

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

May 31, 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 of May 16, 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, Yerba Buena Room, First Floor, San Francisco, California at 1:03 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Ahn, Alvarado, USACE (represented by Alternate Galacatos), Butt, Chan (represented by Alternate Gilmore), Resources (represented by Alternate Eckerle), McGrath, Peskin, Pine (arrived at 1:25 p.m.), Sears, Sperring (represented by Alternate Vasquez), Tavares (represented by Alternate Nguyen), Techel, Ziegler and Governor's Appointee (represented by Alternate Holzman). Senator Skinner (represented by Alternate McCoy) was also present.

Chair Wasserman announced a quorum was present.

Not present were Commissioners: Santa Clara County (Cortese), Department of Finance (Finn), Contra Costa County (Gioia), Sonoma County (Gorin), State Lands Commission (Lucchesi), Governor (Ranchod, Randolph) and Napa County (Wagenknecht).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda. (No public speaker cards were submitted)

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the May 2, 2019 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of May 2, 2019.

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

VOTE: The motion carried with a vote of 16-0-2 with Commissioners Addiego, Ahn, Alvarado, Butt, Gilmore, Eckerle, McGrath, Peskin, Pine, Sears, Vasquez, Nguyen, Techel, Ziegler, Holzman, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and Commissioners Gilmore and Alvarado abstaining.

5. **Report of the Chair.** Chair Wasserman reported on the following: On the rising sea level front it has been a slightly quiet week. There was an interesting report out of England. Drone studies demonstrating the continued thinning of the Arctic ice sheets demonstrating two things.

One is that science is increasingly using new tools to probe and demonstrate the problems we are facing. And the problems we are facing continue to mount or to melt.

And we are attempting on our side to increase the pace of our efforts to deal with that.

a. **State Audit Report.** As expected the State Auditor's Report on our Enforcement Program was released this week and it will be the subject of a specific presentation later in this meeting.

b. **Enforcement Committee Meeting.** I would now ask Commissioner Gilmore to give us a report on the Enforcement Committee meeting that was held this morning. Commissioner Gilmore reported the following: So the Enforcement Committee met this morning to consider the Salt River matter that had been remanded from the Commission and the Committee by unanimous vote voted to uphold the Executive Director's decision. And I believe that this will be scheduled before the full Commission for a vote in the near future.

c. **Next BCDC Meeting.** Our next Commission meeting will be held in three weeks, on June 6th, and at that meeting we will:

(1) Consider initiating a proposed Bay Plan map amendment for India Basin in San Francisco.

(2) Consider the Salt River enforcement matter. Consider other legislative matters including the Oakland Athletics-Howard Terminal legislation.

(3) Have a staff briefing on the Seaport Plan Update.

(4) Have a staff briefing on the status of the Middle Harbor Enhancement Project at the Port of Oakland.

d. **Ex-Parte Communications.** Does any Commissioner wish to make an ex-parte report on the record here recognizing that you need to do so in writing regardless? (No ex-parte communications were reported)

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

As the Chair alluded to Tuesday was a difficult, albeit relatively successful, day. I arrived home proud of our BCDC team. We grabbed the Audit Report as soon as it was released and adapted our draft documents to it and ensured that Chair Wasserman was kept fully in the loop. We tried to explain as best we could how the audit can improve the way BCDC works while describing the success that BCDC has had during its first 54 years. I want to thank Karen Donovan for leading that team that included Marc Zeppetello, John Bowers, Brad McCrea, Matthew Trujillo, Schuyler Olsson, Andrew Chin and Peggy Atwell. As I said to the San Mateo Daily Journal, it's no fun being audited and this isn't my first. Thankfully, it isn't Karen's first either and you'll see that later today as she will outline the steps that BCDC staff propose to ensure a higher level of confidence in our Enforcement Program.

Today marks the 107th anniversary of the birth of a great American who made a career teaching us about how we work. Studs Terkel, the great bard of Chicago, explained to the country what that hard work entails and how it affects us. He famously said that "... most of us are looking for a calling, not a job. Most of us, like the assembly-line worker, have jobs that are too small for our spirit. Jobs are not big enough for people." Thankfully, I think I can speak for the entire BCDC team in saying that our jobs don't feel that way. And my job is to ensure that we meet your expectations as we fulfill BCDC's mission and represent its spirit. Please continue to let me know how well you think that I am accomplishing that task and how I can improve.

With regard to staffing, I want to introduce to you our new Legal Secretary; Amy Chattopadhyay (Raised her hand and was recognized). Amy will receive a bachelor's degree in economics later this month from Harvard University's Division of Continuing Education, so I think she should be wearing crimson. She has legal experience as an immigration paralegal and as case management director for a nonprofit organization for which she handled criminal and immigration matters and assisted in managing the organization's legal resources. Prior to moving to the United States, Amy worked in Singapore where, among other tasks, she edited contracts and managed compliance with local laws.

Steve Goldbeck and I are working with the State Legislature regarding next year's budget. Both chambers' budget subcommittees have approved funding for our upcoming move. Soon, the legislative leadership will decide how the State's Greenhouse Gas Reduction Funds will be apportioned. We hope and expect that the Governor's budget proposal that grants \$1.841 million to BCDC to almost fully fund our Planning Program will be in the final version of that plan. It appears that the Legislature may approve an additional expenditure for those cap-and-trade funds for coastal adaptation purposes. We'll keep you informed as soon as we know more about that possibility.

Last week BCDC was happy to participate in the distribution of the San Francisco Bay Shoreline Adaptation Atlas which was published by the San Francisco Estuary Institute and SPUR and funded by the Regional Water Quality Board.

We have a guest here this afternoon, Warner Chabot the Executive Director of SFEI and I'd like Warner to take a few minutes to explain how it will help our planning efforts and that of the entire Bay Area.

Mr. Chabot addressed the Commission: I want to acknowledge and thank the Commissioners and the BCDC staff who worked on producing the Adaptation Atlas. What was unique about this report is that it was truly a collaborative effort that was put together by representatives of the Technical Advisory Committee that included staff from local, regional, state and federal agencies as well as the academic, NGO and business community.

The first draft had over 700 comments that we incorporated into the final draft. So it is not only just an SFEI, SPUR document; it is truly a collaborative document that is owned by many, different players and agencies.

The simple fact that even before it was published county governments in Marin and San Mateo County with whom we sort of test-drove a lot of these concepts as well as BCDC, the Metropolitan Transportation Commission, the Regional Water Board have all indicated their intent to incorporate the concepts and framework in this report in their future planning and regulatory efforts.

The challenge of climate change in the Bay Area really is an ecological and engineering; we have vast ecological and engineering resources – the real challenge of the Bay Area is governance and finance.

We are a bathtub with eight million people in it. We are nine counties, 100 cities and several hundred jurisdictions; the question for the Bay Area in this bathtub is how do you get all of those people moving in the same direction?

The Atlas provides a very solid, detailed, scientific foundation to look at the entire Bay Area's ecological systems and to try to provide technical information by breaking up the Bay Area into 30 sub-watersheds or ecological units and providing local government officials with a suite of alternatives and options and opportunities as to how apply nature-based solutions to their specific community.

One of the other challenges of climate, adaptation planning is the fact that 90 percent of adaptation planning actions tend to be land-use planning and 90 percent of land-use, planning actions tend to occur at the local government level.

So how do we provide all the counties and the local governments with a set of data and information and scientific principles and concepts for them to consider nature-based solutions, green solutions and gray solutions?

There is no one-size-fits-all. This document tries to look at about 15 different, nature-based solutions as well as gray, infrastructure solutions as well as regulatory solutions and offer to each of the 30 segments a suite of opportunities that might be most appropriate.

The next step for entities like local governments, the regional water boards – what the Bay Area has demonstrated to the Legislature and the Administration is that we have the ability to collaborate, to coordinate to come up with a common vision and a common direction of how to move forward to make the San Francisco Bay Area a national model of how an urban region of eight million people at the edge of the sea tackles climate adaptation.

It is now the responsibility of the State Legislature and the Newsome Administration to try to provide the Bay Area with policy incentives or additional funding to enable us to have the capacity to implement this planning effort.

Most local governments are over-burdened. For 40 years the federal government has dumped unfunded mandates on the state. The state has dumped unfunded mandates on local governments. The planning departments at local governments who are dealing with planning issues are overwhelmed. They want to collaborate.

