
7. The BCDC is currently using the "Bay Fill Abatement Fund" improperly. Instead of funding restoration of bay lands, these funds are being used to hire administrative staff. This is in direct violation of the enabling legislation. BCDC is circumventing the budget and spending levels authorized by the legislature and using the funds intended to improve the environment to hire administrative staff not authorized by the legislature. This practice must end immediately and a plan put in place to use the Bay Fill Abatement Funds for their intended purpose.
8. To streamline agency process, and to foster continuous improvements, we suggest the Board appoint an independent "Ombudsman" to give stakeholders recourse to pursue disputes ahead of litigation. We believe better leadership and management would have prevented the current chaotic situation. However, given the long history of staff over-reach and the major reforms which need to be implemented, stakeholders will need extra assurance coupled with a process to restore credibility and integrity to the BCDC.
9. "Bay Fill" is currently defined as any activity that is in excess of \$20 and that is far too low a threshold. BCDC has extended the definition far beyond the intent of the act and caused

mayhem in many jurisdictions as a result. Defining "shadows" and navigable waterways in which "vessels might transit or moor" as "bay fill" is absurd! The definition of "Bay-Fill" used by the BCDC needs to be streamlined and limited to negative impacts by physical materials such as sand, mud, gravel, rock, wood, dirt and debris which have a significant impact on the bay and environment. The new definition should NOT include floating docks, boats, fish traps and shadows!

10. BCDC staff need to rapidly respond to requests for information on its activities. Better and more timely reporting by the agency on its activities is urgently needed. Spending, staffing, permit applications and compliance activities need clear and relevant metrics to track status, progress and disposition. There is currently a consistent effort by BCDC staff to defy the rules regarding public disclosure of its activities. BCDC consistently delay and fail to respond to public records act requests. The Alliance has spent significant dollars to attempt to obtain information the law requires BCDC to provide. We have been forced to resort to litigation to address our requests. A judge has insisted several times on our behalf over the past seven months forcing the BCDC to comply with our public records act request. It is striking how much of staff time is wasted simply defending false and ill-conceived enforcement actions, which is the basis of most of the backlog and in addition fighting reasonable information requests made by the public. To date we are still waiting for the BCDC to comply with the judge's order.
11. The BCDC is not following the McAteer-Petris Act regarding key stakeholder and community involvement. By statute, a "Citizens' Advisory Committee" is to be in place to advise on major issues and to assure compliance with the intent of the enabling legislation. Section 66636 of the Act is very specific about the make-up of this important group which was intended to "assist and advise the commission in carrying out its functions". The Citizens Advisory Committee is not in place. The Commission cannot pick and choose which parts of the McAteer-Petris Act they want to follow and which parts they don't like. They are remiss in their failure to maintain this key oversight and advisory resource. The make-up and function of the Citizens' Advisory Committee needs updating to address participation by local, state and federal agencies and community stakeholders who are not directly represented as Board members. We recommend the Citizens Advisory Committee be implemented within the next 90 days to assist the Commission and the Legislature in helping to recommend BCDC reforms. This has been strongly recommended by maritime organizations including RBOC, MRA, Boat US and many others, to no effect, and would be of great benefit in developing sensible, responsible policy and practice.
12. The Alliance recommends the Legislature appoint an oversight commission to monitor BCDC reforms and report on progress to the Governor and Legislature. The commission would have five members from the community, local, state and federal agency level (not from the BCDC Board and Staff) and would be in place for three years to assure the agreed to reforms are implemented efficiently and urgently.

The Alliance welcomes the opportunity to be part of the BCDC reform process. We look forward to further discussions and can provide more background on the foregoing observations and recommendations. You can follow our work and progress on our website at www.baystewards.com.

SF Bay Stewardship Alliance

February 28, 2019

Exhibits to Recommendations:

For Item 3

Bay Planning Coalition White Paper *Shoreline Restoration/Resiliency Projects in SF Bay: An Opportunity for Improving Regulatory Efficiency* November 21, 2017

For Item 6

BCDC Enforcement Meeting - Excerpts from Presentation on 12 13 18

For Item 7

Bay Fill Abatement Fund Financial Analysis

For Item 10

February 12, 2019 Letter to Alliance Attorney Navi Dhillon from California Deputy Attorney General Nicholas Tsukamaki on Proposed Stipulation & Settlement on The Alliance 1849 LLC v. San Francisco Bay Conservation Development Commission San Francisco Superior Court, Case No. CPF-18-516291



May 15, 2019

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019

Re: California State Auditors Report and Recommendations

Dear Chair Wasserman and Commissioners:

We fully support the recommendations made this week by the California State Auditor regarding the BCDC. Attached are the Alliance recommendations for reform of the BCDC. We shared our recommendations with the California State Auditor in February and were gratified that many were included in their report.