In the last two years alone there have been three, separate, individual, informal, professional networks of local-government officials, planners, policy wonks, engineers creating their own networks, informal networks of collaborative efforts just to share issues and solutions.

I believe that what we need in the Bay Area is something comparable to what the Rockefeller Foundation did multiple years ago when they created 100 resilient cities and they provided resiliency officers to communities.

It is now up to the State Legislature to provide some support to local-government officials so they have some additional capacity to do the collaboration that they desperately want to do but simply don't have the capacity.

And I think the degree to which entities like BCDC, the Regional Board and local governments can deliver a single message to the Administration and the Legislature that we have a blueprint. We have a plan. We have a planning process that you, BCDC, are now going to be developing in creating your Regional Adaptation Plan, more planning, more process is necessary but we definitely have demonstrated to the state and the nation how multiple jurisdictions can collaborate and coordinate and now we need some additional support to try to implement the recommendations on this.

I do think that BCDC, the Regional Board and others that helped support this effort deserve a tremendous amount of praise to demonstrate how collaboration and coordination can work to provide a very dramatic and sustainable future for the Bay Area. Thank you for your time.

Commissioner Alvarado was recognized: SPUR was very, very proud to be involved with SFEI on this measure and we recently – SPUR takes an annual, study trip every year to another city and we just came back from Miami to look at their sea level rise efforts and in fact former, BCDC, Executive Director Will Travis joined us as well but we were really struck by, similar to the Bay Area, multiple jurisdictions, very large, geographic and diverse geography – how they are taking action, real-time, adaptation efforts, nature-based approaches, policy approaches, engineered approaches to take action now, not necessarily wait for the perfect answer because they are seeing the effects of sea level rise every day.

They have sunny-day flooding and they recognize the threat in a very, immediate way. So it was a really informative trip. We will be producing some of those findings and insights in our Urbanist magazine. But they were very familiar with the work that we are doing in the Bay Area. And the work that we see here in this publication will further help inform other regions as well as build collaboration and coordination amongst the multiple jurisdictions in our Bay Area. Thank you.

Executive Director Goldzband continued: I'd like to ask Steve Goldbeck to update the Commission regarding our ongoing discussions with the Athletics concerning their proposed ballpark at Howard Terminal.

Chief Deputy Director Goldbeck addressed the Commission: We and the State Lands Commission have met with the A's, the Port and the city of Oakland regarding the proposed project and legislation at Howard Terminal for the A's stadium and mixed-use development.

We've had productive discussions and the State Assembly policy committees have also confirmed through the legislative process that BCDC's planning and permitting process needs to be respected.

We are talking with the stakeholders about the project and their proposed uses on the Bay-filled lands on that site including the ballpark and its associated offices.

Among other matters the A's are concerned about whether the project can meet BCDC's fill test for these filled Baylands. We will work to ensure that any proposed, legislative language is limited and protective of the Bay and we will definitely be bringing that back to you, any proposed language, for you to consider at your June 6th meeting.

Meanwhile the analysis of the need for the site to meet regional, seaport needs is underway. Thank you.

Executive Director Goldzband continued: In the penultimate chapter of our ongoing district-court, legal saga of BCDC versus the U.S. Army Corps of Engineers, I am happy to report that the Office of the California Attorney General this week filed on BCDC's behalf our Final Brief in that litigation. Because the Corps is the home team, it gets last at-bats by submitting a reply brief prior to the oral arguments that are scheduled for July 18th. Let us know if you'd like a copy of any of the briefs in that case.

Finally, and please take note – due to the press of regulatory business BCDC staff may well have to schedule an additional Commission meeting in the months of June, July, or August. We assume that such an additional meeting would be held during the morning of the regularly scheduled meetings on June 20th, July 18th, or August 1st. We likely will need an additional meeting because two those afternoon meetings in July and August are reserved for the Commission's public hearings on the two Bay Plan amendments – Fill for Habitat and Environmental Justice. We want to keep those hearings in place and we don't want to shortchange the public's or the Commission's discussions regarding those two important regulatory changes. And, it just so happens that major project applications are coming at BCDC in a big scheduling clump. So – our team will reach out to you early next week to ask for your preferences and ideas regarding those three options. Please reply to that request as soon as possible.

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

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

7. **Consideration of Administrative Matters.** Chair Wasserman stated: That brings us to Item 7 which we are not going to do because there are no administrative listings in front of us.

Commissioner McGrath commented: On that point sir - there was a list of things and I do have one, quick question if I may be indulged.

Brad, it doesn't appear to be an Administrative Listing but I am curious about the revetment at Point Emery. I just want to make sure that is going to be a regular permit and would go to the Design and Review Board. That is Permit No. 2019.002.

Mr. McCrea replied: Fortunately, whispering to my right is Walt Deppe who is handling this project. I am going to ask him to answer your question.

Mr. Deppe commented: We received the application late last month. We are still in the 30-day, review process for that application. So we are going to send them a response once we have been able to analyze what they provided with us and what the outstanding application materials are.

Commissioner McGrath added: Just so everyone knows – that site is used by kite boarders and wind surfers for launching and I want to make sure they have an opportunity to comment.

Mr. Deppe answered: I am going to make sure to loop in Ben Bach of the Water Trail.

8. **Commission Consideration of Hope for the Bay Resolution.** Chair Wasserman announced: Item 8 is consideration of a Hope for the Bay Resolution. The presentation will be made by Executive Director Goldzband and Commissioner Eckerle.

Executive Director Goldzband presented the following: Thank you very much Chair Wasserman. Just to give you a little bit of background that Commissioner Eckerle will expand on; a few months before the end of the Brown Administration the former governor held a tremendous conference on sustainability in San Francisco.

And we were requested to provide a resolution of support that was called, Hope for the Coast. It turned out that we couldn't do it in time because the Commission wasn't meeting when it needed to be met.

And so we decided that we should still do the resolution and instead call it, Hope for the Bay which is why you have the resolution in front of you.

And now I will cede the mic to Commissioner Eckerle.

Commissioner Eckerle addressed the Commission: Thank you that was a good introduction. As most of you recall last year the Coastal Conservancy and the Nature Conservancy released the first, comprehensive, statewide, vulnerability assessment for coastal habitats in the face of sea level rise.

That report indicated that over half of California's coastal habitats will be threatened by five feet of sea level rise and that includes beaches, coastal marshes and rocky, inter-tidal habitat.

And while these findings are certainly alarming, the assessment also included strategies to maintain and protect these critical, coastal habitats into the future including things like maintaining existing, conservation lands and protecting potential, future, habitat areas.

In an effort to catalyze this action and focus a coordinated approach on protecting coastal habitats from rising seas the Nature Conservancy developed a vision for California's coastal future which was called, Hope for the Coast.

And this vision really expressed a commitment to maintain and enhance California's coast and Bay shoreline in the face of sea level rise and it creates a blueprint for public and private entities to work together and to advance science-based action to protect California's coast and Bay shoreline both natural and developed.

So as Larry mentioned at the Governor's Climate Action Summit in September of last year this Hope for the Coast and the Bay vision really served as the foundation for a commitment that was made by then, Secretary for Natural Resources John Laird on behalf of the state of California.

And Secretary Laird was joined on stage by leaders of state and local jurisdictions that had adopted the Hope for the Coast vision and committed to taking specific and meaningful action to advance it including Chair Wasserman representing BCDC and Commissioner Pine representing San Mateo County Board of Supervisors.

As Larry mentioned in the lead up to the Summit all of the entities represented on stage had adopted formal resolutions or letters of commitment to adopt the Hope for the Coast vision. Unfortunately given the timing of the Summit and this Commission's meeting schedule we were unable to bring a resolution to this Commission for consideration before the Summit began.

So what you see before you today in this resolution describes the ambitious and pioneering efforts that BCDC has already undertaken to increase climate resilience in the Bay Area and it memorializes the commitment that Chair Wasserman made at the Summit on behalf of this Commission that we will continue to prioritize protection of Bay habitats and shoreline communities to promote ecological, social and economic benefits now and for future generations. Thank you.

Chair Wasserman continued: We do not have any public speakers on this. Do Commissioners have any questions or comments? (No comments were voiced)

I would entertain a motion to approve.

MOTION: Vice-Chair Halsted moved approval of the resolution, seconded by Commissioner Pine.

VOTE: The motion carried with a vote of 18-0-0 with Commissioners Addiego, Ahn, Alvarado, Butt, Galacatos, Gilmore, Eckerle, McGrath, Peskin, Pine, Sears, Vasquez, Nguyen, Techel, Ziegler, Holzman, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

9. Briefing on Governance Survey Concerning Adaption to Rising Sea Level. Chair Wasserman announced: That brings us to Item 9 is a briefing by U.C. Davis Professor Mark Lubell regarding the results of his survey on governance issues faced by the Bay Area regarding adaptation to rising sea level.

Professor Lubell addressed the Commission: I am Mark Lubell from U.C. Davis and I am here with my colleague Francesca Vantaggiato who helped me work on this project.

This is part of our Riser Project that is collaboration between U.C. Davis and Berkeley and I know that you have had Mark Stacey talk about the bio-dynamic modelling and the transportation modelling that we are doing as part of that project.

And previously when I was here I talked about the work we've done on the so-called, governance gap about how to navigate the messy situation about all the different, fragmented authorities and venues that exist in the Bay Area around sea level rise and climate adaptation and the cooperation and learning that is needed to get over it.

The previous report that we had on the governance gap – actually I should say this is all the things we have done. So we started out with interviewing people and focus groups and we had the 2017 report called the “Governance Gap”.

And then we did the survey in 2018 which is what I am going to report to you mostly now.

This is from the previous report. The Governance Gap Report all the main, seven challenges and some of the solution concepts. We've talked about this before in this room and you have seen that former report too.

I want to remind you that on this one we talked about last time this idea of a visioning plan about one of the past forward through what I call the “horns of the governance dilemma here” and I will get to that.

So this is the main topic. What did we find in the surveys? We put it out in 2018. There are the three, main parts of the survey – the perceptions, the problems, what peoples' preferences are concerning the actions and the sorts of collaborative activities that people have done.

We got 722 replies. Those of you who are in the room who did actually fill out the survey – thank you very much. Your opinions are in here. And those opinions come from 385 organizations. So there were a lot of different organizations and people that we got to respond to the survey.

This tells you the types of organizations. So this is the percentage of responses of different types. You can see at the top are local governments and NGOs, education consulting and then as you get to the more regional, higher, levels of government the total numbers of people start to go down.

Out of those people most of the people who are involved they are involved as part of their work. They are mostly involved on behalf of one organization. There are a few people that represent multiple sorts of organizations.

This is SFEL's shoreline segments here. So we asked people in the survey to indicate which shoreline segments they worked on. Some of them indicated only one. Some of them indicated the entire Bay and there is a range in between but the darker colors here show the intensity of attention to particular shoreline segments.

And this tends to be more correlated with the total population area and not as directly correlated with the amount of flooding that is expected in particular areas.

This is peoples' perception of the problems. There is a fairly high level agreement of agreement on what the risks are. As you go down you get higher levels agreement. And the blue means agreement on level of risks, the risks that are being faced. And the red is actions.

You see a fairly, high, level agreement is on the risks but not very, high, level agreement on the actions that are taken.

So people recognize the problem. I am guessing that in other places in the country you would see a much different story as far as that goes.

This is what they are most concerned about. We asked people to select three items that they are most worried about as far as the potential vulnerabilities. And this is the percentage of time that they were named in the top three.

So transportation, wastewater, infrastructure and disadvantaged communities being the top three concerns and then water supply, infrastructure and ecosystem health being the next higher ones and then down the road from there.

This is the primary barriers to collaboration. The number one barrier to collaboration that people see is a lack of an over-arching plan to address sea level rise in the Bay Area.

The next one down is lack of political leadership from elected officials and then money.

Interestingly near the bottom of the list is lack of availability of scientific information. So the amount and availability of science out there is not seen as a problem in this particular area.

You know often environmental, policy people say – oh it's always the science, the best, available science; not the case in this particular area according to these results.

If you kind of go through those most of the top seven barriers that we identified before show up in the top again here.

So what do you want to do about it? Create a sea level rise adaptation plan possibly of the sort that BCDC is now engaging in. Create a collaborative partnership to support it. Do some green infrastructure. Vulnerability assessment.

Interestingly enough at the bottom of this is one of the things that I wrote about in the report previously about which is a visioning process as a potential complement or a prelude to a full-blown adaptation plan to get through what I still see as the horns of a dilemma – so if you are going to come up with an adaptation plan and a new set of institutional arrangements or some networks of collaboration; do you need a higher level of visioning process to start with?

The stakeholders in the survey did not say yes to that but it is partly because it is a new idea.

Who collaborates? So we asked every single respondent to indicate the sets of organizations who they collaborated with, their collaboration networks. BCDC comes out as the winner here basically. It has the highest number of connections to the network. So the most central organization in the collaboration network but the list goes down from there.

There are a lot of other players and many of them are in the room here that were indicated as being central in the network.

This is BCDC's network. So everybody in this network is connected in some fashion to BCDC. We call this the ego network. This is all the connections BCDC has.

And where the labels are the most central, other actors who are working with BCDC are shown. It all comes directly from the data.

Everybody kind of wants their own position in these networks when we give our presentation. Where are we in the network? So there is where you are.

We asked people to nominate the collaborative initiative which they are most likely participating in. We had a lot of RBD people. So Resilient by Design was nominated as the most recent, Baywide thing. A lot of consultants from there were in the survey. So that was the number one in terms of the people indicating participating.

And then ART is next. And then you see down the list most of the ones again and most people are familiar with this in this room.

But then we also asked them to evaluate each of these initiatives along a number of criteria. We said if you said Resilient by Design then we asked you each respondent that said Resilient by Design to evaluate that particular project according to these criterions. But this gives you an idea of what we received.

So if you said RBD or you said ART we said, okay were the goals of all stakeholders taken into account? And the higher up in the scale here means higher performance in a sense. So this is the head-to-head competition between ART and RBD as far as that goes.

Interestingly enough if you look at down for the first two – goals of stakeholders were taken into account and the initiatives led to tangible progress in preparing for sea level rise; ART which is the red bars scores higher from the stakeholder perception.

And there are measures of cooperation. For example which ART also scores higher on but where RBD scores higher is coming up with innovative thinking regarding adaptation to sea level rise.

There is an interesting story there where to what is going on. One of the things that is interesting is that if you are coming up with something completely new that is innovative and maybe nobody has ever thought of – maybe it is out-of-the-box thinking. It is also something that tends to raise more controversy.

There are other things we can talk about there but if you look at the report we've ranked the performance of many other of the organizations or many of the other initiatives so we are able to give a score card on what has occurred in the time period of the survey.

If you would like us to we could survey people every year. We would get a lot of information from that.

Some lessons for BCDC – I still think you are on a bit of a horns of a dilemma here in the sense that BCDC is very central in the network. But there are all these other players regionally, locally, at the state level that are involved in the sea level rise adaptation plan and that what you are doing now with the adaptation planning process that you are initiating is something that needs to happen.

But I still think that there is a space and possibly a need for some more visioning process that involves getting the Legislature, the Governor's Office involved and getting the other regional agencies and state agencies with a regional mandate involved to have a visioning process that accompanies that planning process.

BCDC's role in that would have an additional role of trying to do the convening, help organize and convene and lobby for that type of idea at a higher level.

The amount and availability of science is not a problem but the sense-making of what do you with that information and the usability still remains a challenge. In Marine County a couple of years ago Jack Lever said the last thing we need is another portal. It is more like how do you take that information and bring it into the hands of a resilience officer who can be the warm body that does the translation on knowledge making there.

ART is doing great in a lot of metrics. But as I mentioned as the innovation occurs at least one interpretation there is that it introduces more controversy.

What we are doing next – this is our citizen's survey. I have shown you this before but what we are doing next is this is sort of stuff; we have done our data collection and we are writing up papers and we have various reports and outreach, we are happy to deliver that information and have discussions with people at whatever level we are capable of doing either in person or remotely so that we can continue to learn from what is going on and hopefully our information can benefit what you guys are doing going forward.

We are doing a more on-the-ground comparative study looking at State Road 37 process and then a couple of other comparative transportation, planning processes in San Diego and Los Angeles to think about what is this looking like in other regions and what does it look like at the hyper, local level not just the full region but what do you say when you say we are going to do this road or this transportation project?