Our detailed recommendations fall into three general categories:

1. Reform Governance
2. Replace Executive Staff with New Leaders
3. Improve Processes for Permits, Compliance and Enforcement

The Alliance recommendations are based on our own experiences with Staff and the Commission and after many interactions with other stakeholders around SF Bay. The conclusions of the California State Auditor support our own findings.

We are continuing our analysis of the BCDC, but to date have not yet received information requested many months ago. We recently had a judgment entered by the California Superior Court in San Francisco regarding an information request we made regarding enforcement cases that we initiated last summer. The judgement requires the BCDC to comply with our PRA request. Quoting the judgement:

"The Court finds and determines that BCDC failed to adequately search for and timely produce all responsive records requested by the Alliance all in violation of the Public Records Act and California Constitution."

This is a serious and blatant disregard by BCDC leadership of the California public records act. Further, we have found in conducting depositions that the BCDC Staff are

routinely destroying documents. We are considering additional actions regarding this serious matter.

BCDC Staff waste taxpayer funds for no good reason. In a sworn deposition, one BCDC IT staff member stated there was a central server that contained all documents from 2005 and a document search would take only 20 minutes to satisfy our request. We were told document searches were too cumbersome and could not easily be performed. Frankly, BCDC Staff have not been honest about the effort needed to retrieve important information. They have wasted hundreds of hours and hundreds of thousands of dollars in costs for no justifiable reason. Why did staff do this? We really have no idea. We intend to recover the significant costs connected with our efforts.

The waste and extensive delays we experienced indicates a serious management problem at the senior staff and executive level. Resources are squandered and, as the audit report points out, there are serious questions about the effectiveness and focus of BCDC activities. We intend to continue our analysis and pursue the facts once we receive the information we requested as required by the order of the court.

We applaud the work of the California State Auditor. Their report indicated they reviewed in detail only a small portion of the open enforcement cases. We have reason to believe a more complete review of open cases and supporting documentation will yield many more serious issues calling into question the validity of these cases. Based on the cases in the public domain (Buckler Island, Scotts Seafood, Westpoint Harbor, and others), it has been shown repeatedly that claims made by BCDC Staff as violations are not supported with facts. This was also the finding of the Solano County Superior Court in the Buckler Island Case. We are mystified, as was the auditor, how priorities are established. We are appalled that minor alleged infractions have led to massive wasted resources in failed extended enforcement actions, while major pollution and damage being done to SF Bay goes unaddressed. This is further reason to replace current BCDC executive leadership and reform processes **before** any further resources and taxpayer dollars are wasted.

BCDC Staff are already on record this week requesting more resources and staff to pursue enforcement cases. This is premature. We have no confidence that more resources will be put to good effect until the reforms we and the California State Auditor have recommended are in place.

As the audit report points out, BCDC does not have its priorities in the right order. This week the BCDC Executive Director publically states he needs more staff and cannot complete his mandate as required by law. BUT at the last Commission meeting he bragged he was gaining support in this year's state budget process for \$3 million to cover an unnecessary and expensive move to a new office building. Is this really the highest priority of the BCDC? We think not. The Commission must immediately put a stop to these wasteful practices.

The Alliance looks forward to the Commission's response to the serious issues raised by the California State Auditor. We also look forward to the Commission's response to our

recommendations. We are working diligently with our elected representatives to promote needed reform of the BCDC. It is vital this happens quickly to save SF Bay from further harm due to BCDC mismanagement and neglect.

Respectfully,

A handwritten signature in black ink, appearing to read "Bob Wilson". The signature is fluid and cursive, with the first name "Bob" written in a larger, more prominent script than the last name "Wilson".

Bob Wilson
Co-founder
The SF Bay Stewardship Alliance