We are going to do household surveys like this one in multiple regions. So right now we are thinking replicating what we did in the San Francisco Bay Area at the household level but also Norfolk, Virginia, probably New Jersey Shore, Miami, Dade County possibly Houston to see how the citizens are thinking about this issue in multiple regions that either have or have not had a history of big storms and are more or less climate friendly or climate skeptical.

I will hopefully have a chance to look at what does a region like Miami do to solve basically the same sort of governance challenge when there is different political cultures, institutions and that sort of thing.

That is it and here you see the team that was involved and I am happy to take any questions if we have time for that.

Chair Wasserman asked: Questions? (No questions were voiced) We don't have any cards but if anybody from the public wishes to speak we would welcome them. (No public speakers came forward)

I want to say thank you for the study. There is a lot of very valuable and useful information in this.

It is not all surprising to me that on the issue of innovation RBD comes out way ahead. RBD was an innovation project fundamentally. ART is a fundamentally cataloguing project. I don't mean to diminish it by cataloguing but it is a study of what exists and a little bit of how things can work together. We need both.

On the visioning issue I think you have not and your team has not fully understood the process we are going through to develop the Regional Adaptation Plan because the workshops and both the working groups and the workshops where we have had in terms of these kinds of things a relatively large number of people attend. It is very much a visioning process usually focused on some specific areas – Bay fill, equity, financing; we will be moving forward towards education, we are not there yet.

And while one whether coming at it from an academic study or simply being in the midst of it can always wish that there were more vision and I certainly do.

I think we've encouraged people to think outside the box, to work together collaboratively as a basis for that.

We will continue to utilize that process as we start to formalize the Regional Adaptation Plan. And as we talked about at the last meeting we are in the process of gathering a formal advisory group to help us on that. But that will go through the same kind of very inclusive workshop process.

And we absolutely recognize that although we are pleased at the center of that map it requires the participation and collaboration with a whole range of other organizations, public, private, non-profit.

But I think the framework that you are helping to provide is very useful for us and the other organizations in grappling with what is unquestionably a messy and challenging situation.

Thank you very much and thank you team for us.

10. Briefing on BCDC Audit Report 2018-120. Chair Wasserman announced: That brings us to Item 10 a briefing on the State Auditor's Report regarding BCDC's Enforcement Program. Enforcement attorney Karen Donovan will provide the briefing and Brad is going to lead off.

Mr. McCrea was recognized: You are scheduled today for a briefing on the final BCDC Report prepared by the California State Auditor. I am going to give just a couple of minutes of background and some context about the process. And then I will turn it over to Karen Donovan.

The State Auditor staff as a team of up to five people at a time visited BCDC's office numerous times over about a nine month period between September of last year and March this year.

The Auditor staff had unfettered access to BCDC's files and all of them. As the Auditor said if you can see it we can see it.

They looked at our permit files, our administrative files. They had access to the enforcement files and our planning files.

The Auditor staff conducted also multiple interviews with BCDC staff and others outside of the agency.

And based on that audit research they released a draft last month and they released a final version just two days ago.

In general there was very little difference between the draft that came out last month and the final that came out this week.

On Tuesday of this week the BCDC staff sat down and carefully reviewed the document and then distributed several documents to you, to your advisory boards, to the staff and really anyone who asked for more information about the audit.

We distributed Chair Wasserman's public statement. We distributed answers to frequently asked questions about the audit. A fact sheet on BCDC and BCDC's response to the audit findings.

In just about a minute Karen Donovan BCDC's enforcement attorney will walk everyone through the major points of the audit.

So I will conclude by saying something that Larry pointed out and that is no one likes being audited. Whether it is a financial audit or a programmatic audit like the one that we have before us – no one likes being audited.

The good news is that after six to nine months of the Auditor being in BCDC's office the Auditor found nothing that supported the allegations of staff misconduct such as bias or moving the goal posts.

And the Auditor also found that BCDC generally drafts reasonable permit conditions that comply with state law.

And what we have learned through this process is that we can and we will be doing enforcement better. This audit is a roadmap that will help us achieve that goal.

Ms. Donovan presented the following: I am going to walk through the audit. One thing I wanted to start with is really what this is.

This is a performance audit. It is not a financial audit. It is not the IRS although they did show up in dark suits. (Laughter) As stated on the State Auditor's website the State Auditor conducts these to measure performance, assess efficiency and effectiveness, test key management and administrative controls and most importantly to offer insights and solutions for approaches and improvements.

So that is what this audit is all about. And as we've said we are taking these recommendations on approaches and improvements to heart.

Now Brad already described what the past several months have been like and the unfettered access that the auditor's staff had to BCDC's files and its people.

So now I am going to go through some of the major findings. BCDC has a significant backlog of cases. The Report identifies a number of factors that have caused this including the time staff spends trying to amicably resolve cases.

This is a significant amount of time spent on cases and we acknowledge that it is probably too long.

The Report also looks at the lack of staff as well as the lack of any formal procedures to establish timelines or milestones to govern case management. All of these feed into the backlog of cases.

The Report also found that the Commission needs to develop more formal policies, guidelines and regulations.

One example of this is that the report notes that neither the McAteer-Petris Act nor BCDC's regulations define what constitutes a single violation.

The Report also recommends that we develop a penalty matrix which would detail the weighting of the factors that are set forth in the McAteer-Petris Act.

The Report also notes that the Enforcement Committee and the Commission need to be more active and provide more guidance to staff.

Now I wanted to note a positive here which is that the report notes that reconvening the Enforcement Committee was a positive step. But it also notes that the Committee should be doing more.

The Report does support the idea that BCDC needs more enforcement staff. And it recommends a workforce study to determine the specific need.

The Report notes that staff should be conducting regular site visits and doing regular patrols in areas within BCDC's jurisdiction.

Now this also does dovetail with the lack of staff. The reason that these regular site visits and patrolling are not occurring is the limited staff and the amount of time that would be required to do that.

The Report also notes that staff should not be resolving dredging violations using the standardized fine process because this is not explicitly allowed in the standardized fines regulations.

The Report notes the new, prioritization process has actually not resulted in efficiencies and is too complex. Now this is something where staff had noted that it is a work in progress. The staff believes that this prioritization matrix that has been developed does help in moving cases but we do recognize that there are improvements.

Now finally the report does criticize the database that we use and finds that the database is lacking. A separate briefing on the database and our resource needs would be appropriate.

We recognize that we lack the modern tools that are needed to track and engage in compliance activities. A lot of this is still done with paper files.

There are findings that more needs to be done to protect Suisun Marsh.

Also the State Auditor disagrees with BCDC's use of the Bay Fill Cleanup and Abatement Fund for staff salaries. Notably they do acknowledge that the Department of Finance and the Legislature have authorized the practice. The State Auditor does disagree with this though.

Finally similar to Brad I want to end on a good note. The Report finds that BCDC generally drafts reasonable, permit conditions that comply with applicable law and that staff is meeting the deadlines for issuing decisions.

So the major takeaways – the first is that the Commission should develop policies and possibly some regulatory changes to provide more direction to staff.

The second is that without these formal policies and guidance there is a risk. There is a risk of harm to the Bay and the denial of public access as a result of unchecked violations and there is a risk of inconsistencies.

I do want to pause here for a minute and discuss the cases that had been cited in the Report to support the findings. I did want to discuss a few of these cases, most particularly the tugboat Polaris.

The tugboat is discussed in multiple places in the report. On page two this beached tugboat which is decaying in the Bay, corroding and deteriorating is discussed as an example of the things that can happen when staff has no clear guidance on how to handle cases. On page 23 the Report again cites this to support the statement that a lack of clear guidance from the Commission creates the risk that staff will make decisions that are not consistent with the law.

I wanted to tell the story of the tugboat Polaris but I want to start also with the ending. This is not necessarily an example of a mishandled case. It is an example of some information lacking in the files. And it is an example of the complexity of the cases that BCDC has to address.

On April 14th in 2013 the tugboat Polaris ran aground on some rocks near the city of Rodeo and the U.S. Coast Guard responded to this. The vessel owner actually was unwilling to abandon the vessel at the time. And then after weeks of negotiation the vessel was eventually cleared of fuel and moved to a nearby marina.

In this time period BCDC also in response to the reports from the Coast Guard opened an enforcement case. This went on for a while. Repair efforts on the vessel failed and the vessel eventually sank.

In the meantime CalRecycle and the Contra Costa Sheriff's Office were involved. And State Lands determined to exercise its authority to remove this.

In early December of 2013 State Lands authorized the removal. Based on all the evidence that staff had been presented with particularly that State Lands was taking a lead and that the vessel had been cleared of fuel and had been moved and at this point the action involved multiple agencies; staff did close the case.

Now one of the things I wanted to note is that part of how we were able to confirm all this was not simply the discussions with the staff who were handling this but I did a Google search of State Lands and Polaris.

And the first thing I landed on was a public report that was presented to the State Lands Commission when they made their decision and this confirms all of these facts including that this vessel had been cleared of fuel so that it no longer presented the threat that the Coast Guard originally had voiced.

These documents incidentally have now been added to the file and we do recognize that the file should have had further information to confirm staff's decision.

I wanted to bring this up though because there are approximately 10 cases that are discussed in this report. And some of these issues have already been discussed.

It is important to note however that as the report discusses other cases similar to the tugboat Polaris these are cases where evidence is lacking in the files and thus the audit staff could not confirm that the cases were not handled inappropriately.

If you look at some of these cases you can see that they were handled in a manner that we felt was most protective of the situation in recognizing other agencies.

There is no finding that a fine for instance in a case that is discussed on page 36 was inappropriately assessed. The finding is that without evidence in the file it was impossible to determine whether it was appropriately assessed.

I just wanted to note this because I think it is important to drill down on first off the fact that all of the cases that BCDC handles are unique and that we do recognize that we have databases that may in some cases particularly if you look at them from the outside be lacking information and that we need to be more diligent on that.

Now I want to go on to the recommendations. There are 17 separate recommendations for BCDC. I have combined some of these.

BCDC needs to create policies, procedures and possibly regulatory changes covering a number of areas in order to ensure that we have more transparency and that we eliminate risks of inconsistency.

One important one is timelines. We recognize that there is this tension between our existing practice of trying to resolve these cases amicably and work with the violators and getting these cases closed quickly and controlling the backlog.

This is something we are going to work on. We do recognize that some of these cases drag out way too long. A lot of times it is because there is a lot of discussion between staff and the violator and sometimes those discussions do break down.

Now there is always going to be this tension between trying to move something very quickly with rigid timelines and trying to work something out amicably because when you move it rigidly without tight timelines sometimes you can end up in litigation. This is a balance we are going to be continuing to work on as we develop more policies and procedures.

BCDC should update its database. We already talked about this and it should simplify the prioritization matrix that staff has developed over the past couple of years.

BCDC should conduct a workforce study and seek the resources specifically to hire a compliance position. There is a lot of discussion in the report about how doing better work with permittees on compliance would be beneficial. And we do recognize this and we appreciate that the report has recognized that we should seek the resources and get a compliance position at BCDC.

BCDC should review local agency compliance with the Marsh Program. We are already working on this.

BCDC should evaluate and update its permit fees. And we have already started an update to the permit fees and consistent with the recommendations in the Report we will be updating them regularly.

And also the report recommends that BCDC appoint a new Citizen's Advisory Committee.

The Report also had some recommendations for the Legislature. A lot of these do overlap the recommendations to BCDC. They recommend that the Legislature specifically require us to work on these timelines for cases, procedures for management review and a penalty matrix.

They recommend that the Legislature require regular reporting on our Suisun Marsh responsibilities.

Now significantly they recommend that the Legislature clarify the use of the Bay Fill Cleanup and Abatement Fund and importantly consider fully funding the enforcement staff through the General Fund if there is a determination that using the Bay Fill Fund for enforcement staff salaries is inappropriate.

Finally after everything is done they recommend that the Legislature provide BCDC with a new tool which would be the ability to record notices of violations on title.

Now this is a tool that we think we should get sooner rather than later. BCDC in its comment letter did note that doing legislation on this issue should not await us implementing these recommendations.

So now – what are we doing? Staff has already started working on a number of important changes. First – moving cases. There has been a lot of work on developing what would be case management plans containing milestones and timeframes for cases after they are opened.

The Enforcement Team now meets weekly and we discuss how to move the active cases and we discussed the new violation reports that have been coming in and how to get these resolved quickly.

We've been reviewing best practices. The Report specifically notes the Virginia system and suggests that we look at it and adopt some of theirs. We are looking at other agencies and what they do.

We've spoken with a number of agencies about their policies and we are going to be examining those further.

We are also working on identifying additional policies and changes and also procedural changes looking at our work flow and looking at how to eliminate the inefficiencies. And we are identifying all those areas where we feel that formal procedures can be formulated quickly and then where not formulated quickly we are working on timelines for doing them.

Also importantly we are scheduling some updates for the Committee. The Enforcement Committee will be meeting more often and we will be working on some policies with stakeholder input in these meetings.

And finally we are also working on improving the database. The database once again I think is almost a briefing in itself. We recognize that we have limitations and we have a resource need in order to be able to acquire the technology that we need.

This is an example of the types of worksheets we are putting together to get the Commission involved in the changes we are going to want implement.

And then finally I wanted to talk a little bit about what is next. First off within 60 days we do have an obligation to respond to the auditor about our efforts. And then there is going to be another response in six months and one year.

Prior to the one year because the report does recommend that we do some procedural changes by January of 2020 we will have already begun implementing some of the recommendations.

As I said we are going to be establishing regular meetings and updates for the Enforcement Committee and working on these procedural changes.

So with that we will take any questions.

Chair Wasserman announced: We have a couple of public speakers before we go to questions.

Mr. Peter Blackmore was recognized: I am a co-founder of the Bay Stewardship Alliance. First the Alliance is very pleased to see the recommendations in the Audit Report.

They indicate and endorse many of the points we have been making for some time about BCDC. We were however surprised and disappointed to see the response from BCDC. In particular refuting the need for the legislative change recommendations we believe is simply a denial of the problem.

The organization clearly is not working well and needs reform which will be very difficult to obtain from within.

We were also frankly astounded to see Mr. Goldzband's comments which were – we need to up our game and we need more money. This shows with all respect he does not understand the problem.

It starts with accountability for bad practices. The Audit Report shows there is a lot of inefficiency and a waste of money in the current processes. And before any more dollars are committed to the BCDC budget it is logical to see reform first.

We also suggest that BCDC should abandon its move to the new offices which were agreed by the Commissioners early this year and immediately freeze any expenditures related to such move.

Adding several million dollars of costs for building rent is outrageous at this time.

We also suggest a freeze on hiring at all levels should immediately be imposed until reform has been agreed. In other words get the budgets and processes sorted out and build from there.

From the Alliance viewpoint we see an issue of accountability as well as poor governance. From my personal experience as a CEO of several companies I know how difficult reform of an organization can be. It certainly does not happen by the current team saying – we need to up our game.

The only secure approach is a change in executive leadership together with much better oversight and guidance.

For example again with all due respect having 27 Commissioners is cumbersome and unwieldy.

We encourage genuine reform supported by executive and legislative change so that all of us can regain confidence in BCDC and feel comfortable that the organization is committed to reform and execute their mandate in a professional manner.

Right now it is clear from the Audit Report that is not happening. In summary this is an urgent call to action. Thank you for your time.

Mr. Will Travis addressed the Commission: Let me tell you an auditor joke. (Laughter) The Pope decides that he wants an audit of the Catholic Church so he brings the auditors in. As part of their investigation they visit the Sistine Chapel. In their final report to the Pope they point out that it would have been a lot faster and less costly if Michelangelo had used a roller and had painted the Sistine Chapel a neutral beige color. And based on that they concluded that the Catholic Church was not providing spiritual leadership for the world.

Now the reason I cite that joke which I made up (Laughter) is that I think it is a lot easier to focus on the small stuff and miss the big picture.

I applaud what the Commission is doing in a politically-correct and a politically-wise fashion of using the Audit to improve the program that you are administering and to seek the resources that are necessary to run your enforcement program well.

I always viewed enforcement at BCDC as the full employment act for the Bay Area. You could put all of your staff, assign every one of them to enforcement and you would still end up being criticized for taking too long to do a good job.

I have looked at BCDC for a bit longer than the Auditor has and I have concluded that I think if you take the entire experience of the American Republic and say, find us two dozen government agencies that know what they are supposed to do and do it well; that BCDC would make that cut.

You inherited a Bay that was getting smaller. Through the enhancement and wetland mitigation that you approved the Bay is getting bigger.

You are supposed to provide public access to the shoreline. You have done that in large part by approving tens of billions of dollars of investment along the shoreline and as a condition of that development have secured a lot of public access.

I think you can be very proud of your record and as you move forward to deal with and implement the Auditor's Report just remember – it is a hell of a lot easier to be an advocate than to be a manager. And it is really a lot easier to be a critique than to be a leader. BCDC is a leader. Thank you.

Mr. David Lewis addressed the Commission: I am the Executive Director of Save the Bay. I didn't put in a card because I wasn't planning to speak on this item. But I disagree with almost everything that the first speaker said. So I thought I would record that. And I appreciate and agree with most of what Will said.

I think this is a really important opportunity for inflection by the Commission and the Commissioners. When the Executive Director was hired for this position he made as one of his top priorities improving BCDC's enforcement effort.

And obviously a lot has been done that the Auditor and the Staff Report recognized. But when an outside auditor takes a look at your organization and tells you what is going on inside it is an important moment of opportunity for the Commission itself to reflect on why it was necessary to learn about opportunities for improvement from an outside auditor.

I have a great deal of sympathy for the staff because I am often asking them why something isn't happening faster. And they are often telling me that they don't have enough staff and resources from the Executive Director on down.

But I think it is an important opportunity for the Commissioners for you to ask yourselves – if this Commission needs more staff and needs more resources; why hasn't it asked for them?

Certainly you are aware of the dynamic inside state agencies when they are gently or not-so-gently told not to ask for more resources. But one of the really important assets this Commission has which is an asset not a detriment is 26 of you and 26 more Alternates.

It is a huge constituency for BCDC potentially with the State Legislature and you just saw in one of the previous presentations that you are the centerpiece, the admired centerpiece of a huge network which I would say starts with us, Save the Bay, which was central in creating this agency the way it is.

So I encourage the Commissioners to take this moment to find out what the staff needs from you. What the staff needs from the Legislature and other places because I am sure it is not limited to improved resources on enforcement.

And that is your job but it is also your opportunity. Thank you.

Mr. Cliff Waldek was recognized: I just came up here to back up everything that Will Travis and David Lewis said. I am married to a state worker and I know the amount of time and effort that is put in.

And every time I have had my encounters with BCDC the staff has always been helpful and responsive and I think what has kind of occurred – if somebody doesn't like what BCDC has to say or an enforcement action they will fight and people have deep pockets and a lot of time and there is limited staff.

So I think that BCDC especially their staff and their enforcement team always has to kind of triage what they have to do.

I just say let's not throw the baby out with the Bay water. (Laughter) Thanks.

Commissioner McGrath commented: First of all I agree with the concerns expressed by the Auditor on time deadlines – not necessarily the solutions. I was the first to report an alleged violation at West Point Harbor.

I received an email from a kite boarder who was trying to launch out there who reported he was chased off the site.

I had not been on the Commission when that project was approved. I had no idea what the permit conditions were. I had no idea of the status. I sent it to the staff with no opinion.

But I am disappointed that it took about 10 years to come to the Commission for resolution.

I think that both an applicant and those who seek to use a public-access facility have a right to a more timely process. Perhaps a system that had nominal deadlines, that had to be actively waived by an alleged violator so that they acknowledged that they want to continue to negotiate and the public needs to know might be a better solution.

Second I think explicit priority setting on the violations with involvement by the Commission as an endorsement and a clear understanding of what is a loss of public access or a loss of habitat would be an improvement and I endorse those.

Finally there was much on the tugboat and I appreciated the full story on that. I have some background with tugboats that is amusing in retrospect but wasn't at the time. The legal structure for removing what may be a derelict boat is very difficult. It is property. There are due process issues.

I know the State Lands Commission, the Coast Guard and BCDC staff is all frustrated by that. I know legislative efforts have been started but not gone forward. I think it is time to look at that and look at the possible funding and try to figure out how to make that process work better.

I think the problems identified by the Auditor about boats that aren't properly managed may have been a little bit overstated but what we have to do is look at it as an opportunity to craft a solution.

Vice-Chair Halsted stated: I echo those comments but I also see this as a great opportunity for us to improve our transparency and consistency in our processes around enforcement.

And particularly for the Commission like myself to understand those processes more fully and be able to feel more accountable for them.

I do appreciate that objective in the near future and will look forward to timelines on that subject matter.

I do think the staff has done an excellent job on what they can do on enforcement but we need to give more leadership in improving that in the future.

I think that our staff has done a good job of responding to the Auditor's suggestions. We just have to stay on track of how we implement those responses and I look forward to that.

Commissioner Peskin commented: I agree with Travis about the fact that since the advent of the McAteer-Petris Act the Bay is larger, wetlands have been restored and public access has been provided.

But the McAteer-Petris Act and the Coastal Act are only as good as their enforcement. And that is why both the Coastal Commission and the Bay Conservation and Development Commission were given those enforcement powers.

It is always hard to anticipate in an under-staffed, over-worked agency what is going to be the next thing. But I am pleased to have the Audit and I concur that this is an opportunity.

And I think we should also look ahead at other things that we are not thinking about. And I am actually bringing this from what just happened at the Coastal Commission last week which is it had been years since we actually did an evaluation of our executive director which Jack Ainesworth passed with flying colors. But I think that is another thing that we might want to think about which is another thing to show the public that we are doing that and obviously that is a closed-session item but we should endeavor to do that because it has been a while.

Chair Wasserman added: In process.

Commissioner Peskin replied: Excellent.

Commissioner Butt chimed in: First of all I appreciated Jim's comments about boats. As a city with a harbor that has often ended up being the recipient of derelict boats there is no more complicated, legal problem than getting rid of a boat that happens to appear in your marina or in your port.

I think anything we can do to try to deal with that is going to be a step forward. I don't think Richmond was the local marina that got the Polaris. But we have been the recipient of several boats that looked just like it. (Laughter) And it was a very, very expensive undertaking to get rid of them.

Second of all as I have said before I look at this Audit as a gift. One high-priority recommendation in there should be the Staffing Report. I think that is something that should be done sooner than later and the results of it should be recommendations about staffing levels and budgets that are necessary to address some of the problems identified – for example, the backlog.

The Staffing Report might end with recommendations for three levels of staffing. One that would get rid of the backlog in the next 12 months, one that would get rid of it in the next five years and one that would get rid of it in the next 10 years and then give it to our legislatures and ask them to choose which one they want.

I think that ought to be really priority. That to me goes to the heart of this. I think it is a really, great opportunity for BCDC to try to get the funds to do the job that people think we should be doing.

Commissioner Pine was recognized: I too think that the Audit gives us a tool to do our job better. And I think a key part in that is the role of the Commissioners, all of us around the table here.

Historically during my service on the Commission we don't hear that much about enforcement. I do commend Larry for setting up the Enforcement Committee but in light of the Audit and the challenges we face I would urge us to regularly agendaize how we are doing on enforcement at least quarterly.

I think it is not enough only for it to go through the Enforcement Committee. And we know that in the short-term there are a number of things that have been identified that we can jump on right away such as the plan for dealing with the backlog and assessing what resources we need. Certainly on the prioritization the whole Commission should have a good understanding of the top-five, big problems so that each time we talk about here we can find out how those top five are proceeding.

And there were a lot of references to what appears to be a really poor, database system that we are going to need to fix.

So there are a number of things that have been identified that we need to get on right away and we should have a system whereby each quarter the entire Commission can have an opportunity to check in on those and talk about those.

Commissioner Techel commented: Being on the Enforcement Committee this is my second time today hearing this report and I appreciate that staff put this together. (Laughter) Not it is good reinforcement.

I was reading this today coming in on the ferry and I felt like I hired a consultant to give me ideas about things I could do to improve the organization. We met with the Enforcement Committee and said – we are ready to become more involved. I think that was part of the Report for the Commissioners to be more involved.

And having gone through the experience of a couple of years of enforcement hearings I think we are ready to help look at the matrix and look at the findings and do exactly the kinds of things that will make us more efficient and more transparent.

Chair Wasserman commented: I agree with the comments of all the Commissioners and I do think as Larry has said as I have said – the Audit Report gives us an opportunity in a number of ways to improve our process and procedures, our transparency and hopefully our resources. We are an under-resourced agency not only on enforcement but also still on planning where we've gotten some more money but not enough yet.

One of the issues some of us have discussed with Larry and staff is figuring out how to create a report for our regular agendas that is somewhat parallel to our Administrative Matters reports on enforcement. There are a couple of complexities in ongoing negotiations but that is one of the pieces we are certainly working on along with the ones that Karen outlined.

We are taking this seriously. We may have different views than some on how best to improve ourselves and how best to implement the sensible recommendations in the Auditor's Report. But we take it very seriously.

We have already started. We started early on in the Audit in changing some of our processes and will continue to do that and will continue to discuss it openly at Commission meetings.

No further action is needed at this meeting. Clearly further action is needed and we will do that.

11. Briefing on San Francisco Bay Plan Amendment 1-17 to address Bay Fill for Habitat.

Chair Wasserman announced: Item 11 is a briefing on the Fill for Habitat Bay Plan Amendment. Shannon Fiala will provide the briefing.

Ms. Fiala addressed the Commission: I am BCDC's Planning Manager. I oversee both Bay Plan Amendments. Megan Hall is actually back at our office hard at work on putting the finishing touches on both of the reports. So I will be providing the briefings today for both of the amendments.

As a reminder of the project process: although the need for this amendment has been discussed for many years we really began in earnest in August of 2018 when we hired Megan Hall.

She started with a deep dive on background research and interviews with stakeholders which will be summarized in our Background Report.

And as you may recall, we held a well-attended workshop with the Commissioners and the public in March.

And since then we have been hard at work drafting, refining and reviewing draft, policy changes which will be explained in our Staff Report.

Throughout this process, we have been meeting on a monthly basis with our Bay Fill Policies Working Group comprised of Barry Nelson as Chair and Commissioners Jim McGrath, Sam Ziegler, Katarina Galacatos and former Commissioner Pat Showalter as well as Commissioner Sean Randolph. And we want to thank them for their time and insight as we've moved through this amendment process.

Megan is hard at work trying to publish the Background and Staff Report by Monday. They will be posted on our website and emailed out to Commissioners and interested parties, which will start a 30-day, public-comment period followed by an initial, public hearing on June 20th.

And depending on how that hearing goes we may need additional public hearings to revise our staff recommendation.

But optimistically Commissioners could vote on the amendment by the end of the year.

On June 20th we will provide an in-depth staff presentation on the background research and staff recommendation. But today we can't get too far into the details of the policies because we haven't published them yet.

We aim to give you a high-level, sneak-peak of what you can expect to receive in your in-box on Monday.

But as a reminder of the project purpose, this picture really sums up the problem. Taken at Mariner's Point in San Mateo County, on the right is a King Tide, the current, highest, high tide of the year; you can see that marsh vegetation is submerged.

In the absence of intervention with rising sea level and decreasing sediment supply we anticipate that many of our existing, Bay ecosystems will be lost or will convert from one habitat type to another such as from marsh to mudflat.

One way that we can make Bay ecosystems more resilient to rising sea levels is by potentially allowing more Bay fill to give ecosystems elevation that they will need to keep pace with rising sea level.

So our project goal is to amend the Bay Plan to essentially allow increasing amounts of Bay fill for habitat, restoration projects in an effort to increase the region's resilience to rising seas.

At the Bay Plan sections that have been identified for amendment are listed here. I will walk you through high-level concepts representing our preliminary, staff recommendation.

The bullets that you will see are not the actual policy language. That will be included in our Staff Report and we will get into much more detail on June 20th. But you may start to notice some re-occurring themes in these bullet points.

For the first section - Fish, Other Aquatic Organisms and Wildlife – findings will acknowledge that fill may be necessary in light of rising sea level.

We also are proposing to revise the policy that currently restricts fill for habitat projects to a minor amount.

We also will add new policies guiding the placement of fill and the required analysis for potential impacts of those fills.

And we will recommend policies prioritizing the placement of fill in areas where it is most needed.

In the tidal marshes, tidal flats and sub-tidal areas sections of the Bay Plan we will be proposing or recommending findings acknowledging the need to establish complete, well-connected, sustainable habitats in light of rising sea level, findings on adaptive management, uncertainty and project failure as well as revised findings to allow more than a minor amount of fill for habitat projects except for in deep, sub-tidal areas.

Projects will require consideration of regional goals and appropriate project siting in project proposals. Policies will guide the placement of fill and analysis of the potential impacts of those fills.

Again, a policy will match that finding about monitoring adaptive management as well as policies that encourage pilot projects and additional research.

For shoreline protection we will be revising an existing policy to strengthen consideration and use of natural or nature-based solutions to the greatest extent practicable and an acknowledgement that these solutions may not be appropriate adjacent to airports which has been requested by SFO.

A revised policy acknowledges that these solutions may require less mitigation or may, in some cases, be self-mitigating. A policy encourages the implementation of pilot projects or demonstration projects to research the efficacy of these innovative solutions.

In the dredging section, we will be proposing or recommending a revised policy on the restriction of the use of more than a minor amount of dredged material for habitat restoration as well as a new policy encouraging additional research.

And finally, in the major conclusions and policies section, we will be revising policies acknowledging the potential benefits of Bay fill with the section is currently very focused on the negative impacts of fill on the Bay.

And a revised policy essentially just softening the language around the negative impacts of Bay fill.

So back to the timeline – Megan and staff are working very hard to publish the Background and Staff Reports by Monday. Those will be distributed in an email to Commissioners, Alternates and members of the public and other people who have expressed interest in the project and that will start a 30-day, comment period. Anyone is welcomed to submit a comment letter or to testify at the public hearing held here on June 20th. Depending on how that goes we may or may not need to have additional public hearings.

With that I don't know if we have any public comment cards.

Chair Wasserman stated: We do not have any cards. Is there anybody who would like to speak?

Mr. John Coleman addressed the Commission: I am with the Bay Planning Coalition and I would like to applaud the staff and the Committee and Chair Nelson. I've gone to almost every one of the meetings and they have been very open to working with ideas and approaches and I thank you very much on that.

I just hope in the process under the benefit side and I've asked that it be included in the Report that we look at what potential economic benefits there may be by changing the policy in terms of protecting assets along the shoreline similar to the CEQA process and putting that in part of the deliberation and the thought process and I look forward to receiving the Report on Monday. Thank you.

Chair Wasserman asked: Anyone else? (No other public speakers came forward)
Commissioner comments or questions?

Commissioner McGrath commented: I obviously support this. Those of you who know me know that I am not really very original but I try to steal from the best. (Laughter) In the mid-1990s Phil Williams came to the State of the Estuary Conference and changed my mind about what the Bay needed. He said we have 1500 dams in our system – we don't have as much sediment as we need going forward. That is the mid-1990s.

Prior to that, prior to my work with the Port of Oakland I had been on the Coastal Commission. I had worked with Fish and Wildlife Service on San Diego Bay where we were trying to enhance eelgrass fisheries by raising the elevation.

While I was at the Port of Oakland I worked with people at Puget Sound where shallow water was critical for restoration of salmonid habitat.

I worked with biologists from U.S. Fish and Wildlife Service and from the Port of Houston doing restoration work in Galveston Bay that looked at shallow water.

These are things that we have learned in other systems and are important. It is time we incorporate those ideas here. And I support this.

Chair Wasserman asked: Other Commissioners or comments? (No further comments were voiced) I thank you very much for the work and the report.

12. Briefing on San Francisco Bay Plan Amendment 2-17 to Address Social Equity and Environmental Justice. Chair Wasserman announced: That brings us to Item 12 a briefing on the Environmental Justice Bay Plan Amendment. Shannon Fiala will again make the report.

Ms. Fiala addressed the Commission: So this amendment will follow a similar process as the other one but we did start a bit earlier on this one when we hired Clesi back in February of 2018. Clesi spent initially a lot of time conducting background research and interviewing stakeholders and talking to our fellow state agencies who have gone through environmental justice processes and other environmental organizations and community-based organizations and presenting those findings to our Environmental Justice Commissioner Working Group with whom we have been meeting for over a year now.

We want to acknowledge their contributions and that group is comprised of Teresa Alvarado, who has been serving as chair, Commissioners John Vasquez, Eddie Ahn, Sheri Pemberton and former, Commissioner Pat Showalter. We are very grateful for the time and guidance that they have provided to staff throughout this process.

In addition to a joint workshop that we held with the State Lands Commission and the Coastal Commission back in June of 2018 we also held a well-attended, public workshop here in January.

And since then we have been working on drafting and refining our preliminary, staff recommendation.

And I also want to recognize the contribution of our Environmental Justice Review Team who has been guiding us in this process. This group is funded by the Resources Legacy Fund to participate in our process. The Review Team consists of Bay Area environmental justice and community-based organizations including the Environmental Justice Coalition for Water, Green Action for Health and Environmental Justice, BreakThrough communities, Shore Up Marin and Nuestra Casa and they are pictured here with some of our staff and members of our Commissioner Working Group.

The timeline for this one is a little bit staggered behind the Fill for Habitat Amendment. So we are aiming to publish our Background Report and Staff Report for this amendment no later than May 31st to allow for a 45-day, comment period in advance of our first public hearing on July 18th.

And depending on how that hearing goes we may need to have additional public hearings to revise our staff recommendation.

We will be providing a much more in-depth presentation of our background research on July 18th, but as a reminder what is at the heart of this amendment, this heat map shows areas that have been identified by our ART Program as socially vulnerable around the Bay overlaid with rising sea level vulnerability.

Compounding the vulnerability of these communities and the risks that they face is the correlation of these communities with contaminated lands and other hazardous land uses on the Bay shoreline that will be further exacerbated by rising sea level.

So that brings us to our project goal – to amend the Bay Plan to incorporate principles of environmental justice and social equity into BCDC’s permitting process.

And these are the sections of the Bay Plan that have been identified for amendment. In addition to these three existing sections that are shown here we are proposing to add a new section focused on EJ and social equity.

As with the other amendment we will provide much more detail on July 18th and we look forward to answering your policy questions then. And through this briefing we just want to provide a preview of what you will find in the Staff Report at the end of May.

In the new section on environmental justice we propose to include recognition of BCDC’s historic and current role in perpetuating injustice in the Bay Area, to provide definitions of important terms such as vulnerable communities, disadvantaged communities, underrepresented communities and meaningful involvement and environmental justice itself.

We are also proposing to include guiding principles that will serve as aspirational goals to guide the Commission’s work as well as requirements for community outreach and engagement for certain projects.

We also recommend that BCDC address disproportionate burdens of certain projects and avoid, minimize and potentially compensate for those burdens in certain projects.

And finally, we recommend increased coordination with local governments and other agencies especially on issues that extend beyond our authority and jurisdiction.

For public access we typically require public access to be located as close to the project as possible but where that is not feasible, in-lieu access can sometimes be required. And we recommend that the location of the in-lieu access be prioritized in areas that need the access most.

A recurring theme that you will see is we recommend increased community involvement in the design of the access and the design be inclusive of multi-cultural and indigenous history.

We also recommend that signage be in appropriate languages and potentially be icon-based as well as strengthening our commitment to accommodating a broad range of activities for people of all races, cultures, ages, income levels and abilities.

For shoreline protection, we recommend that shoreline protection projects analyze potential, adjacent impacts especially for potential impacts to these identified communities.

We also again recommend that communities are more involved in the design and construction of shoreline protection and to ensure that public access to the Bay is still possible where shoreline protection exists.

And finally, they require the use of the best, available science including the Ocean Protection Council sea level rise projections in contamination, remediation projects.

Last but not least, we recommend increased community involvement in the development of mitigation projects that have Bay resource impacts which require the mitigation.

And that brings us back to the timeline. Please keep an eye out for our email which will contain the Background Report and Staff Report no later than May 31st.

And we look forward to discussing these issues with you in greater detail at the hearing on July 18th.

Chair Wasserman continued: Thank you. Any questions or comments?

Commissioner Alvarado gave kudos: I just really want to commend staff. Thank you so much for everything you've done. They have really mounted a speedy, thorough and highly engaged process that could really be a model for other agencies in their approach to environmental justice and social equity issues as well as to BCDC for how we manage projects such as this. Thanks.

Commissioner Vasquez was recognized: I too want to thank staff. But getting back to the Auditor's Report they really should have looked at the breadth and the depth of the work that is being done here.

I mean we just had two presentations and that is a tremendous amount of work and it is a tremendous amount of planning. Given what we have to do here not only with the projects that come forward and having to deal with those, the ones that fall out of compliance and require us to enforce some kind of penalty on them and then the work that is being done for the future; I think that the Audit was unfair.

Having been a member of the Board of Supervisors I took it to be more like a grand jury report, a civil, grand jury report which just makes accusations and doesn't give any help to help resolve it.

It is easy to pick on something if you don't like it. And I often say if going after government was a sport it would be like hunting a beached whale. (Laughter) How can you miss? You simply can't.

We are supposed to do everything right. And nobody needs to tell us thank you because that is our job to try to do the best that we can.

And I would have liked to ask the speaker but I held off; which one of the 28 doesn't he want here? (Laughter) I certainly think my role is important and I think every Commissioner thinks so.

Chair Wasserman interjected: Probably me. (Laughter)

Commissioner Vasquez continued: Well you know you can come to some agreement. (More laughter) I just think that the last few months that the staff has been taking a heck of a beating.

And I want to say as one Commissioner, I appreciate it. I've been almost eight and a half years here and I've come to enjoy the work, respect the work and respect staff.

Anytime I call on them or want assistance they are there to help me and the public should know that. (Applause)

Chair Wasserman continued: Thank you very much for speaking truth to power.

Ms. Sheridan Noelani Enomoto was recognized: Just to re-emphasize the work. I am with Greenaction for Health and Environmental Justice. I also had the opportunity and privilege to be a part of the Working Group for Environmental Justice and Social Equity and many other working groups that BCDC provides for us to participate in.

There are so many people to thank. I do not ever come as an "I". I come as a "we". And just to re-emphasize yesterday I was at a meeting in Bay View Hunter's Point, San Francisco one of the communities that actually fits a lot of the vulnerability categories that were outlined in the presentation and it was headed by Resilient Bay View and was a community meeting.

And the community themselves were basically pointing out all the things that have been mentioned in the work that we are continually doing.

But one thing I felt really proud of when I was in this room with everyone is that I got to be a part of this. I get to be here where I get to share and advocate for all of those realities that they are facing and they are concerned about into a process of policy and permit.

And you may feel that even though I think the Commission is fine it often seems like it is tiny but mighty. But you are a small agency but you are doing amazing things and are often at the forefront where a lot of other agencies that I have to engage with are not.

And I actually recommend BCDC to other agencies to look at models and ways to start looking at and engaging with all of community in this process.

It is not easy but I also am a part of the Adapting to Rising Tides Program and also I was involved with the Resilient by Design going back to the earlier research and I have to say there is a huge difference. I completely agree.

When it comes to sustaining commitment to community and relationships it is a very, very different reality and a very different thing.

And I believe you do it in a very good way. And for me to say that says a lot.

So I just want to say thank you and thank you to the Commissioners who are a part of the Working Group for Environmental Justice and Social Equity. I am glad I made it. It is a lot of work going on and it is very busy but everything you do here really does make a difference and it matters and it is shared. And I hope that you continually move forward in a good way. Thank you.

Chair Wasserman continued: Thank you very much. I want to return to Commissioner Vasquez's comments and again thank you for speaking truth to power. Thank you for praising the staff who in general do a superb job and certainly through this assault on the Audit have been doing so.

I certainly want to be frank about a couple of things. One - auditors are a little bit like carpenters – if you are using a hammer you always look for the nail and they don't look for much else.

It is not their job. Maybe the very, very best of them will put it in a broader context. To be fair they tried a little bit. They recognized the ART Program and some other things.

Second – Will accused us of being politically correct and while there is some truth in that accusation there is also some benefit in it because as a number of you said earlier there are some things in this audit that we can use to our benefit and to improve.

I don't know whether I am happy that the speaker and his good friend left before I said this but we ain't stopping anything – be very clear about that. We are going to get better but we are going to proceed with pursuing our missions and there is more than one vigorously, thoroughly, lawfully and with the great commitment that both the members of this Commission on our staff show.

So with that I would ask for a motion and a resounding approval to adjourn.

13. **Adjournment.** Upon motion by Commissioner McGrath, seconded by Vice-Chair Halsted, the Commission meeting was adjourned at 2:56 p.m.